

CR 2022/91 - Sandon Capital Activist Fund - reclassification of units using 'series of units' methodology

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Status: **legally binding**

Class Ruling

Sandon Capital Activist Fund – reclassification of units using ‘series of units’ methodology

📌 Relying on this Ruling

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

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What this Ruling is about

1. This Ruling sets out the income tax consequences for the unitholders of the Sandon Capital Activist Fund (the Fund) when their Series Units in the Fund are reclassified into Lead Series Units in the Fund under a ‘series of units’ accounting methodology.
2. Details of this scheme are set out in paragraphs 9 to 21 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you are a unit holder in the Fund and you:
 - hold your units in the Fund on capital account; that is, you do not hold your units as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1))
 - are a resident of Australia (as defined in subsection 6(1) of the *Income Tax Assessment Act 1936*)
 - are not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on your units in the Fund, and
 - have your units in the Fund reclassified from Series Units into Lead Series Units under the ‘series of units’ accounting methodology set out in

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Clause 4.25(a) of the *Consolidated deed poll establishing and governing the Sandon Capital Activist Fund*, as amended by the *Sixth supplemental deed to the trust deed for the Sandon Capital Activist Fund*, dated 9 September 2022 (Trust Deed).

Note: Division 230 will not apply to individuals unless they have made an election for it to apply.

When this Ruling applies

5. This Ruling applies from 1 July 2022 to 30 June 2028.

Ruling

Reclassification of Series Units

6. CGT event H2 (section 104-155) happens to you when your Series Units in the Fund are reclassified into Lead Series Units under the 'series of units' accounting methodology set out in Clause 4.25(a) of the Trust Deed (the reclassification).

7. As you will not receive or be entitled to receive any capital proceeds and will not incur any incidental costs in respect of the reclassification, you will not make a capital gain or capital loss under CGT event H2 (subsection 104-155(3)).

8. No other CGT event under Part 3-1 will happen as a result of the reclassification.

Scheme

9. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

Background

10. The Fund is an unlisted wholesale unit trust for Australian-resident investors who qualify as wholesale investors (as defined by the *Corporations Act 2001*), including individuals, family trusts, companies or superannuation funds, that meet the minimum investment requirements.

11. One Fund Services Limited (ABN 56 615 523 003) is the trustee of the Fund (the Trustee). Sandon Capital Pty Ltd (ABN 98 130 853 691) (SCPL) is the investment manager for the Fund.

12. The Fund was established in September 2009 and currently has one class of units on issue.

The 'series of units' accounting methodology

13. The Trust Deed was amended to provide the Trustee the option of determining that units issued by the Fund at a particular time are of the same Series for the purpose of the calculation of performance fees in respect of particular units in the Fund.

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14. SCPL is entitled to a monthly performance fee under Clause 9.1.3 of the *Investment Management Agreement: One Fund Services Ltd ACN 615 523 003 (Trustee) and Sandon Capital Pty Ltd ACN 130 853 691 (Manager) in relation to Sandon Capital Activist Fund (Fund)*, as amended by the *Investment Management Agreement First amending agreement: One Fund Services Ltd ACN 615 523 003 (Trustee) and Sandon Capital Pty Ltd ACN 130 853 691 (Manager) in relation to Sandon Capital Activist Fund (Fund)* (Investment Management Agreement) dated 19 September 2022, which is paid by the Trustee out of the assets of the Fund.

15. The performance fee is calculated with regard to the increase in the unit price over the previous high-water mark (HWM). Broadly, the HWM is the highest peak in value that the Fund had reached, reduced by any performance fees paid. SCPL is not entitled to a performance fee if the unit price is lower than the HWM.

16. Clause 4.25 of the Trust Deed provides that there are multiple accounting methodologies that the Trustee may implement if it determines that units issued at a particular time are of the same Series. One of the methodologies is for the Trustee to adopt a 'series of units' accounting methodology.

17. If the Trustee determines to use the 'series of units' accounting methodology, each time an investor subscribes to the Fund, they are issued with a new series of units (Series Units) with an initial HWM equal to its purchase price.

18. As at 9 September 2022, all existing units in the Fund had the same HWM (Lead Series Units).

19. When the HWM of the Series Units reaches or exceeds the HWM of the Lead Series Units, a performance fee is paid based on this new HWM and the Series Units are then reclassified into Lead Series Units. Following the reclassification of Series Units into Lead Series Units, the performance fee is calculated based on the new HWM.

20. Clause 4.25(a) of the Trust Deed provides that when Series Units are reclassified into Lead Series Units, the Trustee is not:

- cancelling or redeeming any units
- receiving any consideration
- amending the proportion of capital entitlement of any class to capital of the trust
- at the time units may be reclassified, changing the initial price of the units or the attached rights, obligations, restrictions and entitlements
- transferring any unit, or
- causing any change to the legal and beneficial ownership of units.

21. You do not incur incidental costs when Series Units are reclassified into Lead Series Units.

Commissioner of Taxation

19 October 2022

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Appendix – Explanation

❶ *This Explanation 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.*

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CGT event H2

22. CGT event H2 happens if an act, transaction or event occurs in relation to a CGT asset and the act, transaction or event does not result in an adjustment being made to the asset's cost base or reduced cost base (subsection 104-155(1)). A capital gain is made if the capital proceeds from the event are more than the incidental costs incurred in relation to it and a capital loss is made if the capital proceeds are less than the incidental costs (subsection 104-155(3)). Capital proceeds are the money or other consideration received, or entitled to be received, because of the act, transaction or event (subsection 116-20(2)).

23. The reclassification of the units from Series Units to Lead Series Units will constitute an act, transaction or event occurring in relation to the units owned by the unitholders in the Fund. The reclassification of units will not result in an adjustment being made to the cost base or reduced cost base of the units in accordance with Divisions 110 and 112. Therefore, CGT event H2 will occur at the time the reclassification occurs (subsection 104-155(2)).

24. Under the scheme and as stated in Clause 4.25(a) of the Trust Deed, no consideration will be provided to you in respect of the reclassification of your units. Further, you will not incur incidental costs in relation to the reclassification. Consequently, you will not make a capital gain or capital loss under CGT event H2 from the reclassification.

Other CGT events

25. Other relevant CGT events include CGT event A1 (section 104-10), CGT event C2 (section 104-25) and CGT event D1 (section 104-35). These CGT events do not happen to you as a result of the reclassification.

CGT event A1

26. CGT event A1 happens if you dispose of a CGT asset (subsection 104-10(1)), where the disposal involves a change of ownership from you to another entity (subsection 104-10(2)).

27. There will be no change to the attached rights, obligations, restrictions and entitlements of the units when the Series Units are reclassified into Lead Series Units. As

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such, there is no disposal of a Series Unit for the purposes of section 104-10. You will continue to own the same underlying units, albeit with a different classification.

28. Therefore, CGT event A1 does not happen as there is no change in the legal or beneficial ownership of the units as a result of the reclassification. As such, no capital gain or capital loss arises for you under section 104-10.

CGT event C2

29. CGT event C2 happens if your ownership of an intangible CGT asset ends by the asset being redeemed or cancelled (paragraph 104-25(1)(a)).

30. There is no cancellation of the Series Units when they are reclassified as Lead Series Units, as the units continue to exist and are simply reclassified for the purposes of standardising the calculation of the ongoing performance fee. Further, Clause 4.25(a) of the Trust Deed provides that there is no redemption of any units when they are reclassified.

31. Therefore, CGT event C2 does not happen as there has been no redemption, cancellation or similar ending in relation to your units in the Fund. As such, no capital gain or capital loss arises for you under section 104-25.

CGT event D1

32. CGT event D1 happens if you create a contractual right or other legal or equitable right in another entity (section 104-35).

33. The reclassification will not result in a change to your rights or obligations in the Fund. The reclassification will have no consequences other than the standardisation of the ongoing performance fee and a change to how the units are described.

34. The right of SCPL to a performance fee under Clause 9.1.3 of the Investment Management Agreement remains in existence both before and after the reclassification. The reclassification only impacts the calculation of the performance fee.

35. As such, no contractual or other legal or equitable right is created in favour of the Fund or another entity.

36. Therefore, CGT event D1 does not happen as a result of the reclassification and no capital gain or capital loss arises for you under section 104-35.

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References

Legislative references:

- ITAA 1997 Pt 3-1
- ITAA 1997 104-10
- ITAA 1997 104-10(1)
- ITAA 1997 104-10(2)
- ITAA 1997 104-25
- ITAA 1997 104-25(1)(a)
- ITAA 1997 104-35
- ITAA 1997 104-155
- ITAA 1997 104-155(1)
- ITAA 1997 104-155(2)
- ITAA 1997 104-155(3)
- ITAA 1997 Div 110
- ITAA 1997 Div 112
- ITAA 1997 116-20(2)
- ITAA 1997 Div 230
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- ITAA 1936 6(1)
- Corporations Act 2001

ATO references

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