

# ***CR 2020/50 - Ellerston Global Investments Limited - scheme of arrangement***



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## Class Ruling

# Ellerston Global Investments Limited – scheme of arrangement

### **❶ Relying on this Ruling**

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

Further, if we think that this Ruling disadvantages you, we may apply the law in a way that is more favourable to you.

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### **What this Ruling is about**

1. This Ruling sets out the income tax consequences for shareholders of Ellerston Global Investments Limited (EGI) who disposed of their ordinary shares in EGI (EGI shares) in exchange for fully-paid Class B units in Ellerston Global Mid Small Cap Fund (Fund) under the scheme of arrangement implemented on 18 August 2020 (Implementation Date).

2. All legislative references in this Ruling are to provisions of the *Income Tax Assessment Act 1997* unless otherwise indicated.

### **Who this Ruling applies to**

3. This Ruling applies to you if you:

- acquired your EGI shares on or after 20 September 1985
- held your EGI shares on capital account, that is, your EGI shares were neither held as revenue asset (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1))
- disposed of your EGI shares under the scheme of arrangement, and
- acquired your Class B units in the Fund under the scheme of arrangement.

4. This Ruling does not apply to anyone who is subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 26 to 39 of this Ruling.

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

## **When this Ruling applies**

5. This Ruling applies from 1 July 2020 to 30 June 2021.

## **Ruling**

### **CGT event A1 happened on the disposal of EGI shares**

6. CGT event A1 happens when you disposed of your EGI shares under the scheme of arrangement.<sup>1</sup>

7. The timing of CGT event A1 is when your EGI shares were disposed of on the Implementation Date.<sup>2</sup>

8. The capital proceeds from CGT event A1 happening to each EGI share is the market value of a Class B unit you received, or are entitled to receive, in exchange for your EGI share. The market value of the Class B unit is worked out as at the time of CGT event A1 happening. The Commissioner will accept the market value of the Class B unit to be \$1.2104 on the Implementation Date.<sup>3</sup>

9. You make a capital gain from CGT event A1 happening if the capital proceeds from the disposal of your EGI share exceeds the cost base of that share.<sup>4</sup>

10. You can treat the capital gain as a 'discount capital gain' provided that the conditions of Subdivision 115-A are met. In particular, the EGI shares that were disposed of must have been acquired by you at least 12 months before the Implementation Date.

11. You make a capital loss from CGT event A1 happening if the capital proceeds from the disposal of your EGI share are less than the reduced cost base of that share.<sup>5</sup>

12. If you are a non-resident, a capital gain or capital loss will be disregarded<sup>6</sup> as the EGI share will not be taxable Australian property.

### ***Cost base and reduced cost base of Class B units in the Fund received in relation to the disposal of EGI shares***

13. The first element of the cost base and reduced cost base of a Class B unit you received in relation to the disposal of an EGI share is equal to the market value of the EGI share you disposed of in exchange for the issue of a Class B unit. The market value of the EGI share is worked out on the Implementation Date. The Commissioner will accept the market value of the EGI share to be \$1.2104 on the Implementation Date.

<sup>1</sup> Section 104-10.

<sup>2</sup> Paragraph 104-10(3)(b).

<sup>3</sup> Subsection 116-20(1).

<sup>4</sup> Subsection 104-10(4).

<sup>5</sup> Subsection 104-10(4).

<sup>6</sup> Section 855-10.

***Attributions to Class B unitholders******Resident***

14. You are required to include in your assessable income the franked distributions attributed to you by the responsible entity (RE) of the Fund, which may include any franked dividends from EGI.<sup>7</sup>

15. You are entitled to the franking credit tax offsets attributed to you by the RE of the Fund unless the Commissioner makes a determination under section 276-90 to treat you as not being a qualified person in relation to the distribution for the purposes of Division 1A of former Part IIIAA of the *Income Tax Assessment Act 1936* (ITAA 1936).<sup>8</sup>

***Non-resident***

16. If you are a non-resident unitholder of a Class B unit, the franked dividend attributed to you is exempted from dividend withholding tax.<sup>9</sup> As a result, the franked dividend will be treated as non-assessable non-exempt income.<sup>10</sup>

***Redemption of Class B units******Class B unit held on capital account***

17. CGT event C2 happens when your Class B units are redeemed.<sup>11</sup>

18. Your ownership of a Class B unit in the Fund, being an intangible asset, ends when the Fund pays an amount of redemption consideration to you.<sup>12</sup>

19. The capital proceeds in respect of CGT event C2 happening will include the money and the market value of any property received by you in respect of the redemption, including any franked distribution paid to you by the RE of the Fund as a result of your Class B units being redeemed, and is included in your assessable income or non-assessable non-exempt income.<sup>13</sup>

20. You will make a capital gain from CGT event C2 happening if the capital proceeds from the redemption exceed the cost base of your Class B unit<sup>14</sup>, subject to the cost base of that unit, to be adjusted under section 104-107B. In particular, where the capital proceeds included any franked distribution attributed to you that is included in your assessable income or non-assessable non-exempt income, the cost base is effectively increased by the amount included in your assessable income or non-assessable non-exempt income<sup>15</sup> but *not* reduced by the amount of the franked distribution that you have a right to receive.<sup>16</sup>

21. You can treat the capital gain as a 'discount capital gain' provided that the conditions of Subdivision 115-A are met. In particular, the Class B unit that is disposed of must have been acquired by you at least 12 months before the date of the redemption.

<sup>7</sup> Subsections 276-80(1) to 276-80(3).

<sup>8</sup> Subsections 276-80(4) to 276-80(6).

<sup>9</sup> Paragraph 128B(3)(ga) of the ITAA 1936.

<sup>10</sup> Section 128D of the ITAA 1936.

<sup>11</sup> Subsection 104-25(1).

<sup>12</sup> Subsection 104-25(2).

<sup>13</sup> Subsection 116-20(1).

<sup>14</sup> Subsection 104-25(3).

<sup>15</sup> Section 104-107E.

<sup>16</sup> Subsection 104-107D(2).

22. You will make a capital loss from CGT event C2 happening if the capital proceeds from the redemption are less than the reduced cost base of your Class B unit<sup>17</sup>, subject to the reduced cost base of that unit to be adjusted under section 104-107B.

23. A capital gain or capital loss will be disregarded under section 855-10 if you are a non-resident and the Class B unit is not taxable Australian property.

#### *Class B unit held on revenue account*

24. If you have held the Class B units as 'revenue assets' (as defined in section 977-50), the amount by which the redemption consideration exceeds the cost of each Class B unit is included in your assessable income.<sup>18</sup> Correspondingly, if the cost of each Class B exceeds the redemption consideration, the difference is an allowable deduction.<sup>19</sup> The cost of each Class B unit is subject to the adjustment to be made under section 104-107G.

25. You will also make a capital gain or capital loss under CGT event C2 (as described in paragraphs 17 to 23 of this Ruling). However, any capital gain or capital loss you made will be disregarded at the time of the CGT event if the Class B units were held as revenue assets.<sup>20</sup>

### **Scheme**

26. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

#### **EGI**

27. EGI is an Australian public company listed on the Australian Securities Exchange, investing in a diversified portfolio of predominantly global equities (Portfolio). As at 30 June 2019, EGI had 105,300,394 shares on issue. At the Implementation Date, less than 10% EGI shares were held by non-resident shareholders.

28. EGI has been paying fully franked dividends since 2015.

29. The share capital account of EGI is not tainted for the purposes of Division 197.

#### **Fund**

30. The Fund is an Australian unit trust registered with the Australian Securities and Investments Commission. It is a managed investment scheme under the *Corporations Act 2001*. The RE for the Fund is Ellerston Capital Limited.

31. The Fund is an attribution managed investment trust (AMIT) for the purposes of Division 276.

32. As at 14 May 2020, there were 26,239,940 Class A units on issue by the Fund held by seven Australian resident unitholders.

33. As at 30 June 2019, the closing balance of the net assets attributable to unitholders was \$27,355,925.

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<sup>17</sup> Subsection 104-25(3).

<sup>18</sup> Section 6-5.

<sup>19</sup> Section 8-1.

<sup>20</sup> Section 118-20.

**Scheme of arrangement**

34. On 17 February 2020, EGI announced that it entered into a scheme implementation deed with the RE of the Fund. Under the scheme of arrangement, the RE of the Fund will acquire all the issued shares in EGI, such that EGI will become wholly owned by the Fund and delisted from the Australian Securities Exchange. In exchange, shareholders of EGI will be entitled to receive one fully-paid Class B unit in the Fund for each EGI share held on 11 August 2020 (Scheme Record Date).

35. The scheme of arrangement was approved by EGI shareholders and the Supreme Court of New South Wales under section 411 of the *Corporations Act 2001*, and it was implemented on the Implementation Date.

36. On the Implementation Date, based on the net tangible assets of EGI, the market value of each:

- EGI share was determined to be \$1.2104, and
- Class B unit was determined to be \$1.2104.

37. On the Implementation Date, the RE of the Fund also acquired the Portfolio from EGI.

38. After the Implementation Date, the shareholders of EGI (now holders of Class B units in the Fund) may request the withdrawal of some or all of their units by way of a redemption in accordance with the Fund's constitution.

**Other information**

39. EGI is expected to be wound up on or before 30 June 2021.

**Commissioner of Taxation**

23 September 2020

**Appendix – Explanation**

**❶** *This Explanation 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.*

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**The AMIT cost base adjustment**

40. You are required to adjust the cost base of your Class B units according to sections 104-107B to 104-107G.

***Class B units held on capital account***

41. If you hold your Class B units in the Fund on capital account, you are required to make an annual adjustment to the cost base and reduced cost base of each of your Class B units under section 104-107B. The adjustment is to be made just before the end of the income year, or just before the time of a relevant CGT event. Therefore, if you are redeeming a Class B unit, you will need to adjust the cost base and reduced cost base of your Class B unit just before the redemption. Otherwise, you will need to adjust the cost base and reduced cost base of your Class B units just before the end of the income year.

42. The cost base and reduced cost base of each of your Class B units is effectively reduced by the AMIT cost base reduction amount for the income year under section 104-107D, being the total of:

- money, and the market value of any property, attributable to the Class B unit, that you start to have a right to receive in that income year, and
- the amounts of all tax offsets attributable to the Class B unit,

to the extent that the receipt is not as a result of CGT events A1, C2, E1, E6 or E7.

43. The cost base and reduced cost base of each of your Class B units is effectively increased by the AMIT cost base increase amount for the income year under section 104-107E, being the total of:

- amounts included in your assessable income or non-assessable non-exempt income (including amounts included because of section 276-80) that are attributable to the Class B unit, other than any amount in respect of the Fund's net capital gain, and
- the amount of your determined member component of a character relating to capital gains.<sup>21</sup>

44. The amount by which the cost base and reduced cost base is actually adjusted under section 104-107B is the net difference between the AMIT cost base reduction

<sup>21</sup> Include any relevant discount component (subsection 276-85(4)).

amount and the AMIT cost base increase amount. This is called the AMIT cost base net amount, and it is worked out under section 104-107C.

45. If the cost base is reduced to nil, any further negative AMIT cost base net amount results in a capital gain under CGT event E10 pursuant to subsection 104-107A(3).

### ***Class B units held on revenue account***

46. Corresponding with sections 104-107B (which provides for annual cost base adjustments for capital gains tax purposes) and 104-107A (which provides for a capital gain to arise if the relevant cost base would otherwise be reduced below nil), sections 104-107G and 104-107H deal with adjustments to the tax cost of AMIT interests held on revenue account and the inclusion of an amount in assessable income where that cost would otherwise be reduced below nil.

47. If your Class B units are held on revenue account, you are required to adjust the tax cost of your Class B units just before the time of a CGT event (for example, CGT event C2 happens when you redeem a Class B unit), or otherwise, just before the end of the income year.<sup>22</sup>

48. As discussed in paragraphs 41 to 45 of this Ruling, the tax cost of your Class B units may increase or decrease<sup>23</sup> and, where the reduction exceeds the tax cost, the excess is included in your assessable income.<sup>24</sup>

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<sup>22</sup> Subsection 104-107G(5).

<sup>23</sup> Section 104-107G.

<sup>24</sup> Subsection 104-107H(2).



**References***Previous draft:*

Not previously issued as a draft

*Legislative references:*

- ITAA 1936 former PtIIIAA Div 1A
- ITAA 1936 128B(3)(ga)
- ITAA 1936 128D
- ITAA 1997 6-5
- ITAA 1997 8-1
- ITAA 1997 104-10
- ITAA 1997 104-10(3)(b)
- ITAA 1997 104-10(4)
- ITAA 1997 104-25(1)
- ITAA 1997 104-25(2)
- ITAA 1997 104-25(3)
- ITAA 1997 104-107A
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- ITAA 1997 104-107B
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- ITAA 1997 104-107D
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- ITAA 1997 855-10
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- TAA 1953
- Corporations Act 2001

## ATO references

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