

CR 2020/17 - URB Investments Limited - partial scrip for scrip roll-over



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Class Ruling

URB Investments Limited – partial scrip for scrip roll-over

❶ Relying on this Ruling

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

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

Further, if we think that this Ruling disadvantages you, we may apply the law in a way that is more favourable to you.

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What this Ruling is about

1. This Ruling sets out the income tax consequences for Australian resident shareholders in URB Investments Limited (URB) who exchanged their URB shares for stapled securities in

- 360 Capital Active REIT (formerly 360 Capital Total Return Active Fund) (the TOT Active Fund), and
- 360 Capital Passive REIT (formerly 360 Capital Total Return Passive Fund) (the TOT Passive Fund)

on 20 December 2019. Collectively, these two funds will be referred to as TOT in this Ruling.

2. Full details of this scheme are set out in paragraphs 29 to 49 of this Ruling.

3. All legislative references are to provisions of the *Income Tax Assessment Act 1997* (ITAA 1997) unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you:
- were the holder of fully paid ordinary URB shares
 - were a resident of Australia as defined in subsection 6(1) of *the Income Tax Assessment Act 1936* (ITAA 1936) and not a 'temporary resident' within the meaning of that expression in subsection 995-1(1) at the time the scheme was implemented
 - participated in the scheme that is subject to this Ruling
 - did not hold your URB shares as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)) that is, the shares were held on capital account for tax purposes, and
 - did not acquire your URB shares pursuant to an employee share scheme.
5. This Ruling does not apply to anyone who is subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 29 to 49 of this Ruling.

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

When this Ruling applies

6. This Ruling applies from 1 July 2019 to 30 June 2020.

Ruling**CGT event A1 happened on the disposal of URB shares**

7. CGT event A1 happened when you transferred your URB shares to TOT Active Fund under the scheme described in this Ruling (subsection 104-10(1)).
8. The time of CGT event A1 was the scheme Implementation Date, being 20 December 2019 (paragraph 104-10(3)(b)).
9. You made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of your URB share exceeded the cost base of that share (subsection 104-10(4)).
10. You made a capital loss from CGT event A1 happening if the capital proceeds from the disposal of your URB share was less than the reduced cost base of that share (subsection 104-10(4)).
11. The capital proceeds from CGT event A1 happening to each URB share is the market value of the scrip consideration you received, or are entitled to receive, for the exchange of your URB shares (paragraph 116-20(1)(b)). The scrip consideration you received for each URB share was 0.9833 of a TOT stapled security. The market value of a TOT stapled security is worked out as at the time of CGT event A1, which was the Implementation Date.
12. The TOT 31 December 2019 quarter cash distribution of \$0.0225 per TOT stapled security held at 5.00pm (AEDT) on 31 December 2019 (Distribution Record Date) does not form part of your capital proceeds.

Availability of partial scrip for scrip roll-over if capital gain is made

13. Each TOT stapled security comprises two separate and distinct CGT assets for Australian income tax purposes (section 108-5). It consists of a unit in TOT Active Fund and a unit in TOT Passive Fund. For the purposes of section 124-790:

- the TOT Active Fund unit component of each TOT stapled security is eligible proceeds, and
- the TOT Passive Fund unit component of each TOT stapled security is ineligible proceeds.

14. Subject to the qualification in paragraph 15 of this Ruling, if you made a capital gain from the disposal of a URB share, you may choose partial scrip for scrip roll-over under subsection 124-790(1) for that part of the capital gain that is referable to the receipt of the TOT Active Fund unit component of the scrip consideration.

15. Scrip for scrip roll-over cannot be chosen if any capital gain you made from the replacement TOT Active Fund units would be disregarded, except because of a roll-over (paragraph 124-795(2)(a)).

If scrip for scrip roll-over is chosen***Capital gain partially disregarded***

16. If you choose scrip for scrip roll-over, the capital gain you made from the disposal of a URB share is disregarded to the extent that you received replacement TOT Active Fund units for the disposal of your URB share (eligible proceeds) (subsection 124-785(1)).

17. The capital gain made from the disposal of a URB share is not disregarded to the extent that you received TOT Passive Fund units for the disposal of your URB share (ineligible proceeds) (subsection 124-790(1)).

Cost base and reduced cost base of TOT Active Fund unit and TOT Passive Fund unit

18. As the TOT stapled security comprises two distinct CGT assets, the respective cost bases and reduced cost bases of the TOT Active Fund units and TOT Passive Fund units need to be worked out separately. The first element of the cost base and reduced cost base of each CGT asset is that part of the expenditure that is reasonably attributable to the acquisition of the asset (subsection 112-30(1)).

19. A reasonable method of apportionment of the first element of the cost base and reduced cost base of the respective TOT Active Fund units and TOT Passive Fund units is made by reference to the net tangible asset (NTA) apportionment ratio between TOT Active Fund and TOT Passive Fund. The relative NTA apportionment ratio as at the day before the Implementation Date was published on 360 Capital Group's investor centre website¹ on 5 March 2020 and attributed the NTA apportionment ratio between TOT Active Fund and TOT Passive Fund to be 16.2% and 83.8% respectively.

20. The first element of the cost base and reduced cost base of each replacement TOT Active Fund unit received is calculated by reasonably attributing to it the cost base of your original URB shares for which it was exchanged (subsections 124-785(2) and (4)).

¹ <https://360capital.com.au/investor-centre/tot/>

21. The first element of the cost base and reduced cost base of each TOT Passive Fund unit received is equal to that part of the market value of the URB shares exchanged that is reasonably attributable to the TOT Passive Fund units at the time of their acquisition (paragraph 110-25(2)(b) and subsections 110-55(2) and 112-30(1)).

Acquisition date of TOT Active Fund unit and TOT Passive Fund unit

22. If you choose scrip for scrip roll-over, you are taken to have acquired a TOT Active Fund unit when you acquired your original URB shares that were exchanged for the relevant TOT stapled securities (table item 2 in subsection 115-30(1)).

23. You are taken to have acquired the TOT Passive Fund unit at the time when the unit was issued, being the Implementation Date (paragraph 104-35(5)(c) and table item 2 in section 109-10).

If scrip for scrip roll-over is not chosen or cannot be chosen

Capital gain or loss not disregarded

24. If you do not, or cannot, choose scrip for scrip roll-over, you must take any capital gain or capital loss from CGT event A1 happening on the disposal of your URB shares into account in working out your net capital gain or net capital loss for the income year (sections 102-5 and 102-10).

Cost base and reduced cost base of TOT Active Fund Unit and TOT Passive Fund unit

25. 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 TOT Active Fund unit and TOT Passive Fund unit received is equal to that part of the market value of the URB shares reasonably attributable to the TOT Active Fund and TOT Passive Fund units at the time of their acquisition (paragraph 110-25(2)(b), and subsections 110-55(2) and 112-30(1)).

26. The amount reasonably attributable to the TOT Active Fund units and TOT Passive Fund units is determined based upon the NTA apportionment ratio of TOT Active Fund and TOT Passive Fund calculated on 19 December 2019 as set out in paragraphs 19 and 45 of this Ruling.

Acquisition date of TOT Active Fund Unit and TOT Passive Fund unit

27. Where scrip for scrip roll-over is not chosen or cannot be chosen, you are deemed to acquire both the TOT Active Fund units and TOT Passive Fund units when the TOT stapled securities were issued to you on the Implementation Date (paragraph 104-35(5)(c) and table item 2 in section 109-10).

Discount capital gain

28. If you make a capital gain from the disposal of a URB share you will be eligible to treat the capital gain as a 'discount capital gain' provided you satisfy the positive conditions of Division 115 and do not satisfy the negative conditions of Division 115. In particular, the URB share that was disposed of must have been acquired (or taken to be acquired for CGT purposes) by you at least 12 months before the Implementation Date.

Scheme

29. The following description of the scheme is based on information provided by the applicant. If the scheme was not carried out as described, this Ruling cannot be relied upon.

Relevant entities

URB Investments Limited

30. URB was an Australian public company registered on 13 October 2016 which listed on the Australian Securities Exchange (ASX) on 11 April 2017.

31. As at 13 December 2019:

- URB had only ordinary shares on issue, with each of the 73,959,549 ordinary shares carrying rights to participate in dividends and proceeds on the winding up of URB
- URB had 2,207 ordinary shareholders
- the largest 20 shareholders (inclusive of nominees) held approximately 42.73% of ordinary shares in URB, whilst the largest shareholder held 12.35% of those shares, and
- no single shareholder held 30% or more of the URB shares.

32. URB was removed from listing on the ASX on 23 December 2019.

360 Capital Total Return Active Fund and 360 Capital Total Return Passive Fund

33. 360 Capital FM Limited (TOT RE) is the responsible entity for both the TOT Active Fund and TOT Passive Fund.

34. TOT securities are listed and traded on the ASX and are stapled on a 1:1 basis (TOT stapled securities).

35. As at 12 August 2019, TOT had:

- 70,225,399 TOT stapled securities on issue
- more than 300 holders of TOT stapled securities, and
- top 20 holders of TOT stapled securities owning less than 75% of the TOT stapled securities on issue.

36. TOT Active Fund is an Australian resident unit trust and a public trading trust for the purposes of Division 6C of Part III of the ITAA 1936.

37. TOT Active Fund is the head company of a tax consolidated group that was formed with effect from 27 August 2019.

38. TOT Passive Fund is an Australian unit trust that is a resident of Australia and an attribution managed investment trust (AMIT) for the purposes of the ITAA 1997.

39. TOT Passive Fund has made a managed investment trust (MIT) capital account election.

Acquisition of URB by TOT

40. On 14 October 2019, URB and TOT entered into a scheme implementation deed under which TOT proposed to acquire all of the ordinary shares in URB by way of a scheme of arrangement pursuant to Part 5.1 of the *Corporations Act 2001*.

41. On 6 December 2019, the scheme of arrangement was approved by URB shareholders at a scheme meeting. On 10 December 2019, the Federal Court approved the scheme of arrangement for the purposes of paragraph 411(4)(b) of the *Corporations Act 2001*.

42. On 20 December 2019 (the Implementation Date), as consideration for the transfer of the URB shares to TOT, URB shareholders (other than 'ineligible overseas shareholders') were issued with 0.9833 new TOT stapled securities for each URB share they held on the scheme Record Date (13 December 2019).

43. Immediately after implementation on the Implementation Date, TOT Active Fund acquired 100% of the voting shares in URB, and URB was removed from the official list of the ASX at the close of trading of 23 December 2019.

Other matters

44. As the scheme was implemented prior to the record date for the 31 December 2019 quarterly distribution, URB shareholders who remained on the register of TOT at the Distribution Record Date received the TOT distribution for the 31 December 2019 quarter of \$0.0225 per TOT stapled security held on the Distribution Record Date. Neither the declaration of the 31 December 2019 quarterly distribution or URB shareholder's entitlement to the quarterly distribution was determined by the scheme being implemented.

45. The relative NTA apportionment ratio of TOT Active Fund and TOT Passive Fund was calculated by TOT RE in accordance with Australian accounting standards on 19 December 2019, being the date immediately prior to the Implementation Date. The relative NTA apportionment ratio was published on 360 Capital Group's investor centre website² on 5 March 2020 and attributed the NTA apportionment ratio between TOT Active Fund and TOT Passive Fund to be 16.2% and 83.8% respectively.

46. Both URB and TOT Active Fund did not have a 'significant stakeholder' or 'common stakeholder' in relation to the scheme within the meaning of those terms in section 124-783.

47. All URB shareholders (except TOT Active Fund) were offered the opportunity to participate in the scheme on the same terms. Certain 'ineligible overseas shareholders' did not receive new TOT stapled securities. Instead, the new TOT stapled securities of ineligible overseas shareholders were issued to a Nominee who sold the new TOT stapled securities on-market and paid the proceeds (net of costs) to the ineligible shareholders.

48. URB, URB shareholders and TOT dealt with each other at arm's length at all times in respect of the scheme of arrangement.

² <https://360capital.com.au/investor-centre/>

49. TOT did not, and will not, make a choice that URB shareholders cannot obtain Subdivision 124-M roll-over for CGT event A1 happening in relation to the exchange of their URB shares for the purposes of subsection 124-795(4).

Commissioner of Taxation25 March 2020

Appendix – Explanation

ⓘ *This Explanation 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.*

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Availability of partial scrip for scrip roll-over under Subdivision 124-M if capital gain is made

50. Scrip for scrip roll-over under Subdivision 124-M enables a shareholder to disregard a capital gain from a share that is disposed of if the shareholder receives a replacement share in exchange. It also provides special rules for calculating the cost base of the replacement share.

51. Subdivision 124-M contains a number of conditions for, and exceptions to, a shareholder 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) an entity exchanges shares in a company for shares in another company (paragraph 124-780(1)(a))
- (b) the exchange is in consequence of a single arrangement that satisfies subsections 124-780(2) or (2A)
- (c) conditions for the roll-over in subsection 124-780(3) are satisfied
- (d) further conditions, if applicable, are satisfied, and
- (e) exceptions to obtaining scrip for scrip roll-over are not applicable.

52. One of the conditions relevant to the present scheme is that shares in a company are exchanged for shares in another company (paragraph 124-780(1)(a)).

Paragraph 124-780(1)(a)

53. In the present case, TOT Active Fund is a public trading trust under Division 6C of the ITAA 1936 and has made a choice under section 703-50 to form an income tax consolidated group. The effect of the choice by TOT Active Fund is that, generally, 'this Act', as defined in subsection 995-1(1), applies to TOT Active Fund in a way corresponding to the way in which the Act applies to a company. One application of the Act in this way is to treat the units in TOT Active Fund as analogous to shares in a company (see Note 2 to subsection 713-135(1)). On this basis, the TOT Active Fund units will be the replacement interest.

54. Accordingly, this condition is satisfied to the extent that the URB shareholders receive TOT Active Fund units in exchange for their URB shares. Scrip for scrip roll-over will not be available to the extent that the URB shareholders receive TOT Passive Fund units in exchange for their URB shares.

55. The scheme that is the subject of this Ruling satisfies the other requirements for partial roll-over under Subdivision 124-M.

If scrip for scrip roll-over is chosen

Capital gain partially disregarded

56. If you choose scrip for scrip roll-over, the capital gain you made from the disposal of a URB share is disregarded to the extent you received replacement TOT Active Fund units for the disposal of your URB share (eligible proceeds) (subsection 124-785(1)).

57. The capital gain is not disregarded to the extent that you received TOT Passive Fund units for the disposal of your URB share (ineligible proceeds) (subsection 124-790(1)).

58. In working out that amount of the capital gain that is subject to scrip for scrip roll-over, the following method may be applied:

$$\text{Eligible proceeds} = \text{Market value of TOT stapled security} \times 16.2\% \text{ (TOT Active Fund part of NTA apportionment ratio)}$$

$$\text{Eligible proceeds cost base} = \text{Cost base of URB shares} \times 16.2\% \text{ (TOT Active Fund part of NTA apportionment ratio)}$$

$$\text{Capital gain (roll-over)} = \text{Eligible proceeds} - \text{Eligible proceeds cost base}$$

59. In working out that amount of the capital gain that is not subject to scrip for scrip roll-over, the following method may be applied:

$$\text{Ineligible proceeds} = \text{Market value of TOT stapled security} \times 83.8\% \text{ (TOT Passive Fund part of NTA apportionment ratio)}$$

$$\text{Ineligible proceeds cost base} = \text{Cost base of URB shares} \times 83.8\% \text{ (TOT Passive Fund part of NTA apportionment ratio)}$$

$$\text{Capital gain} = \text{Ineligible proceeds} - \text{Ineligible proceeds cost base}$$

Cost base and reduced cost base of TOT Active Fund unit and TOT Passive Fund unit

60. The first element of the cost base and reduced cost base of each replacement TOT Active Fund unit received is calculated by reasonably attributing to it the cost base of your original URB shares for which it was exchanged (subsections 124-785(2) and (4)).

61. You can calculate the first element of the cost base and reduced cost base of the TOT Active Fund units component as follows:

$$\begin{array}{lcl} \text{First element of cost} & & \\ \text{base or reduced cost} & & \\ \text{base of each TOT} & & \\ \text{Active Fund unit} & = & \frac{\text{Cost base of URB shares} \times 16.2\% \text{ (TOT Active Fund Part of NTA apportionment ratio)}}{\text{Number of TOT Active Fund units issued as part of the scrip consideration}} \end{array}$$

62. The first element of the cost base and reduced cost base of each TOT Passive Fund unit received is equal to that part of the market value of the URB shares exchanged that is reasonably attributable to the TOT Passive Fund units at the time of their acquisition (paragraph 110-25(2)(b) and subsections 110-55(2) and 112-30(1)).

63. You can calculate the first element of the cost base and reduced cost base of the TOT Passive Fund units component as follows:

$$\begin{array}{lcl} \text{First element of cost} & & \\ \text{base or reduced cost} & & \\ \text{base of each TOT} & = & \frac{\text{Market value of URB shares} \times 83.8\% \text{ (TOT Passive Fund part of NTA apportionment ratio)}}{\text{Number of TOT Passive Fund units issued as part of the scrip consideration}} \end{array}$$

References*Previous draft:*

Not previously issued as a draft

Legislative references:

- ITAA 1997 124-780(1)(a)
- ITAA 1997 124-780(2)(a)
- ITAA 1997 124-780(2A)
- ITAA 1997 124-780(3)
- ITAA 1997 124-780(1)(a)
- ITAA 1997 124-783
- ITAA 1997 124-785
- ITAA 1997 124-785(1)
- ITAA 1997 124-785(2)
- ITAA 1997 124-785(3)
- ITAA 1997 124-785(4)
- ITAA 1997 124-790
- ITAA 1997 124-790(1)
- ITAA 1997 124-795(2)
- ITAA 1997 124-795(2)(a)
- ITAA 1997 124-795(4)
- ITAA 1997 Div 230
- ITAA 1997 703-50
- ITAA 1997 713-135(1)
- ITAA 1997 995-1
- Corporations Act 2001 Pt 5.1
- Corporations Act 2001 411(4)(b)
- ITAA 1936 6(1)
- ITAA 1936 Pt III Div 6C
- ITAA 1997 102-5
- ITAA 1997 102-10
- ITAA 1997 104-10(1)
- ITAA 1997 104-10(2)
- ITAA 1997 104-10(3)(b)
- ITAA 1997 104-10(4)
- ITAA 1997 104-35(5)(c)
- ITAA 1997 108-5
- ITAA 1997 109-10
- ITAA 1997 110-25(2)
- ITAA 1997 110-25(2)(b)
- ITAA 1997 112-30(1)
- ITAA 1997 110-55(2)
- ITAA 1997 Div 115
- ITAA 1997 115-30
- ITAA 1997 115-30(1)
- ITAA 1997 116-20(1)
- ITAA 1997 116-20(1)(b)
- ITAA 1997 SDiv 124-M

ATO references

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