


# ***CR 2015/11 - Income tax: exchange of units in the Bailador Trust for shares in Bailador Technology Investments Limited***

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## Class Ruling

# Income tax: exchange of units in the Bailador Trust for shares in Bailador Technology Investments Limited

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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, 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 provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

### Relevant provision(s)

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

- section 59-40 of the *Income Tax Assessment Act 1997* (ITAA 1997)
- section 104-10 of the ITAA 1997
- section 109-10 of the ITAA 1997
- section 110-25 of the ITAA 1997
- section 110-55 of the ITAA 1997
- Division 115 of the ITAA 1997
- section 116-20 of the ITAA 1997

- section 124-15 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 ordinary units in the Bailador Trust (BT1) 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*
- hold their units neither as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)) – that is, broadly on capital account, and
- are not subject to the taxation of financial arrangement rules in Division 230 in relation to gains and losses on their 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 8 to 19 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.

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## Date of effect

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7. This Ruling applies from 1 July 2014 to 30 June 2015. The Ruling continues to apply after 30 June 2015 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).

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## Scheme

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8. 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 7 November 2014
- Draft Unit and Sponsor Unit for Share Exchange Deed – Bailador Trust restructure
- Draft Consent Deed Poll-including power of attorney and resolution of Unitholders relating to Bailador Trust restructure, and
- Correspondence received in relation to the Class Ruling application dated up to and including 7 November 2014.

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

### Bailador Trust

9. Bailador Investment Management Pty Ltd (Bailador) is an investment company that was founded in 2010.

10. Bailador currently manages the Bailador Trust (BT1) and another unit trust.

11. There are 36 unit holders who hold ordinary units in BT1 and 2 unit holders who hold sponsor units in BT1.

12. Ordinary units carry a pro rata entitlement to the income and capital of BT1. Sponsor units carry a right to distributions of income by BT1 above a set return in specified proportions.

13. BT1 has various investments in underlying companies in the form of ordinary equity and convertible preference shares.

## **Restructure**

14. Bailador proposes to create a listed company as the vehicle to hold the investments currently owned by BT1 and the other unit trust managed by Bailador.

15. The listed company will be called Bailador Technology Investments Limited (BTIL). The ordinary shares in BTIL will be listed on the Australian Securities Exchange (ASX).

16. In order to achieve the overall objective of listing on the ASX, there will be a restructure of the Bailador group.

17. A step in the restructure involves all of the BT1 unit holders transferring their units in BT1 to BTIL in return for the issue of shares in BTIL.

18. The shares in BTIL are an equity interest under Division 974.

19. After the exchange of units in BT1 for shares in BTIL, and the completion of the other steps necessary for implementing the restructure and listing the ordinary shares of BTIL on the ASX, BTIL will issue rights to acquire BTIL shares to its shareholders. The rights will trade separately on the ASX and will only be exercisable at a future date.

## **Ruling**

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### **CGT event A1 – disposal of BT1 ordinary units**

20. CGT event A1 will happen as a result of the disposal by a BT1 ordinary unit holder of their BT1 ordinary units to BTIL (subsections 104-10(1) and 104-10(2)).

21. The time of CGT event A1 is when the ownership of the BT1 ordinary units changes to BTIL (paragraph 104-10(3)(b)).

22. A BT1 ordinary unit holder will make a capital gain from CGT event A1 happening if the capital proceeds from the disposal of a BT1 ordinary unit exceed its cost base. A BT1 ordinary unit holder will make a capital loss if the capital proceeds from the disposal of a BT1 ordinary unit are less than its reduced cost base (subsection 104-10(4)).

23. Under subsection 116-20(1), the capital proceeds from CGT event A1 happening to a BT1 ordinary unit will be the market value of the property (BTIL shares) received or entitled to be received in respect of the disposal of a BT1 ordinary unit. The market value of BTIL shares is worked out as at the time of CGT event A1.

**Availability of Subdivision 124-H roll-over**

24. A disposal of all of the units in a unit trust to a company in exchange for shares in the company (and nothing else), as described in section 124-445, will happen when the BT1 ordinary unit holders and the BT1 sponsor unit holders dispose of all of their units to BTIL in exchange for BTIL shares. As the conditions for roll-over under Subdivision 124-H will be satisfied in relation to the disposal of BT1 ordinary units to BTIL, a BT1 ordinary unit holder who is an Australian resident at the time they dispose of their units in BT1 will be eligible to choose to obtain a CGT roll-over under Subdivision 124-H.

**Consequences of choosing Subdivision 124-H roll-over**

25. A BT1 ordinary unit holder who chooses to obtain Subdivision 124-H roll-over will disregard any capital gain or capital loss made when CGT event A1 happens on the disposal of their BT1 ordinary units (subsection 124-15(2)).

26. The first element of the cost base and reduced cost base of each BTIL share acquired by a BT1 ordinary unit holder under the restructure will be worked out as follows:

- Total the cost bases of all the BT1 ordinary units (worked out when a unit holder's ownership of the units ended) in respect of which Subdivision 124-H roll-over was chosen, and
- Divide the total by the number of BTIL shares issued to a BT1 ordinary unit holder for those BT1 ordinary units (subsection 124-15(3)).

27. The BTIL ordinary shares, which are an equity interest under Division 974, will be acquired by a BT1 ordinary unit holder when the shares are issued or allotted (Item 2 of the table in section 109-10).

28. For the purpose of determining eligibility to make a discount capital gain on any later disposal of their BTIL shares, a BT1 ordinary unit holder who chooses Subdivision 124-H roll-over will be taken to have acquired their BTIL shares on the date when they acquired, for CGT purposes, the corresponding BT1 ordinary units (Item 2 of the table in subsection 115-30(1)).

**Consequences of not choosing Subdivision 124-H roll-over**

29. A BT1 ordinary unit holder who does not choose Subdivision 124-H roll-over must take into account any capital gain or capital loss from the disposal of their BT1 ordinary units in working out their net capital gain or net capital loss for the income year (sections 102-5 and 102-10).

30. A BT1 ordinary unit holder who makes a capital gain on the disposal of a BT1 ordinary unit but does not choose roll-over can treat the capital gain as a discount capital gain if the conditions of Subdivision 115-A are met. In particular, the BT1 ordinary unit must have been acquired by the unit holder at least 12 months before the time of CGT event A1 happening to the unit (section 115-25).

31. For these BT1 ordinary unit holders, the first element of the cost base and reduced cost base of each BTIL share received under the exchange will be equal to the market value of the BT1 ordinary units they disposed of (worked out as at the time of the acquisition of the BTIL shares), divided by the number of BTIL shares they are issued (subsections 110-25(2) and 110-55(2)).

32. The BTIL shares, which are an equity interest under Division 974, will be acquired by a BT1 ordinary unit holder when the shares are issued or allotted (Item 2 of the table in section 109-10).

### **Consequences of the subsequent rights issue**

33. The market value of the rights issued to a BTIL ordinary shareholder by BTIL to acquire BTIL ordinary shares will be non-assessable non-exempt income of the BTIL ordinary shareholder (section 59-40). Section 59-40 only applies to the issue of the rights, not any subsequent disposal, cessation or exercise of the rights.

34. The rights issue will not cause a CGT event to happen. However, the exercise of the rights will cause Subdivision 130-B to apply.

## Appendix 1 – Explanation

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**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.*

35. The tax consequences that arise concerning the scheme that is the subject of this Ruling are outlined in the Ruling part of this document.

36. The significant tax consequence is the availability of roll-over under Subdivision 124-H. The roll-over enables a unit holder of a unit trust to disregard a capital gain or capital loss from a unit that is either disposed of, or redeemed or cancelled, 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 in exchange.

37. Subdivision 124-H contains a number of conditions for eligibility to choose the roll-over. The main conditions that are relevant to the scheme that is the subject of this Ruling, which involves the disposal of units, are:

- at least two entities must own all the units in the unit trust
- there must be a scheme for reorganising the unit trust's affairs, and consideration for the disposal of the units must consist of shares in the company and nothing else
- the company must own all the units in the unit trust just after all the exchanging unit holders have disposed of their units in the unit trust (the completion time)
- just after the completion time, each unit holder must own a whole number of shares in the company
- just after the completion time, each unit holder must own a percentage of the shares in the company that were issued to all the unit holders that is equal to the percentage of the units in the unit trust that the unit holder owned
- just after the completion time, the unit holders must own all the shares in the company, or entities other than those unit holders 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 unit holders as owning all the shares
- the shares issued in the company must not be redeemable shares
- the ratio test in subsection 124-450(3) is met, and
- the company must choose that the rules in section 124-470 apply.

38. The conditions for roll-over under Subdivision 124-H will be satisfied by the scheme that is the subject of this Ruling.

## **Appendix 2 – Detailed contents list**

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

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## References

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- Previous draft:*
- ITAA 1997 109-10
  - ITAA 1997 110-25
- Not previously issued as a draft
- ITAA 1997 110-25(2)
- Related Rulings/Determinations:*
- TR 2006/10
- ITAA 1997 110-55
  - ITAA 1997 110-55(2)
  - ITAA 1997 Div 115
  - ITAA 1997 Subdiv 115-A
- Subject references:*
- Capital gains tax
  - Capital proceeds
  - CGT event A1
  - CGT roll-over relief
  - Cost base
  - Reduced cost base
- ITAA 1997 115-25
  - ITAA 1997 115-30(1)
  - ITAA 1997 116-20
  - ITAA 1997 116-20(1)
  - ITAA 1997 124-15
  - ITAA 1997 124-15(2)
  - ITAA 1997 124-15(3)
  - ITAA 1997 Subdiv 124-H
- Legislative references:*
- ITAA 1936 6(1)
  - ITAA 1997
  - ITAA 1997 59-40
  - 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 124-445
  - ITAA 1997 124-450(3)
  - ITAA 1997 124-470
  - ITAA 1997 Subdiv 130-B
  - ITAA 1997 Div 230
  - ITAA 1997 Div 974
  - ITAA 1997 977-50
  - ITAA 1997 995-1(1)
  - TAA 1953
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### ATO references

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