


CR 2016/50 - Income tax: AMP Capital Community Infrastructure Fund - capital reallocation

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Class Ruling

Income tax: AMP Capital Community Infrastructure Fund – capital reallocation

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📌 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 102M of the *Income Tax Assessment Act 1936* (ITAA 1936)
 - subsection 102T(19) of the ITAA 1936
 - section 104-70 of the *Income Tax Assessment Act 1997* (ITAA 1997)
 - subsection 110-25(5) of the ITAA 1997, and
 - subsection 110-55(2) of the ITAA 1997.

All subsequent 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 is the unit holders of the AMP Capital Community Infrastructure Trading Trust (TT) and the AMP Capital Community Infrastructure Holding Trust (HT) who:

- participated in the scheme that is the subject of this Ruling
- did not hold their respective units in TT as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)) – that is, the holders held their units, broadly, on capital account
- acquired their respective units in TT on or after 20 September 1985, and
- are not subject to the taxation of financial arrangements (TOFA) rules in Division 230 in relation to gains and losses on their units in TT.

(**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 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 17 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 2015 to 30 June 2016. The Ruling continues to apply after 30 June 2016 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 the applicant. The following documents, or relevant parts of them, form part of and are to be read with the description:

- application for a class ruling dated 28 April 2016, and
- supporting documentation attached to the application for a class ruling.

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

Background

9. The AMP Capital Community Infrastructure Fund (CommIF) is a stapled security consisting of a unit in TT stapled to a unit in HT.

10. TT and HT are each a registered managed investment scheme under Chapter 5C of the *Corporations Act 2001*. AMP Capital Funds Management Limited (an Australian resident company) is the Responsible Entity of both HT and TT.

11. TT is a public trading trust under Division 6C of Part III of the ITAA 1936.

12. HT and TT invest in loan notes, as well as entities and joint ventures which principally invest in service concession financial assets related to social infrastructure projects.

13. Before the Capital Reallocation, the Net Asset Value (NAV) ratio across CommIF was 60% for TT and 40% for HT.

14. The capital required by TT or HT for an investment is not necessarily in proportion to the NAV ratio. Where there are insufficient funds in one trust, funds are loaned from the other trust, thereby creating a cross staple loan balance. Before the Capital Reallocation, the Trustee of HT owed money to the Trustee of TT.

The Capital Reallocation

15. The Trustee of TT and the Trustee of HT have committed to funding the acquisition of a number of assets in the near future, and are considering the acquisition of other assets. TT and HT both require additional capital to fund these acquisitions. Therefore, a return of capital and mandatory reinvestment of the capital (the Capital Reallocation) was undertaken to ensure that the Trustee of TT and the Trustee of HT have sufficient funds for the proposed acquisitions in the correct proportions whilst eliminating the cross staple loan owed by the Trustee of HT to the Trustee of TT.

16. The Capital Reallocation was implemented as follows:

- the Trustee of TT paid \$90,000,000 to the unit holders of TT. The entire amount was debited against TT's contributed equity account, and
- the entire amount of the payment was compulsorily applied by the Trustee of TT on behalf of the TT unit holders as a capital injection into HT by paying up an additional amount in respect of all the current units in HT (which were held, in the same proportions, by the TT unit holders).

17. To give effect to the Capital Reallocation, amendments to the Constitutions of HT and TT were made. These amendments were approved by special resolution of the unit holders of HT and TT on 21 March 2016.

Ruling

Not assessable under section 6-5

18. The payment by the Trustee of TT of \$0.240217049 per unit is not included in a TT unit holder's assessable income under section 6-5.

Unit trust dividend

19. The payment by the Trustee of TT to the TT unit holders constitutes a unit trust dividend (as defined in section 102M of the ITAA 1936).

20. No part of the payment by the Trustee of TT is taken to be paid out of profits derived by the Trustee of TT for the purposes of subsection 102T(19) of the ITAA 1936.

CGT event E4

21. CGT event E4 happens in respect of each TT unit when the Trustee of TT made a payment of \$0.240217049 per unit to the unit holders of TT. None of the payment is included in the assessable income of the TT unit holders (section 104-70).

22. The time of CGT event E4 is just before the end of the income year in which the Trustee of TT makes the payment (paragraph 104-70(3)(a)).

23. A TT unit holder will make a capital gain when CGT event E4 happens if the amount of the non-assessable payment of \$0.240217049 exceeds the cost base of the unit (subsection 104-70(4)). A TT unit holder cannot make a capital loss when CGT event E4 happens to their TT units.

24. If the TT unit was acquired by an Australian resident unit holder at least 12 months before the time of CGT event E4 (see paragraph 22), a capital gain from CGT event E4 happening to that unit may qualify as a discount capital gain under subsection 115-25(1), provided the other conditions in Subdivision 115-A are satisfied.

25. If a TT unit holder makes a capital gain when CGT event E4 happens, the cost base and reduced cost base of the TT unit will be reduced to nil (subsection 104-70(5)).

26. If the non-assessable payment of \$0.240217049 per TT unit made by the Trustee of TT is less than or equal to the cost base of a TT unit, the cost base and reduced cost base of the TT unit will be reduced by that amount (subsection 104-70(6)).

Cost base of HT units

27. The fourth element of the cost base and reduced cost base of a HT unit will increase by \$0.240217049 per unit, which is the amount of the payment by the Trustee of TT that was compulsorily applied on behalf of the TT unit holders by paying up an additional amount in respect of all the current units in HT (which were held, in the same proportions, by the TT unit holders) (subsections 110-25(5) and 110-55(2)).

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.*

Not assessable under section 6-5

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] HCA 48; 10 AITR 367; 14 ATD 286, Windeyer J stated (at CLR 526; AITR 375; ATD 293):

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

29. The payment by the Trustee of TT of \$0.240217049 per unit will be a distribution of trust capital (being a payment of corpus) and does not have the quality of income in the hands of the TT unit holders. It is not ordinary income under section 6-5.

CGT event E4

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

31. The main tax consequence is that CGT event E4 happens. Under section 104-70, CGT event E4 happens if the trustee of a trust makes a payment to a beneficiary of the trust in respect of their unit or other interest in the trust, and some or all of the payment is not included in the beneficiary's assessable income (the non-assessable part).

Cost base of HT units

32. The payment by the Trustee of TT of \$0.240217049 per unit was compulsorily applied on behalf of the TT unit holders by paying up an additional amount in respect of all the current units in HT (which were held, in the same proportions, by the TT unit holders). This payment represents capital expenditure incurred by a HT unit holder for the purpose of increasing or preserving the value of their HT unit.

33. This amount is included in the fourth element of the cost base and reduced cost base of each HT unit (subsection 110-25(5) and 110-55(2)).

Appendix 2 – Detailed contents list

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

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Legislative references:

- ITAA 1936
- ITAA 1936 Div 6C Part III
- ITAA 1936 102M
- ITAA 1936 102T(19)
- ITAA 1997
- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- ITAA 1997 104-70
- ITAA 1997 104-70(3)(a)
- ITAA 1997 104-70(4)

- ITAA 1997 104-70(5)
- ITAA 1997 104-70(6)
- ITAA 1997 110-25(5)
- ITAA 1997 110-55(2)
- ITAA 1997 Subdiv 115-A
- ITAA 1997 115-25(1)
- ITAA 1997 Div 230
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- TAA 1953
- Corporations Act 2001 Ch 5C

Case references:

Scott v. Federal Commissioner of Taxation (1966) 117 CLR 514;
[1966] HCA 48; 10 AITR 367; 14 ATD 286

ATO references

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