


CR 2018/30 - Income tax: IFM Infrastructure Funds - Restructure

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Class Ruling

Income tax: IFM Infrastructure Funds – Restructure

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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, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is 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.

Summary – 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 126-245 of the *Income Tax Assessment Act 1997* (ITAA 1997)
- subsection 115-30(1) of the ITAA 1997.

All subsequent legislative references are to the ITAA 1997 unless otherwise indicated.

Class of entities

3. The class of entities to which this Ruling applies is the holders of units in IFM Infrastructure Funds (IFM IF) who:

- are registered on IFM IF's unit register at 1 July 2018
- do not hold their units in IFM IF as revenue assets (as defined in section 977-50) nor as trading stock (as

defined in subsection 995-1(1)) – that is, the holders hold their units in IFM IF broadly on capital account, and

- are not subject to the taxation of financial arrangements (TOFA) rules in Division 230 in relation to gains and losses on their units in IFM IF.

(Note: Division 230 will generally not apply to individuals, unless they have made an election for it to apply to them.)

In this Ruling, this class of entities is referred to as IFM IF unit holders.

Qualifications

4. The Commissioner makes this Ruling based on the precise arrangement 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 8 to 29 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.

Date of effect

7. This Ruling applies from 1 July 2018 to 30 June 2019. The Ruling continues to apply after 30 June 2019 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10 *Public Rulings*).

Scheme

8. 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:

- Class Ruling application dated 19 December 2017.

- Consolidated Trust Deed dated 21 December 1990 (incorporating amendments from 1 October 2011; 9 November 2012, 17 September 2015, 16 September 2016 and 26 May 2016).
- Restructure Implementation Deed.

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

9. IFM IF is an Australian unit trust which invests, directly and indirectly, in infrastructure assets both in Australia and internationally.

10. IFM IF is wholly owned by a number of Australian complying superannuation funds and pooled superannuation trusts (PSTs) and currently operates as a PST.

11. IFM IF has two separate classes of units on issue:

- Australian Units, and
- International Units.

12. The assets (and liabilities) of IFM IF are effectively 'tagged' to a unit class with the value and distribution entitlements of Australian Units being linked to Australian infrastructure assets and the value and distribution entitlements of International Units being linked to non-Australian infrastructure assets.

The Restructure

13. The Restructure Arrangement involved the following steps:

Step 1:

14. On 31 May 2018(TBC), the Unitholders of IFM IF voted to approve:

- the amendments to the Trust Deed of IFM IF (as described below)
- IFM IF ceasing to be an PST, and
- implementation of the remaining steps of the Restructure Arrangement (as described below) under the Restructure Implementation Deed.

Step 2:

15. IFM Global Infrastructure (Australia) Trust (IFM Global) was established by IFM Investors Pty Ltd (IFM Investors) and another unitholder with a settlement sum of \$100. The IFM Global Trust Deed is substantially identical to the IFM IF Trust Deed (as amended). The differences between the IFM IF Trust Deed and the IFM Global Trust Deed are limited to:

- (1) minor differences to reflect entity names and that this is a new (that is, not an amended) trust deed

- (2) inclusion of the terms of the units issued to IFM Investors and the other unitholder on establishment of IFM Global (Initial Units), and minor consequential changes, and
- (3) modifications to clause 40 (Restructure) to only include aspects of the restructure relevant to IFM Global, for example removing references to IFM IF Unitholder meetings.

16. The trustee of IFM IF and IFM Global respectively, along with the unitholders in IFM IF and IFM Global executed the Restructure Implementation Deed which documented the following restructure steps:

- (1) the amendment of the IFM IF Trust Deed
- (2) the transfer of the International Assets and certain liabilities from the trustee of IFM IF to the trustee of IFM Global in consideration of the trustee of IFM Global issuing units to the unitholders of IFM IF
- (3) the immediate and automatic redemption of the Initial Units issued to IFM Investors and the other unitholder on establishment of IFM Global for their issue price (i.e. \$100 in aggregate) upon the issue by IFM Global of any other unit
- (4) the subsequent transfer to the trustee of IFM Global of any International Assets which the trustee of IFM IF may receive after the restructure implementation and an indemnity from the trustee of IFM Global in favour of the trustee of IFM IF in respect of any liabilities that arise after the restructure and which are properly referable to the International Assets.

Step 3:

17. On 1 July 2018 (the Implementation Date):

- (1) the trustee of IFM Global issued:
 - (a) Australian Units in IFM Global to holders of Australian Units in IFM IF on a one for one basis.
 - (b) International Units in IFM Global to holders of International Units in IFM IF on a one for one basis.
- (2) the Initial Units in IFM Global issued to IFM Investors and the other unitholder were redeemed for their issue price (i.e. \$100 in aggregate), and
- (3) the trustee of IFM IF transferred all International Assets (including the right to any accrued but unpaid distribution entitlements in respect of the International Assets) and certain liabilities tagged to the

International Units to IFM Global in exchange for trustee of the IFM Global issuing units to unitholders of IFM IF as described in paragraph (1) above.

Step 4:

18. APRA will be notified by the trustee of IFM IF of its intention to cease to operate IFM IF as a PST.

Other matters

19. IFM IF and IFM Global are each a 'resident trust for CGT purposes' as defined in subsection 995-1(1).

20. Neither IFM IF nor IFM Global is a 'corporate unit trust' under Division 6B of Part III of the *Income Tax Assessment Act 1936* (ITAA 1936).

21. The Commissioner makes this Ruling on the basis that, in the income year ended 30 June 2018, neither IFM IF nor IFM Global was a public trading trust for the purposes of Division 6C of Part III of the ITAA 1936, that is, neither trust was a trust to which section 102S of the ITAA 1936 applied.

This is an essential requirement for the trustee of IFM IF and the trustee of the IFM Global to be eligible to choose to obtain the roll-over under Subdivision 126-G.

22. On this basis, the Restructure Arrangement satisfied the requirements for the roll-over in Subdivision 126-G.

23. Under subsection 126-225(3), both the trustee of IFM IF and the trustee of IFM Global chose to obtain the roll-over under Subdivision 126-G in respect of the transfer of assets from the trustee of IFM IF to the trustee of the IFM Global.

Ruling

No capital gain or capital loss for IFM IF unit holders

24. IFM IF unit holders will not make a capital gain or capital loss as a result of the issue of units in IFM Global, under the restructure.

Cost base of International Units immediately after the Transfer Time

25. As the requirements for the roll-over in Subdivision 126-G are satisfied, the first element of the cost base and reduced cost base of each International Unit in IFM Global just after the Transfer Time is equal to the cost base and reduced cost base of the corresponding International Unit held in IFM IF just before the Transfer Time.

26. The first element of the cost base and reduced cost base of each International Unit in IFM IF just after the Transfer Time is nil.

Cost base of Australian Units immediately after the Transfer Time

27. As the requirements for the roll-over in Subdivision 126-G are satisfied, the first element of the cost base and reduced cost base of each Australian Unit in IFM IF just after the Transfer Time is equal to its cost base or reduced cost base just before the Transfer Time.

28. The first element of the cost base and reduced cost base of each Australian Unit in IFM Global just after the Transfer Time is nil.

Acquisition date of units in IFM Global for discount capital gain purposes

29. As the requirements for the roll-over in Subdivision 126-G are satisfied, for the purpose of determining eligibility to make a discount capital gain under Subdivision 115-A, an IFM IF unit holder is taken to have acquired IFM Global units they received under the restructure on the date that they acquired their corresponding units in IFM IF (item 9 of the table in subsection 115-30(1)).

Commissioner of Taxation

4 July 2018

Appendix 1 – Explanation

① *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.*

Consequences for IFM IF unit holders under Subdivision 126-G

30. Subdivision 126-G provides for CGT roll-over relief when CGT assets are transferred between trusts. As outlined in the Scheme section of this ruling the requirements of section subdivision 126-G are satisfied in relation to the restructure and the trustees of both IFM IF and IFM Global have chosen to obtain the roll-over in accordance with subsection 126-225(3).

31. Accordingly, any capital gain or loss that would otherwise arise from the Restructure Arrangement is disregarded (section 126-240).

32. As both the trustee of IFM IF and the trustee of IFM Global chose to obtain the roll-over under Subdivision 126-G in respect of the transfer of assets from the trustee of IFM IF to the trustee of IFM Global, each unit holder is required to adjust, just after the Transfer Time, the cost base and reduced cost base of their units in both IFM IF and IFM Global.

33. Section 126-245 effectively requires the unitholders to apportion the cost base and reduced cost base of the units held before the restructure to the units held in both trusts after the restructure.

34. The apportionment must be reasonable and must have regard to the market value of the units just before and just after the restructure.

35. As all the assets and certain liabilities associated with the International Units are transferred to IFM Global, the International Units remaining in IFM IF are effectively worthless and will have a market value of nil. Likewise, all the assets and liabilities associated with the Australian Units are held in IFM IF and so the Australian Units in IFM Global will have a market value of nil.

36. Therefore, the first element of the cost base and reduced cost base of each International Unit in IFM Global just after the Transfer Time is equal to the cost base and reduced cost base of the corresponding International Unit held in IFM IF just before the Transfer Time. That is, 100% of the cost base or reduced cost base of each existing International Unit in IFM IF will be allocated to the new International Units issued in IFM Global and the existing International Units in IFM IF will have a cost base of nil.

37. In contrast, 100% of the cost base or reduced cost base of each existing Australian Unit in IFM IF will be allocated to those Australian Units in IFM IF and the new Australian Units in IFM Global will have a cost base of nil.

Appendix 2 – Detailed contents list

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

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References

- Previous draft:*
- Not previously issued as a draft
- Related Rulings/Determinations:*
- TR 2006/10
- Legislative references:*
- ITAA 1936
 - ITAA 1936 Pt III Div 6B
 - ITAA 1936 Pt III Div 6C
 - ITAA 1997
 - ITAA 1997 Subdiv 115-A
 - ITAA 1997 115-30(1)
 - ITAA 1997 Subdiv 126-G
 - ITAA 1997 126-225(3)
 - ITAA 1997 126-240
 - ITAA 1997 126-245
 - ITAA 1997 126-245(2)
 - ITAA 1997 126-245(3)
 - ITAA 1997 126-245(4)
 - ITAA 1997 Div 230
 - ITAA 1997 977-50
 - ITAA 1997 995-1(1)
 - TAA 1953
 - Corporations Act 2001
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ATO references

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