


CR 2020/21 - Perth Markets Limited - restructure

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Class Ruling

Perth Markets Limited – restructure

📌 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 the Ruling disadvantages you, we may apply the law in a way that is more favourable to you.

| Table of Contents | Paragraph |
|-------------------------------|------------------|
| What this Ruling is about | 1 |
| Who this Ruling applies to | 4 |
| When this Ruling applies | 6 |
| Ruling | 7 |
| Scheme | 23 |
| Appendix – Explanation | 50 |

What this Ruling is about

1. This Ruling sets out the income tax consequences for the former holders of Perth Markets Limited stapled securities (PML stapled securities), each of which consisted of a unit in Perth Markets Land Trust (PMLT) and a share in Perth Markets Limited (PML), in respect of the restructure of Perth Markets Group (PMG).
2. Details of this scheme are set out in paragraphs 23 to 49 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997* unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you:
 - were registered on the unit register of PMLT and the share register of PML at 5:00pm AWST (Perth time) on 27 September 2019 (the Record Date)
 - are a resident of Australia within the meaning of subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936)
 - are not a temporary resident of Australia within the meaning of subsection 995-1(1), and

- held your PML stapled securities on capital account, that is, you did not hold your PML stapled securities as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)).

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 23 to 49 of this Ruling.

Note: Division 230 will 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

De-stapling of the PML stapled securities

7. You did not make a capital gain or a capital loss on the de-stapling of the PML stapled securities.

Disposal of PMLT units and PML shares – CGT consequences

CGT event A1

8. CGT event A1 (first CGT event) happened when you disposed of your unit in PMLT to Perth Markets Group Limited (PMGL) (subsection 104-10(1)).

9. CGT event A1 (second CGT event) happened when you disposed of your share in PML to PMGL (subsection 104-10(1)).

10. Both CGT events happened on 1 October 2019 (the Implementation Date) when the securityholders exchanged their PMLT units for PMGL shares on a one-for-one basis, and the securityholders exchanged their PML shares for PMGL shares on a one-for-one basis (paragraph 104-10(3)(b)).

11. The capital proceeds from the first CGT event is the market value of the ordinary share in PMGL you received in exchange for each PMLT unit. Similarly, the capital proceeds from the second CGT event is the market value of the ordinary share in PMGL you received in exchange for each PML share (subsection 116-20(1)).

12. You made a capital gain from the first CGT event if the capital proceeds from the disposal of your PMLT unit exceeded the cost base of the unit. You made a capital loss from the first CGT event if the capital proceeds from the disposal of your PMLT unit were less than the reduced cost base of the unit (subsection 104-10(4)).

13. You made a capital gain from the second CGT event if the capital proceeds from the disposal of your PML share exceeded the cost base of the share. You made a capital loss from the second CGT event if the capital proceeds from the disposal of your PML share were less than the reduced cost base of the share (subsection 104-10(4)).

Availability of Division 615 rollover

14. You may choose to obtain a rollover for the first CGT event and the second CGT event as the conditions for the availability of rollover in subsection 615-5(1) were satisfied in relation to the disposal of your PMLT unit and your PML share.

Consequences if Division 615 rollover is chosen

15. If you choose to obtain a rollover for the first CGT event:
- (a) you disregard any capital gain or capital loss you made on disposal of your PMLT unit (section 615-40 and subsection 124-15(2))
 - (b) you are taken to have acquired the PMGL share at the time you acquired your PMLT unit (table item 2 in subsection 115-30(1)), and
 - (c) the first element of the cost base of the PMGL share you received is worked out by dividing the total cost base of the PMLT units at the time of disposal by the number of PMGL shares you received in exchange for the PMLT units (section 615-40 and subsection 124-15(3)). The first element of the reduced cost base of a PMGL share is worked out similarly (subsection 110-55(2)).
16. If you choose to obtain a rollover for the second CGT event:
- (a) you disregard any capital gain or capital loss you made on disposal of your PML share (section 615-40 and subsection 124-15(2))
 - (b) you are taken to have acquired the PMGL share you received at the time you acquired your PML share (table item 2 in subsection 115-30(1)), and
 - (c) the first element of the cost base of the PMGL share you received is worked out by dividing the total cost base of the PML shares at the time of disposal by the number of PMGL shares you received in exchange for the PML shares (section 615-40 and subsection 124-15(3)). The first element of the reduced cost base of a PMGL share is worked out similarly (subsection 110-55(2)).

Consequences if Division 615 rollover is not chosen

17. If you do not choose to obtain a rollover for the first CGT event:
- (a) you must take into account any capital gain or capital loss from the disposal of your PMLT unit when working out your net capital gain or net capital loss for the income year (sections 102-5 and 102-10)
 - (b) the acquisition time of the PMGL share is the date that it was issued to you, being the Implementation Date (section 109-5), and
 - (c) the first element of the cost base of each PMGL share you received in exchange for a PMLT unit is the market value of the PMLT units at the time of acquisition divided by the total number of PMGL shares you received in exchange for those PMLT units (subsection 110-25(2)). The first element of the reduced cost base of a PMGL share is worked out similarly (subsection 110-55(2)).

18. If you do not choose to obtain a rollover for the second CGT event:
- you must take into account any capital gain or capital loss from the disposal of your PML share when working out your net capital gain or net capital loss for the income year (sections 102-5 and 102-10)
 - the acquisition time of the PMGL share is the date that it was issued to you, being the Implementation Date (section 109-5), and
 - the first element of the cost base of each PMGL share you received in exchange for a PML share is the market value of the PML shares at the time of acquisition divided by the total number of PMGL shares you received in exchange for those PML shares (subsection 110-25(2)). The first element of the reduced cost base of a PMGL share is worked out similarly (subsection 110-55(2)).

Consolidation of PMGL shares

No CGT event on the consolidation of PMGL shares

19. The consolidation of the PMGL shares into a single PMGL share did not result in a CGT event happening (paragraph 112-25(4)(a)).

Consolidated PMGL shares – first element of the cost base and reduced cost base

20. On consolidation of the PMGL shares into one PMGL share, the first element of the cost base and reduced cost base of the resulting share is the sum of the first elements of the cost base or reduced cost base of the original shares (subsection 112-25(4)(b)).

21. This produces four different possible outcomes for the first element of the cost base and reduced base of each consolidated PMGL share, depending on whether you chose to obtain a rollover for the first CGT event and/or the second CGT event. The cost base outcomes are set out in the following table:

| If your choice for the first CGT event is | and your choice for the second CGT event is | then the first element of the cost base of your PMGL share after consolidation is | Refer to paragraph |
|---|---|---|--------------------|
| Yes | Yes | the sum of the cost base of a PMLT unit and a PML share | 15(c) and 16(c) |
| Yes | No | the sum of the cost base of a PMLT unit and the market value of a PML share | 15(c) and 18(c) |
| No | Yes | the sum of the market value of a PMLT unit and the cost base of a PML share | 17(c) and 16(c) |
| No | No | the sum of the market values of a PMLT unit and a PML share | 17(c) and 18(c) |

Sections 45B and 45C will not apply

22. The Commissioner will not make a determination under subsection 45B(3) of the ITAA 1936 that section 45C of the ITAA 1936 applies in relation to the whole, or a part, of the capital benefit provided to you by PMGL under the restructure.

Scheme

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

PMG

24. PMG is an industry-focused facility owner, manager and developer which operates the primary trading centre for fruit and vegetables in Western Australia, known as 'Market City'.

25. PMG operated under a stapled security structure between PML and PMLT. The units in PMLT and shares in PML were stapled in accordance with the Cooperation and Coordination Deed and provisions contained in the constitutions of PML and PMLT.

26. PML stapled securities carried the right to receive dividends and distributions as declared from both PML and PMLT and an entitlement to one vote, either in person or by proxy, at a meeting of the company.

27. PML stapled securities were not traded on the Australian Securities Exchange. As at 28 August 2019, the capital structure of PMG was as follows:

| Security | Number |
|-----------------|---------------|
| PML shares | 58,840,131 |
| PMLT units | 58,840,131 |

PMLT

28. PMLT is an Australian resident unit trust. PMLT is not a managed investment trust for the purposes of Subdivision 12-H of the *Taxation Administration Act 1953*. It is not a public trading trust under Division 6C of the ITAA 1936.

29. PMLT was established to acquire and privatise Market City and does not have any non-resident unitholders.

30. PMLT owns Market City Asset Trust, an Australian resident unit trust which owns land, buildings, fixtures and existing tenant leases in Market City.

31. PMLT generates income from its properties and from services and activities provided to tenants at Market City.

32. PMLT only has one class of units on issue. Each PMLT unit carries the same rights to the income and capital of PMLT as every other PMLT unit.

33. On the Implementation Date, One Funds Management Limited was the trustee of PMLT.

PML

34. PML is an unlisted public company and was the head company of an Australian tax consolidated group.

35. PML and its wholly-owned subsidiaries, Market City Operator Co Pty Ltd and Market City Asset Manager Co Pty Ltd, are residents of Australia for taxation purposes, and formed an income tax consolidated group on 31 March 2016.

36. PML is responsible for the ownership and management of Market City, a freehold land asset of 51 hectares which plays a critical role in the marketing and distribution of fresh produce.

37. PML only has ordinary shares on issue.

Restructure of PMG

38. The stapled security structure was imposed on PMG by the Western Australian State Government as part of the legislated tender and sale process of the Market City site. PMG acquired the Market City site and corresponding assets from the Western Australian State Government on 31 March 2016.

39. In order to efficiently progress its strategic and business initiatives and to reduce the administrative and operational expenses and complexities impacting PMG, a restructuring was proposed with the ultimate aim of simplifying the structure.

40. The corporate restructure was subject to securityholders' approval by requisite majority as required by the *Corporations Act 2001*, and is governed by the Implementation Deed (the Deed) executed by PMG.

41. There was no change to the underlying business and assets of PMG as a result of the de-stapling.

Detailed steps of the restructure

42. The restructure was effected as follows:

- de-stapling the PML stapled securities
- interposing PMGL as the new holding company of PMG
- securityholders exchanging their PMLT units for PMGL shares on a one-for-one basis
- securityholders exchanging their PML shares for PMGL shares on a one-for-one basis, and
- the consolidation of PMGL shares on a two-for-one basis.

43. On 8 May 2019, PMGL was incorporated as an unlisted public company with one ordinary share. PMGL will not carry out any operations or undertake any activities, other than those associated with the schemes.

44. On the Implementation Date, PMLT units and PML shares were de-stapled from each other in accordance with the Deed and constitutions of PMLT and PML.

45. Immediately following the de-stapling, securityholders exchanged their PMLT units for the equivalent number of shares in PMGL.

46. Immediately afterwards, securityholders exchanged their PML shares for an equivalent number of shares in PMGL.

47. Immediately afterwards, PMGL shares were consolidated on a two-for-one basis so that each securityholder holds a PMGL share for every PML stapled security they held prior to the restructure.

48. Following the share consolidation, the only shares on issue in the capital of PMGL were the PMGL shares issued to the securityholders as listed in paragraph 42 of this Ruling. The initial ordinary share was cancelled.

Other matters

49. This Ruling is made on the basis that PMGL will choose that section 615-65 applies, as required under subsection 615-30(1), within the timeframe prescribed by subsection 615-30(3).

Commissioner of Taxation

8 April 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.*

| Table of Contents | Paragraph |
|-------------------------------------|------------------|
| Division 615 rollover | 50 |
| CGT consequences | 53 |
| Sections 45B and 45C will not apply | 54 |

Division 615 rollover

50. Division 615 enables a member of a company or a unit trust to disregard a capital gain or capital loss from the disposal of shares in the company or units in the trust where, under a scheme for reorganising the affairs of the company or trust, the member receives new shares in another company in exchange.

51. The conditions in Division 615 that are relevant for the purposes of this Ruling are:

- at least two entities (the exchanging members) must own all the shares or units in the company or trust (the original entity) (paragraph 615-5(1)(b))
- under a scheme for reorganising the original entity's affairs, the exchanging members dispose of all their shares or units in the original entity to a company (the interposed company) in exchange for shares in the interposed company and nothing else (paragraph 615-5(1)(c))
- the interposed company must own all the shares or units in the original entity immediately after all the exchanging members have disposed of their shares or units in the original entity (the completion time) (section 615-15)
- immediately after the completion time, each exchanging member must own a whole number of shares in the interposed company (paragraph 615-20(1)(a))
- immediately after the completion time, each exchanging member must own a percentage of the shares in the interposed company that were issued to all the exchanging members of the original entity that is equal to the percentage of the shares or units in the original entity that the exchanging member owned (paragraph 615-20(1)(b))
- for each exchanging member:

market value of member's shares in interposed company

market value of shares in interposed company issued to all
exchanging members

=

market value of member's shares or units in original entity disposed of
under scheme

market value of all shares or units in original entity disposed of under
scheme

where the market values in the first fraction are worked out immediately after the completion time, and the market values in the second fraction are worked out immediately before the first disposal (subsection 615-20(2)).

- the shares issued in the interposed company must not be redeemable shares (subsection 615-25(1))
- immediately after the completion time, the exchanging members must own all the shares in the interposed company (paragraph 615-25(3)(a)), and
- the interposed company must make a choice under section 615-30 within the applicable time limit prescribed in subsection 615-30(3) – that is, it must either choose that a consolidated group continues in existence if the conditions in subsection 615-30(2) are satisfied, or where those conditions cannot be satisfied, it must choose to work out the first element of the cost base and reduced cost base of the shares or units it owns in the original entity immediately after the completion time in accordance with section 615-65 (subsection 615-30(1)).

52. The scheme described in paragraphs 23 to 49 of this Ruling satisfies these conditions. Therefore, you are entitled to choose to obtain a rollover under Division 615 in relation to the first and second CGT events described in paragraphs 8 and 9 of this Ruling.

CGT consequences

53. The CGT consequences for you of choosing or not choosing to obtain a rollover in respect of the disposal of your PMLT units and/or your PML shares under the schemes and the subsequent consolidation of the PMGL shares are discussed in sufficient detail in the Ruling section.

Sections 45B and 45C will not apply

54. Section 45B of the ITAA 1936 applies where certain capital benefits are, having regard to the relevant circumstances of the scheme set out in subsection 45B(8) of the ITAA 1936, considered to have been provided to shareholders by a company for a more than incidental purpose of enabling a taxpayer to obtain a tax benefit.

55. The issue of shares in PMGL is the provision of a capital benefit pursuant to paragraph 45B(5)(a) of the ITAA 1936 as it is the provision of an ownership interest in PMGL to you. In the event that the issue of the shares in PMGL was a dividend rather than a capital benefit, it is likely that you would have incurred a greater tax liability. Consequently, your receipt of the capital benefit will represent a tax benefit.

56. However, having regard to the relevant circumstances of the scheme, it cannot be concluded that the scheme was entered into or carried out for a more than incidental purpose of enabling you to obtain a tax benefit.

57. Accordingly, the Commissioner will not make a determination under subsection 45B(3) of the ITAA 1936 that section 45C of the ITAA 1936 applies.

References*Previous draft:*

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Legislative references:

- ITAA 1936 6(1)
- ITAA 1936 Div 6C
- ITAA 1936 45B
- ITAA 1936 45B(3)
- ITAA 1936 45B(5)(a)
- ITAA 1936 45B(8)
- ITAA 1936 45C
- ITAA 1997 102-5
- ITAA 1997 102-10
- ITAA 1997 104-10(1)
- ITAA 1997 104-10(3)(b)
- ITAA 1997 104-10(4)
- ITAA 1997 109-5
- ITAA 1997 110-25(2)
- ITAA 1997 110-55(2)
- ITAA 1997 112-25(4)(a)
- ITAA 1997 112-25(4)(b)
- ITAA 1997 115-30(1)
- ITAA 1997 116-20(1)
- ITAA 1997 124-15(2)
- ITAA 1997 124-15(3)
- ITAA 1997 Div 230
- ITAA 1997 Div 615
- ITAA 1997 615-5(1)
- ITAA 1997 615-5(1)(b)
- ITAA 1997 615-5(1)(c)
- ITAA 1997 615-15
- ITAA 1997 615-20(1)(a)
- ITAA 1997 615-20(1)(b)
- ITAA 1997 615-20(2)
- ITAA 1997 615-25(1)
- ITAA 1997 615-25(3)(a)
- ITAA 1997 615-30
- ITAA 1997 615-30(1)
- ITAA 1997 615-30(2)
- ITAA 1997 615-30(3)
- ITAA 1997 615-40
- ITAA 1997 615-65
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- TAA 1953 Subdiv 12-H
- Corporations Act 2001

ATO references

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 Income tax ~~ Capital gains tax ~~ Rollovers ~~ Business restructures –
 Division 615
 Income tax ~~ Capital management ~~ Anti avoidance rules ~~ Section 45B

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