


***CR 2019/9 - Income tax: unit for unit roll-over:
exchange of units in Ophir High Conviction Fund for
replacement units***

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Class Ruling

Income tax: unit for unit roll-over: exchange of units in Ophir High Conviction Fund for replacement units

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

This publication (excluding appendices) 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)
 - Subdivision 124-E 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 is the holders of units in the Ophir High Conviction Fund (Ophir HCF) who:

- are residents of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936)

- were recorded on the Ophir HCF unit register on 11 December 2018 as a unitholder of High Conviction Fund units, High Conviction Fund Class A units and/or High Conviction Fund Class C units (collectively referred to as the 'existing classes')
 - had their units in the existing classes of Ophir HCF redeemed on 14 December 2018 (redeemed units) and were issued with a number of units in the replacement class of units (replacement units) in Ophir HCF with the equivalent market value
 - held their redeemed units on capital account at the time of the exchange, that is, the redeemed units were neither held as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1))
 - are not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on their Ophir HCF units
- (**Note:** Division 230 will generally not apply to individuals, unless they have made an election for the Division to apply to them.)

4. In this Ruling, an entity belonging to this class of entities is referred to as a 'participating unitholder'.

Qualifications

5. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.

6. 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 9 to 30 of this Ruling.

7. 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

8. This Ruling applies from 1 July 2018 to 30 June 2019. The Ruling continues to apply after 30 June 2019 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10 *Public Rulings*).

Scheme

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

Ophir High Conviction Fund

10. Ophir HCF is an Australian resident unit trust established on 23 July 2015. Ophir HCF is a registered managed investment scheme (ARSN 620 920 201 and APIR OPH0002AU).

11. The trustee and responsible entity of Ophir HCF is The Trust Company (RE Services) Limited which is a wholly owned subsidiary of Perpetual Limited (the trustee).

12. The custodian and administrator of Ophir HCF is Link Fund Solutions Pty Limited.

13. The investment manager of Ophir HCF is Ophir Asset Management Pty Limited (investment manager).

14. Effective from 1 July 2015, the trustee of Ophir HCF made an election under the capital elections provisions in Division 275 which deems all gains or losses made on the disposal of covered assets to be on capital account for income tax purposes.

15. On 1 July 2017, the trustee of Ophir HCF irrevocably elected to enter the attribution regime in Division 276 for the taxation of managed investment trusts to be an attribution managed investment trust (AMIT). The trustee of Ophir HCF has not made a choice to have each existing class of Ophir HCF units treated as a separate AMIT.

16. Just before the restructure of Ophir HCF, the following classes of units were on issue:

- High Conviction Fund
- High Conviction Fund Class A

- High Conviction Fund Class C

(collectively referred to as the 'existing classes').

Restructure of Ophir HCF

17. In the explanatory memorandum attached to the notice of meeting to unitholders dated 18 October 2018, the investment manager proposed to convert Ophir HCF from an unlisted unit trust structure to a listed investment trust on the Australian Securities Exchange (ASX). Before listing Ophir HCF on the ASX its constitution needed to be amended to give the trustee the power to redeem the units in the existing classes and issue a single replacement class of units (replacement units).

18. At a unitholder's meeting on 13 November 2018 a special resolution to amend the constitution of Ophir HCF was passed.

19. At the close of business on 11 December 2018 (the value date), the market value of the units in the existing classes was determined using the unit price for each class. The unit price for each class was based on the net asset value of investments for the class divided by the number of units on issue in that class on the value date. A unit in each of the existing classes had the following market value:

Class	Market Value
High Conviction Fund	\$1.6777
High Conviction Fund Class A	\$1.5737
High Conviction Fund Class C	\$1.5948

20. On 14 December 2018 (the implementation date) all of the units in the existing classes were redeemed and 199,999,608 units in the replacement class were issued in Ophir HCF (replacement class).

21. The initial unit price of \$2.132122 of a unit in the replacement class was based on the net asset value of Ophir HCF on 11 December 2018 divided by the number of units in the replacement class.

22. Each participating unitholder as recorded on the unit registry as at 5pm on the value date had all of their units redeemed. In substitution, each participating unitholder was issued units in the replacement class to the equivalent market value of their redeemed units and nothing else.

23. A unit conversion ratio was used by the trustee to determine the number of replacement units to be issued in exchange for each redeemed unit. In accordance with the unit conversion ratio, the market value of a redeemed unit in an existing class was divided by the initial unit price of a replacement unit. As per the unit conversion ratio, the market value of one redeemed unit in each of the existing classes was equivalent to the following number of replacement units:

Class	Market Value
High Conviction Fund	0.7869
High Conviction Fund Class A	0.7381
High Conviction Fund Class C	0.7480

24. The terms of issue of the replacement units are the same as the terms of issue of the redeemed units, except for the pricing methodology which is now subject to the ASX listing rules.

25. The redeemed units were cancelled following their redemption. From 14 December 2018 no more units in the existing classes of units will be issued.

26. On 19 December 2018 Ophir HCF was listed on the ASX.

27. There were no changes to the underlying assets of Ophir HCF or its investment strategy as a result of its restructure and listing on the ASX.

Other matters

28. On 22 November 2018, a special distribution of income derived by Ophir HCF between 1 July 2018 and 13 November 2018 was paid to the unitholders of Ophir HCF. Each unitholder will be notified of the amount attributed to them in the AMIT member annual statement to be issued by the trustee to the unitholders after the end of the 2019 income year.

29. The investment manager and trustee of Ophir HCF do not anticipate any tax deferred distributions or payments which are not otherwise assessable to be made to Ophir HCF unitholders in the 2019 income year.

30. All units in the existing classes in Ophir HCF were acquired after 20 September 1985, and as a consequence no unitholder held pre-CGT units on 14 December 2018.

Ruling

CGT event A1 happened on the disposal of the existing classes of units

31. CGT event A1 happened when a participating unitholder disposed of their redeemed units in exchange for replacement units of an equivalent market value (and nothing else) on 14 December 2018 (the implementation date) (subsections 104-10(1) and 104-10(2) and paragraph 104-10(3)(b)).

Capital gain or capital loss

32. A participating unitholder made a capital gain when CGT event A1 happened if the capital proceeds from the disposal of their redeemed unit exceeded its cost base. The capital gain is the amount of the excess. A participating unitholder made a capital loss if the capital proceeds on disposal were less than the reduced cost base of the redeemed unit. The capital loss is the amount of the difference (subsection 104-10(4)).

33. For a participating unitholder, the capital proceeds for each redeemed unit will be the market value of the redeemed unit, worked out as at the time that CGT event A1 happened (subsection 116-20(1)).

34. The market value of a redeemed unit is determined based on the unit pricing methodology. A unit in each of the redeemed classes had the following market value:

Class	Market Value
High Conviction Fund	\$1.6777
High Conviction Fund Class A	\$1.5737
High Conviction Fund Class C	\$1.5948

Availability of unit for unit roll-over

35. A participating unitholder, who made a capital gain or capital loss on the disposal of their redeemed units, is eligible to choose unit for unit roll-over under section 124-245.

Consequences if unit for unit roll-over is chosen

36. If a participating unitholder chooses unit for unit roll-over, the capital gain or capital loss made from the disposal of their redeemed units is disregarded (subsection 124-15(2)).

37. A participating unitholder who chooses unit for unit roll-over is taken to have acquired their replacement units on the date they originally acquired their redeemed units (Item 2 of the table in subsection 115-30(1)).

38. The first element of cost of a participating unitholder's replacement units is equal to the total cost base of their redeemed units when they were redeemed (14 December 2018) as follows (subsection 124-15(3)):

$$\frac{\begin{array}{c} \text{The total of the cost bases of all a participating} \\ \text{unitholder's redeemed units} \\ \text{(worked out when their ownership of them ended)} \end{array}}{\begin{array}{c} \text{Number of replacement units issued to the participating} \\ \text{unitholder} \end{array}}$$

Consequences if unit for unit roll-over is not chosen

39. A participating unitholder who does not, or cannot, choose unit for unit roll-over must take any capital gain or capital loss from the disposal of their redeemed units into account in working out their net capital gain or net capital loss for the income year.

40. A participating unitholder who does not, or cannot, choose unit for unit roll-over acquired their replacement units with effect from 14 December 2018.

Commissioner of Taxation

30 January 2019

Appendix 1 – Explanation

① *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.*

Availability of unit for unit roll-over

41. Subdivision 124-E enables a unitholder who owns original units of a certain class to disregard a capital gain or capital loss from a unit from that class when all the units of that class are redeemed or cancelled and the trustee issues the unitholder with a replacement unit (and nothing else) in substitution for the original unit. It also provides special rules for calculating the cost base of the replacement units.

42. Subdivision 124-E contains a number of conditions that must be satisfied before a unitholder is eligible to choose unit for unit roll-over. These conditions are:

- the unitholder owns the units (the original units) of a certain class in a unit trust
- the trustee redeems or cancels all units of that class;
- the trustee issues the unitholder with new units (and nothing else) in substitution for the original units
- the market value of the new units just after they were issued is at least equal to the market value of the original units just before they were redeemed or cancelled, and
- the unitholder is an Australian resident at the time of the redemption or cancellation or, if they are a foreign resident at the time, the original units were taxable Australian property just before that time and the new units are taxable Australian property when they are issued.

Requirement 1 – investor owns units of a certain class in a unit trust

43. Ophir HCF is a unit trust which had 3 classes on issue in accordance with its constitution (the existing classes).

44. The participating unitholders held units in one or more of the existing classes.

45. The first requirement is satisfied.

Requirement 2 – the trustee redeems or cancels all units of that class

46. Under the Scheme the trustee redeemed all of the units in the existing classes. No further units in the existing classes will be issued.

47. The second requirement is satisfied.

Requirement 3 – the trustee issues the taxpayer with new units in substitution for the original units

48. After all the units in the existing classes were redeemed, the trustee provided the participating unitholders with units in the replacement class. The participating unitholders received nothing else other than these replacement units.

49. The third requirement is satisfied.

Requirement 4 – the market value of the new units just after they were issued is at least equal to the market value of the original units just before they were redeemed or cancelled

50. The market value of the redeemed units was based on the net asset value of investments in each unit class divided by the number of units on issue in that class on the value date (11 December 2018).

51. The market value of the replacement units was based on the net asset value of Ophir HCF on 11 December 2018 divided by the number of units to be issued in the replacement class on the implementation date (14 December 2018).

52. The trustee used a unit conversion ratio to calculate the number of replacement units to be issued to each participating unitholder to ensure that they were issued with replacement units of an equivalent market value to their redeemed units.

53. The fourth requirement is satisfied.

Requirement 5 – the taxpayer is an Australian resident at the time of redemption or cancellation or a foreign resident whose units were taxable Australian property

54. The class of entities to which this ruling applies are Australian resident investors.

55. The fifth requirement is satisfied.

Appendix 2 – Detailed contents list

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

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Legislative references:

- ITAA 1936
 - ITAA 1936 6(1)
 - ITAA 1997
 - ITAA 1997 104-10
 - ITAA 1997 104-10(1)
 - ITAA 1997 104-10(2)
 - ITAA 1997 104-10(3)(b)
 - ITAA 1997 104-10(4)
 - ITAA 1997 115-30(1)
 - ITAA 1997 116-20(1)
 - ITAA 1997 Subdiv 124-E
 - ITAA 1997 124-15(2)
 - ITAA 1997 124-15(3)
 - ITAA 1997 124-245
 - ITAA 1997 Div 230
 - ITAA 1997 Div 275
 - ITAA 1997 Div 276
 - ITAA 1997 977-50
 - ITAA 1997 995-1(1)
 - TAA 1953
-

ATO references

NO: 1-GMPHHCP

ISSN: 2205-5517

ATOlaw topic: Income tax ~~ Capital gains tax ~~ Rollovers ~~ Other
Income tax ~~ Trusts ~~ Other

BSL: PGI

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