



## Class Ruling

### Income tax: Return of capital, acquisition of new interests and stapling of securities to form a new stapled security: Centro Retail Group

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#### **❶ 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 99B of the *Income Tax Assessment Act 1936* (ITAA 1936);
- section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 104-70 of the ITAA 1997;
- section 109-5 of the ITAA 1997;
- section 109-10 of the ITAA 1997;
- subsection 110-25(2) of the ITAA 1997;
- subsection 110-55(2) of the ITAA 1997;

- subsection 112-25(4) of the ITAA 1997; and
- Subdivision 115-A of the ITAA 1997.

All subsequent legislative references 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 Centro Retail Group (CER) stapled securities who:

- participated in the Scheme that is the subject of this Ruling;
- were residents of Australia within the meaning of subsection 6(1) of the ITAA 1936 on 14 December 2011 (Implementation Date);
- held their CER stapled securities on capital account; and
- are not subject to the taxation of financial arrangement rules in Division 230 in relation to gains and losses on their CER stapled securities.

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

In this Ruling, a person belonging to this class of entities is referred to as a 'CER security holder'.

## **Qualifications**

4. The Commissioner makes this Ruling 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 9 to 15 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 1 July 2011 to 30 June 2012. The Ruling continues to apply after 30 June 2012 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:

- Class ruling application dated 17 October 2011 from Centro Retail Group;
- Equalisation Model and calculations provided on 17 October 2011;
- Stapling Deed Centro Retail Australia dated 23 November 2011 and Deed of Accession and Amendment to the Stapling Deed dated 23 November 2011 (Stapling Deeds);
- CER Explanatory Memorandum dated 5 October 2011;
- Disclosure Document dated 5 October 2011; and
- Implementation Agreement as modified on 17 November 2011.

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

10. CER was listed on the Australian Securities Exchange (ASX) as a stapled security. Each stapled security consisted of one separate Centro Retail Limited (CRL) ordinary share and one separate Centro Retail Trust (CRT) unit. The effect of the stapling was that the CRL shares and CRT units could only be dealt with as one security on the ASX.

11. The responsible entity for CRT is Centro Retail Australia Limited.

12. On 9 August 2011, CER entered into an Implementation Agreement by way of which the Australian assets of CER, Centro Australia Wholesale Fund (CAWF), Centro DPF Holding Trust (DHT) and Centro Properties Group (CNP) were to be aggregated together to form a newly listed Australian retail property group called Centro Retail Australia (CRA).

13. The restructure was approved by members of CNP, CER, CAWF and DHT on 22 November 2011 and was carried out on the Implementation Date.

## Restructure

14. The following steps and transactions occurred on the Implementation Date pursuant to the Implementation Agreement and the Stapling Deeds:

- CRL consolidated its issued ordinary shares on the basis of an approximate ratio of 1:5.29, reducing the overall ordinary shares in CRL from 2,286,399,424 to 432,609,095;
- CRT consolidated its issued units on the basis of an approximate ratio of 1:5.29, reducing the overall units in CRT from 2,286,399,424 to 432,609,095;
- CER received various assets in accordance with the Disclosure Document in exchange for issuing 294,908,933 CER stapled securities which resulted in a total of 727,518,028 shares in CRL on issue and 727,518,028 units in CRT on issue;
- CRT returned capital totalling \$714,153,146 by distributing an amount of \$0.9816 per unit to CER security holders in respect of their CRT units;
- CRT satisfied the capital reduction by each CER security holder receiving new units in CAWF and DHT. Of the \$0.9816 per unit capital reduction amount, \$0.6112 was applied to subscribe for units in CAWF and \$0.3704 was applied to subscribe for units in DHT;
- each CER security holder's CER securities were legally stapled with their newly issued units in CAWF and DHT to form a CRA stapled security; and
- CRA stapled securities were listed on the ASX.

15. It was an objective that immediately after the restructure each CRA stapled security would have a net asset value of approximately \$2.50.

## **Ruling**

### **Consolidation of shares in CRL and units in CRT**

16. The consolidation of shares in CRL and units in CRT will not result in a CGT event happening (paragraph 112-25(4)(a)).

17. Each element of the cost base and reduced cost base of a new consolidated CRL share and a new consolidated CRT unit (at the time of consolidation) is the sum of the corresponding elements of the original shares and units that are consolidated to form the new share and unit (paragraph 112-25(4)(b)).

18. Each CER security holder is taken to have acquired the new consolidated CRL shares and CRT units at the time that they acquired the original shares and units to which they relate (section 109-5).

### **Return of capital by CRT**

#### ***Non-assessable payments***

19. The return of capital by CRT to CER security holders in respect of their CRT units is not assessable income of CER security holders under section 99B of the ITAA 1936.

20. The return of capital by CRT to CER security holders in respect of their CRT units is not assessable as ordinary income of CER security holders under section 6-5.

### ***CGT event E4***

21. The return of capital (a non-assessable payment) by CRT resulted in CGT event E4 happening to CER security holders in respect of each of their CRT units (section 104-70).

22. A CER security holder will make a capital gain when CGT event E4 happens if the sum of all the non-assessable parts of payments made by the trustee during the income year in respect of the CRT unit exceeds the cost base of the unit (subsection 104-70(4)). A CER security holder cannot make a capital loss when CGT event E4 happens to their CRT units.

23. Where a CER security holder makes a capital gain when CGT event E4 happens, the cost base and reduced cost base of the CRT unit are reduced to nil (subsection 104-70(5)).

24. However, if the sum of all the non-assessable parts of payments made by the trustee during the income year is less than or equal to the cost base of the CRT unit, the cost base and reduced cost base of that CRT unit will be reduced (but not below nil) by the non-assessable payments (subsection 104-70(6)). The non-assessable payments will include the amount of the capital return (\$0.9816).

25. A CER security holder who makes a capital gain when CGT event E4 happens may be eligible to treat the gain as a 'discount capital gain' provided that they satisfy the requirements of Subdivision 115-A.

## **Acquisition of new units in DHT**

26. The first element of the cost base and reduced cost base of each DHT unit acquired by CER security holders in satisfaction of the return of capital from CRT will be \$0.3704 (subsection 110-25(2) and section 110-55).

27. A CER security holder acquires the DHT units at the time the units are issued to the security holder, being 14 December 2011 (item 3 of the table in section 109-10).

## **Acquisition of new units in CAWF**

28. The first element of the cost base and reduced cost base of each CAWF unit acquired by CER security holders in satisfaction of the return of capital from CRT will be \$0.6112 (subsection 110-25(2) and section 110-55).

29. A CER security holder acquires the CAWF units at the time the units are issued to the security holder, being 14 December 2011 (item 3 of the table in section 109-10).

## **Implications of the stapling of securities to form a CRA stapled security**

30. No CGT event in Division 104 will happen because of the stapling of the shares in CRL and the units in CRT, CAWF and DHT to form a CRA stapled security.

## 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.*

### Consolidation of shares in CRL and units in CRT

31. The Ruling section provides an explanation of the Commissioner's decision in this regard. No further explanation is warranted.

### Return of capital by CRT

#### ***Non-assessable payments***

32. Division 6 of Part III of the ITAA 1936 is the primary scheme for including distributions from trusts in the assessable income of beneficiaries. Subsection 99B(1) of the ITAA 1936 provides that an amount, being property of a trust estate, paid to, or applied for the benefit of, a beneficiary of the trust estate who was a resident at any time during the year of income, is assessable income of the beneficiary, subject to the exceptions in subsection 99B(2) of the ITAA 1936.

33. Based on the facts, CER security holders will not include the payment from CRT in their assessable income under subsection 99B(1) of the ITAA 1936.

34. Section 6-5 provides that a taxpayer's assessable income includes income according to ordinary concepts (ordinary income).

35. In *Scott v. Federal Commissioner of Taxation* (1966) 117 CLR 514, Windeyer J stated at page 526 that:

Whether or not a particular receipt is income depends upon its quality in the hands of the recipient

36. The High Court of Australia in *GP International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation* (1990) 170 CLR 124 at page 138 unanimously stated that the following factors were important in determining the nature of receipt:

To determine whether a receipt is of an income or of a capital nature, various factors may be relevant. Sometimes, the character of receipts will be revealed most clearly by their periodicity, regularity or recurrence; sometimes, by the character of a right or thing disposed of in exchange for the receipt; sometimes, by the scope of the transaction, venture or business in or by reason of which money is received and by the recipient's purpose in engaging in the transaction, venture or business.

37. The payment by CRT to CER security holders in respect of their CRT units does not have the character of income in the hands of the CER security holders and will not be ordinary income of CER security holders under section 6-5.

## **CGT event E4**

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

39. The total amount of the capital distribution by CRT to CER security holders will be \$0.9816 per unit. No part of this amount will be included in the assessable income of CER security holders. Therefore, CGT event E4 will happen to each CRT unit as a result of the capital distribution by CRT.

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

41. A CER security holder will make a capital gain when CGT event E4 happens to the extent (if any) that the sum of all the non-assessable parts of payments made by the trustee during the income year in respect of a CRT unit exceeds the cost base of the unit (subsection 104-70(4)).

42. Where a CER security holder makes a capital gain when CGT event E4 happens, the cost base and reduced cost base of the CRT unit are reduced to nil (subsection 104-70(5)).

43. However, if the sum of all the non-assessable parts of payments made by the trustee during the income year is less than or equal to the cost base of the CRT unit, the cost base and reduced cost base of that CRT unit will be reduced (but not below nil) by the non-assessable payments (subsections 104-70(6)). The non-assessable payments will include the amount of the capital return (\$0.9816).

44. A CER security holder who makes a capital gain when CGT event E4 happens may be eligible to treat the gain as a 'discount capital gain' provided that they satisfy the requirements of Subdivision 115-A. The time when CGT event E4 happens to each CRT unit is determined in accordance with subsection 104-70(3).

## **Acquisition of new units in DHT**

45. Under subsections 110-25(2) and 110-55(2), the first element of the cost base and reduced cost base of each newly acquired DHT unit by CER security holders is \$0.3704, being the amount applied by CRT on behalf of CER security holders to subscribe for each DHT unit.

46. Each DHT unit is acquired by a CER security holder at the time the units are issued to the CER security holder, being 14 December 2011 (item 3 of the table in section 109-10).



**Acquisition of new units in CAWF**

47. Under subsections 110-25(2) and 110-55(2), the first element of the cost base and reduced cost base of each newly acquired CAWF unit by CER security holders is \$0.6112, being the amount applied by CRT on behalf of CER security holders to subscribe for each CAWF unit.

48. Each CAWF unit is acquired by a CER security holder at the time the units are issued to the CER security holder, being 14 December 2011 (item 3 of the table in section 109-10).

**Implications of the stapling of securities to form a CRA stapled security**

49. The effect of the stapling arrangement is to apply restrictions to the transferability of the individual securities that together make up the CRA stapled security, such that they cannot be sold separately. Each individual security (that is, each share in CRL and unit in CRT, CAWF and DHT) will retain its legal character without any change in beneficial ownership. There is no variation to the rights or obligations attaching to, or the beneficial ownership of, the individual securities comprising the CRA stapled security as a consequence of stapling.

50. Therefore, no CGT event in Division 104 will happen as a consequence of the stapling of shares in CRL and units in CRT, CAWF and DHT to form a CRA stapled security.

## Appendix 2 – Detailed contents list

51. 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:*

TD 2000/10; TR 2006/10

### *Subject references:*

- acquisition dates
- capital gains
- CGT cost base
- trusts
- stapled structure

### *Legislative references:*

- ITAA 1936 99B
- ITAA 1997 6-5

- ITAA 1997 104-70
- ITAA 1997 109-10
- ITAA 1997 110-25(2)
- ITAA 1997 110-55
- ITAA 1997 112-25(4)
- TAA 1953
- Copyright Act 1968

### *Case references:*

- Scott v. Federal Commissioner of Taxation (1966) 117 CLR 514
- GP International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation (1990) 170 CLR 124

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### ATO references

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