


CR 2008/48 - Income tax: Scrip for scrip roll-over: merger of Centro Shopping America Trust with Centro Retail Trust

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Class Ruling

Income tax: Scrip for scrip roll-over: merger of Centro Shopping America Trust with Centro Retail Trust

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1 This publication 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 (unless we are satisfied that the ruling is incorrect and disadvantages you, in which case we may apply the law in a way that is more favourable for you – provided 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 provision(s) identified below apply to the defined class of entities, who took part in the scheme to which this Ruling relates.

Relevant provision(s)

2. The relevant provisions dealt with in this Ruling are:
- section 104-10 of the *Income Tax Assessment Act 1997* (ITAA 1997); and
 - Subdivision 124-M of the ITAA 1997.

All references to legislative provisions in this Ruling are to the ITAA 1997 unless otherwise stated.

Class of entities

3. The class of entities to whom this Ruling applies consists of the unit holders in the Centro Shopping America Trust (CSF) who:
- (a) disposed of their units in CSF on 22 October 2007 under the scheme to which this Ruling applies;
 - (b) were residents of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* at that time;
 - (c) held their CSF units on capital account at that time; and
 - (d) were not 'significant stakeholders' or 'common stakeholders' within the meaning Subdivision 124-M at that time.

In this Ruling, a person belonging to this class of entities is referred to as a 'CSF unit holder'.

Qualifications

4. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out was carried out in accordance with the scheme described in paragraphs 12 to 21 of this Ruling.
5. If the scheme actually carried out was 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

7. This Ruling applies from 1 July 2007 to 30 June 2008. However, the Ruling continues to apply after 30 June 2008 to all entities within the specified class who entered into the specified scheme during the term of the Ruling.

8. 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 provisions are not amended.

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

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

- the income year or other period to which the rulings relate has not 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 (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Scheme

12. The following description of the scheme is based on information and documents provided by the applicant for this Ruling. These documents include the following:

- (a) Class Ruling application dated 6 February 2008;
- (b) Implementation Deed dated 27 August 2007;
- (c) Explanatory Memorandum for a proposed Merger of Centro Shopping America Trust and Centro Retail Trust (CRT) dated 14 September 2007;
- (d) Letter to CSF unit holders dated 25 October 2007; and
- (e) Correspondence and emails received from the applicant in relation to the Class Ruling application.

Note: where certain information has been provided by the applicant on a commercial-in-confidence basis it will not be disclosed or released under the Freedom of Information legislation.

Overview of scheme

13. The scheme that is the subject of this Ruling involved the exchange by the CSF unit holders of all of their CSF units for securities in the stapled group comprised of Centro Retail Trust and Centro Retail Limited (together the stapled group is referred to as CER) and a cash payment.

CSF

14. CSF was, at the time of this scheme, a unit trust publicly listed on the Australian Securities Exchange (ASX) with Centro Funds Management Limited acting as responsible entity. It was principally involved in the business of retail property investment.

15. It had approximately 1.052 billion units on issue immediately prior to the scheme.

CER

16. CER was, at the time of the scheme, a stapled group whose securities were publicly listed on the ASX with Centro MCS Manager Limited acting as responsible entity. Each security consists of a unit in CRT stapled to a share in Centro Retail Limited (CRL). CRL was a shell company – having only \$2 cash and \$2 share capital. CER is principally involved in the business of retail property investment.

17. It had approximately 1.144 billion securities on issue immediately prior to the scheme.

The CPT Asset Acquisition

18. Prior to the merger, a company called CPT Manager Ltd (a wholly owned subsidiary of Centro Property Group) transferred retail property assets (which had a gross value of approximately \$2.2 billion and a net value of approximately \$800m after the assumption of debt) held through Centro managed sub-trusts, to CSF in exchange for the issue by CSF of 690.1 million units. As a consequence CPT Manager Ltd became the owner of 39.6% of the units in CSF.

The merger of CSF with CER

19. All of the CSF unit holders who owned units at the Merger Record Date (9.00pm on 19 October 2007) exchanged each of their CSF units for:

- 0.655 of a unit in the Centro Retail Trust (CRT);
- 0.655 of an ordinary share in Centro Retail Ltd (CRL);
and
- a cash payment of 5 cents (the Special Payment).

20. The receipt by the CSF unit holders of the CRT units and CRL shares was subject to rounding. These units and shares were received as stapled securities, referred to as CER securities. The exchange of the CSF units for the CER securities occurred after close of ASX trading on 22 October 2007 and the Special Payment was made on 25 October 2007.

Other matters

21. All units in CSF were acquired after 19 September 1985, as a consequence no unit holder held pre-CGT units in CSF at the time of this scheme.

Ruling

CGT event A1 happened on the disposal of CSF units

22. CGT event A1 happened when a CSF unit holder disposed of each CSF unit on 22 October 2007 in exchange for part of a CRT unit, part of a CRL share, and the right to receive the cash payment on 25 October 2007 (subsections 104-10(1) and (2) and paragraph 104-10(3)(b)).

Scrip for scrip roll-over

23. If a CSF unit holder made a capital gain from the disposal of their CSF unit, scrip for scrip roll-over can be chosen under section 124-781, to the extent that the capital gain is referable to the receipt of CRT units, subject to the qualification in paragraph 24 of this Ruling.

24. Scrip for scrip roll-over cannot be chosen if any capital gain the CSF unit holder might make from the CSF unit would be disregarded, except because of a roll-over (subsection 124-795(2)).

Commissioner of Taxation

16 July 2008

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.

CGT event A1 happened on the disposal of CSF units

25. CGT event A1 happened when a CSF unit holder disposed of CSF units on 22 October 2007 (subsections 104-10(1) and (2) and paragraph 104-10(3)(b)).

26. A CSF unit holder made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of a CSF unit exceeded its cost base. The CSF unit holder made a capital loss if the capital proceeds were less than the CSF unit’s reduced cost base (subsection 104-10(4)).

27. The capital proceeds for each CSF unit was the sum of:

- the Special Payment of 5 cents;
- the market value of the part of a CRT unit received; and
- the market value of the part of a CRL share received,

in respect of its disposal (subsections 116-20(1) and 116-40(1)).

28. The market value of a CRT unit and a CRL share is worked out at the time the CSF unit holder disposed of the CSF unit (which was on 22 October 2007).

29. The Commissioner accepts that the market value of the CRT unit received was \$1.67. This is the closing price on the ASX of a CER Security on 22 October 2007 (note that since CRL was a shell company it is considered that the entire \$1.67 was attributable to the CRT unit).

30. As a consequence, the capital proceeds for each CSF unit disposed of under the merger was generally \$1.14 – the Special Payment of 5 cents plus \$1.09 (0.655 x \$1.67). These proceeds might be slightly different for those unit holders who had their entitlement to CER securities rounded.

If a capital loss was made

31. If a CSF unit holder made a capital loss from the disposal of their CSF units, the amount of the capital loss is taken into account in working out the unit holder’s net capital gain or net capital loss for the 2007-08 income year (sections 102-5 and 102-10).

If a capital gain is made***Scrip for scrip roll-over***

32. Subdivision 124-M contains a number of conditions for, and exceptions to, a shareholder being eligible to choose scrip for scrip roll-over. The main conditions and exceptions that are relevant to the circumstances of the scheme are:

- (a) units in a trust are exchanged for units in another trust;
- (b) the exchange occurs as part of a single arrangement;
- (c) conditions for roll-over are satisfied;
- (d) further conditions are not applicable or are satisfied; and
- (e) exceptions to obtaining scrip for scrip roll-over are not applicable.

33. Subject to the qualification in paragraph 34 of this Ruling, if a CSF unit holder makes a capital gain from the disposal of their CSF unit, the Commissioner accepts that scrip for scrip roll-over can be chosen under Subdivision 124-M, but only to the extent that the capital gain is referable to the receipt of part of a CRT unit (sections 124-781 and 124-790).

34. Scrip for scrip roll-over cannot be chosen if any capital gain the CSF unit holder might make from the CRT units would be disregarded, except because of a roll-over (subsection 124-795(2)).

35. Scrip for scrip roll-over cannot be chosen to the extent that the capital gain on the CSF unit is referable to the receipt of the Special Payment and the part of the CRL share (section 124-790).

Discount capital gain

36. CSF unit holders who made capital gains that are not disregarded (that is, capital gains for which scrip for scrip roll-over is not, or cannot, be chosen) can treat the amount of those gains as 'discount capital gains', provided that the conditions in Subdivisions 115-A to 115-C are satisfied.

Cost base of CRT units

37. The method for calculating a CSF unit holder's cost base and reduced cost base of each of the CRT units received on 22 October 2007 under the scheme, depends on whether scrip for scrip roll-over was chosen.

Scrip for scrip roll-over was not chosen

38. Where scrip for scrip roll-over was not chosen, the first element of the CSF unit holder's cost base and reduced cost base of each CRT unit received in exchange for CSF units is equal to the market value of the property (that is, the CSF units (or part thereof)) given in exchange for the CRT unit (subsections 110-25(2) and 110-55(2)).

39. The Commissioner accepts that the market value of the CSF units given in exchange for each of the CRT units received under the scheme was \$1.67. This will therefore be the first element of the CSF unit holder's cost base and reduced cost base on 22 October 2007 of each CRT unit.

Scrip for scrip roll-over was chosen

40. Where scrip for scrip roll-over was chosen, the first element of the CSF unit holder's cost base and reduced cost base of each CRT unit received in exchange for CSF units is the sum of parts of the cost bases of the CSF units that are reasonably attributable to the acquisition of the CRT unit (subsections 124-785(2) and 124-785(4)).

Cost base of CRL shares

41. The CRL shares received under the scheme have a nil market value. Therefore, whether scrip for scrip roll-over is chosen or not, the first element of the cost base and the reduced cost base of those shares will be nil at the time of their receipt (22 October 2007).

Acquisition date of CRT units and CRL shares

42. The acquisition date for CSF unit holders of the CRT units and the CRL shares acquired in exchange for their CSF units is 22 October 2007 (section 109-10).

43. However, for the purposes of applying the CGT discount to any later disposal of their CRT units, CSF unit holders who choose scrip for scrip roll-over are taken to have acquired their CRT units when they acquired the corresponding CSF units which were exchanged for the relevant CRT units (item 2 of the table in subsection 115-30(1)).

Appendix 2 – Detailed contents list

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References

Previous draft:

Not previously issued as a draft

Subject references:

- arrangement
- capital proceeds
- CGT cost base
- CGT events
- CGT event A1 – disposal of a CGT Asset
- companies
- scrip for scrip roll-over
- unit trusts

Legislative references:

- ITAA 1936 6(1)
 - ITAA 1997
 - ITAA 1997 102-5
 - ITAA 1997 102-10
 - ITAA 1997 104-10
 - ITAA 1997 104-10(1)
 - ITAA 1997 104-10(2)
 - ITAA 1997 104-10(3)(b)
 - ITAA 1997 104-10(4)
 - ITAA 1997 109-10
 - ITAA 1997 110-25(2)
 - ITAA 1997 110-55(2)
 - ITAA 1997 Subdiv 115-A
 - ITAA 1997 115-30(1)
 - ITAA 1997 Subdiv 115-B
 - ITAA 1997 116-20(1)
 - ITAA 1997 116-40(1)
 - ITAA 1997 Subdiv 115-C
 - ITAA 1997 Subdiv 124-M
 - ITAA 1997 124-781
 - ITAA 1997 124-785(2)
 - ITAA 1997 124-785(4)
 - ITAA 1997 124-790
 - ITAA 1997 124-795(2)
 - TAA 1953
 - TAA 1953 Sch 1 357-75(1)
 - Copyright Act 1968
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ATO references

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