


CR 2021/48 - Dexus - scrip for scrip roll-over

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Class Ruling

Dexus – scrip for scrip roll-over

① 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 the holders of Dexus stapled securities (Security holders) resulting from the disposal of their units in each of Dexus Diversified Trust (DDF), Dexus Industrial Trust (DIT) and Dexus Office Trust (DOT) (together, the Dexus Trusts) in consideration for units in Dexus Property Trust (DPT).
2. Full details of this scheme are set out in paragraphs 24 to 39 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 a Security holder on 2 July 2021
 - held your Dexus stapled securities on capital account, that is, you did not hold your Dexus stapled securities as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)), and
 - acquired your units in the Dexus Trusts after 20 September 1985.
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 24 to 39 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 2021 to 30 June 2022.

Ruling**CGT event A1*****CGT event A1 did not happen from the de-stapling of your units in the Dexs Trusts***

7. CGT event A1 did not happen when your units in the Dexs Trusts were de-stapled from the units in Dexs Operations Trust (DXO).

CGT event A1 happened on the disposal of your units in the Dexs Trusts

8. CGT event A1 happened when you disposed of your units in the Dexs Trusts to Dexs Funds Management Limited (DXFM) as trustee for DPT (subsection 104-10(1)).
9. The time of CGT event A1 was 6 July 2021 (Implementation Date) (paragraph 104-10(3)(b)).
10. You will make a capital gain from CGT event A1 happening if the capital proceeds from the disposal of your units in the Dexs Trusts exceed their cost bases. You will make a capital loss from CGT event A1 happening if the capital proceeds from the disposal of your units in the Dexs Trusts are less than their reduced cost bases (subsection 104-10(4)).
11. The capital proceeds from CGT event A1 happening is equal to the market value of the DPT units received under the scheme (paragraph 116-20(1)(b)).

CGT event A1 did not happen from the stapling of your units in Dexs Property Trust

12. CGT event A1 did not happen when your units in DPT were stapled to the units in DXO.

Availability of scrip for scrip roll-over if you make a capital gain

13. Subject to the qualification in paragraph 14 of this Ruling, if you make a capital gain from the disposal of your units in the Dexs Trusts, you may choose to obtain scrip for scrip roll-over (section 124-781).
14. Scrip for scrip roll-over cannot be chosen if:
- you were a foreign resident just before the disposal of your units in the Dexs Trusts on the Implementation Date unless, just after you acquired the replacement DPT units, the DPT units are taxable Australian property (subsection 124-795(1)), or
 - any capital gain you might subsequently make from the replacement DPT units would be disregarded, except because of a roll-over (paragraph 124-795(2)(a)).

Australian-resident Security holders***Consequences if you choose scrip for scrip roll-over***

15. If you choose scrip for scrip roll-over, you will be able to disregard any capital gain from CGT event A1 happening in respect of the disposal of your units in the Dexus Trusts in consideration for DPT units (subsection 124-785(1)).

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

17. You calculate the first element of the cost base and reduced cost base of each replacement DPT unit by dividing the aggregate cost bases or reduced cost bases of your units in the Dexus Trusts by the number of replacement DPT units you received.

18. The date of acquisition of the DPT units is the date you acquired your original units in the Dexus Trusts (table item 2a of subsection 115-30(1)).

Consequences if you do not, or cannot, choose scrip for scrip roll-over

19. 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 units in the Dexus Trusts 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).

20. 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 units in the Dexus Trusts that you disposed of must have been acquired by you at least 12 months before their disposal to DXFM as trustee for DPT.

21. 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 DPT unit received is equal to the market value of each of the units in the Dexus Trusts given in respect of acquiring each DPT unit, worked out as at the time of their acquisition (subsections 110-25(2) and 110-55(2)).

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

Foreign-resident Security holders

23. If, just before the Implementation Date, you are a foreign resident or the trustee of a foreign trust for CGT purposes:

- you disregard a capital gain or capital loss from the disposal of your units in the Dexus Trusts (section 855-10) as these units are not 'taxable Australian property' under table items 1, 2, 3 or 4 of section 855-15
- you cannot disregard a capital gain or capital loss from the disposal of your units in the Dexus Trusts where these units are CGT assets that are covered by subsection 104-165(3) (choosing to disregard a gain or loss on ceasing to be an Australian resident) under table item 5 of section 855-15.

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.

Dexus

25. Dexus has been listed on the Australian Securities Exchange since 2004 as a single (quadruple) stapled security.

26. A Dexus stapled security comprised of one unit in each of DDF, DIT, DOT and DXO.

27. DXFM is the responsible entity of DDF, DIT, DOT and DXO.

28. DXFM, as the responsible entity of DDF, DIT and DOT, irrevocably elected to enter the attribution regime in Division 276 for the taxation of managed investment trusts to be an attribution managed investment trust. These elections were made for the income year ended 30 June 2017.

29. DXO is a public trading trust for the purposes of Division 6C of the *Income Tax Assessment Act 1936*.

Simplification of the Dexus structure**Commercial rationale**

30. Dexus conducted a review of its business operations to achieve greater simplicity of operation, investor communications and reduced management and administrative costs.

Simplification steps

31. The scheme was implemented as follows:

- Step 1 – DPT was established as an Australian unit trust by the Constitution Dexus Property Trust, with DXFM as the responsible entity.
- Step 2 – DPT was listed on the Australian Securities Exchange.
- Step 3 – Dexus stapled securities held by foreign-resident Security holders who were ineligible to directly participate in the scheme (Ineligible Foreign Security holders) were transferred to a nominee for disposal under the sale facility.
- Steps 4 to 6 – occurred simultaneously on the Implementation Date
 - The Dexus Trusts were de-stapled from DXO. Following the de-stapling, the units in the Dexus Trusts were able to be dealt with separately.
 - DPT acquired 100% of the units in the Dexus Trusts and, in exchange, Security holders (excluding Ineligible Foreign Security holders) were issued with units in DPT equivalent to the number of Dexus stapled securities held at 2 July 2021.
 - DPT units were stapled with DXO units to form new dual-stapled securities (New Dexus Stapled Securities). As a dual-stapled security, no dealings in DPT were to occur without a corresponding dealing in units in DXO.

- Step 7 – after the Implementation Date
 - The New Dexus Stapled Securities held by the nominee are sold and proceeds remitted to the Ineligible Foreign Security holders.
 - DDF, DIT and DOT are delisted and de-stapled.

Sale facility for Ineligible Foreign Security holders

32. A number of foreign-resident Security holders were ineligible to directly participate in the scheme due to certain foreign securities law restrictions; in particular, as a result of DXFM as trustee for DPT having determined it was unduly onerous or practical to issue DPT units to these Ineligible Foreign Security holders. Dexus stapled securities held by the Ineligible Foreign Security holders were transferred to a nominee as part of the sale facility and their holdings of Dexus stapled securities were converted into New Dexus Stapled Securities under the scheme. The New Dexus Stapled Securities held by the nominee are sold and the proceeds remitted to the Ineligible Foreign Security holders.

33. 0.00324% of Security holders were classified as Ineligible Foreign Security holders.

Other matters

34. DXFM as trustee for DPT will make a choice for DPT to be an attribution managed investment trust for the income year ended 30 June 2022.

35. DXFM as trustee for DPT did not make a choice to deny the roll-over to the Security holders under subsection 124-795(4).

36. Under the scheme, the Security holders and DXFM as trustee for DPT dealt with each other at arm's length and DPT had more than 300 beneficiaries just before the implementation of the scheme (for the purposes of subsection 124-781(4)).

37. The Dexus Trusts and DPT did not have a 'significant stakeholder' or 'common stakeholder' in relation to the scheme within the meaning of those terms in section 124-783.

38. Foreign-resident Security holders who held units in the Dexus Trusts have not used their units at any time in carrying on a business through a permanent establishment in Australia.

39. No Security holder together with their associates (as defined in subsection 995-1(1)) hold at least 10% or more of the units in the Dexus Trusts.

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 if you make a capital gain

40. 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.

41. One tax consequence that is the subject of this Ruling is the availability of scrip for scrip roll-over under Subdivision 124-M. Scrip for scrip 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.

42. 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 subsection 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.

43. 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

- 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(1)
- ITAA 1997 124-795(2)(a)
- ITAA 1997 124-795(4)
- ITAA 1997 Div 230
- ITAA 1997 Div 276
- ITAA 1997 855-10
- ITAA 1997 855-15
- ITAA 1997 977-50
- ITAA 1997 995-1(1)

Legislative references:

- ITAA 1936 Div 6C
- 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 104-165(3)
- 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

ATO references

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 Income tax ~~ Capital gains tax ~~ Discount capital gains
 Income tax ~~ Capital gains tax ~~ Rollovers ~~ Scrip for scrip – Subdivision 124-M

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