



***CR 2005/102 - Income tax: scrip for scrip roll-over:
exchange of shares in The Hills Motorway Limited for
shares in Transurban Holdings Limited and
exchange of units in Hills Motorway Trust for units in
Transurban Holding Trust***

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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: scrip for scrip roll-over:
exchange of shares in The Hills Motorway
Limited for shares in Transurban Holdings
Limited and exchange of units in Hills
Motorway Trust for units in Transurban
Holding Trust

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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 IVA 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 the following provisions of the *Income Tax Assessment Act 1997* (ITAA 1997):

- section 104-10; and
- Subdivision 124-M.

Class of persons

3. The class of persons to whom this Ruling applies is the holders of the Hills Motorway Group (Hills) stapled securities (consisting of a share in The Hills Motorway Limited (HML) and a unit in Hills Motorway Trust (HMT)) who:

- (a) participate in the arrangement that is the subject of this Ruling;
- (b) hold their HML shares on capital account;

- (c) hold their HMT units on capital account;
- (d) dispose of their HML shares and receive shares in Transurban Holdings Limited (THL);
- (e) dispose of their HMT units and receive units in Transurban Holding Trust (THT); and
- (f) are 'residents of Australia' within the meaning of that expression in subsection 6(1) of the *Income Tax Assessment Act 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 22.
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 year of income ended 30 June 2005 or substituted accounting period. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Withdrawal

9. This Ruling is withdrawn immediately 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 this Ruling is described below. The description is based on, and includes reference to, the following documents:

- (a) Class Ruling application dated 8 August 2005 from Greenwoods and Freehills requesting the Commissioner make a Class Ruling in relation to scrip for scrip roll-over relief that may apply to the exchange of HML shares for THL shares and the exchange of HMT units for THT units;
- (b) Transurban Group (Transurban) Replacement Bidder's Statement dated 14 February 2005;
- (c) copies of Transurban Bidder's Statement dated 4 February 2005, Transurban First Supplementary Bidder's Statement dated 14 February 2005, Transurban Second Supplementary Bidder's Statement dated 17 March 2005 and Transurban Third Supplementary Bidder's Statement dated 13 April 2005;
- (d) copy of Joint Bidding Agreement dated 3 February 2005 between THL, Transurban Infrastructure Management Limited (TIML) as responsible entity for THT and Transurban Nominees 3 Pty Ltd (TN3);
- (e) copy of the THT Constitution as at February 2005;
- (f) copies of the HMT Constitution provided on 8 August 2005, supplemental deed to the HMT constitution dated 24 February 2000 and supplemental deed to the HMT constitution dated 16 June 2005;
- (g) copies of Australian Stock Exchange (ASX) press releases (relating to the Hills takeover offer) by Transurban from 31 January 2005 to 29 June 2005; and
- (h) e-mails from Greenwoods & Freehills from 15 August 2005 to 8 November 2005.

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

Details of the takeover offer

11. The arrangement that is the subject of this Ruling involves the acquisition of the shares in HML by THL and the acquisition of the units in HMT by TIML as responsible entity for THT.

12. On 31 January 2005, Transurban announced a scrip takeover offer to acquire the stapled securities in Hills.

13. Under the offer dated 14 February 2005, a Hills stapled security holder was entitled to receive 1.47 THL shares and 1.47 Transurban Limited (TL) shares for each of their HML shares and 1.47 THT units for each of their HMT units. A THL share, TL share and THT unit form a Transurban stapled security.

14. The offer period commenced 18 February 2005 and following certain extensions, closed on 20 May 2005. A Hills security holder could accept the offer at any time during the offer period.

15. On 13 April 2005 the offer was increased, subject to Transurban securing a stake of 80% or more in Hills. On 6 May 2005 Transurban announced that their interest in Hills exceeded 80% and the offer consideration for each HMT unit was increased to 1.47 THT units and 25 cents in cash.

Completion of the takeover

16. THL and TIML, as responsible entity for THT, appointed TN3 as nominee to effect the takeover offer. TN3 would:

- hold the HML shares absolutely for THL and act as directed by THL in respect of those HML shares; and
- hold the HMT units absolutely for TIML, as responsible entity for THT, and act as directed by TIML in respect of those HMT units.

17. At the close of the offer Transurban held 98.38% of Hills stapled securities. The remaining Hills stapled securities were compulsorily acquired by TN3 on 10 June 2005 on terms consistent with the offer.

18. Subsequent to the compulsory acquisition, Hills securities were delisted and unstapled. The HML shares held by TN3 were transferred to THL and the HMT units held by TN3 were transferred to TIML, as responsible entity for THT.

Other aspects of the takeover

19. Foreign security holders were entitled to participate in the arrangement. The securities to which they became entitled were sold on the ASX on their behalf by a nominee.

20. HML, THL, HMT and THT each had at least 300 members just before the commencement of the arrangement. There were no significant stakeholders or common stakeholders in respect of this arrangement.

21. Both HML and THL were Australian residents at the time of the commencement of the takeover bid. Both HMT and THT were resident trusts for CGT purposes at that time.

22. HMT was established in 1994.

Ruling

Disposal of HML shares and HMT units

23. CGT event A1 happened as a result of a HML shareholder or a HMT unit holder disposing of a HML share or a HMT unit, respectively, under the arrangement described in this Ruling (section 104-10 of the ITAA 1997).

24. The CGT event happened at the time the shareholder or unit holder entered into the contract to dispose of the share or unit or when it was compulsorily acquired (subsection 104-10(3) of the ITAA 1997).

25. A HML shareholder made a capital gain from CGT event A1 happening if the capital proceeds for a HML share exceeded the cost base of the HML share. The HML shareholder made a capital loss if those capital proceeds were less than the share's reduced cost base (subsection 104-10(4) of the ITAA 1997).

26. Similarly, a HMT unit holder made a capital gain from CGT event A1 happening if the capital proceeds for a HMT unit exceeded the cost base of the HMT unit. The HMT unit holder made a capital loss if those capital proceeds were less than the unit's reduced cost base (subsection 104-10(4) of the ITAA 1997).

Availability of scrip for scrip roll-over

27. HML shareholders, to the extent they received THL shares in exchange for their HML shares, and HMT unit holders, to the extent they received THT units in exchange for their HMT units, are eligible to choose scrip for scrip roll-over under the arrangement if:

- (a) they acquired their HML shares or HMT units on or after 20 September 1985 (paragraphs 124-780(3)(a) and 124-781(3)(a) of the ITAA 1997);
- (b) apart from the roll-over under Subdivision 124-M of the ITAA 1997, they would make a capital gain from the CGT event A1 that happened to their HML shares or HMT units (paragraphs 124-780(3)(b) and 124-781(3)(b) of the ITAA 1997); and

- (c) they could not disregard (except because of a roll-over) any capital gain they might make from a replacement THL share or THT unit (paragraph 124-795(2)(a) of the ITAA 1997).

Consequences of scrip for scrip roll-over for HML shareholders

28. A HML shareholder who received THL shares and TL shares for the disposal of their HML shares and chooses roll-over may disregard the capital gain from the disposal to the extent that the shareholder received THL shares. The capital gain is not disregarded to the extent that the shareholder received TL shares for the disposal of their HML shares (subsection 124-790(1) of the ITAA 1997).

29. The first element of the cost base of each THL share is worked out as a portion of the cost base of the HML share for which it was exchanged after reducing that cost base by so much of it that is attributable to the TL shares (subsections 124-785(2) and (3) of the ITAA 1997). The first element of the reduced cost base is calculated similarly (subsection 124-785(4) of the ITAA 1997).

Consequences of scrip for scrip roll-over for HMT unit holders

30. A HMT unit holder who received THT units and cash for the disposal of their HMT units and chooses roll-over may disregard the capital gain from the disposal to the extent that the unit holder received THT units. The capital gain is not disregarded to the extent that the unit holder received cash for the disposal of their HMT units (subsection 124-790(1) of the ITAA 1997).

31. The first element of the cost base of each THT unit is worked out as a portion of the cost base of the HMT unit for which it was exchanged after reducing that cost base by so much of it that is attributable to the cash proceeds (subsections 124-785(2) and (3) of the ITAA 1997). The first element of the reduced cost base is calculated similarly (subsection 124-785(4) of the ITAA 1997).

Explanation

Disposal of HML shares and HMT units

32. CGT event A1 (section 104-10 of the ITAA 1997) happens if there is a change in the ownership of an asset from one entity to another. This event happens when a contract to dispose of the asset is entered into or, if there is no contract, when the change of ownership occurs (subsection 104-10(3) of the ITAA 1997).

33. The time when CGT event A1 happens determines the income year in which any capital gain or loss is made and whether the CGT discount applies to any capital gain (subsection 104-10(3) of the ITAA 1997).

34. Hills security holders who accepted the takeover offer are taken to have disposed of their HML shares and HMT units when they accepted the offer.

35. Hills security holders whose HML shares and HMT units were compulsorily acquired are considered to have disposed of their HML shares and HMT units on 10 June 2005 when the compulsory acquisition was completed in accordance with the *Corporations Act 2001* (subsection 104-10(3) of the ITAA 1997).

36. The time of the CGT event A1 is also relevant in determining the capital proceeds received for each HML share or each HMT unit. The capital proceeds from a CGT event are the money and market value of any property received or entitled to be received, worked out at the time the CGT event happens (subsection 116-20(1) of the ITAA 1997).

37. Hills security holders must therefore determine the market value of a THL share, TL share and THT unit at the time they disposed of their HML shares and HMT units. Hills security holders may refer to the closing price of a Transurban stapled security on the ASX on the date that the Hills security holder disposed of their HML shares and HMT units and allocate this amount between the HML shares and HMT units. Transurban has advised that it can provide information to Hills security holders to assist with this allocation process.

Availability of scrip for scrip roll-over

38. Subdivision 124-M of the ITAA 1997 contains a number of conditions regarding the eligibility of a shareholder to choose scrip for scrip roll-over. The main conditions and exceptions that are relevant to this arrangement are outlined below.

Share for share exchange

Subparagraph 124-780(1)(a)(i) of the ITAA 1997 requires an entity (a HML shareholder) to exchange a share in a company (HML) for a share in another company (THL)

39. This requirement was satisfied by a HML shareholder who received a share in THL as consideration for the disposal of their HML share under the takeover offer. Only partial roll-over will be available as HML shareholders also received TL shares. Refer to paragraph 70 of this Ruling.

Paragraphs 124-780(1)(b) and 124-780(2)(a) of the ITAA 1997 require that shares in an entity (HML – the original entity) be exchanged in consequence of a single arrangement that results in another entity (THL – the acquiring entity) becoming the owner of 80% or more of the voting shares in the original entity (HML)

40. In the context of the scrip for scrip provisions, the exchange of shares in HML for shares in THL is considered to be a single arrangement. THL became the owner of more than 80% of the voting shares in HML as a result of that arrangement.

41. The only issued shares in HML are ordinary shares. These shares satisfy the definition of 'voting share' in subsection 995-1(1) of the ITAA 1997.

42. The Explanatory Memorandum to the New Business Tax System (Capital Gains Tax) Bill 1999 that introduced section 124-780 of the ITAA 1997 states that this test will be satisfied if the share acquisition has a causal connection with the arrangement. It indicates that this connection will exist if, after a takeover offer expires, shares are acquired under powers of compulsory acquisition in the *Corporations Act 2001*.

43. Accordingly, this requirement was satisfied in respect of all HML shares disposed of as part of the takeover offer, including those that were compulsorily acquired.

Paragraphs 124-780(1)(b) and 124-780(2)(b) of the ITAA 1997 require that the exchange of shares is in consequence of a single arrangement in which at least all owners of voting shares in the original entity (HML) (apart from the acquiring entity or members of the acquiring entity's wholly-owned group) could participate

44. This requirement was satisfied as the takeover offer was made to all HML shareholders.

Paragraphs 124-780(1)(b) and 124-780(2)(c) of the ITAA 1997 require that the exchange is in consequence of a single arrangement in which participation was available on substantially the same terms for all of the owners of interests of a particular type in the original entity (HML)

45. This requirement was satisfied as the takeover offer was available on the same terms to all owners of ordinary HML shares.

46. The allotment of THL and TL shares to a nominee on behalf of foreign security holders does not prevent the arrangement from being on substantially the same terms for all owners of shares in HML, as those shareholders are entitled to accept the takeover offer.

Paragraphs 124-780(1)(c) and 124-780(3)(a) of the ITAA 1997 require the original interest holder (a HML shareholder) to have acquired its original interest (HML shares) on or after 20 September 1985

47. Roll-over will only be available for those HML shares that were acquired on or after 20 September 1985. Paragraph 27(a) limits this Ruling in this regard.

Paragraphs 124-780(1)(c) and 124-780(3)(b) of the ITAA 1997 require that, apart from the roll-over, the original interest holder (a HML shareholder) would make a capital gain from a CGT event happening in relation to its original interest (its HML shares)

48. Whether a HML shareholder would, apart from the roll-over, make a capital gain from the disposal of any of their shares to THL is a question of fact that is dependent on the specific circumstances of each shareholder – in particular, on the cost base of each HML share and the value of the capital proceeds received. Paragraph 27(b) limits this Ruling in this regard.

Paragraphs 124-780(1)(c) and 124-780(3)(c) of the ITAA 1997 require that the replacement interest is in the acquiring entity (THL), or the ultimate holding company of the wholly owned group which includes the acquiring entity

49. This requirement was satisfied as the replacement shares received by HML shareholders were in the acquiring entity, THL.

Paragraphs 124-780(1)(c) and 124-780(3)(d) of the ITAA 1997 require that the original interest holder (a HML shareholder) chooses the roll-over, or if section 124-782 of the ITAA 1997 applies to it for the arrangement, it and the replacement entity jointly choose to obtain the roll-over

50. Whether a HML shareholder chooses to obtain roll-over in relation to the disposal of a HML share is a question of fact.

Subsection 124-780(4) of the ITAA 1997 provides that the additional requirements in subsection 124-780(5) of the ITAA 1997 must be satisfied if the original interest holder (a HML shareholder) and the acquiring entity (THL) did not deal with each other at arm's length and:

- ***neither the original entity (HML) nor the replacement entity (THL) had at least 300 members just before the arrangement started (paragraph 124-780(4)(a) of the ITAA 1997); or***
- ***the original interest holder (a HML shareholder), the original entity (HML) and the acquiring entity (THL) were all members of the same linked group just before the arrangement started (paragraph 124-780(4)(b) of the ITAA 1997)***

51. Paragraph 124-780(4)(a) of the ITAA 1997 will not apply because HML and THL each had at least 300 members just before the arrangement started. Section 124-810 of the ITAA 1997 will not apply to HML and THL as ownership of each of the companies was not concentrated in a manner contemplated by that section.

52. Paragraph 124-780(4)(b) of the ITAA 1997 does not apply as HML and THL were not members of the same linked group just before the arrangement commenced.

Unit for unit exchange

Subparagraph 124-781(1)(a)(i) of the ITAA 1997 requires an entity (a HMT unit holder) to exchange a unit in a trust (HMT) for a unit in another trust (THT)

53. This requirement was satisfied by a HMT unit holder who received a unit in THT as consideration for the disposal of their HMT unit under the takeover offer. Only a partial roll-over will be available as HMT unit holders also received cash. Refer to paragraph 74 of this Ruling.

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 (HMT) and the acquiring entity (THT)

54. Having regard to:

- (a) all of the documents and any other material referred to in paragraph 10 of this Ruling; and
- (b) all the facts comprising the arrangement as described in paragraphs 11 to 22 of the Ruling,

it is considered that, for the purposes of paragraph 124-781(1)(b) of the ITAA 1997, there are fixed entitlements to all of the income and capital of HMT and of THT immediately before, during and immediately after the arrangement that is the subject of this Ruling.

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 (THT) becoming the owner of 80% or more of the trust voting interests in the original entity (HMT)

55. A trust voting interest is defined in subsection 124-781(6) of the ITAA 1997 as an interest that confers rights of the same or a similar kind as the rights conferred by a voting share in a company. 'Voting shares' are defined in subsection 995-1(1) of the ITAA 1997 by reference to the definition in section 9 of the *Corporations Act 2001*. All of the HMT units are trust voting interests.

56. As a consequence of the exchange of units in HMT for units in THT, THT became the owner of more than 80% of the HMT units. Accordingly, this requirement was satisfied.

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 (HMT) could participate

57. This requirement was satisfied as the takeover offer was made to all HMT unit holders.

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 in the original entity (HMT)

58. This requirement was satisfied as the takeover offer was available on the same terms to all owners of ordinary HMT units.

59. The allotment of THT units to a nominee on behalf of foreign security holders does not prevent the arrangement from being on substantially the same terms for all owners of units in HMT, as those unit holders are entitled to accept the takeover offer.

Paragraphs 124-781(1)(d) and 124-781(3)(a) of the ITAA 1997 require the original interest holder (a HMT unit holder) to have acquired its original interest (HMT units) on or after 20 September 1985

60. Roll-over will only be available for those HMT units that were acquired on or after 20 September 1985. This requirement was satisfied as HMT was established in 1994.

Paragraphs 124-781(1)(d) and 124-781(3)(b) of the ITAA 1997 require that, apart from the roll-over, the original interest holder (a HMT unit holder) would make a capital gain from a CGT event happening in relation to its original interest (its HMT units)

61. Whether a HMT unit holder would, apart from the roll-over, make a capital gain from the disposal of any of their units in the HMT is a question of fact that is dependent on the specific circumstances of each unit holder – in particular, on the cost base of each HMT unit and the value of the capital proceeds received. Paragraph 27(b) limits this Ruling in this regard.

Paragraphs 124-781(1)(d) and 124-781(3)(c) of the ITAA 1997 require that the original interest holder (a HMT unit holder) chooses the roll-over, or if section 124-782 of the ITAA 1997 applies to it for the arrangement, it and the trustee of the acquiring entity jointly choose to obtain the roll-over

62. Whether a HMT unit holder chooses to obtain the roll-over in relation to a HMT unit is a question of fact.

Subsection 124-781(4) of the ITAA 1997 provides that the additional requirements must be satisfied if the original interest holder (a HMT unit holder) and the trustee of the acquiring entity (THT) 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***

63. Subsection 124-781(4) of the ITAA 1997 will not apply because HMT and THT each had at least 300 beneficiaries just before the arrangement started. Section 124-810 of the ITAA 1997 will not apply to HMT and THT as ownership of each of the trusts was not concentrated in a manner contemplated by that section.

Exceptions to obtaining scrip for scrip roll-over

Paragraph 124-795(2)(a) of the ITAA 1997 provides that the roll-over is not available if any capital gain the original interest holder (a HML shareholder or HMT unit holder) might make from their replacement interest (a THL share or THT unit) would be disregarded

64. Whether the capital gain arising because of the disposal of a HML share or HMT unit is disregarded under another provision of the ITAA 1997 (for example, the Hills security holder holds their HML shares or HMT units as trading stock) is a question of fact. Paragraph 27(c) limits this Ruling in this regard.

Paragraph 124-795(2)(b) of the ITAA 1997 provides that roll-over is not available if the original interest holder (a HML shareholder) and the acquiring entity (THL) are members of the same wholly-owned group just before the original interest holder stops owning their original interest (a HML share), and the acquiring entity is a foreign resident

65. This exception will not apply as THL was not a foreign resident.

Subsection 124-795(4) of the ITAA 1997 provides that roll-over is not available for an original interest (a HML share) in an original entity (HML) that is a company if, just before the arrangement started, the original entity is not an Australian resident and did not have at least 300 members

66. This exception will not apply as HML is an Australian resident just before the commencement of the takeover offer.

Consequences of roll-over

67. Scrip for scrip roll-over enables a shareholder or unit holder to disregard all or part of a capital gain from a share or unit that is disposed of as part of a corporate takeover or merger if the shareholder or unit holder receives a replacement share or unit in exchange. The cost base of the replacement share or unit is determined by apportioning on a reasonable basis the cost base of the original share or unit which is exchanged for it (subsections 124-785(2) and 124-785(3) of the ITAA 1997).

68. If the only capital proceeds the shareholder or unit holder receives are replacement shares or replacement units, respectively, the capital gain is disregarded completely (subsection 124-785(1) of the ITAA 1997). All of the cost base of the original shares and units can be allocated to the replacement shares or units (subsection 124-785(2) of the ITAA 1997).

69. If the shareholder or unit holder receives other capital proceeds as well as the replacement shares or replacement units, the capital gain is disregarded in part (subsection 124-790(1) of the ITAA 1997). Only a portion of the cost base of the original share or original unit can be allocated to the replacement shares or replacement units (subsections 124-785(2), 124-785(3) and 124-785(4) of the ITAA 1997).

Consequences of scrip for scrip roll-over for HML shareholders

70. A HML shareholder who received THL shares and TL shares for the disposal of their HML shares can choose only a partial roll-over. Roll-over will not be available to the extent that the capital gain is attributable to the TL shares (ineligible proceeds) received (subsection 124-790(1) of the ITAA 1997).

71. In calculating the capital gain attributable to their ineligible proceeds, a HML shareholder should deduct from the value of those proceeds a reasonable portion of the cost base of their HML share (just before its disposal) (subsection 124-790(2) of the ITAA 1997).

72. In making a reasonable apportionment of the cost base of a HML share, it is appropriate for a shareholder to consider the value of the ineligible proceeds (the TL shares) compared with the value of the THL shares on the date that CGT event A1 happened to their HML share.

73. The cost base of the HML shares, reduced by that portion that is taken into account in working out the capital gain in respect of the ineligible proceeds, will form the first element of the cost base of the THL shares (subsections 124-785(2) and (3) of the ITAA 1997).

Consequences of scrip for scrip roll-over for HMT unit holders

74. A HMT unit holder who received THT units and cash for the disposal of their HMT units can choose only a partial roll-over. Roll-over will not be available to the extent that the capital gain is attributable to the cash (ineligible proceeds) received (subsection 124-790(1) of the ITAA 1997).

75. In calculating the capital gain attributable to their ineligible proceeds, a HMT unit holder should deduct from the value of those proceeds a reasonable portion of the cost base of their HMT unit (just before its disposal) (subsection 124-790(2) of the ITAA 1997).

76. In making a reasonable apportionment of the cost base of a HMT unit, it is appropriate for a shareholder to consider the value of the ineligible proceeds (the amount of cash) compared with the value of the THT units on the date that CGT event A1 happened to their HMT unit.

77. The cost base of the HMT units, reduced by that portion that is taken into account in working out the capital gain in respect of the ineligible proceeds, will form the first element of the cost base of the THT units (subsections 124-785(2) and (3) of the ITAA 1997).

Detailed contents list

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Paragraphs 124-780(1)(b) and 124-780(2)(c) of the ITAA 1997 require that the exchange is in consequence of a single arrangement in which participation was available on substantially the same terms for all of the owners of interests of a particular type in the original entity (HML)

45

Paragraphs 124-780(1)(c) and 124-780(3)(a) of the ITAA 1997 require the original interest holder (a HML shareholder) to have acquired its original interest (HML shares) on or after 20 September 1985

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Paragraphs 124-780(1)(c) and 124-780(3)(b) of the ITAA 1997 require that, apart from the roll-over, the original interest holder (a HML shareholder) would make a capital gain from a CGT event happening in relation to its original interest (its HML shares)

48

Paragraphs 124-780(1)(c) and 124-780(3)(c) of the ITAA 1997 require that the replacement interest is in the acquiring entity (THL), or the ultimate holding company of the wholly owned group which includes the acquiring entity

49

Paragraphs 124-780(1)(c) and 124-780(3)(d) of the ITAA 1997 require that the original interest holder (a HML shareholder) chooses the roll-over, or if section 124-782 of the ITAA 1997 applies to it for the arrangement, it and the replacement entity jointly choose to obtain the roll-over

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Subsection 124-780(4) of the ITAA 1997 provides that the additional requirements in subsection 124-780(5) of the ITAA 1997 must be satisfied if the original interest holder (a HML shareholder) and the acquiring entity (THL) did not deal with each other at arm's length and:

- neither the original entity (HML) nor the replacement entity (THL) had at least 300 members just before the arrangement started (paragraph 124-780(4)(a) of the ITAA 1997); or*
- the original interest holder (a HML shareholder), the original entity (HML) and the acquiring entity (THL) were all members of the same linked group just before the arrangement started (paragraph 124-780(4)(b) of the ITAA 1997)*

51

Unit for unit exchange

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Subparagraph 124-781(1)(a)(i) of the ITAA 1997 requires an entity (a HMT unit holder) to exchange a unit in a trust (HMT) for a unit in another trust (THT)

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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 (HMT) and the acquiring entity (THT)

54

<i>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 (THT) becoming the owner of 80% or more of the trust voting interests in the original entity (HMT)</i>	55
<i>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 (HMT) could participate</i>	57
<i>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 in the original entity (HMT)</i>	58
<i>Paragraphs 124-781(1)(d) and 124-781(3)(a) of the ITAA 1997 require the original interest holder (a HMT unit holder) to have acquired its original interest (HMT units) on or after 20 September 1985</i>	60
<i>Paragraphs 124-781(1)(d) and 124-781(3)(b) of the ITAA 1997 require that, apart from the roll-over, the original interest holder (a HMT unit holder) would make a capital gain from a CGT event happening in relation to its original interest (its HMT units)</i>	61
<i>Paragraphs 124-781(1)(d) and 124-781(3)(c) of the ITAA 1997 require that the original interest holder (a HMT unit holder) chooses the roll-over, or if section 124-782 of the ITAA 1997 applies to it for the arrangement, it and the trustee of the acquiring entity jointly choose to obtain the roll-over</i>	62
<i>Subsection 124-781(4) of the ITAA 1997 provides that the additional requirements must be satisfied if the original interest holder (a HMT unit holder) and the trustee of the acquiring entity (THT) 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:</i>	
(a) <i>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</i>	
(b) <i>the replacement interest must carry the same kind of rights and obligations as those attached to the original interest</i>	63
<i>Exceptions to obtaining scrip for scrip roll-over</i>	64

Paragraph 124-795(2)(a) of the ITAA 1997 provides that the roll-over is not available if any capital gain the original interest holder (a HML shareholder or HMT unit holder) might make from their replacement interest (a THL share or THT unit) would be disregarded 64

Paragraph 124-795(2)(b) of the ITAA 1997 provides that roll-over is not available if the original interest holder (a HML shareholder) and the acquiring entity (THL) are members of the same wholly-owned group just before the original interest holder stops owning their original interest (a HML share), and the acquiring entity is a foreign resident 65

Subsection 124-795(4) of the ITAA 1997 provides that roll-over is not available for an original interest (a HML share) in an original entity (HML) that is a company if, just before the arrangement started, the original entity is not an Australian resident and did not have at least 300 members 66

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Commissioner of Taxation

16 November 2005

Previous draft: - unit
Not previously issued as a draft - unit holder

<p><i>Related Rulings/Determinations:</i> CR 2001/1; TR 92/1; TR 92/20; TR 97/16</p> <p><i>Subject references:</i></p> <ul style="list-style-type: none"> - arrangement - capital proceeds - CGT event - company - cost base - interests - ordinary share - original interest - replacement interest - resident - roll-over - scrip for scrip roll-over - share - shareholder - stapled security - takeover 	<p><i>Legislative references:</i></p> <ul style="list-style-type: none"> - ITAA 1936 6(1) - ITAA 1997 104-10 - ITAA 1997 104-10(3) - ITAA 1997 104-10(4) - ITAA 1997 116-20(1) - ITAA 1997 Subdiv 124-M - ITAA 1997 124-780 - ITAA 1997 124-780(1)(a)(i) - ITAA 1997 124-780(1)(b) - ITAA 1997 124-780(1)(c) - ITAA 1997 124-780(2)(a) - ITAA 1997 124-780(2)(b) - ITAA 1997 124-780(2)(c) - ITAA 1997 124-780(3)(a) - ITAA 1997 124-780(3)(b) - ITAA 1997 124-780(3)(c) - ITAA 1997 124-780(3)(d) - ITAA 1997 124-780(4) - ITAA 1997 124-780(4)(a) - ITAA 1997 124-780(4)(b)
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