


***CR 2015/50 - Income tax: scrip for scrip roll-over:
acquisition of shares in Novion Limited by
Federation Limited and acquisition of units in Novion
Trust by Federation Centres Trust No. 1***

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Class Ruling

Income tax: scrip for scrip roll-over: acquisition of shares in Novion Limited by Federation Limited and acquisition of units in Novion Trust by Federation Centres Trust No. 1

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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.

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:
- Schedule 2F of the *Income Tax Assessment Act 1936*
 - section 104-10 of the *Income Tax Assessment Act 1997* (ITAA 1997)
 - section 109-10 of the ITAA 1997
 - subsection 115-30(1) of the ITAA 1997; and
 - Subdivision 124-M of the ITAA 1997.

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

Class of entities

3. The class of persons to which this Ruling applies are the holders of stapled securities in Novion Property Group who:
- (a) participate in the arrangement that is the subject of this ruling
 - (b) hold their stapled securities in Novion on capital account for tax purposes
 - (c) are not 'significant stakeholders' within the meaning of that expression in Subdivision 124-M, and
 - (d) are not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on their shares in Novion Limited (NL) and units in Novion Trust (NT).

(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 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 12 to 33 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. However, the Ruling continues to apply after this date to all entities within the specified class who entered into the specified scheme during the term of the Ruling, subject to there being no change in the scheme or in the entities involved in the scheme.
8. The Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling. Furthermore, the Ruling only applies to the extent that:
- it is not later withdrawn by notice in the *Gazette*, or
 - the relevant provisions are not amended.

9. If this Class Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

10. If this Class Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Class Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun, and
- the scheme to which the rulings relate has not begun to be carried out.

11. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Scheme

12. 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:

- (a) Class Ruling application dated 3 March 2015 from Greenwoods & Herbert Smith Freehills.
- (b) Merger Implementation Agreement (MIA) dated 3 February 2015.
- (c) Copy of Scheme of Arrangement (Scheme) for NL.
- (d) Copy of Novion RE Limited Deed Poll (Deed Poll).
- (e) Copy of draft Supplemental Deed Poll (Supplemental Deed Poll) of Novion RE Limited.
- (f) Copy of NT consolidated constitution as at 28 May 2012.
- (g) Copy of Federation Centres Trust No. 1 (FCT) consolidated constitution as at 10 November 2014.
- (h) Copy of draft FCT Supplemental Deed Poll dated 7 November 2014.
- (i) Copy of Independent Expert's Report dated 14 April 2015.
- (j) Further correspondence from Greenwoods & Herbert Smith Freehills.

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

Novion Property Group

13. The Novion Property Group (Novion) is a retail sector specific Australian real estate investment group. It invests in shopping centres and retail outlets across Australia.

14. NT is an Australian resident unit trust, and part of Novion. NL is an Australian resident company and is part of Novion. The units in NT and the shares in NL are stapled to form a single tradeable security on the Australian Securities Exchange (ASX) with the code NVN.

15. There are 16,953 NVN security holders, with foreign residents holding approximately 32.6%. There are 3,077,214,058 NVN Stapled Securities and 2,489,028 Novion Performance rights on issue.

Federation Centres

16. Federations Centres (Federation) is an Australian real estate investment trust that owns and manages Australian shopping centres. FCT is an Australian resident unit trust and part of Federation. Federation Limited (FL) is an Australian resident company and is part of Federation. The units in FCT and the shares in FL are stapled to form a single tradeable security on the ASX with the code FDC.

17. There are currently 7,763 FDC security holders, with foreign residents holding approximately 48.9%. There are 1,427,641,565 FDC stapled securities and 6,293,364 Federation Performance Rights on issue.

The Merger Agreement

18. On 3 February 2015, Novion and Federation announced that they have entered into a MIA under which, Federation will acquire all of the NVN stapled securities. The merged group will become a significant owner and manager of Australian retail assets.

19. After the transaction the original NVN stapled security holders will own approximately 64% of the FDC stapled securities. FDC security holders will own the remaining 36% of the FDC stapled securities. The merger ratio of 0.8225 FDC securities for each NVN security was agreed between representatives and advisors of Novion and Federation during the negotiation of the MIA.

Steps of the Merger

20. NL entered the Scheme with holders of fully paid shares in NL to facilitate the merger. NL shareholders disposed of their NL shares, held on the share register of NL at 5 June 2015 at 7pm (record date), to FL. As consideration for the disposal they received shares in FL. The Scheme was subject to shareholder approval.

21. Novion RE as responsible entity for NT by way of Deed Poll amended the Constitution of NT to facilitate the merger. NT unit holders disposed of their NT units, held on the NT unit register at record date, to FCT. As consideration for the disposal they received units in FCT.
22. The Scheme of Arrangement was approved by the Novion Group security holders on 27 May 2015.
23. The Federal Court approved the Scheme of Arrangement entered into by NL under Part 5.1 of the *Corporations Act 2001*.
24. All other conditions precedent in the MIA between Novion and Federation are satisfied or waived.
25. On 11 June 2015, the implementation date, the NVN stapled securities de-stapled allowing the shares in NL and the units in NT to be separately traded.
26. On 11 June 2015 each shareholder registered on the Share Register of NL disposed of the NL shares that they held at the record date to FL, and received as consideration shares in FL in accordance with the merger ratio of 0.8225 FL shares for each NL share.
27. On 11 June 2015 each unit holder registered on the NT register disposed of the NT units that they held at the record date to FCT, and received as consideration units in FCT in accordance with the merger ratio of 0.8225 FCT units for each NT unit.
28. Each FL share provided to the Participating NVN security holders was stapled to a unit of FCT provided to the Participating NVN security holder immediately upon issue. The NVN security holder received a FDC stapled security.
29. A security sale facility was established for Ineligible Foreign Securityholders pursuant to clause 4.3 of the MIA, as it was determined that it was unduly onerous or impractical to issue a FDC stapled security to certain foreign resident NVN security holders.

Other Matters

30. Following the implementation date, the merged group became known as Federation Centres and traded on the Australian Securities Exchange under the code FDC.
31. All NVN stapled securities on issue were acquired after 20 September 1985.
32. An independent expert determined that the merger was fair and reasonable.
33. At present no NVN security holder is either a 'significant stakeholder' or 'common stakeholder' within the meaning of these terms in section 124-783.

Ruling

Separate CGT assets

34. The unit in NT and the share in NL are separate CGT assets for the purposes of section 108-5.

De-stapling and Re-stapling

35. A holder of a NVN stapled security will not make a capital gain or loss when de-stapling of the NVN security occurs.

36. A holder of a FDC stapled security will not make a capital gain or capital loss as a result of the stapling of the FCT unit and the FL share.

CGT Event A1

37. CGT event A1 will happen when a shareholder of NL disposes of their NL share to FL (section 104-10).

38. CGT event A1 will happen when a unit holder of NT disposes of their NT unit to FCT (section 104-10).

39. The time of the CGT event A1 is the Implementation Date when the change in ownership of the NL share or NT unit occurs (paragraph 104-10(3)(b)).

Acquisition date

40. The date the participating security holder acquires the FL share is the Implementation Date when the shares were issued or allotted (item 2 in the table in section 109-10).

41. The date the participating security holder acquires the FCT unit is the Implementation Date when the units were issued (item 3 in the table in section 109-10).

Acquisition date of FDC security for CGT discount purposes

42. Participating security holders who choose scrip for scrip roll-over acquired the FDC stapled securities, for CGT discount purposes, on the date that they acquired the corresponding NVN stapled securities that they disposed of for the FDC stapled securities (item 2 of the table in subsection 115-30(1)).

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

43. A NL shareholder, other than an Ineligible Foreign Securityholder, who made a capital gain from CGT event A1 happening in relation to the disposal of their NL share can choose roll-over relief, provided they could not disregard (except because of a roll-over) any capital gain they might make from a replacement share in FL (paragraph 124-795(2)(a)).

44. A NT unit holder, other than an Ineligible Foreign Securityholder, who made a capital gain from CGT event A1 happening in relation to the disposal of their NT unit can choose roll-over relief, provided they could not disregard (except because of a roll-over) any capital gain they might make from a replacement unit in FCT (paragraph 124-795(2)(a)).

Consequences of scrip for scrip roll-over

45. Where a NL shareholder or a NT unit holder chooses scrip for scrip roll-over, the capital gain arising from the CGT event A1 is disregarded (subsection 124-785(1)).

Cost Base

46. Where scrip for scrip roll-over relief is chosen the first element of the cost base and reduced cost base of each of the FCT units the participating security holder receives is calculated by reasonably attributing to it the cost base and reduced cost base of the NT unit for which it was exchanged (subsections 124-785(2) and 124-785(4)).

47. Where scrip for scrip roll-over relief is chosen the first element of the cost base and reduced cost base of each of the FL shares the participating security holder receives is calculated by reasonably attributing to it the cost base and reduced cost base of the NL share for which it was exchanged (subsections 124-785(2) and 124-785(4)).

Foreign residents

48. An NVN security holder who is a foreign resident, or the trustee of a foreign trust for CGT purposes, just before CGT event A1 happens, disregards under subsection 855-10(1) any capital gain or loss made from CGT event A1 happening to the NL share or NT unit if their share or unit is not 'taxable Australian property' as defined in section 855-15. If the NL share or NT unit of a foreign resident NVN security holder is taxable Australian property, a foreign resident NVN security holder is eligible to choose roll-over relief if the replacement share in FL or replacement unit in FCT is taxable Australian property.

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.*

Disposal of NL shares and NT units

49. CGT event A1 happens if there is a change in the ownership of an asset from one entity to another entity (section 104-10).

50. The time when CGT event A1 happens determines the income year in which any capital gain or loss is made and whether the CGT discount applies to any capital gain. The event happens when a contract to dispose of the asset is entered into, or if there is no contract, when the change of ownership occurs (subsection 104-10(3)).

51. The Addendum to Taxation Determination TD 2002/4 indicates that a takeover or merger effected by a court ordered scheme of arrangement does not involve a disposal of shares under a contract.

52. CGT event A1 happens to all NL shareholders on the merger implementation date when the NL shares are transferred to FL pursuant to the terms of the MIA and Scheme.

53. CGT event A1 happens to all NT unit holders on the merger implementation date when the NT units are transferred to FCT pursuant to the terms of the MIA, Deed Poll, and Supplemental Deed Poll.

Acquisition date

54. The MIA at clause 4.2(a) outlines that a participating security holder will acquire a new FDC stapled security consisting of an FL share stapled to a unit in FCT.

55. The acquisition date for the FL share, which is not acquired under a contract, is when the share is issued or allotted (item 2 in the table in subsection 109-10). Similarly, the acquisition date for the FCT unit is the time it was issued (item 3 in the table in subsection 109-10).

56. For FDC stapled security holders who choose scrip for scrip roll-over, the acquisition date of their new FDC stapled security for CGT discount purposes is the date that they acquired their original NVN stapled security which were disposed of in exchange for the new FDC stapled securities (item 2 in the table in subsection 115-30(1)). As the NVN stapled security consists of an NL share and an NT unit, it follows the acquisition date for the NL share and the NT unit for CGT discount purposes is the same.

Availability of scrip for scrip roll-over- Subdivision 124-M

57. Subdivision 124-M contains a number of conditions for, and exceptions to, the eligibility of a NVN security holder to choose scrip for scrip roll-over. The arrangement requires the NVN security to be de-stapled before the NVN share and the NT unit can be disposed of. It is the share for share exchange and the unit for unit exchange that may qualify for roll-over relief. As the NVN stapled security consists of an NL share and an NT unit, the following explanation for roll over relief refers to an NL shareholder (for the share for share exchange) and a NT unit holder (for the unit for unit exchange).

Share for share exchange

58. The main conditions that are relevant to the Scheme that is the subject of this Ruling are:

- (a) shares are exchanged for shares in another company (subparagraph 124-780(1)(a)(i))
- (b) the exchange occurs as part of a single arrangement (paragraph 124-780(1)(b))
- (c) conditions for roll-over are satisfied (paragraph 124-780(1)(c)), and
- (d) further conditions are not applicable (subsection 124-780(4)).

Shares are exchanged for shares in another company

59. Paragraph 124-780(1)(a) requires an entity (a NL shareholder) to exchange a share in a company (a NL share) for a share in another company.

60. This requirement was satisfied by a NL security holder who, under the arrangement, received FL shares as consideration for their disposal of NL shares.

61. Non-resident NL security holders whose replacement FL shares were issued to a nominee for sale under the Security Sale Facility are considered to satisfy this requirement, as those security holders were entitled to receive replacement shares under the arrangement (MIA and Scheme).

The exchange occurs as part of a single arrangement

62. Paragraph 124-780(1)(b) requires that shares in an entity (NL – the original entity) be exchanged in consequence of a single arrangement.

63. In the context of the scrip for scrip roll-over, the exchange of NL shares for FL shares under the Scheme is considered to be a consequence of a single arrangement. With the single arrangement being the broader exchange of a NVN stapled security for an FDC stapled security under the MIA. The single arrangement must also satisfy the following conditions set out below.

(a) 80% ownership

64. Paragraph 124-780(2)(a) requires that shares in an original entity (NL) be exchanged in consequence of a single arrangement that results in the acquiring entity (FL) becoming the owner of 80% or more of the voting shares in the original entity.

65. To proceed, the merger required approval from NL security holders and Court approval as a Scheme of Arrangement under Part 5.1 of the *Corporations Act 2001* for the purposes of paragraph 411(4)(b) of the *Corporations Act 2001*. Once these approvals were obtained all NL security holders were required to participate. Such that FL acquired all NL shares, and satisfies the 80% ownership test.

66. The ordinary NL shares, being the shares subject to the Scheme, satisfy the definition of voting shares in subsection 995-1(1).

(b) All voting share owners participate

67. Paragraph 124-780(2)(b) requires that the exchange of shares be in consequence of a single arrangement in which at least all owners of voting shares in the original entity (NL) could participate.

68. If the merger is approved all of the shareholders in NL will participate, disposing of their NL shares.

69. The security sale facility was established under clause 4.3 of the MIA as it was determined that it was unduly onerous or impractical to issue a FDC stapled security to certain foreign resident NVN security holders. This establishes a group of Ineligible Foreign Securityholders.

70. The Ineligible Foreign Securityholders will dispose of their NL shares, and be allocated new FDC stapled securities, but the securities are issued to a nominee for sale. It is accepted that the Ineligible Foreign Securityholders are participating albeit that the FDC stapled securities they are allocated will be sold.

(c) Participation is on substantially the same terms

71. Paragraph 124-780(2)(c) requires that the exchange of shares is in consequence of a single arrangement in which participation was available on substantially the same terms for all of the owners of interests of a particular type in the original entity (NL).

72. This requirement is satisfied as participation in the Scheme was on the same terms for all NL shareholders.

73. As all NL shareholders are governed by the same terms except for the use of the security sale facility for Ineligible Foreign Securityholders it is considered that participation is on substantially the same terms.

Conditions for roll-over are satisfied

74. Paragraph 124-780(1)(c) requires that the conditions for roll-over outlined in subsection 124-780(3) are met. These conditions must be met in relation to each NL share for which scrip for scrip roll-over will be chosen.

75. The conditions in subsection 124-780(3) are set out in paragraphs 76 to 85 of this Ruling.

(a) NL shares are post-CGT shares

76. Paragraph 124-780(3)(a) requires the original interest holder (a NL shareholder) to have acquired its original interest (a NL share) on or after 20 September 1985.

77. This requirement is satisfied as all of the shares in NL were issued on or after 20 September 1985.

(b) Novion stapled security holder would otherwise make a capital gain

78. Paragraph 124-780(3)(b) requires that, apart from the roll-over, the original interest holder (a NL shareholder) would make a capital gain from a CGT event happening in relation to the original interest (a NL share).

79. Whether a NL shareholder would, apart from the roll-over, have made a capital gain from the disposal of its shares to FL will depend on the individual circumstances of the NVN security holder. A capital gain will be made on a disposal of a NL share if the capital proceeds from the disposal of that share are more than its cost base. Each participating NVN security holder will need to consider their own circumstances in meeting this requirement.

(c) Novion stapled security holder receives an interest in the group acquiring their original share

80. Paragraph 124-780(3)(c) requires that the replacement interest is in the acquiring entity (FL) or the ultimate holding company of the wholly-owned group of which it is a member.

81. This requirement is satisfied as the replacement interests received by NL shareholders will be in FL, the acquiring company.

(d) Novion stapled security holder must choose to obtain scrip for scrip roll-over

82. Paragraph 124-780(3)(d) requires that the original interest holder (a NL shareholder) choose to obtain the roll-over, or if section 124-782 applies to it for the Scheme, it and the replacement entity jointly choose to obtain the rollover.

83. Section 124-782 has no application in the circumstances of the Scheme since there are no significant stakeholders or common stakeholders under the arrangement (within the meaning in 124-783).

84. Further, with the 20 largest holders of NL shares holding approximately 68% and the widely held profile of NVN securities subsection 124-810(1) will not apply to treat NL as having less than 300 members.

85. Subject to their eligibility (see paragraph 43), whether a NVN security holder chooses to obtain roll-over is a question of fact for each stapled security holder.

Further conditions are not applicable

86. Subsection 124-780(4) provides that the additional requirements in subsection 124-780(5) must be satisfied if the original interest holder (a NL shareholder) and the acquiring entity (FL) did not deal with each other at arm's length and:

- (a) neither the original entity (NL) nor the replacement entity (FL) had at least 300 members just before the arrangement started (paragraph 124-780(4)(a)), or
- (b) the original interest holder (a NL shareholder), the original entity (NL) and the acquiring entity (FL) were all members of the same linked group just before the arrangement started (paragraph 124-780(4)(b)).

87. Paragraph 124-780(4)(a) will not apply because both NL and FL had at least 300 members just before the arrangement started. Section 124-810 will not apply to either NL or FL as their ownership was not concentrated in the manner contemplated by that section.

88. Paragraph 124-780(4)(b) will not apply because NL and FL were not members of the same linked group (within the meaning of section 170-260) just before the arrangement started.

Exceptions

89. Subsection 124-795(1) provides that roll-over is not available if, just before the disposal, the original interest holder is a foreign resident unless, just after the acquisition of the replacement interest, the replacement interest is 'taxable Australian property' as defined in section 855-15. This means that the foreign NL shareholders are not eligible to choose scrip for scrip roll-over if the replacement FL shares are not taxable Australian property.

90. Foreign residents should consider the impact of the exception in 124-795(1) and potential CGT consequences in their particular circumstances.

Unit for unit exchange

91. The main conditions that are relevant to the Scheme that is the subject of this Ruling are:

- (a) units are exchanged for units in another trust (subparagraph 124-781(1)(a)(i))
- (b) fixed entitlements (paragraph 124-781(1)(b))
- (c) the exchange occurs under an arrangement (paragraph 124-781(2)(a))
- (d) conditions for roll-over are satisfied (paragraph 124-781(1)(c)), and
- (e) further conditions are not applicable (subsection 124-781(4)).

Units are exchanged for units in another trust

92. Subparagraph 124-781(1)(a)(i) requires an entity (a NT unit holder) to exchange a unit (NT unit) in a trust for a unit in another trust.

93. This requirement was satisfied by a NVN security holder as NT units were exchanged for FCT units pursuant to the amendments to the NT consolidated constitution.

94. Foreign NVN security holders who will be Ineligible Foreign Securityholders will have their replacement FCT units issued to a nominee for sale under the security sale facility. It is considered that the disposal of the NT units and allocation of FCT units satisfies this requirement as those unit holders are entitled to receive replacement units under the terms of the NT consolidated constitution and Deed Poll.

Fixed entitlements

95. Paragraph 124-781(1)(b) requires that entities have fixed entitlements to all of the income and capital of the original entity (NT) and the acquiring entity (FCT).

96. Having regard to:

- (a) all of the documents and any other material referred to in paragraph 12 of this Ruling; and
- (b) all the facts comprising the arrangement as described in paragraphs 13 to 33 of this Ruling,

The Commissioner exercises the discretion in subsection 272-5(3) in Schedule 2F to the *Income Tax Assessment Act 1936* to find the members' entitlements in NT and FCT as fixed. The Commissioner exercises this discretion on the grounds that the constituent documents of each trust make it reasonable to conclude that the interests of members to the income and capital of both trusts are sufficiently determined.

The exchange occurs under an arrangement

(a) 80% ownership

97. Paragraphs 124-781(1)(c) and 124-781(2)(a) require that the exchange of units is in consequence of an arrangement that results in the acquiring entity (FCT) becoming the owner of 80% or more of the trust voting interests in the original entity (NT).

98. A 'trust voting interest' is defined in subsection 124-781(6) as an interest that confers rights of the same or a similar kind as the rights conferred by a voting share in a company. 'Voting shares' are defined in subsection 995-1(1) by reference to the definition in section 9 of the *Corporations Act 2001*.

99. All of the NT units are considered to be trust voting interests. The exchange of units is considered to be a consequence of the arrangement, with the arrangement being the broader exchange of a NVN stapled security for an FDC stapled security under the MIA. Accordingly, upon implementation of the merger, this requirement was satisfied as FCT became the owner of all of the NT units as a consequence of the arrangement.

(b) All voting unit owners participate

100. Paragraph 124-781(2)(b) requires that the exchange of units is in consequence of an arrangement in which at least all owners of trust voting interests in the original entity (NT) could participate.

101. This requirement was satisfied because under the amendments to the NT consolidated constitution and Deed Poll all the unit holders in NT will participate in the arrangement. This includes Ineligible Foreign Securityholders.

(c) Participation is on substantially the same terms

102. Paragraph 124-781(2)(c) requires that the exchange of units is in consequence of an arrangement in which participation was available on substantially the same terms for all of the owners of units of a particular type.

103. This requirement was satisfied as the amendments to the NT consolidated constitution and Deed Poll applied to all the NT unit holders.

104. While some Ineligible Foreign Securityholders had their replacement FCT units issued to a nominee for sale under the security sale facility, this does not prevent the arrangement from being on substantially the same terms for all unit holders, as all are entitled to receive replacement units under the terms of both the MIA, NT consolidated constitution and Deed Poll.

Conditions for roll-over are satisfied

105. Paragraph 124-781(1)(d) requires that the conditions for roll-over outlined in subsection 124-781(3) be met. These conditions must be met in relation to each NT unit for which scrip for scrip roll-over will be chosen.

106. The conditions in subsection 124-781(3) are set out in paragraphs 107 to 114 of this Ruling.

(a) Novion units are post-CGT units

107. Paragraph 124-781(3)(a) requires the original interest holder (NVN security holder) to have acquired its original interest (NT unit) on or after 20 September 1985.

108. This requirement is satisfied as all of the units in NT were issued on or after 20 September 1985.

(b) Novion stapled security holder would otherwise make a capital gain

109. Paragraph 124-781(3)(b) requires that, apart from the roll-over, the original interest holder (a NT unit holder) would make a capital gain from a CGT event happening in relation to the original interest (NT unit).

110. Whether a NT unit holder would, apart from the roll-over, have made a capital gain from the disposal of its units to FCT will depend on the individual circumstances of the NVN security holder. A capital gain will be made on a disposal of a NT unit if the capital proceeds from the disposal of that unit are more than its cost base. Each participating NVN security holder will need to consider their own circumstances in meeting this requirement.

(c) Novion stapled security holder must choose to obtain scrip for scrip roll-over

111. Paragraph 124-781(3)(c) requires that the original interest holder (a NT unit holder) choose to obtain the roll-over.

112. Section 124-782 has no application in the circumstances of the Scheme since there are no significant stakeholders or common stakeholders under the arrangement (within the meaning in section 124-783).

113. Further, with the 20 largest holders of NT units holding approximately 68% and the widely held profile of NVN securities subsection 124-810(2) will not apply to treat NT as having less than 300 members.

114. Subject to their eligibility (see paragraph 42), whether a NVN security holder chooses to obtain the roll-over is a question of fact for each stapled security holder.

Further conditions are not applicable

115. Subsection 124-781(4) provides that additional requirements must be satisfied if the original interest holder (a NT unit holder) and the trustee of the acquiring entity (FCT) did not deal with each other at arm's length, and neither the original entity (NT), nor the acquiring entity (FCT), had at least 300 beneficiaries just before the arrangement started. The additional requirements are:

- (a) the market value of the original interest holder's capital proceeds for the exchange must be at least substantially the same as the market value of its original interest; and
- (b) the replacement interest must carry the same kind of rights and obligations as those attached to the original interest

116. Subsection 124-781(4) will not apply because NT and FCT each had more than 300 beneficiaries just before the arrangement starts.

Exceptions to obtaining scrip for scrip roll-over are not applicable

117. Section 124-795 contains a number of exceptions where scrip for scrip roll-over cannot be chosen.

(a) Novion stapled security holders are residents of Australia

118. Subsection 124-795(1) provides that roll-over is not available if, just before the disposal, the original interest holder is a foreign resident unless, just after the acquisition of the replacement interest, the replacement interest is 'taxable Australian property' as defined in section 855-15. This means that foreign NT unit holders are not eligible to choose scrip for scrip roll-over if the replacement FCT units are not taxable Australian property.

119. Foreign residents should consider the impact of the exception in 124-795(1) and potential CGT consequences in their particular circumstance.

(b) A capital gain cannot (apart from the roll-over) be otherwise disregarded

120. Paragraph 124-795(2)(a) provides that the rollover is not available if any capital gain the original interest holder (a NT unit holder) might make from the replacement interest (FCT unit) would be disregarded. This requirement is contained in the eligibility for roll-over, see paragraph 42 of this Ruling.

(c) Acquiring entities are not foreign residents

121. Paragraph 124-795(2)(b) provides that the roll-over is not available if the original interest holder (a NT unit holder) and the acquiring entity (FCT) are members of the same wholly-owned group just before the original interest holder stops owning their original interest (NT unit), and the acquiring entity is a foreign resident.

122. This exception does not apply as FCT is not a foreign resident.

Consequences of roll-over

123. Scrip for scrip roll-over enables a shareholder or unit holder to disregard all or part of a capital gain from a share or unit that is disposed of as part of a corporate takeover or merger if the shareholder or unit holder receives a replacement share or unit in exchange. The cost base of the replacement share or unit is determined by apportioning on a reasonable basis the cost base of the original share or unit which is exchanged for it (subsections 124-785(2) and 124-785(3)).

124. If the only capital proceeds the shareholder or unit holder receives are replacement shares or replacement units, respectively, the capital gain is disregarded completely (subsection 124-785(1)). All of the cost base of the original shares and units can be allocated to the replacement shares or units (subsection 124-785(2)).

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References

Previous draft:

Not previously issued as a draft

*Related Rulings/Determinations:*TR 2006/10; TR 2005/19;
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