


CR 2014/106 - Income tax: transfer of assets from Caledonia (Private) Investment Trust to Caledonia (Private) Investment No. 2 Trust

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Class Ruling

Income tax: transfer of assets from Caledonia (Private) Investment Trust to Caledonia (Private) Investment No. 2 Trust

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1 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:

- subsection 115-30(1) of the *Income Tax Assessment Act 1997* (ITAA 1997)
- section 126-245 of the ITAA 1997
- subsection 126-245(2) of the ITAA 1997
- subsection 126-245(3) of the ITAA 1997, and
- subsection 126-245(4) of the ITAA 1997.

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

Class of entities

3. The class of entities to which this Ruling will apply consists of the holders of the units ('the Unitholders') in Caledonia (Private) Investment Trust ('CPIT') and the Caledonia (Private) Investment No. 2 Trust ('CPIT No. 2') who:

- are listed on the unit register of the CPIT and the CPIT No. 2 at the Transfer Time (consistent with the "transfer time" per paragraph 126-225(1)(a))
- hold their units on capital account for Australian income tax purposes
- are residents of Australia for the purposes of section 6 of the *Income Tax Assessment Act 1936* at all relevant times and were not considered temporary residents for tax purposes, and
- are not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on their units in CPIT or CPIT No. 2.

(Note: Division 230 will generally not apply to individuals, unless they make an election for it to apply to them.)

Qualifications

4. The Commissioner makes this Ruling on the precise scheme 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 26 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 2014 to 30 June 2015. The Ruling continues to apply after 30 June 2015 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 18 November 2014
- Caledonia (Private) Investment Trust Supplemental Deed No. 2 dated 24 October 2014
- Constitution of Caledonia (Private) Investment No. 2 Trust dated 24 October 2014
- Application by trustee of Caledonia (Private) Investment Trust for units in Caledonia (Private) Investment No. 2 Trust dated 24 October 2014
- Deed of appointment and retirement of trustee of Caledonia (Private) Investment No. 2 Trust dated 24 October 2014
- Investment Management Agreement – Alfred Street Nominees Pty Ltd, Caledonia (Private) Investments Pty Ltd, Caledonia (Private) Investment Trust and Caledonia (Private) Investment No. 2 Trust, and
- Correspondence between PricewaterhouseCoopers and the Australian Taxation Office (ATO) dated 4 December 2014 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.

Background

9. The scheme that is the subject of this Ruling involves the transfer of assets from the Caledonia (Private) Investment Trust (CPIT) to the Caledonia (Private) Investment No. 2 Trust (CPIT No. 2) as part of a reorganisation of portfolio assets.

Caledonia (Private) Investment Trust

10. Alfred Street Nominees Pty Ltd is an Australian resident company that acts in the capacity of trustee of the CPIT. As trustee of the CPIT, it holds a significant portfolio of investments. The trust's assets are managed by Caledonia (Private) Investments Pty Ltd (Caledonia) which does not have custody of the trust's assets.

11. The CPIT's largest investments are shares held in two publicly listed US companies – Zillow, Inc. and Trulia, Inc. The interests in these companies comprise approximately 32% and 21%, respectively, of the CPIT's total investment portfolio.

12. In July 2014, Zillow, Inc. and Trulia, Inc. announced a proposed all-scrip merger of their businesses. Following the proposed merger, the investment in the merged company would comprise approximately 53% of CPIT's total investment portfolio.

13. This level of concentration in a single stock poses various challenges for Caledonia as manager of the CPIT's assets, including catering to the various levels of risk appetite across the investor base, managing a portfolio that is dominated by one single investment (reducing the relevance and impact of all other positions), and managing the volatility, liquidity and concentration risk that comes with such a large single-stock position.

14. While acknowledging these challenges, it is Caledonia's strong recommendation that Unitholders maintain their current exposure in Zillow, Inc. and Trulia, Inc.

15. Accordingly, a reorganisation of the investments held by the CPIT is proposed whereby approximately 66% of the current interests held by the trust in each of the companies (the Relevant Shareholding Interests) will be transferred to the CPIT No. 2. Each of the Unitholders in CPIT will receive units in the CPIT No. 2 corresponding to the number of units held in CPIT.

Proposed Reorganisation

16. The Reorganisation involves three steps:

Step 1

17. On 24 October 2014:

- A new trust called the CPIT No. 2 was established. Caledonia was the original trustee of the CPIT No. 2.
- The trustee of the CPIT subscribed for, and was issued with, ten units in the CPIT No. 2 in consideration for \$10.

Step 2

18. The 10 units held by the CPIT in the CPIT No. 2 will be split so that the total number of issued units will equal the same number of units on issue in the CPIT.

19. The trustee of CPIT will make an in-specie distribution of the units in CPIT No. 2 to the Unitholders of CPIT equal to the number of their existing unitholdings in CPIT.

Step 3

20. After the in-specie distribution of CPIT No. 2 units, the CPIT will transfer 66% of its interests in each of Zillow, Inc. and Trulia, Inc. to the CPIT No. 2 for nil consideration. The transfers will happen on or around the same time (the Transfer Time).

21. Just after the Transfer Time, the net asset value of each of the CPIT and the CPIT No. 2 will represent 65% and 35%, respectively, of the total net asset value of the CPIT immediately prior to the Transfer Time.

Other

22. The CPIT and the CPIT No. 2 will each have only one class of units on issue just before, and just after, the Transfer Time.

23. The rights attaching to the units in the CPIT and CPIT No. 2 are identical just before, and just after, the Transfer Time.

24. All of the units in CPIT were acquired by the Unitholders after 19 September 1985.

25. The requirements for CGT roll-over in Subdivision 126-G are met in respect of the transfer of each of the Relevant Shareholding Interests.

26. The trustee of each of the CPIT and CPIT No. 2 will make a choice under section 126-225 to obtain a rollover in respect of the transfer of each of the Relevant Shareholding Interests.

Ruling**Cost base and reduced cost base of units in CPIT and CPIT No. 2**

27. On the basis that the trustee of each of the CPIT and the CPIT No. 2 will choose Subdivision 126-G roll-over for the transfer of each of the Relevant Shareholding Interests, a Unitholder's cost base of each CPIT unit and CPIT No. 2 unit will be calculated in accordance with section 126-245.

28. The Commissioner accepts that a reasonable apportionment of the cost bases and reduced cost bases of the CPIT units is that:

- the first element of the cost base and reduced cost base of each CPIT unit, just after the Transfer Time, is an amount equal to 65% of the cost base of each CPIT unit just before the Transfer Time (subsections 126-245(2) and 126-245(4)), and

- the first element of the cost base and reduced cost base of each CPIT No. 2 unit, just after the Transfer Time, is the sum of:
 - an amount equal to 35% of the cost base of each CPIT unit just before the Transfer Time, and
 - the cost base (if any) of each CPIT No. 2 unit just before the Transfer Time (subsections 126-245(3) and 126-245(4)).

Acquisition date of units in CPIT No. 2 for CGT discount purposes

29. For the purposes of the CGT discount rules, a Unitholder's CPIT No. 2 unit will be taken to have been acquired on the date that the Unitholder acquired their corresponding unit in CPIT (item 9 of the table in subsection 115-30(1)).

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.*

30. Subdivision 126-G provides a CGT roll-over for the transfer of assets between certain trusts.

31. The scheme that is the subject of this Ruling will be eligible for a CGT roll-over under Subdivision 126-G. As the trustees of both the CPIT and CPIT No. 2 will choose to obtain the roll-over in respect of the transfer of the Relevant Shareholding Interests, each Unitholder is required to adjust, just after the Transfer Time, the cost base and reduced cost base of their interests in both trusts.

32. The general rule is that these adjustments must be made in respect of each asset transfer. A Unitholder may choose to calculate a single adjustment under section 126-250 where there are multiple asset transfers. However, in the circumstances of this particular reorganisation, there would be no difference in the cost base calculations under section 126-250 from the general provisions in section 126-245 as the Relevant Shareholding Interests will all be transferred on or around the same time.

The first element of the cost base and reduced cost base of each unit in CPIT (the Transferring Trust)

33. Section 126-245 requires Unitholders to apportion the cost base of each CPIT unit that they own between that unit and their corresponding new unit in CPIT No. 2. The apportionment must be reasonable having regard to the relative market value of the units in CPIT and CPIT No. 2 (or a reasonable approximation of those market values) just before, and just after, the Transfer Time.

34. The following formula is a reasonable basis for calculating the first element of the cost base and reduced cost base of each unit in CPIT just after the Transfer Time (subsections 126-245(2) and (4)):

Total cost base / reduced cost base of unit in the CPIT just before the Transfer Time	X	Net asset value of the CPIT just after the Transfer Time
		Net asset value of the CPIT just before the Transfer Time

35. Under the scheme, the Relevant Shareholding Interests transferred by the CPIT to the CPIT No. 2 will represent 35% of the total net asset value of the CPIT just before the Transfer Time.

36. Applying the statutory formula in subsections 126-245(2) and (4), the first element of the cost base and reduced cost base of each unit in the CPIT just after the Transfer Time is therefore an amount equal to 65% of the cost base of the units in the CPIT just before the Transfer Time.

The first element of the cost base and reduced cost base of each unit in CPIT No. 2 (the Receiving Trust)

37. The first element of the cost base and reduced cost base of a unit that a Unitholder holds in CPIT No. 2, worked out just after the Transfer Time, is an amount such that the total cost base of that unit and the corresponding unit in the CPIT just before the Transfer Time, reasonably approximates the total cost base of those interests just after the Transfer Time (subsections 126-245(3) and (4)).

38. The following formula is a reasonable basis for calculating the first element of the cost base of each unit in the CPIT No. 2 just after the Transfer Time (subsections 126-245(3) and (4)):

1 st element of cost base of unit in CPIT No. 2 just after the Transfer Time	=	cost base of the unit in CPIT No. 2 + cost base of corresponding unit in CPIT just before the Transfer Time	less	1 st element of cost base of unit in CPIT just after the Transfer Time (that is, the amount worked out in paragraph 36)
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39. The first element of the reduced cost base of the unit in CPIT No. 2 just after the Transfer Time would be worked out similarly.

40. The first element of cost base and reduced cost base of each unit in the CPIT No. 2 just after the Transfer Time will therefore be an amount equal to 35% of the cost base of the corresponding unit in the CPIT just before the Transfer Time. To this amount should be added the cost base of CPIT No. 2 (if any) just before the Transfer Time.

41. The trustee of the transferring trust (that is, the CPIT) must provide the Unitholders with sufficient information to make these calculations.

Acquisition date of units in CPIT No. 2 for CGT discount purposes

42. The Unitholders are deemed to have acquired their units in the CPIT No. 2 just after the Transfer Time (subsection 126-245(5)).

43. However, for the purposes of the CGT discount, item 9 of the table in subsection 115-30(1) provides that the ownership period of units in the receiving trust (that is, the CPIT No. 2) includes the period of ownership of the corresponding membership interests in the transferring trust (that is, the CPIT).

Appendix 2 – Detailed contents list

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Subject references:

- CGT cost base
- CGT reduced cost base
- -CGT roll-over relief
- CGT small asset roll-over
- Unit trusts

Legislative references:

- ITAA 1936 6
 - ITAA 1997 115-30(1)
 - ITAA 1997 Subdiv 126-G
 - ITAA 1997 126-225
 - ITAA 1997 126-225(1)(a)
 - ITAA 1997 126-245
 - ITAA 1997 126-245(2)
 - ITAA 1997 126-245(3)
 - ITAA 1997 126-245(4)
 - ITAA 1997 126-245(5)
 - ITAA 1997 126-250
 - ITAA 1997 Div 230
 - TAA 1953
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ATO references

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