


CR 2011/64 - Income tax: capital gains: personal-use assets: transfer of health insurance policies from Manchester Unity Australia Limited to The Hospitals Contribution Fund of Australia Limited

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Class Ruling

Income tax: capital gains: personal-use assets: transfer of health insurance policies from Manchester Unity Australia Limited to The Hospitals Contribution Fund of Australia Limited

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ⓘ This publication provides you with the following level of protection:

This publication (excluding appendices) 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 provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provision(s)

2. The relevant provisions dealt with in this Ruling are the following provisions of the *Income Tax Assessment Act 1997* (ITAA 1997):

- section 108-20; and
- subsection 118-10(3).

All legislative references in this Ruling are to the ITAA 1997 unless otherwise indicated.

Class of entities

3. The class of entities to whom this Ruling applies is the policy holders of Manchester Unity Australia Limited (MU) who will have their MU health insurance policies transferred to The Hospitals Contribution Fund of Australia Limited (HCF) under the proposed transaction (MU policy holders).

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 9 to 15 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.

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Date of effect

8. This Ruling applies from 1 July 2010 to 30 June 2011. The Ruling continues to apply after this date 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

9. The following description of the scheme is based on information provided by the applicant:

- Class Ruling application dated 24 February 2011;
- Deed of Arrangement (DoA) between HCF and MU dated 18 February 2011; and
- correspondence from the applicant between 24 February 2011 and 25 May 2011.

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

10. HCF is a registered private health insurer under the *Private Health Insurance Act 2007* (PHI Act) and carries on a health insurance business as defined in Division 121 of the PHI Act.

11. MU is a wholly owned subsidiary of HCF. MU is a registered private health insurer under the PHI Act. MU carries on a health insurance business (as defined in Division 121 of the PHI Act) with approximately 75,000 members.

12. MU and HCF entered into a DoA on 24 February 2011 under which the parties agreed to transfer the Health Insurance Business from MU to HCF under section 146-5 of the PHI Act (the proposed transfer).

13. Subject to certain conditions precedent (including approval from the Private Health Insurance Administration Council (PHIAC) and other relevant Public Authorities) and unless otherwise agreed in writing, the proposed transfer date under the DoA is 30 June 2011.

14. Under clause 6.1 of the DoA, MU and HCF acknowledge and covenant that:

- (1) MU as legal and beneficial owner of the Assets and the Health Insurance Business will transfer the Assets (including all insurance policies referable to the MU Health Benefits Fund) and the Health Insurance Business to HCF; and
- (2) in consideration for the Assets being transferred by MU to HCF, HCF will assume the Assumed Liabilities (that is all liabilities of MU relating to the Assets of the Health Insurance Business, including all policy liabilities) from MU,

on the transfer date and subject to the provisions of the DoA.

15. MU policy holders become members of MU's Health Benefits Fund as a result of becoming policy holders. The only rights that MU policy holders have in their capacity as members of MU's Health Benefits Fund are their rights under MU health insurance policies. MU policy holders are not entitled to any other rights or benefits. In particular, MU policy holders do not have any right to vote, any right to receive dividends or any right to receive any distribution of surplus or capital upon a winding up of MU.

Ruling

16. Any capital gain made by a MU policy holder from the proposed transfer of their MU health insurance policy will be disregarded if the first element of the cost base of the MU health insurance policy is \$10,000 or less (subsection 118-10(3)). Any capital loss made by a MU policy holder from the proposed transfer is disregarded under subsection 108-20(1).

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.*

17. The asset that is the subject of this Ruling consists of each MU policy holder's rights under their respective MU health insurance policy. Under Taxation Determination TD 93/86, whether all the rights comprise one single asset or each right is a separate asset will depend on the facts of each case. However, the initial approach is to regard the totality of rights as one asset for the purposes of Parts 3-1 and 3-3 of the ITAA 1997. The bundle of rights to receive health benefits under a MU health insurance policy is a capital gains tax (CGT) asset to the MU policy holder.

18. The Federal Court in *Favaro v. FC of T* 96 ATC 4975; (1996) 34 ATR 1 considered the term 'personal use' in the *Income Tax Assessment Act 1936* equivalent to subsection 108-20(2):

The expression 'personal use' is used in s.160B of the ITAA in contradistinction to use for business or profit making purposes.

19. The only rights that MU policy holders have are their interest in rights in MU health insurance policies. MU policy holders are not entitled to any other right or benefits under their health insurance policies.

20. Throughout the duration of the health insurance policies, MU policy holders would have used or mainly kept those policies to access MU's health insurance benefits under their respective policies when a personal need arose. Throughout the duration of these policies, the purpose of using or keeping these policies would not have been for a business or profit-making purpose. The rights of a MU policy holder under their health insurance policy; therefore are within the meaning of personal use.

21. Subsection 118-10(3) provides for any capital gain made from a personal use asset, or part of the asset, to be disregarded if the first element of the asset's cost base under section 110-25 is \$10,000 or less. In this case, it is considered that the first element of the cost base consists of the initial premium paid by a MU policy holder to acquire the policy and therefore in the majority, if not all cases, any capital gain made on a MU health insurance policy will be disregarded.

22. Subsection 108-20(1) provides that any capital loss made from a personal use asset is disregarded in working out the net capital gain or net capital loss for the income year.

Appendix 2 – Detailed contents list

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

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10; TD 93/86

Subject references:

- CGT exemptions
- personal use asset

Legislative references:

- ITAA 1997 Part 3-1
- ITAA 1997 Part 3-3

- ITAA 1997 108-20
- ITAA 1997 108-20(1)
- ITAA 1997 108-20(2)
- ITAA 1997 110-25
- ITAA 1997 118-10(3)
- Copyright Act 1968
- PHI Act Div 121
- PHI Act 146-5

Case references:

- Favaro v. Commissioner of Taxation 96 ATC 4975; (1996) 34 ATR 1

ATO references

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