


# ***CR 2003/53 - Income tax: Saint Gobain Group Savings Plan for Australian Employees***

 This cover sheet is provided for information only. It does not form part of *CR 2003/53 - Income tax: Saint Gobain Group Savings Plan for Australian Employees*

 This document has changed over time. This is a consolidated version of the ruling which was published on *1 July 2000*



## **Class Ruling**

### **Income tax: Saint Gobain Group Savings Plan for Australian Employees**

---

Contents	Para
<b>What this Class Ruling is about</b>	<b>1</b>
<b>Date of effect</b>	<b>8</b>
<b>Withdrawal</b>	<b>9</b>
<b>Arrangement</b>	<b>10</b>
<b>Ruling</b>	<b>39</b>
<b>Explanation</b>	<b>46</b>
<b>Detailed contents list</b>	<b>74</b>

#### ***Preamble***

*The number, subject heading, and the **What this Class Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Withdrawal**, **Arrangement** and **Ruling** parts of this document are a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**. CR 2001/1 explains **Class Rulings** and **Taxation Rulings** TR 92/1 and TR 97/16 together explain when a Ruling is a public ruling and how it is binding on the Commissioner.*

#### **What this Class Ruling is about**

---

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax law(s)' identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates.

#### **Tax law(s)**

2. The tax laws dealt with in this Ruling are

- Section 6 of the Income Tax Assessment Act 1936 (ITAA 1936);
- Section 23L of the ITAA 1936;
- Division 13A of the ITAA 1936;
- Subsection 6-5(4) of the *Income Tax Assessment Act 1997* (ITAA 1997);
- Subsection 6-10(3) of the ITAA 1997;
- Section 104-10 of the ITAA 1997;
- Section 104-25 of the ITAA 1997;
- Section 110-25 of the ITAA 1997;
- Subsection 112-20(1) of the ITAA 1997;
- Division 115 of the ITAA 1997;
- Subsection 116-20(1) of the ITAA 1997;

- Section 43 of the *Fringe Benefit Tax Assessment Act 1986* ('FBTAA 1986'); and
- Subsection 136(1) of the FBTAA 1986.

## **Class of persons**

3. The class of persons to which this Ruling applies consists of the Australian residents employed by Saint Gobain Abrasives Pty Ltd, Saint Gobain Industrial Ceramics Pty Ltd, Saint Gobain Ceramic Materials Pty Ltd and Saint Gobain RF Pty Ltd and its Australian subsidiaries who subscribe under the arrangement described below in paragraphs 10 to 38.

## **Qualifications**

4. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.
5. The class of persons defined in this Ruling may rely on its contents provided the arrangement actually carried out is carried out in accordance with the arrangement described below at paragraphs 10 to 38 in this Ruling.
6. If the arrangement actually carried out is materially different from the arrangement that is described in this Ruling:
- (a) this Ruling has no binding effect on the Commissioner because the arrangement entered into is not the arrangement on which the Commissioner has ruled; and
  - (b) this Ruling may be withdrawn or modified.
7. This work is copyright. Apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without prior written permission from the Commonwealth. Requests and inquiries concerning reproduction and rights should be addressed to:

Commonwealth Copyright Administration  
Intellectual Property Branch  
Department of Communications, Information Technology  
and the Arts  
GPO Box 2154  
CANBERRA ACT 2601  
or by e-mail: [commonwealth.copyright@dcita.gov.au](mailto:commonwealth.copyright@dcita.gov.au).

## **Date of effect**

---

8. This Ruling applies to arrangements entered into during the income years ending 30 June 2001, 30 June 2002 and 30 June 2003. However, this Ruling 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 issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

## **Withdrawal**

---

9. This Class Ruling is withdrawn and ceases to have effect on and after 1 July 2003. The Ruling continues to apply, in respect of the tax law(s) ruled upon, even following its withdrawal, for arrangements entered into prior to the withdrawal of the Ruling. This is subject to there being no material change in the arrangement or in the class of persons involved in the arrangement.

## **Arrangement**

---

10. The arrangement that is the subject of the Ruling is described below. It is entered into when the subscriptions referred to in paragraph 17 below are made by employees. This description is based on the documents identified below. These documents, or the relevant parts of them, as the case may be, form part of and are to be read with this description. The relevant documents or parts of documents incorporated into this description of arrangement are:

- Application for class ruling dated 11 February 2003;
- Saint Gobain Avenir Monde FCPE Rules and Information Notice of 14 February 2002;
- Saint Gobain Group Savings Plan 2002; and
- Saint Gobain Employee Offering - Australian Employee Supplement.

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

The arrangements are as follows:

11. Compagnie De Saint Gobain ('Saint Gobain') is a company incorporated in France. Its shares are listed on the Paris Stock exchange.
12. Saint Gobain is the parent company of the Saint Gobain group.
13. In France, Saint Gobain established a Group Savings Plan on January 22, 1988 in accordance with French law. The plan provides the opportunity for employees of companies in the Saint Gobain group to invest in shares of the parent company.
14. The Group Savings Plan involves some direct investment by employees in Saint Gobain shares and by employee corporate mutual funds. The names of the funds are 'Saint Gobain Adhesion', 'Saint Gobain Avenir' and 'Saint Gobain Avenir Monde'.
15. Each of these funds, in legal form, is a *Fonds Commun De Placement D'Enterprise* ('FCPE') created and governed by Article L214-40 of the *Code monetaire et financier*, a law of France.
16. In 2001 Saint Gobain decided to extend the opportunity of participating in its Group Savings Plan to all permanent full-time and part time employees of Saint Gobain Abrasives Australia Pty Ltd, Saint Gobain Industrial Ceramics Pty Ltd, Saint Gobain Ceramic Materials Pty Ltd, Saint Gobain RF Pty Ltd and its Australian subsidiary companies (the 'Saint Gobain Australian Employees'), that have been employed for at least three months.
17. On 25 March 2002, an offer (the '2002 Offer') was made by Saint Gobain to its employees, including Saint Gobain Australian Employees, to subscribe to Saint Gobain's Group Savings Plan.
18. Employees to whom the offer is directed are employees under common law receiving salary or wages for their services to their Saint Gobain subsidiary company. Their salary or wages are subject to Pay As You Go taxation.
19. The 2002 Offer is contained in the documents 'Saint Gobain Group Savings Plan 2002' and 'Saint Gobain Employee Offering - Australian Employee Supplement'.
20. Pursuant to the invitation to invest in Saint Gobain shares the Australian employees were offered units in the FCPE named 'Saint Gobain Avenir Monde' (the Fund). The subscription price for the units was based upon a 'reference price' less 20%. The reference price was calculated having regard to the average of the opening prices of Saint Gobain shares on the Paris Stock Exchange for the 20 days prior to 23 January 2002.
21. The maximum amount that may be invested by an employee pursuant to the offer is 25% of the employee's annual remuneration.

22. The 2002 Offer featured a reference price of 169.36 euros and a subscription price of 135.50 euros equating to A\$225.83 based upon an exchange rate of A\$1 to 0.60 euros. In 2003 an offering has been made, on similar terms but subject to differences in the reference price, subscription price and exchange rates.

23. The mechanics of the investment are that the participating employee pays the subscription price for the FCPE units (his / her contribution) to the Fund and the Fund manager then subscribes for a number of shares in Saint Gobain at a discounted price and holds those shares in the Fund.

24. The number of units in the Fund allotted to the employee on subscription is equal to the number of shares subscribed for by the Fund manager and issued to the Fund by Saint Gobain.

25. The Fund custodian holds Saint Gobain shares issued to the Fund in the name of the Fund.

26. The shares held in the name of the Fund are managed as a single portfolio. There is no allocation of individual shares to individual unit holders.

27. The principal entitlements of the unit holders, per the Fund regulations, are:

- (a) Collectively, the unit holders are entitled to the net assets of the Fund;
- (b) Individually, the unit holders interest is a fraction of the net assets of the Fund having regard to the number of units held and the total number of units allocated;
- (c) The value of a unit ('net asset value') is calculated by dividing the Fund's net assets at market value by the number of units allocated;
- (d) Periodically, the number of units in the Fund is adjusted having regard to the market price of a Saint Gobain share on the Stock Exchange. Thus a unit holder may hold a different number of units, with a different unitary value, pre and post adjustment but the unit holder's fractional interest in the Fund is always preserved;
- (e) Fund revenue is reinvested and reflected by the issue of additional units or fractions of units to the unit holders;
- (f) Unit holders may apply for redemption of their units subject to the conditions of the Saint Gobain Group Savings Plan. In the case of Australian employees of Saint Gobain subsidiaries subscribing in response to the

2002 offer this means that they must hold their units until:

- 1 July 2007;
  - Cessation of employment;
  - Death; or
  - Total and permanent disablement (but where employment continues, until cessation of employment or 3 years from the date that the Fund subscribed for shares in response to the employee's subscription, whichever is the earlier);
- (g) The holding period under (f) is referred to as the 'Lock-up Period';
- (h) Unit holders (or their beneficiaries) are entitled to continue to hold units in the Fund after occurrence of any of the above redemption conditions;
- (i) When applying for redemption of units, the unit holder is entitled to request a transfer of shares or payment in cash. If no preference is indicated the Fund regulations permit the manager to satisfy the redemption by a cash payment; and
- (j) The redemption value of a unit is the 'net asset value' calculated on the day or the next trading day, that the request is received by the Fund manager depending on whether receipt is before or after noon and whether or not the day of receipt is a trading day. A fee applies (0.4%) payable to the Fund.

28. The net assets of the Fund consist substantially of Saint Gobain shares at market value. The value of the net assets of the Fund varies from the value of the share portfolio due to the inclusion in the balance sheet of relatively small amounts of cash/debit balances and creditors from time to time as necessitated by redemption applications.

29. The profit and loss statement for the Fund confirms that certain management fees and administration costs are met out of revenue. The surplus is capitalised.

30. The Fund is not a separate legal entity. It consists of assets held and managed for the unit holders in accordance with the objectives of the Saint Gobain Group Saving Plan. The structure adopted for this purpose is made up of a Supervisory Board, a Management Company and a Custodian. The functions of each are specified in the regulations of the Fund.

31. The Supervisory Board consists of representatives of Saint Gobain and the unit holders. It must meet at least once a year to review the annual reports of transactions and performance of the Fund. It has the overall responsibility of defending and asserting the interests of the unit holders. It may change the Management Company and the Custodian.

32. The Management Company's function is to assemble and manage the portfolio, retain liquid funds in order to meet redemptions, represent unit holders' interests in dealings with third parties and prepare accounts, reports and information concerning the operations of the Fund.

33. The Custodian is responsible for the custody of the assets of the Fund. It processes the purchase, exchange and sale of securities comprising the portfolio. It ensures that the rights attaching to the securities are exercised. It also carries out the collections and payments of money resulting from the management of the Fund.

34. A Statutory Auditor appointed by the Board and approved by the regulatory authority audits the accounts of the Fund.

35. The term of the Fund under its regulations is 99 years. This term may be extended by the Supervisory Board.

36. The Supervisory Board also has the power to decide on any conversion, merger, demerger or liquidation of the Fund.

37. In the event of a merger or demerger, the assets of the Fund shall be transferred to the new FCPE(s) and the unit holders' entitlement recalculated on the basis of the net assets of the new FCPE(s).

38. Liquidation may only take place when all units are redeemable. In that event the Management has the power to liquidate the assets and distribute the proceeds to the unit holders. Unclaimed amounts are to be held for the statutory period of 30 years and then the Management company shall liquidate the units and transfer the amount to the French Treasury.

## **Ruling**

---

39. When units in the FCPE are issued to a Saint Gobain Australian employee, the employee derives ordinary income under section 6-5 of the ITAA 1997, equivalent to the difference between the 'subscription price' for the units and the 'reference price' referred to in paragraph 20 above ('the discount'). The income so derived is exempt income of the employee under section 23L of the ITAA 1936, as it is derived by way of the provision of a fringe benefit as defined in subsection 136(1) of the FBTAA 1986. In this regard, the provision



of the units is not excluded from the definition of fringe benefit by paragraph (ha) of the definition because it is not constituted by the acquisition by a person of shares or rights under an employee share scheme within the meaning of Division 13A of Part III of the ITAA 1936.

40. In the fraction denoted by the number of units held, income of the Fund is included in the Australian resident unit holder's assessable income. The income is derived by the unit holder when it is received by the custodian and dealt with on their behalf by reinvestment and the issue of additional units on account of the reinvested income (subsection 6-5(4) or subsection 6-10(3) of the ITAA 1997 applies).

41. If an Australian resident unit holder redeems units in the Fund for either cash or a transfer of Saint Gobain shares, a CGT event C2 occurs pursuant to section 104-25 of the ITAA 1997. A capital gain results if the capital proceeds exceed the cost base of the units. A capital loss occurs if the capital proceeds are less than their reduced cost base.

42. The capital proceeds of a redemption (CGT event C2) consist of any cash received and the market value of any shares acquired in consideration for the redemption (subsection 116-20(1) applies).

43. The cost base or reduced cost base of the units redeemed consists of the subscription price paid for the units in the case of units acquired by subscription. For additional units acquired on account of reinvested income, the income so applied forms the cost base of the asset (section 110-25 applies).

44. If an Australian resident unit holder makes a capital gain on redemption of their units and the interest in the Fund represented by the units redeemed was acquired 12 months or more prior to the CGT event C2 happening, the gain is a discount capital gain pursuant to Division 115 of the ITAA 1997

45. If an Australian resident unit holder, having redeemed their units in the Fund in consideration for Saint Gobain shares, disposes of the shares a CGT event A1 happens (refer section 104-10). The capital gain or capital loss with respect to the disposal is calculated on the basis of the first element of the cost base or reduced cost base of the shares being their market value at the date of acquisition. If a capital gain is made, it will be a discount capital gain pursuant to Division 115 if the acquisition of the shares occurred 12 months or more prior to the disposal.

## **Explanation**

---

### **Ordinary income derived**

46. Saint Gobain Australian employees have a present entitlement to be paid an agreed amount of remuneration under their employment contracts at fixed intervals when they have performed services for any of the Saint Gobain Australian companies over a fixed period. This remuneration from their employment is ordinary income if it is received as money or something that can be converted into money. When units in the FCPE are issued to a Saint Gobain Australian employee, the employee receives the benefit of the discount referred to in paragraph 39 above. That discount when received is properly to be viewed as having the character of ordinary income, as it is a product of the employee's employment and is something that can be converted into money.

### **Exemption of the benefit from acquisition of units at a discount**

47. The provision of units in the Fund to Australian resident employees is a fringe benefit for the purposes of the *Fringe Benefits Tax Assessment Act 1986*. The provision of the units is clearly a 'benefit' as defined in relation to the employee's employment by the Saint Gobain employer or its associate. The critical question in the circumstances is whether the benefit provided is excluded from the fringe benefits tax regime by paragraph (ha) of the definition of 'fringe benefit' in subsection 136(1).

48. Paragraph (ha) excludes 'a benefit constituted by the acquisition by a person of a share or right under an employee share scheme (within the meaning of Division 13A of Part III of the *Income Tax Assessment Act 1936*).

49. 'Shares' are defined by Section 6 of the ITAA 1936 in relation to a company as shares in the capital of the company, and including stock. As 'right' and 'right to acquire' a share are used interchangeably throughout Division 13A, a 'right' is properly understood as a right to acquire a share.

50. For the purposes of Division 13A, a taxpayer *acquires a share* if another person transfers or allots the share to them (paragraphs 139G (a), (b) of ITAA 1936) or the taxpayer otherwise acquires a legal or beneficial interest in the share from another person (paragraphs 139G (d), (e)). A taxpayer *acquires a right* if another person transfers the right to, or creates the right in, the taxpayer (paragraphs 139G (a), (c)) or the taxpayer otherwise acquires a legal or beneficial interest in the right from another person (paragraphs 139G (d), (e)). A fractional interest in a share or right is sufficient for

‘acquiring’ or ‘providing’ a share or right within the meaning of section 139G.

51. The Saint Gobain FCPE is a contractual arrangement formed with the intention of creating a situation of common ownership of an investment portfolio. It has been submitted that, under the relevant law (i.e. French law), the arrangements present a property interest in shares and thus meet the requirements of section 139G.

52. However, the unit holder’s interest under the Fund’s regulations is, in essence, a fractional interest in net assets with rights to a share of reinvested income. This interest (a *chose in action*) is not identical with the inherent or underlying interest that the unit holder may have in shares that are part of the net assets. It is considered that, even if under French law the unit holders may be regarded as co-owners, the interest in shares cannot be severed and dealt with separately for the purpose of the application of the Australian taxation law.

53. The FCPE concept, being a collective investment vehicle that is neither a separate legal entity nor a trust according to French law, is analogous in some respects to a partnership and the unit holder’s interest is comparable to the interest of a partner in a partnership. In this regard, the following dicta of the majority in *FC of T v. Everett* (1980) 143 CLR 440; 10 ATR 608; 80 ATC 4076 lends support to the view expressed in paragraph 52 above: ‘...the partner’s fractional interest [in the partnership] is an entire *chose in action*; it is capable of division by assignment into further fractions, but it is not capable of division by assignment so that the right to participate in partnership profits which is inherent to the interest is hived off from the rest of that interest. Consequently, a partner’s entitlement to participate in profits is not separate and severable from the interest of the partner.’ (at 450; 613; 4081)

54. ‘Accordingly, in considering the application of paragraph (ha) of the definition of ‘fringe benefit’ in subsection 136(1), the property right that a unit holder may have in particular assets, e.g. shares, cannot be substituted for the entire *chose*. In other words, the relevant benefit is that arising from the provision of the units, not a benefit associated with any inherent or underlying property.

55. ‘The benefit in question is not ‘a benefit constituted by the acquisition by a person of a share or right ...’ and the exclusion under paragraph (ha) does not apply. The fringe benefit is classified as an external property fringe benefit, the taxable value of which falls for determination under section 43 of the FBTAA 1986.

56. In accordance with section 23L of the ITAA 1936, Australian resident employees acquiring units in the Fund are exempt from tax on the benefit obtained.

**Taxation of fund income**

57. Income (principally dividends) received on assets held in the Fund is income in the hands of the unit holder if there is an entitlement thereto under the terms of the investment.

58. In this regard it is accepted that unit holders do not have a shareholder's title to the dividends. The dividends are paid to the custodian bank which receives them in that capacity. The unit holders' entitlement to income under the Fund regulations is not a claim for immediate payment of the dividends received by the custodian but a right to have that money reinvested on their behalf and, in recognition, be allocated additional units.

59. It is considered that the unit holders' entitlement, incorporating as it does an unconditional right to have income reinvested on their behalf, indicates an entitlement to the income as it is received notwithstanding that it cannot be enjoyed as an immediate cash distribution. In accordance with subsections 6-5(4) and 6-10(3) of the ITAA 1997 the income is derived by the unit holders when it is received and dealt with on their behalf.

60. An argument to the contrary may be advanced on the basis of judicial authority indicating that receipt of income by the fund manager and crediting of income to the investor's account is not sufficient for derivation of the amount by the investor.

61. In *Clarke v. FC of T* (1992) 23 ATR 102; 92 ATC 4136, income allocated to a life insurance policy holder's account but not paid to the policy holder was found not to be derived. Davies J, at 23 ATR 106; 92 ATC 4140 said:

'No sum is derived by the holder of a participating policy of the type with which we are concerned when a credit is made to his or her investment account or capital growth account.'

62. The decision in *Clark* relied on the High Court decision in *Constable v. FC of T* (1952) 86 CLR 402. In that case a taxpayer received a lump sum including contributions and interest thereon on withdrawing from a superannuation fund. The Court held that the sum including interest allocated to the employee's account was not assessable pursuant to section 26(e). In obiter comments, at 86 CLR 418, Dixon CJ, McTiernan, Williams and Fullagar JJ said:

'... we find it by no means easy to see how the sums so contributed can be regarded as allowed granted or given to the employee when they are paid to the administrators of the fund. It is only after the administrators have exercised their discretion that any moneys paid to the special account are reflected in the member's (employee's) account and even then that does not mean that the member becomes presently entitled to the moneys credited to that account.'

63. These authorities confirm that, for income to be derived, the taxpayer must be entitled to it. The outcome in each case is explained by the fact that the taxpayer did not have the necessary entitlement. In *Clark*, the allocation to the policy holder's account could be cancelled or reduced. In *Constable*, the employee had no present entitlement to interest credited to his account when the credit was made. The entitlement was to a payment of a sum in the future contingent upon events such as resignation or retirement.

64. An analogy may be drawn between the contingent right to payment of a sum in *Constable* and the right of redemption in *Saint Gobain*. In each case the right is based on the account/value of units and is conditional. In the *Saint Gobain* situation the condition is the ending of the 'lock-up' period imposed under the terms of the offer. Certainly the unit holder is not entitled to payment or transfer of *Saint Gobain* shares until the lock-up ends. However, unlike the situation in *Constable*, the contingencies affecting withdrawal do not rule out an entitlement to income during the period of the investment. As stated above, the present scheme is that the unit holders are entitled to have the income reinvested on their behalf and recognised by the allocation of additional units. This is not a matter of mere accounting for the purpose of calculating a contingent future entitlement. It involves the creation of an additional *chose in action*, enforceable against the manager.

65. The circumstances are different to those in *Read v. Commonwealth of Australia* (1987) 167 CLR 57 where additional units were issued following a revaluation of the assets in the fund. An argument that was accepted by the majority in that case was that the additional units were part of the original interest of the unit holder; they did not represent a separate interest and accordingly did not represent 'income' for social security purposes. In the present case the additional units ensure that the unit holders, who are members of the fund at the relevant time, receive the benefit of the income actually received (in contrast to an unrealised gain from a revaluation of the fund assets). Reinvested income forms part of the fund and should be reflected in the net asset value of the fund and the value of the existing units but only momentarily. As soon as the market value of the portfolio changes so will the net asset value. Without the allotment of additional units the income, to which unit holders at a particular point in time are entitled, would also benefit unit holders who invest at a later time. Another factor is that the additional units do not relate to the change in 'net asset value' that is the measure of the unit holders' interest. The additional rights are full consideration for the income entitlement not related to any change pre and post dividend in the value of the capital fund.

66. An argument raised in this context is that the additional units created and allotted to the unit holders on account of reinvested income are akin to bonus shares and as such do not represent income in the hands of the recipient, in the absence of a specific statutory provision: *IRC v. Blott* [1920] 1 KB 114; *Gibb v. FC of T* (1966) 118 CLR 628. It is accepted that bonus shares (and units in a fund) are not income but that is not the issue. In the words of Brennan J in *Read*, at 167 CLR 76

‘the liability to tax depends not on the character of the bonus shares but on the answer to the question whether the shareholder obtains such a title to the profits used to pay for the shares to make those profits ‘income’ in his hands.’

The significance of the allotment of the additional units in the present case is that they are new rights reflecting a pre-existing entitlement to the reinvested fund income.

### **Capital Gains Tax**

67. The general capital gains tax rules under Part 3-1 of the ITAA 1997 would apply to CGT events in relation to the interests in net assets of the Fund represented by units and shares acquired via the redemption of units. The units are not units in a unit trust and Taxation Determination TD 2000/32 does not apply.

68. Section 104-25 provides that CGT event C2 happens if your ownership of an intangible CGT asset ends by it being redeemed or cancelled. Accordingly when Australian resident unit holders redeem their units there will be a CGT event.

69. If the redemption is satisfied fully or partly by the transfer of Saint Gobain shares, the capital proceeds with respect to CGT event C2 will include, in addition to any money received, the market value of the shares at the date of the redemption (refer subsection 116-20(1)).

70. Under Division 110 for units acquired by subscription, the cost base or reduced cost base includes the subscription paid. For units obtained on account of reinvested income, the cost base or reduced cost base is the amount of the reinvested income. In the event that, during the period of the unit holder’s membership of the Fund, unit holders’ interests have been redenominated by the manager adjusting the number of units in the Fund and accordingly the number held by each unit holder, the original cost base or reduced cost base will be spread over the revised number of units.

71. If employees redeem their units for Saint Gobain shares and subsequently sell the shares, a CGT event A1 happens pursuant to section 104-10 with respect to the shares. The first element of the cost base or reduced cost base of the shares will be the market value of the shares at the date they were acquired (subsection 112-20(1) applies).

72. For the purposes of Division 115 (discount capital gains) the acquisition time of units will be the date that units related to the interest redeemed were issued in consideration for the unit holder's subscription or reinvested income. This is when the relevant interest in the Fund was acquired regardless of whether at the date of redemption the interest was denominated differently as a result of adjustments made by the Fund manager for the purpose of equalising unit value with the market price of a Saint Gobain share.

73. Saint Gobain shares obtained by redeeming units in the Fund are acquired at the redemption time.

## **Detailed contents list**

---

74. Below is a detailed contents list for this Class Ruling:

	<b>Paragraph</b>
<b>What this Class Ruling is about</b>	<b>1</b>
Tax law(s)	2
Class of persons	3
Qualifications	4
<b>Date of effect</b>	<b>8</b>
<b>Withdrawal</b>	<b>9</b>
<b>Arrangement</b>	<b>10</b>
<b>Ruling</b>	<b>39</b>
<b>Explanation</b>	<b>46</b>
Ordinary income derived	46
Exemption of the benefit from acquisition of units at a discount	47
Taxation of fund income	57
Capital Gains Tax	67
<b>Detailed contents list</b>	<b>74</b>

**Commissioner of Taxation**

23 July 2003

*Previous draft:*

Not previously released in draft form

- ITAA 1936 23L
- ITAA 1936 26(e)
- ITAA 1936 139G
- ITAA 1936 139G(a)
- ITAA 1936 139G(b)
- ITAA 1936 139G(c)
- ITAA 1936 139G(d)
- ITAA 1936 139G(e)

*Related Rulings/Determinations:*TR 92/1; TR 92/20; TR 97/16;  
TD 2000/32; CR 2001/1

- ITAA 1997 6-5
- ITAA 1997 6-5(4)
- ITAA 1997 6-10(3)
- ITAA 1997 Part 3-1
- ITAA 1997 104-10
- ITAA 1997 104-25
- ITAA 1997 Div 110
- ITAA 1997 110-25
- ITAA 1997 112-20(1)
- ITAA 1997 Div 115
- ITAA 1997 116-20(1)
- FBTAA 1986 43
- FBTAA 1986 136(1)

*Subject references:*

- acquisition of share or right
- capital gains tax
- CGT event A1
- CGT event C2
- cost base
- chose-in-action
- derivation of income
- discount capital gains
- dividends
- employee savings plan
- employee share schemes
- exempt income
- external property fringe benefit
- Fonds Commun De Placement D'Enterprise
- fringe benefit
- fringe benefits tax
- reduced cost base
- reinvested income

*Case references:*

- IRC v. Blott [1920] 1 KB 114
- Clarke v. FC of TT (1992) 23 ATR 102; 92 ATC 4136
- Constable v. FC of T (1952) 86 CLR 402.
- FC of T v. Everett (1980) 143 CLR 440; 10 ATR 608; 80 ATC 4076
- Gibb v. FC of T (1966) 118 CLR 628
- Read v. Commonwealth of Australia (1987) 167 CLR 57

*Legislative references:*

- Copyright Act 1968
- TAA 1953 Part IVAAA
- ITAA 1936 6
- ITAA 1936 Div 13A
- ITAA 1936 Div 13A Part III

## ATO references

NO: 2002/003596  
ISSN: 1445 2014