


# ***CR 2013/62 - Income tax: exchange of shares in DUET Management Company 1 Limited for shares in DUET Company Limited***

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## Class Ruling

### Income tax: exchange of shares in DUET Management Company 1 Limited for shares in DUET Company Limited

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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

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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:

- section 104-10 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 108-5 of the ITAA 1997;
- Division 110 of the ITAA 1997;
- section 112-25 of the ITAA 1997;
- section 112-30 of the ITAA 1997;
- Subdivision 115-A of the ITAA 1997;
- section 116-20 of the ITAA 1997;
- section 124-15 of the ITAA 1997; and

- Subdivision 124-G of the ITAA 1997.

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

## **Class of entities**

3. The class of entities to which this Ruling applies are the holders of ordinary shares in DUET Management Company 1 Limited (DMC 1 shareholders) who:

- participate in the scheme that is the subject of this Ruling;
- are residents of Australia within the meaning of subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936);
- acquired their shares after 19 September 1985;
- hold their shares neither as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)) – that is, broadly on capital account; and
- are not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on their shares.

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

## **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 38 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

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7. This Ruling applies from 1 July 2013 to 30 June 2014. The Ruling continues to apply after 30 June 2014 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).

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## Scheme

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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 12 March 2013;
- Draft Meeting Booklet;
- DUET Management Company 1 Limited (DMC 1) Constitution;
- Constitution of DUET Company Limited (DUETCo);
- Implementation Agreement;
- Stapling Deed;
- 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.

### The DUET Group

9. The DUET Group consists of a six-instrument stapled security listed on the Australian Securities Exchange (ASX).

10. The stapled security consists of:

- three Australian resident unit trusts which are managed investment schemes registered under Chapter 5C of the *Corporations Act 2001* – Diversified Utility and Energy Trust No. 1 (DUET 1), Diversified Utility and Energy Trust No. 2 (DUET 2) and Diversified Utility and Energy Trust No. 3 (DUET 3);
- three Australian resident companies – DMC 1, DUET Management Company 2 (DMC 2), and DUET Investment Holdings Limited (DIHL).

11. Each DUET stapled security is made up of one share in each of DMC 1, DMC 2 and DIHL and one unit in each of DUET 1, DUET 2 and DUET 3.
12. All stapled securities were issued on or after 20 September 1985.
13. Neither DUET 1, DUET 2 nor DUET 3 is a corporate unit trust pursuant to Division 6B of Part III of the ITAA 1936 or a public trading trust pursuant to Division 6C of Part III of the ITAA 1936.
14. DUET 1, DUET 2 and DUET 3 only have one class of units on issue. Each unit carries the same rights to the income and capital of DUET 1, DUET 2 and DUET 3 (respectively) as every other unit in the respective trust.
15. DMC 1 is the responsible entity for DUET 1. DMC 2 is the responsible entity for DUET 2 and DUET 3.
16. Prior to 4 December 2012, the DUET Group was managed jointly by Macquarie Capital Group Limited and AMP Capital Holdings Limited. The DUET Group's management was internalised on 4 December 2012, resulting in management personnel becoming employed by DIHL.

## **Scheme for simplifying the stapled structure**

17. The DUET Group is proposing to simplify its stapled structure by converting from a six-instrument stapled security to a four-instrument stapled security.
18. The Boards of DMC 1, DMC 2 and DIHL consider that the advantages of the restructure include:
  - Reduction of head office costs due to reduced administrative burden;
  - Simplified financial reporting requirements;
  - Improved flexibility to implement capital and other initiatives; and
  - The four-instrument stapled security is expected to be more easily understood by investors (particularly non-resident investors) than the current six-instrument stapled security.
19. The date for the implementation of the simplification scheme is expected to be 1 August 2013 (Implementation Date).

**Detailed steps of the simplification scheme*****Incorporation of DUECo***

20. A new Australian resident company, DUET Company Limited (DUECo), is incorporated with no more than 5 ordinary shares on issue (the Founder shares) held by an existing DUET Group stapled security holder.

***De-stapling the stapled security***

21. The units and shares comprising the DUET Group stapled security will be de-stapled to allow each stapled security holder to deal with the shares and units separately for the purposes of implementing the scheme.

22. The de-stapling will require approval by the stapled security holders.

***Subdivision of DUECo shares***

23. Prior to the exchange of DMC 1 shares for DUECo shares, DUECo will subdivide its existing shares on issue.

24. The purpose of the share subdivision is to facilitate an exchange ratio of DUECo shares to DMC 1 shares of 1:1. This is to avoid fractions of DUECo shares being issued.

25. The proportion of share ownership by the existing DUECo shareholders will remain the same and will not be affected by the share subdivision.

***Acquisition of 100% of DMC 1 shares by DUECo***

26. On the Implementation Date, all DMC 1 shareholders will dispose of their DMC 1 shares to DUECo. DUECo will issue new DUECo ordinary shares to DMC 1 shareholders as consideration for the disposal of their DMC 1 shares.

27. Each DMC 1 shareholder will obtain one new DUECo share for each share in DMC 1 they hold. No cash or other property will be paid or otherwise distributed to DMC 1 shareholders.

28. The acquisition of DMC 1 shares by DUECo will be effected pursuant to a scheme of arrangement between DMC 1 and its shareholders under Part 5.1 of the *Corporations Act 2001*.

***DUECo shares are consolidated***

29. After the issue of the new DUECo shares and before they can be dealt with or traded, DUECo will undertake a share consolidation.

30. The consolidation will result in all DUECo shareholders retaining the same proportional interest in DUECo immediately after the consolidation as they will have had immediately before the consolidation.

31. No DUECo shares will be cancelled or redeemed by DUECo under the share consolidation. There will not be any change in the total amount standing to the credit of the share capital account of DUECo.

### ***Other entities in the DUET Group stapled security***

32. The responsible entity of DUET 2 will acquire all of the units in DUET 3 (with DUET 3 unit holders receiving units in DUET 2 as consideration) on the Implementation Date.

33. DUECo will acquire the units in DUET 1 (with DUET 1 unit holders receiving DUECo shares as consideration) on the Implementation Date. The Founder shares in DUECo will then immediately be cancelled.

34. These are separate schemes subject to separate Class Rulings.

35. In order for the simplification scheme to be implemented, these separate schemes must be approved (as set out in the Meeting Booklet).

36. The acquisition of DMC 1 by DUECo and the issue of the new DUECo shares to the former DMC 1 shareholders under the simplification scheme will occur immediately after the acquisition of all of the units in DUET 1 by DUECo (and the issue of new DUECo shares to the former DUET 1 unit holders) and the cancellation of the Founder shares.

37. The DUECo shares, DIHL shares, and DMC2 shares will be stapled to the DUET 2 units to form the new DUET Group stapled security, which will be listed on the ASX.

38. The consolidation of DUECo shares (as outlined above) and a consolidation of DUET 2 units (both occurring prior to the formation of the new DUET Group stapled security) will ensure that DUET 2 units and DUECo shares can be stapled to DMC 2 shares and DIHL shares on a 1:1 basis.

## **Ruling**

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### **Separate CGT assets under section 108-5**

39. Each unit in DUET 1, DUET 2 and DUET 3, and each share in DIHL, DMC 1 and DMC 2, is a separate CGT asset for the purposes of section 108-5.

40. Subsection 112-30(1) will apply to apportion the expenditure incurred on acquiring a CGT asset where only part of the expenditure relates to the acquisition of that CGT asset.

41. In such a case, the first element of the cost base and reduced cost base on acquiring each CGT asset that forms part of a stapled security will be that part of the expenditure that is reasonably attributable to the acquisition of that particular CGT asset.

#### **De-stapling of the DUET Group stapled security**

42. A DMC1 shareholder will not make a capital gain or capital loss when the de-stapling of the DUET Group stapled security occurs.

#### **No CGT event on the subdivision of DUECo shares**

43. The subdivision of DUECo shares will not result in a CGT event happening (subsection 112-25(2)).

44. Subsection 112-25(2) will apply because the DUECo shares (each being a CGT asset) will be split into 2 or more assets, and the same entity is the beneficial owner of the original asset and each new asset (subsection 112-25(1)).

#### **CGT event A1 will happen on the disposal of DMC 1 shares**

45. CGT event A1 will happen as a result of the disposal by a DMC 1 shareholder of their DMC 1 shares to DUECo (section 104-10). The time of CGT event A1 is on the Implementation Date (paragraph 104-10(3)(b)).

46. A DMC 1 shareholder will make a capital gain from CGT event A1 happening if the capital proceeds from the disposal of a DMC 1 share exceed its cost base. A DMC 1 shareholder will make a capital loss if the capital proceeds from the disposal of a DMC 1 share are less than its reduced cost base (subsection 104-10(4)).

47. Under subsection 116-20(1), the capital proceeds from CGT event A1 happening will be the market value of the property (a DUECo share) received or entitled to be received in respect of the disposal of a DMC 1 share. The market value of the DUECo share is worked out as at the time of CGT event A1, which is on the Implementation Date.

## **Availability of Subdivision 124-G roll-over**

48. A disposal of shares in a company to another company in exchange for shares in the other company (and nothing else), as described in section 124-360, will happen when a DMC 1 shareholder disposes of a DMC 1 share to DUECo in exchange for a DUECo share. As the conditions for roll-over under Subdivision 124-G will be satisfied in relation to this disposal of DMC 1 shares to DUECo, a DMC 1 shareholder is eligible to choose the roll-over under Subdivision 124-G.

## ***Subdivision 124-G roll-over is chosen***

49. A DMC 1 shareholder who chooses roll-over will disregard any capital gain or capital loss made when CGT event A1 happens (subsection 124-15(2)).

## ***Subdivision 124-G roll-over is not chosen***

50. A DMC 1 shareholder who does not choose roll-over must take into account any capital gain or capital loss from the disposal of their DMC 1 shares in working out their net capital gain or net capital loss for the income year (sections 102-5 and 102-10).

51. A DMC 1 shareholder who makes a capital gain where roll-over is not chosen, can treat the capital gain as a 'discount capital gain' provided that the conditions of Subdivision 115-A are met. In particular, the DMC 1 shares must have been acquired by the shareholder at least 12 months before their disposal to DUECo.

## **No CGT event on the consolidation of DUECo shares**

52. The consolidation of DUECo shares will not result in a CGT event happening (paragraph 112-25(4)(a)).

53. Paragraph 112-25(4)(a) will apply because a certain number of DUECo shares (being CGT assets) will be merged into a single asset, and the same entity is the beneficial owner of the original assets and the new asset.

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## Appendix 1 – Explanation

**①** *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.*

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

55. The significant tax consequence that is the subject of this Ruling is the availability of roll-over under Subdivision 124-G. The roll-over enables a shareholder of a company to disregard a capital gain or capital loss from a share that is either disposed of, or redeemed or cancelled, as part of a reorganisation of the affairs of the company, where the shareholder becomes the owner of new shares in another company in exchange.

56. Subdivision 124-G contains a number of conditions for eligibility to choose roll-over. The main conditions that are relevant to the scheme that is the subject of this Ruling, which involves the disposal of shares, are:

- at least two entities must own all the shares in a company (the original company);
- there must be a scheme for reorganising the original company's affairs, and consideration for the disposal of the shares in the original company must consist of receiving shares in another company (the interposed company) and nothing else;
- the interposed company must own all the shares in the original company just after all the exchanging shareholders have disposed of their shares in the original company (the completion time);
- just after the completion time, each exchanging shareholder must own a whole number of shares in the interposed company;
- just after the completion time, each exchanging shareholder must own a percentage of the shares in the interposed company that were issued to all the exchanging shareholders of the original company that is equal to the percentage of the shares in the original company that the exchanging shareholder owned;
- just after the completion time, the exchanging shareholders must own all the shares in the interposed company, or entities other than those shareholders must own no more than 5 shares in the interposed company and the market value of those shares is such that it is reasonable to treat the exchanging shareholders as owning all the shares;

- the shares issued in the interposed company must not be redeemable shares; and
- the ratio test in subsection 124-365(3) is met.

57. The conditions for roll-over under Subdivision 124-G will be satisfied by the scheme that is the subject of this Ruling.

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## Appendix 2 – Detailed contents list

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

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## References

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*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

TR 2006/10; TD 2000/10;

*Subject references:*

- arrangement
- CGT assets
- CGT capital proceeds
- CGT cost base
- CGT event A1 – disposal of a CGT asset
- CGT reduced cost base
- CGT roll-over relief
- consolidation of shares
- de-stapling of securities
- ordinary shares
- re-organisations
- stapled securities
- unit trust units

*Legislative references:*

- ITAA 1936 6(1)
- ITAA 1997 Div 102
- ITAA 1997 102-5
- ITAA 1997 102-10
- ITAA 1997 104-10
- ITAA 1997 108-5
- ITAA 1997 Div 112
- ITAA 1997 112-25
- ITAA 1997 112-30(1)
- ITAA 1997 116-20(1)
- ITAA 1997 124-G
- ITAA 1997 124-10(2)
- ITAA 1997 124-360
- ITAA 1997 124-365(3)
- ITAA 1997 Div 230
- TAA 1953
- Corporations Act 2001 Ch 5
- Copyright Act 1968

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ATO references

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