


***CR 2017/44 - Income tax: scrip for scrip roll-over:  
acquisition of units in Centuria Urban REIT by  
Centuria Metropolitan REIT***

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## Class Ruling

### Income tax: scrip for scrip roll-over: acquisition of units in Centuria Urban REIT by Centuria Metropolitan REIT

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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.

## Summary – 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 104-10 of the *Income Tax Assessment Act 1997* (ITAA 1997)
  - section 108-5 of the ITAA 1997
  - section 109-5 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
  - Subdivision 115-A of the ITAA 1997
  - section 115-25 of the ITAA 1997

- section 115-30 of the ITAA 1997
- section 116-20 of the ITAA 1997
- Subdivision 124-M of the 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 units in Centuria Urban REIT (CUA) who:

- participated in the Scheme that is the subject of this Ruling
- were residents of Australia within the meaning of that expression in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936) on 29 June 2017 (the Implementation Date)
- acquired their CUA units on or after 20 September 1985
- did not hold their units in CUA as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)) on the Implementation Date – that is, they held their CUA units on capital account, and
- are not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on their CUA units.

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

In this Ruling, a person belonging to this class of entities is referred to as a CUA unit holder.

## 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 31 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

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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

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

- Class Ruling application dated 3 February 2017
- Supplemental Deed – 360 Capital Office Fund Constitution, dated 20 March 2014 (Trust Deed of CUA)
- Epping Investment Trust Constitution, dated 9 March 2000 as amended on 1 December 2005 (Trust Deed of CMR1)
- 360 Capital Office Fund Annual Report for the year ended 30 June 2016 (Annual report for CUA)
- Scheme Implementation Agreement, dated 3 March 2017
- Deed of Amendment to the Scheme Implementation Agreement, dated 21 April 2017, and
- correspondence between the applicant's tax adviser and the Australian Taxation Office.

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

## **Centuria Urban REIT**

9. CUA (formerly 360 Capital Office Fund) is an Australian resident unit trust for tax purposes.
10. Units in CUA are traded on the Australian Securities Exchange (ASX) under the code CUA (previously TOF).
11. CUA is a managed investment scheme (as defined in section 9 of the *Corporations Act 2001*) that is registered under Chapter 5C of the *Corporations Act 2001*.
12. The responsible entity of CUA is Centuria Property Funds No. 2 Limited (CPF2L). CPF2L is an Australian incorporated company and is a wholly-owned subsidiary of Centuria Capital Limited (CCL).
13. CUA is a property investment fund that is focused on acquiring assets in suburban A-grade and central business district B-grade rent collecting properties in Australia in the \$30 million to \$100 million asset value range.
14. CUA has only one class of units on issue. At 30 June 2016, CUA had 73,279,751 units on issue and 1,895 unit holders.
15. A 19.99% interest in CUA is owned by the trustee of the Centuria Capital No. 2 Office Fund (CCF2O), a sub-trust ultimately wholly owned by Centuria Capital Fund (CCF). Another 8.76% interest in CUA is owned by the responsible entity of Centuria Metropolitan REIT.

## **Centuria Metropolitan REIT**

16. Prior to the corporate restructure (Restructure) on 22 March 2017, Centuria Metropolitan REIT (formerly Centuria Metropolitan REIT No. 1 – 'CMR1') was part of a stapled structure consisting of units in CMR1 and units in Centuria Metropolitan REIT No. 2 (CMR2) which were traded together on the ASX as the Centuria Metropolitan REIT (CMA) stapled security. Under the Restructure, the responsible entity of CMR1 acquired all of the units in CMR2 (with the exception of a single unit issued by the responsible entity of CMR2 to Centuria Capital No. 2 Fund), and the stapled structure ceased to exist.
17. Following the Restructure, Centuria Metropolitan REIT continues to trade on the ASX under the code CMA. As such, CMR1 will be referred to herein as 'CMA'.
18. CMA is an Australian resident unit trust for tax purposes.
19. CMA is a managed investment scheme (as defined in section 9 of the *Corporations Act 2001*) that is registered under Chapter 5C of the *Corporations Act 2001*.
20. The responsible entity of CMA is Centuria Property Funds Limited (CPFL). CPFL is an Australian incorporated company and is a wholly-owned subsidiary of CCL.

21. CMA is a property investment fund that invests in office and industrial assets in metropolitan markets across Australia.
22. CMA has only one class of units on issue. At 30 June 2016, CMA had 119,407,764 units on issue and 1,429 unit holders.
23. All CMA units on issue were acquired on or after 20 September 1985.
24. On 9 January 2017, the responsible entity of CMA acquired an 8.76% interest in CUA.

### **Acquisition of CUA units by the responsible entity of CMA**

25. On 3 March 2017, the responsible entity of CMA and the responsible entity of CUA entered into a Scheme Implementation Agreement under which the responsible entity of CMA would acquire all of the remaining 91.24% of issued units in CUA which it did not hold on the Implementation Date (including the 19.99% interest owned by CCF2O).
26. A Notice of Meeting and Explanatory Memorandum was issued to the unit holders of CUA by the responsible entity of CUA on 12 May 2017.
27. On 14 June 2017, a meeting of the unit holders of CUA was held in relation to the proposed acquisition of all the units in CUA by the responsible entity of CMA. The unit holders of CUA passed:
  - an ordinary resolution to approve the acquisition by the responsible entity of CMA of all the units in CUA for the purposes of item 7 of the table in section 611 of the *Corporations Act 2001*, and
  - a special resolution to amend the constitution of CUA so as to allow the responsible entity of CUA to take the steps necessary to implement the Scheme.
28. On 14 June 2017, a meeting of the unit holders of CMA was held in relation to the proposed acquisition of all the units in CUA by the responsible entity of CMA. The unit holders of CMA passed an ordinary resolution to approve the acquisition by the responsible entity of CMA of the units in CUA held by the trustee of CCF2O for the purposes of ASX Listing Rule 10.1.
29. On the Implementation Date (29 June 2017), each unit holder who held CUA units on the Record Date (22 June 2017) exchanged their units for the Scheme Consideration, being a cash component of \$0.23 and 0.88 of a unit in CMA for each unit in CUA.

### **Other matters**

30. CUA units and CMA units pass the principal asset test in section 855-30 (for the purposes of the definition of an indirect Australian real property interest in section 855-25).

31. The responsible entity of CMA did not make a choice under subsection 124-795(4) to the effect that the unit holders of CUA cannot obtain scrip for scrip roll-over under Subdivision 124-M for the CGT event happening in relation to their units.

## Ruling

### **CGT event A1 happened on the disposal of CUA units**

32. CGT event A1 happened when CUA unit holders disposed of their CUA units to the responsible entity of CMA. The time of CGT event A1 was on the Implementation Date (subsection 104-10(1), 104-10(2) and paragraph 104-10(3)(b)).

33. CUA unit holders made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of each CUA unit exceeded its cost base. CUA unit holders made a capital loss if the capital proceeds from the disposal of each CUA unit was less than its reduced cost base (subsection 104-10(4)).

### **Capital proceeds of CUA units disposed**

34. The capital proceeds received by CUA unit holders from the disposal of each CUA unit consisted of:

- (a) the cash component of \$0.23 (paragraph 116-20(1)(a)), and
- (b) the market value of the scrip component of 0.88 of a unit in CMA (worked out as at the time of the disposal of the CUA unit) (paragraph 116-20(1)(b)).

### **Availability of scrip for scrip roll-over if a capital gain is made**

35. Subject to the qualification in the following paragraph, CUA unit holders who make a capital gain from the disposal of their CUA units to the responsible entity of CMA are eligible to choose scrip for scrip roll-over (section 124-781 and section 124-785).

36. Scrip for scrip roll-over cannot be chosen if any capital gain CUA unit holders make from the disposal is disregarded, except because of a roll-over (paragraph 124-795(2)(a)).

### ***Consequences if scrip for scrip roll-over is chosen***

37. CUA unit holders can disregard a part of the capital gain they make from the disposal of their CUA units (subsection 124-785(1) and section 124-790).

38. CUA unit holders can obtain only a partial roll-over as the capital proceeds for each of their CUA units included the cash component (the ineligible proceeds) as well as CMA units (the replacement interest). There is no roll-over for the ineligible part of their CUA units for which they received ineligible proceeds.

***Consequences if scrip for scrip roll-over is not chosen, or cannot be chosen***

39. CUA unit holders who do not choose roll-over, or cannot choose roll-over, must take into account any capital gain or capital loss from CGT event A1 happening on the disposal of their CUA units in working out their net capital gain or net capital loss for the income year in which CGT event A1 happened (sections 102-5 and 102-10).

40. A CUA unit holder who makes a capital gain where roll-over is not chosen, or cannot be chosen, may be eligible to treat the capital gain as a 'discount capital gain' provided that the conditions of Subdivision 115-A are met. In particular, the CUA units must have been acquired by the CUA unit holder at least 12 months before their disposal to the responsible entity of CMA (section 115-25).

**Cost base and reduced cost base of CMA units received**

***Scrip for scrip roll-over is chosen***

41. Where scrip for scrip roll-over is chosen, the first element of the cost base and reduced cost base of each replacement CMA unit received is calculated by reasonably attributing to it the cost base and reduced cost base of each CUA unit for which it was exchanged and for which the CUA unit holders obtained the roll-over (subsections 124-785(2) and 124-785(4)).

***Scrip for scrip roll-over is not chosen***

42. Where scrip for scrip roll-over is not chosen, or cannot be chosen, the first element of the cost base and reduced cost base of each replacement CMA unit received is equal to the market value of the CUA unit that is given in respect of acquiring each replacement CMA unit, worked out as at the time of their acquisition (subsections 110-25(2) and 110-55(2)).

**Acquisition date of CMA units**

43. The unit holders of CUA acquired their CMA units on the date when the responsible entity of CMA issued the CMA units to them (item 3 of the table in section 109-10), being the Implementation Date (section 109-5).



44. For the purposes of determining if a capital gain on a subsequent disposal of their CMA units is eligible to be a discount capital gain, CUA unit holders who choose scrip for scrip roll-over are taken to have acquired their CMA units on the date when they acquired (for CGT purposes) the corresponding CUA units (item 2 of the table in subsection 115-30(1)).

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**Commissioner of Taxation**

26 July 2017

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## Appendix 1 – Explanation

**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.*

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

### **Scrip for scrip roll-over**

46. The significant tax consequence that is the subject of this Ruling is the availability of scrip for scrip roll-over under Subdivision 124-M. The roll-over enables the holder of a unit or other interest in a trust to disregard a capital gain from the unit or other interest that is disposed of if the holder receives a replacement interest in another trust in exchange. It also provides special rules for calculating the cost base and reduced cost base of the replacement interest.

47. Subdivision 124-M contains a number of conditions for, and exceptions to, the holder of an interest in a trust being eligible to choose scrip for scrip roll-over. The main requirements that are relevant to the scheme that is the subject of this Ruling are:

- (a) units or other interests in a trust are exchanged for units or other interests in another trust
- (b) entities have fixed entitlements to all of the income and capital of the original trust and the acquiring trust
- (c) the exchange is in consequence of an arrangement
- (d) conditions for the roll-over are satisfied
- (e) further conditions, if applicable, are satisfied, and
- (f) exceptions to obtaining scrip for scrip roll-over are not applicable.

48. It is considered that, for the purposes of paragraph 124-781(1)(b), there are fixed entitlements to all of the income and capital of CUA and CMA immediately before, during and immediately after the exchange of units that is the subject of this Ruling.

49. The scheme satisfies the requirements for the roll-over under Subdivision 124-M.

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

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

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## References

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*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

TR 2006/10

*Legislative references:*

- ITAA 1936
  - ITAA 1936 6(1)
  - ITAA 1997
  - 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 108-5
  - ITAA 1997 109-5
  - ITAA 1997 109-10
  - ITAA 1997 110-25
  - ITAA 1997 110-25(2)
  - ITAA 1997 110-55
  - ITAA 1997 110-55(2)
  - ITAA 1997 Subdiv 115-A
  - ITAA 1997 115-25
  - ITAA 1997 115-30
  - ITAA 1997 115-30(1)
  - ITAA 1997 116-20
  - ITAA 1997 116-20(1)(a)
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  - ITAA 1997 124-785
  - ITAA 1997 124-785(1)
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  - ITAA 1997 124-785(4)
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  - ITAA 1997 124-795(2)(a)
  - ITAA 1997 124-795(4)
  - ITAA 1997 Div 230
  - ITAA 1997 977-50
  - ITAA 1997 995-1(1)
  - TAA 1953
  - Corporations Act 2001 Ch 5C
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ATO references

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