


***CR 2017/26 - Income tax: scrip for scrip roll-over:
acquisition of Centuria Metropolitan REIT No. 2 by
Centuria Metropolitan REIT No. 1***

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Class Ruling

Income tax: scrip for scrip roll-over: acquisition of Centuria Metropolitan REIT No. 2 by Centuria Metropolitan REIT No. 1

Contents	Para
LEGALLY BINDING SECTION:	
Summary – what this Ruling is about	1
Date of effect	7
Scheme	8
Ruling	23
NOT LEGALLY BINDING SECTION:	
Appendix 1:	
Explanation	37
Appendix 2:	
Detailed contents list	42

① This publication provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

Summary – what this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provision(s)

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

- section 104-10 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 108-5 of the ITAA 1997;
- Division 110 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 Centuria Metropolitan REIT No. 2 (CMR2) who:

- participate in the scheme that is the subject of this Ruling
- are residents of Australia within the meaning of subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936)
- acquired their units after 19 September 1985
- hold their units neither as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)) – that is, broadly on capital account, and
- are not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on their units.

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

In this Ruling, a person belonging to this class of entities is referred to as a CMR2 Unitholder.

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 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 2016 to 30 June 2017. The Ruling continues to apply after 30 June 2017 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Scheme

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

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

Centuria Metropolitan REIT

9. Centuria Metropolitan REIT (CMA) is a stapled security consisting of two Australian resident unit trusts – CMR1 and CMR2. Each trust is a managed investment scheme that is registered under Chapter 5C of the *Corporations Act 2001*.

10. Each CMA stapled security is made up of one unit in each of CMR1 and CMR2. These stapled securities are listed on the Australian Securities Exchange (ASX) under the code 'CMA'.

11. All units in CMR1 and CMR2 were acquired after 19 September 1985.

12. Neither CMR1 nor CMR2 is a public trading trust pursuant to Division 6C of Part III of the ITAA 1936.

13. CMR1 and CMR2 currently only have one class of units on issue. Each unit carries the same rights to the income and capital of CMR1 and CMR2 (respectively).

14. Centuria Property Funds Limited (CPFL) is the Responsible Entity for both CMR1 and CMR2.

Scheme for ending the stapled structure

15. On 15 March 2017, CMA unit holders approved a restructure of the CMA holding structure at an Extraordinary General Meeting. The restructure consisted of the following steps.

Step 1 – de-stapling of CMA stapled securities

16. The units in CMR1 and CMR2 were de-stapled.
17. A single unit was then issued by the Responsible Entity of CMR2 to an entity in the same economic group as CPFL.

Step 2 – acquisition of CMR2 units by the Responsible Entity of CMR1

18. 100% of the units in CMR2 were acquired by the Responsible Entity of CMR1 (with the exception of the single unit issued in step 1 of the scheme).
19. On the Implementation Date, all of the issued units in CMR2 were transferred to the Responsible Entity of CMR1 (with the exception of the single unit issued in step 1 of the scheme).
20. Each CMR2 Unitholder was issued with new CMR1 units as consideration for the disposal of their CMR2 units. CMR2 Unitholders received 0.8 of a CMR1 unit for every one unit in CMR2 that was transferred.
21. No cash or other property was paid or otherwise distributed to CMR2 Unitholders.
22. The Record Date for the scheme was 20 March 2017. The date for the implementation of the scheme was 22 March 2017 (Implementation Date).

Ruling

De-stapling of CMA stapled securities

23. Each unit in CMR1 and CMR2 that constitutes the CMA stapled security is a separate CGT asset for the purposes of section 108-5.
24. A CMR2 Unitholder will not make a capital gain or capital loss when the de-stapling of the CMA stapled security occurs.

CGT event A1 will happen on the disposal of CMR2 units

25. CGT event A1 will happen as a result of the disposal by a CMR2 Unitholder of their CMR2 units to the Responsible Entity of CMR1 (section 104-10). The time of CGT event A1 is on the Implementation Date (paragraph 104-10(3)(b)).

26. A CMR2 Unitholder will make a capital gain from CGT event A1 happening if the capital proceeds from the disposal of a CMR2 unit exceed its cost base. A CMR2 Unitholder will make a capital loss if the capital proceeds from the disposal of a CMR2 unit are less than its reduced cost base (subsection 104-10(4)).

27. Under subsection 116-20(1), the capital proceeds from CGT event A1 happening will be the market value of the property (units in CMR1) received, or entitled to be received, in respect of the disposal of a CMR2 unit. The market value of the CMR1 units 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 CMR2 Unitholder who makes a capital gain from the disposal of a CMR2 unit to the Responsible Entity of CMR1 is eligible to choose scrip for scrip roll-over (section 124-781 and section 124-785).

29. Scrip for scrip roll-over cannot be chosen if any capital gain a CMR2 Unitholder might make from their replacement CMR1 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. The only capital proceeds received by a CMR2 Unitholder will be CMR1 units. Therefore, if a CMR2 Unitholder chooses scrip for scrip roll-over, the capital gain they will make upon the disposal of a CMR2 unit to the Responsible Entity of CMR1 is disregarded (subsection 124-785(1)).

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

31. A CMR2 Unitholder 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 CMR2 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 CMR2 Unitholder 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 CMR2 units must have been acquired by the unitholder at least 12 months before their disposal to the Responsible Entity of CMR1.

Cost base of CMR1 units received

33. The method for calculating the cost base of the CMR1 units received under the scheme for the disposal of CMR2 units will depend 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 each replacement CMR1 unit received is calculated by reasonably attributing to it the cost base and reduced cost base of the CMR2 units for which it was exchanged (subsections 124-785(2) and 124-785(4)).

35. A CMR2 Unitholder can calculate the first element of the cost base and reduced cost base of each replacement CMR1 unit by dividing the aggregate cost bases or reduced cost bases of their respective units in CMR2 by the number of replacement CMR1 units received.

Scrip for scrip roll-over is not chosen

36. 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 each replacement CMR1 unit received is equal to the market value of the CMR2 unit given in respect of acquiring each CMR1 unit, worked out as at the time of their acquisition (subsections 110-25(2) and 110-55(2)).

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.*

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

38. The significant 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.

39. 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/interests are exchanged for units/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.

40. 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 CMR2 and of CMR1 immediately before, during and immediately after the exchange of units that is the subject of this Ruling.

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

Appendix 2 – Detailed contents list

42. The following is a detailed contents list for this Ruling:

	Paragraph
Summary – what this Ruling is about	1
Relevant provision(s)	2
Class of entities	3
Qualifications	4
Date of effect	7
Scheme	8
Centuria Metropolitan REIT	9
Scheme for ending the stapled structure	15
<i>Step 1 – de-stapling of CMA stapled securities</i>	16
<i>Step 2 – acquisition of CMR2 units by the Responsible Entity of CMR1</i>	18
Ruling	23
De-stapling of CMA stapled securities	23
CGT event A1 will happen on the disposal of CMR2 units	25
Availability of scrip for scrip roll-over if a capital gain is made	28
Consequences if scrip for scrip roll-over is chosen	30
Consequences if scrip for scrip roll-over is not chosen, or cannot be chosen	31
Cost base of CMR1 units received	33
<i>Scrip for scrip roll-over is chosen</i>	34
<i>Scrip for scrip roll-over is not chosen</i>	36
Appendix 1 – Explanation	37
Appendix 2 – Detailed contents list	42

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Legislative references:

- ITAA 1936
 - ITAA 1936 6(1)
 - ITAA 1936 Div 6C, Part III
 - ITAA 1997
 - ITAA 1997 Div 102
 - ITAA 1997 102-5
 - ITAA 1997 102-10
 - ITAA 1997 Div 104
 - ITAA 1997 104-10
 - ITAA 1997 104-10(3)(b)
 - ITAA 1997 104-10(4)
 - ITAA 1997 108-5
 - ITAA 1997 Div 110
 - ITAA 1997 110-25(2)
 - ITAA 1997 110-55(2)
 - ITAA 1997 Subdiv 115-A
 - ITAA 1997 116-20
 - ITAA 1997 116-20(1)
 - ITAA 1997 Subdiv 124-M
 - ITAA1997 124-781
 - ITAA1997 124-781(1)(b)
 - ITAA 1997 124-785
 - ITAA 1997 124-785(1)
 - ITAA 1997 124-785(2)
 - ITAA 1997 124-785(4)
 - ITAA 1997 124-795(2)(a)
 - ITAA 1997 Div 230
 - ITAA 1997 977-50
 - ITAA 1997 995-1(1)
 - TAA 1953
 - Corporations Act 2001 Ch 5C
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ATO references

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