CR 2015/92 - Income tax: scrip for scrip roll-over - exchange of units in Maroochy Palms Trust for units in Residential Parks No. 2 Trust

Class Ruling

Income tax: scrip for scrip roll-over – exchange of units in Maroochy Palms Trust for units in Residential Parks No. 2 Trust

Contents Para

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 provisions

2. The relevant provisions dealt with in this Ruling are:

- section 102-5 of the *Income Tax Assessment Act 1997* (ITAA 1997)
- section 102-10 of the ITAA 1997
- section 103-5 of the ITAA 1997
- Division 104 of the ITAA 1997
- section 110-25 of the ITAA 1997
- section 110-55 of the ITAA 1997
- subsection 112-20(1) of the ITAA 1997
- subsection 112-30(1) of the ITAA 1997

- Subdivision 115-A of the ITAA 1997
- section 116-20 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 indicated.

Class of entities

3. The class of entities to which this Ruling applies are the holders of units in the Maroochy Palms Trust who:

- participated in the scheme that is the subject of this Ruling
- are a 'resident of Australia' as that term is defined in subsection 6(1) of the *Income Tax Assessment Act 1936*
- did not hold their units in the Maroochy Palms 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 held their units broadly on capital account, and
- are not subject to the taxation of financial arrangements (TOFA) rules in Division 230 in relation to gains and losses on their units in the Maroochy Palms Trust.

  (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 8 to 22 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 *Public Rulings*).

Scheme

8. The following description of the scheme is based on information provided by the applicant (Greenwoods and Herbert Smith Freehills Pty Ltd).

9. The following documents, or relevant parts of them, form part of and are to be read with the description:

- Class Ruling application dated 15 September 2015
- the Constitution of the Maroochy Palms Trust
- Notice of meeting and explanatory notes dated 15 April 2015
- Replacement Prospectus and Product Disclosure Statement dated 28 May 2015, and
- correspondence from the applicant.

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 Gateway Lifestyle Group

10. The Gateway Lifestyle Group operates 25 Manufactured Home Parks that are located in New South Wales, Victoria and Queensland. The properties are held by various trusts (or in some cases wholly owned sub-trusts) – including the Maroochy Palms Trust. Units in the trusts were owned by different syndicates of wholesale investors. Each landholding trust also had a related operating company or trust. None of the relevant entities were listed on the Australian Securities Exchange (ASX).

11. The Gateway Lifestyle Group undertook a corporate restructure, with the object of combining ownership of all of the residential parks, their specific operating companies and the related Gateway Lifestyle Residential Parks Pty Ltd into one stapled structure listed on the ASX.

The Transaction

12. On the Implementation Date (15 June 2015), the unit holders of the Maroochy Palms Trust received 1.27 units in Residential Parks No. 2 Trust (RPT2) in exchange for transferring each unit they held in the Maroochy Palms Trust to the trustee of RPT2.

13. The unit holders of the Maroochy Palms Trust also received an amount of money (the Cash Settlement Adjustment) in addition to the units in RPT2. Broadly, the Cash Settlement Adjustment was determined by the difference between the net asset value of the Maroochy Palms Trust at the time of the Transaction and the position upon which the unit exchange ratio was based.

14. As a result of the Transaction, the Maroochy Palms Trust became wholly owned by the trustee of RPT2, which is a registered managed investment scheme under Chapter 5C of the *Corporations Act 2001*.

15. A new public company (Gateway Lifestyle Operations Limited (GLOL)) was incorporated with the trustee of RPT2 initially being the sole shareholder of GLOL.

16. Following the exchange of units, all RPT2 unit holders received the number of shares in GLOL corresponding to the number of units they hold, for no further consideration, as an in specie distribution by the trustee of RPT2.

17. Each share in GLOL and each unit in RPT2 were stapled on a 1:1 basis to form the New Stapled Securities that were listed on the ASX on 11 June 2015.

18. Unit holders who did not elect to retain some or all of their New Stapled Securities had the opportunity to sell them under the Cash Sale Facility (a sale mechanism established by the Gateway Lifestyle Group as part of the Transaction).

Other matters

19. All of the unit holders of the Maroochy Palms Trust were offered the opportunity to participate in the Transaction and the offer was available to all unit holders on the same terms.

20. Both the Maroochy Palms Trust and RPT2 were settled after 20 September 1985.

21. At the time of the Transaction there was only one class of units on issue in the Maroochy Palms Trust.

22. The Maroochy Palms Trust and RPT2 did not have a ‘significant stakeholder’ or a ‘common stakeholder’ in relation to the scheme within the meaning of those expressions in section 124-783.

Ruling

CGT event A1

23. CGT event A1 happened when the unit holders of the Maroochy Palms Trust disposed of their units to the trustee of RPT2 (section 104-10).

24. The time of CGT event A1 is on the Implementation Date (paragraph 104-10(3)(b)).

25. A unit holder made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of a unit exceeded the cost base of that unit (subsection 104-10(4)).

26. A unit holder made a capital loss from CGT event A1 happening if the capital proceeds from the disposal of a unit were less than its reduced cost base (subsection 104-10(4)).

27. The capital proceeds from CGT event A1 happening to a unit in the Maroochy Palms Trust is the market value of 1.27 units in RPT2 and the amount of any Cash Settlement Adjustment received in respect of the disposal of that unit (subsection 116-20(1)). The market value of a RPT2 unit is worked out as at the time of CGT event A1, which is on the Implementation Date.

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

28. Subject to the qualification in the following paragraph, a unit holder who made a capital gain from the disposal of their Maroochy Palms Trust unit to the trustee of RPT2 may choose to obtain partial scrip for scrip roll-over for that part of the capital gain that is referable to the receipt of RPT2 units (sections 124-781, 124-785 and 124-790).

29. Scrip for scrip roll-over cannot be chosen if any capital gain a unit holder might make from their replacement RPT2 units would be disregarded, except because of a roll-over (paragraph 124-795(2)(a)).

Consequences if scrip for scrip roll-over is chosen

30. If scrip for scrip roll-over is chosen, that part of the capital gain that is referable to the receipt of RPT2 units is disregarded (subsections 124-785(1) and 124-790(1)). Any part of the capital gain that is referable to the receipt of the Cash Settlement Adjustment is not disregarded because it is ineligible proceeds for which roll-over is not available (subsection 124-790(1)).

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

31. A unit holder of the Maroochy Palms Trust 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 Maroochy Palms Trust units 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).

32. A 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 units in the Maroochy Palms Trust that were disposed of to the trustee of RPT2 must have been acquired by the unit holder at least 12 months before the Implementation Date.

Cost base and reduced cost base of RPT2 units received

33. The method for calculating the cost base and reduced cost base of the RPT2 units acquired by a unit holder in exchange for their units in the Maroochy Palms Trust depends on whether scrip for scrip roll-over is chosen.

Scrip for scrip roll-over is chosen

34. Where scrip for scrip roll-over is chosen, the first element of the cost base and reduced cost base of a replacement RPT2 unit received is worked out by reasonably attributing to it the cost base and reduced cost base (respectively) of the Maroochy Palms Trust unit for which it was exchanged and for which the roll-over was obtained (subsections 124-785(2) and 124-785(4)). The cost base and reduced cost base of the Maroochy Palms Trust unit exchanged by a unit holder is reduced by so much of it that is attributable to the Cash Settlement Adjustment (subsection 124-785(3)).

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

35. 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 a replacement RPT2 unit received is equal to the market value of the part of each Maroochy Palms Trust unit given in respect of acquiring the RPT2 unit (subsections 110-25(2) and 110-55(2)). The market value is worked out as at the time of the acquisition. The balance of the market value of each Maroochy Palms Trust unit, being property given in respect of receiving the Cash Settlement Adjustment, is not included (subsection 112-30(1)).

CGT event E4 happens when GLOL shares are distributed to RPT2 unit holders

36. CGT event E4 happens when the trustee of RPT2 makes a payment to the unit holders of RPT2 (being the shares in GLOL) in respect of their units in RPT2. None of the payment is included in the assessable income of the unit holders (section 104-70).

37. The amount of the payment is the market value of the shares in GLOL (section 103-5).

38. The time of CGT event E4 is just before the end of the income year in which the trustee of RPT2 makes the payment (paragraph 104-70(3)(a)).

39. As the unit holders of RPT2 did not pay money or give property to acquire their shares in GLOL, the first element of the cost base and reduced cost base of the unit holders' shares in GLOL is the market value of those shares, at the time they were acquired by the unit holders (subsection 112-20(1)).

40. A unit holder makes a capital gain if the total amount of the non-assessable payment made by the trustee of RPT2 during the income year in respect of a RPT2 unit exceeds the cost base of the unit (subsection 104-70(4)).

41. If a unit holder makes a capital gain, the cost base and reduced cost base of the RPT2 unit is reduced to nil (subsection 104-70(5)).

42. If the total amount of the non-assessable payment made by the trustee of RPT2 during the income year is not more than the cost base of a RPT2 unit, the cost base and reduced cost base of the unit will be reduced by that total amount (subsection 104-70(6)).

Commissioner of Taxation
11 November 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.

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

44. The main 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.

45. 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 or other interests are exchanged for units or other 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.

46. Having regard to:

(a) all of the documents and any other material referred to in paragraph 9 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 Maroochy Palms Trust and RPT2 immediately before, during and immediately after the exchange of units that is the subject of this Ruling.

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

Appendix 2 – Detailed contents list

48. 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

Legislative references:

- ITAA 1936 6(1)
- ITAA 1997
- ITAA 1997 102-5
- ITAA 1997 102-10
- ITAA 1997 103-5
- ITAA 1997 Div 104
- ITAA 1997 104-10
- ITAA 1997 104-10(3)(b)
- ITAA 1997 104-10(4)
- ITAA 1997 104-70
- ITAA 1997 104-70(3)(a)
- ITAA 1997 104-70(4)
- ITAA 1997 104-70(5)
- ITAA 1997 104-70(6)
- ITAA 1997 110-25
- ITAA 1997 110-25(2)
- ITAA 1997 110-55
- ITAA 1997 110-55(2)
- ITAA 1997 112-20(1)
- ITAA 1997 112-30(1)
- ITAA 1997 Subdiv 115-A
- ITAA 1997 116-20
- ITAA 1997 116-20(1)
- ITAA 1997 Subdiv 124-M
- ITAA 1997 124-781
- ITAA 1997 124-781(1)(b)
- ITAA 1997 124-783
- ITAA 1997 124-785
- ITAA 1997 124-785(1)
- ITAA 1997 124-785(2)
- ITAA 1997 124-785(3)
- ITAA 1997 124-785(4)
- ITAA 1997 124-790
- ITAA 1997 124-790(1)
- ITAA 1997 124-795(2)(a)
- ITAA 1997 Div 230
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- Corporations Act 2001 Ch 5C
- TAA 1953

ATO references

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