



CR 2005/50 - Income tax: capital gains: scrip for scrip roll-over: exchange of units in the Macquarie Airports Sophisticated Investor Trust No. 2 for units in the Macquarie Airports Trust (1)

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Class Ruling

Income tax: capital gains: scrip for scrip roll-over: exchange of units in the Macquarie Airports Sophisticated Investor Trust No. 2 for units in the Macquarie Airports Trust (1)

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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**, **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(s)

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 which this Ruling applies are the holders of units in Macquarie Airports Sophisticated Investor Trust No. 2 (MASIT2) 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 the ITAA 1936 but would be subject to capital gains tax because the units in MASIT2 being disposed of have the necessary connection with Australia under any of the categories of CGT assets in section 136-25 of the ITAA 1997;

- (b) acquired their interest in MASIT2 on or after 20 September 1985;
- (c) disposed of their units in MASIT2 to Macquarie Airports Management Limited as responsible entity for the Macquarie Airports Trust (1) (MAT1) in exchange for units in MAT1; and
- (d) are not 'significant stakeholders' or 'common stakeholders' within the meaning of those expressions as used in Subdivision 124-M.

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 at paragraphs 9 to 12.
6. If the arrangement actually carried out is materially different from the arrangement that is described in this Ruling:
 - (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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Date of effect

8. This Class Ruling applies to 2003-04 income year.

Arrangement

9. The arrangement that is the subject of this Ruling is described below. The description is based on, and includes, the following documents:

- (a) Class Ruling application dated 21 June 2004 from Allens Arthur Robinson requesting the Commissioner of Taxation to make a Class Ruling in relation to the scrip for scrip roll-over provisions as they apply to the exchange of units in MASIT2 for units in MAT1;
- (b) Offer letter from Macquarie Airports Management Limited as responsible entity of the MAT1 to MASIT2 investors;
- (c) Sample Unit Acquisition Agreement;
- (d) Constitution of MASIT2;
- (e) Constitution of MAT1;
- (f) Financial Statements for MASIT2 for the year ended 30 June 2003;
- (g) Financial Statements for MAT1 for the year ended 30 June 2003; and
- (h) Correspondence from Allens Arthur Robinson dated 16 November 2004, 27 January 2005, 3 and 7 February 2005 and 10 March 2005.

10. The arrangement that is the subject of this Ruling involves the acquisition of the units in the MASIT2 by Macquarie Airports Management Limited as responsible entity of the MAT1.

11. On 24 February 2004, Macquarie Airports Management Limited as responsible entity of the MAT1 announced an offer to acquire the units in MASIT2. The offer was made to all MASIT2 unit holders and was open until 17 March 2004. MAT1 received acceptances from 100% of MASIT2 unit holders. Under the offer, MASIT2 unit holders received 1.07682624 MAT1 units for each MASIT2 unit.

12. Under the arrangement to which this Ruling applies:

- (a) Macquarie Specialised Asset Management Limited as trustee of the MASIT2 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) Macquarie Airports Management Limited as responsible entity for MAT1 is a resident of Australia as defined in subsection 6(1) of the ITAA 1936.

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

Ruling

13. Subject to the qualifications in paragraphs 4 to 6 of this Ruling, holders of units in MASIT2 who are within the class of persons to whom this Ruling applies can choose roll-over under Subdivision 124-M of the ITAA 1997 for the disposal of a MASIT2 unit acquired after 19 September 1985 if:

- (a) apart from the roll-over, they would make a capital gain from disposal of the MASIT2 units under the arrangement; and
- (b) they might make a capital gain from a replacement unit in MAT1 which would not be disregarded (except because of a roll-over).

Explanation

Availability of scrip for scrip roll-over

14. Scrip for scrip roll-over enables a unit holder to disregard a capital gain they make from a unit that is transferred as part of a takeover or merger to the extent that the unit holder receives a replacement unit in exchange. The roll-over also provides that the cost base and reduced cost base of each new unit is based on those of the original units at the time of the roll-over.

15. Roll-over will be available for a MASIT2 unit holder if certain conditions are satisfied.

16. Subdivision 124-M of the ITAA 1997 contains a number of conditions for, and exceptions to, the eligibility of a unit holder to choose scrip for scrip roll-over. The main conditions and exceptions that are relevant to the circumstances of the arrangement that is the subject of this Ruling are outlined below.

Subparagraph 124-781(1)(a)(i) of the ITAA 1997 requires an entity (a MASIT2 unit holder) to exchange a unit in a trust for a unit in another trust.

17. This requirement is satisfied because the MASIT2 unit holder has exchanged each of their units in MASIT2 for units in MAT1.

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 (MASIT2) and the acquiring entity (MAT1)

18. Having regard to:

- (a) all of the documents and any other material referred to in paragraph 9 of this Ruling; and
- (b) all the facts comprising the arrangement as described in paragraphs 10 to 12 of this 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 MASIT2 and MAT1 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) require that the exchange of units is in consequence of an arrangement that results in the acquiring entity (MAT1) becoming the owner of 80% or more of the trust voting interests in the original entity (MASIT2)

A trust voting interest is defined in subsection 124-781(6) 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

19. This requirement is satisfied. All of the MASIT2 units are trust voting interests as defined in subsection 995-1(1). As a consequence of the offer made on 24 February 2004, MAT1 became the owner of 100% of the MASIT2 units.

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 (MASIT2) could participate

20. This requirement is satisfied because the offer by MAT1 was made to all unit holders in MASIT2.

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

21. MASIT2 has only one class of units. This condition will be satisfied because the same offer was made to all MASIT2 unit holders and therefore all unit holders will exchange their units on the same terms. Each MASIT2 unit holder received the same consideration for each MASIT2 unit disposed of.

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

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 would make a capital gain from a CGT event happening in relation to its original interest

22. The class of persons to whom this Ruling applies is limited to those unit holders who acquired their MASIT2 units on or after 20 September 1985 and who, apart from rollover, would make a capital gain from a CGT event happening in relation to its original interest.

23. Whether a MASIT2 unit holder would make a capital gain apart from the roll-over is dependent on the specific circumstances of each unit holder including the unit holder's cost base of each MASIT2 unit at the time of disposal.

24. Roll-over is not available if, in respect of a MASIT2 unit, a unit holder would make a capital loss.

Paragraphs 124-781(1)(d) and 124-781(3)(c) of the ITAA 1997 requires that the original interest holder choose to obtain roll-over

25. This Ruling only applies to those MASIT2 unit holders who choose roll-over.

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**

26. Subsection 124-781(4) of the ITAA 1997 will not apply because MAT1 had more than 300 members just before the arrangement started. (Section 124-810 of the ITAA 1997 will not apply to MAT1 because its ownership is not concentrated in the manner contemplated by that section.)

Exceptions to obtaining scrip for scrip roll-over***Roll-over is not available if any of the exceptions in section 124-795 apply***

Subsection 124-795(1) of the ITAA 1997 provides that roll-over for non-resident interest holders is not available if their replacement interests are in an entity that is not a resident trust for CGT purposes

27. MAT1 is an Australian resident trust.

28. If a non-resident unit holder in MASIT2 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 unit holder's replacement interest as having the necessary connection with Australia if their original interest had such a connection. So each unit in MAT1 that a non-resident holder of a unit in MASIT2 receives in exchange for the non-resident holder's unit in the MASIT2, where that MASIT2 unit had the necessary connection with Australia, is treated as having the necessary connection with Australia.

Paragraph 124-795(2)(a) of the ITAA 1997 provides that roll-over is not available if any capital gain an interest holder might make from their replacement interest would be disregarded (except because of a roll-over)

29. This exception may apply, if for example, the unit holder holds their MAT1 units as trading stock. Paragraph 13 limits this ruling in this regard.

30. The other exceptions in section 124-785 of the ITAA 1997 do not apply as they relate to companies.

Detailed contents list

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Commissioner of Taxation

22 June 2005

<i>Previous draft:</i>	<i>Legislative references:</i>
Not previously issued as a draft	- ITAA 1936 6(1)
	- ITAA 1936 95(2)
	- ITAA 1997 Subdiv 124-M
<i>Related Rulings/Determinations:</i>	- ITAA 1997 124-781(1)(a)(i)
CR 2001/1; TR 92/1; TR 97/16	- ITAA 1997 124-781(1)(b)
	- ITAA 1997 124-781(1)(c)
	- ITAA 1997 124-781(1)(d)
<i>Subject references:</i>	- ITAA 1997 124-781(2)(a)
- acquiring entity	- ITAA 1997 124-781(2)(b)
- arrangement	- ITAA 1997 124-781(2)(c)
- capital	- ITAA 1997 124-781(3)(a)
- capital gain	- ITAA 1997 124-781(3)(b)
- class of persons	- ITAA 1997 124-781(3)(c)
- exchange	- ITAA 1997 124-781(4)
- fixed entitlement	- ITAA 1997 124-781(6)
- income	- ITAA 1997 124-785
- original entity	- ITAA 1997 124-795
- original interest	- ITAA 1997 124-795(1)
- replacement interest	- ITAA 1997 124-795(2)(a)
- roll-over	- ITAA 1997 124-810
- scrip	- ITAA 1997 136-25
- scrip for scrip roll-over	- ITAA 1997 995-1
- unit	- ITAA 1997 995-1(1)
- unit holder	- Copyright Act 1968
- unit trust	- Corporations Act 2001 9
	- TAA 1953 Pt IVAAA

ATO references

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