


***CR 2018/49 - Income tax: scrip for scrip roll-over:  
acquisition of units in SGH Professional Investor  
Micro Cap Trust by SGH Emerging Companies Fund***

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## Class Ruling

### Income tax: scrip for scrip roll-over: acquisition of units in SGH Professional Investor Micro Cap Trust by SGH Emerging Companies Fund

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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 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)
  - Division 110 of the ITAA 1997
  - Subdivision 115-A of the ITAA 1997
  - subsection 116-20(1) of the ITAA 1997
  - Subdivision 124-M of the ITAA 1997.

Legislative references in this Ruling are to provisions of the ITAA 1997 unless otherwise indicated.

## Class of entities

3. The class of entities to which this ruling applies are holders of units in the SGH Professional Investor Micro Cap Trust (MicroCap Fund) who:

- were residents of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936*
- held 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, they held their units on capital account
- acquired their units on or after 20 September 1985, and
- are not subject to the taxation of financial arrangements 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.)

In this Ruling, a person belonging to this class of entities is referred to as a MicroCap Fund Unitholder.

## 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 that the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 8 to 21 of this Ruling.

6. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then that is:

- 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 2018 to 30 June 2019. The Ruling continues to apply after 30 June 2019 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 *Public Rulings*).

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## Scheme

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8. The following description of the scheme is based on 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.

### **MicroCap Fund and SGH Emerging Companies Fund**

9. The SGH Emerging Companies Fund (SGH Trust) and MicroCap Fund are unit trusts which were settled by trust deeds on 2 October 2001 and 1 March 2004 respectively.

10. Each trust is a managed investment scheme that is registered under Chapter 5C of the *Corporations Act 2001*.

11. The MicroCap Fund has only one class of units on issue and has 44 unitholders.

12. The SGH Trust is an attribution managed investment trust as described in section 276-10.

13. The broad investment objective of both the MicroCap Fund and the SGH Trust is to provide medium to long term capital growth potential to investors by seeking to outperform the S&P/ASX Emerging Companies Accumulation Index.

### **Acquisition of MicroCap Fund units by SGH Trust**

14. The Responsible Entity of the SGH Trust made an offer to all MicroCap Fund Unitholders to acquire all their units in the MicroCap Fund (the Offer).

15. As a result of the Offer, the Responsible Entity of the SGH Trust acquired more than 80% of the units on issue in the MicroCap Fund on 1 November 2018 (the Implementation Date).

16. MicroCap Fund Unitholders who accepted the Offer were issued with SGH Trust units as consideration for the disposal of their MicroCap Fund units.

17. The number of SGH Trust units that MicroCap Fund Unitholders received was determined by reference to the market value of each MicroCap Fund unit and each SGH Trust unit on the Implementation Date.

18. No cash or other property was paid or otherwise provided to the unit holders of the MicroCap Fund.

## **Other matters**

19. The MicroCap Fund and the SGH Trust did not have a 'significant stakeholder' or 'common stakeholder' in relation to the scheme within the meaning of those terms in section 124-783.

20. All MicroCap Fund Unitholders were given the opportunity to participate in the scheme on the same terms.

21. MicroCap Fund Unitholders and the Responsible Entity of the SGH Trust dealt with each other at arm's length (for the purposes of subsection 124-781(4)).

## **Ruling**

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### **CGT event A1 will happen on the disposal of MicroCap Fund units**

22. CGT event A1 will happen to a MicroCap Fund Unitholder by disposing of their MicroCap Fund units to the Responsible Entity of SGH Trust (section 104-10). The time of CGT event A1 is the Implementation Date (paragraph 104-10(3)(b)).

23. A MicroCap Fund Unitholder will make a capital gain from CGT event A1 happening if the capital proceeds from the disposal of a MicroCap Fund unit exceeds its cost base. A MicroCap Fund Unitholder will make a capital loss if the capital proceeds from the disposal of a MicroCap Fund unit are less than its reduced cost base (subsection 104-10(4)).

24. The capital proceeds from CGT event A1 happening will be the market value of the SGH Trust unit received, or entitled to be received, in respect of the disposal of a MicroCap Fund unit (subsection 116-20(1)). The market value of a SGH Trust unit is worked out as at the time of CGT event A1, which is on the Implementation Date.

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

25. Subject to the qualification in the following paragraph, a MicroCap Fund Unitholder who makes a capital gain from the disposal of a MicroCap Fund unit to the Responsible Entity of SGH Trust is eligible to choose scrip for scrip roll-over (section 124-781 and section 124-785).

26. Scrip for scrip roll-over cannot be chosen if any capital gain a MicroCap Fund Unitholder might make from their replacement SGH Trust units would be disregarded, except because of a roll-over (paragraph 124-795(2)(a)).

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

27. The only capital proceeds received by a MicroCap Fund Unitholder will be SGH Trust units. Therefore, if a MicroCap Fund Unitholder chooses scrip for scrip roll-over, the capital gain they make upon the disposal of a MicroCap Fund unit to the Responsible Entity of SGH Trust is disregarded (subsection 124-785(1)).

28. The first element of the cost base and reduced cost base of each replacement SGH Trust unit received is calculated by reasonably attributing to it the cost base and reduced cost base of the MicroCap Fund units for which it was exchanged (subsections 124-785(2) and 124-785(4)).

29. A MicroCap Fund Unitholder can calculate the first element of the cost base and reduced cost base of each replacement SGH Trust unit by dividing the aggregate cost bases or reduced cost bases of their respective units in the MicroCap Fund by the number of replacement SGH Trust units they receive.

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

30. A MicroCap Fund Unitholder who does 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 MicroCap Fund units in working out their net capital gain or net capital loss for the income year in which CGT event A1 happens (section 102-5 and section 102-10).

31. A MicroCap Fund Unitholder, who makes a capital gain where roll-over is not chosen, or cannot be chosen, can treat the capital gain as a 'discount capital gain' provided that the conditions of Subdivision 115-A are met.

32. The first element of the cost base and reduced cost base of each replacement SGH Trust unit received is equal to the market value of the MicroCap Fund unit given in respect of acquiring each SGH Trust unit, worked out as at the time of their acquisition (subsections 110-25(2) and 110-55(2)).

## 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.*

33. Information on how the Commissioner’s view has been reached is adequately described in paragraphs 22 to 32 of this Ruling.

34. 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.

35. 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:

- units/interests are exchanged for units/interests in another trust
- entities have fixed entitlements to all of the income and capital of the original trust and the acquiring trust
- the exchange is in consequence of an arrangement
- conditions for the roll-over are satisfied
- further conditions, if applicable, are satisfied, and
- exceptions to obtaining scrip for scrip roll-over are not applicable.

36. It is considered that, for the purpose of paragraph 124-781(1)(b), there are fixed entitlements to all of the income and capital of MicroCap Fund and SGH Trust immediately before, during and immediately after the exchange of units that is the subject of this Ruling.

37. The description of the scheme in this Ruling satisfies the requirements for the roll-over under Subdivision 124-M.

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

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38. 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(3)(b)
  - ITAA 1997 104-10(4)
  - ITAA 1997 Div 110
  - ITAA 1997 110-25(2)
  - ITAA 1997 110-55(2)
  - ITAA 1997 Subdiv 115-A
  - ITAA 1997 116-20(1)
  - ITAA 1997 Subdiv 124-M
  - ITAA 1997 124-781
  - ITAA 1997 124-781(1)(b)
  - ITAA 1997 124-781(4)
  - ITAA 1997 124-783
  - ITAA 1997 124-785
  - ITAA 1997 124-785(1)
  - ITAA 1997 124-785(2)
  - ITAA 1997 124-785(4)
  - ITAA 1997 124-795(2)(a)
  - ITAA 1997 Div 230
  - ITAA 1997 276-10
  - ITAA 1997 977-50
  - ITAA 1997 995-1(1)
  - TAA 1953
  - Corporations Act 2001
  - Corporations Act 2001 Ch 5C
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ATO references

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