


CR 2017/24 - Income tax: PRP Investment Trust: redemption of units

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Class Ruling

Income tax: PRP Investment Trust: redemption of units

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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.

Summary – what this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision identified below applies to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provision

2. The relevant provision dealt with in this Ruling is section 104-25 of the *Income Tax Assessment Act 1997* (ITAA 1997).

All subsequent 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 is the holders of the Class C and Class F units (together the Class Units) in PRP Investment Trust (PRPIT) who:

- will have their Class Units redeemed by PRPIT
- are residents of Australia within the meaning of subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936)

- acquired their Class Units in PRPIT on or after 20 September 1985
- hold their Class Units in PRPIT on capital account for tax purposes, and
- are not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on their Class Units in PRPIT.

(Note: Division 230 will generally not apply to the financial arrangements of individuals, unless they have made an election for those rules to apply to them.)

In this Ruling, this class of entities is referred to as 'participating unitholders'.

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 24 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 2016 to 30 June 2017. The Ruling continues to apply after 30 June 2017 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 Class Ruling dated 17 November 2016
- the PRPIT Trust Deed entitled 'Sixth Deed of Amendment – PRP Investment Trust' dated 5 September 2016, and
- further correspondence and information provided by the applicant.

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. PRPIT is a public trading trust which is taxed under Division 6C of Part III of the ITAA 1936.

10. PRPIT will make a choice, under sections 703-50 and 713-130, to form a tax consolidated group on 1 July 2016 with itself as the head company.

11. Upon PRPIT making this choice, PRPIT is generally treated as a company and in turn its units treated as shares for the purposes of applying the ITAA 1997 and ITAA 1936.

12. PRPIT was established in March 2008 and operates multiple radiology practices in New South Wales, Australia.

13. PRP Diagnostic Imaging Pty Ltd is the current trustee of PRPIT (Trustee).

14. PRPIT is governed by the Trust Deed entitled 'Sixth Deed of Amendment – PRP Investment Trust' dated 5 September 2016 (Trust Deed).

15. PRPIT is owned and operated by radiologists who work in the business as well as by members of the management team.

16. PRPIT has various types of units on issue. The rights attached to them are governed by the Trust Deed.

17. Under the terms of the Trust Deed, a majority of the units on issue have fixed rights to either income or capital.

18. The Class Units for the purposes of this Ruling are:

- (a) Class C units: issued to the radiologists and/or entities related to them, and

- (b) Class F units: issued to senior management and/or entities related to them.

19. The rights and entitlements attached to the Class Units are identical.

20. The Class Units do not have rights to capital or to vote.

21. The holders of the Class Units are, however, under the terms of the Trust Deed, members of a class of beneficiaries, for whom the Trustee may, in its absolute discretion, exercise a power of appointment vested in it in respect of the distribution of its income.

22. Any income entitlement due to the holders of the Class Units will be paid before the date of the redemption and holders do not have any future entitlement to distributions.

The reorganisation

23. The arrangement that is the subject of this Ruling is part of a broader arrangement to simplify the unitholdings in PRPIT in order to facilitate the interposition of a new holding company for the purpose of corporatising the structure of the Trustee's business.

24. As part of this reorganisation, the Trustee will, in accordance with the Trust Deed, exercise its discretion and redeem all the Class Units for \$1 per unit.

Ruling

25. Capital gains tax (CGT) event C2 (section 104-25) will happen when each Class Unit held by a participating unitholder is redeemed by the Trustee.

26. A participating unitholder will make a capital gain if the capital proceeds from the redemption of a Class Unit are more than the cost base of the Class Unit. Conversely, a participating unitholder will make a capital loss if the capital proceeds are less than the reduced cost base of the Class Unit (subsection 104-25(3)).

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.*

Unit trust considerations

27. At the time of the implementation of the scheme that is the subject of this Ruling, PRPIT was a public trading trust which was taxed under Division 6C of Part III of the ITAA 1936. PRPIT has made a choice, under sections 703-50 and 713-130, to form an income tax consolidated group on 1 July 2016 with itself as the head company.

28. As a consequence of making this choice, PRPIT will generally be treated as a company for the purposes of applying the ITAA 1997 and ITAA 1936 and in effect the units and unitholders treated as shares and shareholders respectively.

Redemption of Class Units

29. Under paragraph 104-25(1)(a), CGT event C2 happens if the ownership of an intangible CGT asset, such as a share, ends by the asset being redeemed or cancelled. CGT event C2 will happen when each Class Unit held by a participating unitholder is redeemed by the Trustee.

30. The time of CGT event C2 will be when the Trustee redeems a participating unitholder's Class Unit (paragraph 104-25(2)(b)).

31. Participating unitholders will make a capital gain if the capital proceeds from the redemption of a Class Unit are more than the cost base of the Class Unit.

32. Participating unitholders will make a capital loss if the capital proceeds from the redemption of the Class Unit are less than the reduced cost base.

33. If the market value substitution rule in section 116-30 applies to determine the capital proceeds received in respect of the redemption of a Class Unit, subsection 116-30(3A) provides that the market value is determined as if the redemption had not occurred and was never proposed to occur.

34. The market value substitution rule will apply if the actual capital proceeds for the redemption, being \$1 per Class Unit, are more or less than the market value of a Class Unit at the time of the CGT event C2 (subparagraph 116-30(2)(b)(ii)).

Appendix 2 – Detailed contents list

35. 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 6(1)
- ITAA 1936 Pt III Div 6C
- ITAA 1997

- ITAA 1997 104-25
 - ITAA 1997 104-25(1)(a)
 - ITAA 1997 104-25(2)(b)
 - ITAA 1997 104-25(3)
 - ITAA 1997 116-30
 - ITAA 1997 116-30(3A)
 - ITAA 1997 116-30(2)(b)(ii)
 - ITAA 1997 Div 230
 - ITAA 1997 703-50
 - ITAA 1997 713-130
 - TAA 1953
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ATO references

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