


CR 2022/7 - RAM Australia Retail Property Fund - return of capital and formation of a stapled security

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Status: **legally binding**

Class Ruling

RAM Australia Retail Property Fund – return of capital and formation of a stapled security

📌 Relying on this Ruling

This publication 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 income tax consequences for the unit holders of the RAM Australia Retail Property Fund (RARPF) who were entitled to receive a return of capital from the Trustee of RARPF which was satisfied by those unit holders acquiring units in the RAM Australia Medical Property Fund (RAM Medical Fund), followed by the stapling of the RARPF units and RAM Medical Fund units.
2. Full details of this scheme are set out in paragraphs 19 to 36 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 unit holder of RARPF on the Record Date for the return of capital (20 October 2021)
 - were a resident of Australia within the meaning of subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936) on the date of the return of capital (20 October 2021), and
 - did not hold your units in RARPF as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)); that is, your units in RARPF were held on capital account.

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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 19 to 36 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

Splitting of RAM Australia Retail Property Fund units

7. No CGT event happened as a result of the splitting of RARPF units (subsections 112-25(1) and (2)).

8. Each element of the cost base and reduced cost base of a new split RARPF unit is worked out by apportioning each element of the cost base and reduced cost base of the original RARPF units in a reasonable way to the new RARPF units (subsection 112-25(3)).

9. You will be taken to have acquired your new split RARPF units at the time that you acquired the original RARPF units to which they relate (subsection 109-5(1)).

Return of capital is not assessable income

10. The return of capital is not included in your assessable income either as ordinary income under subsection 6-5(1), or under section 99B of the ITAA 1936.

Adjustment to cost base of RAM Australia Retail Property Fund units

11. Under section 104-107B, a member of an attribution managed investment trust (AMIT) (such as RARPF) makes an annual adjustment to the cost base of their units or interests in the attribution managed investment trust.

12. The adjustment is the net difference between the AMIT cost base reduction amount (worked out under section 104-107D) and the AMIT cost base increase amount (worked out under section 104-107E). This difference is called the AMIT cost base net amount (section 104-107C).

13. The AMIT cost base reduction amount includes money, and the market value of any property, that you start to have a right to receive from the trustee of the attribution managed investment trust in the income year, if that right is reasonably likely not to be defeated, to the extent that the money and property is reasonably attributable to your unit. The entitlement to receive the return of capital (which was compulsorily applied to acquire new units in the RAM Medical Fund on your behalf) is property that you started to have a right to receive (and received) from the Trustee of RARPF in respect of your RARPF units during the income year, and will accordingly form part of the AMIT cost base reduction amount (section 104-107D) for you for that income year.

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14. If the cost base of your units in RARPF is reduced to nil, any further AMIT cost base net amount under paragraph 104-107C(a) would result in you making a capital gain under CGT event E10 (section 104-107A).

Cost base of units in RAM Australia Medical Property Fund

15. The first element of the cost base and reduced cost base of the RAM Medical Fund units you acquired in satisfaction of your entitlement to receive the return of capital will be 74.05 cents per unit (subsections 110-25(2) and 110-55(2)).

Acquisition date of units in RAM Australia Medical Property Fund

16. You acquired your units in RAM Medical Fund on 20 October 2021 (table item 3 of section 109-10).

CGT event H2 will happen upon stapling of the units

17. CGT event H2 will happen to you as a result of the stapling of the RARPF units and the RAM Medical Fund units because it is an act, transaction or event which occurs in relation to a CGT asset that you own and does not result in an adjustment being made to the cost base or reduced cost base of any of your units (subsection 104-155(1)).

18. However, you will not make a capital gain or capital loss as a result of CGT event H2 happening as you will not receive capital proceeds or incur any incidental costs due to the stapling of the units (subsection 104-155(3)).

Scheme

19. 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.

Background

20. Real Asset Management Group Pty Ltd (RAM Group) is a global funds management firm which was established in 2010.

21. RAM Group caused RARPF to be settled in 2016.

22. RAM Group caused RAM Medical Fund to be settled in 2018.

23. RAM Group decided to form the RAM Essential Services Property Fund (RESPF) by stapling the units in RARPF and the units in RAM Medical Fund, raising capital by issuing new units and listing the stapled units on the Australian Securities Exchange (ASX).

RAM Australia Retail Property Fund

24. RARPF invests in Australian retail property, with a focus on sub-regional and neighbourhood shopping centres.

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25. RARPF is a registered managed investment scheme under Chapter 5C of the *Corporations Act 2001*. The Trustee and responsible entity of RARPF is RAM Property Funds Management Ltd, a wholly-owned subsidiary of RAM Group.

26. RARPF is an attribution managed investment trust under section 276-10.

RAM Australia Medical Property Fund

27. RAM Medical Fund invests in Australian property that involves medical facilities or medical service providers.

28. RAM Medical Fund is a registered managed investment scheme under Chapter 5C of the *Corporations Act 2001*. The Trustee and responsible entity of RAM Medical Fund is also RAM Property Funds Management Ltd.

Return of capital, acquisition of units and stapling

29. The Trustee of RARPF split its issued units on the basis of a ratio of 1.0087 to 1, increasing the number of issued units in RARPF.

30. On 20 October 2021, the Trustee of RARPF made a return of capital to the unit holders of RARPF (who were unit holders on the Record Date) of 74.05 cents per unit.

31. The Trustee of RARPF accounted for the return of capital by debiting the unitholders' funds account by \$3,333,520.

32. The Trustee of RARPF satisfied the unit holders' entitlement to receive the return of capital by compulsorily applying 74.05 cents per unit on behalf of RARPF unit holders to subscribe for new units in RAM Medical Fund.

33. As a result of this subscription, the Trustee of RAM Medical Fund issued new units to the unit holders of RARPF on 20 October 2021. Unit holders held the same number of RARPF units and RAM Medical Fund units.

34. The units in RARPF were then stapled to the units in RAM Medical Fund on a 1:1 basis to form RESPF stapled securities. This means that the units can only be owned and transferred together.

35. 356,926,370 new RESPF stapled securities were also issued to investors through an initial public offering.

36. The units in RARPF and RAM Medical Fund were admitted to the official list of the ASX, and commenced trading as RESPF stapled securities (under the ASX code 'REP') on a conditional and deferred settlement basis on 20 October 2021.

Commissioner of Taxation

9 February 2022

Status: **not legally binding**

References

Previous draft:

Not previously issued as a draft

- ITAA 1997 104-155(1)
- ITAA 1997 104-155(3)
- ITAA 1997 109-5(1)

Related Rulings/Determinations:

TR 2006/10

- ITAA 1997 109-10
- ITAA 1997 110-25(2)
- ITAA 1997 110-55(2)

Legislative references:

- ITAA 1936 6(1)
- ITAA 1936 99B
- ITAA 1997 6-5(1)
- ITAA 1997 104-107A
- ITAA 1997 104-107B
- ITAA 1997 104-107C
- ITAA 1997 104-107C(a)
- ITAA 1997 104-107D
- ITAA 1997 104-107E

- ITAA 1997 112-25(1)
- ITAA 1997 112-25(2)
- ITAA 1997 112-25(3)
- ITAA 1997 Div 230
- ITAA 1997 276-10
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- TAA 1953
- Corporations Act 2001 5C

ATO references

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