



CR 2006/36 - Income tax: capital gains: scrip for scrip roll-over: exchange of units in the Principal America Office Trust for units in the Macquarie Office 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: capital gains: scrip for scrip
roll-over: exchange of units in the
Principal America Office Trust for units in
the Macquarie Office Trust.

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❶ This Ruling provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, we must apply the law to you in the way set out in the ruling (or in a way that is more favourable for you if we are satisfied that the ruling is incorrect and disadvantages you, and we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant taxation provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant taxation provision(s)

2. The following provisions of the *Income Tax Assessment Act 1997* (ITAA 1997) are dealt with in this Ruling:

- section 104-10;
- section 109-10;
- subsection 116-20(1); and
- Subdivision 124-M.

Class of entities

3. The class of entities to which this Ruling applies is the holders of units in Principal America Office Trust (PAO) who:

- (a) are 'residents of Australia' as that term is defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936);
- (b) held their PAO units on capital account;
- (c) disposed of their units in PAO in exchange for units in the Macquarie Office Trust (MOF) under this scheme; and
- (d) are not 'significant stakeholders' or 'common stakeholders' within the meaning of those expressions as used in Subdivision 124-M of the ITAA 1997.

Qualifications

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

5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 12 to 18.

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

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme 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. This Ruling is withdrawn and ceases to have effect after 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 issue of the Ruling. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the Gazette; or
- the relevant taxation provisions are not amended

9. If this Class Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (subsection 357-75(1) Item 1 of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

10. If this Class Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Class Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not yet begun; and
- the scheme to which the rulings relate has not begun to be carried out.

11. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (subsection 357(1) Item 3 of Schedule 1 to the TAA).

Scheme

12. The scheme 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 22 November 2005 received from KPMG on behalf of Macquarie Office Management Limited (MOML) as Responsible Entity (RE) for MOF;
- (b) MOF's Bidder's Statement (Bidder's Statement) dated 11 August 2004;
- (c) Consolidated copy of the trust deed dated 8 October 1993 for MOF adopted at the time of *Managed Investments Act* transition, as amended by the Supplemental Deeds dated 22 May 2000, 22 November 2001 and 20 December 2002;
- (d) MOF Supplemental Deed Poll dated 29 July 2004;

- (e) Macquarie Office (US) Trust Supplemental Deed Poll dated 24 December 2004;
- (f) MOF Amending Deed dated 29 July 2004; and
- (g) Constitution of Lend Lease US Office Trust consolidated with amendments as at 16 June 2003.

13. The scheme that is the subject of this Ruling involves the acquisition of the units in PAO by MOF.

14. On 11 August 2004, MOF made an offer to acquire all the units in PAO (the Offer). Under the Offer PAO unitholders received 1.06 of a MOF unit plus a cash component for each PAO unit, with the cash component varying depending on whether the PAO unitholders accepted the Offer before or after planned quarterly distributions by the trusts.

15. At the close of the Offer, approximately 94% of the PAO units were acquired by MOML. The remaining units were compulsorily acquired after that time on terms consistent with the Offer.

16. MOF is a resident trust for capital gains tax (CGT) purposes as defined in subsection 995-1(1) of the ITAA 1997.

17. Both PAO and MOF have only one class of issued units.

18. Both PAO and MOF have at least 300 members just before the commencement of the scheme.

Ruling

Availability of scrip for scrip roll-over

19. PAO unitholders are eligible to choose scrip for scrip roll-over to the extent that they received MOF units in exchange for their PAO units under the Offer if:

- (a) they acquired their PAO units on or after 20 September 1985 (paragraph 124-780(3)(a) of the ITAA 1997);
- (b) apart from the roll-over under Subdivision 124-M of the ITAA 1997, they would have made a capital gain from the CGT event A1 that happened to their PAO units (paragraph 124-780(3)(b) of the ITAA 1997); and
- (c) they cannot disregard (except because of a roll-over) any capital gain they might have made or might make from the MOF unit (subsection 124-795(2) of the ITAA 1997).

Appendix 1 – Explanation

❶ *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

Disposal of PAO units to MOF

20. 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 ITAA 1997).

21. CGT event A1 happened to all PAO unitholders when they accepted the Offer or when their units were compulsorily acquired.

22. A PAO unitholder made a capital gain from CGT event A1 if the capital proceeds for the disposal exceeded the cost base of a PAO unit. The PAO unitholder made a capital loss if those capital proceeds were less than the PAO unit's reduced cost base (subsection 104-10(4) of the ITAA 1997).

23. The time of the CGT event A1 is also relevant in determining the capital proceeds received for each PAO 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 event happens (subsection 116-20(1) of the ITAA 1997).

Time of acquisition of MOF units

24. A MOF unit was acquired by a PAO unitholder when the PAO unitholder accepted the Offer during the Offer Period or when the MOF unit was issued to the PAO unitholder under compulsory acquisition (item 3 in the table in section 109-10 of the ITAA 1997).

Availability of scrip for scrip roll-over

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

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

26. This requirement was satisfied by a PAO unitholder who received a unit in MOF as consideration for the disposal of their PAO unit under the Offer. Only a partial roll-over was available as those unitholders received MOF units and cash (see paragraph 14 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 (PAO) and the acquiring entity (MOF)

27. Having regard to:

- (a) all of the documents and any other material referred to in paragraph 12 of this Ruling; and
- (b) all the facts comprising the scheme as described in paragraphs 12 to 18 of this Ruling

it is considered that, for the purposes of paragraph 124-781(1)(b), there were fixed entitlements to all of the income and capital of PAO and MOF immediately before, during and immediately after the scheme that is the subject of this Ruling.

Paragraphs 124-781(1)(c) and 124-781(2)(a) of the ITAA 1997 require that units in an entity (PAO – the original entity) be exchanged in consequence of a single arrangement that results in another entity (MOF – the acquiring entity) becoming the owner of 80% or more of the trust voting interests in the original entity (PAO)

A trust voting interest is defined in subsection 124-781(6) as an interest that confers rights of the same or 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

28. The acquisition of PAO units by MOF under the Offer was considered to be in consequence of a single arrangement. All of the PAO units were trust voting interests as defined in subsection 995-1(1) of the ITAA 1997. As a consequence of the offer made on 11 August 2004, MOF became the owner of 100% of the PAO 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 (PAO) could participate

29. This requirement was satisfied because the Offer by MOF was made to all unitholders in PAO.

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

30. PAO had only one class of units on issue. This condition was satisfied because the same offer was made to all PAO unitholders and therefore all unitholders exchanged their units on the same terms, including those unitholders whose units were compulsorily acquired. Each PAO unitholder received the same consideration for each PAO 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

31. This Ruling only applies to those unit holders who acquired their PAO units on or after 20 September 1985 and who, apart from the rollover, would make a capital gain from a CGT event happening in relation to their original interest.

32. Whether a PAO unitholder would make a capital gain apart from the roll-over was dependent on the specific circumstances of each unitholder including the unitholder's cost base for each PAO unit at the time of disposal.

33. Roll-over is not available if, in respect of a PAO unit, a unitholder would make a capital loss.

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

34. This Ruling only applies to those PAO unitholders who chose 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***

35. Subsection 124-781(4) will not apply because PAO and MOF had more than 300 members just before the scheme started. Section 124-810 of the ITAA 1997 will not apply to MOF because its ownership is not concentrated in the 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 PAO unitholder) might make from their replacement interest (a MOF unit) would be disregarded

36. Whether the capital gain arising because of the disposal of a MOF unit is disregarded under another provision of the ITAA 1997 (for example, the unitholder holds their MOF units as trading stock) is a question of fact.

37. As this Ruling only applies to a holder who holds PAO units on capital account this exception will not apply.

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

38. This exception will not apply as MOF is not a foreign resident.

Consequences of roll-over

39. Scrip for scrip roll-over enables a unitholder to disregard all or part of a capital gain from a unit that is disposed of as part of a takeover or merger if the unitholder receives a replacement unit in exchange (subsection 124-785(1) of the ITAA 1997). The cost base of the replacement unit is determined by apportioning on a reasonable basis the cost base of the original unit which is exchanged for it (subsection 124-785(2) of the ITAA 1997).

40. If the unitholder receives other capital proceeds as well as the 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 unit can be allocated to the replacement units (subsection 124-785(3) of the ITAA 1997).

41. As the consideration paid to PAO unitholders in respect of their original interests in PAO consisted of MOF units and cash, a PAO unitholder could only choose a partial roll-over. Roll-over will not be available to the extent that the capital gain was attributable to the cash component (ineligible proceeds – subsection 124-790(1) of the ITAA 1997).

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

43. In making a reasonable apportionment of the cost base of a PAO unit, it would be appropriate for a unitholder to consider the value of the ineligible proceeds (the cash) and the MOF unit on the date that CGT event A1 happens to their PAO unit.

44. The cost base and reduced cost base of the PAO units, reduced by that portion that is taken into account in working out the capital gain in respect of the ineligible proceeds, would form the first element of the cost base of MOF units (subsections 124-785(2), 124-785(3) and 124-785(4) of the ITAA 1997).

Appendix 2 – Detailed contents list

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References

Previous draft:

Not previously issued as a draft

Subject references:

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- capital proceeds
- CGT event
- fixed entitlement
- fixed trust
- original interest
- replacement interest
- roll-over
- scrip for scrip roll-over
- takeover
- unitholder
- unit trust

Legislative references:

- TAA 1953
- TAA 1953 Sch 1 335-75(1)
- TAA 1953 Sch 1 357(1)
- ITAA 1936 6(1)
- ITAA 1997 104-10
- ITAA 1997 104-10(3)
- ITAA 1997 104-10(4)
- ITAA 1997 109-10
- ITAA 1997 116-20(1)
- ITAA 1997 Subdiv 124-M
- ITAA 1997 124-780(3)(a)

- ITAA 1997 124-780(3)(b)
- ITAA 1997 124-781(1)(a)(i)
- ITAA 1997 124-781(1)(b)
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- ITAA 1997 124-781(1)(d)
- ITAA 1997 124-781(2)(a)
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- ITAA 1997 124-781(3)(a)
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- ITAA 1997 124-782
- ITAA 1997 124-785(1)
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- ITAA 1997 124-790(2)
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- ITAA 1997 124-795(2)(a)
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- ITAA 1997 124-810
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