



## Class Ruling

# Income tax: capital gains: scrip for scrip roll-over: exchange of shares in Transurban Limited for shares in Transurban Holdings Limited and subsequent Transurban Holdings Limited share consolidation

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### **ⓘ This publication provides you with the following level of protection:**

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

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, we must apply the law to you in the way set out in the ruling (unless we are satisfied that the ruling is incorrect and disadvantages you, in which case we may apply the law in a way that is more favourable for you – provided we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

## What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

### Relevant provision(s)

2. The relevant provisions dealt with in this Ruling are:
- Division 104 of the *Income Tax Assessment Act 1997* (ITAA 1997);
  - section 104-25 of the ITAA 1997;
  - subsection 116-20(1) of the ITAA 1997; and
  - Subdivision 124-M of the ITAA 1997.

All references are to the ITAA 1997 unless otherwise stated.

## Class of entities

3. The class of entities to which this Ruling applies are the stapled security holders in Transurban Limited (TL) who:
- (a) are 'residents of Australia' as that term is defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936);
  - (b) hold their TL shares on capital account;
  - (c) have their shares in TL cancelled in exchange for shares in Transurban Holdings Limited (THL) under this Scheme;
  - (d) are not 'significant stakeholders' or 'common stakeholders' within the meaning of those expressions as used in Subdivision 124-M; and
  - (e) who then, as stapled security holders in THL, have their shares consolidated.

## Qualifications

4. The Commissioner makes this Ruling based on the precise scheme identified in the Ruling.
5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 13 to 18 of this Ruling.
6. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:
- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
  - this Ruling may be withdrawn or modified.
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## Date of effect

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8. This Ruling applies from 23 October 2006. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or
- the relevant provisions are not amended.

9. If this Class Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

10. If this Class Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Class Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

11. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

## Withdrawal

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12. This Ruling is withdrawn and ceases to have effect after 30 June 2007. However, the Ruling continues to apply after its withdrawal in respect of the relevant provisions ruled upon, to all entities within the specified class who entered into the specified scheme during the term of the Ruling, subject to there being no change in the scheme or in the entities involved in the scheme.

## Scheme

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13. The scheme that is the subject of this Ruling is described below. This description is based on, and includes reference to, the following documents:

- Class Ruling application dated 16 August 2006 received from PricewaterhouseCoopers on behalf of TL and THL;
- a copy of the Information Memorandum provided to Transurban security holders outlining the arrangement;

- a copy of the notice of annual general meeting (AGM) provided to stapled security holders; and
- email correspondence dated 18 September 2006 and 9 October 2006 from PricewaterhouseCoopers.

**Note:** certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under the Freedom of Information legislation.

14. THL is a resident company for capital gains tax (CGT) purposes as defined in subsection 995-1(1).

15. At present, under a triple stapled security arrangement, a stapled security holder in TL (TLSS holder) has a stapled security consisting of a unit in Transurban Holdings Trust (THT) and an ordinary share in each of THL and TL. These stapled securities are listed for quotation on the Australian Stock Exchange (ASX) and cannot be separately traded. The scheme that is the subject of this Ruling involves the cancellation of shares in TL, the issue of shares in THL and the consolidation of shares in THL.

16. On the effective date of the transaction, TLSS holders will have all of their shares in TL cancelled and replaced with new shares issued in THL (the Offer). Under the Offer TL stapled security holders will receive one THL share for every 100 of their TL shares. TLSS holders will not receive any cash consideration.

17. A summary of the proposed broader restructure of Transurban, which includes the steps that are part of the scheme are as follows:

- (a) Transurban destaples the TL shares from the Transurban stapled security arrangement.
- (b) TL issues one hundred voting preference shares to THL. The issue of the preference shares is necessary under Corporations Law to ensure that TL remains a legal company by retaining at least one share, and by consequence, at least one owner at all points in time.
- (c) TL reduces its ordinary share capital by way of a cancellation of all ordinary shares in TL.
- (d) In consideration, there will be an issue of one new share in THL for every 100 TL shares cancelled. On completion, THL will own all of the issued capital of TL, making TL a wholly owned subsidiary of the THL consolidated tax group.
- (e) TL will issue 833,921,185 new ordinary shares to THL in exchange for the shares issued in step (d) to THL share holders.

- (f) Shares in THL will then be consolidated to ensure an equalisation of the numbers of securities on issue in the new Stapled Security. This consolidation is necessary to correct the imbalance arising in the number of stapled securities held in THL from the fresh issue of shares under step (d). This consolidation of THL shares will ensure that THL has an equal number of shares on issue as Transurban International Limited (TIL), which is established separately from this arrangement, and units in THT.
- (g) While TIL is established separately from the scheme for which this Ruling is sought, THL, THT and TIL will be stapled such that an interest in one cannot be separately traded on the ASX.

18. Both TL and THL will have at least 300 members just before the commencement of the scheme.

## **Ruling**

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### **Cancellation of TL shares**

19. CGT event C2 will happen as a result of the cancellation of each TL share under the Offer (subsection 104-25(1)).

20. The CGT event will happen to each TL share at the time when the TL shares are cancelled (subsection 104-25(2)).

21. A TLSS holder will make a capital gain from CGT event C2 happening if the capital proceeds for the cancellation of a TL share exceeds the cost base of the share. The TLSS holder will make a capital loss if those capital proceeds are less than the share's reduced cost base (subsection 104-25(3)).

22. The capital proceeds for each TL share will be that proportion of the market value of the THL share that relates to the cancelled TL share (paragraph 116-20(1)(b)).

### **Availability of scrip for scrip roll-over**

23. TLSS holders are eligible to choose scrip for scrip roll-over to the extent that they receive THL shares in exchange for their TL shares under the Offer if:

- (a) apart from the roll-over under Subdivision 124-M, they will make a capital gain from the CGT event C2 that happens to their TL shares (paragraph 124-780(3)(b)); and
- (b) they cannot disregard (except because of the roll-over) any capital gain they might make from the TL share (subsection 124-795(2)).

24. If a TLSS holder chooses roll-over, a capital gain from a TL share is disregarded (subsection 124-785(1)).

25. If a TLSS holder chooses roll-over, the cost base of the replacement THL share is worked out by reasonably attributing to it the cost base of any TL share for which it was exchanged and for which a roll-over was obtained (subsections 124-785(2) and (3)).

### **Consolidation of THL shares**

26. No CGT event under Division 104 will happen on the consolidation of the THL shares.

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**Commissioner of Taxation**

8 November 2006

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## **Appendix 1 – Explanation**

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**❶** *This Appendix 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.*

### **Cancellation of TL shares**

27. CGT event C2 (section 104-25) happens if there is a cancellation, surrender or similar ending of ownership of an intangible CGT asset. This event happens when ownership of the asset ends.

28. CGT event C2 will happen to all TLSS holders when their TL shares are cancelled under the Offer.

29. A TLSS holder will make a capital gain from CGT event C2 happening to each of their TL shares if the capital proceeds for the disposal exceed the cost base of the TL share. The TLSS holder will make a capital loss if those capital proceeds are less than the TL share's reduced cost base (subsection 104-25(3)).

30. The time of the CGT event C2 happening is also relevant in determining the capital proceeds received for each TL share. The capital proceeds from a CGT event are the market value of any property (that is, THL shares) received or entitled to be received, worked out at the time the event happens (subsection 116-20(1)). As one THL share will be received for every 100 TL shares cancelled, the market value of each THL share received is apportioned across the 100 TL shares cancelled.

### **Availability of scrip for scrip roll-over**

31. Where scrip for scrip roll-over is chosen in respect of the capital gain arising on the disposal of a TL share, the capital gain from the disposal will be disregarded to the extent that the TLSS holder receives a THL share.

32. If the TLSS holder chooses roll-over, the cost base of each THL share is worked out by reasonably attributing to it a proportion of the cost base of the TL shares for which it will be exchanged and for which roll-over will be obtained.

### **Requirements for scrip for scrip roll-over – Subdivision 124-M**

33. Subdivision 124-M contains a number of conditions for, and exceptions to, the eligibility of a TLSS holder to choose scrip for scrip roll-over. The main conditions and exceptions that are relevant to the proposed Scheme that is the subject of this Ruling are:

- (a) shares are exchanged for shares in another company;
- (b) the exchange occurs as part of a single arrangement;
- (c) conditions for roll-over are satisfied;

- (d) further conditions are not applicable; and
- (e) exceptions to obtaining scrip for scrip roll-over are not applicable.

34. These requirements are explained below.

### ***Shares are exchanged for shares in another company***

35. Paragraph 124-780(1)(a) requires an entity (a TLSS holder) to exchange a share (a TL share) in a company for a share in another company.

36. This requirement will be satisfied by a TLSS holder who receives a share in THL as consideration for the cancellation of their TL shares under the Offer.

### ***The exchange occurs as part of a single arrangement***

37. Paragraph 124-780(1)(b) requires that shares in an entity (TL – the original entity) be exchanged in consequence of a single arrangement.

38. In the context of the scrip for scrip rollover, the exchange of TL shares for THL shares under the proposed Scheme is considered to be a single arrangement. The single arrangement must also satisfy the following conditions.

#### ***(a) 80% ownership***

39. Paragraph 124-780(2)(a) requires that shares in an entity (TL – the original entity) be exchanged in a single arrangement that results in another entity (THL – the acquiring entity) becoming the owner of 80% or more of the voting shares in the original entity (TL).

40. Under the proposed Scheme, 100% of the ordinary shares owned by TLSS holders will be cancelled. Each of these ordinary shares satisfies the definition of a 'voting share' in subsection 995-1(1). If the proposed Scheme is implemented, THL will become the sole owner of the voting shares in TL.

#### ***(b) All voting share owners participate***

41. Paragraph 124-780(2)(b) requires that the exchange of shares is in consequence of a single arrangement in which at least all owners of voting shares in the original entity (TL) (apart from the acquiring entity or members of the acquiring entity's wholly-owned group) could participate.

42. This requirement will be satisfied because all the owners of shares in TL will be entitled to participate in the proposed Scheme, if approved by the shareholders.

*(c) Participation is on substantially the same terms*

43. Paragraph 124-780(2)(c) requires that the exchange is in consequence of a single arrangement in which participation is available on substantially the same terms for all owners of interests of a particular type in the original entity (TL).

44. This requirement will be satisfied because the proposed Scheme provides that all TLSS holders will be entitled to participate in the proposed Scheme on the same terms.

**Conditions for roll-over are satisfied**

45. Paragraph 124-780(1)(c) requires that the conditions for roll-over outlined in subsection 124-780(3) are met. These conditions must be met in relation to each TL shares for which scrip for scrip roll-over will be chosen.

46. The conditions in subsection 124-780(3) are as follows.

*(a) TL shares are post-CGT shares*

47. Paragraph 124-780(3)(a) requires the original interest holder (a TLSS holder) to have acquired its original interest (a TL ordinary share) on or after 20 September 1985.

48. As TL was incorporated in 1996, all TL ordinary shares must have been acquired after 20 September 1985.

*(b) TLSS holder would otherwise make a capital gain*

49. Paragraph 124-780(3)(b) requires that, apart from the roll-over, the original interest holder (a TLSS holder) would make a capital gain from a CGT event happening in relation to its original interest (the TL share).

50. As explained in paragraph 29 of this Ruling, a capital gain will be made on the cancellation of a TL share if the capital proceeds from the cancellation of that share are more than its cost base. Therefore whether this condition is met will depend on the individual circumstances of the TLSS holder.

*(c) TLSS holder receives an interest in the group acquiring their original share*

51. Paragraph 124-780(3)(c) requires that the replacement interest is in the acquiring entity (THL), or the ultimate holding company of the wholly owned group which includes the acquiring entity.

52. This requirement will be satisfied as the TLSS holders will receive shares in THL, the acquiring entity.

*(d) TLSS holder must choose to obtain scrip for scrip roll-over*

53. Paragraph 124-780(3)(d) requires that the original interest holder (TLSS holder) chooses the roll-over, or if section 124-782 applies to it for the Scheme, it and the replacement entity jointly choose to obtain the roll-over.

54. Section 124-782 has no application in the circumstances of the proposed Scheme since there are no significant stakeholders or common stakeholders under the arrangement.

55. Subject to their eligibility (see paragraph 23 of this Ruling), whether a TLSS holder chooses to obtain roll-over in relation to the disposal of a TL share is a question of fact for each TLSS holder.

***Further conditions are not applicable***

56. Subsection 124-780(4) provides that the additional requirements in subsection 124-780(5) must be satisfied if the original interest holder (a TLSS holder) and the acquiring entity (THL) did not deal with each other at arm's length and:

- (a) neither the original entity (TL) nor the replacement entity (THL) had at least 300 members just before the arrangement started (paragraph 124-780(4)(a)); or
- (b) the original interest holder, the original entity and the acquiring entity (THL) were all members of the same linked group just before the arrangement started (paragraph 124-780(4)(b)).

57. Paragraph 124-780(4)(a) will not apply because TL will have at least 300 members just before the arrangement started. Paragraph 124-780(4)(b) does not apply as TL, the TLSS holders and THL will not be members of the same linked group just before the arrangement commences.

***Exceptions to obtaining scrip for scrip roll-over are not applicable***

58. Section 124-795 contains a number of exceptions where scrip for scrip roll-over cannot be chosen. These exceptions are as follows.

*(a) TLSS holders are residents of Australia*

59. Subsection 124-795(1) provides that roll-over is not available if the original interest holder (a TLSS holder) was a foreign resident and the replacement entity is not an Australian resident.

60. The class of entities to whom the Ruling applies is limited to TLSS holders who are residents of Australia at the time of the implementation of the proposed Scheme. As a consequence, the exception in subsection 124-795(1) will not apply to limit the Ruling in this regard.

*(b) A capital gain cannot (apart from the roll-over) be otherwise disregarded*

61. Paragraph 124-795(2)(a) provides that the roll-over is not available if any capital gain the original interest holder (a TLSS holder) might make from their replacement interest (a THL share) would be disregarded.

62. Whether the capital gain arising because of the disposal of a TL share will be disregarded under another provision of the ITAA 1997 (for example, the TL shares are trading stock held by the TLSS holder) is a question of fact for each TLSS holder. Paragraph 23(b) of this Ruling limits the application of this Ruling in this regard.

*(c) Acquiring entity is not a foreign resident*

63. Paragraph 124-795(2)(b) provides that roll-over is not available if the original interest holder (a TLSS holder) and the acquiring entity (THL) are members of the same wholly-owned group just before the original interest holder stops owning their original interest (a TL share) and the acquiring entity (THL) is a foreign resident.

64. This exception will not apply as the TLSS holders and THL will not be members of the same wholly-owned group just before the proposed Scheme is implemented. In addition, THL is not a foreign resident company.

*(d) No roll-over is available under either Division 122 or Subdivision 124-G*

65. Subsection 124-795(3) provides that scrip for scrip roll-over is not available if a roll-over can be chosen under Division 122 or Subdivision 124-G.

66. This exception will not apply as the circumstances of the proposed Scheme are such that a roll-over in Division 122 or Subdivision 124-G is not available.

*(e) TL is not a foreign resident*

67. Subsections 124-795(4) and (5) provide that roll-over is not available for certain original entities that are foreign residents.

68. This exception will not apply as TL (the original entity) is not a foreign resident.

## Consequences of roll-over

69. Scrip for scrip roll-over enables a shareholder to disregard all or part of a capital gain from a share that is disposed of as part of a share cancellation if the shareholder receives a replacement share in exchange (subsection 124-785(1)). The cost base of the replacement share is determined by reasonably attributing to it the cost base of the original shares which are exchanged for it (subsection 124-785(2)).

70. As the only capital proceeds that TLSS holders will receive in respect of the cancellation of their TL shares are shares in THL, the capital gain will be disregarded completely.

## Consolidation of THL shares

71. Under step (f) of the proposed broader restructure of Transurban, the new shares and the existing shares in THL will be consolidated so that THL only has 833,921,185 shares on issue. The consolidation will result in TLSS holders retaining the same proportional interest in THL after the consolidation as they will have immediately before this step is undertaken. The consolidation is designed to ensure that the same amount of securities are on issue in THL as there are on issue in both TIL and THT.

72. In Tax Determination TD 2000/10, the Commissioner outlined that if a company converts its shares into a larger or smaller number of shares (the converted shares) in accordance with section 254H of the *Corporations Act 2001* (Corporations Law) in that:

- (a) the original shares are not cancelled or redeemed in terms of the Corporations Law;
- (b) there is no change in the total amount allocated to the share capital account of the company; and
- (c) the proportion of equity owned by each shareholder in the share capital account is maintained,

no CGT event will happen to the TLSS holders' original THL shares. While there will be a change in the form of the original shares, there will be no change in their beneficial ownership.

73. The proposed consolidation of THL shares will meet the requirements outlined in TD 2000/10 and therefore the requirements outlined in subsection 112-25(4) will be satisfied. This is because under the proposed Scheme TLSS holders will not have their original shares in THL cancelled, nor will there be any alteration to the amount of share capital account in the company, and nor will the new proportion of equity owned by each stapled security holder be modified.

74. In accordance with TD 2000/10, the tax cost base of the consolidated shares will be determined by evenly apportioning the original tax cost base of THL shares plus the cost base in their new THL shares (that is, those arising from the cancellation of TL shares), across their consolidated THL shares.

## **Appendix 2 – Detailed contents list**

75. The following is a detailed contents list for this Ruling:

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## References

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<i>Previous draft:</i>	- ITAA 1997 124-780(1)(a)
Not previously issued as a draft	- ITAA 1997 124-780(1)(b)
	- ITAA 1997 124-780(1)(c)
<i>Related Rulings/Determinations:</i>	- ITAA 1997 124-780(1)(d)
TD 2000/10	- ITAA 1997 124-780(2)(a)
	- ITAA 1997 124-780(2)(b)
	- ITAA 1997 124-780(2)(c)
<i>Subject references:</i>	- ITAA 1997 124-780(3)
- capital gain	- ITAA 1997 124-780(3)(a)
- capital proceeds	- ITAA 1997 124-780(3)(b)
- CGT event	- ITAA 1997 124-780(3)(c)
- fixed entitlement	- ITAA 1997 124-780(3)(d)
- original interest	- ITAA 1997 124-780(4)
- replacement interest	- ITAA 1997 124-780(4)(a)
- roll-over	- ITAA 1997 124-780(4)(b)
- scrip for scrip roll-over	- ITAA 1997 124-780(5)
- takeover	- ITAA 1997 124-782
	- ITAA 1997 124-785(1)
<i>Legislative references:</i>	- ITAA 1997 124-785(2)
- TAA 1953	- ITAA 1997 124-785(3)
- TAA 1953 Sch 1 357-75(1)	- ITAA 1997 124-785(4)
- ITAA 1936 6(1)	- ITAA 1997 124-795
- ITAA 1997 Div 104	- ITAA 1997 124-795(1)
- ITAA 1997 104-25	- ITAA 1997 124-795(2)
- ITAA 1997 104-25(1)	- ITAA 1997 124-795(2)(a)
- ITAA 1997 104-25(2)	- ITAA 1997 124-795(2)(b)
- ITAA 1997 104-25(3)	- ITAA 1997 124-795(3)
- ITAA 1997 109-10	- ITAA 1997 124-795(4)
- ITAA 1997 112-25(4)	- ITAA 1997 124-795(5)
- ITAA 1997 116-20(1)	- ITAA 1997 995-1(1)
- ITAA 1997 116-20(1)(b)	- Copyright Act 1968
- ITAA 1997 Div 122	- Corporations Act 2001
- ITAA 1997 Subdiv 124-G	- Corporations Act 2001 254H
- ITAA 1997 Subdiv 124-M	

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### ATO references

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