



Class Ruling

Income tax: scrip for scrip roll-over: exchange of shares in Sydney Roads Limited for shares in Transurban Holdings Limited and exchange of units in Sydney Roads Trust for units in Transurban Holding Trust

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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:

- section 104-10 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 109-10 of the ITAA 1997;
- subsection 115-30(1) of the ITAA 1997; and
- Subdivision 124-M of the ITAA 1997.

All legislative references in this Ruling are to the ITAA 1997 unless otherwise stated.

Class of entities

3. The class of entities to whom this Ruling applies is the holders of the Sydney Road Group (SRG) stapled securities (consisting of a share in Sydney Roads Limited (SRL) and a unit in Sydney Roads Trust (SRT)) who:

- (a) participate in the arrangement that is the subject of this Ruling;
- (b) hold their SRL shares on capital account;
- (c) hold their SRT units on capital account;
- (d) dispose of their SRL shares and receive shares in Transurban Holdings Limited (THL) and Transurban International Limited (TIL);
- (e) dispose of their SRT units and receive units in Transurban Holdings Trust (THT); and
- (f) are 'residents of Australia' within the meaning of that expression in subsection 6(1) of the *Income Tax Assessment Act 1936*.

Qualifications

4. The Commissioner makes this Ruling based on the precise scheme identified in this 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 25 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

8. This Ruling applies from 1 July 2006 to 30 June 2008. However, the Ruling continues to apply after this date 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.

9. 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.

10. 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)).

11. 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.

12. 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).

Scheme

13. The following description of the scheme is based on information provided by the applicant. The following documents, or relevant parts of them form part of and are to be read with the description:

- (a) Class Ruling application dated 19 December 2006 from PricewaterhouseCoopers;
- (b) Transurban Group (Transurban) Bidder's Statement dated 21 December 2006;
- (c) Joint Bidding Agreement between THL, Transurban Infrastructure Management Limited (TIML) as the responsible entity for THT and Transurban Investments Pty Ltd (TI Pty Ltd);
- (d) THT Constitution as at December 2006;

- (e) SRT Constitution provided on 19 December 2006; and
- (f) e-mails from PricewaterhouseCoopers from 9 January 2007 to 1 March 2007.

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

Details of the takeover offer

14. The arrangement that is the subject of this Ruling involves the acquisition of the shares in SRL by THL and the acquisition of the units in SRT by TIML as the responsible entity for THT.

15. On 14 December 2006, Transurban announced a scrip takeover offer (the Offer) to acquire the stapled securities in SRG.

16. Under the Offer dated 21 December 2006, a SRG stapled security holder could choose as their Offer consideration either:

- the All Scrip Alternative of 1 share in THL and 1 share in TIL for every 5.7 SRL shares and 1 THT unit for every 5.7 SRT units; or
- the Cash Pool Alternative, where depending on the level of acceptance of the All Scrip Alternative, the SRG stapled security holder will receive either all cash consideration (up to \$1.32 per SRG stapled security) or a combination of cash and Transurban stapled securities for every SRG security held by the SRG stapled security holder.

A Transurban stapled security is a triple stapled security comprising a THL share, a TIL share and a THT unit.

17. If the SRG stapled security holder accepts the Offer and does not make an election, the SRG security holder will receive the All Scrip Alternative.

18. The Offer period commenced on 18 January 2007.

19. A SRG stapled security holder will be issued new Transurban stapled securities when they enter into a contract accepting Transurban's Offer. The contract date is:

- where the Offer is accepted prior to Transurban achieving the requirements to make the Offer unconditional, when the Offer becomes unconditional;
- for a SRG stapled security holder who accepts the Offer on or after the date when the Offer becomes unconditional, when the Offer is accepted; and
- for a SRG stapled security holder whose shares are compulsorily acquired, when those shares are compulsorily acquired by Transurban.

20. The Bidder's Statement contains separate offers under which THT offers to acquire SRT units in exchange for THT units and THL offers to acquire SRL shares in exchange for THL shares. However, for simplicity this ruling refers to them collectively as the Offer.

Completion of the Offer

21. THL and TIML, as the responsible entity for THT, have appointed TI Pty Ltd as nominee to effect the Offer. TI Pty Ltd will:

- hold the SRL shares absolutely for THL and act as directed by THL in respect of those SRL shares; and
- hold the SRT units absolutely for TIML, as the responsible entity for THT, and act as directed by TIML in respect of those SRT units.

22. At the close of the Offer, if Transurban holds more than 90% but less than 100% of SRG stapled securities, the remaining SRG stapled securities will be compulsorily acquired by TI Pty Ltd on terms consistent with the Offer.

23. Subsequent to the compulsory acquisition SRG securities will be delisted and unstapled. The SRL shares held by TI Pty Ltd will be transferred to THL and the SRT units held by TI Pty Ltd will be transferred to TIML, as the responsible entity for THT.

Other aspects of the Offer

24. At present, no SRG security holder is either a 'significant stakeholder' or 'common stakeholder' within the meaning of those terms in Subdivision 124-M.

25. All ordinary shares and units on issue in SRG were acquired after 20 September 1985 (that is, there are no pre-CGT SRG stapled securities on issue).

Ruling

Disposal of SRL shares and SRT units

26. CGT event A1 happens as a result of a SRL shareholder or a SRT unit holder disposing of a SRL share or a SRT unit, respectively, under the Scheme (section 104-10).

27. CGT event A1 happens to a SRG stapled security holder:

- in cases where the Offer is accepted prior to Transurban achieving the requirements to make the Offer unconditional, CGT event A1 happens when the Offer becomes unconditional (subsection 104-10(3));

- for a SRG stapled security holder who accepts the Offer on or after the date when the Offer becomes unconditional, CGT event A1 happens when the Offer is accepted (subsection 104-10(3)); and
- for a SRG stapled security holder whose shares are compulsorily acquired, CGT event A1 happens when those shares are compulsorily acquired by Transurban (subsection 104-10(6)).

28. A SRL shareholder will make a capital gain from CGT event A1 happening if the capital proceeds for a SRL share exceeds the cost base of the SRL share. The SRL shareholder will make a capital loss if the capital proceeds are less than the share's reduced cost base (subsection 104-10(4)).

29. A SRT unit holder will make a capital gain from CGT event A1 happening if the capital proceeds for a SRT unit exceed the cost base of the SRT unit. The SRT unit holder will make a capital loss if those capital proceeds are less than the unit's reduced cost base (subsection 104-10(4)).

Acquisition date of the new Transurban stapled securities

30. The acquisition date of the new Transurban stapled securities is the date the contract is entered into (item 2 of the table in section 109-10).

31. For SRG stapled security holders who choose scrip for scrip roll-over, the acquisition date of their new Transurban stapled securities for CGT discount purposes is the date that they acquired the corresponding SRG stapled securities that they disposed of for the relevant new Transurban stapled securities (item 2 of the table in subsection 115-30(1)).

Availability of scrip for scrip roll-over

32. SRL shareholders, to the extent they receive THL shares in exchange for their SRL shares, and SRT unit holders, to the extent they receive THT units in exchange for their SRT units, are eligible to choose scrip for scrip roll-over under the arrangement if:

- (a) they acquired their SRL shares or SRT units on or after 20 September 1985 (paragraphs 124-780(3)(a) and 124-781(3)(a));
- (b) apart from the roll-over under Subdivision 124-M, they would make a capital gain from the CGT event A1 that happened to their SRL shares or SRT units (paragraphs 124-780(3)(b) and 124-781(3)(b)); and
- (c) they could not disregard (except because of a roll-over) any capital gain they might make from a replacement THL share or THT unit (paragraph 124-795(2)(a)).

Consequences of scrip for scrip roll-over for SRL shareholders

33. A SRL shareholder who receives THL shares and TIL shares and cash for the disposal of their SRL shares and chooses roll-over may disregard the capital gain from the disposal to the extent that the shareholder receives THL shares. The capital gain is not disregarded to the extent that the shareholder receives TIL shares and cash (if any) for the disposal of their SRL shares (subsection 124-790(1)).

34. The first element of the cost base of each THL share will be worked out as a portion of the cost base of the SRL share for which it will be exchanged after reducing that cost base by so much of it that is attributable to the TIL shares and the cash (if any) (subsections 124-785(2) and (3)). The first element of the reduced cost base will be calculated similarly (subsection 124-785(4)).

Consequences of scrip for scrip roll-over for SRT unit holders

35. A SRT unit holder who receives THT units and cash for the disposal of their SRT units and chooses roll-over may disregard the capital gain from the disposal to the extent that the unit holder receives THT units. The capital gain is not disregarded to the extent that the unit holder receives cash (if any) for the disposal of their SRT units (subsection 124-790(1)).

36. The first element of the cost base of each THT unit will be worked out as a portion of the cost base of the SRT unit for which it will be exchanged after reducing that cost base by so much of it that is attributable to the cash proceeds (if any) (subsections 124-785(2) and (3)). The first element of the reduced cost base will be calculated similarly (subsection 124-785(4)).

Commissioner of Taxation14 March 2007

Appendix 1 – Explanation

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.***

Disposal of SRL shares and SRT units

37. CGT event A1 happens if there is a change in the ownership of an asset from one entity to another entity (section 104-10).

38. The time when CGT event A1 happens determines the income year in which any capital gain or loss is made and whether the CGT discount applies to any capital gain. The event happens when a contract to dispose of the asset is entered into, or if there is no contract, when the change of ownership occurs (subsection 104-10(3)).

39. The Offer is subject to fulfilling a number of conditions. For SRG stapled security holders who accept the Offer prior to the Offer becoming unconditional, the contract date is the date the Offer becomes unconditional. For SRG stapled security holders who accept the Offer on or after the date the Offer becomes unconditional, the contract becomes effective when they accept the Offer (subsections 104-10(1), 104-10(2) and 104-10(3)).

40. SRG stapled security holders whose SRL shares and SRT units are compulsorily acquired are considered to have disposed of their SRL shares and SRT units when the compulsory acquisition is completed in accordance with the *Corporations Act 2001* (paragraph 104-10(6)(d) of the ITAA 1997).

41. The time of the CGT event A1 is also relevant in determining the capital proceeds received for each SRL share or each SRT unit. The capital proceeds from a CGT event are the money and market value of any property received or entitled to be received, worked out at the time the CGT event happens (subsection 116-20(1)).

42. SRG stapled security holders must therefore determine the market value of a THL share, TIL share and THT unit at the time they dispose of their SRL shares and SRT units. The Commissioner will accept as the market value of the stapled securities the closing price of a Transurban stapled security on the Australian Stock Exchange (ASX) on the date that the SRG stapled security holders disposed of their SRL shares and SRT units provided that the closing price does not vary by more than 5% from either the minimum or maximum traded price over the course of the day. If the closing price does vary by more than 5% the Commissioner will accept the volume-weighted average price (VWAP) for the stapled securities over the day as representing the market value of the Transurban stapled security for that day and allocate this amount between the SRL shares and SRT units. Transurban has advised that it can provide information to SRG stapled security holders to assist with this allocation process.

Acquisition date of the new Transurban stapled securities

43. The acquisition date of the new Transurban stapled securities is the date they are issued to each SRG stapled security holder (this is the same date as the contract is entered into (see paragraph 27 of this Ruling) (section 109-10).

44. For SRG stapled security holders who choose scrip for scrip roll-over, the acquisition date of their new Transurban stapled securities for CGT discount purposes is the date that they acquired their original SRG stapled securities which were disposed of in exchange for the relevant new Transurban stapled securities (item 2 of the table in subsection 115-30(1)).

Availability of scrip for scrip roll-over for SRL shareholder

45. Where scrip for scrip roll-over is chosen in respect of the capital gain arising on the disposal of the SRL shares, the capital gain from the disposal will be disregarded to the extent that the SRL shareholder receives THL shares.

46. If the SRL shareholder 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 SRL share for which it will be exchanged and for which roll-over will be obtained.

Availability of scrip for scrip roll-over for SRT unit holders

47. Where scrip for scrip roll-over is chosen in respect of the capital gain arising on the disposal of the SRT units, the capital gain from the disposal will be disregarded to the extent that the SRT unit holder receives THT units.

48. If the SRT unit holder chooses roll-over, the cost base of each THT unit is worked out by reasonably attributing to it a proportion of the cost base of the SRT unit for which it will be exchanged and for which roll-over will be obtained.

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

49. Subdivision 124-M contains a number of conditions for, and exceptions to, the eligibility of a SRG stapled security holder to choose scrip for scrip roll-over.

Share for share exchange

50. The main conditions that are relevant to the Scheme that is the subject of this Ruling are:

- (a) shares are exchanged for shares in another company (subparagraph 124-780(1)(a)(i));

- (b) the exchange occurs as part of a single arrangement (paragraph 124-780(1)(b));
- (c) conditions for roll-over are satisfied (paragraph 124-780(1)(c)); and
- (d) further conditions are not applicable (subsection 124-780(4)).

Shares are exchanged for shares in another company

51. Paragraph 124-780(1)(a) requires an entity (a SRG security holder) to exchange a share (a SRL share) in a company for a share in another company.

52. This requirement will be satisfied by a SRG security holder who will receive a share in THL and TIL as consideration for the disposal of their SRL shares under the Scheme.

The exchange occurs as part of a single arrangement

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

54. In the context of the scrip for scrip roll-over, the exchange of SRL shares for THL and TIL shares under the Scheme is considered to be a single arrangement. The single arrangement must also satisfy the following conditions set out below.

(a) 80% ownership

55. Paragraph 124-780(2)(a) requires that shares in an entity (SRL – 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 (SRL).

56. One of the conditions precedent to the Scheme is that Transurban acquires at least 50.1% of the interests in SRG. Should Transurban acquire less than 50.1% of the ordinary shares in SRL, the proposed transaction will not go ahead and roll-over will not be relevant. Should Transurban acquire 50.1% or more, but less than 80% of the ordinary shares in SRL the transaction will proceed but scrip for scrip roll-over will be unavailable. Should Transurban acquire greater than 80% of the ordinary shares in SRL, this requirement will be satisfied. Each of these ordinary shares satisfies the definition of 'voting share' in subsection 995-1(1). If the Scheme is implemented, THL will become the sole owner of the voting shares in SRL.

(b) All voting share owners participate

57. 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 (SRL) (apart from the acquiring entity or members of the acquiring entity's wholly-owned group) could participate.

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

(c) Participation is on substantially the same terms

59. 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 (SRL).

60. This requirement will be satisfied because the Scheme provides that all SRG stapled security holders will be entitled to participate in the Scheme on the same terms.

Conditions for roll-over are satisfied

61. 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 SRL share for which scrip for scrip roll-over will be chosen.

62. The conditions in subsection 124-780(3) are set out in paragraphs 63 to 71 of this Ruling.

(a) SRL shares are post-CGT shares

63. Paragraph 124-780(3)(a) requires the original interest holder (a SRG stapled security holder) to have acquired its original interest (a SRL ordinary share) on or after 20 September 1985.

64. All SRL shares are post CGT assets (see paragraph 25 of this Ruling).

(b) SRG stapled security holder would otherwise make a capital gain

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

66. As explained in paragraph 28 of this Ruling, a capital gain will be made on the disposal of a SRL share if the capital proceeds from the disposal of that share are more than its cost base. Therefore whether this condition is met will depend on the individual circumstances of the SRG stapled security holder.

(c) SRG stapled security holder receives an interest in the group acquiring their original share

67. 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.

68. This requirement will be satisfied as the SRG stapled security holders will receive shares in THL, the acquiring entity.

(d) SRG stapled security holder must choose to obtain scrip for scrip roll-over

69. Paragraph 124-780(3)(d) requires that the original interest holder (SRG stapled security 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.

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

71. Subject to their eligibility (see paragraph 32 of this Ruling), whether a SRG stapled security holder chooses to obtain roll-over in relation to the disposal of a SRL share is a question of fact for each SRG stapled security holder.

Further conditions are not applicable

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

- (a) neither the original entity (SRL) 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)).

73. Paragraph 124-780(4)(a) will not apply because SRL will have at least 300 members just before the arrangement starts. Paragraph 124-780(4)(b) does not apply as SRL and THL will not be members of the same linked group just before the arrangement commences.

Unit for unit exchange

74. The main conditions that are relevant to the Scheme that is the subject of this Ruling are:

- (a) units are exchanged for units in another trust (subparagraph 124-781(1)(a)(i));
- (b) fixed entitlements (paragraph 124-781(1)(b));
- (c) the exchange occurs under an arrangement (paragraph 124-781(2)(a));
- (d) conditions for roll-over are satisfied (paragraph 124-781(1)(c)); and
- (e) further conditions are not applicable (subsection 124-781(4)).

Units are exchanged for units in another trust

75. Subparagraph 124-781(1)(a)(i) requires an entity (a SRG security holder) to exchange a unit (a SRT unit) in a trust for a unit in another trust.

76. This requirement will be satisfied by a SRG security holder who will receive a unit in THT as consideration for the disposal of their SRT units under the scheme.

Fixed entitlements

77. Paragraph 124-781(1)(b) requires that entities have fixed entitlements to all of the income and capital of the original entity (SRT) and the acquiring entity (THT).

78. Having regard to:

- (a) all of the documents and any other material referred to in paragraph 13 of this Ruling; and
- (b) all the facts comprising the arrangement as described in paragraphs 14 to 25 of the Ruling,

it is considered that, for the purposes of paragraph 124-781(1)(b), there are fixed entitlements to all of the income and capital of SRT and of THT immediately before, during and immediately after the arrangement that is the subject of this Ruling. The scheme must also satisfy the conditions set out in the following paragraphs of this Ruling.

The exchange occurs under an arrangement

(a) 80% ownership

79. Paragraph 124-781(2)(a) requires that units in an entity (SRT – the original entity) be exchanged in a single arrangement that results in another entity (THT – the acquiring entity) becoming the owner of 80% or more of the voting units in the original entity (SRT).

80. One of the conditions precedent to the Scheme is that Transurban acquires at least 50.1% of the interests in SRG. Should Transurban acquire less than 50.1% of the units in SRT, the proposed transaction will not go ahead and scrip for scrip roll-over will not be relevant. Should Transurban acquire 50.1% or more, but less than 80% of the units in SRT the transaction will proceed but scrip for scrip roll-over will be unavailable. Should Transurban acquire greater than 80% or more of the units in SRT, this requirement will be satisfied. Each of these units satisfies the definition of 'trust voting interest' in subsection 995-1(1). If the Scheme is implemented, THT will become the sole owner of the trust voting interest in SRT.

(b) All voting units owners participate

81. Paragraph 124-781(2)(b) requires that the exchange of units is in consequence of a single arrangement in which at least all owners of voting units in the original entity (SRT) (apart from the acquiring entity or members of the acquiring entity's wholly-owned group) could participate.

82. This requirement will be satisfied because all the owners of units in SRT will be entitled to participate in the Scheme, if approved by the unit holders.

(c) Participation is on substantially the same terms

83. Paragraph 124-781(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 (SRT).

84. This requirement will be satisfied because the Scheme provides that all SRG stapled security holders will be entitled to participate in the Scheme on the same terms.

Conditions for roll-over are satisfied

85. Paragraph 124-781(1)(d) requires that the conditions for roll-over outlined in subsection 124-781(3) be met. These conditions must be met in relation to each SRT unit for which scrip for scrip roll-over will be chosen.

86. The conditions in subsection 124-781(3) are set out in paragraphs 87 to 93 of this Ruling.

(a) SRT units are post-CGT units

87. Paragraph 124-781(3)(a) requires the original interest holder (a SRG stapled security holder) to have acquired its original interest (a SRT unit) on or after 20 September 1985.

88. All SRT units are post CGT assets (see paragraph 25 of this Ruling).

(b) SRG stapled security holder would otherwise make a capital gain

89. Paragraph 124-781(3)(b) requires that, apart from the roll-over, the original interest holder (a SRG stapled security holder) would make a capital gain from a CGT event happening in relation to its original interest (the SRT unit).

90. As explained in paragraph 28 of this Ruling, a capital gain will be made on the disposal of a SRT unit if the capital proceeds from the disposal of that unit are more than its cost base. Therefore whether this condition is met will depend on the individual circumstances of the SRG stapled security holder.

(c) SRG stapled security holder must choose to obtain scrip for scrip roll-over

91. Paragraph 124-781(3)(c) requires that the original interest holder (SRG stapled security 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.

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

93. Subject to their eligibility (see paragraph 32 of this Ruling), whether a SRG stapled security holder chooses to obtain roll-over in relation to the disposal of a SRT units is a question of fact for each SRG stapled security holder.

Further conditions are not applicable

94. Subsection 124-781(4) provides that the additional requirements must be satisfied if the original interest holder (a SRT unit holder) and the trustee of the acquiring entity (THT) did not deal with each other at arm's length, and neither the original entity nor the acquiring entity had at least 300 beneficiaries just before the arrangement started and:

- (a) the market value of the original interest holder's capital proceeds for the exchange must be at least substantially the same as the market value of its original interest; and
- (b) the replacement interest must carry the same kind of rights and obligations as those attached to the original interest.

95. Subsection 124-781(4) will not apply because SRT and THT will have at least 300 beneficiaries just before the arrangement starts.

Share for share exchange and unit for unit exchange

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

96. Section 124-795 contains a number of exceptions where scrip for scrip roll-over cannot be chosen. Paragraphs 97 to 104 of this Ruling set out why these exceptions are not applicable.

(a) SRG stapled security holders are residents of Australia

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

98. The class of entities to whom the Ruling applies is limited to SRG stapled security holders who are residents of Australia at the time of the implementation of the 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

99. Paragraph 124-795(2)(a) provides that the roll-over is not available if any capital gain the original interest holder (a SRG stapled security holder) might make from their replacement interest (a THL and TIL share and a THT unit) would be disregarded.

100. Whether the capital gain arising because of the disposal of a SRL share or a SRT unit will be disregarded under another provision of the ITAA 1997 (for example, the SRL shares or SRT units are trading stock held by the SRG stapled security holder) is a question of fact for each SRG stapled security holder. Paragraph 3(b) or (c) of this Ruling limits the application of this Ruling in this regard.

(c) Acquiring entities are not foreign residents

101. Paragraph 124-795(2)(b) provides that roll-over is not available if the original interest holder (a SRG stapled security holder) and the acquiring entities (THL and THT) are members of the same wholly-owned group just before the original interest holder stops owning their original interest (a SRG stapled security) and the acquiring entities (THL and THT) are foreign residents.

102. This exception will not apply as the SRG stapled security holders and THL and THT will not be members of the same wholly-owned group just before the Scheme is implemented. In addition, THL and THT are not foreign residents.

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

103. 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.

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

Consequences of roll-over

105. Scrip for scrip roll-over enables a shareholder or unit holder to disregard all or part of a capital gain from a share or unit that is disposed of as part of a corporate takeover or merger if the shareholder or unit holder receives a replacement share or unit in exchange. The cost base of the replacement share or unit is determined by apportioning on a reasonable basis the cost base of the original share or unit which is exchanged for it (subsections 124-785(2) and 124-785(3)).

106. If the only capital proceeds the shareholder or unit holder receives are replacement shares or replacement units, respectively, the capital gain is disregarded completely (subsection 124-785(1)). All of the cost base of the original shares and units can be allocated to the replacement shares or units (subsection 124-785(2)).

107. If the shareholder or unit holder receives other capital proceeds as well as the replacement shares or replacement units, the capital gain is disregarded in part (subsection 124-790(1)). Only a portion of the cost base of the original share or original unit can be allocated to the replacement shares or replacement units (subsections 124-785(2), 124-785(3) and 124-785(4)).

Consequences of scrip for scrip roll-over for SRL shareholders

108. A SRL shareholder who will receive THL shares, TIL shares and cash for the disposal of their SRL shares can choose only a partial roll-over. Roll-over will not be available to the extent that the capital gain is attributable to the TIL shares and cash (ineligible proceeds) received (subsection 124-790(1)).

109. In calculating the capital gain attributable to their ineligible proceeds, a SRL shareholder should deduct from those proceeds a reasonable portion of the cost base of their SRL share (just before its disposal) (subsection 124-790(2)).

110. In making a reasonable apportionment of the cost base of a SRL share, it is appropriate for a shareholder to consider the value of the ineligible proceeds (the TIL share and cash) compared with the value of the THL shares on the date that CGT event A1 happened to their SRL share.

111. The cost base of the SRL shares, reduced by that portion that is taken into account in working out the capital gain in respect of the ineligible proceeds, will form the first element of the cost base of the THL shares (subsections 124-785(2) and (3)).

Consequences of scrip for scrip roll-over for SRT unit holders

112. A SRT unit holder who will receive THT units and cash for the disposal of their SRT units can choose only a partial roll-over. Roll-over will not be available to the extent that the capital gain is attributable to the cash (ineligible proceeds) received (subsection 124-790(1)).

113. In calculating the capital gain attributable to their ineligible proceeds, a SRT unit holder should deduct from those proceeds a reasonable portion of the cost base of their SRT unit (just before its disposal) (subsection 124-790(2)).

114. In making a reasonable apportionment of the cost base of a SRT unit, it is appropriate for a shareholder to consider the value of the ineligible proceeds (the amount of cash) compared with the value of the THT units on the date that CGT event A1 happened to their SRT unit.

115. The cost base of the SRT units, reduced by that portion that is taken into account in working out the capital gain in respect of the ineligible proceeds, will form the first element of the cost base of the THT units (subsections 124-785(2) and (3)).

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- Subject references:*
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 - capital proceeds
 - CGT event
 - company
 - cost base
 - interests
 - ordinary share
 - original interest
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 - resident
 - roll-over
 - scrip for scrip roll-over
 - share
 - shareholder
 - stapled security
 - takeover
 - unit
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- Legislative references:*
- ITAA 1997 124-780(3)(a)
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