


CR 2016/54 - Income tax: AMP Capital Infrastructure Equity Fund - creating a new stapled security

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Class Ruling

Income tax: AMP Capital Infrastructure Equity Fund – creating a new stapled security

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1 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:

- section 126-245 of the *Income Tax Assessment Act 1997* (ITAA 1997), and
- 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 the AMP Capital Infrastructure Equity Fund (IEF A) who:

- were registered on the unit register on 23 June 2016

- do not hold their units in IEF A 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 IEF A 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 IEF A.

(**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 IEF A 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 26 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 8 June 2016

- Restructure Implementation Deed dated 23 June 2016 (Restructure Implementation Deed), and
- correspondence received in relation to the Class Ruling application.

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. IEF A is an unregistered managed investment scheme for the purposes of the *Corporations Act 2001*. IEF A has the legal form of a unit trust.

10. AMP Investment Services Pty Limited (AMPIS) and AMP Capital Investors Limited (AMPCI) are Australian resident companies that act respectively as the trustee and investment manager of IEF A.

11. IEF A was established in 1995 to provide Australian wholesale investors with the ability to invest in non-controlling interests in Australian and New Zealand infrastructure assets, diversified by sector and asset life cycle.

12. As at 23 June 2016, IEF A is estimated to have had a market value of approximately \$978.1 million.

13. IEF A has one class of units on issue.

The restructure

14. The restructure involved creating a stapled security consisting of units in IEF A being stapled to units in a new trust, the AMP Capital Diversified Infrastructure Trust B (IEF B). As a result, IEF A unit holders now hold stapled securities that consist of a unit in IEF A stapled to a unit in IEF B.

15. The investment mandate of the stapled IEF A and IEF B allows either trust to take active, controlling stakes in infrastructure assets (unlike the previous stand-alone investment mandate of IEF A). It is anticipated that any active, controlling stakes in infrastructure assets will be held by the trustee of IEF B rather than the trustee of IEF A.

16. The restructure involved the following steps in this sequence.

Step 1 – Create IEF B

17. AMPCI procured the settlement of a new trust, IEF B.

18. IEF B is an unregistered managed investment scheme for the purposes of the *Corporations Act 2001* and has the legal form of a unit trust.

Step 2 – Amend the trust deed of IEF A

19. The trustee of IEF A made amendments to the trust deed of IEF A to facilitate IEF A's entry into the restructure as well as IEF A's continued operation following the implementation of the restructure. IEF A was also renamed from the 'AMP Capital Infrastructure Equity Fund' to the 'AMP Capital Diversified Infrastructure Trust A'. The amendments were approved by the unit holders of IEF A on 22 June 2016.

Step 3 – Restructure Implementation Deed

20. After the trust deed of IEF A was amended, the trustee of IEF A, the trustee of IEF B and AMPCI entered into the Restructure Implementation Deed, which set out the steps required to implement the restructure.

21. Under the Restructure Implementation Deed and the trust deeds of IEF A and IEF B, the following happened:

- (a) the trustee of IEF A agreed to transfer certain assets (being some of its non-controlling interests in various entities) to the trustee of IEF B
- (b) in consideration for the agreement to transfer the assets, AMPCI (on behalf of, and pursuant to a power of attorney granted by, the unit holders of IEF A) subscribed for such number of units in IEF B as equalled the number of units in IEF A that were held by each IEF A unit holder, that is, one unit in IEF B for every unit held in IEF A
- (c) pursuant to this application, the trustee of IEF B issued units in IEF B to IEF A's unit holders
- (d) each unit in IEF B was stapled to a corresponding unit in IEF A, such that the IEF A unit holders are not able to deal with a unit in IEF A separately from the IEF B unit that is stapled to it, and
- (e) legal title to the assets described in (a) was transferred from the trustee of IEF A to the trustee of IEF B on 23 June 2016 (the Transfer Time). The market value of the transferred assets was 4% of the market value of IEF A.

Other matters

22. IEF A and IEF B are each a 'resident trust for CGT purposes' as defined in subsection 995-1(1).

23. Neither IEF A nor IEF B is a 'corporate unit trust' under Division 6B of Part III of the *Income Tax Assessment Act 1936* (ITAA 1936).

24. The Commissioner makes this Ruling on the basis that, in the income year ended 30 June 2016, the trustee of IEF A and the trustee of IEF B did not respectively (for the purposes of Division 6C of Part III of the ITAA 1936):

- (i) carry on a trading business, or
- (ii) control, or have the ability to control, directly or indirectly, the affairs or operations of another person in respect of the carrying on by that other person of a trading business.

This is an essential requirement for the trustee of IEF A and the trustee of IEF B to be eligible to choose to obtain the roll-over under Subdivision 126-G.

25. On this basis, the restructure satisfied the requirements for the roll-over in Subdivision 126-G.

26. Under subsection 126-225(3), both the trustee of IEF A and the trustee of IEF B chose to obtain the roll-over under Subdivision 126-G in respect of the transfer of assets from the trustee of IEF A to the trustee of IEF B.

Ruling

No capital gain or capital loss for IEF A unit holders

27. IEF A unit holders will not make a capital gain or capital loss as a result of the issue of units in IEF B, and the stapling of those units to their IEF A units, under the restructure.

Cost base of IEF A units immediately after the Transfer Time

28. 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 IEF A unit holder's units in IEF A just after the Transfer Time is 96% of the unit's cost base and reduced cost base just before the Transfer Time (subsection 126-245(2) and subsection 126-245(4)).

Cost base of IEF B units immediately after the Transfer Time

29. 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 IEF A unit holder's new units in IEF B just after the Transfer Time is 4% of the cost base and reduced cost base of their corresponding IEF A units just before the Transfer Time (subsection 126-245(3) and subsection 126-245(4)).

Acquisition date of IEF B units for discount capital gain purposes

30. 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 IEF A unit holder is taken to have acquired the IEF B units they received under the restructure on the date that they acquired their corresponding units in IEF A (item 9 of the table in subsection 115-30(1)).

Commissioner of Taxation

20 July 2016

Appendix 1 – Explanation

ⓘ *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 IEF A unit holders under Subdivision 126-G

31. The tax consequences that arise concerning the scheme that is the subject of this Ruling are outlined in the Ruling part of this document.

32. The significant tax consequence that is the subject of this Ruling is the availability of roll-over under Subdivision 126-G for the transfer of assets between certain trusts. As both the trustee of IEF A and the trustee of IEF B chose to obtain the roll-over under Subdivision 126-G in respect of the transfer of assets from the trustee of IEF A to the trustee of IEF B, each unit holder is required to adjust, just after the Transfer Time, the cost base and reduced cost base of their units in both IEF A and IEF B.

Appendix 2 – Detailed contents list

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

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References

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

NO: 1-8HPC3GM
ISSN: 2205-5517
BSL: PGI
ATOlaw topic: Income tax ~~ Capital gains tax ~~ Rollovers ~~ Other

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