



CR 2003/90 - Income tax: capital gains: scrip for scrip roll-over: exchange of units in AMP Diversified Property Trust for units in Stockland Trust

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 This document has changed over time. This is a consolidated version of the ruling which was published on *29 October 2003*



Class Ruling

Income tax: capital gains: scrip for scrip roll-over: exchange of units in AMP Diversified Property Trust for units in Stockland Trust

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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**, **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.*

[Note: This is a consolidated version of this document. Refer to the Tax Office Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]

What this Class Ruling is about

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

Tax law(s)

2. The tax law dealt with in this Ruling is Subdivision 124-M of the *Income Tax Assessment Act 1997* (ITAA 1997).

Class of persons

3. The class of persons to which this Ruling applies is the holders of units in AMP Diversified Property Trust (ADP) who:

- (a) are ‘residents of Australia’ as that term is defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936);
- (b) disposed of their units in ADP in exchange for units in Stockland Trust (which are stapled to shares in

Stockland Corporation Limited and traded as Stockland stapled securities); and

- (c) are not 'significant stakeholders' or 'common stakeholders' within the meaning of those expressions as used in Subdivision 124-M.

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 9 to 12.
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.
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Date of effect

8. This Class Ruling applies to the 2002-03 and 2003-04 income years.

Arrangement

9. The arrangement that is the subject of this Ruling is described below. This description is based on the following documents. These documents, or 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 the arrangement are:

- (a) Class Ruling application dated 10 September 2003 from Corrs Chambers Westgarth;
- (b) letter dated 8 August 2003 from Corrs Chambers Westgarth and accompanying documentation; and
- (c) e-mail dated 12 September 2003 from Corrs Chambers Westgarth and accompanying documentation.

10. The arrangement that is the subject of this Ruling involves the acquisition of the units in ADP by Stockland Trust Management Limited as responsible entity for Stockland Trust.

11. On 2 June 2003, Stockland Trust offered to acquire all of the units in ADP. The offer was able to be accepted by ADP unitholders prior to 17 July 2003. Under the offer ADP unitholders were entitled to receive one Stockland Stapled Security (consisting of one unit in Stockland Trust and one share in Stockland Corporation Limited) plus \$0.80 cash for every 1.9 units in ADP.

12. At the close of the offer, approximately 97% of the ADP units had been acquired by Stockland. The remaining units were compulsorily acquired after that time on terms consistent with the offer.

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

Ruling

13. Subject to the qualifications in paragraphs 4 to 6 of this Ruling, holders of units in ADP who are within the class of persons to whom this Ruling applies can choose roll-over under paragraph 124-781(3)(c) for the disposal of an ADP unit acquired after 19 September 1985 if:

- apart from the roll-over, they would make a capital gain from disposal of the ADP unit under the arrangement; and

- they might make a capital gain from a replacement unit in Stockland Trust which would not be disregarded (except because of a roll-over).

14. Pursuant to section 124-790, a unitholder who chooses roll-over will only be entitled to a partial roll-over. Roll-over will not be available to the extent that an ADP unit is exchanged for cash or a Stockland Corporation share.

Explanation

Availability of scrip for scrip roll-over

15. Scrip for scrip roll-over enables a unitholder to disregard a capital gain they make from a unit that is transferred as part of a takeover or merger to the extent that the unitholder receives a replacement unit in exchange. The roll-over also provides that the cost base and reduced cost base of each new unit is based on those of the original units at the time of the roll-over.

16. A partial roll-over will be available for an ADP unitholder if certain conditions are satisfied. Below is an outline of the main conditions and exceptions that are relevant to the circumstances of the arrangement that is the subject of this Ruling.

17. **Subparagraph 124-781(1)(a)(i) requires an entity (an ADP unitholder) to exchange a unit in a trust for a unit in another trust.**

18. This requirement is satisfied because the ADP unitholder has exchanged each of their units in ADP for an interest in a unit in Stockland Trust.

19. **Paragraph 124-781(1)(b) requires that entities have fixed entitlements to all of the income and capital of the original entity (ADP) and the acquiring entity (Stockland Trust).**

20. Having regard to:

- all of the documents and any other material referred to in paragraph 9 of this Ruling; and
- all the facts comprising the arrangement as described in paragraphs 10 and 11 of this Ruling

it is considered that for the purposes of paragraph 124-781(1)(b) there are fixed entitlements to all of the income and capital of ADP and Stockland Trust immediately before, during and immediately after the arrangement that is the subject of this Ruling.

21. **Paragraphs 124-781(1)(c) and 124-781(2)(a) require that the exchange of units is in consequence of an arrangement that results in the acquiring entity (Stockland Trust) becoming the owner of 80% or more of the trust voting interests in the original entity (ADP).**

22. A trust voting interest is defined in subsection 124-781(6) as an interest that confers rights of the same or a similar kind as the rights conferred by a voting share in a company. 'Voting shares' are defined in subsection 995-1(1) of the ITAA 1997 by reference to the definition in section 9 of the *Corporations Act 2001*.

23. All of the ADP units are trust voting interests. As a consequence of the offer made on 2 June 2003, Stockland became the owner of 100% of the ADP units. Therefore, this requirement is satisfied.

24. **Paragraphs 124-781(1)(c) and 124-781(2)(b) require that the exchange of units is in consequence of an arrangement in which at least all owners of trust voting interests in the original entity (ADP) could participate.**

25. This requirement is satisfied because all existing ADP unitholders (including non-residents) as set out in the Register of Unitholders were entitled to dispose of their units in ADP.

26. **Paragraphs 124-781(1)(c) and 124-781(2)(c) require that the exchange of units is in consequence of an arrangement in which participation was available on substantially the same terms for all of the owners of units of a particular type.**

27. This requirement is satisfied as the arrangement gave each resident holder of ADP units the same terms.

28. Although the stapled securities that non-resident ADP unitholders were otherwise entitled to were issued to a nominee for sale, the arrangement is still one that was available on substantially the same terms for all ADP unitholders.

29. An arrangement is considered to be on substantially the same terms if the capital proceeds that each participant receives differ for reasons such as those outlined in subsection 619(3) of the *Corporations Act 2001*.

30. **Paragraphs 124-781(3)(a) and 124-781(3)(b) require that the original interest holder (an ADP unitholder) acquired its interest after 19 September 1985 and apart from the roll-over, would make a capital gain from a CGT event happening in relation to its original interest.**

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31. This Ruling applies to ADP unitholders to the extent to which they acquired their unit in ADP after 19 September 1985 and would otherwise make a capital gain from the disposal of it to Stockland Trust – refer to paragraph 13.
32. Whether an ADP unitholder would make a capital gain, apart from the roll-over is dependent on the specific circumstances of each unitholder – in particular the cost base of each ADP unit at the time of the disposal and the value of the consideration received.
33. Roll-over is not available if, in respect of an ADP unit, a unitholder would make a capital loss.
34. **Paragraph 124-781(3)(c) requires that the original interest holder (an ADP unitholder) chooses to obtain roll-over.**
35. This Ruling applies only to those ADP unitholders who choose to obtain roll-over – refer to paragraph 13.
36. **Subsection 124-781(4) contains additional requirements if the original interest holder (an ADP unitholder) and the trustee of the acquiring entity (Stockland Trust) did not deal with each other at arm's length, and neither the original entity (ADP) nor the acquiring entity had at least 300 beneficiaries just before the arrangement started.**
37. Subsection 124-781(4) will not apply because ADP and Stockland Trust each had more than 300 members just before the arrangement started. (Section 124-810 will not apply to ADP or Stockland Trust because their ownership is not concentrated in the manner contemplated by that section.)
38. **Roll-over under Subdivision 124-M is not available if any of the exceptions in section 124-795 applies.**
39. Subsection 124-795(1) provides that roll-over for non-resident interest holders is not available if their replacement interests are in an entity that is not a resident trust for CGT purposes. Non-residents are not within the class of persons to whom this Ruling applies: refer to paragraph 3(a).
40. Paragraph 124-795(2)(a) provides that roll-over is not available if any capital gain an interest holder might make from their replacement interest would be disregarded (except because of a roll-over). This Ruling applies to those unitholders who might make a capital gain from a replacement interest in ADP which would not be disregarded (except because of a roll-over) - refer to paragraph 13.
41. The other exceptions in section 124-795 are not relevant as they relate to roll-overs that involve companies.

What is the rollover?

42. **Section 124-790 provides that only a partial roll-over is available if a unitholder receives something other than a replacement unit as capital proceeds for an original unit.**

43. Roll-over is only available to the extent that an ADP unitholder received a unit in Stockland Trust as capital proceeds for an ADP unit. To the extent that the unitholder received cash or a share in Stockland Corporation Limited (ineligible proceeds), roll-over is not available.

44. In working out the capital gain attributable to their ineligible proceeds, an ADP unitholder deducts from those proceeds a reasonable portion of the cost base of their ADP unit (just before the disposal to Stockland). The remaining cost base is taken into account in working out the cost base of the replacement Stockland Trust unit.

45. The cost base of the ADP units just before the disposal is determined by deducting the amount of any relevant non-assessable payments in the current and earlier income years: section 104-71 of the ITAA 1997.

46. The capital gain relating to the ineligible proceeds will be taken into account in working out the unitholder's net capital gain for the income year in which they accepted the Stockland offer.

Cost base of Stockland Corporation Limited share

47. The acquisition cost of a Stockland Corporation Limited share is calculated having regard to the market value of the property given to acquire it (subsection 110-25(2) of the ITAA 1997) – that is, a proportion of the value of ADP units.

Example

48. This example indicates how to calculate the capital gain attributable to the ineligible proceeds. It also illustrates how the acquisition cost of a Stockland Trust unit and a Stockland Corporation Limited share is to be calculated.

49. Peter acquired 1000 units in ADP after 19 September 1985. On 20 June 2003 he accepted the offer to dispose of his units. At that time the cost base of each of his units, adjusted as required by section 104-71, was \$2.30.

50. Peter received:

- 527 Stockland Stapled securities (each with a market value of \$5.50 on the date the offer was accepted); and
- \$421.60 cash.

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51. Assume that a unit in Stockland Trust represented 89% of the value of a Stockland Stapled security and that a share in Stockland Corporation Limited represented 11% of the value of the security.

52. The total amount of capital proceeds received by Peter was \$3,320.10 apportioned as follows:

Stockland stapled securities	527 @ \$5.50	\$2,898.50
Stockland shares	\$318.83 = \$2,898.50 x 11%	
Stockland units	\$2,579.67 = \$2,898.50 x 89%	
Cash (527 x \$0.80)		\$421.60

Capital gain attributable to ineligible proceeds (Stockland shares and cash)

53. Peter chooses roll-over to the extent that he is able. However he must work out his capital gain in relation to the ineligible proceeds that he received. He does this as follows:

Capital gain = Ineligible capital proceeds – Cost base of ‘ineligible part’

Ineligible capital proceeds = Share + Cash

$$\$318.83 + \$421.60$$

$$\$740.43$$

CB of ineligible part = $\frac{\text{Ineligible proceeds} \times \text{Cost base of ADP units}}{\text{Total proceeds}}$

$$\$740.43 / \$3,320.10 \times \$2,300$$

$$\$512.93$$

Capital gain = \$740.43 – \$512.93

$$\$227.50$$

Acquisition cost of Stockland Trust unit

54. Peter determines the acquisition cost of his Stockland Trust units by apportioning, in a reasonable way, the remaining cost base of his ADP units. He does this as follows:

$$\frac{\text{Cost base of ADP units} - \text{Cost base taken into account above}}{\text{Number of Stockland Trust units}}$$

$$\frac{\$2,300 - \$512.93}{527}$$

527

\$3.39

Acquisition cost of Stockland Corporation Limited share

55. Peter works out the acquisition cost of his Stockland Corporation Limited shares having regard to the market value of the ADP units for which they were exchanged. The market value of a unit in ADP on the date Peter accepted the offer was \$3.19. The market value of 1.9 ADP units at that time was \$6.06.

56. Peter works out the acquisition cost using the following formula:

$$\frac{\text{Value of share} \times \text{Market value of ADP units given}}{\text{Value of all property received}}$$

Value of all property received

1 Stockland Share	= \$0.60 (11% of \$5.50)
1 Stockland Unit	= \$4.90 (89% of \$5.50)
Cash	= \$0.80
	\$6.30

Acquisition cost of Stockland share = $(\$0.60 / \$6.30) \times \$6.06$

\$0.58 per share

Detailed contents list

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

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Commissioner of Taxation

15 October 2003

Previous draft:

Not previously issued in draft form.

Related Rulings/Determinations:

CR 2001/1; TR 92/1; TR 97/16

Subject references:

- acquiring entity
- arrangement
- capital
- capital gain
- class of persons
- exchange
- fixed entitlement
- income
- original entity
- original interest
- replacement interest
- roll-over
- scrip
- scrip for scrip roll-over
- unit
- unitholder
- unit trust

Legislative References:

- ITAA 1936 6(1)
- ITAA 1997 104-71
- ITAA 1997 110-25(2)
- ITAA 1997 Subdivision 124-M
- ITAA 1997 124-781(1)(a)(i)
- ITAA 1997 124-781(1)(b)
- ITAA 1997 124-781(1)(c)
- ITAA 1997 124-781(2)(a)
- ITAA 1997 124-781(2)(b)
- ITAA 1997 124-781(2)(c)
- ITAA 1997 124-781(3)(a)
- ITAA 1997 124-781(3)(b)
- ITAA 1997 124-781(3)(c)
- ITAA 1997 124-781(4)
- ITAA 1997 124-781(6)
- ITAA 1997 124-790
- ITAA 1997 124-795
- ITAA 1997 124-795(1)
- ITAA 1997 124-795(2)(a)
- ITAA 1997 124-810
- ITAA 1997 995-1(1)
- TAA 1953 Part IVAAA
- Copyright Act 1968
- Corporations Act 2001 9
- Corporations Act 2001 619(3)

ATO references

NO: 2003/13350

ISSN: 1445-2014