



CR 2001/85 - Income tax: capital gains: scrip for scrip roll-over: exchange of units in the Transurban City Link Unit Trust for units in the Transurban Holding Trust

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Class Ruling

Income tax: capital gains: scrip for scrip roll-over: exchange of units in the Transurban City Link Unit Trust for units in the Transurban Holding Trust

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Preamble

*The number, subject heading, and the **What this Class Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Arrangement** and **Ruling** parts of this document are a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**. CR 2001/1 explains Class Rulings and Taxation Rulings TR 92/1 and TR 97/16 together explain when a Ruling is a public ruling and how it is binding on the Commissioner.*

What this Class Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the tax law identified below applies to the defined class of persons who take part in the arrangement to which this Ruling relates.

Tax law

2. The tax law dealt with in this Ruling is Subdivision 124-M of the *Income Tax Assessment Act 1997* (ITAA 1997).

Class of persons

3. The class of persons to whom this Ruling applies is the unitholders in the Transurban City Link Unit Trust ('the CityLink Trust'), who:

- (a) are 'residents of Australia' as that term is defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936), or are 'non-residents' of Australia within the meaning of that expression in subsection 6(1) of ITAA 1936 but would be subject to capital gains tax because the units in the CityLink Trust being disposed of have the necessary connection with Australia under any of the categories of CGT assets in section 136-25;

- (b) are not 'significant stakeholders' or 'common stakeholders' within the meaning of those expressions as used in Subdivision 124-M of the ITAA 1997;
- (c) will dispose of their units in the CityLink Trust to the Transurban Holding Trust ('the Holding Trust') in exchange for units in the Holding Trust;
- (d) choose CGT scrip for scrip roll-over in accordance with paragraph 124-781(3)(c) of the ITAA 1997;
- (e) apart from the roll-over for which Subdivision 124-M of the ITAA 1997 provides, would make a capital gain from a CGT event happening in relation to their units in the CityLink Trust; and
- (f) might make a capital gain from a replacement unit in the Holding Trust which would not be disregarded (except because of a roll-over).

Qualifications

4. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.

5. The class of persons defined in this Ruling may rely on its contents provided the arrangement described below at paragraphs 9 to 14 is carried out in accordance with the details of the arrangement provided in this Ruling.

6. If the arrangement described in this Ruling is materially different from the arrangement that is actually carried out:

- (a) this Ruling has no binding effect on the Commissioner because the arrangement entered into is not the arrangement on which the Commissioner has ruled, and
- (b) this Ruling may be withdrawn or modified.

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The Manager
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Date of effect

8. This Class Ruling applies to the 2001-2002 income year.

Arrangement

9. The arrangement that is the subject of the Ruling is described below. This description is based on the following documents. These documents, or relevant parts of them, as the case may be, form part of and are to be read with this description. The relevant documents or parts of documents incorporated into this description of the arrangement are:

- (a) Class Ruling application dated 8 November 2001 from Freehills requesting the Commissioner to make a Class Ruling in relation to the capital gains scrip for scrip roll-over provisions as they apply to the exchange of units in the CityLink Trust for units in the Holding Trust on a one for one basis.
- (b) Letter dated 8 October 2001 from Freehills requesting the Commissioner to rule on whether unitholders have fixed entitlements in relation to the transfer of units contemplated in the arrangement.
- (c) Letter dated 2 November 2001 from Freehills attaching a copy of the Equity Infrastructure Bond Trust Deed.
- (d) Letter dated 8 November 2001 from Freehills in response to a request for further information by the Commissioner on 6 November 2001.
- (e) Facsimile dated 22 November 2001 from Freehills to which was attached ASC modifications and ASX waivers.
- (f) Letter dated 23 November 2001 from Freehills providing further information in relation to the arrangement.
- (g) Facsimile dated 23 November 2001 from Freehills to which was attached an ASX modification.
- (h) E-mail dated 23 November 2001 from Freehills in response to a request for further information by the Commissioner on 22 November 2001.
- (i) Letter dated 23 November 2001 from Freehills referencing the Corporations Law and Class Order CO 98/52.

- (j) E-mail dated 25 November 2001 from Freehills as a further submission specific to the requirement of paragraph 124-781(1)(b) of the ITAA 1997.
- (k) Facsimile dated 27 November 2001 from Freehills referring to relief granted by ASIC and waivers to ASX listing rules.
- (l) Facsimile dated 29 November 2001 from Freehills in response to a request for further information by the Commissioner on 28 November 2001.
- (m) Letter dated 3 December 2001 from Freehills referencing amendments to relevant Constitutions and comments in respect of ASIC modifications and ASX waivers.
- (n) E-mail dated 4 December from Freehills in response to a request for further information by the Commissioner on 3 December 2001.
- (o) The restructure documentation accompanying the Class Ruling application, consisting of:
- Articles of Association of Transurban City Link Limited;
 - Constitution of Transurban Holdings Limited;
 - Constitution of the Transurban Holding Trust consolidated up until First Supplemental Deed;
 - Constitution of Transurban Infrastructure Development Limited;
 - Constitution of Transurban Infrastructure Management Limited;
 - CTCS Licence and Services Agreement between Transurban Infrastructure Developments Limited and Transurban City Link Limited;
 - Deed Poll between Transurban Holdings Limited and Scheme Participants;
 - Exhibition Street Extension Fourth Amendment Deed;
 - Exchange Deed between Perpetual Trustee Company Limited and Transurban Infrastructure Management Limited;
 - Implementation Deed between Transurban City Link Limited and Transurban Holdings Limited;

- Information Memorandum dated 19 October 2001;
- Integration and Facilitation Agreement Seventh Amending Deed;
- Management Agreement between Transurban City Link Limited and Transurban Infrastructure Developments Limited;
- Management Agreement between Transurban Holdings Limited and Transurban Infrastructure Developments Limited;
- Management Agreement between Transurban Infrastructure Management Limited and Transurban Infrastructure Developments Limited;
- Melbourne City Link Fifteenth Amending Deed;
- Notice of Meeting of Transurban City Link Limited shareholders;
- Notice of Meeting of Unit Holders;
- Notice of Scheme Meeting of Transurban City Link Limited shareholders;
- Scheme of Arrangement between Transurban City Link Limited and its shareholders;
- Stapling Deed Transurban Group;
- Supplemental Deed to the Transurban City Link Unit Trust Deed;
- Transfer Agreement;
- Trust Deed of the Transurban City Link Unit Trust.

10. The proposed restructure, of which the arrangement that is the subject of this Ruling forms part, is described fully in the Information Memorandum. The restructure will lead to the destapling of the existing securities in CityLink Limited and the CityLink Trust and the establishment of a new structure involving the creation of new vehicles:

- the Holding Trust will hold and beneficially own 100% of the units in the CityLink Trust;
- a holding company - Transurban Holdings Limited ('Holdings Ltd') - will hold and beneficially own 100% of the shares in CityLink Limited; and

- an operations and development company - Transurban Infrastructure Developments Limited ('TIDL') - is to be established to undertake certain activities described in the Information Memorandum.

11. Under the arrangement, the existing unitholders in the CityLink Trust will exchange their units for units in the Holding Trust on a one for one basis. Perpetual Trustee Company Limited is the trustee of the CityLink Trust and Transurban Infrastructure Management Limited is the trustee of the Holding Trust.

12. Under another arrangement (that is not the subject of this Ruling), the shareholders of CityLink Limited will exchange their shares in that company for shares in Holdings Ltd on a one for one basis. Holdings Ltd proposes to subscribe for shares in TIDL on behalf of all Holdings Ltd shareholders for no consideration in accordance with the terms of TIDL's constitution, and TIDL will issue all of the shares for which Holdings Ltd has subscribed.

13. The units in the Holding Trust will after the arrangement be stapled to shares in Holdings Ltd and shares in TIDL.

14. Under the arrangement to which this Ruling applies:

- (a) the Holding Trust is an Australian resident trust estate as defined in subsection 95(2) of the ITAA 1936 and a resident trust for CGT purposes as defined in section 995-1 of the ITAA 1997; and
- (b) Transurban Infrastructure Management Limited (TIML), as trustee of the Holding Trust, is a resident of Australia as defined in subsection 6(1) of the ITAA 1936.

Note: certain information received from Freehills has been provided on a commercial-in-confidence basis and will not be disclosed or released under the Freedom of Information Legislation.

Ruling

15. Subject to the qualifications in paragraphs 4 to 6 of this Ruling, unitholders in the CityLink Trust who are within the class of persons to whom this Ruling applies (as set out in paragraph 3 of this Ruling) will be eligible to choose scrip for scrip roll-over under paragraph 124-781(3)(c) of the ITAA 1997 for the disposal of their units in the CityLink Trust under the arrangement.

16. This Ruling does not apply to the arrangement by which shares held by shareholders of CityLink Limited are exchanged for shares in Holdings Ltd.

Explanations

Availability of scrip for scrip roll-over

17. Subdivision 124-M of the ITAA 1997 contains a number of conditions for, and exceptions to the eligibility of, an entity to choose the roll-over. Some of these conditions and exceptions are not relevant to this arrangement. Below is an outline of the main conditions and exceptions that are relevant to the circumstances of the arrangement that is the subject of this Ruling.

18. Subparagraph 124-781(1)(a)(i) of the ITAA 1997 requires an entity to exchange a unit in a trust (the ‘original trust’) for a unit in another trust.

19. This requirement will be satisfied because the unitholders of the CityLink Trust will exchange each of their units in the CityLink Trust for a unit in the Holding Trust. In the case of foreign unitholders of the CityLink Trust the trustee issues to a nominee one unit for every exchange unit held by the exchanging unitholder. If the units issued to the nominee are later sold a CGT event will happen after the roll-over.

20. Paragraph 124-781(1)(b) of the ITAA 1997 requires that entities have fixed entitlements to all of the income and capital of the original entity (the CityLink Trust) and the acquiring entity (the Holding Trust).

21. Having regard to:

- all of the documents and any other material referred to in paragraph 9 of this Ruling, for example, Part 3, Part 29 and Part 46 of the Trust Deed of the CityLink Trust and Clause 3, Clause 11 and Clause 18 of the Constitution of the Holding Trust; and
- all the facts comprising the arrangement as described in paragraphs 10 to 14 of this Ruling; and
- the fact that any re-investment of income of the Holding Trust by or on behalf of unitholders or beneficiaries of the Holding Trust can only occur by way of the issue of new units in that Trust for a price including the amount of the income re-invested; and
- the fact that, pursuant to Clause 5.7A of the Constitution of the Holding Trust referred to in paragraph 9 of this Ruling, particular obligations are imposed on the trustee of the Holding Trust in relation

to determining the price at which units in the Holding Trust are issued;

it is considered that entities have fixed entitlements to all of the income and capital of both the CityLink Trust and the Holding Trust immediately before, during and immediately after the proposed restructure referred to in paragraphs 10 to 14 of this Ruling occurs.

22. Paragraphs 124-781(1)(c) and 124-781(2)(a) of the ITAA 1997 require that the exchange of units is in consequence of an arrangement that results in the acquiring entity (the Holding Trust) becoming the owner of 80% or more of the trust voting interests in the original entity (the CityLink Trust).

23. The arrangement will result in the Holding Trust acquiring 100% of the units in the CityLink Trust.

24. Paragraphs 124-781(1)(c) and 124-781(2)(b) of the ITAA 1997 require that the exchange of units is in consequence of an arrangement in which at least all owners of trust voting interests in the original entity (the CityLink Trust) could participate.

25. This requirement will be satisfied because all of the existing unitholders will exchange all of their units in the CityLink Trust for units in the Holding Trust.

26. Paragraphs 124-781(1)(c) and 124-781(2)(c) of the ITAA 1997 require that the exchange of units is in consequence of an arrangement in which participation was available on substantially the same terms for all of the owners of units of a particular type.

27. The CityLink Trust has only one class of units. This condition will be satisfied because all of the unitholders will exchange their units in the CityLink Trust for units in the Holding Trust on the same terms.

28. Paragraphs 124-781(3)(a) and 124-781(3)(b) of the ITAA 1997 require that the original interest holder acquired its interest after 20 September 1985 and apart from the roll-over, would make a capital gain from a CGT event happening in relation to its original interest.

29. This condition will be satisfied because all unitholders acquired their units after 20 September 1985. Furthermore, the class of persons to whom this Ruling applies is limited to those unitholders who would otherwise make a capital gain.

30. Paragraph 124-781(3)(c) of the ITAA 1997 requires that the original interest holder choose to obtain roll-over.

31. This condition will be satisfied for those unitholders who choose roll-over.

32. Subsection 124-781(4) of the ITAA 1997 provides additional requirements to be satisfied 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. The additional requirements are:

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

33. Subsection 124-781(4) of the ITAA 1997 will not apply because the CityLink Trust had more than 300 members just before the arrangement started. (Section 124-810 of the ITAA 1997 will not apply to the CityLink Trust because its ownership is not concentrated in the manner contemplated by that section.)

Non-resident original interest holder

34. If a non-resident holder of a unit in the CityLink Trust chooses scrip for scrip roll-over, Category number 9 in the table in section 136-25 of the ITAA 1997 modifies the usual requirement for a replacement unit to have the necessary connection with Australia. The effect of Category number 9, if it applies, is that it treats a non resident unitholder's replacement interest as having the necessary connection with Australia if their original interest had such a connection. So each unit in the Holding Trust which a non-resident holder of a unit in the CityLink Trust receives in exchange for the non-resident holder's unit in the CityLink Trust is treated as having the necessary connection with Australia.

Detailed contents list

35. Below is a detailed contents list for this Class Ruling:

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Commissioner of Taxation

19 December 2001

Previous draft:

- unit trust

Not previously released in draft form

Legislative references:

Subject references:

- acquiring entity
- arrangement
- capital
- capital gain
- class of persons
- exchange
- fixed entitlement
- income
- original entity
- original interest
- replacement interest
- roll-over
- scrip
- scrip for scrip roll-over
- unit
- unitholder

- ITAA 1936 6(1)
- ITAA 1936 95(2)
- ITAA 1997 Subdivision 124-M
- ITAA 1997 124-781(1)(a)(i)
- ITAA 1997 124-781(1)(b)
- ITAA 1997 124-781(1)(c)
- ITAA 1997 124-781(2)(a)
- ITAA 1997 124-781(2)(b)
- ITAA 1997 124-781(3)(a)
- ITAA 1997 124-781(3)(b)
- ITAA 1997 124-781(3)(c)
- ITAA 1997 124-781(4)
- ITAA 1997 124-810
- ITAA 1997 136-25
- ITAA 1997 995-1

ATO References

NO: T2001/019421

ISSN: 1445-2014