



CR 2015/12 - Income tax: restructure of Bailador Siteminder Co-Investment Trust

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Class Ruling

Income tax: restructure of Bailador Siteminder Co-Investment Trust

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ⓘ 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.

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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 59-40 of the *Income Tax Assessment Act 1997* (ITAA 1997)
 - section 104-10 of the ITAA 1997
 - section 109-10 of the ITAA 1997
 - subsection 110-25(2) of the ITAA 1997
 - subsection 110-55(2) of the ITAA 1997
 - Subdivision 115-A of the ITAA 1997
 - section 116-20 of the ITAA 1997

- Subdivision 122-A of the ITAA 1997
- Subdivision 124-M of the ITAA 1997, and
- Subdivision 130-B 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 ordinary units and sponsor units in the Bailador Siteminder Co-Investment Trust (BT2) 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*
- 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 arrangement 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 21 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 7 November 2014
- Trust Deed- Bailador Siteminder Co-investment Trust dated 28 March 2012
- Draft Unit for Share and subsequent Share for Share Exchange Deed- Bailador Siteminder Coinvestment Trust restructure
- Draft Consent Deed Poll-including power of attorney and resolution of Unitholders relating to Bailador Trust restructure, and
- Correspondence received in relation to the Class Ruling application dated up to and including 7 November 2014.

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

Bailador Siteminder Co-Investment Trust

9. Bailador Investment Management Pty Ltd (Bailador) is an investment company that was founded in 2010.

10. Bailador currently manages the Bailador Siteminder Co-Investment Trust (BT2) and another unit trust.

11. There are 11 unit holders who hold ordinary units in BT2 and 2 unit holders who hold sponsor units in BT2.

12. The only investment held by the Trustee of BT2 is convertible preference shares in a company.

Restructure

13. Bailador proposes to create a listed company as the vehicle to hold the investments currently owned by BT2 and the other unit trust managed by Bailador.

14. The listed company will be called Bailador Technology Investments Limited (BTIL). The ordinary shares in BTIL will be listed on the Australian Securities Exchange (ASX).

15. In order to achieve the overall objective of listing on the ASX, there will be a restructure of the Bailador group. The restructure includes the following steps:

- Step 3 - Disposal of ordinary units to an acquiring company
- Step 4 - Disposal of sponsor units to an acquiring company
- Step 5 - Disposal of shares in an acquiring company to BTIL

Step 3 - Disposal of ordinary units to an acquiring company

16. Part of the restructure involves each BT2 ordinary unit holder who wishes to participate transferring their BT2 ordinary units to a company in which, just after the transfer, that particular unit holder will own all the shares (an acquiring company).

17. The shares in each acquiring company are an equity interest under Division 974.

Step 4 - Disposal of sponsor units to an acquiring company

18. The holders of BT2 sponsor units will transfer some of their sponsor units to a company in which, just after the transfer, that particular unit holder will own all the shares (also an acquiring company).

19. The shares in each acquiring company are an equity interest under Division 974.

Step 5 - Disposal of shares in an acquiring company to BTIL

20. The sole shareholder of each acquiring company that owns BT2 ordinary units and sponsor units will transfer their shares in that acquiring company to BTIL in return for the issue of shares in BTIL.

Other

21. After the completion of the other steps necessary for implementing the restructure and listing the ordinary shares of BTIL on the ASX, BTIL will issue rights to acquire BTIL shares to its shareholders. The rights will only be exercisable at a future date.

Ruling**Step 3 and step 4 - Disposal of BT2 ordinary units and sponsor units to an acquiring company*****CGT event A1***

22. CGT event A1 will happen as a result of the disposal by a BT2 ordinary unit holder of their BT2 ordinary units, or the disposal by a BT2 sponsor unit holder of their BT2 sponsor units, to an acquiring company (subsections 104-10(1) and 104-10(2)).

23. The time of CGT event A1 is when the ownership of the BT2 ordinary units or sponsor units changes to an acquiring company (paragraph 104-10(3)(b)).

24. A BT2 ordinary unit holder and sponsor unit holder will make a capital gain from CGT event A1 happening if the capital proceeds from the disposal of a unit exceed its cost base. A BT2 ordinary unit holder and sponsor unit holder will make a capital loss if the capital proceeds from the disposal of a unit are less than its reduced cost base (subsection 104-10(4)).

25. Under subsection 116-20(1), the capital proceeds from CGT event A1 happening to a BT2 ordinary unit and sponsor unit will be the market value of the property (shares in the acquiring company) received or entitled to be received in respect of the disposal of a BT2 ordinary unit and sponsor unit. The market value of the shares in the acquiring company is worked out as at the time CGT event A1.

Availability of Subdivision 122-A roll-over

26. The conditions for roll-over under Subdivision 122-A will be satisfied in relation to the disposal by BT2 ordinary unit holders and sponsor unit holders of their units to a company in which, just after the disposal, that particular unit holder will own all the shares. Therefore, a BT2 ordinary unit holder and sponsor unit holder who is an Australian resident at the time they dispose of their units in BT2 will be eligible to choose to obtain a CGT roll-over under Subdivision 122-A.

Consequences of choosing Subdivision 122-A roll-over

27. A BT2 ordinary unit holder or sponsor unit holder who chooses to obtain Subdivision 122-A roll-over will disregard any capital gain or capital loss made when CGT event A1 happens on the disposal of their BT2 ordinary units or sponsor units (subsection 122-40(1)).

28. The first element of the cost base and reduced cost base of each share in an acquiring company acquired by a BT2 ordinary unit holder or sponsor unit holder under the restructure will be worked out as follows:

- total the cost bases of each class of BT2 units (worked out when the unit holder disposed of it) in respect of which Subdivision 122-A roll-over was chosen, and
- divide the total by the number of shares issued to a BT2 ordinary unit holder or sponsor unit holder for that class of BT2 units (subsection 122-40(2)).

29. The shares in each acquiring company, which are an equity interest under Division 974, will be acquired by a BT2 unit holder when the shares are issued or allotted (Item 2 of the table in section 109-10).

30. For the purpose of determining eligibility to make a discount capital gain on any later disposal of their shares in an acquiring company, a BT2 ordinary unit holder or sponsor unit holder who chooses Subdivision 122-A roll-over will be taken to have acquired their shares on the date when they acquired, for CGT purposes, the corresponding BT2 ordinary units or sponsor units (Item 2 of the table in section 115-30(1)).

31. If shares in an acquiring company are disposed of, the effect of having chosen to obtain Subdivision 122-A roll-over and acquiring the shares in an acquiring company as a replacement asset for that roll-over is that a BT2 ordinary unit holder or sponsor unit holder who disposes of shares in an acquiring company is taken to have satisfied the 12 month rule in section 115-25. This will be relevant for the purpose of determining eligibility to make a discount capital gain on any later disposal of their shares in an acquiring company (subparagraph 115-34(1)(c)(i) and subsection 115-34(2)).

Consequences of not choosing Subdivision 122-A roll-over

32. A BT2 ordinary unit holder or sponsor unit holder who does not choose to obtain Subdivision 122-A roll-over must take into account any capital gain or capital loss from the disposal of their BT2 units in working out their net capital gain or net capital loss for the income year (sections 102-5 and 102-10).

33. A BT2 ordinary unit holder or sponsor unit holder who makes a capital gain on the disposal of a BT2 unit but does not choose roll-over can treat the capital gain as a discount capital gain if the conditions of Subdivision 115-A are met. In particular, the BT2 ordinary unit or sponsor unit must have been acquired by the unit holder at least 12 months before the time of CGT event A1 happening to the unit (section 115-25).

34. For these BT2 ordinary unit holders and sponsor unit holders, the first element of the cost base and reduced cost base of each share in an acquiring company will be equal to the market value of the BT2 ordinary units or sponsor units they disposed of, worked out as at the time of the acquisition of the shares in the acquiring company, divided by the number of shares they are issued in the acquiring company (subsections 110-25(2) and 110-55(2)).

35. The shares in each acquiring company, which are an equity interest under Division 974, will be acquired by a BT2 unit holder when the shares are issued or allotted (Item 2 of the table in section 109-10).

Step 5 - Disposal of shares in an acquiring company to BTIL

CGT event A1

36. CGT event A1 will happen as a result of the disposal by a shareholder of their shares in an acquiring company to BTIL (subsections 104-10(1) and 104-10(2)).

37. The time of CGT event A1 is when the ownership of the shares in an acquiring company changes to BTIL (paragraph 104-10(3)(b)).

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

39. Under subsection 116-20(1), the capital proceeds from CGT event A1 happening to a share in an acquiring company will be the market value of the property (ordinary shares in BTIL) received or entitled to be received in respect of the disposal of a share in an acquiring company. The market value of the BTIL ordinary shares is worked out as at the time CGT event A1.

Availability of Subdivision 124-M roll-over if a capital gain is made

40. Subject to the qualification in the following paragraph, a shareholder who would otherwise make a capital gain from the disposal of their shares in an acquiring company to BTIL will be eligible to choose to obtain a CGT roll-over under Subdivision 124-M (section 124-780 and section 124-785).

41. Subdivision 124-M roll-over cannot be chosen if any capital gain a shareholder in an acquiring company might make from their replacement BTIL shares would be disregarded, except because of a roll-over (paragraph 124-795(2)(a)).

Consequences of choosing Subdivision 124-M roll-over

42. A shareholder in an acquiring company who chooses to obtain Subdivision 124-M roll-over will disregard any capital gain made when CGT event A1 happens on the disposal of their shares to BTIL (subsection 124-785(1)).

43. The first element of the cost base and reduced cost base of each BTIL ordinary share acquired by a shareholder of an acquiring company under the restructure will be worked out by reasonably attributing to it the cost base (or the part of it) of their share in the acquiring company for which it was exchanged and for which they obtained the roll-over (subsections 124-785(2) and 124-785(4)).

44. The Commissioner accepts that the first element of the cost base and reduced cost base of these BTIL ordinary shares can be worked out as follows:

- total the cost bases of the shares in an acquiring company in respect of which Subdivision 124-M roll-over was chosen, and
- divide the total by the number of BTIL ordinary shares issued to a shareholder of an acquiring company in respect of the shares in an acquiring company for which Subdivision 124-M roll-over was chosen.

45. The BTIL ordinary shares, which are an equity interest under Division 974, will be acquired by a shareholder when the shares are issued or allotted (Item 2 of the table in section 109-10).

46. For the purpose of determining eligibility to make a discount capital gain on any later disposal of their BTIL shares, a shareholder who chooses Subdivision 124-M roll-over will be taken to have acquired their BTIL shares on the date when they acquired, for CGT purposes, the corresponding shares in an acquiring company (Item 2 of the table in subsection 115-30(1)).

Consequences if Subdivision 124-M roll-over is not chosen, or cannot be chosen

47. A shareholder who does not choose Subdivision 124-M roll-over, or cannot choose the roll-over (for example because they do not make a capital gain from CGT event A1 happening on the disposal of shares in an acquiring company) must take into account any capital gain or capital loss from the disposal of their shares in an acquiring company in working out their net capital gain or net capital loss for the income year (sections 102-5 and 102-10).

48. For these shareholders, the first element of the cost base and reduced cost base of each BTIL ordinary share will be equal to the market value of the shares in an acquiring company that they disposed of, worked out as at the time of the acquisition of the BTIL ordinary shares, divided by the number of ordinary shares they are issued in BTIL (subsections 110-25(2) and 110-55(2)).

49. The BTIL shares, which are an equity interest under Division 974, will be acquired by a shareholder when the shares are issued or allotted (Item 2 of the table in section 109-10).

50. A shareholder who makes a capital gain on the disposal of a share in an acquiring company but does not choose roll-over can treat the capital gain as a discount capital gain if the conditions of Subdivision 115-A are met. In particular, the share in an acquiring company must have been acquired by the shareholder at least 12 months before the time of CGT event A1 happening to the share (section 115-25).

51. Subsection 115-34(2) has the effect that section 115-25 applies as if shareholders had acquired the shares in an acquiring company at least 12 months before the time of CGT event A1 happening on the disposal of those shares to BTIL.

Other

Consequences of the subsequent rights issue

52. The market value of the rights issued to a BTIL ordinary shareholder by BTIL to acquire BTIL ordinary shares will be non-assessable non-exempt income of the BTIL ordinary shareholder (section 59-40). Section 59-40 only applies to the issue of the rights, not any subsequent disposal, cessation or exercise of the rights.

53. The rights issue will not cause a CGT event to happen. However, the exercise of the rights will cause Subdivision 130-B to apply.

Commissioner of Taxation

18 February 2015

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.*

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

55. The significant tax consequences are the availability of roll-over under Subdivision 122-A and Subdivision 124-M.

Subdivision 122-A

56. The roll-over in Subdivision 122-A enables an individual, or the trustee of a trust, to disregard a capital gain or capital loss if they transfer a CGT asset (including all the assets of a business) to a company in which the individual or trustee owns all the shares after the transfer. It also deals with the creation of a CGT asset in a company.

57. Subdivision 122-A contains a number of conditions for, and exceptions to, an individual or trustee being eligible to choose the roll-over. The main requirements that are relevant to the scheme that is the subject of the transfer of units in BT2 by a unit holder for shares in an acquiring company are:

- the consideration the individual or trustee receives must be only shares in the company
- the market value of the shares the individual or trustee receives for the transfer must be substantially the same as the market value of the asset they disposed of, less any liabilities the company undertakes to discharge in respect of the asset
- the individual or trustee must own all the shares in the company just after the time of the transfer, and
- the asset must not be a collectable, a personal use asset, or a precluded asset (a depreciating asset, trading stock, an interest in the copyright in a film referred to in section 118-30 or a registered emissions unit).

58. The scheme satisfies the requirements for the roll-over under Subdivision 122-A.

Subdivision 124-M

59. Scrip for scrip roll-over in Subdivision 124-M enables the holder of a share in a company to disregard a capital gain from a share that is disposed of if the holder receives a replacement share in another company in exchange. It also provides special rules for calculating the cost base and reduced cost base of the replacement interest.

60. Subdivision 124-M contains a number of conditions for, and exceptions to, a shareholder being eligible to choose scrip for scrip roll-over. The main requirements that are relevant to the scheme that is the exchange of shares in an acquiring company for ordinary shares in BTIL are:

- an entity exchanges shares in a company for shares in another company
- the exchange is in consequence of a single arrangement that satisfies subsections 124-780(2) or (2A)
- the conditions for the roll-over in subsection 124-780(3) are satisfied, and
- if subsection 124-780(4) applies, the conditions in subsection 124-780(5) are satisfied.

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

Appendix 2 – Detailed contents list

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References

- Previous draft:*
- ITAA 1997 115-25
 - Not previously issued as a draft - ITAA 1997 115-30(1)
 - ITAA 1997 115-34(1)(c)(i)
- Related Rulings/Determinations:*
- ITAA 1997 115-34(2)
 - TR 2006/10 - ITAA 1997 116-20
 - ITAA 1997 116-20(1)
 - ITAA 1997 118-30
- Subject references:*
- Capital gains tax - ITAA 1997 122-40(1)
 - Capital proceeds - ITAA 1997 122-40(2)
 - CGT event A1 - ITAA 1997 Subdiv 122-A
 - CGT roll-over relief - ITAA 1997 Subdiv 124-M
 - Cost base - ITAA 1997 124-780
 - Reduced cost base - ITAA 1997 124-780(2)
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- ITAA 1936 6(1)
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 - ITAA 1997 104-10(2)
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ATO references

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