


CR 2021/42 - APG Self Storage Trusts - scrip for scrip roll-over

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Class Ruling

APG Self Storage Trusts – 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 (Unitholders) in Arrowfield Self Storage Trust No.2, APG Self Storage Trust No. 3, APG Self Storage Trust No. 4, StoreInvest Income Growth Fund, APG Self Storage Trust No. 9 and APG Self Storage Trust No. 11 (collectively referred to as the Sub-Trusts) that exchange their units for units in StoreInvest Enhanced Income Fund No. 1 (SEIF1) under the scheme to which this Ruling relates.
2. Further details of this scheme are set out in paragraphs 24 to 32 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:
 - are a Unitholder in one or more of the Sub-Trusts
 - participate in the scheme that is set out in paragraphs 24 to 32 of this Ruling
 - are a 'resident of Australia' as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936), and
 - do not hold your units in the Sub-Trusts as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)); that is, you hold your units on capital account.

5. This Ruling does not apply to any entity that is subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 24 to 32 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 2022.

Ruling

CGT event A1 will happen on the disposal of the Sub-Trust units

7. CGT event A1 will happen when the Sub-Trust Unitholders dispose of their Sub-Trust units to Arrowfield Property Group Pty Ltd as trustee for SEIF1 (subsection 104-10(1)).

8. The time of CGT event A1 will be when the Sub-Trust Unitholder (via a power of attorney granted to the trustee of the relevant Sub-Trust) executes a unit transfer form with the trustee for SEIF1 for the disposal of their Sub-Trust units (paragraph 104-10(3)(a)).

9. A Sub-Trust Unitholder will make a capital gain from CGT event A1 happening if the capital proceeds from the disposal of their Sub-Trust units exceed the cost base of those units (subsection 104-10(4)).

10. A Sub-Trust Unitholder will make a capital loss from CGT event A1 happening if the capital proceeds from the disposal of their Sub-Trust units is less than the reduced cost base of those units (subsection 104-10(4)).

11. The capital proceeds for each Sub-Trust unit disposed of by a Sub-Trust Unitholder will be the market value of the SEIF1 units received in respect of that disposal (paragraph 116-20(1)(b)). The market value of each SEIF1 unit received is worked out at the time of the event (see paragraph 8 of this Ruling).

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

12. Subject to the qualification in paragraph 13 of this Ruling, a Sub-Trust Unitholder that makes a capital gain from the disposal of their Sub-Trust units in exchange for SEIF1 units is eligible to choose to obtain scrip for scrip roll-over (sections 124-781 and 124-785).

13. Scrip for scrip roll-over cannot be chosen if any capital gain a Sub-Trust Unitholder might subsequently make from their replacement SEIF1 units would be disregarded on a subsequent CGT event, except because of a roll-over (paragraph 124-795(2)(a)).

14. Each Sub-Trust Unitholder that is a significant stakeholder (as defined in section 124-783) to which section 124-782 applies must jointly choose to obtain scrip for scrip roll-over with the trustee for SEIF1 to obtain the roll-over (paragraph 124-781(3)(c)) and must notify the trustee for SEIF1 in writing of the cost base of their original interests just before the disposal of the Sub-Trust units under the scheme (paragraph 124-781(3)(d)).

Consequences if scrip for scrip roll-over is chosen***Capital gain is disregarded***

15. If a Sub-Trust Unitholder chooses scrip for scrip roll-over, the capital gain they make upon the disposal of their Sub-Trust units is disregarded (subsection 124-785(1)).

16. Choosing scrip for scrip roll-over allows the capital gain made by the Sub-Trust Unitholder on the disposal of their Sub-Trust units to be deferred until the disposal of their SEIF1 units.

Acquisition date of StoreInvest Enhanced Income Fund No. 1 units

17. If a Sub-Trust Unitholder chooses scrip for scrip roll-over, the acquisition date of each replacement unit in SEIF1 for the purpose of making a discount capital gain is the date when they acquired the Sub-Trust units that will be exchanged for the SEIF1 units (table item 2 of subsection 115-30(1)).

Cost base and reduced cost base of StoreInvest Enhanced Income Fund No. 1 units received

18. If a Sub-Trust Unitholder chooses scrip for scrip roll-over, the first element of the cost base and reduced cost base of the replacement SEIF1 units received (in exchange for their Sub-Trust units) is worked out by reasonably attributing the cost base and reduced cost base (respectively) of the Sub-Trust units for which they are exchanged and for which the roll-over is obtained (subsections 124-785(2) and 124-785(4)).

19. A Sub-Trust Unitholder can calculate the first element of the cost base or reduced cost base of each replacement SEIF1 unit by dividing the aggregate cost bases or reduced cost bases of their Sub-Trust units by the number of replacement SEIF1 units received.

Consequences if scrip for scrip roll-over is not chosen, or cannot be chosen***Capital gain is not disregarded***

20. A Sub-Trust Unitholder that does not, or cannot, choose the scrip for scrip roll-over must account for any capital gain or capital loss from CGT event A1 happening on the disposal of their Sub-Trust units in working out their net capital gain or net capital loss for the income year in which the CGT event A1 happens (sections 102-5 and 102-10).

21. A Sub-Trust Unitholder that is not a company, makes a capital gain and does not choose or cannot choose the scrip for scrip roll-over, can treat the capital gain as a discount capital gain provided that the conditions of Subdivision 115-A are met. Sub-Trust units must have been acquired, or taken to have been acquired, by the Sub-Trust Unitholder at least 12 months before their disposal to the trustee for SEIF1.

Acquisition date of StoreInvest Enhanced Income Fund No. 1 units

22. A Sub-Trust Unitholder that does not, or cannot, choose the scrip for scrip roll-over will acquire their SEIF1 units when the unit transfer form is executed (table item 3 of section 109-10).

Cost base and reduced cost base of StoreInvest Enhanced Income Fund No. 1 units received

23. If a Sub-Trust Unitholder does not, or cannot, choose the scrip for scrip roll-over, the first element of the cost base and reduced cost base of the replacement SEIF1 units received is equal to the market value of the Sub-Trust units given in respect of acquiring the SEIF1 units (subsections 110-25(2) and 110-55(2)). The market value of the Sub-Trust units is worked out as at the time of the acquisition of the SEIF1 unit (see paragraph 22 of this Ruling).

Scheme

24. 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.

The Sub-Trusts

25. Each of the Sub-Trusts:

- is a unit trust established in or after 2012
- is a 'resident of Australia' as defined in subsection 6(1) of the ITAA 1936
- has, since their establishment, had one class of unit (ordinary units) on issue
- is managed by a delegate of an Australian Financial Services Licence holder, and
- provides a managed investment scheme platform for eligible investors to invest in the 'self storage' sector (via subscription for units in the Sub-Trusts).

26. The main activity of the Sub-Trusts is to invest in storage facilities for the purposes of deriving rental income. Each Sub-Trust holds storage property in only one State of Australia.

StoreInvest Enhanced Income Fund No. 1

27. SEIF1 is an open-ended wholesale investment fund established on 12 May 2021, and a resident of Australia as defined in subsection 6(1) of the ITAA 1936.

Acquisition of units in the Sub-Trusts by StoreInvest Enhanced Income Fund No. 1

28. It is proposed that the Sub-Trusts will be consolidated under one holding trust (SEIF1) through which further asset expansions are intended to be funded. The purpose of this proposal, among other purposes, is to provide Sub-Trust Unitholders with greater diversification in their storage investment portfolio across the Australian States and to assist the Sub-Trusts attract future capital.

29. As part of this proposal:

- Sub-Trust Unitholder approval by way of Special Resolution (requiring 75% of all votes cast by Unitholders of each of the Sub-Trusts to be in favour) was sought and received in May 2021

- the passing of the Special Resolutions provided the trustees for each of the Sub-Trusts with a power of attorney to implement the proposal
- the trustee for SEIF1 has issued ordinary units (initial units) to each of the Sub-Trust Unitholders.¹ The number of initial units issued to each Sub-Trust Unitholder is based on the market value of their Sub-Trust units as a proportion of the total market value of the units in all of the Sub-Trusts, and
- a unit transfer form will be executed by the trustee for SEIF1 and the trustee for each of the Sub-Trusts (pursuant to the power of attorney referred to in this paragraph of the Ruling) to transfer all of the Sub-Trust units to SEIF1 in exchange for units in SEIF1, and nothing else. The number of SEIF1 units issued to the Sub-Trust Unitholders will be based on the market value of their Sub-Trust units as a proportion to the total market value of the units in all the Sub-Trusts.

30. As a consequence of this proposal:

- the trustee for SEIF1 will acquire 100% of the units in each of the Sub-Trusts (so that the Sub-Trusts become wholly-owned sub-trusts of SEIF1)
- the Sub-Trust Unitholders will receive SEIF1 units in exchange for their Sub-Trust units, providing them with an indirect ownership interest in all of the storage properties of the Sub-Trusts (as opposed to those of the relevant Sub-Trust(s) in which they previously held units), and
- the market value of each Sub-Trust Unitholder's units in SEIF1 immediately after the exchange will be substantially the same as the market value of the Sub-Trust units they held immediately prior to the exchange.

Other matters

31. This Ruling is made on the following bases:

- all dealings will be at arm's length
- all Sub-Trust Unitholders will be offered the opportunity to participate in the scheme on the same terms
- the Commissioner has, having regard to all the information provided by the applicant, exercised the discretion in subsection 272-5(3) of Schedule 2F to the ITAA 1936 to treat the Sub-Trust Unitholders as having fixed entitlements to all of the income and capital of the Sub-Trusts and SEIF1
- the trustee for SEIF1 will not make a choice to deny the scrip for scrip roll-over to the Sub-Trust Unitholders under subsection 124-795(4)
- the trustee for SEIF1 will jointly make the choice to obtain the scrip for scrip roll-over with any Sub-Trust Unitholder that is a significant stakeholder to which section 124-782 applies, and
- the scheme is not part of and does not include a takeover bid.

32. Based on independent market valuations prepared for the Sub-Trusts in March 2021, it is expected that at least one Sub-Trust Unitholder will be a significant stakeholder in relation to the scheme within the meaning of that term in

¹ This Ruling does not address tax consequences relating to the initial units.

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subsection 124-783(1). There are no common stakeholders in relation to the scheme within the meaning of that term in subsection 124-783(3).

Commissioner of Taxation

7 July 2021

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

33. The tax consequences that arise concerning the scheme that is the subject of this Ruling are outlined in paragraphs 7 to 23 of this Ruling.

34. 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.

35. 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 (paragraph 124-781(1)(a))
- entities have fixed entitlements to all of the income and capital of the original and the acquiring trust (paragraph 124-781(1)(b))
- the exchange is in consequence of an arrangement that satisfies subsection 124-781(2)
- conditions for the scrip for scrip roll-over (in subsection 124-781(3)) are satisfied
- further conditions, if applicable, are satisfied (subsection 124-781(4)), and
- exceptions to obtaining scrip for scrip roll-over under section 124-795 are not applicable.

36. Where the Sub-Trust Unitholders would, apart from the scrip for scrip roll-over, make a capital gain from a CGT event happening in relation to their Sub-Trust units and choose to obtain the roll-over, the scheme that is the subject of this Ruling satisfies the requirements for roll-over under Subdivision 124-M.

References*Previous draft:*

Not previously issued as a draft

Legislative references:

- ITAA 1936 6(1)
- ITAA 1936 Sch 2F 272-5(3)
- ITAA 1997 102-5
- ITAA 1997 102-10
- ITAA 1997 104-10(1)
- ITAA 1997 104-10(3)(a)
- 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(1)(a)
- ITAA 1997 124-781(1)(b)
- ITAA 1997 124-781(2)
- ITAA 1997 124-781(3)
- ITAA 1997 124-781(3)(c)
- ITAA 1997 124-781(3)(d)
- ITAA 1997 124-781(4)
- ITAA 1997 124-782
- ITAA 1997 124-783
- ITAA 1997 124-783(1)
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- ITAA 1997 124-785
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- ITAA 1997 124-785(2)
- ITAA 1997 124-785(4)
- ITAA 1997 124-795
- ITAA 1997 124-795(2)(a)
- ITAA 1997 124-795(4)
- ITAA 1997 Div 230
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- TAA 1953

ATO references

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