


***CR 2018/5 - Income tax: scrip for scrip roll-over:
acquisition of units in EQT Emerging Companies
Fund by SGH Professional Investor Emerging
Companies Trust***

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Class Ruling

Income tax: scrip for scrip roll-over: acquisition of units in EQT Emerging Companies Fund by SGH Professional Investor Emerging Companies Trust

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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 provisions identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provisions

2. The relevant provisions dealt with in this Ruling are:
- section 104-10 of the *Income Tax Assessment Act 1997* (ITAA 1997)
 - Division 110 of the ITAA 1997
 - Subdivision 115-A of the ITAA 1997
 - section 116-20 of the ITAA 1997
 - Subdivision 124-M of the ITAA 1997.

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

Class of entities

3. The class of entities to which this Ruling applies are the holders of units in the EQT Emerging Companies Fund (EQT Fund) who:

- participated in the scheme that is the subject of this Ruling
- were residents of Australia (as that term is defined in subsection 6(1) of the *Income Tax Assessment Act 1936*) on the Implementation Date
- held 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
- acquired their units on or after 20 September 1985, 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 to them.)

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

Qualifications

4. The Commissioner makes this Ruling based on the precise arrangements 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 21 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 2017 to 30 June 2018. The Ruling continues to apply after 30 June 2018 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 (HWL Ebsworth):

- Class Ruling application dated 21 April 2017, and
- correspondence with the applicant.

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

EQT Fund and SGH Professional Investor Emerging Companies Trust (SGH Trust)

9. The EQT Fund and the SGH Trust are unit trusts which were settled by trust deeds in 2000 and 2001 respectively.

10. Each trust is a management investment scheme that is registered under Chapter 5C of the *Corporations Act 2001*.

11. The EQT Fund and the SGH Trust currently only have one class of units on issue.

12. The broad investment objective of both the EQT Fund and the SGH Trust is to provide medium to long-term capital growth potential to investors by seeking to outperform the S&P/ASX Emerging Companies Accumulation Index over a rolling three-year period.

13. Equity Trustees Limited is the Responsible Entity of both the EQT Fund and the SGH Trust.

Acquisition of EQT Fund units by the SGH Trust

14. The Responsible Entity of the SGH Trust made an offer to all the unit holders of the EQT Fund to acquire their units in the EQT Fund (the Offer).

15. As a result of the Offer, the Responsible Entity of the SGH Trust acquired more than 80% of the units on issue in the EQT Fund on 2 November 2017 (the Implementation Date).

16. The unit holders of the EQT Fund who accepted the Offer were issued with SGH Trust units as consideration for the disposal of their EQT Fund units.

17. The number of SGH Trust units that the unit holders of the EQT Fund received was determined by reference to the market value of each EQT Fund unit and each SGH Trust unit on the Implementation Date.

18. No cash or other property was paid or otherwise provided to the unit holders of the EQT Fund.

Other matters

19. The EQT Fund and the SGH Trust did not have a 'significant stakeholder' or 'common stakeholder' in relation to the scheme within the meaning of those terms in section 124-783.

20. All of the unit holders of the EQT Fund were given the opportunity to participate in the scheme on the same terms.

21. The unit holders of the EQT Fund and the Responsible Entity of the SGH Trust dealt with each other at arm's length (for the purposes of subsection 124-781(4)).

Ruling

CGT event A1 will happen on the disposal of EQT Fund units

22. CGT event A1 will happen as a result of the disposal by an EQT Fund Unitholder of their EQT Fund units to the Responsible Entity of SGH Trust (section 104-10). The time of CGT event A1 is on the Implementation Date (paragraph 104-10(3)(b)).

23. An EQT Fund Unitholder will make a capital gain from CGT event A1 happening if the capital proceeds from the disposal of an EQT Fund unit exceeded its cost base. An EQT Fund Unitholder will make a capital loss if the capital proceeds from the disposal of an EQT Fund unit are less than its reduced cost base (subsection 104-10(4)).

24. Under subsection 116-20(1), the capital proceeds from CGT event A1 happening will be the market value of the property (units in SGH Trust) received, or entitled to be received, in respect of the disposal of an EQT Fund unit. The market value of the SGH Trust 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 capital gain is made

25. Subject to the qualification in the following paragraph, an EQT Fund Unitholder who makes a capital gain from the disposal of an EQT Fund unit to the Responsible Entity of SGH Trust is eligible to choose scrip for scrip roll-over (section 124-781 and section 124-785).

26. Scrip for scrip roll-over cannot be chosen if any capital gain an EQT Fund Unitholder might make from their replacement SGH Trust units would be disregarded, except because of a roll-over (paragraph 124-795(2)(a)).

Consequences if scrip for scrip roll-over is chosen

27. The only capital proceeds received by an EQT Fund Unitholder will be SGH Trust units. Therefore, if an EQT Fund Unitholder chooses scrip for scrip roll-over, the capital gain they make upon the disposal of an EQT Fund unit to the Responsible Entity of SGH Trust is disregarded (subsection 124-785(1)).

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

28. An EQT Fund 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 EQT Fund units in working out their net capital gain or net capital loss for the income year in which CGT event A1 happens (section 102-5 and section 102-10).

29. An EQT Fund 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 EQT Fund units must have been acquired by the EQT Fund Unitholder at least 12 months before their disposal to the Responsible Entity of SGH Trust.

Cost base of SGH Trust units received

30. The method for calculating the cost base of the SGH Trust units received under the scheme for the disposal of EQT Fund units will depend on whether scrip for scrip roll-over is chosen.

31. Where scrip for scrip roll-over is chosen, the first element of the cost base and reduced cost base of each replacement SGH Trust unit received is calculated by reasonably attributing to it the cost base and reduced cost base of the EQT Fund units for which it was exchanged (subsections 124-785(2) and 124-785(4)).

32. An EQT Fund Unitholder can calculate the first element of the cost base and reduced cost base of each replacement SGH Trust unit by dividing the aggregate cost bases or reduced cost bases of their respective units in the EQT Fund by the number of replacement SGH Trust units they receive.

33. 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 SGH Trust unit received is equal to the market value of the EQT Fund unit given in respect of acquiring each SGH Trust unit, worked out as at the time of their acquisition (subsections 110-25(2) and 110-55(2)).

Commissioner of Taxation

24 January 2018

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.*

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

35. 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 the 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.

36. 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:

- units/interests are exchanged for units/interests in another trust
- entities have fixed entitlements to all of the income and capital of the original trust and the acquiring trust
- the exchange is in consequence of an arrangement
- conditions for the roll-over are satisfied
- further conditions, if applicable, are satisfied, and
- exceptions to obtaining scrip for scrip roll-over are not applicable.

37. 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 EQT Fund and SGH Trust immediately before, during and immediately after the exchange of units that is the subject of this Ruling.

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

Appendix 2 – Detailed contents list

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

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References

- Previous draft:*
- ITAA 1997 116-20
- Not previously issued as a draft
- ITAA 1997 116-20(1)
 - ITAA 1997 Subdiv 124-M
- Related Rulings/Determinations:*
- TR 2006/10
- ITAA 1997 124-781
 - ITAA 1997 124-781(1)(b)
 - ITAA 1997 124-781(4)
 - ITAA 1997 124-783
 - 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)
- Legislative references:*
- ITAA 1936
 - ITAA 1936 6(1)
 - ITAA 1997
 - ITAA 1997 102-5
 - ITAA 1997 102-10
 - ITAA 1997 104-10
 - ITAA 1997 104-10(3)(b)
 - ITAA 1997 104-10(4)
 - ITAA 1997 Div 110
 - ITAA 1997 110-25(2)
 - ITAA 1997 110-55(2)
 - ITAA 1997 Subdiv 115-A
 - TAA 1953
 - Corporations Act 2001
 - Corporations Act 2001 Ch 5C
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ATO references

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