



CR 2004/117 - Income tax: FKP Property Group - capital raising

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 This document has changed over time. This is a consolidated version of the ruling which was published on *1 July 2004*



Class Ruling

Income tax: FKP Property Group – capital raising

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Preamble

*The number, subject heading, **What this Class Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Withdrawal**, **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 laws' identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates.

Tax law(s)

2. The tax laws dealt with in this Ruling are:
- section 110-25 of the *Income Tax Assessment Act 1997* (ITAA 1997);
 - section 110-55 of the ITAA 1997; and
 - subsection 112-30(1) of the ITAA 1997.

Class of persons

3. The class of persons to which this Ruling applies are those entities that:

- obtain FKP Property Group stapled securities under the arrangement that is the subject of this Ruling;
- hold those securities on capital account; and
- are residents of Australia within the meaning of that term in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936).

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 actually carried out is carried out in accordance with the arrangement described in paragraphs 10 to 14.
6. If the arrangement actually carried out is materially different from the arrangement that is described in this Ruling, then:
 - 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
 - this Ruling may be withdrawn or modified.
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Date of effect

8. This Ruling applies to the income year ending 30 June 2005. The arrangement will be carried out within that income year.

Withdrawal

9. This Ruling is withdrawn and ceases to have effect after 30 June 2005. The Ruling continues to apply, in respect of the tax laws ruled upon, to all persons within the specified class who enter into the arrangement during the term of the Ruling.

Arrangement

10. The arrangement that is the subject of the Ruling is described below. This description is based on and incorporates the following documents:

- Class Ruling application from KPMG dated 29 July 2004; and
- draft Explanatory Memorandum (dated 20 September 2004) relating to the proposal to staple shares in FKP Limited to units in FKP Property Trust (FKP Trust).

11. The arrangement that is the subject of this Ruling is referred to as the capital raising. It is separate from the stapling arrangement set out in Class Ruling CR 2004/116 which involves the stapling of shares in FKP Limited (FKP) and units in FKP Trust to form FKP Property Group stapled securities.

12. Conditional upon the stapling arrangement being completed, it is proposed that FKP and FKP Trust will raise further capital by way of an offer to acquire FKP Property Group stapled securities. This capital raising will involve an institutional placement and a security purchase plan.

13. The institutional placement involves the issue to professional or sophisticated investors who are also wholesale clients (all within the meaning of the *Corporations Act 2001*) of stapled securities having a value of approximately \$110 million. The issue price will be determined by reference to market conditions at the time of the placement in October/November 2004.

14. Under the security purchase plan, an offer will be made to existing holders of FKP Property Group stapled securities to subscribe for stapled securities worth up to \$5,000 in parcels of either \$2,500 or \$5,000. The offer under this plan is expected to be made shortly after the institutional placement. The issue price will be determined by reference to market conditions at the time of the institutional placement.

Ruling

15. The cost base and reduced cost base of each FKP share and FKP Trust unit comprising an FKP Property Group stapled security issued under the capital raising is determined in accordance with sections 110-25 and 110-55 of the ITAA 1997.

16. The expenditure incurred to acquire an FKP stapled security must be apportioned on a reasonable basis to determine the first element of the cost base and reduced cost base of the share and unit comprising the stapled security (subsection 112-30(1) of the ITAA 1997).

Explanation

17. As each FKP share and FKP Trust unit which comprise an FKP Property Group stapled security are separate assets for capital gains tax purposes, a cost base and reduced cost base must be determined for both of them under sections 110-25 and 110-55 of the ITAA 1997 respectively.

18. Subsection 112-30(1) of the ITAA 1997 states that where only part of the expenditure incurred under a transaction relates to the acquisition of an asset, the first element of the cost base and reduced cost base of the asset is that part of the expenditure that is reasonably attributable to the acquisition of the asset.

19. Consequently, the expenditure incurred to acquire an FKP Group stapled security must be apportioned in accordance with subsection 112-30(1) of the ITAA 1997 to determine the first element of the cost base and reduced cost base of an FKP share and an FKP Trust unit.

20. The Commissioner considers it reasonable to apportion the expenditure incurred to acquire an FKP Property Group stapled security between the FKP share and FKP Trust unit in the same ratio as the net tangible assets of each entity immediately prior to the issue of the securities.

Detailed contents list

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

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Previous draft:

Not previously issued as a draft

- reduced cost base
- shares
- stapled structure

*Related Rulings/Determinations:*CR 2001/1; CR 2004/118;
TR 92/1; TR 97/16*Legislative references:*

- ITAA 1936 6(1)
- ITAA 1997 110-25
- ITAA 1997 110-55
- ITAA 1997 112-30(1)
- TAA 1953 Pt IVAAA
- Copyright Act 1968
- Corporations Act 2001

Subject references:

- acquisition of unit trust units
 - capital gains
 - capital gains tax
 - CGT events G1-G3 – shares
 - cost base
 - dividend income
-

ATO references

NO: 2004/15127
ISSN: 1445-2014