


# ***CR 2021/52 - Intelligent Investor Australian Growth Fund - scrip for scrip roll-over***

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## Class Ruling

# Intelligent Investor Australian Growth Fund – scrip for scrip roll-over

### **📌 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 the Intelligent Investor Australian Growth Fund (AGF) in relation to the acquisition of those units by the Trustee of the Intelligent Investor Australian Equity Growth Fund (IIGF) in exchange for units in IIGF.
2. Full details of this scheme are set out in paragraphs 21 to 36 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 AGF on 30 June 2021 (Implementation Date)
  - participated in the exchange of units that is the subject of 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 AGF 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 36 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 Intelligent Investor Australian Growth Fund units**

7. CGT event A1 happened when you disposed of your AGF units to the Trustee of IIGF (subsection 104-10(1)).

8. The time of CGT event A1 was the date on which you accepted the offer from the Trustee of IIGF to acquire your AGF units (paragraph 104-10(3)(a)).

9. You will make a capital gain from CGT event A1 happening if the capital proceeds from the disposal of an AGF unit exceed its cost base. You will make a capital loss from CGT event A1 happening if the capital proceeds from the disposal of an AGF unit is 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 the IIGF units that you received (paragraph 116-20(1)(b)).

### **Availability of scrip for scrip roll-over for your Intelligent Investor Australian Growth Fund units**

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

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

### **Consequences if you choose to obtain scrip for scrip roll-over for your Intelligent Investor Australian Growth Fund units**

13. If you choose to obtain 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 AGF units for replacement IIGF units (subsection 124-785(1)).

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

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

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

### **Consequences if you do not, or cannot, choose scrip for scrip roll-over for your Intelligent Investor Australian Growth Fund 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 AGF 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 AGF units that you disposed of must have been acquired by you at least 12 months before their disposal to the Trustee of IIGF.

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 the replacement IIGF units you received is equal to the market value of your AGF units given in respect of acquiring the IIGF units, worked out as at the time you acquired the replacement IIGF units (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 IIGF units is the date on which you accepted the offer from the Trustee of IIGF to acquire your AGF units (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.

### **Intelligent Investor Australian Growth Fund**

22. AGF was settled on 1 February 2017 and is an Australian-resident unit trust. AGF was a registered managed investment scheme under Chapter 5C of the *Corporations Act 2001*.

23. The Trustee and responsible entity of AGF is InvestSMART Funds Management Ltd (InvestSMART Funds), an Australian-resident company.

24. AGF has one class of units on issue. The units of AGF are not listed on the Australian Securities Exchange.

25. AGF is an attribution managed investment trust under Division 276.

### **Intelligent Investor Australian Equity Growth Fund**

26. IIGF was settled on 18 December 2018 and is an Australian-resident unit trust. IIGF is a registered managed investment scheme under Chapter 5C of the *Corporations Act 2001*. The Trustee and responsible entity of IIGF is InvestSMART Funds.

27. IIGF has one class of units on issue. The units of IIGF are listed on the Australian Securities Exchange.

28. As of 14 April 2021, IIGF had 2,019 unit holders.

29. IIGF is an attribution managed investment trust under Division 276.

**The merger**

30. The Trustee of AGF and the Trustee of IIGF sought to improve investor returns by decreasing portfolio management costs via a merger of IIGF and AGF.

31. On 1 June 2021, the Trustee of IIGF made an offer on the same terms to all of the unit holders of AGF to acquire all of the units on issue in AGF. The offer was open until 28 June 2021.

32. AGF unit holders who accepted the offer disposed of their AGF units in exchange for new units in IIGF. No cash consideration was received by AGF unit holders. The offer was accepted by the holders of 82.53% of the units in AGF. The units in AGF were transferred to the Trustee of IIGF on the Implementation Date.

33. The number of IIGF units that the AGF unit holders received was determined by reference to the market value of each AGF unit (worked out based on the net asset value of AGF) and each IIGF unit (worked out based on the one-day volume weighted average price) on the Implementation Date.

**Other matters**

34. The Trustee of IIGF will not make a choice to deny a roll-over to the unit holders of AGF under subsection 124-795(4).

35. For the purposes of subsections 124-810(4) and (5), IIGF had more than 300 beneficiaries just before the Implementation Date.

36. IIGF and AGF did not have a 'significant stakeholder' or 'common stakeholder' in relation to the scheme within the meaning of those terms in section 124-783.

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**Commissioner of Taxation**28 July 2021

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## **Appendix – Explanation**

**ⓘ** *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.*

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

37. Scrip for scrip roll-over under Subdivision 124-M enables a unit holder to disregard a capital gain from the disposal of a unit if the unit holder receives a replacement unit in exchange. It also provides special rules for calculating the cost base and reduced cost base of the replacement unit.

38. Subdivision 124-M contains a number of conditions for, and exceptions to, a unit holder 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 trusts
- the exchange is in consequence of an arrangement that satisfies subsection 124-781(2) or (2A)
- the conditions for the roll-over under subsection 124-781(3) are satisfied
- further conditions in subsection 124-781(4), if applicable, are satisfied, and
- exceptions for the roll-over in section 124-795 are not applicable.

39. 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

- ITAA 1997 124-781(2)
- ITAA 1997 124-781(2A)
- ITAA 1997 124-781(3)
- 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
- ITAA 1997 124-795(2)(a)
- ITAA 1997 124-795(4)
- ITAA 1997 124-810(4)
- ITAA 1997 124-810(5)
- ITAA 1997 Div 230
- ITAA 1997 Div 276
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- Corporations Act 2001 5C

*Legislative references:*

- ITAA 1936 6(1)
- ITAA 1997 102-5
- ITAA 1997 102-10
- ITAA 1997 104-10(1)
- ITAA 1997 104-10(3)(a)
- 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

## ATO references

NO: 1-PHIC4EX

ISSN: 2205-5517

BSL: PGI

ATOlaw topic: Income tax ~~ Capital gains tax ~~ CGT events ~~ CGT event A1 – disposal of a CGT asset  
 Income tax ~~ Capital gains tax ~~ CGT assets ~~ General  
 Income tax ~~ Capital gains tax ~~ Rollovers ~~ Scrip for scrip –  
 Subdivision 124-M

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