



## Class Ruling

### Income tax: scrip for scrip roll-over: acquisition of units in Federation Centres Trust No. 2 and Federation Centres Trust No. 3 by Federation Centres Trust No. 1

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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

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
  - section 116-20 of the ITAA 1997
  - Subdivision 115-A of the ITAA 1997, and
  - Subdivision 124-M 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 persons to which this Ruling applies are the holders of stapled securities in Federation Centres 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 stapled securities in Federation Centres on or after 20 September 1985
- hold their stapled securities 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 for tax purposes, and
- are not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on their stapled securities.

(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 35 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 10 November 2014 to 30 June 2015. The Ruling continues to apply after 30 June 2015 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 26 August 2014
- Explanatory notes – EM insert for Simplification Resolutions received on 5 September 2014
- Constitution of the Federation Limited (FL)
- Notification of change to managed investment scheme's constitution for Centro Retail Trust dated 12 December 2011
- Supplemental Deed – amending the Constitution for Federation Centres Trust No. 1 (FCT1) dated 22 January 2013
- Notification of change to managed investment scheme's constitution for Centro Australia Wholesale Fund dated 2 December 2011
- Amending Deed to the Constitution of Centro Australia Wholesale Fund dated 6 February 2012
- Supplemental Deed – amending the Constitution for Centres Trust No. 2 (FCT2) dated 22 January 2013
- Amending Deeds to the Constitution of Centro DPF Holding Trust dated 24 November 2011 and 6 December 2012
- Supplemental Deed – amending the Constitution for Federation Centres Trust No. 3 (FCT3) dated 22 January 2013, and
- 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.

## **Federation Centres**

9. Federation Centres is currently a quadruple stapled vehicle comprising of:

- three Australian resident unit trusts which are managed investment schemes registered under Chapter 5C of the *Corporations Act 2001* – FCT1, FCT2 and FCT3, and
- one Australian resident company – FL.

10. Each Federation Centres stapled security is made up of one share in FL and one unit in each of the FCT1, FCT2 and FCT3. These stapled securities are listed on the ASX under the code 'FDC'.

11. All FDC stapled securities were issued on or after 20 September 1985.

12. Neither FCT1, FCT2 and FCT3 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.

13. FCT1, FCT2 and FCT3 currently only have one class of units on issue. Each unit carries the same rights to the income and capital of FCT1, FCT2 and FCT3 as every other unit in the respective trusts.

14. Federation Centres Limited is the responsibility entity for FCT1, FCT2 and FCT3.

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

15. Federation Centres is proposing to simplify its stapled structure by converting from a four-instrument stapled security to a two-instrument stapled security (the Simplification scheme).

16. The Boards of FL, FCT1, FCT2 and FCT3 consider that the advantages of the restructure include:

- reduction of head office costs due to reduced administrative burden
- simplified financial reporting requirements
- historical reasons for the four-instrument stapled structure no longer compelling, and
- the two-instrument stapled security is expected to be more easily understood by investors than the current four-instrument stapled security.

17. The date for the implementation of the Simplification scheme is expected to be 10 November 2014 (Implementation Date).

**Detailed steps of the Simplification scheme*****Step 1 – De-stapling the stapled security***

18. The units and shares comprising the FDC stapled security will be unstapled to allow each security holder to deal with the shares and units separately for the purposes of implementing the scheme.

19. The de-stapling will require approval by the holders of the stapled securities.

20. After de-stapling of the FDC stapled security occurs, FCT2 and FCT3 will each issue one nominal unit to FDC Custodian No.3 Pty Ltd, a company within the Federation Limited group.

21. A nominal unit in FCT2 and FCT3 will give their holder an entitlement to nominal income, but no rights to voting or to capital (on a winding up or otherwise).

***Step 2 – Acquisition of 100% FCT2 and FCT3 ordinary units by the responsible entity of FCT1***

22. The constitutions of FCT1, FCT2 and FCT3 will be amended to authorise the responsible entity to take all the actions necessary to transfer the FCT2 and FCT3 ordinary units to FCT1. The amendments to the constitutions of FCT1, FCT2 and FCT3 must be approved by the holders of the FDC securities.

23. On the Implementation Date, the responsible entity in its capacity as attorney and agent of FCT1 will transfer all of the ordinary units in FCT2 and FCT3 to FCT1. The nominal unit in FCT2 and FCT3 will not form part of the transfers to FCT1.

24. FCT1 will issue new FCT1 units to those FCT2 and FCT3 unit holders as consideration for the disposal of their units as follows:

- 0.4778 FCT1 unit for every one unit in FCT2 transferred, and
- 0.2795 FCT1 unit for every one unit in FCT3 transferred.

25. No cash or other property will be paid or otherwise distributed to FCT2 and FCT3 unit holders.

***Step 3 – FCT1 units are consolidated***

26. After the issue of the new FCT1 units has occurred and before they can be dealt with or traded, FCT1 will undertake a unit consolidation.

27. Prior to consolidation, a unit holder will hold 1.7573 FCT1 units for every 1 FL share.

28. The number of FCT1 units on issue will be consolidated back to the number of units on issue prior to Step 1 so that the same number of FCT1 units will be on issue as the existing number of FL shares.

29. The consolidation will result in all FCT1 unit holders retaining the same proportional interest in FCT1 immediately after the consolidation as they will have had immediately before the consolidation.

30. No units will be cancelled or redeemed by the responsible entity of FCT1 under the unit consolidation.

31. There will not be any change in the total amount standing to the credit of the contributed capital account of FCT1.

#### ***Step 4 – Restapling the securities***

32. Following the implementation of the above steps, the FCT1 units will be stapled to the FL shares on a 1:1 basis. The stapled securities will recommence trading on the ASX under their original code 'FDC'.

33. After restapling, the units in FCT1 and shares in FL will remain separate and distinct assets; however, they can only be traded together as Federation Centres stapled securities on the ASX.

34. Immediately after the Simplification scheme, the stapled security holders will hold the same number of stapled securities, same percentage interest and voting power in Federation Centres as they held prior to the Simplification scheme.

#### **Other matter**

35. FCT2 and FCT3 did not have a 'significant stakeholder' or 'common stakeholder' in relation to the scheme within the meaning of section 124-783.

## **Ruling**

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

36. Each unit in FCT1, FCT2 and FCT3 and share in FL that makes up the FDC stapled security is a separate CGT asset for the purposes of section 108-5.

#### **De-stapling of the Federation Centres securities**

37. A holder of a FDC stapled security will not make a capital gain or capital loss when the de-stapling of the FDC stapled security occurs.

#### **CGT event A1 will happen on the disposal of FCT2 or FCT3 ordinary units**

38. CGT event A1 will happen when a unit holder of FCT2 or FCT3 dispose of their units to FCT1 (section 104-10).

39. The time of CGT event A1 is on the Implementation Date (paragraph 104-10(3)(b)).

40. A unit holder of FCT2 or FCT3 will make a capital gain from CGT event A1 happening if the capital proceeds from the disposal of a FCT2 or FCT3 ordinary unit (respectively) exceeds the cost base of that unit (subsection 104-10(4)).

41. A unit holder of FCT2 or FCT3 will make a capital loss if the capital proceeds from the disposal of a FCT2 or FCT3 ordinary unit are less than its reduced cost base (subsection 104-10(4)).

42. Under subsection 116-20(1), the capital proceeds from CGT event A1 happening will be the market value of the property (units in FCT1) received or entitled to be received, in respect of the disposal of the units in FCT2 or FCT3 respectively.

43. The market value of the FCT1 units is worked out as at the time of CGT event A1, which is on the Implementation Date.

#### **Availability of scrip for scrip roll-over if a capital gain is made**

44. Subject to the qualification in the following paragraph, a unit holder of FCT2 or FCT3 who makes a capital gain from the disposal of their respective FCT2 or FCT3 unit to FCT1 is eligible to choose scrip for scrip roll-over (section 124-781 and section 124-785).

45. Scrip for scrip roll-over cannot be chosen if any capital gain a FCT2 or FCT3 unit holder might make from their replacement FCT1 units would be disregarded, except because of a roll-over (paragraph 124-795(2)(a)).

#### **Consequences if scrip for scrip roll-over is chosen**

46. The only capital proceeds received by a FCT2 or FCT3 unit holder will be units in FCT1. Therefore, if a FCT2 or FCT3 unit holder chooses scrip for scrip roll-over, the capital gain they will make upon the disposal of a FCT2 or FCT3 unit (respectively) will be disregarded (subsection 124-785(1)).

#### **Consequences if scrip for scrip roll-over is not chosen, or cannot be chosen**

47. A unit holder of FCT2 or FCT3 who does not choose roll-over or cannot choose roll-over must take into account any capital gain or capital loss from CGT event A1 happening on the disposal of their FCT2 or FCT3 unit (respectively) in working out their net capital gain or net capital loss for the income year in which CGT event A1 happens (sections 102-5 and 102-10).

48. A unit holder of FCT2 or FCT3 who makes a capital gain where roll-over is not chosen, or cannot be chosen, can treat the capital gain as a 'discount capital gain' provided that the conditions of Subdivision 115-A are met. In particular, the units in FCT2 or FCT3 must have been acquired by the unit holder at least 12 months before their disposal to FCT1.

## **Cost base of FCT1 units received**

49. The method for calculating the cost base of the FCT1 units received under the Simplification scheme for the disposal of FCT2 or FCT3 units will depend on whether scrip for scrip roll-over is chosen.

### ***Scrip for scrip roll-over is chosen***

50. Where scrip for scrip roll-over is chosen, the first element of the cost base and reduced cost base of each replacement FCT1 unit received is calculated by reasonably attributing to it the cost base and reduced cost base of the FCT2 or FCT3 unit for which it was exchanged (subsections 124-785(2) and 124-785(4)).

### ***Scrip for scrip roll-over is not chosen***

51. Where scrip for scrip roll-over is not chosen, or cannot be chosen, the first element of the cost base and reduced cost base of the replacement FCT1 unit received is equal to the market value of the respective FCT2 or FCT3 unit given in respect of acquiring each FCT1 unit, worked out as at the time of their acquisition (subsections 110-25(2) and 110-55(2)).

## **No CGT event on the consolidation of FCT1 units**

52. The consolidation of FCT1 units 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 FCT1 units (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. Each element of the cost base or reduced cost base of the consolidated unit in FCT1 is the sum of the corresponding elements of the original units that have been combined to form a single consolidated unit (paragraph 112-25(4)(b)).

54. The consolidated units have the same date of acquisition as the original FCT1 units to which they relate.

## **Restapling the securities**

55. No capital gain or capital loss will be made as a result of the stapling of the FCT1 units and shares in FL.

## 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.*

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

57. The significant tax consequence that is the subject of this Ruling is the availability of scrip for scrip roll-over under Subdivision 124-M. The roll-over enables the holder of a unit or other interest in a trust to disregard a capital gain from a unit or other interest that is disposed of if the holder receives a replacement interest in another trust in exchange. It also provides special rules for calculating the cost base and reduced cost base of the replacement interest.

58. Subdivision 124-M contains a number of conditions for, and exceptions to, the holder of an interest in a trust being eligible to choose scrip for scrip roll-over. The main requirements that are relevant to the scheme that is the subject of this Ruling are:

- (a) units or other interests are exchanged for units or other interests in another trust;
- (b) entities have fixed entitlements to all of the income and capital of the original trust and the acquiring trust;
- (c) the exchange is in consequence of an arrangement;
- (d) conditions for the roll-over are satisfied;
- (e) further conditions, if applicable, are satisfied; and
- (f) exceptions to obtaining scrip for scrip roll-over are not applicable.

59. Having regard to:

- (a) all of the documents and any other material referred to in paragraph 8 of this Ruling; and
- (b) all the facts comprising the scheme as described in 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 FCT2 and FCT1, and FCT3 and FCT1, immediately before, during and immediately after the exchange of units that is the subject of this Ruling.

60. The scheme satisfies the requirements for the roll-over under Subdivision 124-M.

**Appendix 2 – Detailed contents list**

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

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## References

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- Previous draft:*
- ITAA 1997 104-10(4)
  - ITAA 1997 108-5
- Not previously issued as a draft
- ITAA 1997 110-25(2)
- Related Rulings/Determinations:*
- ITAA 1997 110-55(2)
  - ITAA 1997 112-25
  - ITAA 1997 112-25(4)(a)
  - ITAA 1997 112-25(4)(b)
- 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
  - unit trust units
- ITAA 1997 112-30(1)
  - ITAA 1997 Subdiv 115-A
  - ITAA 1997 116-20(1)
  - ITAA 1997 Subdiv 124-M
  - ITAA 1997 124-781
  - ITAA 1997 124-781(1)(b)
  - ITAA 1997 124-783
  - ITAA 1997 124-785
  - ITAA 1997 124-785(1)
  - ITAA 1997 124-785(2)
  - ITAA 1997 124-785(4)
  - ITAA 1997 124-795
  - ITAA 1997 124-795(2)(a)
- Legislative references:*
- ITAA 1936 6(1)
  - ITAA 1936 Div 6B
  - ITAA 1936 Div 6C
  - ITAA 1997 Div 102
  - ITAA 1997 Div 104
  - ITAA 1997 102-5
  - ITAA 1997 102-10
  - ITAA 1997 104-10
  - ITAA 1997 104-10(3)(b)
  - ITAA 1997 977-50
  - ITAA 1997 995-1(1)
  - TAA 1953
  - Corporations Act 2001 Ch 5
  - Copyright Act 1968
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### ATO references

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