


CR 2021/54 - RAM Australia Elsie Street Burwood Trust - scrip for scrip roll-over

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Class Ruling

RAM Australia Elsie Street Burwood Trust – scrip for scrip roll-over

📌 Relying on this Ruling

This publication 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 RAM Australia Elsie Street Burwood Trust (the Burwood Trust) in relation to the acquisition of those units by the Trustee of the RAM Australia Diversified Property Fund (RADPF) in exchange for units in RADPF.
2. Full details of this scheme are set out in paragraphs 20 to 33 of this Ruling.
3. All legislative reference 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 the Burwood Trust on 7 July 2021 (Implementation Date)
 - participated in the scheme that is the subject of this Ruling, and
 - were either
 - a resident of Australia (as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936), or
 - not a resident of Australia (as defined in subsection 6(1) of the ITAA 1936) and your Burwood Trust units were taxable Australian property (as defined in section 855-15), and

- held your units in the Burwood Trust on capital account, that is, the units were neither held as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)).

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 20 to 33 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 2021 to 30 June 2022.

Ruling

CGT event A1 happened on the disposal of your RAM Australia Elsie Street Burwood Trust units

7. CGT event A1 happened when you disposed of your Burwood Trust units to the Trustee of RADPF (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 your Burwood Trust unit exceeded the cost base of that unit (subsection 104-10(4)). You will make a capital loss from CGT event A1 happening if the capital proceeds from the disposal of your Burwood Trust unit are less than the reduced cost base of that unit (subsection 104-10(4)).
10. The capital proceeds from CGT event A1 happening are equal to the market value of the RADPF units received under the scheme (paragraph 116-20(1)(b)).
11. You can treat the capital gain as a 'discount capital gain' provided that the conditions in Subdivision 115-A are met. In particular, the Burwood Trust units that you disposed of must have been acquired by you at least 12 months before their disposal to the Trustee of RADPF (subsection 115-25(1)).

Cost base and reduced cost base of RAM Australia Diversified Property Fund units

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

Acquisition date of RAM Australia Diversified Property Fund units

13. The acquisition date of the RADPF units is the date you were issued units in RADPF, being the Implementation Date (table item 3 of section 109-10).

Availability of scrip for scrip roll-over for your RAM Australia Elsie Street Burwood Trust units

14. Subject to the qualification in paragraph 15 of this Ruling, if you make a capital gain from the disposal of your Burwood Trust units, you may choose to obtain scrip for scrip roll-over for your capital gain (section 124-781).

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

Consequences if you choose scrip for scrip roll-over for your RAM Australia Elsie Street Burwood Trust units***Capital gain is disregarded for your RAM Australia Elsie Street Burwood Trust units***

16. If you choose to obtain scrip for scrip roll-over, you will be able to disregard any capital gain you make from CGT event A1 happening in respect of the exchange of your Burwood Trust units for replacement RADPF units (subsection 124-785(1)).

Cost base and reduced cost base of RAM Australia Diversified Property Fund units

17. If you choose to obtain scrip for scrip roll-over, the first element of the cost base and reduced cost base of a replacement RADPF unit you received is worked out by reasonably attributing to it the cost base and reduced cost base (respectively) of the Burwood Trust units for which it was exchanged and for which the roll-over was obtained (subsections 124-785(2) and (4)).

18. You can calculate the first element of the cost base and reduced cost of each replacement RADPF unit by dividing the aggregate cost bases of your Burwood Trust units by the number of replacement RADPF units you received.

Acquisition date of RAM Australia Diversified Property Fund units

19. If you choose to obtain scrip for scrip roll-over, for the purposes of determining your eligibility to make a discount capital gain on a subsequent CGT event happening to your RADPF units, the acquisition date of each replacement unit in RADPF is the date you acquired the corresponding Burwood Trust unit (table item 2 of subsection 115-30(1)).

Scheme

20. 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.

RAM Australia Elsie Street Burwood Trust

21. The Burwood Trust is an Australian-resident unit trust which was settled on 11 September 2018, with RAM Burwood Property Nominees Pty Ltd as its trustee.

22. Immediately before the acquisition that is the subject of this Ruling, the Burwood Trust had 17 unit holders.

23. At all times since it was settled, the Burwood Trust has only had one class of units on issue.

RAM Australia Diversified Property Fund

24. RADPF is an Australian-resident unit trust which was settled on 25 June 2021, with RAM Diversified Property Nominees No. 2 Pty Ltd as its trustee.
25. RADPF was established to acquire all of the units in the Burwood Trust.
26. At all times since it was settled, RADPF has only had one class of units on issue.

Acquisition of units in the RAM Australia Elsie Street Burwood Trust

27. On 30 June 2021, the Trustee of RADPF offered to acquire all of the units in the Burwood Trust.
28. The offer was made to all Burwood Trust holders, and the offer was available to all Burwood Trust unit holders on the same terms.
29. On 7 July 2021, all of the units in the Burwood Trust were transferred to the Trustee of RADPF. The Burwood Trust unit holders received one unit in RADPF for each unit in the Burwood Trust.

Other matters

30. The Trustee of RADPF will not make a choice to deny a roll-over to the unit holders of the Burwood Trust under subsection 124-795(4).
31. Under the scheme, the unit holders of the Burwood Trust and the Trustee of the RADPF dealt with each other at arm's length just before the implementation of the scheme (for the purposes of subsection 124-781(4)).
32. For the unit holders of the Burwood Trust who are not residents of Australia within the meaning of subsection 6(1) of the ITAA 1936 and whose Burwood Trust units were taxable Australian property under section 855-15, the units they acquire in RADPF under the scheme will qualify as taxable Australian property under table item 2 of section 855-15 (an indirect Australian real property interest) just after the Implementation Date. This is because:
 - each non-resident unit holder to whom this Ruling applies will hold 10% or more of the units in RADPF, and
 - more than half of the market values of the assets of RADPF will be taxable Australian real property (as defined in section 855-20).
33. RADPF and the Burwood 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.

References*Previous draft:*

Not previously issued as a draft

- ITAA 1997 124-781
- 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 855-15
- ITAA 1997 855-20
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- TAA 1953

Legislative references:

- ITAA 1936 6(1)
- 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 115-25(1)
- ITAA 1997 115-30(1)
- ITAA 1997 116-20(1)(b)

ATO references

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Income tax ~~ Capital gains tax ~~ Cost base and reduced cost base

Income tax ~~ Capital gains tax ~~ Discount capital gains

Income tax ~~ Capital gains tax ~~ Rollovers ~~ Scrip for scrip –

Subdivision 124-M

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