


# ***CR 2017/57 - Income tax: Scrip for scrip roll-over -Charter Hall Long WALE REIT Simplification***

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## Class Ruling

# Income tax: Scrip for scrip roll-over – Charter Hall Long WALE REIT Simplification

Contents	Para
<b>LEGALLY BINDING SECTION:</b>	
<b>Summary – what this ruling is about</b>	<b>1</b>
<b>Date of effect</b>	<b>7</b>
<b>Scheme</b>	<b>8</b>
<b>Ruling</b>	<b>18</b>
<b>NOT LEGALLY BINDING SECTION:</b>	
<b>Appendix 1: Explanation</b>	<b>24</b>
<b>Appendix 2: Detailed contents list</b>	<b>57</b>

### **📌 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 respect of the matters covered 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 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:

- paragraph 272-5(3)(b) of Schedule 2F to the *Income Tax Assessment Act 1936* (ITAA 1936)
- section 104-10 of the *Income Tax Assessment Act 1997* (ITAA 1997)
- section 108-5 of the ITAA 1997
- section 109-10 of the ITAA 1997
- section 110-25 of the ITAA 1997
- section 110-55 of the ITAA 1997
- section 115-30 of the ITAA 1997
- section 115-45 of the ITAA 1997

- section 115-50 of the ITAA 1997
- Subdivision 124-M of the ITAA 1997
- section 124-781 of the ITAA 1997
- section 124-782 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
- section 124-810 of the ITAA 1997
- section 995-1 of the ITAA 1997.

All legislative references are to the ITAA 1997 unless otherwise indicated.

## **Class of entities**

3. The class of entities to which this Ruling applies is the holders of units (**unitholders**) in Charter Hall Direct Industrial Fund (**DIF**); Canning Vale Logistics Trust No.1; 218 Bannister Road Trust; CPOF Kogarah Holding Trust; CHPT Dandenong Trust; Franklin Street Property Trust and LWR Finance Trust who:

- are Australian residents
- are listed on the Unit Registers of DIF, Canning Vale Logistics Trust No.1; 218 Bannister Road Trust; CPOF Kogarah Holding Trust; CHPT Dandenong Trust; Franklin Street Property Trust and LWR Finance Trust at the time of the Reorganisation arrangement as outlined in paragraphs 8 to 17 of this Ruling
- hold their units on capital account for Australian income tax purposes, and
- are not subject to the taxation of financial arrangement rules in Division 230 of the ITAA 1997 in relation to gains and losses on their units in the Original Trusts (refer to the definition of 'Original Trusts' in paragraph 9).

## **Qualifications**

4. The Commissioner makes this Ruling based on the precise arrangement identified in it.

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 17 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**

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7. This Ruling applies from 1 July 2016 to 30 June 2019. 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**

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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 Charter Hall WALE Limited (the responsible entity) on behalf of the investors in Canning Vale Logistics Trust No.1, 218 Bannister Road Trust, CPOF Kogarah Holding Trust and CHPT Dandenong Trust.
- 218 Bannister Road Trust Supplemental Deed dated 5 September 2016.
- Canning Vale Logistics Trust No. 1 Supplemental Deed dated 5 September 2016.
- DIF Supplemental Deed dated 21 September 2016.
- Deed of Retirement and Appointment of Responsible Entity – DIF dated 7 September 2016.
- CHPT Dandenong Trust Supplemental Deed dated 5 September 2016.
- CPOF Kogarah Holding Trust Supplemental Deed dated 5 September 2016.

9. DIF, Canning Vale Logistics Trust No.1, 218 Bannister Road Trust, CPOF Kogarah Holding Trust, CHPT Dandenong Trust, Franklin Street Property Trust and LWR Finance Trust are stapled trusts that presently comprise the Charter Hall Long WALE REIT. For the purposes of this Ruling:

- Reference to **CHC** is a reference to the Charter Hall Group, which comprises 2 parent entities: Charter Hall Limited and Charter Hall Property Trust. The shares and units in these respective entities are stapled.
- Reference to **Charter Hall Long WALE REIT** is a reference to all entities that constitute the stapled trusts in Charter Hall Long WALE REIT, together with their wholly owned entities, at any point in time.
- Reference to **'unitholder'** is a reference to an entity that owns one or more securities in Charter Hall Long WALE REIT.
- Reference to **Original Trusts** is a reference to the following entities:
  - Canning Vale Logistics Trust No.1
  - 218 Bannister Road Trust
  - CPOF Kogarah Holding Trust, and
  - CHPT Dandenong Trust.

10. Charter Hall Long WALE REIT was formed in consequence of the offer by it of 280.2 million securities in November 2016. In creating the Charter Hall Long WALE REIT:

- Charter Hall Long WALE REIT investors were issued stapled securities (being new units in the Original Trusts) in return for cash representing the subscription price.
- Existing units in the Original Trusts were redeemed from the proceeds of the offer for investment in the Charter Hall Long WALE REIT.

11. A restructure (**Simplification**) of Charter Hall Long WALE REIT is proposed. The proposal is to transfer the existing investments of the Original Trusts to DIF (or its sub-trust) as the holding trust for Charter Hall Long WALE REIT. The unitholders in the Original Trusts will be issued units in DIF as consideration for the transfer of their existing units to DIF.

12. The reasons for the Simplification are expressed in the Class Ruling application as follows:

*'...a key driver of the Simplification is to simplify the group structure in order to enhance investor understanding in respect of the nature of their investment and provide clarity to investors on the key drivers of their investment returns. It is also intended that a simplified group*

*structure will open CLW to the introduction of new investors due to the reduced complexities of the overall investment vehicle.*

*3.8 The current structure (which comprises of seven stapled trusts) results in unnecessary duplication of resources in the management and operation of the Original Trusts. CLW is proposing to reorganise the current structure in order to achieve greater simplicity of operations, client communications and management of the assets of the Original Trusts. In turn, this should generate operational cost savings to the unitholders in the form of a reduced Management Expense Ratio (MER). In particular, the manager of CLW (i.e. CHC) has identified direct annual cost savings as a result of the Simplification relating to reduced external audit, tax compliance and finance staff costs.*

*3.9 The estimated MER saving outlined above will be in perpetuity on a per annum basis. Therefore, the annual savings on MER will effectively be compounded with additional funds available in the Trusts to either return to unitholders or fund further investments'.*

### **Proposed Simplification**

13. In carrying out the Simplification, it is proposed that the following steps be taken:

#### *Step 1*

Each of the Original Trusts will transfer their investments at market value to DIF in consideration for two promissory notes (P1 & P2). Broadly, the face value of each P2 will equate to the aggregate 'cost base' of the underlying investments. The face value of each P1 will equate to the aggregate net capital gain in respect of the underlying investments.

#### *Step 2*

The units in the Original Trusts, DIF, Franklin Street Property Trust and the LWR Finance Trust are unstapled from one another.

#### *Step 3*

The unitholders will transfer their units in the relevant Original Trust to a DIF custodian in consideration for Charter Hall WALE Limited, as trustee for DIF, issuing units in DIF to the unitholders. These new units will be issued in proportion to the relative aggregate market value of each Original Trust unit.

#### *Step 4*

Each of the Original Trusts will make a distribution to DIF. This distribution will consist of the aggregate net capital gains realised on the transfer of its investments by way of the endorsement and delivery of P1.

#### *Step 5*

DIF will undertake a unit consolidation so that the total number of DIF units on issue and the number of DIF units held by

each unitholder is the same as the number of units on issue prior to Step 3.

*Step 6*

DIF, Franklin Street Property Trust and the LWR Finance Trust will enter into a new Stapling Deed.

*Step 7*

Each of the Original Trusts will be wound-up by redemption of all existing units. DIF, as the sole unitholder in the Original Trusts, will receive as redemption proceeds the respective P2 from each of the Original Trusts as part of the winding-up.

14. Following the Simplification, all of the P1s and P2s will be extinguished by DIF. Going forward, all new investors will subscribe for stapled units in DIF, Franklin Street Property Trust and the LWR Finance Trust, and all new investments will be made by DIF.

### **Other facts in this scheme**

15. 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 the Original Trusts would, but for the application of the roll-over provisions, result in a capital gain to the relevant unitholder.
- The relevant unitholder will choose to obtain the roll-over-over.
- No unitholder (or unitholder and its associates between them) has the right to receive 30% or more of any distribution of income or capital in the Original Trusts just before the start of the arrangement (as defined in paragraphs 31 to 33 below), or 30% or more of any distribution of income or capital in DIF just after the arrangement is completed.
- No 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 the Original Trusts just before the arrangement starts, and the right to receive 80% or more of any distribution of income or capital in DIF just after the arrangement is completed.
- DIF has more than 300 beneficiaries. Just before the start of the arrangement:
  - DIF 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 DIF, carrying fixed entitlements to at least 75% of DIF's income or capital, or 75% of rights to vote in respect of DIF'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 unitholder on its DIF units will not be disregarded under the terms of paragraph 124-795(2)(a) .
- The unitholders in the Original Trusts and DIF 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 the Original Trusts are transferred; and DIF is not a foreign resident.
- DIF will not make a choice to deny a roll-over-over to unitholders under Subdivision 124-M .

16. 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 the Original Trusts will not include any ineligible proceeds as defined in subsection 124-790(1) .

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

- DIF 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 DIF, carrying fixed entitlements to at least 75% of DIF's income or capital, or 75% of rights to vote in respect of DIF'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

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### Ruling 1: Scrip for scrip roll-over for unitholders

18. 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 DIF in consideration for the transfer of the unitholders' units in the Original Trusts, 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 the Original Trusts would, but for the application of the roll-over-over provision, result in a capital gain to the relevant unitholder
- the unitholder chooses to obtain the roll-over-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 , and
  - no unitholder is or will be '**common stakeholder**' as defined in section 124-783 , and
- DIF has at least 300 beneficiaries just before the arrangement starts, and section 124-810 does not apply to treat DIF as if it does not have at least 300 beneficiaries and provided that, with regard to the exceptions outlined in section 124-795 of the ITAA 1997
- a capital gain which might be made by a unitholder on its DIF units will not be disregarded for the purposes of paragraph 124-795(2)(a)
- the unitholders and DIF 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 the Original Trusts are transferred
- DIF is not a foreign resident, and
- DIF will not make a choice to deny a roll-over-over to the unitholders under Subdivision 124-M.

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

19. 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 the Original Trusts for units in DIF, the first element of the unitholders' cost base and reduced cost base of units acquired in DIF will be the same as their cost base in the existing units in the Original Trusts in accordance with the application of Section 124-785 of the ITAA 1997.

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

20. 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 the Original Trusts for units in DIF, the first element of the unitholders' cost base and reduced cost base of units in DIF will be equal to the market value of the units transferred at the time of the transfer of the units in the Original Trusts 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**

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 the Original Trusts for units in DIF, the unitholders will be deemed to have acquired their interests in DIF at the time they acquired their units in the Original Trusts 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**

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 the Original Trusts for units in DIF, the unitholders will be taken to have acquired their interests in DIF for the purposes of the capital gains tax discount concession at the time the units in DIF were issued to them in accordance with the application of subsection 109-10 of the ITAA 1997.

**Ruling 6: Discount capital gains**

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

- at the time of the relevant CGT event, DIF has more than 300 beneficiaries, and section 124-810 does not

apply to treat DIF as if it does not have at least 300 beneficiaries

- for 12 months following the Simplification, no individual owns, or group of individuals of up to 20 own between them, (directly or indirectly) and for their own benefit, interests in DIF, carrying fixed entitlements to at least 75% of DIF's income or capital, or 75% of rights to vote in respect of DIF'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 Simplification, it is not reasonable to conclude that the interests in DIF 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.

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**Commissioner of Taxation**

23 August 2017

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## 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: Scrip for scrip roll-over for unitholders**

24. 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 DIF in consideration for the transfer of the unitholders' units in the Original Trusts.

25. 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-over provisions in section 124-795 must not apply.

26. 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.

27. 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)**

28. An 'exchange' occurs in this case given that unitholders (the 'original interest holder') exchange their units in the Original Trusts ('the original interest') for units ('replacement interest') in DIF (the 'acquiring entity' and 'replacement entity').

29. This exchange is proposed to be conducted in accordance with the process outlined in Step 3 of the Simplification whereby the unitholders will transfer their units in each Original Trust to a DIF custodian in consideration for DIF issuing further units to the unitholders. These new units will be issued in proportion to the relative aggregate market value of each Original Trust unit.

## **Paragraph 124-781(1)(b)**

30. Having regard to:

- all of the documents and any other material referred to in paragraph 8 of this Ruling, and
- all of the facts comprising the arrangement as described in paragraphs 3, 8 to 17 of the Ruling,

for the purposes of paragraph 124-781(1)(b), there are fixed entitlements to all of the income and capital of the Original Trusts and DIF immediately before, during and immediately after the arrangement that is the subject of this Ruling.

## **Paragraph 124-781(1)(c)**

31. '*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.*'

32. 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.

33. The arrangement in this case is the Simplification involving the Original Trusts, DIF, Franklin Street Property Trust and the LWR Finance Trust as outlined in Step 1 to Step 7. The Simplification is a reorganisation of the group of entities which is conceived as a whole and which affects all the above-mentioned entities and their unitholders.

Further, the entities are currently stapled. While the Simplification involves the destapling of the entities as a necessary step in facilitating the reorganisation, unitholders retain their interests in

Charter Hall Long WALE REIT as a whole throughout the process, and their interests in the remaining entities in Charter Hall Long WALE REIT will be re-stapled under Step 6.

Consequently the Simplification outlined in Step 1 to Step 7 cannot be conceived of separately in application to each affected entity, but must be taken as a single arrangement as it applies to all entities in Charter Hall Long WALE REIT and their investors.

It follows that with the exception of section 124-784A, the *'arrangement'* for the purposes of Subdivision 124-M is the single proposal contemplated under Step 1 to Step 7 above as it applies to all entities in Charter Hall Long WALE REIT together with their investors.

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

- under the arrangement, DIF (as 'acquiring entity') will acquire 100% of the units in the Original Trusts, thereby satisfying paragraph 124-781(2)(a)
- all unitholders will exchange their units in the Original Trusts for units in DIF, thereby satisfying paragraph 124-781(2)(b), and
- Under the arrangement, all unitholders will participate on the same terms and will be provided units in DIF in proportion to the relative aggregate market value of each Original Trust unit. In this regard, the condition in paragraph 124-781(2)(c) will be met.

***Paragraph 124-781(1)(d)***

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

36. 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.

This condition will be satisfied in this case as all unitholders acquired their original interests in the Original Trusts after 20 September 1985, having been acquired in November 2016.

- 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 Simplification involves the transfer of units held by the unitholders in the Original Trusts to DIF, resulting in CGT event A1 happening. For the purposes of this

Ruling it is taken as a fact that the disposal of the units in the Original Trusts would, but for the application of the roll-over-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 the original interest holder must choose *'to obtain the roll-over-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-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, each unitholder is neither a significant stakeholder nor a common stakeholder for the reasons expressed below.

Significant stakeholder

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.

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.

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

- No unitholder (or unitholder and its associates between them) has the right to receive 30% or more of any distribution of income or capital in any of the Original Trusts just before the arrangement starts, and
- No unitholder (or unitholder and its associates between them) has the right

to receive 30% or more of any distribution of income or capital in DIF just after the arrangement is completed.

On this basis, the requirements of a 'significant stakeholder' in subsection 124-783(7) will not be met, and consequently no unitholder will be considered to be a 'significant stakeholder' under Subdivision 124-M.

Common stakeholder

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.

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.

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

- no 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 any of the Original Trusts' income or capital just before the arrangement starts, and
- no 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 DIF just after the arrangement is completed.

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*'.

- 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*'.

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

- Subsection 124-781(4) will apply if the unitholders and the Trustee of DIF do not deal with each other at arms' length. Even if this were the case, subsection 124-781(4) would be satisfied in this case because:
  - Paragraph 124-781(4)(a) would be satisfied as the market value of the unitholders' '*capital proceeds for the exchange*' (being the new units in DIF) is '*at least substantially the same as the market value*' of the Original Trust units, given that the DIF units are issued in proportion to the relative aggregate market value of each Original Trust unit, and
  - Paragraph 124-781(4)(b) would be satisfied as the clauses in the Constitutions of the Original Trusts and the Constitution of DIF indicate that the units in the Original Trusts carry the same kind of rights and obligations as those attached to the DIF units.

#### *Exceptions to the application of the roll-over-over provisions*

37. Section 124-795 specifies a list of circumstances in which a roll-over-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 unitholder on its

DIF units will not be disregarded. On the basis of this premise, paragraph 124-795(2)(a) will not apply.

- The unitholders and DIF 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 the Original Trusts are transferred. Further, DIF is not a foreign resident. Therefore, paragraph 124-795(2)(b) will not 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 the Original Trusts are exchanged for units in an existing trust, being DIF.
- DIF will not make a choice to deny a roll-over-over to the unitholders under Subdivision 124-M. On this basis, subsection 124-795(4) will not apply.

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

38. To the extent that the conditions for scrip for scrip roll-over-over under Subdivision 124-M of the ITAA 1997 are met in respect of the exchange of units in the Original Trusts for units in DIF, the first element of the unitholders' cost base and reduced cost base of each unit acquired in DIF will be the same as their cost base in the existing units in the Original Trusts in accordance with the application of Section 124-785 of the ITAA 1997.

39. 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.
- (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-over.
- (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).

- (4) The first element of the reduced cost base is worked out similarly.

...

40. In the present case:

- It is proposed that, in return for the transfer of the unitholders' units in the Original Trusts, the unitholders will be issued further DIF units. These units will be issued in proportion to the relative aggregate market value of each Original Trust unit.
- Under subsection 124-785(2), the first element of the cost base of the DIF units for each unitholder must be worked out by reasonably attributing to it the cost base of the units in the Original Trusts.
- The submissions provided in support of this Class Ruling application prescribe a method of calculating the cost base of the DIF units received by the unitholders. The formula is essentially that the first element of the cost base of each unit will be equal to:  
$$\frac{\text{the sum of the cost base of the Original Trust units exchanged}}{\text{the number of DIF units received}}$$
- 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: Unitholder's cost base where no roll-over-over**

41. To the extent that the conditions for scrip for scrip roll-over-over under Subdivision 124-M of the ITAA 1997 are *not* met in respect of the exchange of units in the Original Trusts for units in DIF, the first element of the unitholders' cost base and reduced cost base of the units in DIF will be equal to the market value of the units transferred at the time of the transfer of the units in the Original Trust in accordance with the application of section 110-25 and section 110-55 (respectively) of the ITAA 1997.

42. If the roll-over provisions under Subdivision 124-M do not apply, the transfer of units in the Original Trusts to DIF will result in CGT event A1 happening. CGT event A1 applies where you dispose of a CGT asset: subsection 104-10(1).

43. As consideration for the transfer, the unitholders are issued units in DIF. Units in DIF are 'CGT assets' under the terms of section 108-5, being 'any kind of property' as expressed in subsection 108-5(1). See also Note 1 to section 108-5.

44. 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). 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).

45. In the present case:

- the property that a unitholder is '*required to give*' to acquire a unit in DIF is the corresponding number of unit/s in an Original Trust that are provided as consideration for the DIF unit
- therefore the first element of the cost base for a unit in DIF is the market value of the Original Trust unit/s transferred to acquire the DIF unit, and
- the market value is worked out at the time of the acquisition, being the date on which the DIF units are issued to the unitholders.

#### **Ruling 4: Time of acquisition where roll-over occurs**

46. 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 the Original Trusts for units in DIF, the unitholders will be deemed to have acquired their interests in DIF for the purposes of the capital gains tax discount concession at the time they acquired the relevant units in the Original Trust in accordance with the application of subsection 115-30(1) of the ITAA 1997.

47. 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
- section 115-115.

48. 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-over (other than a roll-over-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).

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-over-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.

49. 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.

The original asset in this case is the Original Trust units which were exchanged for the issue of the DIF units. It follows that a unitholder will be taken to have acquired the DIF units at the time they acquired the units in the relevant Original Trusts transferred in exchange.

## **Ruling 5: Time of acquisition where no roll-over**

50. 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 the Original Trusts for units in DIF, the unitholders will be taken to have acquired their interests in DIF for the purposes of the capital gains tax discount concession at the time the units in DIF were issued to them in accordance with the application of section 109-10 of the ITAA 1997.

51. 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 in relation to the asset in question. 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.

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

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

52. Under the terms of the proposed reorganisation:

- Charter Hall WALE Limited as trustee for DIF will issue units in DIF to the unitholders, 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.

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 the Original Trusts for units in DIF (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 DIF is the date on which those units are issued to it.

This date of acquisition applies also for the purposes of determining the availability of the capital gains discount concession.

#### **Ruling 6: Discount capital gains**

53. Subsection 115-50(2) of the ITAA 1997 will apply in respect of unitholders who dispose of their units in DIF within 12 months of the Simplification thereby preventing the application of section 115-45 of the ITAA 1997.

54. 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.

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

56. 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 3, 8 to 17 of the Ruling,

for the purposes of paragraph 115-50(2)(a), DIF unitholders have fixed entitlements to all of the income and capital of DIF in the 12 months following the arrangement that is the subject of this Ruling.

- It is taken as a fact for the purposes of this ruling that at the time of the relevant CGT event, DIF will continue to have more than 300 beneficiaries.
- Subsection 115-50(4) does not apply in this case as, for 12 months following the Simplification, 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 DIF, carrying fixed entitlements to at least 75% of DIF's income or capital, or 75% of rights to vote in respect of DIF'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 Simplification, the interests in DIF 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.

## **Appendix 2 – Detailed contents list**

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

	<b>Paragraph</b>
<b>Summary – what this ruling is about</b>	<b>1</b>
Relevant provision(s)	<b>2</b>
Class of entities	<b>3</b>
Qualifications	<b>4</b>
<b>Date of effect</b>	<b>7</b>
<b>Scheme</b>	<b>8</b>
Proposed Simplification	13
Other facts in this scheme	15
<b>Ruling</b>	<b>18</b>
Ruling 1: Scrip for scrip roll-over for unitholders	18
Ruling 2: Unitholder’s cost base where roll-over occurs	19
Ruling 3: Unitholder’s cost base where no roll-over	20
Ruling 4: Time of acquisition where roll-over occurs	21
Ruling 5: Time of acquisition where no roll-over <sup>1</sup>	22
Ruling 6: Discount capital gains	23
<b>Appendix 1 – Explanation</b>	<b>24</b>
Ruling 1: Scrip for scrip roll-over-over for unitholders	24
<i>Paragraph 124-781(1)(a)</i>	28
<i>Paragraph 124-781(1)(b)</i>	30
<i>Paragraph 124-781(1)(c)</i>	31
<i>Paragraph 124-781(1)(d)</i>	35
<i>Exceptions to the application of the roll-over provisions</i>	37
Ruling 2: Unitholder’s cost base where roll-over occurs	38
Ruling 3: Unitholder’s cost base where no roll-over-over	41
Ruling 4: Time of acquisition where roll-over occurs	46
Ruling 5: Time of acquisition where no roll-over	50
Ruling 6: Discount capital gains	53
<b>Appendix 2 – Detailed contents list</b>	<b>57</b>

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