


CR 2016/77 - Income tax: scrip for scrip roll-over - Caledonia group reorganisation: Caledonia (Private) Investment Trust

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Class Ruling

Income tax: scrip for scrip roll-over – Caledonia group reorganisation: Caledonia (Private) 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.

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:

- paragraph 272-5(3)(b) of the *Income Tax Assessment Act 1936* (ITAA 1936)
- section 109-10 of the *Income Tax Assessment Act 1997* (ITAA 1997)
- section 110-25 of the ITAA 1997
- section 110-55 of the ITAA 1997
- subsection 115-30(1) of the ITAA 1997
- section 115-45 of the ITAA 1997
- subsection 115-50(2) of the ITAA 1997
- Subdivision 124-M of the ITAA 1997

- section 124-781 of the ITAA 1997
- section 124-783 of the ITAA 1997
- section 124-785 of the ITAA 1997
- section 124-795 of the ITAA 1997, and
- section 124-810 of the ITAA 1997.

Class of entities

3. The class of entities to which this Ruling applies is the holders of units in Caledonia (Private) Investment Trust (**Private**) who:

- are Australian residents
- are listed on the Unit Register of Private at the time of the Reorganisation arrangement as outlined in paragraphs 8 to 19 of this ruling
- hold their units on capital account for Australian income tax purposes, and
- are not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on their units in Private.

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 19 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 2016 to 30 June 2018. 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 by Alfred Street Nominees Pty Ltd on behalf of the investors in Private dated 20 June 2016.
- Caledonia Private Investment Trust Supplemental Deed No. 2.
- Caledonia Global Investment Trust Supplemental Deed No. 2 dated 24 October 2014.

9. Alfred Street Nominees Pty Limited (**Trustee**) is an Australian resident company that acts as the trustee of, and Caledonia (Private) Investments Pty Ltd (**Caledonia**) is the investment manager for, the following trusts:

- Caledonia Small Caps Trust (**Small Caps**), Private, Caledonia Australia Trust (**CAT**), Caledonia Global Investment Trust (**Global**) (collectively, **the Trusts**), and
- Caledonia Small Caps No. 2 Trust (**Small Caps 2**), Caledonia (Private) Investment No. 2 Trust (**Private 2**), Caledonia Australia No. 2 Trust (**CAT 2**) and Caledonia Global Investment No. 2 Trust (**Global 2**) (collectively, **the Replicate Trusts**).

10. The Replicate Trusts were created in a previous restructure in February 2015.

11. The current structure comprises the eight separate trusts over two effectively identical pools of assets. Caledonia proposes to reorganise the current structure *'in order to achieve greater simplicity of operations, client communications and management of the investment portfolios of the Trusts'*, which *'should generate operational cost savings to the unitholders in the form of a reduced operating cost Management Expense Ratio'*.

12. The proposed reorganisation will be implemented in the financial ended 30 June 2017.

Proposed reorganisation

13. Under the proposed reorganisation, the investments held by Small Caps, Private and CAT (**Target Trusts**) will be transferred to Global. All unitholders in each Target Trust will receive units in the Global in the relative proportion to their existing unitholding in each Target Trust.

14. A similar reorganisation will be undertaken with respect to the Replicate Trusts.

15. In carrying out the reorganisation, the following steps will be undertaken:

Step 1

Global will be issued with a nominal number of units in the Target Trusts. These units will be issued at the application prices. The units will be issued to ensure the trust estate relationship is maintained for the Target Trusts at all times during the reorganisation.

The Managers of CAT and Private, and the Trustee of Small Caps apply for units in Global on behalf of their unitholders and will compulsorily redeem all units (**Redeemed Units**) held by their unitholders other than those held by Global. The redemptions are satisfied by Global issuing units to the Target unitholders in proportion to the relative aggregate redemption price of the Redeemed Units in each Trust. No unitholder vote is required for the reorganisation to be implemented. It is not proposed that any contract be entered into between the Trustee and the unitholders giving effect to the issue of these units to the unitholders. All unitholders will participate in this arrangement on substantially the same terms.

As Private initially holds approximately 60% of the units in Small Caps and 63% of the units in the Small Caps 2, it will be issued units in Global and Global 2 respectively.

In consideration for the issue of its units to the investors, Global Trust will be issued further units in the Target Trusts.

Step 2

The Target Trusts will then be wound up. This will occur as a 'two-step-redemption'. Initially, each of the Target Trusts will transfer their investments at market value to Global in consideration for two promissory notes (P1 & P2). Broadly, the face value of P2 will equate to the aggregate 'cost base' of the underlying investments. The face value of P1 will equate to the aggregate net capital gain and net revenue gain of the underlying investments.

The units that Private holds in Global will be redeemed for aggregate redemption prices. The respective cost bases and any capital gain/loss arising from redemption will be included in P1 and P2 to be provided to Private by Global. The units that Private holds in Global 2 will not be redeemed. The units will be transferred to Global as an investment of Private in accordance with the mechanism outlined above.

Step 3

Each of the Target Trusts will then make a distribution to Global. This distribution will consist of the aggregate net capital gains and net revenue gains realised on the transfer (and redemption in the case of Global units held by Private) of their investments by way of the endorsement and delivery of P1.

Step 4

The units held by Global in each of the Target Trusts will be redeemed. Global will receive as redemption proceeds the respective P2 from each of the Target Trusts.

16. Following the Reorganisation, all of the P1s and P2s will be extinguished by Global. All new investors will subscribe for units in Global and all new investments will be made by Global.

Other facts in this scheme

17. For the purposes of Ruling 1, Ruling 2, Ruling 4 and Ruling 6, it is taken as facts that:

- The disposal of the units in Private would, but for the application of the roll-over provision, result in a capital gain to the relevant Private unitholder.
- The relevant Private unitholder will choose to obtain the roll-over.
- No Private unitholder (or unitholder and its associates between them) has the right to receive 30% or more of any distribution of income or capital in Private just before the start of the arrangement (as defined in paragraphs 32 to 35 below), or 30% or more of any distribution of income or capital in Global just after the arrangement is completed.
- No Private unitholder, or unitholder and one or more other entities, and their associates, between them have the right to receive 80% or more of any distribution of income or capital in Private just before the arrangement starts, and the right to receive 80% or more of any distribution of income or capital in Global just after the arrangement is completed.
- Global has more than 300 beneficiaries. Just before the start of the arrangement:
 - Global will continue to have more than 300 beneficiaries.
 - No individual will own, or group of individuals of up to 20 will own between them, directly or indirectly and for their own benefit, units or other fixed interests in Global, carrying fixed

entitlements to at least 75% of Global's income or capital, or 75% of rights to vote in respect of Global's activities. Further, this concentration of ownership is not capable of arising in the manner and by any of the circumstances prescribed under subsection 124-810(5).

- A capital gain which might be made by a relevant Target Trust unitholder on its Global units will not be disregarded under the terms of paragraph 124-795(2)(a).
- The unitholders in Private and Global are not members of the same wholly owned group, and will not be members of the same wholly-owned group just before the unitholders' units in Private are redeemed; and Global is not a foreign resident.
- Global will not make a choice to deny a roll-over to Private unitholders under Subdivision 124-M.

18. For the purposes of Ruling 2, it is taken as a fact that:

- The capital proceeds received by the unitholders for their original interests in Private will not include any ineligible proceeds as defined in subsection 124-790(1).

19. For the purposes of Ruling 6, it is taken as facts that for 12 months following the restructure:

- Global will have more than 300 beneficiaries.
- No individual will own, or group of individuals of up to 20 will own between them, directly or indirectly and for their own benefit, interests in Global, carrying fixed entitlements to at least 75% of Global's income or capital, or 75% of rights to vote in respect of Global's activities, under the terms of subsection 115-50(4) and subsection 115-50(5).
- Further, such concentration of ownership is not capable of arising in the manner and by any of the circumstances prescribed under subsection 115-50(6) and subsection 115-50(7).

Ruling

Ruling 1: Scrip for scrip roll-over for unitholders

20. The conditions for scrip for scrip roll-over under Subdivision 124-M of the ITAA 1997 will be met in respect of the acquisition of the newly issued units in Global in consideration for the redemption of the unitholders' units in Private, provided that, in respect of the application of section 124-781:

- the condition in paragraph 124-781(3)(b) is satisfied on the basis that the disposal of the units in Private would, but for the application of the roll-over provision, result in a capital gain to the relevant unitholder
- the unitholder chooses to obtain the roll-over under paragraph 124-781(3)(c), and section 124-782 does not apply to it because:
 - no unitholder is or will be a '**significant stakeholder**' as defined in section 124-783.
 - no unitholder is or will be '**common stakeholder**' as defined in section 124-783.
- Global has at least 300 beneficiaries just before the arrangement starts, and section 124-810 does not apply to treat Global as if it does not have at least 300 beneficiaries,

and provided that, with regard to the exceptions outlined in section 124-795:

- a capital gain which might be made by a relevant Private unitholder on its Global units will not be disregarded for the purposes of paragraph 124-795(2)(a)
- the unitholders in Private and Global are not members of the same wholly owned group, and will not be members of the same wholly-owned group just before the unitholders' units in Private are redeemed; and Global is not a foreign resident, and
- Global does not make a choice to deny a roll-over to the unitholders under Subdivision 124-M.

Ruling 2: Unitholder's cost base where roll-over occurs

21. To the extent that the conditions for scrip for scrip roll-over under Subdivision 124-M of the ITAA 1997 are met in respect of the exchange of units in Private for units in Global, the first element of the unitholders' cost base and reduced cost base of each unit acquired in Global will be calculated in accordance with the application of section 124-785 of the ITAA 1997.

Ruling 3: Unitholder's cost base where no roll-over

22. To the extent that the conditions for scrip for scrip roll-over under Subdivision 124-M of the ITAA 1997 are *not* met in respect of the exchange of units in Private for units in Global, the first element of the unitholders' cost base and reduced cost base of each unit in Global will be equal to the market value of the units redeemed at the time of the acquisition of Global units in accordance with the application of section 110-25 and section 110-55 (respectively) of the ITAA 1997.

Ruling 4: Time of acquisition where roll-over occurs

23. To the extent that the conditions for scrip for scrip roll-over under Subdivision 124-M of the ITAA 1997 are met in respect of the exchange of units in Private for units in Global, the unitholders will be deemed to have acquired their interests in Global at the time they acquired the relevant units in Private in accordance with the application of subsection 115-30(1) of the ITAA 1997, for the purposes of the various provisions to which subsection 115-30(1) applies.

Ruling 5: Time of acquisition where no roll-over

24. To the extent that the conditions for scrip for scrip roll-over under Subdivision 124-M of the ITAA 1997 are *not* met in respect of the exchange of units in Private for units in Global, the unitholders will be deemed to have acquired their interests in Global for the purposes of the capital gains tax discount concession at the time the units in Global were issued to them in accordance with the application of section 109-10 of the ITAA 1997.

Ruling 6: Discount capital gains

25. Subsection 115-50(2) of the ITAA 1997 will apply in respect of unitholders who dispose of their units in Global within 12 months of the Restructure, thereby preventing the application of section 115-45 of the ITAA 1997, provided that:

- at the time of the relevant CGT event, Global has more than 300 beneficiaries, and section 124-810 does not apply to treat Global as if it does not have at least 300 beneficiaries
- for 12 months following the Restructure, no individual owns, or group of individuals of up to 20 own between them, (directly or indirectly) and for their own benefit, interests in Global, carrying fixed entitlements to at least 75% of Global's income or capital, or 75% of rights to vote in respect of Global's activities, such that subsection 115-50(4) would apply (taking into

- consideration the various entities that are deemed to be a single individual under subsection 115-50(5)), and
- for 12 months following the Restructure, it is not reasonable to conclude that the interests in Global can, by reason of any of the factors outlined in subsection 115-50(7), be varied or abrogated in such a way that subsection 115-50(4) would be satisfied.

Commissioner of Taxation19 October 2016

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.*

Ruling 1: The conditions for scrip for scrip roll-over under Subdivision 124-M of the ITAA 1997 will be met in respect of the acquisition of the newly issued units in Global in consideration for the redemption of the unitholders' units in Private.

26. In order to be eligible for scrip for scrip roll-over under Subdivision 124-M, the conditions prescribed in section 124-781 must be met, and the exclusions to the application of the roll-over provisions in section 124-795 must not apply.

27. The conditions for a scrip for scrip roll-over in section 124-781 are prescribed as follows:

124-781(1)

There is a roll-over if:

- (a) an entity (also the **original interest holder**) exchanges:
 - (i) a unit or other interest (also the holder's **original interest**) in a trust (also the **original entity**) for a unit or other interest (also the holder's **replacement interest**) in another trust (also the **acquiring entity** and the **replacement entity**); or
 - (ii) an option, right or similar interest (also the holder's **original interest**) issued by the original entity that gives the holder an entitlement to acquire a unit or other interest in the original entity for a similar interest (also the holder's **replacement interest**) in another trust (also the **acquiring entity** and the **replacement entity**); and
- (b) entities have fixed entitlements to all of the income and capital of the original entity and the acquiring entity; and
- (c) the exchange is in consequence of an arrangement that satisfies subsection (2) or (2A); and
- (d) the conditions in subsections (3) and (4) are satisfied.

28. The requirements in subsection 124-781(1) have been met in this case. The conditions prescribed under each of the paragraphs and their application to the facts of this case is considered below.

Paragraph 124-781(1)(a)

29. An 'exchange' occurs in this case given that unitholders of Private (the 'original interest holder') exchange their units (the 'original interest') for units ('replacement interest') in Global (the 'acquiring entity' and 'replacement entity').

30. This exchange is proposed to be conducted in accordance with the process in Step 1 of the reorganisation under which the following occurs:

- The Manager of Private applies for units in the Global on behalf of its unitholders and compulsorily redeems all units held by its unitholders.
- The redemptions are satisfied by Global issuing units to the redeeming unitholders in proportion to the relative aggregate redemption price of the redeemed units in Private.
- In turn, Global Trust will be issued further units in Private in consideration for the issue of their units to the investors.

Paragraph 124-781(1)(b)

31. Having regard to:

- (a) all of the documents and any other material referred to in paragraph 8 of this Ruling, and
- (b) all of the facts comprising the arrangement as described in paragraphs 8 to 19 of the 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 Private and of Global immediately before, during and immediately after the arrangement that is the subject of this Ruling.

Paragraph 124-781(1)(c)

32. '*Arrangement*' is defined in section 995-1 as '*any arrangement, agreement, understanding, promise or undertaking, whether express or implied, and whether or not enforceable (or intended to be enforceable) by legal proceedings.*'

33. Paragraph 11.23 of the Explanatory Memorandum to the New Business Tax System (Miscellaneous) Bill (No. 2) 2000 provides that:

What constitutes a single arrangement is a question of fact. Relevant factors in determining whether what takes place is part of a single arrangement would include, but not be limited to, whether there is more than one offer or transaction, whether aspects of an overall transaction occur contemporaneously, and the intention of the parties in all the circumstances as evidenced by objective facts.

34. Steps 1 to 4 are intended to be implemented contemporaneously in respect of all the Target Trusts. The reorganisation is conceived of as a whole with a strategy that proposes various transactions affecting all the Target Trusts.

35. Consequently, with the exception of section 124-784A, the *'arrangement'* for the purposes of Subdivision 124-M is the single proposal under Step 1 to Step 4 above as it applies to all the Target Trusts.

36. The arrangement satisfies subsection 124-781(2) for the following reasons:

- under the arrangement, Global (as 'acquiring entity') will acquire 100% of the voting interests in all the Target Trusts, thereby satisfying paragraph 124-781(2)(a)
- it is proposed that all unitholders in the Target Trusts be eligible for the exchange of their units in their relevant Target Trust for units in Global, thereby satisfying paragraph 124-781(2)(b), and
- participation is to be available to all Target Trust unitholders on substantially the same terms. Under the arrangement, all unitholders will be provided the same type of units in Global in proportion to their original unitholding in the relevant Target Trust. In this regard, the condition in paragraph 124-781(2)(c) will be met.

Paragraph 124-781(1)(d)

37. This paragraph requires the conditions in subsection 124-781(3) and subsection 124-781(4) to be satisfied.

38. The conditions in subsection 124-781(3) are satisfied for the following reasons:

- Paragraph 124-781(3)(a) requires that the original interest holder acquired its original interest on or after 20 September 1985.

The condition in paragraph 124-781(3)(a) will be satisfied in this case as all unitholders of Private have acquired their interests in Private after 20 September 1985, given that Private was established in 2007.
- Paragraph 124-781(3)(b) requires that apart from the roll-over, the original interest holder would make a capital gain from a CGT event happening in relation to its original interest.

The proposed reorganisation involves the compulsory redemption of the units held by the unitholders in Private, which will invoke the application of CGT event

C2. CGT event C2 applies where an asset is redeemed (paragraph 104-25(1)(a)). For the purposes of this Ruling it is taken as a fact that the disposal of the units in Private would, but for the application of the roll-over provision, result in a capital gain to the relevant unitholder. On the basis of this assumption, the condition in paragraph 124-781(3)(b) will be satisfied.

- Paragraph 124-781(3)(c) provides that if the original interest holder must choose *'to obtain the roll-over or, if section 124-782 applies to it for the arrangement, it and the trustee of the acquiring entity jointly choose to obtain the roll-over'*.

It is assumed for the purposes of this Ruling that the relevant unitholder will choose to obtain the roll-over.

A joint choice by the unitholder and the Trustee is not required given that section 124-782 does not apply in this case. Section 124-782 applies only if the holder is a **'significant stakeholder'** or a **'common stakeholder'** for the arrangement. In this case, a Private unitholder is neither a **significant stakeholder** nor a **common stakeholder** for the following reasons:

Significant stakeholder

39. Subsection 124-783(1) provides:

An original interest holder is a **significant stakeholder** for an arrangement if it had:

- (a) a significant stake in the original entity just before the arrangement started; and
- (b) a significant stake in the replacement entity just after the arrangement was completed.

40. A significant stake is defined in subsection 124-783(7) as follows:

An entity has a **significant stake** in a trust at a time if the entity, or the entity and the entity's associates between them, had at that time the right to receive 30% or more of any distribution to beneficiaries of the trust of income or capital of the trust.

41. In this case, it is taken as facts for the purposes of this ruling that:

- no Private unitholder will hold a right, alone or with its associates, to receive 30% or more of the distributions of Private's income or capital just before the arrangement starts, and

- no Private unitholder will have a right to receive 30% or more of any distribution of income or capital in Global just after the arrangement is completed.

42. On this basis, the requirements of a '**significant stakeholder**' in subsection 124-783 will not be met, and consequently the unitholder will not be considered to be a '**significant stakeholder**' under the terms of Subdivision 124-M.

Common stakeholder

43. Subsection 124-783(3) provides:

An original interest holder is a **common stakeholder** for an arrangement if it had:

- (a) a common stake in the original entity just before the arrangement started; and
- (b) a common stake in the replacement entity just after the arrangement was completed.

44. Subsection 124-783(10) defines '**common stake**' as follows

If the original entity and the replacement entity are trusts, an entity, or 2 or more entities, have a **common stake** in the original entity just before the arrangement started and in the replacement entity just after the arrangement was completed if the entity or entities, and their associates, between them:

- (a) had, just before the arrangement started, the right to receive 80% or more of any distribution to beneficiaries of the original entity of income or capital of the original entity; and
- (b) had, just after the arrangement was completed, the right to receive 80% or more of any distribution to beneficiaries of the replacement entity of income or capital of that entity.

45. It is taken as facts for the purposes of this Ruling that:

- no Private unitholder, whether alone or in combination with one or more other entities and their associates, will have the right to receive 80% or more of any distribution of Private's income or capital just before the arrangement starts, and
- no Private unitholder, whether alone or in combination with one or more other entities and their associates, will have a right to receive 80% or more of any distribution of income or capital in Global just after the arrangement is completed.

46. As a consequence the '**common stake**' test in subsection 124-783(10) will not be satisfied. It follows that the condition in subsection 124-783(3) will not be met and no original interest holder will be a '**common stakeholder**'.

47. Further, subsection 124-783(5) provides that an original interest holder will not be a **common stakeholder** 'if either the original entity or the replacement entity had at least 300 members (for a company) or 300 beneficiaries (for a trust) just before the arrangement started'.

48. Global as the replacement entity currently has more than 300 beneficiaries and it is taken as a fact that it will continue to have more than 300 beneficiaries just before the start of the arrangement.

49. In this regard, note that section 124-810 does not apply in this case. Section 124-810 treats a widely-held trust as if it does not have at least 300 beneficiaries if certain conditions are met. Global will not fall within the scope of section 124-810 as it is taken as a fact that, just before the start of the arrangement:

- No individual, or group of individuals of up to 20, will own between them (directly or indirectly) and for their own benefit, units or other fixed interests in Global, carrying fixed entitlements to at least 75% of Global's income or capital, or 75% of voting rights in respect of Global's activities, such that subsection 124-810(4) would apply, and
- No rights and interests in Global can, by reason of the various factors outlined in subsection 124-810(5), be varied or abrogated in such a way that, directly or indirectly, subsection 124-810(4) would apply.

The conditions in subsections 124-781(3) and 124-781(4)

50. Paragraph 124-781(3)(d) provides that if section 124-782 applies to the original interest holder, the holder must inform the trustee 'in writing of the cost base of its original interest as at the time just before a CGT event happened in relation to it'.

51. As section 124-782 does not apply, paragraph 124-781(3)(d) has no application to this case.

52. Subsection 124-781(4) will apply if the unitholders in Private and the Trustee (as trustee for Global) do not deal with each other at arms' length and neither Private nor Global had at least 300 beneficiaries before the arrangement starts. Subsection 124-781(4) does not apply in this case because:

- Global has more than 300 unitholders and will continue to have more than 300 unitholders before the arrangement starts.
- As mentioned above, section 124-810 does not apply to treat Global as if it does not have at least 300 beneficiaries. This is on the basis that just before the arrangement starts:
 - No individual, or group of individuals of up to 20, own between them (directly or indirectly)

and for their own benefit, units or other fixed interests in Global, carrying fixed entitlements to at least 75% of Global's income or capital, or 75% of voting rights in respect of Global's activities, such that subsection 124-810(4) would apply, and

- No rights and interests in Global can, by reason of the various factors outlined in subsection 124-810(5), be varied or abrogated in such a way that, directly or indirectly, subsection 124-810(4) would apply.

Exceptions to the application of the roll-over provisions

53. Section 124-795 specifies a list of circumstances in which a roll-over under Subdivision 124-M is not available. The circumstances in this case do not fall within the scope of any of the listed exclusions in section 124-795 for the following reasons:

- Subsection 124-795(1) does not apply in this case as the class of entity to which this Ruling relates is unitholders which are Australian residents.
- This ruling is made on the basis that a capital gain which might be made by a relevant Private unitholder on its Global units will not be disregarded. On the basis of this premise, paragraph 124-795(2)(a) will not apply.
- The unitholders in Private and Global are not members of the same wholly owned group, and will not be members of the same wholly-owned group just before the unitholders' units in Private are redeemed. Further, Global is not a foreign resident. Paragraph 124-795(2)(b) does not therefore apply.
- The exclusion in paragraph 124-795(3) applies if the unitholder can choose a roll-over under Division 122 or Division 615 for the event. As Division 122 concerns roll-over for the disposal of assets to, or the creation of assets in, a wholly-owned company, it has no application to this case. Similarly, in this case no roll-over choice can be made by a unitholder under Division 615 as the Division concerns an exchange resulting in the ownership of new shares in an interposed company – in this case, the units in Private are exchanged for units in an existing unit trust.
- Global will not make a choice to deny a roll-over to the unitholders under Subdivision 124-M. On this basis, subsection 124-795(4) will not apply.

Ruling 2: To the extent that the conditions for scrip for scrip roll-over under Subdivision 124-M of the ITAA 1997 are met in respect of the exchange of units in Private for units in Global, the first element of the unitholders' cost base and reduced cost base of each unit acquired in Global will be calculated in accordance with the application of section 124-785 of the ITAA 1997

54. The cost base of units acquired by a unitholder as a result of the exchange described in section 124-781 is determined under section 124-785, which provides as follows:

124-785(1)

A capital gain you make from your original interest is disregarded.

124-785(2)

You work out the first element of the cost base of each CGT asset you received as a result of the exchange by reasonably attributing to it the cost base (or the part of it) of your original interest for which it was exchanged and for which you obtained the roll-over.

124-785(3)

In applying subsection (2), you reduce the cost base of your original interest (just before you stop owning it) by so much of that cost base as is attributable to an ineligible part (see section 124-790).

124-785(4)

The first element of the reduced cost base is worked out similarly.

55. In the present case:

- The redemption of units held in Private is satisfied by Global issuing units to the redeeming unitholders in proportion to the relative aggregate redemption price of the Redeemed Units in each Trust. That is, Global units will be issued to the value of the redeemed Private units.
- Under subsection 124-785(2), the first element of the cost base of the Global units for each unitholder must be worked out by reasonably attributing to it the cost base of the Private units.
- It is noted that the submissions in the ruling application prescribe a formula for working out the cost base of Global units for the unitholders. The formula is essentially that the first element of cost base of each unit will be equal to:
 - the sum of the cost bases of Private units exchanged, divided by

- the number of Global units received.
- It is considered that this is a reasonable attribution of cost base under subsection 124-785(2).
- The capital proceeds received by the unitholders will not include any ineligible proceeds. Therefore subsection 124-785(3) (which reduces the cost base of an original interest by so much of that cost base that is attributable to an ineligible part) will not apply.

Ruling 3: To the extent that the conditions for scrip for scrip roll-over under Subdivision 124-M of the ITAA 1997 are *not* met in respect of the exchange of units in Private for units in Global, the first element of the unitholders' cost base and reduced cost base of each unit in Global will be equal to the market value of the units redeemed at the time of the acquisition of Global units in accordance with the application of section 110-25 and section 110-55 (respectively) of the ITAA 1997.

56. If the roll-over provisions under Subdivision 124-M do not apply, the redemption of units in Private will result in CGT event C2 happening. CGT event C2 applies where an asset is redeemed (paragraph 104-25(1)(a)).

57. In satisfaction of the redemption, the unitholders are issued units in Global.

58. Units in Global are 'CGT assets' under the terms of section 108-5, being '*any kind of property*' as expressed in subsection 108-5(1).

59. The first element of the cost base of a unit will be determined under the general cost base provisions and reduced cost base provisions in section 110-25 and section 110-55 respectively. The first element of the reduced cost base of an asset is the same as that for the cost base: subsection 110-55(2).

60. Subsection 110-25(2) provides that the first element of the cost base is the total of the money paid or required to be paid in respect of acquiring the asset, and:

'the market value of any other property you gave, or are required to give, in respect of acquiring it (worked out as at the time of the acquisition)'.

61. In the present case:

- the property that a unitholder is '*required to give*' to acquire a unit in Global is the corresponding number of units in Private that are redeemed in exchange for the Global unit
- therefore the first element of the cost base for a unit in Global is the market value of the Private unit/s redeemed to acquire the Global unit, and

- the market value is worked out at the time of the acquisition, being the date on which the Global units are issued to the unitholders.

Ruling 4: To the extent that the conditions for scrip for scrip roll-over under Subdivision 124-M of the ITAA 1997 are met in respect of the exchange of units in Private for units in Global, the unitholders will be deemed to have acquired their interests in Global at the time they acquired the relevant units in Private in accordance with the application of subsection 115-30(1) of the ITAA 1997, for the purposes of the various provisions to which subsection 115-30(1) applies.

62. Subsection 115-30(1) prescribes rules concerning the time of acquisition of certain CGT assets for the purposes of the following provisions in Division 115:

- section 115-25
- section 115-40
- section 115-45
- section 115-105
- section 115-110, and
- section 115-115.

63. Item 2 in the table to subsection 115-30(1) applies to:

A CGT asset that the acquirer acquired as a replacement asset for a replacement-asset roll-over (other than a roll-over covered by paragraph 115-34(1)(c))

(Note: the application of subsection 115-30 as an acquisition rule to replacement asset roll-overs is confirmed in the legislative guide contained in section 109-55: see item 8C)

64. In regard to item 2:

- A ‘*replacement asset roll-over*’ referred to in item 2 is defined in section 112-115 to include scrip for scrip roll-overs under Subdivision 124-M: see item 14A in the table in section 112-115.
- Roll-overs under Subdivision 124-M are not covered by paragraph 115-34(1)(c). Consequently item 2 is not precluded from applying to this case.

65. If a CGT asset falls within the scope of item 2, the acquirer is treated as having acquired the CGT asset:

- (a) When the acquirer acquired the original asset involved in the roll-over, or
- (b) if the acquirer acquired the replacement asset for a roll-over that was the last in an unbroken series of replacement-asset roll-overs (other than roll-overs

covered by paragraph 115-34(1)(c) – when the acquirer acquired the original asset involved in the first roll-over in the series.

66. The original asset in this case is the Private units which were redeemed in exchange for the acquisition of the Global units. It follows that a unitholder will be taken to acquire a unit in Global at the time they had acquired the corresponding (redeemed) unit in Private.

Ruling 5: To the extent that the conditions for scrip for scrip roll-over under Subdivision 124-M of the ITAA 1997 are *not* met in respect of the exchange of units in Private for units in Global, the unitholders will be deemed to have acquired their interests in Global for the purposes of the capital gains tax discount concession at the time the units in Global were issued to them in accordance with the application of section 109-10 of the ITAA 1997

67. Section 109-10 prescribes rules for circumstances in which, and the time at which, a CGT asset is acquired otherwise than as a result of a CGT event happening. One such circumstance, specified in item 3 in the table to section 109-10, is where:

A trustee of a unit trust issues units in the trust to you.

68. In such a case, the time of acquisition of the units is:

When contract is entered into or, if none, when units issued.

69. Under the terms of the proposed reorganisation:

- the Trustee, as trustee for Global, will issue units in Global to the current unitholders in Private, and
- it is not proposed that any contract be entered into between the Trustee and the unitholders giving effect to the issue of these units.

70. It follows that, if the conditions for scrip for scrip roll-over under Subdivision 124-M of the ITAA 1997 are *not* met by a unitholder in respect of the exchange of units in Private for units in Global (for example, if the unitholder does not choose to obtain a CGT roll-over under paragraph 124-781(3)(c)), the time at which a unitholder is taken to acquire the units in Global is the date on which those units are issued to it.

71. This rule applies also for the purposes of the capital gains discount concession.

Ruling 6: Subsection 115-50(2) of the ITAA 1997 will apply in respect of unitholders who dispose of their units in Global within 12 months of the Restructure, thereby preventing the application of section 115-45 of the ITAA 1997.

72. A capital gain arising from a CGT event happening in relation to a unitholder's unit in a trust will not be considered a '*discount capital gain*' if it falls within the scope of section 115-45, which – very broadly speaking – focuses on the trust's ownership of CGT assets acquired less than 12 months prior to the event.

73. Section 115-45 will however not apply if the conditions in subsection 115-50(2) are satisfied.

74. Subsection 115-50(2) provides as follows:

Section 115-45 does not prevent a capital gain from a CGT event happening to an interest in a trust from being a discount capital gain if:

- (a) entities have fixed entitlements to all of the income and capital of the trust; and
- (b) the trust has at least 300 beneficiaries; and
- (c) neither subsection (4) nor subsection (6) applies in relation to the trust.

75. On the facts of the present case, and on the assumptions mentioned below, the conditions subsection 115-50(2) will be satisfied for the following reasons:

- having regard to:
 - (a) all of the documents and any other material referred to in paragraph 8 of this Ruling; and
 - (b) all of the facts comprising the arrangement as described in paragraphs 8 to 19 of the Ruling,it is considered that, for the purposes of paragraph 115-50(2)(a), Global unitholders have fixed entitlements to all of the income and capital of Global in the 12 months following the arrangement that is the subject of this Ruling.
- Global has more than 300 beneficiaries. It is taken as a fact for the purposes of this ruling that at the time of the relevant CGT event, Global will continue to have more than 300 beneficiaries.
- Subsection 115-50(4) does not apply in this case as, for 12 months following the Restructure, no individual owns, or group of individuals of up to 20 own between them, (directly or indirectly) and for their own benefit, interests in Global, carrying fixed entitlements to at least 75% of Global's income or capital, or 75% of rights to vote in respect of Global's activities, such that subsection 115-50(4) would apply. This takes into

consideration the various entities that are deemed to be a single individual under subsection 115-50(5).

- Subsection 115-50(6) does not apply to this case. This is because for 12 months following the Restructure, the interests in Global will not, by reason of any of the factors outlined in subsection 115-50(7), be varied or abrogated in such a way that subsection 115-50(4) would be satisfied.

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