


# ***CR 2015/102 - Income tax: Equity Trustees Limited - exchange of shares for shares in EQT Holdings Limited***

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## Class Ruling

### Income tax: Equity Trustees Limited – exchange of shares for shares in EQT Holdings Limited

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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

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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 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936)
- section 45B of the ITAA 1936
- section 45C of the ITAA 1936
- Division 115 of the *Income Tax Assessment Act 1997* (ITAA 1997)
- section 124-15 of the ITAA 1997
- Division 615 of the ITAA 1997, and
- section 855-10 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 is the ordinary shareholders of Equity Trustees Limited (EQT) who:

- (a) are:
  - (i) residents of Australia within the meaning of subsection 6(1) of the ITAA 1936, or
  - (ii) foreign residents within the meaning of section 995-1 who hold shares in EQT on capital account<sup>1</sup> which are not taxable Australian property within the meaning of section 855-15 at the time of the scheme
- (b) participate in the exchange of their EQT shares for shares in EQT Holdings Limited (EQTHL), and
- (c) are not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on their EQT shares.

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

4. The class of entities to which this Ruling applies does not include ordinary shareholders of EQT who:

- (a) acquired shares under an employee share scheme for the purposes of Division 13A of the ITAA 1936, or
- (b) acquired shares under an employee share scheme for the purposes of Division 83A.

5. In this Ruling, this class of entities is referred to as 'participating shareholders'.

## Qualifications

6. The Commissioner makes this Ruling based on the precise arrangement 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 28 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.

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<sup>1</sup> That is, they are neither held as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)).

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## Date of effect

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9. This Ruling applies from 1 July 2015 to 30 June 2016. The Ruling continues to apply after 30 June 2016 to all entities within the specified class who enter 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).

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## Scheme

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10. The following description of the scheme is based on information provided by the applicant.

### Background

11. EQT is the head company of the EQT income tax consolidated group (EQT Group). The EQT Group is a broad based financial services organisation providing trustee and related services.

12. The EQT Group has experienced significant growth in recent years, both as a result of organic growth and as a result of the acquisition of ANZ Trustees in July 2014. The growth has led to EQT now being included in the Australian Securities Exchange (ASX), ASX 300 index. This growth has coincided with significant changes to the regulatory environment within which the EQT Group operates.

13. In particular, changes have been made to the rules relating to the capital required to be held in connection with certain of the EQT Group's activities (often referred to as 'regulatory capital'). Those changes, together with the growth in the EQT Group's business, have increased the amount of regulatory capital required to be held by the EQT Group.

14. The Australian Securities and Investments Commission (ASIC) have provided the EQT Group with some relief in connection with these increased regulatory capital requirements. The effect of the relief is to reduce the minimum level of capital required to be held by the EQT Group in the period up to 31 December 2015. However, on 1 January 2016, with the ASIC relief having expired, it is expected that the EQT Group will need to raise additional regulatory capital.

15. As a result of the growth in the EQT Group, the changes to the regulatory environment and the need for the EQT Group to hold additional regulatory capital from 1 January 2016, EQT undertook a review of the appropriate structure of the group. That review has led the EQT Board to put forward a proposed Restructure which has been designed to provide the EQT Group with greater funding flexibility, capital and licensing efficiencies and a range of operational benefits.

## **The Restructure of the EQT Group**

16. The proposed Restructure will be voted on by EQT shareholders at a scheme meeting scheduled for 27 November 2015, and if approved, will then need approval by way of a court order under subsection 411(6) of the *Corporations Act 2001*.

17. The Restructure has two stages. The first stage will involve the insertion of EQTHL into the EQT Group. EQTHL was incorporated on 21 August 2015, and is intended ultimately to act as the new holding company for the EQT Group.

18. EQTHL will have one share on issue at the beginning of the Restructure which will be held by EQT. At this time EQTHL will not carry on any operations or undertake any activities other than those associated with the Restructure and will not issue, or agree to issue, any securities other than those proposed in accordance with the terms of the Restructure.

19. Under the second stage of the Restructure one share in EQT will be issued to EQTHL and the original share held by EQT in EQTHL will be bought back for nominal consideration and cancelled.

20. EQT shareholders (other than ineligible foreign resident shareholders) who hold EQT shares on the Record Date (scheduled to be 7 December 2015) will exchange each of their EQT shares for an EQTHL share (that is, on a one-for-one basis).

21. As at the Record Date all statements of holding in respect of EQT shares will cease to have effect as documents of title in respect of those EQT shares and each entry on the EQT share register at that date will cease to have any effect other than as evidence of entitlement to the Restructure consideration.

22. EQTHL shares will then be listed on the ASX and EQT shares will cease to be listed on the ASX (with EQT becoming a wholly owned subsidiary of EQTHL). At the same time, EQTHL may change its name, subject to regulatory approval.

23. The implementation date for the Restructure is expected to be the 14 December 2015, subject to all necessary court and regulatory approvals. Following the implementation of the Restructure, EQT shareholders as at the Record Date will continue to have the same economic interest in the EQT Group as they held immediately before the implementation of the Restructure, through their holding of one EQTHL share for each EQT share they held.

24. The holders of entitlements to acquire unissued EQT shares (being various executives of EQT) will exchange their entitlements for equivalent entitlements to acquire the same number of EQTHL shares as they had to acquire EQT shares, on substantially the same terms and conditions.

25. Trading in EQTHL shares is expected to commence on a deferred settlement basis on 3 December 2015, and normal trading in EQTHL shares is expected to commence on 15 December 2015, subject to all necessary court and regulatory approvals.

### **Ineligible foreign resident shareholders**

26. Certain overseas resident shareholders (ineligible foreign resident shareholders) are ineligible to receive EQTHL shares under the scheme. EQTHL shares that would otherwise have been issued to those shareholders in exchange for their ordinary shares will instead be issued to a nominee or sale agent.

27. The sale proceeds (net of expenses) will be remitted to the relevant ineligible foreign resident shareholder and this will be considered to be full satisfaction of EQTHL's obligations.

### **EQT Group**

28. EQTHL will choose, in accordance with subsection 615-30(2) that the EQT Group will remain in existence at and after the Implementation Date with itself as head company.

## **Ruling**

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### **Resident participating shareholders**

#### ***Roll-over***

29. Participating shareholders who are Australian residents within the meaning of subsection 6(1) of the ITAA 1936 (resident participating shareholders) will be taken to have chosen to obtain roll-over under Division 615 for the exchange of each of their EQT shares for EQTHL shares (subsection 615-5(2)).

#### ***Capital gains tax consequences***

30. For resident participating shareholders any capital gain or capital loss made from the disposal of EQT shares under the exchange is disregarded (section 615-40 and subsection 124-15(2)).

31. For resident participating shareholders, the first element of the cost base and reduced cost base of each EQTHL share they have acquired under the exchange will be the total of the cost bases of all the EQT shares (worked out when the resident participating shareholders dispose of their shares) apportioned over the number of EQTHL shares (subsection 124-15(3)).

32. For the purposes of determining discount capital gains under Division 115, resident participating shareholders will be taken to have acquired their EQTHL shares on the same date they acquired their EQT shares (Item 2 in the table under subsection 115-30(1)).

### ***Shares held as trading stock***

33. For resident participating shareholders who hold their EQT shares as trading stock (as defined in subsection 995-1(1)), and subsequently hold the EQTHL shares acquired as trading stock, the amount included in assessable income on disposal of their EQT shares is:

- (a) if those shares have been held as trading stock since the start of the income year that included the disposal time, taken to be the total value of each EQT share at the start of the income year and the amount (if any) by which the cost has increased since the start of the income year, or
- (b) otherwise, the cost of each EQT share at the time of the disposal (subsection 615-50(1)).

34. The amount taken to have been paid by resident participating shareholders for each of the EQTHL shares acquired as trading stock is equal to the amount included in assessable income on disposal of the EQT shares (as calculated in paragraph 33 of this Ruling) divided by the number of EQTHL shares acquired as trading stock (subsection 615-50(2)).

### ***Shares held as revenue assets***

35. For resident participating shareholders who hold their EQT shares as revenue assets (as defined in section 977-50), and subsequently hold the EQTHL shares acquired as revenue assets, the gross proceeds received for the disposal of each EQT share is taken to be the amount needed to have a nil profit and nil loss for that disposal (subsection 615-55(1)).

36. For the purpose of resident participating shareholders calculating any profit or loss on the future disposal of each EQTHL share acquired that is a revenue asset, the amount taken to have been paid for each EQTHL share is the amount needed to have a nil profit and nil loss for that disposal (as calculated in paragraph 35 of this Ruling) divided by the number of EQTHL shares acquired as revenue assets (subsection 615-55(2)).

**Foreign resident participating shareholders**

37. Any capital gain or loss made by foreign resident participating shareholders from the disposal of their EQT shares, which are not taxable Australian property, under the scheme is disregarded (section 855-10).

**Anti-avoidance provisions will not apply**

38. The Commissioner will not make a determination under subsection 45B(3) of the ITAA 1936 that section 45C of the ITAA 1936 applies in relation to the whole, or a part, of the capital benefit provided by EQTHL to the participating shareholders on the exchange of EQT shares for shares in EQTHL.

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**Commissioner of Taxation**25 November 2015

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## Appendix 1 – Explanation

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**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.*

### Resident participating shareholders

39. Resident participating shareholders will meet the requirements for obtaining roll-over under subsection 615-5(1) because:

- (a) they are ordinary shareholders of EQT, being the original entity
- (b) there is more than one shareholder who owns shares in EQT, being the exchanging members
- (c) under the Restructure, the exchanging members will dispose of all their shares in EQT in exchange for shares in EQTHL, being the interposed company
- (d) the requirements in Subdivision 615-B are satisfied being:
  - EQTHL will own all the shares in the original entity, EQT, immediately after the time (the completion time) all the participating shareholders will have disposed of their shares in the original entity (section 615-15)
  - immediately after the completion time, each participating shareholder will own a whole number of shares in EQTHL equal to the percentage of shares they held in EQT (subsection 615-20(1))
  - the ratio of the market value of each participating shareholder's share in EQTHL to the market value of the shares in EQTHL issued to all participating shareholders will equal the ratio of the market value of each participating members shares in EQT to the market value of all the shares in EQT cancelled under the restructure (subsection 615-20(2))
  - the participating shareholders to which roll-over applies will be Australian residents (subsection 615-20(3))
  - the shares issued in EQTHL will not be redeemable shares (subsection 615-25(1))
  - each exchanging member who is issued shares in EQTHL will hold their shares from the time they are issued until at least the completion time (subsection 615-25(2))

- only one share in EQTHL will be owned by an entity other than a participating shareholder immediately after completion time, its market value being such that it is reasonable to treat the participating shareholders as owning all the EQTHL shares (paragraph 615-25(3)(b))
- EQTHL will choose that a consolidated group continues in existence at and after the completion time with itself as the head company (subsection 615-30(2)).

40. Resident participating shareholders are taken to have chosen to obtain roll-over as immediately before the completion time EQT is the head company of the EQT Group and immediately after the completion time EQTHL is the head company of the EQT Group (subsection 615-5(2) and section 615-15).

41. The consequences of obtaining roll-over for the resident participating shareholders are set out in paragraphs 29 to 36 of this Ruling.

#### **Foreign resident participating shareholders**

42. Division 855 applies to participating shareholders who are foreign residents.

43. Any capital gain or loss made by foreign resident participating shareholders from the disposal of their EQT shares, which are not taxable Australian property, under the scheme is disregarded (section 855-10).

#### **Anti-avoidance provisions will not apply**

44. Section 45B of the ITAA 1936 applies where certain payments, allocations and distributions are made to shareholders in substitution for dividends.

45. In broad terms, there needs to be a scheme in which, having regard to the relevant circumstances of the scheme, it would be concluded that the person, or one of the persons, who entered into the scheme or carried out the scheme or any part of the scheme did so for a purpose, other than an incidental purpose, of enabling the relevant taxpayer to obtain a tax benefit.

46. As the issue of shares in EQTHL in return for the surrender of shares in EQT will generally result in a lesser amount of tax payable to participating shareholders than what would be payable if it had instead been an assessable dividend, these shareholders will obtain a tax benefit within the meaning of subsection 45B(9) of the ITAA 1936.

## ***Relevant circumstances***

47. The relevant circumstances of the scheme which the Commissioner must have regard to when determining whether or not the requisite purpose exists are outlined in subsection 45B(8) of the ITAA 1936.

48. Having regard to the relevant circumstances of the scheme, including the genuine commercial reasons for the Restructure, it cannot be concluded that the scheme was entered into or carried out for a more than incidental purpose of enabling EQT shareholders to obtain a tax benefit.

49. Accordingly, the Commissioner will not make a determination under subsection 45B(3) of the ITAA 1936 that section 45C of the ITAA 1936 applies in relation to the whole, or a part, of the capital benefit provided by EQTHL to the participating shareholders on the exchange of EQT shares for shares in EQTHL.

## **Appendix 2 – Detailed contents list**

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## References

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<i>Previous draft:</i>	- ITAA 1997 Subdiv 615-B
Not previously issued as a draft	- ITAA 1997 615-5(1)
	- ITAA 1997 615-5(2)
<i>Related Rulings/Determinations:</i>	- ITAA 1997 615-15
TR 2006/10	- ITAA 1997 615-20(1)
	- ITAA 1997 615-20(2)
	- ITAA 1997 615-20(3)
<i>Legislative references:</i>	- ITAA 1997 615-25(1)
- ITAA 1936	- ITAA 1997 615-25(2)
- ITAA 1936 6(1)	- ITAA 1997 615-25(3)(b)
- ITAA 1936 45B	- ITAA 1997 615-30(2)
- ITAA 1936 45B(3)	- ITAA 1997 615-40
- ITAA 1936 45B(8)	- ITAA 1997 615-50(1)
- ITAA 1936 45B(9)	- ITAA 1997 615-50(2)
- ITAA 1936 45C	- ITAA 1997 615-55(1)
- ITAA 1936 Div 13A	- ITAA 1997 615-55(2)
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- ITAA 1997 Div 83A	- ITAA 1997 855-10
- ITAA 1997 Div 115	- ITAA 1997 855-15
- ITAA 1997 115-30(1)	- ITAA 1997 977-50
- ITAA 1997 124-15	- ITAA 1997 995-1(1)
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- ITAA 1997 124-15(3)	- Corporations Act 2001 411(6)
- ITAA 1997 Div 230	- TAA 1953
- ITAA 1997 Div 615	

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### ATO references

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