CR 2014/28 - Income tax: GDI Property Group - creating a new stapled security

Class Ruling

Income tax: GDI Property Group – creating a new stapled security

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.

Contents Para

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 99B of the *Income Tax Assessment Act 1936* (ITAA 1936);
- section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 102-5 of the ITAA 1997;
- section 102-10 of the ITAA 1997;
- section 103-5 of the ITAA 1997;
- Division 104 of the ITAA 1997;
- section 109-10 of the ITAA 1997;
- section 110-25 of the ITAA 1997;
- section 110-55 of the ITAA 1997;
- Division 115 of the ITAA 1997;

- section 116-20 of the ITAA 1997
- Subdivision 124-M of the ITAA 1997;
- Division 725 of the ITAA 1997;
- Division 727 of the ITAA 1997; and
- Division 855 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 the GDI No. 35 Perth Prime CBD Office Trust (**Perth Trust**), GDI Premium Office Trust (**Premium Trust**), or GDI No. 34 Sydney CBD Office Trust (**Sydney Trust**) who:

(a) participate in the scheme that is the subject of this Ruling;

(b) are either:

(i) 'residents of Australia' as that term is defined in subsection 6(1) of the (ITAA 1936); or

(ii) 'foreign residents' as that term in defined in subsection 995-1(1) of the ITAA 1997, whose respective units in the Perth Trust, Premium Trust or Sydney Trust, or right to receive something of value in respect of the units in the Perth Trust, Premium Trust or Sydney Trust they own, are not taxable Australian property (as that term is defined in section 855-15 of the ITAA 1997);

(c) do not hold their units in the Perth Trust, Premium Trust or Sydney Trust as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)) – that is, the holders hold their units broadly on capital account;

(d) are not subject to the taxation of financial arrangements (TOFA) 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.)

4. Where an entity is a holder of units in more than one of the trusts listed in paragraph 3, this Ruling applies to the holding of units in each trust separately.

5. The class of entities to which this Ruling applies also consists of entities which successfully applied under the Initial Public Offering (IPO) and were issued with units in the GDI Property Trust, who:

(a) are either:

(i) 'residents of Australia' as that term is defined in subsection 6(1) of the ITAA 1936; or

(ii) 'foreign residents' as that term in defined in subsection 995-1(1) of the ITAA 1997, whose units in the GDI Property Trust, or right to receive something of value in respect of the units in the GDI Property Trust they own, are not taxable Australian property (as that term is defined in section 855-15 of the ITAA 1997);

(b) do not hold their units in the GDI Property Trust as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)) – that is, the holders hold their units broadly on capital account;

(c) are not subject to the taxation of financial arrangements (TOFA) 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

6. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.

7. 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 10 to 22 of this Ruling.

8. 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

9. 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

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

- Class Ruling application dated 7 November 2013;
- copies of the fixed entitlement submissions in relation to the GDI Property Trust, Perth Trust, Premium Trust and Sydney Trust;
- the Constitutions of the Perth Trust, Premium Trust and Sydney Trust;
- the draft Constitution of the GDI Property Trust;
- the draft GDI Implementation Deed; and
- correspondence from Hall Chadwick.

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 GDI Property Group

11. The GDI Property Group manages a number of unlisted unit trusts with real property assets throughout Australia.

12. The Perth Trust, Premium Trust and Sydney Trust are unlisted unit trusts, and were at all relevant times managed investment schemes for the purposes of the *Corporations Act 2001.*

13. The GDI Property Trust is a unit trust that is a registered managed investment scheme under the *Corporations Act 2001*.

14. At the time of the scheme, GDI No. 35 Pty Ltd was the trustee of the Perth Trust. GDI Funds Management Ltd is the trustee of the Premium Trust and Sydney Trust. GDI Funds Management Ltd is also the trustee, and the responsible entity, of the GDI Property Trust.

15. The Perth Trust, Premium Trust, Sydney Trust and GDI Property Trust are each a resident trust estate as defined in subsection 95(2) of the ITAA 1936 and a resident trust for CGT purposes as defined in subsection 995-1(1) of the ITAA 1997.

The restructure

16. The scheme that is the subject of this Ruling involves, broadly, the merger of each of the Perth Trust, Premium Trust and Sydney Trust with the GDI Property Trust. This resulted in the GDI Property Trust holding 100% of the units in the Perth Trust, Premium Trust and Sydney Trust. In exchange for this acquisition, the unit holders of the Perth Trust, Premium Trust and Sydney Trust were issued with units in the GDI Property Trust.

17. Each merger constitutes a separate scheme.

18. The restructure involved the following steps in this sequence:

- The constitutions of the Perth Trust, Premium Trust and Sydney Trust were amended to allow the trustee of each trust to transfer all of the units held by unit holders in each trust to the trustee of the GDI Property Trust, in return for valuable consideration being provided to the unit holders.
- The pre-existing unit holders of the Perth Trust, Premium Trust and Sydney Trust were given the opportunity to either have the units they received in the GDI Property Trust redeemed for cash, or receive stapled securities under the restructure. If the pre-existing unit holders did not elect to receive stapled securities, their units in the GDI Property Trust were redeemed.
- The public was invited to acquire stapled securities under an IPO.
- A new trust, named the Sydney Guarantee Trust, was settled. The trustee of the Sydney Trust subscribed for units in the Sydney Guarantee Trust. The trustee of the Sydney Trust then distributed those units to the unit holders of the Sydney Trust in proportion to their unit holdings in the Sydney Trust.
- On the Implementation Date (16 December 2013), the trustee of the Perth Trust, as attorney for the unit holders of the Perth Trust, executed the document to transfer all of the units in the Perth Trust to the trustee of the GDI Property Trust. As a result, the trustee of the GDI Property Trust became the owner of all of the units in the Perth Trust. The trustee of the GDI Property Trust issued new GDI Property Trust units to the Perth Trust unit holders as consideration for the disposal of their Perth Trust units.

- On the Implementation Date (16 December 2013), the trustee of the Premium Trust and the trustee of the Sydney Trust, as attorney for the unit holders of the Premium Trust and Sydney Trust (respectively), executed the document to transfer all of the units in the Premium Trust and Sydney Trust (respectively) to the trustee of the GDI Property Trust. As a result, the trustee of the GDI Property Trust became the owner of all of the units in the Premium Trust and Sydney Trust. The trustee of the GDI Property Trust issued new GDI Property Trust units to the Premium Trust and Sydney Trust unit holders as consideration for the disposal of their Premium Trust and Sydney Trust units.

- New investors who successfully applied under the IPO were issued with units in the GDI Property Trust.

- After the exchange of units, the unit holders of the GDI Property Trust:

  1) who did not elect to receive GDI stapled securities (consisting of units in the GDI Property Trust and shares in GDI Property Group Limited); or

  2) whose address on the unit register of Perth Trust, Premium Trust or Sydney Trust (when they held units in those trusts) was outside Australia;

  had their new GDI Property Trust units redeemed for cash. The redemption price was debited to the contributed capital account of the GDI Property Trust. The GDI Property Trust unit register was updated accordingly.

- The trustee of the GDI Property Trust made a capital distribution of 4.3321 cents per unit in the GDI Property Trust to all of the remaining unit holders of the GDI Property Trust. The capital distribution was debited to the contributed capital account of the GDI Property Trust. The capital distribution was not paid in cash to unit holders, but was compulsorily applied on behalf of unit holders to apply for shares in a company called GDI Property Group Limited. The unit holders of the GDI Property Trust received the number of shares corresponding to the number of units they hold.

- The units in the GDI Property Trust were stapled to the shares in GDI Property Group Limited.

- GDI stapled securities were listed on the Australian Securities Exchange (ASX).

Other matters

19. The trustee of the GDI Property Trust did not make a choice under subsection 124-795(4) to the effect that the unit holders of the Perth Trust, Premium Trust or Sydney Trust cannot obtain scrip for scrip roll-over for the CGT event happening in relation to their respective units.

20. The Perth Trust, Premium Trust and Sydney Trust did not have a 'significant stakeholder' or 'common stakeholder' in relation to the scheme within the meaning of those expressions in section 124-783.

21. In respect of the Sydney Trust, no entity, or no entity and its associates between them, has the right to receive at least 40% of any distribution of trust income, or trust capital, as unit holders of the Sydney Trust. Further, no unit holder has de facto control of the Sydney Trust.

22. In respect of the GDI Property Trust, no entity, or no entity and its associates between them, has the right to receive at least 40% of any distribution of trust income, or trust capital, as unit holders of the GDI Property Trust. Further, no unit holder has de facto control of the GDI Property Trust.

Ruling

Non-assessable payment when Sydney Guarantee Trust units are distributed to Sydney Trust unit holders

23. The distribution of units in the Sydney Guarantee Trust by the trustee of the Sydney Trust to the unit holders of the Sydney Trust is not included in the assessable income of the unit holders under subsection 99B(1) of the ITAA 1936.

24. The distribution of units in the Sydney Guarantee Trust (being a distribution of corpus) made to the unit holders of the Sydney Trust does not have the quality of income in the hands of the unit holders, and is not ordinary income under section 6-5.

CGT event E4 happens when Sydney Guarantee Trust units are distributed to Sydney Trust unit holders

25. CGT event E4 happens when the trustee of the Sydney Trust makes a payment to the unit holders of the Sydney Trust (being the units in the Sydney Guarantee Trust) in respect of their units in the Sydney Trust. None of the payment is included in the assessable income of the unit holders (section 104-70).

26. The amount of the payment is the market value of the units in the Sydney Guarantee Trust (section 103-5).

27. As CGT event A1 will happen in relation to the Sydney Trust units after the trustee of the Sydney Trust distributes the units in the Sydney Guarantee Trust (which causes CGT event E4 to happen), but before the end of the income year in which the units are distributed, the time of CGT event E4 is just before the time of CGT event A1 (see paragraph 34) (paragraph 104-70(3)(b)).

28. As the unit holders of the Sydney Trust did not pay money or give property to acquire their units in the Sydney Guarantee Trust, the first element of the cost base and reduced cost base of the unit holders' units in the Sydney Guarantee Trust is the market value of those units, at the time they were acquired by the unit holders (subsection 112-20(1)).

29. A unit holder of the Sydney Trust makes a capital gain if the total of the amount of the non-assessable payment made by the trustee of the Sydney Trust during the income year (including this payment by the trustee of the Sydney Trust) in respect of a Sydney Trust unit exceeds the cost base of the unit (subsection 104-70(4)).

30. If the Sydney Trust unit was acquired by an Australian resident unit holder at least 12 months before the time of CGT event E4 (see paragraph 27), a capital gain from CGT event E4 happening to that unit may qualify as a discount capital gain under subsection 115-25(1), provided the other conditions in Subdivision 115-A are satisfied.

31. If a unit holder of the Sydney Trust makes a capital gain, the cost base and reduced cost base of the Sydney Trust unit is reduced to nil (subsection 104-70(5)).

32. If the total of the amount of the non-assessable payment made by the trustee of the Sydney Trust during the income year is not more than the cost base of a Sydney Trust unit, the cost base and reduced cost base of the unit will be reduced by that total amount (subsection 104-70(6)).

CGT event A1 happens on the disposal of Perth Trust, Premium Trust or Sydney Trust units

33. CGT event A1 happens when the unit holders of the Perth Trust, Premium Trust or Sydney Trust dispose of their respective units to the trustee of the GDI Property Trust (section 104-10).

34. The time of CGT event A1 is on the Implementation Date (16 December 2013) (paragraph 104-10(3)(a)).

35. A unit holder of the Perth Trust, Premium Trust or Sydney Trust made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of a Perth Trust, Premium Trust or Sydney Trust unit (respectively) exceeded the cost base of that unit (subsection 104-10(4)).

36. A unit holder of the Perth Trust, Premium Trust or Sydney Trust made a capital loss from CGT event A1 happening if the capital proceeds from the disposal of a Perth Trust, Premium Trust or Sydney Trust unit (respectively) was less than the reduced cost base of that unit (subsection 104-10(4)).

37. The capital proceeds from CGT event A1 happening is equal to the market value of the property (units in the GDI Property Trust) that a unit holder in the Perth Trust, Premium Trust or Sydney Trust (respectively) received, or was entitled to receive, in respect of the disposal of the units in the Perth Trust, Premium Trust or Sydney Trust respectively (subsection 116-20(1)). The market value of the GDI Property Trust units is worked out as at the time of CGT event A1, which is on the Implementation Date.

38. If the Perth Trust, Premium Trust or Sydney Trust unit that was disposed of to the trustee of the GDI Property Trust was acquired by an Australian resident unit holder at least 12 months before the Implementation Date, a capital gain from CGT event A1 happening to that unit may qualify as a discount capital gain under subsection 115-25(1), provided the other conditions in Subdivision 115-A are satisfied.

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

39. Subject to the qualification in the following paragraph, an Australian resident unit holder of the Perth Trust, Premium Trust or Sydney Trust who made a capital gain from the disposal of their respective Perth Trust, Premium Trust or Sydney Trust unit to the trustee of the GDI Property Trust is eligible to choose scrip for scrip roll-over (section 124-781 and section 124-785).

40. Scrip for scrip roll-over cannot be chosen if any capital gain a Perth Trust, Premium Trust or Sydney Trust unit holder might make from their replacement GDI Property Trust units would be disregarded, except because of a roll-over (paragraph 124-795(2)(a)).

Consequences if scrip for scrip roll-over is chosen

41. The only capital proceeds received by a Perth Trust, Premium Trust or Sydney Trust unit holder were the units in the GDI Property Trust. Therefore, if a Perth Trust, Premium Trust or Sydney Trust unit holder chooses scrip for scrip roll-over, the capital gain they made upon the disposal of a Perth Trust, Premium Trust or Sydney Trust unit (respectively) to the trustee of the GDI Property Trust is disregarded (subsection 124-785(1)).

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

42. A Perth Trust, Premium Trust or Sydney Trust 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 Perth Trust, Premium Trust or Sydney Trust units (respectively) 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).

43. A Perth Trust, Premium Trust or Sydney Trust 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 Perth Trust, Premium Trust or Sydney Trust units must have been acquired by the unit holder at least 12 months before their disposal to the trustee of GDI Property Trust.

Cost base and reduced cost base of GDI Property Trust units received

44. The method for calculating the cost base of the GDI Property Trust units received for the disposal of the Perth Trust, Premium Trust or Sydney Trust units depends on whether scrip for scrip roll-over is chosen. In either case, the cost base and reduced cost base of the Sydney Trust units must first be reduced in the manner described in paragraphs 31 and 32 because of CGT event E4 happening when the trustee of the Sydney Trust makes a payment to the unit holders of the Sydney Trust (being the units in the Sydney Guarantee Trust) in respect of their units in the Sydney Trust.

Scrip for scrip roll-over is chosen

45. Where scrip for scrip roll-over is chosen, the first element of the cost base and reduced cost base of each replacement GDI Property Trust unit received is calculated by reasonably attributing to it the cost base and reduced cost base of the Perth Trust, Premium Trust or Sydney Trust unit for which it was exchanged (subsections 124-785(2) and 124-785(4)).

46. The unit holders of the Perth Trust, Premium Trust or Sydney Trust can calculate the first element of the cost base and reduced cost base of each replacement GDI Property Trust unit by dividing the aggregate cost bases of their respective Perth Trust, Premium Trust or Sydney Trust units by the number of replacement GDI Property Trust units received (subsection 124-785(2)).

Scrip for scrip roll-over is not chosen

47. 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 GDI Property Trust unit received is equal to the market value of the respective Perth Trust, Premium Trust or Sydney Trust unit given in respect of acquiring each GDI Property Trust unit, worked out as at the time of their acquisition (subsections 110-25(2) and 110-55(2)).

Acquisition date of GDI Property Trust units

48. The respective unit holders of the Perth Trust, Premium Trust and Sydney Trust acquired their GDI Property Trust units on the date when the trustee of the GDI Property Trust issued the units to them (item 3 of the table in section 109-10), being the Implementation Date.

49. For the purpose of determining eligibility to make a discount capital gain, a GDI Property Trust unit received by a Perth Trust, Premium Trust or Sydney Trust unit holder who chooses scrip for scrip roll-over is taken to have been acquired on the date the unit holder acquired, for CGT purposes, the corresponding Perth Trust, Premium Trust or Sydney Trust unit (item 2 of the table in subsection 115-30(1)).

Non-assessable payment on redemption of GDI Property Trust units for unit holders who did not elect to receive stapled securities or have a non-Australian address

50. The payment made to unit holders whose GDI Property Trust units were redeemed because they did not elect to receive stapled securities, or have a non-Australian address, is not included in the assessable income of those unit holders under subsection 99B(1) of the ITAA 1936.

51. The payment (being a distribution of corpus) made to unit holders whose GDI Property Trust units were redeemed because they did not elect to receive stapled securities, or have a non-Australian address, does not have the quality of income in the hands of the unit holders, and is not ordinary income under section 6-5.

CGT event C2 happens on redemption of GDI Property Trust units for unit holders who did not elect to receive stapled securities or have a non-Australian address

52. CGT event C2 happens when a unit holder's ownership of a GDI Property Trust unit ends by the unit being redeemed (section 104-25).

53. The time of CGT event C2 is when the trustee of the GDI Property Trust redeemed the units of the affected unit holders (paragraph 104-25(2)(b)).

54. A GDI Property Trust unit holder makes a capital gain from CGT event C2 happening if the capital proceeds from the redemption exceed the cost base of that unit. A unit holder will make a capital loss from CGT event C2 happening if the capital proceeds from the redemption are less than the reduced cost base of that unit (subsection 104-25(3)). The calculation of the cost base and reduced cost base of units in the GDI Property Trust is considered at paragraphs 44 to 47.

55. If the GDI Property Trust unit that was redeemed was acquired by an Australian resident unit holder at least 12 months before the time of CGT event C2, a capital gain from CGT event C2 happening to that unit may qualify as a discount capital gain under subsection 115-25(1), provided the other conditions in Subdivision 115-A are satisfied.

56. As the GDI Property Trust units were issued immediately before the redemption, the only way that the 12 month requirement in subsection 115-25(1) can be satisfied is if the Australian resident unit holder of the GDI Property Trust chooses scrip for scrip roll-over when they disposed of their original Perth Trust, Premium Trust or Sydney Trust units to the trustee of the GDI Property Trust. In that case, for the purpose of determining eligibility to make a discount capital gain, their GDI Property Trust units are taken to have been acquired on the date the unit holder acquired, for CGT purposes, the corresponding Perth Trust, Premium Trust or Sydney Trust units (item 2 of the table in subsection 115-30(1)).

Non-assessable payment to the remaining unit holders of GDI Property Trust after the redemption of certain units

57. The payment made to the remaining unit holders of the GDI Property Trust, which is compulsorily applied to subscribe for shares in GDI Property Group Limited, is not included in the assessable income of the unit holders under subsection 99B(1) of the ITAA 1936.

58. The payment (being a distribution of corpus) made to the remaining unit holders of the GDI Property Trust, which is compulsorily applied to subscribe for shares in GDI Property Group Limited, does not have the quality of income in the hands of the unit holders, and is not ordinary income under section 6-5.

CGT event E4 happens on payment to the remaining unit holders of GDI Property Trust after the redemption of certain units

59. CGT event E4 happens when the trustee of the GDI Property Trust makes a payment to the remaining unit holders of the GDI Property Trust (which is compulsorily applied to subscribe for shares in GDI Property Group Limited) in respect of their units in the GDI Property Trust. None of the payment is included in the assessable income of unit holders (section 104-70).

60. The time of this instance of CGT event E4 is just before the end of the income year in which the trustee of the GDI Property Trust made the payment (paragraph 104-70(3)(a)).

61. The amount of the payment by the trustee of the GDI Property Trust forms part of the first element of the cost base and reduced cost base of the unit holders' shares in GDI Property Group Limited (subsection 110-25(2)).

62. A unit holder of the GDI Property Trust makes a capital gain if the total of the amounts of the non-assessable payments made by the trustee of the GDI Property Trust during the income year (including this payment by the trustee of the GDI Property Trust) in respect of a GDI Property Trust unit exceeds the cost base of the unit (subsection 104-70(4)).

63. If the GDI Property Trust unit was acquired by an Australian resident unit holder at least 12 months before the time of CGT event E4 (see paragraph 60), a capital gain from CGT event E4 happening to that unit may qualify as a discount capital gain under subsection 115-25(1), provided the other conditions in Subdivision 115-A are satisfied.

64. As the GDI Property Trust units were issued just before the trustee of the GDI Property Trust made the payment, the only way that the 12 month requirement in subsection 115-25(1) can be satisfied is by an Australian resident unit holder of the GDI Property Trust who chooses scrip for scrip roll-over when they disposed of their original Perth Trust, Premium Trust or Sydney Trust units to the trustee of the GDI Property Trust. In that case, for the purpose of determining eligibility to make a discount capital gain, their GDI Property Trust units are taken to have been acquired on the date the unit holder acquired, for CGT purposes, the corresponding Perth Trust, Premium Trust or Sydney Trust units (item 2 of the table in subsection 115-30(1)).

65. If a unit holder of the GDI Property Trust makes a capital gain, the cost base and reduced cost base of the GDI Property Trust unit is reduced to nil (subsection 104-70(5)).

66. If the total of the amounts of the non-assessable payments made by the trustee of the GDI Property Trust during the income year is not more than the cost base of a GDI Property Trust unit, the cost base and reduced cost base of the unit will be reduced by that total amount (subsection 104-70(6)).

Foreign resident unit holders and CGT consequences

67. The class of entities to which this Ruling applies includes foreign residents whose respective units in the Perth Trust, Premium Trust or Sydney Trust, or right to receive something of value in respect of the units in the Perth Trust, Premium Trust or Sydney Trust they own, are **not** taxable Australian property (as that term is defined in section 855-15).

68. As a result, these unit holders will disregard a capital gain or capital loss (section 855-10) from CGT event A1 happening when their units in the Perth Trust, Premium Trust or Sydney Trust are disposed of to the trustee of the GDI Property Trust.

69. These unit holders will also disregard a capital gain or capital loss (section 855-10) from CGT event C2 happening when their ownership of a GDI Property Trust unit ends by the unit being redeemed because they did not elect to receive stapled securities or have a non-Australian address.

70. The unit holders of the Sydney Trust who are foreign residents will disregard a capital gain or capital loss (section 855-10) from CGT event E4 happening when the trustee of the Sydney Trust makes a payment to the unit holders of the Sydney Trust (being the units in the Sydney Guarantee Trust) in respect of their units in the Sydney Trust.

71. The class of entities to which this Ruling applies also includes foreign residents whose units in the GDI Property Trust, or right to receive something of value in respect of the units in the GDI Property Trust they own, are **not** taxable Australian property (as that term is defined in section 855-15).

72. As a result, all of the remaining unit holders of the GDI Property Trust (after the redemption of certain units which gave rise to CGT event C2) who are foreign residents will disregard a capital gain or capital loss (section 855-10) from CGT event E4 happening when the trustee of the GDI Property Trust makes a payment to the remaining unit holders of the GDI Property Trust (which is compulsorily applied to subscribe for shares in GDI Property Group Limited) in respect of their units in the GDI Property Trust.

Value shifting

73. The value shifting provisions under Division 725 and Division 727 will not apply to the payment made by the trustee of the Sydney Trust to a Sydney Trust unit holder (being the units in the Sydney Guarantee Trust) in respect of their units in the Sydney Trust.

74. The value shifting provisions under Division 725 and Division 727 will not apply to the capital distribution made by the trustee of the GDI Property Trust to a GDI Property Trust unit holder (which is compulsorily applied to subscribe for shares in GDI Property Group Limited).

CGT consequences of stapling

75. No capital gain or capital loss will be made as a result of the stapling of units in the GDI Property Trust with shares in GDI Property Group Limited.

Commissioner of Taxation
19 March 2014

Appendix 1 – Explanation

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.

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

Scrip for scrip roll-over

77. 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.

78. 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.

79. For the purposes of applying Subdivision 124-M, the acquisition of the units in the Perth Trust by the trustee of the GDI Property Trust, the acquisition of the units in the Premium Trust by the trustee of the GDI Property Trust, and the acquisition of the units in the Sydney Trust by the trustee of the GDI Property Trust each consists of a separate scheme.

80. Having regard to:

(a) all of the documents and any other material referred to in paragraph 10 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 the Perth Trust and GDI Property Trust, the Premium Trust and GDI Property Trust, and the Sydney Trust and GDI Property Trust immediately before, during and immediately after the exchange of units that is the subject of this Ruling.

81. Each scheme satisfies the requirements for the roll-over under Subdivision 124-M.

Non-assessable payments

82. Division 6 of Part III of the ITAA 1936 is the primary scheme for including distributions from trusts in the assessable income of beneficiaries. Subsection 99B(1) of the ITAA 1936 provides that an amount, being property of a trust estate, paid to, or applied for the benefit of, a beneficiary of the trust estate who was a resident at any time during the year of income, is the assessable income of the beneficiary, subject to the exceptions in subsection 99B(2) of the ITAA 1936.

83. The exception in paragraph 99B(2)(a) of the ITAA 1936 reduces the amount that would otherwise be included in assessable income by the amount that represents corpus of the trust estate and is not attributable to amounts derived by the trust estate that, if they had been derived directly by a taxpayer being a resident, would have been included in the assessable income of that taxpayer.

84. Section 6-5 provides that a taxpayer's assessable income includes income according to ordinary concepts (ordinary income).

85. In *Scott v. Federal Commissioner of Taxation* (1966) 117 CLR 514; (1966) 10 AITR 367; (1966) 14 ATD 286, Windeyer J stated that:

> Whether or not a particular receipt is income depends upon its quality in the hands of the recipient.

86. In *GP International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation* [1990] HCA 25; (1990) 170 CLR 124; 90 ATC 4413; (1990) 21 ATR 1, the High Court unanimously stated that the following factors were important in determining the nature of a receipt:

> To determine whether a receipt is of an income or a capital nature, various factors may be relevant. Sometimes, the character of receipts will be revealed most clearly by their periodicity, regularity or recurrence; sometimes, by the character of a right or thing disposed of in exchange for the receipt; sometimes by the scope of the transaction, venture or business in or by reason of which money is received and by the recipient's purpose in engaging in the transaction, venture or business.

Distribution of Sydney Guarantee Trust units to Sydney Trust unit holders

87. The trustee of the Sydney Trust made a payment to the unit holders of the Sydney Trust (being the units in the Sydney Guarantee Trust) in respect of their units in the Sydney Trust.

88. The payment by the trustee of the Sydney Trust to the unit holders of the Sydney Trust represents the corpus of the trust estate. It has the quality of capital in the hands of the trustee and that characterisation does not change if the relevant amounts were derived by a hypothetical resident taxpayer.

89. Accordingly, the payment to the unit holders of the Sydney Trust is not included in the assessable income of those unit holders under subsection 99B(1) of the ITAA 1936 as it represents corpus of the Sydney Trust that is attributable to amounts derived by the trust that, if they had been derived by a taxpayer being a resident, would *not* have been included in the assessable income of that taxpayer.

90. For similar reasons, the payment by the trustee of the Sydney Trust does not have the quality of income in the hands of the unit holders of the Sydney Trust and is not ordinary income under section 6-5.

Redemption of certain units

91. For a unit holder of the GDI Property Trust who did not elect to receive stapled securities, or whose address on the unit register of the Perth Trust, Premium Trust or Sydney Trust (when they held units in those trusts) is outside Australia, the trustee of the GDI Property Trust redeemed their units in the GDI Property Trust. The redemption price was debited to the contributed capital account of the GDI Property Trust.

92. The amount paid by the trustee of the GDI Property Trust to the unit holders with respect to the redemption of their units represents the corpus of the trust estate. The contributed capital has the quality of capital in the hands of the trustee and that characterisation does not change if the relevant amounts were derived by a hypothetical resident taxpayer.

93. Accordingly, the amount paid to redeem certain GDI Property Trust units is not included in the assessable income of the affected unit holders of the GDI Property Trust under subsection 99B(1) of the ITAA 1936 as it represents corpus of the GDI Property Trust that is attributable to amounts derived by the trust that, if they had been derived by a taxpayer being a resident, would *not* have been included in the assessable income of that taxpayer.

94. For similar reasons, the amount paid to redeem certain GDI Property Trust units does not have the quality of income in the hands of the unit holders of the GDI Property Trust and is not ordinary income under section 6-5.

Capital distribution applied to subscribe for shares

95. The trustee of the GDI Property Trust made a payment to the remaining unit holders of the GDI Property Trust, which was compulsorily applied to subscribe for shares in GDI Property Group Limited. The payment was debited to the contributed capital account of the GDI Property Trust.

96. The payment by the trustee of the GDI Property Trust to the remaining unit holders represents the corpus of the trust estate. The contributed capital has the quality of capital in the hands of the trustee and that characterisation does not change if the relevant amounts were derived by a hypothetical resident taxpayer.

97. Accordingly, the payment to the remaining GDI Property Trust unit holders is not included in the assessable income of those unit holders under subsection 99B(1) of the ITAA 1936 as it represents corpus of the GDI Property Trust that is attributable to amounts derived by the trust that, if they had been derived by a taxpayer being a resident, would *not* have been included in the assessable income of that taxpayer.

98. For similar reasons, the payment by the trustee of the GDI Property Trust does not have the quality of income in the hands of the unit holders of the GDI Property Trust and is not ordinary income under section 6-5.

Value shifting

99. There is a direct value shift under a scheme involving equity or loan interests in an entity where there is a decrease in the market value of some equity or loan interest and an increase, or issue at a discount, of other equity or loan interests (section 725-145).

100. There is an indirect value shift where there is an unequal exchange of economic benefits between two entities – the losing entity and gaining entity (subsection 727-150(3)).

101. There can only be consequences for a direct value shift if there is an entity that controls the target entity (for value shifting purposes) at some time during the scheme period as defined in section 725-55 (paragraph 725-50(b)). Section 727-355 sets out the relevant tests for whether an entity controls (for value shifting purposes) a company. Section 727-360 sets out the relevant tests for whether an entity controls (for value shifting purposes) a fixed trust.

102. There can only be consequences for an indirect value shift if the entities between which the value is shifted (the losing entity and the gaining entity) satisfy an ultimate controller test and/or a common ownership nexus test at some time during the indirect value shift period defined in subsection 727-150(7) (paragraph 727-100(c) and sections 727-105 and 727-110).

103. There are no consequences for any direct value shift or indirect value shift that happens under the scheme that is the subject of this Ruling. There are no consequences for any direct value shift as there is no entity that controls (for value shifting purposes) either the Sydney Trust or the GDI Property Trust at any time during the period starting when the scheme is entered into and ending when it has been carried out (paragraph 725-50(b) and section 725-55). There are no consequences for any indirect value shift as no entity would, together with the Sydney Trust or the GDI Property Trust, satisfy the ultimate controller test or common ownership nexus test (paragraphs 727-100(c) and 727-110(1)(a) and section 727-355).

Appendix 2 – Detailed contents list

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

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Subject references:

- CGT capital proceeds
- CGT cost base
- CGT event A1 – disposal of a CGT asset
- CGT event C1-C3 – end of a CGT asset
- CGT event E1-E9 - trusts
- CGT reduced cost base
- CGT roll-over relief
- distributions
- takeovers & mergers
- unit trust units

Legislative references:

- ITAA 1936
- ITAA 1936 99B
- ITAA 1997
- ITAA 1997 6-5
- ITAA 1997 Div 104
- ITAA 1997 110-25(2)
- ITAA 1997 110-55(2)
- ITAA 1997 112-20(1)
- ITAA 1997 115-25(1)
- ITAA 1997 115-30(1)
- ITAA 1997 116-20(1)
- ITAA 1997 Subdiv 124-M
- ITAA 1997 124-781
- ITAA 1997 124-785
- ITAA 1997 Div 725
- ITAA 1997 Div 727
- TAA 1953
- Copyright Act 1963
- Corporations Act 2001

Case references:

- *GP International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation* [1990] HCA 25; (1990) 170 CLR 124; 90 ATC 4413; (1990) 21 ATR 1
- *Scott v. Federal Commissioner of Taxation* (1966) 117 CLR 514; (1966) 10 AITR 367; (1966) 14 ATD 286

ATO references

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