

CR 2021/19 - EQT Wholesale Flagship Fund - scrip for scrip roll-over



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Class Ruling

EQT Wholesale Flagship Fund – scrip for scrip roll-over

① 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.

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What this Ruling is about

1. This Ruling sets out the tax consequences for holders of units in EQT Wholesale Flagship Fund (Fund 40) in relation to the acquisition of those units by EQT Flagship Fund (Fund 2) in exchange for units in Fund 2.
2. Full details of this scheme are set out in paragraphs 21 to 39 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997* unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you:
 - were a holder of units in Fund 40 on 2 December 2020 (the Implementation Date)
 - participated in the scheme that is subject to this Ruling
 - are a resident of Australia (as defined in subsection 6(1) of the *Income Tax Assessment Act 1936*), and
 - held your units in Fund 40 neither as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)), that is, you held your units on capital account.

5. This Ruling does not apply to you if you are subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 21 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

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

Ruling

CGT event A1 happened on the disposal of your Fund 40 units

7. CGT event A1 happened when you disposed of your Fund 40 units to Equity Trustees Limited, as trustee for Fund 2 (subsection 104-10(1)).

8. The time of CGT event A1 was on the Implementation Date (paragraph 104-10(3)(b)).

9. You will make a capital gain from CGT event A1 happening if the capital proceeds from the disposal of a Fund 40 unit exceeds its cost base. You will make a capital loss from CGT event A1 happening if the capital proceeds from the disposal of a Fund 40 unit are less than its reduced cost base (subsection 104-10(4)).

10. The capital proceeds from CGT event A1 happening are equal to the market value of Fund 2 units received under the scheme (paragraph 116-20(1)(b)).

Availability of scrip for scrip roll-over under Subdivision 124-M for your Fund 40 units

11. Subject to the qualification in paragraph 12 of this Ruling, if you make a capital gain from the disposal of your Fund 40 units, you may choose to obtain scrip for scrip roll-over (section 124-781).

12. Scrip for scrip roll-over cannot be chosen if any capital gain you might subsequently make from the replacement Fund 2 units would be disregarded, except because of a roll-over (paragraph 124-795(2)(a)).

Consequences if you choose to apply scrip for scrip roll-over for your Fund 40 units

13. If you choose to apply scrip for scrip roll-over, you will be able to disregard any capital gain arising from CGT event A1 happening in respect of the exchange of your Fund 40 units for replacement Fund 2 units (subsection 124-785(1)).

14. The first element of the cost base and reduced cost base of each replacement Fund 2 unit received is calculated by reasonably attributing to it the cost base and reduced cost base of the Fund 40 units for which it was exchanged (subsections 124-785(2) and (4)).

15. You calculate the first element of the cost base or reduced cost base of each replacement Fund 2 unit by dividing the aggregate cost bases or reduced cost bases of your Fund 40 units by the number of replacement Fund 2 units you received.

16. The date of acquisition of Fund 2 units is the date you acquired your original Fund 40 units (table item 2a of subsection 115-30(1)).

Consequences if you do not, or cannot, choose scrip for scrip roll-over for your Fund 40 units

17. If you do not, or cannot, choose scrip for scrip roll-over, you must account for any capital gain or capital loss from CGT event A1 happening on the disposal of your Fund 40 units in working out your net capital gain or net capital loss for the income year in which CGT event A1 happens (sections 102-5 and 102-10).

18. If you make a capital gain and do not, or cannot, choose scrip for scrip roll-over, you can treat the capital gain as a 'discount capital gain' provided that the conditions in Subdivision 115-A are met. In particular, the Fund 40 units that you disposed of must have been acquired by you at least 12 months before their disposal to Equity Trustees Limited, as trustee for Fund 2.

19. If you do not, or cannot, choose scrip for scrip roll-over, the first element of the cost base and reduced cost base of each replacement Fund 2 unit received is equal to the market value of each Fund 40 unit given in respect of acquiring each Fund 2 unit, worked out as at the time of their acquisition (subsections 110-25(2) and 110-55(2)).

20. If you do not, or cannot, choose scrip for scrip roll-over, the date of acquisition of the replacement Fund 2 units is the date you were issued units in Fund 2 (table item 3 of section 109-10).

Scheme

21. 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.

Fund 40

22. Fund 40 is an Australian unit trust which was established on 30 January 2004 by the Constitution for the EQT Wholesale Flagship Fund (Fund 40 Trust Deed) as amended by Supplemental Deeds dated 30 June 2005, 18 August 2006, 25 June 2013 and 3 November 2017.

23. Fund 40 was registered as a managed investment scheme under Chapter 5C of the *Corporations Act 2001* on 9 February 2004 with Equity Trustees Limited, an Australian-resident company, as its trustee and responsible entity.

24. On 1 July 2017, Equity Trustees Limited, as trustee for Fund 40, irrevocably elected to enter the attribution regime in Division 276 for the taxation of managed investment trusts to be an attribution managed investment trust (AMIT).

25. Fund 40 is designed for investors seeking medium-to-long term capital growth potential, coupled with an increasing income stream payable from the dividends of the underlying shares.

26. At all times since its establishment on 30 January 2004, Fund 40 has had only one class of units on issue.

Fund 2

27. Fund 2 is an Australian unit trust which was established on 1 August 2003 by the Constitution for the Equity Trustees Limited Common Fund No. 2 (Fund 2 Trust Deed) as amended by Supplemental Deeds dated 21 January 2004, 13 February 2004, 30 June 2005, 26 June 2013 and 13 December 2017.

28. Fund 2 was registered as a managed investment scheme under Chapter 5C of the *Corporations Act 2001* on 16 February 2004 with Equity Trustees Limited as its trustee and responsible entity.

29. On 1 July 2017, Equity Trustees Limited, as trustee for Fund 2, irrevocably elected to enter the attribution regime in Division 276 for the taxation of managed investment trusts to be an AMIT.

30. Fund 2 is designed for investors seeking medium-to-long term capital growth potential, coupled with an increasing income stream payable from the dividends of the underlying shares.

31. At all times since its establishment on 1 August 2003, Fund 2 has had only one class of units on issue.

Acquisition of units in Fund 40 by Fund 2

32. Equity Trustees Limited, as trustee for both Fund 2 and Fund 40, sought to increase investor returns of the unitholders in Fund 2 and Fund 40 by decreasing portfolio management costs, via a reorganisation that would streamline the operations and management of Fund 2 and Fund 40.

33. Under the reorganisation, Equity Trustees Limited, as trustee for Fund 2, made an offer, on the same terms, to all unitholders in Fund 40, to acquire all of the units on issue in Fund 40.

34. Over 80% of the unitholders in Fund 40, holding over 80% of the Fund 40 units, accepted the offer made by Fund 2.

35. Each of the unitholders in Fund 40 who participated in the scheme disposed of their units in Fund 40 by exchanging them for units in Fund 2, that is, no cash consideration was received.

36. The number of Fund 2 units that the unitholders of Fund 40 received was determined by reference to the market value of each Fund 40 unit and each Fund 2 unit on the Implementation Date.

Other matters

37. Equity Trustees Limited, as trustee for Fund 2, will not make a choice to deny the roll-over to the unitholders in Fund 40 under subsection 124-795(4).

38. Under the scheme, the unitholders in Fund 40 and Equity Trustees Limited, as trustee for Fund 2, dealt with each other at arm's length and Fund 2 had more than 300 beneficiaries just before the implementation of the scheme (for the purposes of subsection 124-781(4)).

39. Fund 2 and Fund 40 did not have a 'significant stakeholder' or 'common stakeholder' in relation to the scheme within the meaning of those terms in section 124-783.

Commissioner of Taxation

24 February 2021

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.*

Availability of scrip for scrip roll-over under Subdivision 124-M if a capital gain is made

40. The tax consequences that arise concerning the scheme that is the subject of this Ruling are outlined in paragraphs 7 to 20 of this Ruling.

41. One consequence identified in this Ruling is the availability of scrip for scrip roll-over under Subdivision 124-M. The roll-over enables a shareholder or a unitholder to disregard a capital gain from the disposal of a share or a unit if the shareholder or unitholder receives a replacement share or unit in exchange. It also provides special rules for calculating the cost base and reduced cost base of the replacement share or unit.

42. Subdivision 124-M contains a number of conditions for, and exceptions to, a shareholder or unitholder being able 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 are exchanged for units in another trust
- entities have fixed entitlements to all of the income and capital of the original and the acquiring trust
- the exchange is in consequence of an arrangement that satisfies subsections 124-781(2) or (2A)
- conditions for the roll-over are satisfied
- further conditions, if applicable, are satisfied, and
- exceptions for obtaining scrip for scrip roll-over are not applicable.

43. The scheme that is the subject of this Ruling satisfies the requirements for roll-over under Subdivision 124-M.

References*Previous draft:*

Not previously issued as a draft

Legislative references:

- ITAA 1936 6(1)
- ITAA 1997 102-5
- ITAA 1997 102-10
- ITAA 1997 104-10(1)
- ITAA 1997 104-10(3)(b)
- ITAA 1997 104-10(4)
- ITAA 1997 109-10
- ITAA 1997 110-25(2)
- ITAA 1997 110-55(2)
- ITAA 1997 Subdiv 115-A
- ITAA 1997 115-30(1)
- ITAA 1997 116-20(1)(b)
- ITAA 1997 Subdiv 124-M
- ITAA 1997 124-781
- ITAA 1997 124-781(2)
- ITAA 1997 124-781(2A)
- ITAA 1997 124-781(4)
- ITAA 1997 124-783
- ITAA 1997 124-785(1)
- ITAA 1997 124-785(2)
- ITAA 1997 124-785(4)
- ITAA 1997 124-795(2)(a)
- ITAA 1997 124-795(4)
- ITAA 1997 Div 230
- ITAA 1997 Div 276
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- TAA 1953
- Corporations Act 2001
- Corporations Act 2001 Chp 5C

ATO references

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