


CR 2023/13 - Charter Hall Direct Industrial Fund No.2 - scrip for scrip roll-over

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Status: **legally binding**

Class Ruling

Charter Hall Direct Industrial Fund No.2 – 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.

Table of Contents	Paragraph
What this Ruling is about	1
Who this Ruling applies to	4
When this Ruling applies	7
Ruling	8
Scheme	20
Appendix – Explanation	40

What this Ruling is about

1. This Ruling sets out the income tax consequences for holders of units in the Charter Hall Direct Industrial Fund No.2 (DIF2), in relation to the acquisition of those units by Charter Hall Direct Property Management Limited (as the responsible entity of Charter Hall Direct Industrial Fund No.4 (DIF4)) in exchange for units in DIF4.
2. Details of this scheme are set out in paragraphs 20 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 DIF2 Units on 31 January 2023 (Completion Date)
 - accepted the exchange of DIF2 Units for DIF4 Units under the scheme 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 DIF2 Units on capital account – that is, you did not hold your DIF2 Units as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)).

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5. This Ruling does not apply to a holder of DIF2 Units who chose to receive a cash payment from the responsible entity of DIF4 for their DIF2 Units.

6. 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 20 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

7. This Ruling applies from 1 July 2022 to 30 June 2023.

Ruling

CGT event A1 happened on the disposal of your Charter Hall Direct Industrial Fund No.2 Units

8. CGT event A1 happened when you disposed of your DIF2 Units to the responsible entity of DIF4 (subsection 104-10(1)).

9. The time of CGT event A1 was on 26 October 2022, when the responsible entity of DIF2 acting in its capacity as agent of the DIF2 Unitholders, entered into the Implementation Deed with DIF4 to implement the acquisition (paragraph 104-10(3)(a)).

10. You will make a capital gain from CGT event A1 happening if the capital proceeds from the disposal of your DIF2 Unit exceeded the cost base of that unit. You will make a capital loss from CGT event A1 happening if the capital proceeds from the disposal of your DIF2 Unit are less than the reduced cost base of that unit (subsection 104-10(4)).

11. The capital proceeds from CGT event A1 happening are equal to the market value of the DIF4 Units that you received (paragraph 116-20(1)(b)).

Availability of scrip for scrip roll-over for your Charter Hall Direct Industrial Fund No.2 Units

12. Subject to the qualification in paragraph 13 of this Ruling, if you make a capital gain from the disposal of your DIF2 Units, you may choose to obtain scrip for scrip roll-over for your capital gain (section 124-781).

13. Scrip for scrip roll-over cannot be chosen if any capital gain you might subsequently make from the replacement DIF4 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 Charter Hall Direct Industrial Fund No.2 Units

14. 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 DIF2 Units for replacement DIF4 Units (subsection 124-785(1)).

15. The first element of the cost base and reduced cost base of each replacement DIF4 Unit received is calculated by reasonably attributing to it the cost base and reduced cost

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base of the DIF2 Unit for which it was exchanged and for which the roll-over was obtained (subsections 124-785(2) and (4)). In this case, due to each DIF2 Ordinary Unit being exchanged for 1.2197 DIF4 Units and each DIF2 Wholesale Unit being exchanged for 1.2359 DIF4 Units, the cost base (and reduced cost base) of each DIF2 Unit you owned is divided by 1.2197 or 1.2359 respectively to determine the first element of the cost base and reduced cost base for each replacement DIF4 Unit.

16. The acquisition date of your replacement DIF4 Units is the date that you acquired the corresponding DIF2 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 Charter Hall Direct Industrial Fund No.2 Units

17. If you receive replacement units in DIF4 and 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 DIF2 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 DIF2 Units that you disposed of must have been acquired by you at least 12 months before 26 October 2022, the date on which CGT event A1 occurred.

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 DIF4 Units you received is equal to the market value of your DIF2 Units given in respect of acquiring the DIF4 Units, worked out as at the time you acquired the replacement DIF4 Units (subsections 110-25(2) and 110-55(2)).

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.

Charter Hall Direct Industrial Fund No.2

21. DIF2 was established on 21 November 2012 and is an Australian-resident unit trust.

22. The Trustee and responsible entity of DIF2 is Charter Hall Direct Property Management Limited, an Australian-resident company.

23. DIF2 had two classes of units, ordinary units and wholesale units, on issue. The units of DIF2 are not listed on the Australian Securities Exchange.

24. Immediately before the Completion Date, DIF2 had 655 ordinary unit holders (27,260,198.4857 units) and 481 wholesale unit holders (102,316,389.1196 units).

25. DIF2 is an attribution managed investment trust under Division 276 for the income year ended 30 June 2023.

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Charter Hall Direct Industrial Fund No.4

26. DIF4 was established on 4 October 2016 and is an Australian-resident unit trust.
27. The Trustee and responsible entity of DIF4 is Charter Hall Direct Property Management Limited.
28. DIF4 has one class of ordinary units on issue. The units of DIF4 are not listed on the Australian Securities Exchange.
29. Immediately before the Completion Date, DIF4 had 3,876 unit holders (1,575,425,546.1281 units).
30. DIF4 is an attribution managed investment trust under Division 276 for the income year ended 30 June 2023.

Acquisition of units in the Charter Hall Direct Industrial Fund No.2

31. On 30 August 2022, the responsible entity of DIF2 received an offer from the responsible entity of DIF4 for DIF4 to acquire all of the units in DIF2 in exchange for either cash or units in DIF4 (the acquisition).
32. On 26 October 2022, DIF2 entered into an Implementation Deed with DIF4 to implement the acquisition.
33. On 22 November 2022, the responsible entity of DIF2 informed the DIF2 Unitholders of the acquisition of 100% of the DIF2 Units by DIF4. It provided the DIF2 Unitholders the option to either receive a cash payment or elect to receive units in DIF4 as consideration for their DIF2 Units. It was not possible to receive consideration partly in cash and partly in DIF4 Units.
34. DIF2 Unitholders who received cash for their units received an amount equal to the net tangible assets of DIF2, calculated per unit.
35. The offer to receive units in DIF4 was accepted by 28% of the DIF2 Unitholders. The number of DIF4 Units they received was equal to the cash consideration that would have been payable to that DIF2 Unitholder divided by the DIF4 entry price of DIF4 Units as at the Completion Date.

Other matters

36. The Trustee of DIF4 will not make a choice to deny a roll-over to the DIF2 Unitholders under subsection 124-795(4).
37. Subsection 124-810(2) will not deem for the purposes of Subdivision 124-M, that either DIF2 or DIF4 had less than 300 beneficiaries just before the Completion Date.
38. DIF2 did not have a 'significant stakeholder' or 'common stakeholder' in relation to the scheme within the meaning of those terms in section 124-783.
39. The acquisition is not a takeover bid within the meaning of the *Corporations Act 2001*.

Commissioner of Taxation

22 March 2023

Status: **not legally binding**

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.*

Scrip for scrip roll-over

40. 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.

41. 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.

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

Status: **not legally binding**

References

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 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(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(2)
- ITAA 1997 Div 230
- ITAA 1997 Div 276
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- Corporations Act 2001

ATO references

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