



## Class Ruling

### Income tax: Macquarie Goodman Industrial Trust – Macquarie Goodman Group merger stapling arrangement

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#### **① This Ruling 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 taxation 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, we must apply the law to you in the way set out in the ruling (or in a way that is more favourable for you if we are satisfied that the ruling is incorrect and disadvantages you, and we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any under-paid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state the law how the current law 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 taxation provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

#### **Relevant taxation provision(s)**

2. The relevant taxation provisions dealt with in this Ruling are:
- Division 104 of the *Income Tax Assessment Act 1997* (ITAA 1997);
  - section 104-70 of the ITAA 1997;
  - section 104-155 of the ITAA 1997;
  - section 109-5 of the ITAA 1997;
  - section 109-10 of the ITAA 1997;
  - section 110-25 of the ITAA 1997;
  - section 110-55 of the ITAA 1997;
  - section 112-25 of the ITAA 1997;
  - Division 725 of the ITAA 1997; and

- Subdivision 727-E of the ITAA 1997.

## **Class of entities**

3. The class of entities to which this Ruling applies is the owners of ordinary units in Macquarie Goodman Industrial Trust (MGI) who:

- participated in the scheme that is the subject of this Ruling;
- hold their MGI units on capital account; and
- are residents of Australia within the meaning of that term in subsection 6(1) of the *Income Tax Assessment Act 1936*.

## **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 10 to 13.

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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8. This Ruling applies to the income year ended 30 June 2005. The scheme was completed within that income year.

## Withdrawal

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9. This Ruling is withdrawn and ceases to have effect after 30 June 2005. The Ruling continues to apply, in respect of the tax provisions ruled upon, to all entities within the specified class who entered into the scheme during the term of the Ruling.

## Scheme

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10. The scheme that is the subject of the Ruling is described below. This description is based on, and includes reference to, the following documents:

- Class Ruling request from Greenwoods & Freehills dated 13 December 2004;
- Explanatory Memorandum in relation to a proposal to staple the units of MGI, of which Macquarie Goodman Funds Management Limited (MGF) is the trustee, and the shares of Macquarie Goodman Management Limited (MGM);
- notes of meetings between the Australian Taxation Office, Greenwoods and Freehills and representatives of MGM and MGI from 8 November 2004 to 14 April 2005; and
- e-mails from Greenwoods & Freehills from 8 June 2004 to 14 April 2005, inclusive, and 21 December 2005.

**Note 1:** certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under the Freedom of Information legislation.

**Note 2:** certain terms used in this Ruling are defined and explained in the Glossary of terms at Appendix 2.

**Note 3:** the events described below are summarised in the diagram at Appendix 3.

11. On 20 October 2004, MGF and MGM announced a proposal to merge MGI and MGM to form the Macquarie Goodman Group (MGG). The merger was achieved by stapling MGM shares to MGI units.

12. The merger was implemented by the following steps, all of which happened on the implementation date (9 February 2005) to MGI unitholders who held units on the stapling record date (8 February 2005).

- **Consolidation of original MGI units in the ratio of 1.0:0.57**

Each holding of original MGI units was consolidated on the basis of 0.57 of a consolidated MGI unit for each original MGI unit. The total number of consolidated MGI units held by each MGI unitholder was rounded down to the nearest whole number.
- **Capital distribution of \$0.01 per consolidated MGI unit**

MGI made a capital distribution (the stapling distribution) of \$0.01 per consolidated MGI unit to each MGI unitholder.
- **Issue of new MGM shares**

MGI, on behalf of each MGI unitholder, applied the stapling distribution to subscribe for new MGM shares (at a subscription price of \$0.01). Each owner of consolidated MGI units received one new MGM share for each of their consolidated MGI units.
- **Stapling of units and shares**

Each consolidated MGI unit was stapled to one new MGM share.

13. After stapling, the MGM shares and MGI units remain separate and distinct assets. However, they can only be traded as one security (MGI stapled security) on the Australian Stock Exchange.

## Ruling

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### Consolidation of original MGI units

14. The consolidation of original MGI units did not result in a CGT event happening. Each unitholder is taken to have a cost base and reduced cost base for their consolidated MGI units based on the cost base and reduced cost base of their original MGI units and which reflects the merger ratio (1.0:0.57) for the consolidation of the units (subsection 112-25(4) of the ITAA 1997).

15. Each MGI unitholder is taken to have acquired their consolidated MGI unit at the time that they acquired their original MGI units (subsection 109-5(1) of the ITAA 1997).

### Capital distribution

16. The capital distribution of \$0.01 to the owners of each consolidated MGI unit resulted in CGT event E4 (section 104-70 of the ITAA 1997) happening in respect of each of their consolidated MGI units.

**Issue of new MGM shares**

17. The first element of the cost base and reduced cost base of each new MGM share acquired by MGI unitholders under the scheme is \$0.01 (sections 110-25 and 110-55, respectively, of the ITAA 1997).

18. Each new MGM share was acquired by MGI unitholders at the time it was issued (section 109-10 of the ITAA 1997).

19. Neither the capital distribution, nor the issue of new MGM shares, resulted in CGT event H2 (section 104-155 of the ITAA 1997) happening to MGI unitholders.

20. The issue of new MGM shares to owners of consolidated MGI units did not have any consequences for MGI unitholders under the direct value shifting rules in Division 725 of the ITAA 1997.

**Stapling of securities**

21. No CGT event in Division 104 of the ITAA 1997 happened as a result of the stapling of each consolidated MGI unit to a new MGM share.

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**Commissioner of Taxation**18 January 2006

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## **Appendix 1 – Explanation**

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**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.*

### **Consolidation of original MGI units**

22. Subsection 112-25(4) of the ITAA 1997 provides that, if two or more CGT assets are merged into a single asset and the beneficial ownership of the old and new assets remains the same, the merger does not result in a CGT event happening. It also provides that each element of the cost base and reduced cost base, respectively, of the new asset (at the time of merging) is the sum of the corresponding elements of each original asset.

23. Accordingly, the consolidation of the original MGI units did not result in a CGT event happening to MGI unitholders.

24. Each MGI unitholder is taken to have a cost base and reduced cost base for their consolidated MGI units based on the cost base and reduced cost base, respectively, of their original MGI units and which reflects the merger ratio (1.0:0.57).

25. Subsection 109-5(1) of the ITAA 1997 generally provides that a CGT asset is acquired when it commences to be owned by someone.

26. If one or more consolidated MGI units can be formed from a parcel of original MGI units that all have the same acquisition date, the MGI unitholder is taken to have acquired those consolidated MGI units on the date of acquisition of the original MGI units. Where there are parcels of original MGI units which have different acquisition dates, the consolidated MGI units can be apportioned to the different acquisition dates on a reasonable basis.

### **Capital distribution**

27. Under section 104-70 of the ITAA 1997, CGT event E4 happens if the trustee of a trust makes a payment to a unitholder in respect of their unit in the trust and some or all of the payment is not included in the unitholder's assessable income (non-assessable payment).

28. The consequences of CGT event E4 happening are determined on an annual basis, that is, having regard to all such CGT events that happen to a unit during an income year (subsection 104-70(3) of ITAA 1997).

29. If CGT event E4 happens during an income year, a unitholder will make a capital gain if the total of the non-assessable payments made by the trustee during the income year in respect of a unit exceeds the cost base of the unit (subsection 104-70(4) of ITAA 1997).

30. However, if the sum of the non-assessable payments is not more than the cost base of the unit, the cost base and reduced cost base are reduced by that amount (subsection 104-70(6) of ITAA 1997).

31. The distribution of \$0.01 per consolidated MGI unit paid by MGI on the implementation date was not included in the assessable income of MGI unitholders. Therefore, the distribution by MGI under the stapling arrangement resulted in CGT event E4 happening in respect of each consolidated MGI unit.

32. Accordingly, the cost base and reduced cost base of each consolidated MGI unit will be reduced by \$0.01.

### **Issue of new MGM shares**

33. Sections 110-25 and 110-55 of the ITAA 1997 provide that the first element of the cost base and reduced cost base, respectively, of a CGT asset is the money paid in respect of its acquisition.

34. Owners of consolidated MGI units are taken to have paid \$0.01 for each new MGM share (as a result of the capital distribution being applied by MGF on behalf of the unitholders). Accordingly, the first element of the cost base and reduced cost base of each new MGM share acquired by MGI unitholders under the scheme is \$0.01.

35. If a company issues or allots equity interests in circumstances where no contract is entered into in respect of the acquisition, the equity interests are taken to have been acquired at the time of issue or allotment (item 2 in the table in section 109-10 of the ITAA 1997). Accordingly, owners of consolidated MGI units acquired each new MGM share on the implementation date.

### **CGT event H2**

36. CGT event H2 in section 104-155 of the ITAA 1997 will only happen to an act, transaction or event if no other CGT event happens to it (section 102-25 of the ITAA 1997).

37. The issue of new MGM shares represented a return of capital to MGI unitholders and CGT event E4 happened.

38. In addition, paragraph 104-155(5)(c) of ITAA 1997 provides that CGT event H2 does not happen when a company issues shares in itself.

39. Therefore, CGT event H2 did not happen as a result of the capital distribution or the issue of new MGM shares to MGI unitholders.

## ***Application of Division 725***

40. Division 725 of the ITAA 1997 may apply where there is a direct value shift under a scheme involving equity interests in an entity. For Division 725 to have consequences for an equity interest, paragraph 725-50(b) requires, amongst other things, that the 'controlling entity test' be satisfied.

41. The 'controlling entity test' is satisfied for value shifting purposes if an entity (the controller) controls the target entity at some time during the period starting when the scheme is entered into and ending when the scheme has been carried out (section 725-55 of the ITAA 1997).

42. Subdivision 727-E of the ITAA 1997 sets out the circumstances in which an entity will be regarded as controlling another entity for value shifting purposes.

43. Having regard to:

- all of the documents and any other material referred to in paragraph 10 of this Ruling; and
- all of the facts comprising the scheme as described in paragraphs 10 to 13 of this Ruling,

it is considered that, for the purposes of section 727-360 of the ITAA 1997, MGI is a fixed trust for the period starting when the scheme was entered into and ending when it was carried out.

44. As MGI is a fixed trust, section 727-360 of the ITAA 1997 contains the relevant tests for whether an entity controls MGI for value shifting purposes. On the basis of the information provided regarding the beneficial ownership of MGI immediately before and after the scheme it is considered that there is no entity that would be regarded as controlling MGI for value shifting purposes under the tests in section 727-360 during this period.

45. Therefore, as the threshold requirement in paragraph 725-50(b) of the ITAA 1997 is not satisfied, Division 725 can have no consequences for the MGI unitholders in respect of the scheme.

## **Stapling of securities**

46. The effect of the stapling is to apply restrictions to the transferability of the individual securities that together make up the MGG stapled security. Each individual security (that is, consolidated MGI unit and new MGM share) retains its legal character without any change in beneficial ownership. There was no variation to the rights or obligations attaching to, or the beneficial ownership of, the individual securities comprising the MGG stapled security as a consequence of stapling.

47. Therefore, no CGT event in Division 104 of the ITAA 1997 happened as a consequence of the stapling of each consolidated MGI unit to each new MGM share.

## Appendix 2 – Glossary of terms

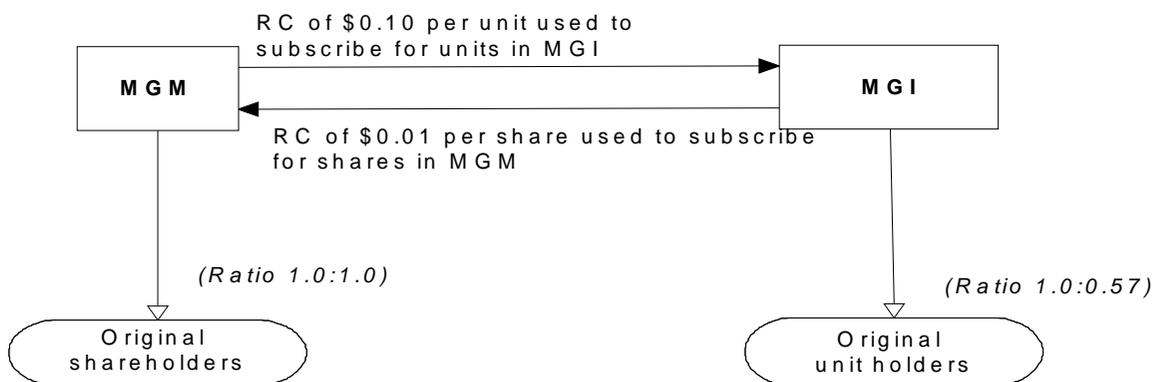
48. The following is a glossary of terms for this Ruling:

<b><i>Ruling Terminology</i></b>	<b><i>Meaning</i></b>
<i>Certain terms used in this Ruling have the same meaning as corresponding terms in The Macquarie Goodman Group Explanatory Memorandum in relation to a proposal to staple the shares of MGM and the units of MGI</i>	
merger ratio	Merger ratio (for consolidation of an existing MGI unit, the merger ratio is 1.0:0.57)
implementation date	Implementation (9 February 2005)
stapling distribution	Stapling Distribution
stapling record date	Stapling Record (8 February 2005)
<i>Other terms used in this Ruling have the following meaning</i>	
original MGI unit	MGI unit before consolidation
consolidated MGI unit	a consolidated MGI unit, as that term is used in the explanatory memorandum, that a unitholder owns immediately after the time when their existing MGI units are merged on the implementation date
new MGM share	a MGM share issued to an existing owner of a consolidated MGI unit on the implementation date
MGG stapled security	Macquarie Goodman Group stapled security consisting of one consolidated MGI unit and one new MGM share

## Appendix 3 – Diagram

49. The following is a diagrammatical summary of the events described in this Ruling:

**MACQUARIE GOODMAN GROUP** (Implementation date - 9 February 2005)



Cost base  
 MGM Original cost base of shares less RC of \$0.10 per share.  
 MGI \$0.10 per unit

Cost base  
 MGI Original cost base adjusted for consolidation of units less RC of \$0.01 per unit.  
 MGM \$0.01 per share

**MGM**: Macquarie Goodman Management Limited  
**MGI**: Macquarie Goodman Industrial Trust  
**RC**: Return of Capital

All subscriptions in the other two entities are made on behalf of the securityholders.

The consolidation of the units occurs prior to the return of capital.

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## **Appendix 4 – Detailed contents list**

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50. 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:*

CR 2006/2

*Subject references:*

- Capital distribution rights
- Capital gains
- CGT cost base
- CGT events
- CGT reduced cost base
- CGT share value shifting
- cost base adjustments
- fixed trusts
- return of capital on shares
- share consolidations
- stapled companies
- stapled structure
- stapled trusts
- time of CGT event
- value shifting - entity interests
- direct value shifting rules

*Legislative references:*

- ITAA 1936 6(1)
- ITAA 1997 Div 104
- ITAA 1997 102-25
- ITAA 1997 104-70
- ITAA 1997 104-70(3)
- ITAA 1997 104-70(4)
- ITAA 1997 104-70(6)
- ITAA 1997 104-155
- ITAA 1997 104-155(5)(c)
- ITAA 1997 109-5
- ITAA 1997 109-5(1)
- ITAA 1997 109-10
- ITAA 1997 110-25
- ITAA 1997 110-55
- ITAA 1997 112-25
- ITAA 1997 112-25(4)
- ITAA 1997 Div 725
- ITAA 1997 725-50(b)
- ITAA 1997 725-55
- ITAA 1997 Subdiv 727-E
- ITAA 1997 727-360
- Copyright Act 1968
- TAA 1953

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ATO references

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Income Tax ~~ Capital Gains Tax ~~ CGT events H1 and H2 - special capital receipts

Income Tax ~~ Capital Gains Tax ~~ CGT events G1 to G3 - shares