


CR 2015/48 - Income tax: distributions from the MG Unit Trust

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Class Ruling

Income tax: distributions from the MG Unit Trust

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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.

What this Ruling is about

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

Relevant provisions

2. The relevant provisions dealt with in this Ruling are:
- Division 1A of former Part IIIAA of the *Income Tax Assessment Act 1936* (ITAA 1936)
 - subsection 207-35(3) of the *Income Tax Assessment Act 1997* (ITAA 1997)
 - section 207-45 of the ITAA 1997
 - section 207-50 of the ITAA 1997, and
 - subsection 207-150(1) of the ITAA 1997.

Class of entities

3. The class of entities to which this Ruling applies are individuals who hold Units in the MG Unit Trust ('Unitholders') and who:

- acquired their Units in MG Unit Trust under the initial public offering of MG Unit Trust on 7 July 2015
- are persons who are residents of Australia as that term is defined in subsection 6(1) of ITAA 1936
- do not hold their Units as revenue assets (as defined in section 977-50 of the ITAA 1997) nor as trading stock (as defined in subsection 995-1(1) of the ITAA 1997) – that is, they hold their Units on capital account, and
- are not subject to the taxation of financial arrangement rules in Division 230 of the ITAA 1997 in relation to gains and losses on their Units.

(Note: Division 230 of the ITAA 1997 will generally not apply to individuals, unless they have made an election for it to apply to them.)

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 8 to 19 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 2015 to 30 June 2016. The Ruling continues to apply after 30 June 2016 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).

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 12 May 2015 (including attachments)
- Constitution of Murray Goulburn Co-operative Co, Limited (Murray Goulburn)
- MG Unit Trust Constitution dated 1 May 2015
- Murray Goulburn Sub-trust Trust Deed dated 1 May 2015, and
- MG Unit Trust Product Disclosure Statement dated 29 May 2015.

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

9. Murray Goulburn is an Australian dairy foods company.

10. Murray Goulburn is an unlisted company, operating under co-operative principles whereby it is 100 per cent dairy farmer controlled. Ordinary Shares are held by dairy farmers who are active suppliers of milk to Murray Goulburn ('Shareholders').

11. Under the Murray Goulburn Capital Structure, Murray Goulburn will establish the MG Unit Trust.

12. The MG Unit Trust is a special purpose funding vehicle, listed on the Australian Securities Exchange.

13. Funds raised by the MG Unit Trust from Unitholders will be invested into Murray Goulburn through Notes which will provide Unitholders with economic exposure to Murray Goulburn. The Notes will be held by MG Unit Trust through a sub-trust.

14. The Notes are a non-share equity interest in Murray Goulburn for the purposes of the ITAA 1997.

15. The Notes carry a right to distributions ('Note Distributions'). The Note Distributions must be the same as dividends paid to Shareholders of Murray Goulburn.

16. The payment of dividends (and therefore Note Distributions) is at the discretion of the Board of Murray Goulburn. The payment will be determined in accordance with the Profit Sharing Mechanism outlined in the MG Unit Trust Product Disclosure Statement.

17. The Note Distributions will flow through MG Unit Trust (via the sub-trust) to Unitholders. The calculation, payment, and flow-through of Note Distributions will be such that Unitholders will receive distributions on Units that will be the same as dividends paid by Murray Goulburn on Shares.

18. The Note Distributions which flow indirectly to Unitholders will be frankable distributions under section 202-40 of the ITAA 1997. It is anticipated that dividends paid to Shareholders, and therefore distributions paid to Unitholders, will be franked to the extent the Board of Murray Goulburn considers appropriate.

19. This ruling is made on the basis that MG Unit Trust (and the sub-trust holding the Notes on behalf of MG Unit Trust) are 'qualified persons' in respect of the Note Distributions, within the meaning of Division 1A of former Part IIIAA of the ITAA 1936.

Ruling

Gross-up and tax offset

20. For the purposes of section 207-50 of the ITAA 1997, franked Note Distributions paid by Murray Goulburn to the MG Unit Trust (via the sub-trust) will flow indirectly to the Unitholders.

21. Where franked Note Distributions paid to the MG Unit Trust (via the sub-trust) flow indirectly to Unitholders who are Australian resident individuals:

- the assessable income of the Unitholder includes the amount of the distribution plus an additional amount equal to their share of the franking credits attached to the franked distributions (subsection 207-35(3) of the ITAA 1997), and
- Unitholder are entitled to a tax offset equal to the Unitholder's share of the franking credit attached to the franked distribution (section 207-45 of the ITAA 1997).

Gross-up and tax offset denied in certain circumstances

22. Provided the sub-trust, MG Unit Trust and the Unitholder are a 'qualified person' in respect of the Note Distributions, within the meaning of Division 1A of former Part IIIAA of the ITAA 1936, none of the circumstance in subsection 207-150(1) of the ITAA 1997 exists which would deny the gross-up or tax offset treatment for Unitholders to whom the Note Distribution flows indirectly.

23. The Unitholders will be a qualified person in respect of the Note Distributions provided that:

- Unitholder do not take any 'positions' (within the meaning of section 160APHJ of former Part IIIAA of the ITAA 1936) in relation to the Notes apart from holding the Units themselves,
- Unitholders, or their associates, do not make any 'related payments' (within the meaning of section 160APHN of former Part IIIAA of the ITAA 1936) in relation to the Note Distributions on the Note, and
- Unitholders do not dispose of their Units before a period of at least 45 days (excluding the date of acquisition and disposal) beginning the day after allotment of the Units.

Commissioner of Taxation

8 July 2015

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.*

Gross-up and tax offset

24. For the purposes of section 207-50 of the ITAA 1997, franked Note Distributions paid by Murray Goulburn to the MG Unit Trust (via the sub-trust) will flow indirectly to the Unitholders.

25. In addition to including in the assessable income of the Unitholders an amount attributable to their share of the franked distribution received from the MG Unit Trust, an amount attributable to the Unitholder's share of the franking credit on the franked distribution will also be included in their assessable income under subsection 207-35(3) of the ITAA 1997.

26. Where franked Note Distributions paid to the MG Unit Trust (via the sub-trust) flow indirectly to Unitholders who are Australian resident individuals, and the whole or part of the distributions are included in their assessable income along with an amount equal to their share of the franking credits attached to the franked distributions, then pursuant to section 207-45 of the ITAA 1997, the Unitholder is entitled to a tax offset equal to the Unitholder's share of the franking credit attached to the franked distribution.

Gross-up and tax offset denied in certain circumstances

27. Subdivision 207-F of the ITAA 1997 creates the appropriate adjustment to cancel the effect of the gross-up and tax offset rules where an entity has manipulated the imputation system in a manner that is not permitted under the income tax law. Section 207-150 of the ITAA 1997 is relevant to the Unitholders that are subject to this Ruling.

28. Provided sub-trust, MG Unit Trust and the Unitholder are a 'qualified person' in respect of the Note Distributions, within the meaning of Division 1A of former Part IIIAA of the ITAA 1936, none of the circumstance in subsection 207-150(1) of the ITAA 1997 exists which would deny the gross-up or tax offset treatment for Unitholders to whom the Note Distribution flows indirectly.

29. The Unitholders will be a qualified person in respect of the Note Distributions provided that:

- Unitholder do not take any 'positions' (within the meaning of section 160APHJ of former Part IIIAA of the ITAA 1936) in relation to the Notes apart from holding the Units themselves

- Unitholders, or their associates, do not make any 'related payments' (within the meaning of section 160APHN of former Part IIIAA of the ITAA 1936) in relation to the Note Distributions on the Note, and
- Unitholders do not dispose of their Units before a period of at least 45 days (excluding the date of acquisition and disposal) beginning the day after allotment of the Units.

Appendix 2 – Detailed contents list

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Subject references:

- franking credits
- franking tax offset
- frankable distributions
- holding period rule
- imputation system
- qualified persons
- related payment rule

Legislative references:

- ITAA 1936
- ITAA 1936 Pt IIIAA Div 1A
- ITAA 1936 160APHJ
- ITAA 1936 160APHN
- ITAA 1997
- ITAA 1997 Subdiv 207-F
- ITAA 1997 207-35(3)
- ITAA 1997 207-50
- ITAA 1997 207-45
- ITAA 1997 207-150(1)

ATO references

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ATOlaw topic: Income tax ~~ Capital management ~~ Franking credits / tax offsets
Income tax ~~ Capital management ~~ Qualified person rule
Income tax ~~ Trusts ~~ Trust income ~~ Other
Tax integrity measures ~~ Part IVA ~~ Application of section 177EA

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