# *CR 2013/82 - Income tax: Stockland Group - Capital Reallocation*

# Class Ruling

## Income tax: Stockland Group - Capital Reallocation

Contents Para





## 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 take part in the scheme to which this Ruling relates.

### Relevant provisions

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

- section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 104-70 of the ITAA 1997;
- Division 109 of the ITAA 1997;
- subsection 110-25(5) of the ITAA 1997;
- subsection 110-55(2) of the ITAA 1997;
- Division 725 of the ITAA 1997;
- Division 727 of the ITAA 1997; and
- section 855-10 of the ITAA 1997.

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

### Class of entities

3. The class of entities to which this Ruling applies are the holders of Stockland Group stapled securities (each stapled security consisting of a share in Stockland Corporation Limited (SCL) stapled to a unit in Stockland Trust (ST)) who:

(a) are registered on the Stockland Group unit register on the record date for the return of trust capital;

(b) do not hold their shares in SCL and units in ST as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1) – that is, they hold their SCL shares and ST units on capital account;

(c) do not hold their shares in SCL and units in ST through a permanent establishment in Australia;

(d) participate in the capital reallocation announced on 13 February 2013 and described in the Scheme part of this Ruling; and

(e) are not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on their units or shares.

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

In this Ruling, an entity belonging to this class of entities is referred to as a securityholder.

### 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 8 to 18 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

7. This Ruling applies from 1 July 2013 to 30 June 2014. The Ruling continues to apply after 30 June 2014 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

8. The following description of the scheme is based on information provided by PricewaterhouseCoopers in the following documents:

- application for class ruling dated 29 May 2013 including appendices, and
- correspondence from PricewaterhouseCoopers providing further information.

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

### Stockland Group

9. Stockland Group is an Australian property group that specialises in developing and managing residential communities, retirement living villages and commercial properties, primarily in Australia.

10. The Stockland stapled security trades on the Australian Securities Exchange as a single stapled security and has been listed since 19 February 1987. SCL and ST each have 300 or more members.

11. Stockland Trust Management Limited is the Responsible Entity of ST.

### The Capital Reallocation

12. The Capital Reallocation announced by Press Release on 13 February 2013 will reallocate at least $500m from ST to SCL. This reallocation of capital seeks to address an imbalance in the existing capital structure of Stockland Group and is in line with the stated objective of having recurring assets and operating profit in the range of 70% to 80% and 60% to 70% respectively.

13. At the Annual General Meeting of Stockland Group held on 29 October 2013, securityholders were asked to approve, amongst other things, a Capital Reallocation which includes:

- A distribution of trust capital by ST to all securityholders of $0.22 per unit, and
- The trust capital returned will be compulsorily applied on behalf of each securityholder as a further capital contribution in respect of existing shares in SCL, as to $0.22 per share.

14. The capital return will be debited to the contributed equity of ST.

15. The capital contribution will be applied to existing shares in SCL. No new shares will be issued under the Capital Reallocation.

16. The capital contribution will be credited to Share Capital in SCL's accounts.

17. In respect of SCL no entity, or no entity and its associates between them, controls SCL or can exercise or can control the exercise of, at least 40% of the voting power in SCL or has the right to receive directly or indirectly at least 40% of any dividends or distributions of capital of SCL.

18. In respect of ST no entity, or no entity and its associates between them controls, or has the right to receive at least 40% of any distribution of trust income, or trust capital as unitholders of ST.

## Ruling

### Non-assessable payment

19. The ST distribution of trust capital $0.22 per unit will not be included in a securityholder's assessable income under section 6-5.

### CGT event E4

20. CGT Event E4 happens in respect of each ST unit when ST pays $0.22 per unit to a securityholder (section 104-70). The entire amount of $0.22 per ST unit is a non-assessable part.

### Capital gain

21. A securityholder will make a capital gain if the non-assessable amount of $0.22 per ST unit exceeds the cost base of the unit (subsection 104-70(4)).

### Cost base reduction

22. Where a securityholder makes a capital gain when CGT event E4 happens, the cost base and reduced cost base of the ST unit will be reduced to nil (subsection 104-70(5)).

23. If the non-assessable amount of $0.22 per ST unit is less than or equal to the cost base of the ST unit, the cost base and reduced cost base of the ST unit are reduced by that amount (subsection 104-70(6)).

### Time of acquisition

24. The capital reallocation will not alter the time that a securityholder acquired its units in ST or shares in SCL under Division 109.

### Foreign resident securityholders

25. A foreign resident securityholder who is paid the non-assessable amount of $0.22 per ST unit includes any capital gain made from CGT event E4 if their ST unit constitutes 'taxable Australian property' (section 855-10).

### Capital contribution and cost base

26. The fourth element of the cost base (subsection 110-25(5)) and reduced cost base (subsection 110-55(2)) of a SCL share will increase by $0.22 per share, which is the further share capital contribution in respect of each existing share in SCL.

### Value shifting

27. There will be no consequences for a securityholder under Divisions 725 and 727.

**Commissioner of Taxation**
6 November 2013

## 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.***

### Non-assessable payment

28. Subsection 6-5(1) provides that a taxpayer's assessable income includes income according to ordinary concepts (ordinary income). In *Scott v. Federal Commissioner of Taxation* (1966) 117 CLR 514; (1966) 10 AITR 367; (1966) 14 ATD 286, Windeyer J stated:

> Whether or not a particular receipt is income depends upon its quality in the hands of the recipient.

29. The ST distribution of trust capital of $0.22 per unit will be a distribution of trust capital for the year ending 30 June 2014 (being a payment of corpus) and does not have the quality of income in the hands of the securityholders and is not ordinary income under section 6-5.

### CGT event E4

30. Under section 104-70, CGT event E4 happens if the trustee of a trust makes a payment to a unitholder in respect of their unit in the trust and some or all of the payment is not included in the unitholder's assessable income (a non-assessable payment).

31. CGT event E4 happens in respect of each ST unit when ST pays $0.22 per unit to a securityholder (section 104-70). For the purposes of section 104-70, the entire amount of $0.22 per ST unit is a non-assessable part.

### Capital gain

32. If CGT event E4 happens during an income year, a unitholder will make a capital gain if the total value of the non-assessable payments made by the trustee during the income year in respect of their unit exceeds its cost base (subsection 104-70(4)). A unitholder cannot make a capital loss when CGT event E4 happens.

33. A securityholder will make a capital gain if the non-assessable amount of $0.22 per unit exceeds the cost base of the unit (subsection 104-70(4)).

### Cost base reduction

34. When a unitholder makes a capital gain from CGT event E4 happening, the cost base and reduced cost base of the unit are reduced to nil (subsection 104-70(5)).

35. If the non-assessable amount of $0.22 per ST unit is less than or equal to the cost base of the unit, the cost base and reduced cost base of the ST unit is reduced by that amount (subsection 104-70(6)).

### Foreign resident securityholders

36. Under subsection 855-10(1), an entity disregards a capital gain or capital loss made from a CGT event if they are a foreign resident, or the trustee of a foreign trust for CGT purposes, just before the CGT event happens in relation to a CGT asset that is not 'taxable Australian property'.

37. The term 'taxable Australian property' is defined in the table in section 855-15. The table sets out these five categories of CGT assets:

| | |
|---|---|
| Item 1 | taxable Australian real property; |
| Item 2 | an indirect Australian real property interest not covered by item 5; |
| Item 3 | a CGT asset used at any time in carrying on a business through a permanent establishment in Australia and which is not covered by item 1, 2, or 5; |
| Item 4 | an option or right to acquire a CGT asset covered by item 1, 2 or 3; and |
| Item 5 | a CGT asset that is covered by subsection 104-165(3) (choosing to disregard a gain or loss on ceasing to be an Australian resident). |

38. However, a foreign resident, or the trustee of a foreign trust for CGT purposes, just before CGT event E4 happens, cannot disregard under subsection 855-10(1) a capital gain from CGT event E4 happening if:

- their ST unit was an 'indirect Australian real property interest' (item 2 of the table in section 855-15), or
- their ST unit was covered by subsection 104-165(3) (item 5 of the table in section 855-15).

39. A foreign resident securityholder will have an 'indirect Australian real property interest' if it holds a membership interest in ST, and the interest passes the 'non-portfolio interest test' (section 960-195) and the 'principal asset test' (section 855-30).

### Capital contribution and cost base

40. The ST distribution of trust capital of $0.22 per unit will be applied to each SCL share as a contribution of share capital. This contribution of share capital represents capital expenditure incurred by a securityholder for the purpose of increasing or preserving the value of their SCL share.

41. The fourth element of the cost base and reduced cost base of each SCL share includes the amount of the share capital contribution that is referable to that share (subsections 110-25(5) and 110-55(2)).

**Value shifting**

42. There is a direct value shift under a scheme involving equity or loan interests in an entity where there is a decrease in the market value of some equity or loan interest and an increase or issue at a discount of other equity or loan interests (section 725-145).

43. There is an indirect value shift where there is an unequal exchange of economic benefits between two entities – the losing entity and gaining entity (subsection 727-150(3)).

44. There can only be consequences for a direct value shift if there is an entity that controls the target entity for value shifting purposes at some time during the scheme period as defined in section 725-55 (paragraph 725-50(b)). Section 727-355 sets out the relevant tests as to when an entity controls a company for value shifting purposes. Section 727-360 sets out the relevant tests for whether an entity controls a fixed trust for value shifting purposes.

45. There can only be consequences for an indirect value shift if the entities between which the value is shifted (the losing entity and the gaining entity) satisfy an ultimate controller tests and/or a common ownership nexus test at some time during the indirect value shift period defined in subsection 727-150(7) (paragraph 727-100(c) and sections 727-105 and 727-110).

46. On the basis of the information provided, there was no entity that controlled SCL or ST for value shifting purposes or that met, together with SCL or ST, the ultimate controller test and/or the common ownership nexus test as described above. As a result, there are no consequences under Divisions 725 and 727 for any direct value shift or indirect value shift that occurs under the Capital Reallocation.

# Appendix 2 – Detailed contents list

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

## References

*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

TR 2006/10

*Subject references:*

- capital gains
- Capital Gains Tax
- CGT assets
- CGT cost base
- CGT events
- CGT reduced cost base
- trusts
- value shifting - entity interests direct value shifting rules
- value shifting - entity interests indirect value shifting rules

*Legislative references:*

- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- ITAA 1997 104-70
- ITAA 1997 104-70(4)
- ITAA 1997 104-70(5)
- ITAA 1997 104-70(6)
- ITAA 1997 104-165(3)
- ITAA 1997 110-25(5)
- ITAA 1997 110-55(2)
- ITAA 1997 Div 725
- ITAA 1997 725-50(b)
- ITAA 1997 725-55
- ITAA 1997 725-145
- ITAA 1997 Div 727
- ITAA 1997 727-100(c)
- ITAA 1997 727-105
- ITAA 1997 727-110
- ITAA 1997 727-150(3)
- ITAA 1997 727-150(7)
- ITAA 1997 727-355
- ITAA 1997 727-360
- ITAA 1997 855-10
- ITAA 1997 855-10(1)
- ITAA 1997 855-15
- ITAA 1997 855-30
- ITAA 1997 960-195
- TAA 1953
- Copyright Act 1968

*Case references:*

- Scott v. Federal Commissioner of Taxation (1966) 117 CLR 514; (1966) 10 AITR 367; (1966) 14 ATD 286

ATO references

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