



Status: **legally binding**

Class Ruling

Abacus Property Group – de-stapling and re-stapling as Abacus Group and Abacus Storage King

📌 Relying on this Ruling

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

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What this Ruling is about

1. This Ruling sets out the income tax consequences of the de-stapling of the Abacus Property Group (Abacus) and its re-stapling as the Abacus Group stapled group (ABG) and the Abacus Storage King stapled group (ASK) for securityholders who held stapled securities in Abacus (Abacus Securityholders) just before 3 August 2023 (De-stapling Implementation Date).

2. A stapled security in Abacus (Abacus Security), held by Abacus Securityholders just before the De-stapling Implementation Date, comprised:

- a share in each of
 - Abacus Group Holdings Limited (AGHL)
 - Abacus Group Projects Limited (AGPL)
 - Abacus Storage Operations Limited (ASOL), and
- a unit in each of
 - Abacus Trust (AT)
 - Abacus Income Trust (AIT), and
 - Abacus Storage Property Trust (ASPT).

3. Details of this scheme are set out in paragraphs 13 to 20 of this Ruling.

4. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

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Who this Ruling applies to

5. This Ruling applies to you if you:
- were registered as an Abacus Securityholder at 7:00 pm on 2 August 2023 (Record Date)
 - were a resident of Australia (as defined in subsection 6(1) of the *Income Tax Assessment Act 1936*), or held your Abacus Securities as taxable Australian property (as defined in section 855-15), at the De-stapling Implementation Date, and
 - held your Abacus Securities on capital account – that is, your Abacus Securities were neither held as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)).
6. This Ruling does not apply to anyone who is subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 13 to 20 of this Ruling.

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

When this Ruling applies

7. This Ruling applies from 1 July 2023 to 30 June 2024.

Ruling

Your stapled securities consist of separate CGT assets

8. Each share in AGHL, AGPL and ASOL and each unit in AT, AIT and ASPT (that made up your Abacus Security) is a separate CGT asset for the purposes of section 108-5.

No CGT event happened on de-stapling and re-stapling

9. No CGT event in Division 104 happened as a result of the de-stapling of each ASPT unit and each ASOL share from each other and from the remainder of the shares and units that made up the Abacus Securities pursuant to the Abacus Stapling Deed Termination Deed dated 3 August 2023 on the De-stapling Implementation Date.
10. No CGT event in Division 104 happened as a result of the re-stapling of your ASPT units and ASOL shares to each other on a one-for-one basis to form stapled securities in ASK (ASK Securities) on the De-stapling Implementation Date.
11. The de-stapling and re-stapling of your ASPT units and ASOL shares on the De-stapling Implementation Date will not change the first element of the cost base or the acquisition time of those units or shares.

Value shifting rules do not apply

12. As the issuance of new ASPT units and ASOL shares to AT, AGPL and Abacus Ventures Trust (AVT) will be for market value consideration, Divisions 725 and 727 will not apply.

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Scheme

13. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

Abacus Property Group

14. Abacus was a real estate investment trust and was listed on the Australian Securities Exchange (ASX) in November 2002 as ABP.

15. The Abacus Stapling Deed was executed on 6 March 2012 resulting in Abacus forming a 6-stapled group with each Abacus Security comprising a:

- fully-paid ordinary share in AGHL
- fully-paid ordinary share in AGPL
- fully-paid ordinary unit in AIT
- fully-paid ordinary unit in AT
- fully-paid ordinary unit in ASPT, and
- fully-paid ordinary share in ASOL.

16. Abacus operated the following 3 investment portfolios:

- Office portfolio – office spaces in Sydney, Melbourne and Brisbane and assets in Canberra and Adelaide
- Self Storage portfolio – 127 self-storage assets across Australia's east coast and New Zealand
- Retail & Other portfolio – retail shopping centres across New South Wales and Queensland

17. At 7:00 pm on the Record Date:

- 51.8% of the Abacus Securities were held by a single Abacus Securityholder (Calculator Australia Pty Limited), and
- the balance of the Abacus Securities were held by Abacus Securityholders who did not individually hold more than 10% of the Abacus Securities.

Restructure of the Abacus Property Group

18. Due to the rapid growth of the Self Storage portfolio over the last 5 years, it was considered commercially desirable for the Self Storage portfolio to be separated from the remainder of Abacus, listed separately on the ASX and have its own capital structure.

19. The separation of the Self Storage portfolio from Abacus was effected as follows on the De-stapling Implementation Date:

- **Step 1 – Transfer of assets** – assets related to the Self Storage portfolio were transferred to ASPT or ASOL for market value consideration.
- **Step 2 – De-stapling and formation of ABG** – by execution of the Abacus Stapling Deed Termination Deed, the Abacus Stapling Deed was terminated and each ASPT unit and each ASOL share on issue was de-stapled from each other and from the remainder of the Abacus Securities. By execution

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of the ABG Stapling Deed, the securities in each of AGHL, AGPL, AIT and AT remained stapled to each other to form stapled securities in ABG (ABG Securities).

- **Step 3A – Transfer of Abacus Repository Trust (ART) and issue of ASPT units to AT, AGPL and AVT** – concurrently with Step 3B, 100% of the units in ART, which were held by AT, AGPL and AVT (a subsidiary of AT and AGPL), was transferred to ASPT in exchange for ASPT issuing ASPT units equal to the market value of ART as consideration. ART held 3 storage properties and management agreements and other property plant and equipment in respect of the storage properties. This step resulted in AT, AGPL and AVT acquiring a collective interest in ASPT of 4.26%.
- **Step 3B – Issue of ASOL shares to AT, AGPL and AVT** – concurrently with Step 3A, ASOL issued ASOL shares for market value consideration to AT, AGPL and AVT so that AT, AGPL and AVT held a collective interest in ASOL of 4.26%. The consideration paid to ASOL was used to offset against intra-group loans (issued on commercial arms-length terms).
- **Step 4 – Formation of ASK** – each ASPT unit and each ASOL share on issue was stapled to each other on a one-for-one basis to form ASK Securities.
- **Step 5 – Issue of ASK Securities to AT** – ASK Securities were issued to AT for market value consideration so that AT held a total interest of 19.22% in ASK. The consideration received from AT was used to offset against intra-group loans (issued on commercial arms-length terms).

20. At the conclusion of those steps:

- 51.8% of the ABG Securities were held by Calculator Australia Pty Limited and the balance held by other ABG securityholders, and
- in relation to the ASK Securities
 - 40.095% were held by Calculator Australia Pty Limited
 - 19.22% were held by AT
 - 1.72% were held by AGPL
 - 1.65% were held by AVT, and
 - the balance held by other ASK securityholders.

Commissioner of Taxation

6 September 2023

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Appendix – Explanation

ⓘ *This Explanation 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.*

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Your stapled securities consist of separate CGT assets

21. A CGT asset is defined as any kind of property or a legal or equitable right that is not property (section 108-5).
22. A stapled securityholder continues to be governed by the separate constitutions of each of the separate stapled entities, which sets out the respective rights and obligations of each entity in respect of each share or unit held by the stapled securityholder.
23. As you have separate rights and obligations in respect of each share or unit making up the Abacus Security, each of those shares or units will be considered separate CGT assets for the purposes of section 108-5.

No CGT event on de-stapling and re-stapling

24. CGT event A1 happens if an entity disposes of a CGT asset (subsection 104-10(1)).
25. An entity disposes of a CGT asset if a change of ownership occurs from the entity to another entity, whether because of some act or event or by operation of law (subsection 104-10(2)).
26. The de-stapling of each ASPT unit and each ASOL share from each other and from the remainder of the shares and units that made up the Abacus Securities pursuant to the Abacus Stapling Deed Termination Deed was a termination of a contractual arrangement as to how the ASPT units and the ASOL shares were to be bought and sold.
27. The de-stapling did not involve a change of your ownership interests in the ASPT units or ASOL shares.
28. Therefore, CGT event A1 did not happen when your ASPT units and ASOL shares were de-stapled on the De-stapling Implementation Date.
29. The subsequent re-stapling of your ASPT units and ASOL shares to each other on a one-for-one basis to form ASK Securities also did not trigger CGT event A1 because it did not involve any change of ownership interests. It was simply a contractual arrangement as to how your ASPT units and ASOL shares were to be dealt with from the De-stapling Implementation Date.
30. No other CGT event in Division 104 happened as a result of the de-stapling and re-stapling of your ASPT units and ASOL shares on the De-stapling Implementation Date.

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31. The de-stapling and re-stapling of your ASPT Units and ASOL Shares on the De-stapling Implementation Date did not give rise to a splitting, change or merging of CGT assets for the purposes of section 112-25.

32. The de-stapling and re-stapling of your ASPT units and ASOL shares on the De-stapling Implementation Date will not change the first element of the cost base of those units or shares as your ASPT units and ASOL shares retained their legal character without any changes to the beneficial ownership.

33. As there was no change to the beneficial ownership of your ASPT units and ASOL shares, the de-stapling and re-stapling of your ASPT units and ASOL shares on the De-stapling Implementation Date will not change the acquisition time of your ASPT units and ASOL shares.

Value shifting rules do not apply

34. There is a direct value shift under a scheme involving equity or loan interests in an entity (target entity) where there is a decrease in the market value of some equity or loan interest and an increase or issue at a discount of other equity or loan interests (section 725-145).

35. As the issuance of new ASPT units and ASOL shares to AT, AGPL and AVT will be for market value consideration and not issued at a discount, there will not be a decrease in the market value of the equity interests in ASPT or ASOL. Therefore, section 725-145 will not apply.

36. There is an indirect value shift where there is an unequal exchange of economic benefits between 2 entities – the losing entity and gaining entity (subsection 727-150(3)). That is, an indirect value shift occurs if the total market value of the one or more economic benefits that the losing entity has provided exceeds the total market value of the one or more economic benefits that the gaining entity has provided to the losing entity in connection with the scheme.

37. As the issuance of new ASPT units and ASOL shares to AT, AGPL and AVT will be for market value consideration, there will not be an unequal exchange in the market value of the economic benefits. Therefore, section 727-150 will not apply.

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References

Legislative references:

- ITAA 1997 Div 104
 - ITAA 1997 104-10(1)
 - ITAA 1997 104-10(2)
 - ITAA 1997 108-5
 - ITAA 1997 112-25
 - ITAA 1997 Div 230
 - ITAA 1997 Div 725
 - ITAA 1997 725-145
 - ITAA 1997 Div 727
 - ITAA 1997 727-150
 - ITAA 1997 727-150(3)
 - ITAA 1997 855-15
 - ITAA 1997 977-50
 - ITAA 1997 995-1(1)
 - ITAA 1936 6(1)
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ATO references

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