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# Taxation Determination

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## **Capital gains: scrip for scrip roll-over: can the exchange of an interest (not being a unit) in a trust for a unit in a unit trust satisfy the requirements in subparagraph 124-781(1)(a)(i) of the *Income Tax Assessment Act 1997*?**

### *Preamble*

*The number, subject heading, date of effect and paragraphs 1 to 5 of this Taxation Determination are a 'public ruling' for the purposes of Part IVAAA of the **Taxation Administration Act 1953** and are legally binding on the Commissioner. The remainder of the Determination is administratively binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain how a Determination is legally or administratively binding.*

### *Date of effect*

*This Determination applies to years commencing both before and after its date of issue. However, this Determination 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 the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).*

1. Yes. Subparagraph 124-781(1)(a)(i) of the *Income Tax Assessment Act 1997* (ITAA 1997), in referring to an exchange of 'a unit or other interest ... in a trust' for 'a unit or other interest ... in another trust' encompasses an exchange of any of the following:

- (a) a unit in a unit trust for a unit in another unit trust;
- (b) a unit in a unit trust for an interest (not being a unit) in a trust;
- (c) an interest (not being a unit) in a trust for a unit in a unit trust; and
- (d) an interest (not being a unit) in a trust for an interest (not being a unit) in another trust.

2. However, the holders of units or interests must satisfy the requirement in paragraph 124-781(1)(b) of the ITAA 1997 that the holders of the interests in the original entity and the holders of the interests in the acquiring entity have 'fixed entitlements' to all of the income and capital of the respective trusts both before and after the exchange. The expression 'fixed entitlement' of a beneficiary, under a trust instrument, to a share of income or of the capital of a trust, is defined in subsection 272-5(1) in Schedule 2F to the *Income Tax Assessment Act 1936* (ITAA 1936) to be a vested and indefeasible interest in the share of income of the trust that the trust derives from time to time, or of the capital of the trust.

3. Futhermore, if:

- the original interest holder and the trustee of the acquiring entity did not deal with each other at arm's length, and

# TD 2002/22

- neither the original entity nor the acquiring entity had at least 300 beneficiaries just before the arrangement started,

subsection 124-781(4) of the ITAA 1997 requires these conditions to be also satisfied:

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

## **Example**

4. *The Bottles Trust provides that each beneficiary is presently entitled to the income and capital of the trust in proportion to the capital subscribed by that beneficiary or his or her predecessor in title. While the interests are fixed the capital is not divided into units. The Bottles Trust is not a unit trust. The Cans Unit Trust provides that each beneficiary is presently entitled to the income and capital in proportion to the number of units held. This trust is a unit trust.*

5. *The trustee of the Bottles Trust makes an offer to acquire all of the units in the Cans Unit Trust. Under the arrangement, the unitholders in the Cans Unit Trust will exchange their units for an interest in the Bottles Trust. The beneficiaries of the Bottles Trust and the unitholders in the Cans Unit Trust have fixed entitlements to all of the income and capital of the respective trusts. Subsection 124-781(4) of the ITAA 1997 does not apply to the arrangement. Provided the other conditions in Subdivision 124-M of the ITAA 1997 for roll-over are satisfied a unitholder in Cans Unit Trust can choose scrip for scrip roll-over in relation to the exchange of their units in the Cans Unit Trust for an interest in the Bottles Trust.*

## **Note:**

6. An arrangement must meet the other conditions in Subdivision 124-M of the ITAA 1997 for scrip for scrip roll-over to be available.

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## **Commissioner of Taxation**

23 October 2002

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*Previous draft:*

TD 2001/D13

*Subject references:*

- arrangement
- capital gain
- exchange
- fixed entitlement
- interest in a trust
- roll-over
- scrip
- scrip for scrip roll-over
- similar interests
- trust
- unit
- unit trust

# TD 2002/22

*Legislative references:*

- ITAA 1997 124-781(1)(a)(i)
- ITAA 1997 124-781(1)(b)
- ITAA 1997 124-781(4)
- ITAA 1997 Subdivision 124-M
- ITAA 1936 Schedule 2F 272-5(1)

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ATO References

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