


TD 2001/D13 - Income tax: capital gains: scrip for scrip roll-over: can the exchange of an interest (not being a unit) in a trust for a unit in a unit trust satisfy the requirements in subparagraph 124-781(1)(a)(i) of the Income Tax Assessment Act 1997 ?

 This cover sheet is provided for information only. It does not form part of *TD 2001/D13 - Income tax: capital gains: scrip for scrip roll-over: can the exchange of an interest (not being a unit) in a trust for a unit in a unit trust satisfy the requirements in subparagraph 124-781(1)(a)(i) of the Income Tax Assessment Act 1997 ?*

This document has been finalised by TD 2002/22.



Draft Taxation Determination

Income tax: capital gains: scrip for scrip roll-over: can the exchange of an interest (not being a unit) in a trust for a unit in a unit trust satisfy the requirements in subparagraph 124-781(1)(a)(i) of the *Income Tax Assessment Act 1997*?

Preamble

Draft Taxation Determinations (DTDs) present the preliminary, though considered, views of the Australian Taxation Office. DTDs should not be relied on; only final Taxation Determinations represent authoritative statements by the Australian Taxation Office.

1. Yes. Subparagraph 124-781(1)(a)(i), in referring to an exchange of ‘a unit or other interest ... in a trust’ for ‘a unit or other interest ... in another trust’ encompasses an exchange of any of the following:
 - (a) a unit in a unit trust for a unit in another unit trust;
 - (b) a unit in a unit trust for a an interest (not being a unit) in a trust;
 - (c) an interest (not being a unit) in a trust for a unit in a unit trust; and
 - (d) an interest (not being a unit) in a trust for an interest (not being a unit) in another trust.
2. For roll-over under Subdivision 124-M of the *Income Tax Assessment Act 1997* (ITAA 1997) to be available, interests in an entity must be exchanged for similar interests in another entity: see paragraph 2.9 of the explanatory memorandum to the New Business Tax System (Capital Gains Tax) Bill 1999. A unit in a unit trust is a similar interest to an interest in a trust.
3. However, the holders of units or interests in any of the above exchanges must satisfy the requirement in paragraph 124-781(1)(b) that the holders of the interests in the original entity and the holders of the interests in the acquiring entity have ‘fixed entitlements’ to all of the income and capital of the respective trusts both before and after the exchange. A ‘fixed entitlement’ is defined in section 272-5 of Schedule 2F of the *Income Tax Assessment Act 1936* to be ‘a vested and indefeasible interest in a share of income of the trust that the trust derives from time to time, or of the capital of the trust.’

4. If:
- the original interest holder and the trustee of the acquiring entity did not deal with each other at arm's length, and
 - neither the original entity nor the acquiring entity had at least 300 beneficiaries just before the arrangement started,

subsection 124-781(4) of the ITAA 1997 requires these conditions to be also satisfied:

- (a) the market value of the original interest holder's capital proceeds for the exchange is at least substantially the same as the market value of its original interest; and
- (b) its replacement interest carries the same kind of rights and obligations as those attached to its original interest.

Example

5. *The trustee of the Bottles Trust makes an offer to acquire all of the units in the Cans Unit Trust. Under the arrangement, the unitholders in the Cans Unit Trust will exchange their units for interests in the Bottles Trust. The beneficiaries of the Bottles Trust and the unitholders in the Cans Unit Trust have fixed entitlements to all of the income and capital of the respective trusts. Subsection 124-781(4) does not apply to the arrangement. The exchange of units in the Cans Unit Trust for interests in the Bottles Trust can satisfy subparagraph 124-781(1)(a)(i).*

Note:

6. An arrangement must meet the other conditions in Subdivision 124-M of the ITAA 1997 for scrip for scrip roll-over to be available.

Your comments

7. We invite you to comment on this draft Taxation Determination. We are allowing 2 weeks for comments before we finalise the Determination. If you want your comments considered, please provide them to us within this period.

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Commissioner of Taxation

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Previous draft:

Not previously issued in draft form

Subject references:

- arrangement
- capital gain
- exchange
- fixed entitlement
- interest in a trust

- roll-over
- scrip
- scrip for scrip roll-over
- similar interests
- trust
- unit
- unit trust

Legislative references:

- ITAA 1997 124-781(1)(a)(i)
- ITAA 1997 124-781(1)(b)
- ITAA 1997 124-781(4)
- ITAA 1997 Subdivision 124-M
- ITAA 1936 Schedule 2F 272-5

ATO references:

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