



## Class Ruling

### Income tax: scrip for scrip roll-over: exchange of units in Westpac Office Trust for Mirvac Group stapled securities

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Contents	Para
<b>LEGALLY BINDING SECTION:</b>	
<b>What this Ruling is about</b>	<b>1</b>
<b>Date of effect</b>	<b>8</b>
<b>Scheme</b>	<b>9</b>
<b>Ruling</b>	<b>22</b>
<b>NOT LEGALLY BINDING SECTION:</b>	
<b>Appendix 1:</b>	
<i>Explanation</i>	<b>41</b>
<b>Appendix 2:</b>	
<i>Detailed contents list</i>	<b>46</b>

**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;
- section 109-10 of the ITAA 1997;
- section 110-25 of the ITAA 1997;
- section 110-55 of the ITAA 1997;
- section 112-30 of the ITAA 1997;
- Division 115 of the ITAA 1997;
- section 116-20 of the ITAA 1997;

- section 124-785 of the ITAA 1997; and
- section 124-790 of the ITAA 1997.

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

## **Class of entities**

3. The class of entities to whom this Ruling applies consists of the holders (including the Security Trustee – Westpac Custodian Nominees Limited) of units in Westpac Office Trust (WOT) who:

- (a) dispose of their units in WOT on the Implementation Date in exchange for cash or Mirvac Group stapled securities (consisting of units in Mirvac Property Trust (MPT) and shares in Mirvac Limited (ML));
- (b) hold their WOT units on capital account at the time of disposal;
- (c) are 'resident of Australia' as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* at the time of disposal; and
- (d) are not 'significant stakeholders' or 'common stakeholders' within the meaning of Subdivision 124-M of the ITAA 1997 at the time of disposal.

In this Ruling, a person belonging to this class of entities is referred to as a 'WOT Unitholder'.

## **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 9 to 21 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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8. This Ruling applies from 28 April 2010 to 30 June 2011. The Ruling continues to apply after 30 June 2011 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

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9. 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:

- (a) Class Ruling application dated 4 June 2010;
- (b) Scheme Implementation Agreement dated 28 April 2010;
- (c) Consolidated WOT Constitution dated 19 February 2003 (as amended from time to time);
- (d) Consolidated Constitution of MPT dated 7 April 2010;
- (e) Consolidated Security Trust Deed dated 10 June 2003 (as amended from time to time);
- (f) Explanatory Memorandum to the scheme;
- (g) draft WOT Supplemental Deed;
- (h) draft Security Trust Deed Amending Deed;
- (i) Australian Securities Exchange (ASX) announcement by Westpac Funds Management Limited, as responsible entity for WOT on 28 October 2009; and

- (j) correspondence from the applicant providing further particulars.

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

## Overview

10. The scheme that is the subject of this Ruling involves the exchange by WOT Unitholders of all of their WOT units for securities in the stapled group comprised of MPT and ML or a cash payment (the Scheme).

## Relevant entities

### **WOT**

11. WOT is, at the time of the Scheme, a resident unit trust and a managed investment scheme registered under Chapter 5C of the *Corporations Act 2001*. The units in WOT are publicly listed on the ASX. WOT has a portfolio of commercial properties that are leased primarily to investment grade tenants.

12. Westpac Funds Management Limited is the responsible entity of WOT.

### **MPT**

13. MPT is a resident unit trust and a managed investment scheme registered under Chapter 5C of the *Corporations Act 2001* with Mirvac Funds Limited acting as the responsible entity.

14. Each unit in MPT is stapled to a share in ML to form a Mirvac Security, which is listed on the ASX.

## The WOT acquisition

15. Under the Scheme Implementation Agreement dated 28 April 2010, each WOT Unitholder will transfer their WOT units to Mirvac Funds Limited as responsible entity of MPT on the Implementation Date (subject to approval by WOT Unitholders of the relevant resolutions and Court approvals).

16. Under the Scheme, all WOT Unitholders who held their WOT units on the Record Date will be entitled to elect to receive either:

- (a) 0.597 Mirvac Securities for each WOT unit held (the Scrip Option); or
- (b) \$0.86 cash for each WOT unit held (subject to an aggregate limit of \$200 million) (the Cash Option).

17. The Mirvac Securities offered as consideration will rank equally with all other Mirvac Securities on issue.

18. WOT Unitholders who do not wish to elect the Cash Option but also do not wish to retain the Mirvac Securities issued to them under the Scrip Option may choose to participate in the Sale Facility.

#### **Other matters**

19. WOT Unitholders who were registered holders of WOT units on the distribution record date (30 June 2010) will be entitled to receive a final distribution from WOT for the three months ended 30 June 2010. This final distribution will be declared and paid independently of the contract for the acquisition of the WOT units.

20. On the Implementation Date, immediately before the Scheme is implemented, a consolidation of WOT units on a one for 0.597 basis will occur in order to achieve a one for one exchange between WOT units and Mirvac Securities.

21. All units in WOT were acquired after 19 September 1985.

## **Ruling**

#### **CGT event A1 will happen on the disposal of WOT units**

22. CGT event A1 will happen when the WOT Unitholders dispose of their WOT units to MPT. The time of the event will be the Scheme's Implementation Date (subsections 104-10(1) and 104-10(2) and paragraph 104-10(3)(b)).

#### **Capital gain or capital loss**

23. A WOT Unitholder will make a capital gain when CGT event A1 happens if the capital proceeds from the disposal of a WOT unit exceeds its cost base. A WOT Unitholder will make a capital loss if the capital proceeds from the disposal of a WOT unit is less than its reduced cost base (subsection 104-10(4)).

#### **Capital proceeds**

24. The capital proceeds from the disposal of each WOT unit will be:

- (a) if electing the Scrip Option – the market value of the Mirvac Securities received in exchange for that WOT unit (worked out as at the time that CGT event A1 happens) (paragraph 116-20(1)(b)); or
- (b) if electing the Cash Option – \$0.86, being the amount of money received in respect of the CGT event (paragraph 116-20(1)(a)).

25. For WOT Unitholders who elect to participate in the Sale Facility, and dispose of the Mirvac Securities issued to them, the capital proceeds from the disposal of the Mirvac Securities will equal the proceeds received from the Sale Nominee for disposing of the Mirvac Securities on market (paragraph 116-20(1)(a)).

## **Final distribution**

26. The final WOT distribution of 1.6625 cents per unit received by WOT Unitholders is not capital proceeds from the disposal of each WOT unit to MPT, as it is considered, having regard to all the circumstances of the arrangement, that it is not paid in respect of the CGT event happening (subsection 116-20(1)).

## **Consolidation of the WOT units**

27. No CGT event will occur upon the consolidation of the WOT units on the Implementation Date, immediately before the Scheme is implemented (subsection 112-25(4)).

## **If a capital gain is made**

### ***Capital gain from the disposal of WOT units for Mirvac Securities – partial scrip for scrip roll-over***

28. A capital gain made from the disposal of WOT units for Mirvac Securities is eligible for partial scrip for scrip roll-over (subsection 124-790(1)).

29. Each Mirvac Security comprises two separate CGT assets: a unit in MPT and a share in ML (section 108-5). For the purposes of section 124-790:

- (a) the MPT unit component of each Mirvac Security is eligible proceeds; and
- (b) the ML share component of each Mirvac Security is ineligible proceeds.

30. Subject to the qualification in paragraph 31 of this Ruling, a WOT Unitholder who makes a capital gain from the disposal of their WOT units for Mirvac Securities, may choose partial scrip for scrip roll-over for the disposal of their WOT units (section 124-790).

31. Scrip for scrip roll-over cannot be chosen if any capital gain the WOT Unitholder might make from the replacement Mirvac Security would be disregarded, except because of a roll-over (subsection 124-795(2)).

32. If scrip for scrip roll-over is chosen, that part of the capital gain that is referable to the receipt of MPT units is disregarded (subsection 124-790(1)).

**Capital gain referable to ML shares**

33. The part of the capital gain that is referable to the receipt of ML shares is not disregarded. This is because the ML shares received are ineligible proceeds under subsection 124-790(1).

34. In calculating the capital gain attributable to their ineligible proceeds, a WOT Unitholder is to deduct that part of the cost base of their WOT unit as is reasonably attributable to these ineligible proceeds (subsection 124-790(2)). In making a reasonable apportionment of the cost base of a WOT unit, it is appropriate for a WOT Unitholder to compare the market value of a share in ML with the market value of a unit in MPT on the Implementation Date.

**Discount capital gain**

35. A WOT Unitholder who makes a capital gain that is not disregarded (that is, those relating to cash consideration or ML shares or capital gains where scrip for scrip roll-over is not chosen) is eligible to treat any resulting capital gain as a 'discount capital gain' provided that the conditions in Subdivisions 115-A to 115-C are satisfied.

**Cost base of MPT units**

36. Where scrip for scrip roll-over is chosen, the first element of the cost base and reduced cost base of each new MPT unit is equal to the sum of the parts of the cost bases of the WOT units that are reasonably attributable to the acquisition of each MPT unit (subsections 124-785(2) and 124-785(4)).

37. Where scrip for scrip roll-over is not chosen, the first element of the WOT Unitholder's cost base and reduced cost base for each MPT unit is equal to the market value of the property (that is, WOT units) that is reasonably attributable to the acquisition of the MPT unit (subsections 110-25(2) and 110-55(2) and section 112-30).

**Cost base of ML shares**

38. The first element of the WOT Unitholder's cost base and reduced cost base for each ML share is equal to the market value of the property (that is, the WOT units) that is reasonably attributable to the acquisition of the ML share (subsections 110-25(2) and 110-55(2) and section 112-30).

## **Acquisition date of MPT units and ML shares**

39. The acquisition date for WOT Unitholders of the MPT units and the ML shares acquired in exchange for their WOT units is the Implementation Date of the Scheme (section 109-10).

40. However, for the purposes of determining if a capital gain on a subsequent disposal of their MPT units is eligible to be treated as a discount capital gain, WOT Unitholders who choose scrip for scrip roll-over are taken to have acquired their MPT units when they acquired the corresponding WOT units that were exchanged for the relevant MPT units (item 2 of the table in subsection 115-30(1)).

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**Commissioner of Taxation**

4 August 2010

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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.*

### **Availability of scrip for scrip roll-over**

41. The tax consequences and relevant legislative provisions that arise in regard to the Scheme are outlined in the Ruling part of this document.

42. One of the consequences is the availability of scrip for scrip roll-over. It enables a unit holder to disregard a capital gain from a unit in a trust that is disposed of as part of a takeover or merger if the holder of that unit receives a replacement unit in a trust in exchange.

43. The scrip for scrip roll-over provisions in Subdivision 124-M contain a number of conditions for, and exceptions to, eligibility to choose scrip for scrip roll-over. The main conditions and exceptions that are relevant to this Scheme are:

- (i) units are exchanged for units in another trust (subparagraph 124-781(1)(a)(i));
- (ii) entities have fixed entitlements to all of the income and capital of the original trust and the acquiring trust (paragraph 124-781(1)(b));
- (iii) the exchange occurs in consequence of an arrangement that satisfied subsection 124-781(2) (paragraph 124-781(1)(c));
- (iv) conditions for roll-over are satisfied (subsection 124-781(3)); and
- (v) further conditions are not applicable (subsection 124-781(4)).

44. Under the Scheme the conditions for roll-over under Subdivision 124-M are satisfied.

45. For WOT Unitholders who elect the Scrip Option, the Commissioner will accept that the market value of a Mirvac Security received is the closing price on the ASX on the Implementation Date.

**Appendix 2 – Detailed contents list**

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

	<b>Paragraph</b>
<b>What this Ruling is about</b>	<b>1</b>
Relevant provision(s)	2
Class of entities	3
Qualifications	4
<b>Date of effect</b>	<b>8</b>
<b>Scheme</b>	<b>9</b>
Overview	10
Relevant entities	11
<i>WOT</i>	11
<i>MPT</i>	13
The WOT acquisition	15
Other matters	19
<b>Ruling</b>	<b>22</b>
CGT event A1 will happen on the disposal of WOT units	22
Capital gain or capital loss	23
Capital proceeds	24
Final distribution	26
Consolidation of the WOT units	27
If a capital gain is made	28
<i>Capital gain from the disposal of WOT units for Mirvac Securities – partial scrip for scrip roll-over</i>	28
<i>Capital gain referable to ML shares</i>	33
Discount capital gain	35
Cost base of MPT units	36
Cost base of ML shares	38
Acquisition date of MPT units and ML shares	39
<b>Appendix 1 – Explanation</b>	<b>41</b>
Availability of scrip for scrip roll-over	41
<b>Appendix 2 – Detailed contents list</b>	<b>46</b>

## References

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- Previous draft:*
- ITAA 1997 110-55(2)
  - ITAA 1997 112-25(4)
- Not previously issued as a draft
- ITAA 1997 112-30
- Related Rulings/Determinations:*
- TR 2006/10; TR 2010/4
- ITAA 1997 Div 115
  - ITAA 1997 Subdiv 115-A
  - ITAA 1997 115-30(1)
  - ITAA 1997 Subdiv 115-B
  - ITAA 1997 Subdiv 115-C
- Subject references:*
- arrangement
  - capital gain
  - CGT event A1 – disposal of a CGT asset
  - disposal of assets
  - fixed entitlements
  - merged asset
  - scrip for scrip roll-over
  - unit trust
- ITAA 1997 116-20
  - ITAA 1997 116-20(1)
  - ITAA 1997 116-20(1)(a)
  - ITAA 1997 116-20(1)(b)
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- Legislative references:*
- ITAA 1936 6(1)
  - ITAA 1997
  - ITAA 1997 104-10
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  - ITAA 1997 104-10(3)(b)
  - ITAA 1997 104-10(4)
  - ITAA 1997 108-5
  - ITAA 1997 109-10
  - ITAA 1997 110-25
  - ITAA 1997 110-25(2)
  - ITAA 1997 110-55
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  - ITAA 1997 124-785(2)
  - ITAA 1997 124-785(4)
  - ITAA 1997 124-790
  - ITAA 1997 124-790(1)
  - ITAA 1997 124-790(2)
  - ITAA 1997 124-795(2)
  - TAA 1953
  - Corporations Act 2001
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  - Copyright Act 1968
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### ATO references

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