


***CR 2013/61 - Income tax: scrip for scrip roll-over:
acquisition of Diversified Utility and Energy Trust No.
3 by Diversified Utility and Energy Trust No. 2***

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Class Ruling

Income tax: scrip for scrip roll-over: acquisition of Diversified Utility and Energy Trust No. 3 by Diversified Utility and Energy Trust No. 2

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❶ This publication provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provision(s)

2. The relevant provisions dealt with in this Ruling are:
- section 104-10 of the *Income Tax Assessment Act 1997* (ITAA 1997);
 - section 108-5 of the ITAA 1997;
 - Division 110 of the ITAA 1997;
 - section 112-25 of the ITAA 1997;
 - section 112-30 of the ITAA 1997;
 - section 116-20 of the ITAA 1997;
 - Subdivision 115-A of the ITAA 1997; and

- Subdivision 124-M of the ITAA 1997.

All legislative references in this Ruling are to the ITAA 1997 unless otherwise indicated.

Class of entities

3. The class of entities to which this Ruling applies are the holders of units in Diversified Utility and Energy Trust No. 3 (DUET 3 unit holders) who:

- participate in the scheme that is the subject of this Ruling;
- are residents of Australia within the meaning of subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936);
- acquired their units after 19 September 1985;
- hold their units neither as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)) – that is, broadly on capital account; and
- are not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on their units.

Note: Division 230 will generally not apply to individuals, unless they have made an election for it to apply to them.

Qualifications

4. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.

5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 8 to 37 of this Ruling.

6. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
- this Ruling may be withdrawn or modified.

Date of effect

7. This Ruling applies from 1 July 2013 to 30 June 2014. The Ruling continues to apply after 30 June 2014 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Scheme

8. The following description of the scheme is based on information provided by the applicant. The following documents, or relevant parts of them, form part of and are to be read with the description:

- Class Ruling application dated 12 March 2013;
- Draft Meeting Booklet;
- Constitution of the Diversified Utility and Energy Trust No. 2 (DUET 2);
- Constitution of the Diversified Utility and Energy Trust No. 3 (DUET 3);
- Implementation Agreement;
- Supplemental Deed – Amending the Constitution for DUET3 (Supplemental Deed Poll);
- Stapling Deed;
- Correspondence received in relation to the Class Ruling application.

Note: certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under Freedom of Information legislation.

The DUET Group

9. The DUET Group consists of a six-instrument stapled security listed on the Australian Securities Exchange (ASX).

10. The stapled security consists of:

- three Australian resident unit trusts which are managed investment schemes registered under Chapter 5C of the *Corporations Act 2001* – Diversified Utility and Energy Trust No. 1 (DUET 1), DUET 2 and DUET 3;

- three Australian resident companies – DUET Management Company 1 Limited (DMC 1), DUET Management Company 2 (DMC 2), and DUET Investment Holdings Limited (DIHL).

11. Each DUET stapled security is made up of one share in each of DMC 1, DMC 2 and DIHL and one unit in each of DUET 1, DUET 2 and DUET 3.

12. All stapled securities were issued on or after 20 September 1985.

13. Neither DUET 1, DUET 2 nor DUET 3 is a corporate unit trust pursuant to Division 6B of Part III of the ITAA 1936 or a public trading trust pursuant to Division 6C of Part III of the ITAA 1936.

14. DUET 1, DUET 2 and DUET 3 only have one class of units on issue. Each unit carries the same rights to the income and capital of DUET 1, DUET 2 and DUET 3 (respectively) as every other unit in the respective trust.

15. DMC 1 is the responsible entity for DUET 1. DMC 2 is the responsible entity for DUET 2 and DUET 3.

16. Prior to 4 December 2012, the DUET Group was managed jointly by Macquarie Capital Group Limited and AMP Capital Holdings Limited. The DUET Group's management was internalised on 4 December 2012, resulting in management personnel becoming employed by DIHL.

Scheme for simplifying the stapled structure

17. The DUET Group is proposing to simplify its stapled structure by converting from a six-instrument stapled security to a four-instrument stapled security.

18. The Boards of DMC 1, DMC 2 and DIHL consider that the advantages of the restructure include:

- Reduction of head office costs due to reduced administrative burden;
- Simplified financial reporting requirements;
- Improved flexibility to implement capital and other initiatives; and
- The four-instrument stapled security is expected to be more easily understood by investors (particularly non-resident investors) than the current six-instrument stapled security.

19. The date for the implementation of the simplification scheme is expected to be 1 August 2013 (Implementation Date).

Detailed steps of the simplification scheme***De-stapling the stapled security***

20. The units and shares comprising the DUET Group stapled security will be de-stapled to allow each stapled security holder to deal with the shares and units separately for the purposes of implementing the scheme.

21. The de-stapling will require approval by the stapled security holders.

Subdivision of DUET 2 units and DUET 3 units

22. Each DUET 2 unit and DUET 3 unit will be subdivided on the Implementation Date.

23. The purpose of the unit subdivision is to facilitate an exchange ratio of DUET 2 units to DUET 3 units of 1:1. This is to avoid fractions of DUET 2 units being issued.

24. The proportion of unit ownership by the existing DUET 2 and DUET 3 unit holders in their respective trusts will remain the same and will not be affected by the unit subdivision.

Acquisition of 100% of DUET 3 units by the responsible entity of DUET 2

25. The DUET 3 Constitution will be amended in accordance with the provisions of a Supplemental Deed Poll to authorise all actions necessary for the transfer of DUET 3 units to the responsible entity of DUET2. The amendments must be approved by a special resolution of DUET 3 unit holders. The Supplemental Deed Poll will be lodged with the Australian Securities and Investments Commission (ASIC).

26. DUET 3 unit holders must then approve an ordinary resolution authorising the acquisition of 100% of the units in DUET 3 by the responsible entity of DUET2.

27. On the Implementation Date, all DUET 3 unit holders will dispose of their DUET 3 units to the responsible entity of DUET 2. The responsible entity of DUET 2 will issue new DUET 2 units to DUET 3 unit holders as consideration for the disposal of their DUET 3 units.

28. Each DUET 3 unit holder will obtain one new DUET 2 unit for each unit in DUET 3 they hold. No cash or other property will be paid or otherwise distributed to DUET 3 unit holders..

DUET 2 units are consolidated

29. After the issue of the new DUET 2 units and before they can be dealt with or traded, DUET2 will undertake a unit consolidation.

30. The consolidation will result in all DUET 2 unit holders retaining the same proportional interest in DUET 2 immediately after the consolidation as they will have had immediately before the consolidation.

31. No units will be cancelled or redeemed by the responsible entity of DUET 2 under the unit consolidation. There will not be any change in the total amount standing to the credit of the contributed capital account of DUET 2.

Other entities in the DUET Group stapled security

32. A newly formed company (DUECo) will acquire the units in DUET 1 (with DUET 1 unit holders receiving shares in DUECo as consideration) on the Implementation Date.

33. DUECo will also acquire the shares in DMC 1 (with DMC 1 shareholders receiving DUECo shares as consideration) on the Implementation Date.

34. These are separate schemes subject to separate Class Rulings.

35. In order for the simplification scheme to be implemented, these separate schemes must be approved (as set out in the Meeting Booklet).

36. The DUECo shares, DIHL shares, and DMC 2 shares will be stapled to the DUET 2 units to form the new DUET Group stapled security, which will be listed on the ASX.

37. The consolidation of DUET 2 units (as outlined above) and a consolidation of DUECo shares (both occurring prior to the formation of the new DUET Group stapled security) will ensure that DUET 2 units and DUECo shares can be stapled to DMC 2 shares and DIHL shares on a 1:1 basis.

Ruling

Separate CGT assets under section 108-5

38. Each unit in DUET 1, DUET 2 and DUET 3, and each share in DIHL, DMC 1 and DMC 2, is a separate CGT asset for the purposes of section 108-5.

39. Subsection 112-30(1) will apply to apportion the expenditure incurred on acquiring a CGT asset where only part of the expenditure relates to the acquisition of that CGT asset.

40. In such a case, the first element of the cost base and reduced cost base on acquiring each CGT asset that forms part of a stapled security will be that part of the expenditure that is reasonably attributable to the acquisition of that particular CGT asset.

De-stapling of the DUET Group stapled security

41. A DUET 3 unit holder will not make a capital gain or capital loss when the de-stapling of the DUET Group stapled security occurs.

No CGT event on the subdivision of units

42. The subdivision of DUET 2 and DUET 3 units will not result in a CGT event happening (subsection 112-25(2)).

43. Subsection 112-25(2) will apply because the DUET 2 and DUET 3 units (each being a CGT asset) will be split into 2 or more assets, and the same entity is the beneficial owner of the original asset and each new asset (subsection 112-25(1)).

CGT event A1 will happen on the disposal of DUET 3 units

44. CGT event A1 will happen as a result of the disposal by a DUET 3 unit holder of their DUET 3 units to the responsible entity of DUET 2 (section 104-10). The time of CGT event A1 is on the Implementation Date (paragraph 104-10(3)(b)).

45. A DUET 3 unit holder will make a capital gain from CGT event A1 happening if the capital proceeds from the disposal of a DUET 3 unit exceed its cost base. A DUET 3 unit holder will make a capital loss if the capital proceeds from the disposal of a DUET 3 unit are less than its reduced cost base (subsection 104-10(4)).

46. Under subsection 116-20(1), the capital proceeds from CGT event A1 happening will be the market value of the property (a DUET 2 unit) received or entitled to be received in respect of the disposal of a DUET 3 unit. The market value of the DUET 2 unit is worked out as at the time of CGT event A1, which is on the Implementation Date.

Availability of scrip for scrip roll-over if a capital gain is made

47. Subject to the qualification in the following paragraph, a DUET 3 unit holder who makes a capital gain from the disposal of a DUET 3 unit to the responsible entity of DUET 2 is eligible to choose scrip for scrip roll-over (section 124-781 and section 124-785).

48. Scrip for scrip roll-over cannot be chosen if any capital gain a DUET 3 unit holder might make from their replacement DUET 2 units would be disregarded, except because of a roll-over (paragraph 124-795(2)(a)).

Consequences if scrip for scrip roll-over is chosen

49. The only capital proceeds received by a DUET 3 unit holder will be DUET 2 units. Therefore, if a DUET 3 unit holder chooses scrip for scrip roll-over, the capital gain they will make upon the disposal of a DUET 3 unit to the responsible entity of DUET 2 is disregarded (subsection 124-785(1)).

Consequences if scrip for scrip roll-over is not chosen, or cannot be chosen

50. A DUET 3 unit holder who does not choose roll-over, or cannot choose roll-over, must take into account any capital gain or capital loss from CGT event A1 happening on the disposal of their DUET 3 units in working out their net capital gain or net capital loss for the income year in which CGT event A1 happens (sections 102-5 and 102-10).

51. A DUET 3 unit holder who makes a capital gain where roll-over is not chosen, or cannot be chosen, can treat the capital gain as a 'discount capital gain' provided that the conditions of Subdivision 115-A are met. In particular, the DUET 3 units must have been acquired by the unit holder at least 12 months before their disposal to the responsible entity of DUET 2.

Cost base of DUET 2 units received

52. The method for calculating the cost base of the DUET 2 units received under the simplification scheme for the disposal of DUET 3 units will depend on whether scrip for scrip roll-over is chosen.

Scrip for scrip roll-over is chosen

53. Where scrip for scrip roll-over is chosen, the first element of the cost base and reduced cost base of each replacement DUET 2 unit received will be calculated by reasonably attributing to it the cost base and reduced cost base of the DUET 3 unit for which it was exchanged (subsections 124-785(2) and 124-785(4)).

Scrip for scrip roll-over is not chosen

54. Where scrip for scrip roll-over is not chosen, or cannot be chosen, the first element of the cost base and reduced cost base of each replacement DUET 2 unit received is equal to the market value of the DUET 3 unit given in respect of acquiring each DUET 2 unit, worked out as at the time of their acquisition (subsections 110-25(2) and 110-55(2)).

No CGT event on the consolidation of units

55. The consolidation of DUET 2 units will not result in a CGT event happening (paragraph 112-25(4)(a)).

56. Paragraph 112-25(4)(a) will apply because a certain number of DUET 2 units (being CGT assets) will be merged into a single asset, and the same entity is the beneficial owner of the original assets and the new asset.

Commissioner of Taxation7 August 2013

Appendix 1 – Explanation

❶ ***This Appendix is provided as information to help you understand how the Commissioner’s view has been reached. It does not form part of the binding public ruling.***

57. The tax consequences that arise concerning the scheme that is the subject of this Ruling are outlined in the Ruling part of this document.

58. The significant tax consequence that is the subject of this Ruling is the availability of scrip for scrip roll-over under Subdivision 124-M. The roll-over enables the holder of a unit or other interest in a trust to disregard a capital gain from a unit or other interest that is disposed of if the holder receives a replacement interest in another trust in exchange. It also provides special rules for calculating the cost base and reduced cost base of the replacement interest.

59. Subdivision 124-M contains a number of conditions for, and exceptions to, the holder of an interest in a trust being eligible to choose scrip for scrip roll-over. The main requirements that are relevant to the scheme that is the subject of this Ruling are:

- (a) units/interests are exchanged for units/interests in another trust;
- (b) entities have fixed entitlements to all of the income and capital of the original trust and the acquiring trust;
- (c) the exchange is in consequence of an arrangement;
- (d) conditions for the roll-over are satisfied;
- (e) further conditions, if applicable, are satisfied; and
- (f) exceptions to obtaining scrip for scrip roll-over are not applicable.

60. Having regard to:

- (a) all of the documents and any other material referred to in paragraph 8 of this Ruling; and
- (b) all the facts comprising the scheme as described in this Ruling,

it is considered that, for the purposes of paragraph 124-781(1)(b), there are fixed entitlements to all of the income and capital of DUET 3 and of DUET 2 immediately before, during and immediately after the exchange of units that is the subject of this Ruling.

61. The scheme satisfies the requirements for the roll-over under Subdivision 124-M.

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Appendix 2 – Detailed contents list

62. The following is a detailed contents list for this Ruling:

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10; TD 2000/10

Subject references:

- arrangement
- CGT assets
- CGT capital proceeds
- CGT cost base
- CGT event A1 – disposal of a CGT asset
- CGT reduced cost base
- CGT roll-over relief
- consolidation of shares
- de-stapling of securities
- re-organisations
- stapled securities
- unit trust units

Legislative references:

- ITAA 1936 6(1)
- ITAA 1997 Div 102
- ITAA 1997 Div 104
- ITAA 1997 Div 124-A
- ITAA 1997 102-5
- ITAA 1997 102-10
- ITAA 1997 104-10
- ITAA 1997 108-5
- ITAA 1997 Div 110
- ITAA 1997 Div 112
- ITAA 1997 112-25
- ITAA1997 112-30(1)
- ITAA 1997 116-20(1)
- ITAA 1997 124-M
- ITAA1997 124-781
- ITAA 1997 124-795
- ITAA 1997 124-785
- ITAA 1997 Div 230
- TAA 1953
- Corporations Act 2001 Ch 5
- Copyright Act 1968

ATO references

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