

CR 2021/20 - Portfolio Plus Industrial Equities Fund - scrip for scrip roll-over



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Class Ruling

Portfolio Plus Industrial Equities Fund – 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.

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What this Ruling is about

1. This Ruling sets out the tax consequences for holders of units in Portfolio Plus Industrial Equities Fund (Fund 55) in relation to the acquisition of those units by EQT Flagship Fund (Fund 2) in exchange for units in Fund 2.
2. Full details of this scheme are set out in paragraphs 21 to 41 of this Ruling.
3. All legislative references in the 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 a holder of units in Fund 55 on 2 December 2020 (the Implementation Date)
 - participated in the scheme that is subject to this Ruling
 - are a resident of Australia (as defined in subsection 6(1) of the *Income Tax Assessment Act 1936*), and
 - held your units in Fund 55 neither as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)), that is, you held your units on capital account.

5. This Ruling does not apply to you if you are subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 21 to 41 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 2020 to 30 June 2021.

Ruling

CGT event A1 happened on the disposal of your Fund 55 units

7. CGT event A1 happened when you disposed of your Fund 55 units to Equity Trustees Limited, as trustee for Fund 2 (subsection 104-10(1)).

8. The time of CGT event A1 was on the Implementation Date (paragraph 104-10(3)(b)).

9. You will make a capital gain from CGT event A1 happening if the capital proceeds from the disposal of a Fund 55 unit exceeds its cost base. You will make a capital loss from CGT event A1 happening if the capital proceeds from the disposal of a Fund 55 unit are less than its reduced cost base (subsection 104-10(4)).

10. The capital proceeds from CGT event A1 happening are equal to the market value of Fund 2 units received under the scheme (paragraph 116-20(1)(b)).

Availability of scrip for scrip roll-over under Subdivision 124-M for your Fund 55 units

11. Subject to the qualification in paragraph 12 of this Ruling, if you make a capital gain from the disposal of your Fund 55 units, you may choose to obtain scrip for scrip roll-over (section 124-781).

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

Consequences if you choose to apply scrip for scrip roll-over for your Fund 55 units

13. If you choose to apply scrip for scrip roll-over you will be able to disregard any capital gain arising from CGT event A1 happening in respect of the exchange of your Fund 55 units for replacement Fund 2 units (subsection 124-785(1)).

14. The first element of the cost base and reduced cost base of each replacement Fund 2 unit received is calculated by reasonably attributing to it the cost base and reduced cost base of the Fund 55 units for which it was exchanged (subsections 124-785(2) and 124-785(4)).

15. You calculate the first element of the cost base or reduced cost base of each replacement Fund 2 unit by dividing the aggregate cost bases or reduced cost bases of your Fund 55 units by the number of replacement Fund 2 units you received.

16. The date of acquisition of Fund 2 units is the date you acquired your original Fund 55 units (table item 2a of subsection 115-30(1)).

Consequences if you do not, or cannot, choose scrip for scrip roll-over for your Fund 55 units

17. If you do not, or cannot, choose scrip for scrip roll-over, you must account for any capital gain or capital loss from CGT event A1 happening on the disposal of your Fund 55 units in working out your net capital gain or net capital loss for the income year in which CGT event A1 happens (sections 102-5 and 102-10).

18. If you make a capital gain and do not, or cannot, choose scrip for scrip roll-over, you can treat the capital gain as a 'discount capital gain' provided that the conditions in Subdivision 115-A are met. In particular, the Fund 55 units that you disposed of must have been acquired by you at least 12 months before their disposal to Equity Trustees Limited, as trustee for Fund 2 (hereafter referred to as Fund 2 Trustee).

19. If you do not, or cannot, choose scrip for scrip roll-over, the first element of the cost base and reduced cost base of each replacement Fund 2 unit received is equal to the market value of each Fund 55 unit given in respect of acquiring each Fund 2 unit, worked out as at the time of their acquisition (subsections 110-25(2) and 110-55(2)).

20. If you do not, or cannot, choose scrip for scrip roll-over, the date of acquisition of the replacement Fund 2 units is the date you were issued units in Fund 2 (table item 3 of section 109-10).

Scheme

21. 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.

Fund 55

22. Fund 55 is an Australian unit trust which was established on 18 June 2014 by ANZ Trustees Limited pursuant to the terms recorded in the Extract of Minutes of the Board meeting held on 18 June 2014.

23. On 4 July 2014, ANZ Trustees Limited resolved to change its name to Equity Trustees Wealth Services Limited (Fund 55 Trustee).

24. Fund 55 Trustee is an Australian-resident company.

25. Fund 55 is not a registered managed investment scheme and is also not a listed trust.

26. Fund 55 Trustee is a licensed trustee company and Fund 55 is a common fund governed by Chapter 5D of the *Corporations Act 2001*.

27. Fund 55's investment strategy is to provide investors with the potential for capital gain similar to the return from the S&P/ASX 100 Industrials Price Index via investment primarily in a diversified portfolio of industrial shares listed or about to be listed on the Australian Securities Exchange, and an income stream from their dividends greater than that derived from the relevant index.

28. At all times since its establishment on 18 June 2014, Fund 55 has had only one class of units on issue.

Fund 2

29. Fund 2 is an Australian unit trust which was established on 1 August 2003 by the Constitution for the Equity Trustees Limited Common Fund No. 2 (Fund 2 Trust Deed) as amended by Supplemental Deeds dated 21 January 2004, 13 February 2004, 30 June 2005, 26 June 2013 and 13 December 2017.

30. Fund 2 was registered as a managed investment scheme under Chapter 5C of the *Corporations Act 2001* on 16 February 2004 with Fund 2 Trustee as its responsible entity.

31. On 1 July 2017, Fund 2 Trustee irrevocably elected to enter the attribution regime in Division 276 for the taxation of managed investment trusts to be an attribution managed investment trust.

32. Fund 2 is designed for investors seeking medium-to-long term capital growth potential, coupled with an increasing income stream payable from the dividends of the underlying shares.

33. At all times since its establishment on 1 August 2003, Fund 2 has had only one class of units on issue.

Acquisition of units in Fund 55 by Fund 2

34. Fund 2 Trustee and Fund 55 Trustee sought to increase investor returns of the unitholders in Fund 2 and Fund 55 by decreasing portfolio management costs, via a reorganisation that would streamline the operations and management of Fund 2 and Fund 55.

35. Under the reorganisation, Fund 2 Trustee made an offer, on the same terms, to all unitholders in Fund 55, to acquire all of the units on issue in Fund 55.

36. All of the unitholders in Fund 55 accepted the offer made by Fund 2.

37. Each of the unitholders in Fund 55 who participated in the scheme disposed of their units in Fund 55 by exchanging them for units in Fund 2, that is, no cash consideration was received.

38. The number of Fund 2 units that the unitholders of Fund 55 received was determined by reference to the market value of each Fund 55 unit and each Fund 2 unit on the Implementation Date.

Other matters

39. Fund 2 Trustee will not make a choice to deny the roll-over to the unitholders in Fund 55 under subsection 124-795(4).

40. Under the scheme, the unitholders in Fund 55 and Fund 2 Trustee dealt with each other at arm's length, and Fund 2 had more than 300 beneficiaries just before the implementation of the scheme (for the purposes of subsection 124-781(4)).

41. Fund 2 and Fund 55 did not have a 'significant stakeholder' or 'common stakeholder' in relation to the scheme within the meaning of those terms in section 124-783.

Appendix – Explanation

❶ *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.*

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

42. The tax consequences that arise concerning the scheme that is the subject of this Ruling are outlined in paragraphs 7 to 20 of this Ruling.

43. One consequence identified in this Ruling is the availability of scrip for scrip roll-over under Subdivision 124-M. The roll-over enables a shareholder or a unitholder to disregard a capital gain from the disposal of a share or a unit if the shareholder or unitholder receives a replacement share or unit in exchange. It also provides special rules for calculating the cost base and reduced cost base of the replacement share or unit.

44. Subdivision 124-M contains a number of conditions for, and exceptions to, a shareholder or unitholder being able 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 are exchanged for units in another trust
- entities have fixed entitlements to all of the income and capital of the original and the acquiring trust
- the exchange is in consequence of an arrangement that satisfies subsections 124-781(2) or (2A)
- conditions for the roll-over are satisfied
- further conditions, if applicable, are satisfied, and
- exceptions for obtaining scrip for scrip roll-over are not applicable.

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

References

Previous draft:

Not previously issued as a draft

Legislative references:

- ITAA 1936 6(1)
- 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 109-10
- ITAA 1997 110-25(2)
- ITAA 1997 110-55(2)
- ITAA 1997 Subdiv 115-A
- ITAA 1997 115-30(1)
- ITAA 1997 116-20(1)(b)
- ITAA 1997 Subdiv 124-M
- ITAA 1997 124-781
- ITAA 1997 124-781(2)
- ITAA 1997 124-781(2A)
- ITAA 1997 124-781(4)
- ITAA 1997 124-783
- ITAA 1997 124-785(1)
- ITAA 1997 124-785(2)
- ITAA 1997 124-785(4)
- ITAA 1997 124-795(2)(a)
- ITAA 1997 124-795(4)
- ITAA 1997 Div 230
- ITAA 1997 Div 276
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- TAA 1953
- Corporations Act 2001 Chapter 5C
- Corporations Act 2001 Chapter 5D

ATO references

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