CR 2011/81 - Income tax: capital gains tax: exchange of units in Villa World Trust for ordinary shares in Villa World Limited

Class Ruling

Income tax: capital gains tax: exchange of units in Villa World Trust for ordinary shares in Villa World Limited

Contents Para

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, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is 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 provisions identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provisions

2. The relevant provisions dealt with in this Ruling are:

- section 102-5 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 102-10 of the ITAA 1997;
- section 104-10 of the ITAA 1997;
- section 104-70 of the ITAA 1997;
- section 108-5 of the ITAA 1997;
- section 109-10 of the ITAA 1997;
- section 112-25 of the ITAA 1997;
- section 112-30 of the ITAA 1997;

- Division 115 of the ITAA 1997;
- section 116-20 of the ITAA 1997;
- section 124-10 of the ITAA 1997; and
- Subdivision 124-H of the ITAA 1997.

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

Class of entities

3. The class of entities to which this Ruling applies are the holders of Villa World Trust (VWT) units who:

- participate in the Scheme that is the subject of this Ruling;
- are residents of Australia within the meaning of subsection 6(1) of the *Income Tax Assessment Act 1936*;
- acquired their units in VWT after 19 September 1985;
- hold their units in VWT on capital account; and
- are not subject to the TOFA rules in Division 230 in relation to gains and losses on their VWT units.

(Note: Division 230 will generally not apply to individuals, unless they have made an election for it to apply to them.)

Qualifications

4. The Commissioner makes this Ruling based on the precise arrangement 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 9 to 29 of this Ruling.

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.

Date of effect

8. This Ruling applies from 1 July 2011 to 30 June 2012. The Ruling continues to apply after 30 June 2012 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Scheme

9. The following description of the scheme is based on information provided by the applicant. The following documents, or relevant parts of them form part of and are to be read with the description:

- Class Ruling application dated 15 June 2011 from PricewaterhouseCoopers;
- GEO Property Group Limited constitution;
- GEO Property Trust constitution;
- Supplemental Deed for the GEO Property Trust;
- Annual Financial Report for the GEO Property Group for the year ended 30 June 2010;
- Draft notice of meetings of Villa World Limited (VWL) and Villa World Management (VWM);
- Draft Explanatory Memorandum of Villa World Group (VWG); and
- Draft Scheme Implementation Deed.

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

The Villa World Group

10. The VWG is listed on the Australian Securities Exchange (ASX) as a stapled security. Each stapled security consists of one VWL ordinary share and one Villa World Trust (VWT) unit stapled together (VWG Stapled Security). The effect of the stapling is that the ordinary shares and units can only be dealt with as one security on the ASX.

11. The responsible entity for VWT is VWM. VWL and its Australian subsidiaries formed a tax consolidated group with effect from 21 August 2006.

12. VWT has only one class of units on issue and each unit carries the same rights to the income and capital of VWT as every other unit, in accordance with Clause 9 of the VWT Constitution. VWT is a managed investment scheme registered under Chapter 5C of the *Corporations Act 2001*.

13. VWL is an Australian company and its share capital is divided into two classes of shares, being ordinary shares and one special share. The special share is held by VWM and has limited voting rights. It is not a stapled security and carries no right to receive any dividend or other distribution. In the event that the VWL Stapled Securities are destapled, VWL may redeem the special share for the sum of $1.00. Prior to the implementation of the Trust Scheme, no VWT units were held by VWL.

Change of name

14. VWG was formerly known as the GEO Property Group. At a meeting of members on 30 June 2011, a special resolution of the members approved the following changes of name:

- VWL, formerly known as GEO Property Group Limited;
- VWT, formerly known as GEO Property Trust;
- VWM, formerly known as GEO Management Limited.

The Trust Scheme

15. VWG proposes to simplify its corporate structure by converting from a stapled structure to a single publicly listed company. VWL and VWM will enter into a Scheme Implementation Agreement under which they will agree to take the following steps to implement the Trust Scheme to restructure VWG, subject to approval by VWG Stapled Security holders.

Step 1: destapling of VWG Stapled Securities

16. The constitutions of both VWL and VWT require approval by separate special resolutions of both the VWL ordinary shareholders and VWT unitholders for the destapling of the VWG Stapled Securities to occur.

17. Accordingly, an Annual General Meeting of VWL ordinary shareholders will be held together with a Meeting of the VWT unitholders on 22 November 2011 at which the special resolutions to destaple the VWG Stapled Securities will be put for the approval of the ordinary shareholders and unitholders.

18. When the destapling has been approved, VWM will destaple the VWG Stapled Securities and each former VWG Stapled Security holder will be able to deal with their VWL ordinary shares and VWT units separately for the purposes of implementing the Trust Scheme.

Step 2: acquisition of 100% of VWT units by VWL

19. A further special resolution will also be put to the VWT unitholders seeking their approval for the amendment of the VWT constitution in accordance with the terms of the Supplemental Deed.

20. Upon approval of the special resolution, VWM will execute the Supplemental Deed Poll and lodge it with the Australian Securities and Investment Commission on 23 November 2011.

21. An ordinary resolution will then be put to VWT unitholders for the acquisition of VWT by VWL, which will require a vote of at least 50% of the votes cast for approval.

22. On the Implementation Date for the Trust Scheme, 5 December 2011, VWT unitholders will dispose of their VWT units to VWL. Subject to the approval of a further ordinary resolution, VWL will issue to the VWT unitholders new VWL ordinary shares as consideration for the disposal of their units at the exchange ratio of 1:1. VWL will acquire 100% of the VWT units under the Trust Scheme.

23. Certain VWT unitholders, who are not Australian residents, reside in jurisdictions where foreign securities law restrictions will prevent participation in the Trust Scheme (Ineligible Overseas Unitholders). The Ineligible Overseas Unitholders hold up to 2.6% of the VWT units on issue.

24. VWL ordinary shares will not be issued directly to Ineligible Overseas Unitholders. Instead, new VWL ordinary shares to which Ineligible Overseas Unitholders are entitled will be issued to a Sale Agent appointed under the Supplemental Deed.

Step 3: VWL consolidates its ordinary share capital

25. After the issue of the new VWL ordinary shares by VWL but before the new shares can be dealt with or traded and subject to the approval of an ordinary resolution by VWL shareholders, VWL will undertake a consolidation of its ordinary share capital.

26. Where the consolidation results in an ordinary shareholder having a fractional entitlement to a share, the fractional entitlement will be rounded down to the next whole number or zero as applicable.

27. As a result of the ordinary share consolidation, the former VWG Stapled Security holders will hold exactly the same number of VWL ordinary shares as they held before the implementation of the Trust Scheme, that is, each two VWL ordinary shares will be consolidated into one VWL ordinary share. The consolidation will result in VWL shareholders holding the same proportionate interest in VWL immediately after the consolidation as they held before. The consolidation will occur before any shares are sold by the Sale Agent.

28. The share consolidation will occur in accordance with section 254H of the *Corporations Act 2001*.

29. The VWL ordinary shares held by the Sale Agent will be sold by the Sale Agent on behalf of Ineligible Overseas Unitholders after the Implementation Date. The Sale Agent will then remit the proceeds from the sale to the Ineligible Overseas Unitholders.

Ruling

Two CGT assets before destapling

30. Each ordinary share in VWL and each unit in VWT is a separate CGT asset both before and after the destapling (section 108-5).

Destapling of VWG Stapled Securities

31. A VWT unitholder will not make a capital gain or capital loss when the VWG Stapled Securities are destapled.

CGT event A1 – disposal of VWT units to VWL

32. CGT event A1 will happen as a result of the disposal by a VWT unitholder of a VWT unit to VWL on the Implementation Date (subsections 104-10(1) and 104-10(2) and paragraph 104-10(3)(b)).

Capital gain or loss

33. A VWT unitholder will make a capital gain when CGT event A1 happens if the capital proceeds from the disposal of a VWT unit exceeds its cost base. The capital gain is the amount of the excess. A VWT unitholder will make a capital loss if the capital proceeds are less than the reduced cost base of the VWT unit. The capital loss is the amount of the difference (subsection 104-10(4)).

Cost base of VWT units

34. The first element of the cost base and reduced cost base of a VWT unit will be calculated in accordance with subsection 112-30(1) by allocating to each VWT unit a proportion of the total purchase price of each VWG Stapled Security that is reasonably attributable to the acquisition of that VWT unit. The cost base and reduced cost base of each VWT unit for these VWG Stapled Security holders should be reduced by the non-assessable part of any distributions made to the VWG Stapled Security holder in respect of the VWT unit (section 104-70).

Capital proceeds

35. For a VWT unitholder, the capital proceeds for each VWT unit will be the market value of the VWL ordinary share received in respect of its disposal, worked out on the Implementation Date (subsection 116-20(1)).

Conditions for roll-over satisfied

36. A disposal of units in a unit trust for shares in a company, as described in section 124-445, will happen when the VWT unitholder disposes of a VWT unit to VWL in exchange for a VWL ordinary share. Under the Trust Scheme, the conditions for roll-over under Subdivision 124-H will be satisfied and a VWT unitholder may choose to obtain roll-over under Subdivision 124-H.

Roll-over is chosen

37. A VWT unitholder who chooses roll-over will disregard any capital gain or capital loss made when CGT event A1 happens (subsection 124-10(2)).

38. For a VWT unitholder who chooses roll-over, the first element of the cost base and the reduced cost base for each new VWL ordinary share will be the cost base and the reduced cost base of each VWT unit that was disposed of under the Trust Scheme described in this Ruling and for which roll-over was chosen (subsection 124-10(3)).

Roll-over is not chosen

39. A VWT unitholder who does not choose roll-over must take any capital gain or capital loss from the disposal of their units into account in working out their net capital gain or net capital loss for the income year (subsection 104-10(3) and sections 102-5 and 102-10)).

40. A VWT unitholder who makes a capital gain and who does not choose roll-over may be eligible to treat the gain as a discount capital gain provided they satisfy the requirements of Division 115.

Acquisition date of the replacement VWL s ordinary hares

41. The acquisition date for VWL ordinary shares acquired in exchange for VWT units is the Implementation Date (section 109-10).

42. However, for the purpose of determining eligibility for a discount capital gain, VWT unitholders who choose roll-over are taken to have acquired their replacement VWL ordinary shares when they acquired the corresponding VWT units (item 2 of the table in subsection 115-30(1)).

Consolidation of the VWL ordinary shares

43. The consolidation of the VWL ordinary shares will not result in a CGT event happening (Taxation Determination TD 2000/10). Each element of the cost base and the reduced cost base of each new consolidated VWL ordinary share (at the time of consolidation) is the sum of the corresponding elements of the original ordinary shares that are consolidated to form the new ordinary share (subsection 112-25(4)).

Commissioner of Taxation
14 September 2011

Appendix 1 – Explanation

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.

44. The tax consequences and relevant legislative provisions that arise concerning the Scheme that is the subject of this Ruling are outlined in the Ruling part of this document.

45. The significant tax consequence is the availability of roll-over under Subdivision 124-H. It enables a unit holder of a unit trust to disregard a capital gain or capital loss from a unit that is disposed of as part of a reorganisation of the affairs of the unit trust where the unit holder becomes the owner of new shares in a company.

46. The roll-over provisions in Subdivision 124-H relating to an exchange of units in a unit trust for shares in a company contain a number of conditions for eligibility to choose roll-over relief. The main conditions in relation to a disposal case that are relevant to the Trust Scheme are set out in sections 124-445, 124-450 and 124-465 and are:

- there must be more than one entity that owns all the units in the unit trust (the exchanging members);
- there must be a scheme for reorganising the trust's affairs and the consideration on disposal of the units by the exchanging members must consist of shares in the company and nothing else;
- all unitholders must dispose of their units in exchange for shares in the company;
- the company must own all the units in the unit trust just after all the exchanging members have disposed of their units in the unit trust (the completion time);
- just after the completion time, each unitholder must own a whole number of shares in the company;
- just after the completion time, each unitholder must own a percentage of the shares in the company that were issued to all unitholders that is equal to the percentage of the units in the unit trust that the unitholder owned;
- just after the completion time, the unitholders must own all the shares in the company, or entities other than those unitholders must own no more than 5 shares in the company and the market value of those shares is such that it is reasonable to treat the unitholders as owning all the shares;
- the shares issued in the company must not be redeemable shares; and

- the ratio test in subsection 124-450(3) is met.

47. Under the Trust Scheme the conditions for roll-over under Subdivision 124-H will be satisfied.

Appendix 2 – Detailed contents list

48. The following is a detailed contents list for this Ruling:

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TD 2000/10; TR 2006/10

Subject references:

- arrangement
- CGT asset
- CGT assets
- CGT capital proceeds
- CGT cost base
- CGT event A1 – disposal of a
- CGT reduced cost base
- CGT roll-over relief
- consolidation of shares
- destapling of securities
- ordinary shares
- reorganisations
- stapled securities
- unit trusts
- units

Legislative references:

- 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)
- ITAA 1997 104-10(3)(b)
- ITAA 1997 104-10(4)
- ITAA 1997 104-70
- ITAA 1997 108-5
- ITAA 1997 109-10
- ITAA 1997 112-25(4)
- ITAA 1997 112-30(1)
- ITAA 1997 Div 115
- ITAA 1997 Subdiv 115-A
- ITAA 1997 115-30(1)
- ITAA 1997 116-20(1)
- ITAA 1997 Subdiv 124-H
- ITAA 1997 124-10(2)
- ITAA 1997 124-10(3)
- ITAA 1997 124-445
- ITAA 1997 124-450
- ITAA 1997 124-450(3)
- ITAA 1997 124-465
- ITAA 1997 Div 230
- TAA 1953
- Corporations Act 2001 254H
- Copyright Act 1968

ATO references

NO: 1-36ROOCI
ISSN: 1445-2014
ATOlaw topic: Income Tax ~~ Capital Gains Tax ~~ roll-overs - trust to company