



## Class Ruling

### Income tax: Woolworths Limited – creating a new stapled security

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#### **ⓘ 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 44 of the *Income Tax Assessment Act 1936* (ITAA 1936);
- section 45A of the ITAA 1936;
- section 45B of the ITAA 1936;
- section 177EA of the ITAA 1936;
- Division 67 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 104-25 of the ITAA 1997;
- section 104-135 of the ITAA 1997;
- section 110-25 of the ITAA 1997;
- section 110-55 of the ITAA 1997;

- section 112-20 of the ITAA 1997;
- Subdivision 115-A of the ITAA 1997;
- section 118-20 of the ITAA 1997;
- Division 125 of the ITAA 1997;
- section 202-40 of the ITAA 1997;
- section 204-30 of the ITAA 1997;
- section 207-145 of the ITAA 1997; and
- Division 855 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 whom this Class Ruling applies consists of the holders of ordinary shares in Woolworths Limited (Woolworths) who:

- were listed on the share register of Woolworths as at the Record Date (30 November 2012) for the distribution of units in Shopping Centres Australasia Property Management Trust (SCA Property Management Trust) and Shopping Centres Australasia Property Retail Trust (SCA Property Retail Trust);
- are either
  - (a) residents of Australia as that term is defined in subsection 6(1) of the ITAA 1936; or
  - (b) foreign residents (as that term is defined in subsection 995-1(1) of the ITAA 1997) whose shares in Woolworths, or right to receive something of value in respect of shares in Woolworths they owned as at the Record Date, are not taxable Australian property (as that term is defined in section 855-15 of the ITAA 1997);
- hold their shares in Woolworths 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; and
- are not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on their Woolworths ordinary shares.

(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 9 to 28 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 to the income year from 1 July 2012 to 30 June 2013. The Ruling continues to apply after 30 June 2013 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 14 August 2012;

- draft Explanatory Memorandum – establishment of SCA Property Group dated 14 September 2012;
- draft SCA Property Group Public Offer – Product Disclosure Statement dated 19 September 2012;
- 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.

10. Woolworths is a company that has been listed on the Australian Securities Exchange (ASX) since 12 July 1993.

11. Woolworths owns and operates several retail chains with a large number of stores in Australia and New Zealand. Through subsidiaries, Woolworths owns substantial parcels of land. These parcels of land are either:

- (a) partially occupied by Woolworths' retail stores and partially occupied by third parties under commercial leases; or
- (b) being developed, with construction being carried out or proposed to be carried out.

12. The parcels of land in Australia are currently owned by a subsidiary member of the Woolworths income tax consolidated group. The parcels of land in New Zealand are currently owned by a New Zealand resident wholly-owned subsidiary of Woolworths (NZ Sub).

## Restructure

13. On 5 October 2012, Woolworths proposed a restructure to its shareholders under which:

- substantial parcels of the Woolworths land in Australia were to be acquired by a unit trust (SCA Property Retail Trust) that was wholly owned by Woolworths; and
- substantial parcels of the Woolworths land in New Zealand were to be acquired by a unit trust (NZ Trust) that was wholly owned by SCA Property Retail Trust, and hence indirectly by Woolworths.

14. Woolworths' shareholders as at the Record Date were to receive all of the units in SCA Property Retail Trust and another trust (SCA Property Management Trust).

15. The units of SCA Property Management Trust were to be stapled to the units of SCA Property Retail Trust, and listed on the ASX as SCA Property Group stapled securities.

16. After the restructure is implemented, the Woolworths ordinary shares and the SCA Property Group stapled securities will be separately tradeable on the ASX. Woolworths will have separate boards, management structures and businesses from the entities comprising the SCA Property Group stapled security.

17. In broad terms, after the restructure

- Woolworths will continue to own and operate retail chains in Australia and New Zealand; and
- the entities comprising the SCA Property Group stapled security will focus on holding and developing their Australian and New Zealand land.

18. The restructure was implemented in four broad stages.

### ***Stage 1***

19. Woolworths subscribed for units in, and loaned funds to, the SCA Property Retail Trust. Most of these monies were applied against the obligation of the SCA Property Retail Trust to pay the purchase price for the parcels of land in Australia it acquired from a subsidiary member of the Woolworths income tax consolidated group. The balance of these monies were applied against the obligation of the NZ Trust (wholly owned by SCA Property Retail Trust) to pay the purchase price for the parcels of land in New Zealand it acquired from NZ Sub.

### ***Stage 2***

20. Woolworths and the SCA Property Retail Trust entered into a Development Management Agreement. Under this agreement, Woolworths promised to procure the completion of construction work on certain parcels of land in Australia and New Zealand. SCA Property Retail Trust will continue the practice of Woolworths of leasing the parcels of land to Woolworths' retail stores and third parties under commercial leases.

### ***Stage 3***

21. SCA Property Management Trust is a unit trust that was settled in order to manage SCA Property Retail Trust. The trustee of the SCA Property Management Trust will own all of the shares in the company that is the trustee of the SCA Property Retail Trust.

## **Stage 4**

22. Woolworths' shareholders voted at an annual general meeting on 22 November 2012 to approve an ordinary resolution under section 256C of the *Corporations Act 2001* to reduce the share capital of Woolworths (the Capital Reduction Amount). The Capital Reduction Amount was debited against an amount standing to the credit of Woolworths' share capital account (as that term is defined in subsection 6(1) of the ITAA 1936).

23. Woolworths also paid a fully franked dividend (the Dividend Component), which was debited against the retained profits account of Woolworths.

24. The Capital Reduction Amount and the Dividend Component were satisfied by an *in specie* distribution of 100% of the units in SCA Property Management Trust and 100% of the units in SCA Property Retail Trust. Woolworths shareholders will receive one unit in the SCA Property Management Trust and one unit in the SCA Property Retail Trust for every five Woolworths shares they held as at the Record Date for the distribution of units. In this Ruling, the distribution of these units is referred to as the Distribution.

25. The Capital Reduction Amount will be 72.99279 cents for every five Woolworths shares. This equates to 14.598558 cents in respect of each Woolworths share for which a shareholder receives SCA Property Group stapled securities. The Dividend Component will be 70.97721 cents for every five Woolworths shares. This equates to 14.195442 cents in respect of each Woolworths share for which a shareholder receives SCA Property Group stapled securities.

## **Other matters**

26. Additional SCA Property Group stapled securities will be issued under an offer to the public, institutions or existing SCA Property Group stapled security holders.

27. Woolworths shareholders who satisfy the definition of a 'Small Shareholder' can elect to participate in a Sale Facility to dispose of the SCA Property Group stapled securities that they would have otherwise received

28. Woolworths has confirmed that no amounts have been transferred to its share capital account (as defined in section 975-300) from any of its other accounts, and accordingly its share capital account is not tainted (within the meaning of Division 197).

## **Ruling**

### **Amount of the Distribution**

29. The Amount of the Distribution by Woolworths is equal to the market value of the SCA Property Group stapled security that is distributed in respect of each Woolworths share. The Amount of the Distribution is \$1.4397.

### **Dividend Component included in residents' assessable income**

30. The Dividend Component of the Distribution, being a dividend as defined in subsection 6(1) of the ITAA 1936, must be included in the assessable income of a resident Woolworths shareholder (paragraph 44(1)(a) of the ITAA 1936).

### **Gross-up and tax offset**

31. The Dividend Component of the Distribution is a frankable distribution under section 202-40.

32. A Woolworths shareholder who received the Dividend Component directly, satisfies the residency requirement in section 207-75, and is a 'qualified person' in relation to the franked distribution:

- must include in their assessable income the amount of the franking credit attached to the Dividend Component (subsection 207-20(1)); and
- will be entitled to a tax offset equal to the franking credit received on the Dividend Component (subsection 207-20(2)).

33. A Woolworths shareholder who:

- received the Dividend Component as a partnership or the trustee of a trust;
- is not a corporate tax entity or a complying superannuation entity; and
- is a 'qualified person' in relation to the franked distribution

must include in the assessable income of the partnership or trust the amount of the franking credit attached to the Dividend Component (subsection 207-35(1)).

34. Division 207 contains detailed rules for calculating the share of the franking credit received on the Dividend Component that the partners of the partnership, or the beneficiaries of the trust, will be entitled to as a tax offset.

## Qualified person

35. A Woolworths shareholder will be a 'qualified person' in relation to the Dividend Component of the Distribution for the purposes of Division 1A of former Part IIIAA of the ITAA 1936 if, pursuant to former section 160APHO of the ITAA 1936:

- the shareholder held their Woolworths shares at risk for a period of at least 45 days (excluding the day of acquisition of the shares, the day (if any) on which the shares were disposed of, and any days on which the shareholder has materially diminished risks of loss or opportunities for gain in respect of the shares within the meaning of former sections 160APHM and 160APHJ of the ITAA 1936) during the primary qualification period;

and

- neither the Woolworths shareholder, nor an associate of the Woolworths shareholder, have made, is under an obligation to make, or are likely to make, a related payment (within the meaning of former section 160APHN of the ITAA 1936) in respect of the Dividend Component of the Distribution.

36. The following will not affect whether a Woolworths share is held 'at risk' for the purposes of Division 1A of former Part IIIAA of the ITAA 1936:

- the Distribution; and
- the availability of a Sale Facility for small parcels of SCA Property Group stapled securities.

## Refundable tax offset

37. The franking credit tax offset that a Woolworths shareholder is entitled to under Division 207 is subject to the refundable tax offset rules in Division 67, unless it is specifically excluded under section 67-25.

## Imputation integrity provisions

38. The Commissioner will not make a determination under paragraph 204-30(3)(c) to deny the whole, or any part, of the imputation benefits in relation to the Dividend Component received by Woolworths shareholders.

39. The Commissioner will not make a determination under paragraph 177EA(5)(b) of the ITAA 1936 to deny the whole, or any part, of the imputation benefits in relation to the Dividend Component received by Woolworths shareholders.

**Dividend Component received by non-resident shareholders**

40. The non-resident Woolworths shareholders who belong to the class of entities to whom this Ruling applies will not be subject to dividend withholding tax on the Dividend Component because it is fully franked (paragraph 128B(3)(ga) of the ITAA 1936).

41. The Dividend Component is non-assessable non-exempt income of the non-resident Woolworths shareholders who belong to the class of entities to whom this Ruling applies (section 128D of the ITAA 1936).

**Capital Reduction Amount is not ordinary income or a dividend**

42. The Capital Reduction Amount is not ordinary income under section 6-5.

43. The Capital Reduction Amount is not a dividend, as defined in subsection 6(1) of the ITAA 1936.

**The application of sections 45A, 45B and 45C of the ITAA 1936 to the Capital Reduction Amount**

44. The Commissioner will not make a determination under subsection 45A(2) of the ITAA 1936 that section 45C of the ITAA 1936 applies to any part of the Capital Reduction Amount. Accordingly, no part of the Capital Reduction Amount will be taken to be a dividend for income tax purposes.

45. The Commissioner will not make a determination under paragraph 45B(3)(b) of the ITAA 1936 that section 45C of the ITAA 1936 applies to any part of the Capital Reduction Amount. Accordingly, no part of the Capital Reduction Amount will be taken to be a dividend for income tax purposes.

**CGT consequences**

46. CGT event G1 in section 104-135 will happen, to the extent of the Capital Reduction Amount (14.598558 cents for each Woolworths share in respect of which a shareholder receives SCA Property Group stapled securities), when Woolworths distributes the units in the SCA Property Management Trust and the SCA Property Retail Trust to a Woolworths shareholder in respect of a Woolworths share that they own at the Record Date and continue to own at the date the Distribution is made.

47. CGT event C2 in section 104-25 will happen when Woolworths makes the Distribution, which consists of a unit in the SCA Property Management Trust and a unit in the SCA Property Retail Trust, to a Woolworths shareholder in respect of a Woolworths share that they own at the Record Date, but which they cease to own before the date the Distribution is made.

48. Any capital gain made by a resident Woolworths shareholder as a result of CGT event C2 happening is reduced under section 118-20 of the ITAA 1997 by the amount of the Dividend Component of the Distribution that is included in the assessable income of the Woolworths shareholder under section 44 of the ITAA 1936.

49. If the Woolworths share to which the Distribution relates was acquired by a resident Woolworths shareholder at least 12 months before the Distribution, a capital gain from CGT event G1 or C2 happening may qualify as a discount capital gain under subsection 115-25(1), provided the other conditions in Subdivision 115-A are satisfied.

## **Foreign resident shareholders**

50. A foreign resident Woolworths shareholder who belongs to the class of entities to whom this Ruling applies, and who receives the Capital Reduction Amount, disregards any capital gain made when CGT event G1 happens because their shares in Woolworths are not 'taxable Australian property' (section 855-10).

51. A foreign resident Woolworths shareholder who belongs to the class of entities to whom this Ruling applies, and who receives the Distribution, disregards any capital gain or capital loss made when CGT event C2 happens because the right to the Distribution is not 'taxable Australian property' (section 855-10).

## **Cost base of the SCA Property Management Trust and SCA Property Retail Trust units**

52. The first element of the cost base and reduced cost base of a SCA Property Management Trust unit acquired by a Woolworths shareholder from Woolworths is its market value (subsection 112-20(1)).

53. The first element of the cost base and reduced cost base of a SCA Property Retail Trust unit acquired by a Woolworths shareholder from Woolworths is its market value (subsection 112-20(1)).

54. The market value of each unit will be determined by reference to the market value of a stapled security. This will be \$1.4397

55. The market value of a SCA Property Group stapled security must be apportioned between the unit in the SCA Property Management Trust and the SCA Property Retail Trust on a reasonable basis, having regard to the net asset values of each trust on the date the Distribution is made.

56. The units in the SCA Property Management Trust and the SCA Property Retail Trust will be acquired at the time when Woolworths stops being the owner of the units (item A1 (case 1) of the table in subsection 109-5(2)).

**Demerger provisions do not apply**

57. The demerger provisions in Division 125 do not apply to this scheme. The scheme to which this Ruling applies is not a demerger as defined in section 125-70.

**Stapling of securities**

58. No CGT event in Division 104 will happen as a result of the stapling of the units in the SCA Property Management Trust and the SCA Property Retail Trust.

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**Commissioner of Taxation**19 December 2012

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## 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.*

### **Dividend Component included in residents' assessable income**

59. Paragraph 44(1)(a) of the ITAA 1936 provides that the assessable income of a resident shareholder in a company includes dividends that are paid to the shareholder by the company out of profits derived by it from any source.

60. The Dividend Component is a distribution made by Woolworths to its shareholders. It is therefore a dividend as defined in subsection 6(1) of the ITAA 1936. The Dividend Component will be paid out of Woolworths' profits. Accordingly, resident Woolworths shareholders must include the amount of the Dividend Component in their assessable income.

### **Gross-up and tax offset**

61. The Dividend Component will be fully franked. Under the Australian imputation system, where a franked distribution is paid by an Australian resident company to a resident shareholder, the assessable income of the resident shareholder must also include the franking credit attached to the dividend under Division 207. The inclusion of both the dividend and the associated franking credit in a shareholder's assessable income is known as 'grossing-up' the dividend.

62. Accordingly, the franking credits attached to the Dividend Component of the Distribution made by Woolworths to its resident shareholders must be included in their assessable income. Woolworths shareholders are entitled to receive a tax offset equal to the franking credit which has been included in their assessable income.

63. Division 207 contains different rules for gross-up and tax offset, depending on whether the recipient receives the franked distribution directly or indirectly from the company.

### **Qualified person**

64. Subdivision 207-F of the ITAA 1997 can operate to cancel the effect of the gross-up and tax offset rules if a distribution is made to an entity in certain circumstances, including where the entity is not a 'qualified person' in relation to the dividend for the purposes of Division 1A of former Part IIIA of the ITAA 1936.

65. An entity is a 'qualified person' for the purposes of Division 1A of former Part IIIAA of the ITAA 1936 if, generally speaking, they satisfy the holding period rule and the related payments rule (former section 160APHO of the ITAA 1936).

66. The holding period rule applies where neither the taxpayer nor an associate has made, is under an obligation to make, or is likely to make, a related payment in respect of the dividend, and requires the shares to have been continuously held 'at risk' for at least 45 days or 90 days (depending on whether the shares are preference shares) during the 'primary qualification period' (former paragraph 160APHO(1)(a) of the ITAA 1936).

67. The related payments rule applies where the taxpayer or an associate has made, is under an obligation to make, or is likely to make, a related payment in respect of the dividend, and requires the shares to have been continuously held 'at risk' for at least 45 days or 90 days (depending on whether the shares are preference shares) during the 'secondary qualification period' (former paragraph 160APHO(1)(b) and former section 160APHN of the ITAA 1936).

68. A Woolworths shareholder who received the Dividend Component of the Distribution will be capable of being a 'qualified person' if:

- they have held their Woolworths shares at risk for a period of at least 45 days (excluding the day of acquisition of the shares, the day (if any) on which the shares were disposed of, and any days on which the shareholder has materially diminished risks of loss or opportunities for gain in respect of the shares), in the primary qualification period
  - (a) beginning on the day after the day on which the shareholder acquired the Woolworths shares; and
  - (b) ending on the 45th day after the day on which the shares became *ex dividend* in relation to the entitlement to receive the Dividend Component of the Distribution
 (former subsections 160APHO(2) and 160APHO(3) and former sections 160APHM, 160APHJ and 160APHE of the ITAA 1936);

and

- neither the Woolworths shareholder, nor an associate of the Woolworths shareholder, have made, is under an obligation to make, or are likely to make, a related payment in respect of the Dividend Component of the Distribution (former paragraph 160APHO(1)(a) and former section 160APHN of the ITAA 1936).

69. If either or both of the above two requirements are not met by a Woolworths shareholder, that shareholder will not be a 'qualified person' for the purposes of Division 1A of former Part IIIAA of the ITAA 1936. Subdivision 207-F of the ITAA 1997 will create the appropriate adjustment to cancel the effect of the gross-up and tax offset rules for such a Woolworths shareholder in relation to the Dividend Component of the Distribution.

## **Refundable tax offset**

70. The franking credit tax offset that a resident Woolworths shareholder is entitled to under Division 207 is subject to the refundable tax offset rules in Division 67, unless it is specifically excluded under section 67-25.

71. The refundable tax offset rules in Division 67 ensure that certain taxpayers are entitled to a refund, once their available tax offsets have been utilised to reduce their income tax liability to nil.

72. Entities excluded by Division 67 include corporate tax entities (such as companies, corporate limited partnerships, corporate unit trusts and public trading trusts), unless they satisfy the requisite conditions set out in subsections 67-25(1C) or 67-25(1D).

## **Imputation benefits – streaming**

73. Subdivision 204-D broadly enables the Commissioner to make a determination where distributions with attached imputation benefits are streamed to a member of a corporate tax entity in preference to another member.

74. Section 204-30 prescribes the circumstances that are required to exist before the Commissioner may make such a determination. Section 204-30 applies where an entity 'streams' the payment of distributions in such a way that:

- an 'imputation benefit' is, or apart from section 204-30 would be, received by a member of the entity as a result of the distribution or distributions (paragraph 204-30(1)(a));
- the member (favoured member) would derive a greater benefit from franking credits than another member of the entity (paragraph 204-30(1)(b)); and
- the other member (disadvantaged member) of the entity will receive lesser imputation benefits, or will not receive any imputation benefits, whether or not the other member receives other benefits (paragraph 204-30(1)(c)).

75. 'Streaming' is not defined for the purposes of Subdivision 204-D. However, the Commissioner has understood it to refer to a company 'selectively directing the flow of franked distributions to those members who can most benefit from the imputation credits' (paragraph 3.28 of the Explanatory Memorandum to the New Business Tax System (Imputation) Bill 2002).

76. The fully franked Dividend Component will be received by all Woolworths shareholders listed on the share register as at the Record Date, regardless of their tax attributes or their individual tax position.

77. The Commissioner has considered the information provided and concluded that the requisite element of streaming does not exist in relation to the Dividend Component to be paid by Woolworths to its shareholders. Accordingly, based on the information provided, the Commissioner will not make a determination under paragraph 204-30(3)(c) to deny imputation benefits to Woolworths shareholders.

### **Section 177EA of the ITAA 1936**

78. Section 177EA of the ITAA 1936 is a general anti-avoidance provision that applies where one of the purposes (other than an incidental purpose) of the scheme is to obtain an imputation benefit. In these circumstances, subsection 177EA(5) of the ITAA 1936 enables the Commissioner to make a determination with the effect of either:

- imposing franking debits or exempting debits on the distributing entity's franking account; or
- denying the imputation benefit on the distribution that flowed directly or indirectly to the relevant taxpayer.

79. Having regard to the features of the present scheme, the Commissioner will not make a determination under paragraph 177EA(5)(b) of the ITAA 1936 that would deny the imputation benefits attached to the Dividend Component of the Distribution to Woolworths shareholders.

### **Capital Reduction Amount is not ordinary income or a dividend**

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

81. In *Scott v. Federal Commissioner of Taxation* (1966) 117 CLR 514; (1966) 10 AITR 367; (1966) 14 ATD 286, Windeyer J stated that:

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

82. In *GP International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation* (1990) 170 CLR 124; 90 ATC 4413; (1990) 21 ATR 1, the High Court unanimously stated that the following factors were important in determining the nature of a receipt:

To determine whether a receipt is of an income or 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.

83. The Capital Reduction Amount is attributable to the share capital of Woolworths. It does not have the quality of income in the hands of Woolworths' shareholders and is not ordinary income under section 6-5.

84. Subsection 44(1) of the ITAA 1936 includes in a shareholder's assessable income any dividends, as defined in subsection 6(1) of the ITAA 1936, paid to the shareholders out of profits derived by the company from any source (if the shareholder is a resident of Australia) and from an Australian source (if the shareholder is a non-resident).

85. The term 'dividend' in subsection 6(1) of the ITAA 1936 includes any distribution made by a company to any of its shareholders. However, paragraph (d) of the definition of 'dividend' in subsection 6(1) excludes a distribution from the meaning of 'dividend' if the amount of a distribution is debited against an amount standing to the credit of the company's share capital account.

86. The term 'share capital account' is defined in section 975-300 as an account which the company keeps of its share capital, or any other account created on or after 1 July 1998 where the first amount credited to the account was an amount of share capital.

87. Subsection 975-300(3) states that an account is not a share capital account if it is tainted.

88. The Capital Reduction Amount was debited against an amount standing to the credit of Woolworths' share capital account. As the share capital account of Woolworths is not tainted within the meaning of Division 197 of the ITAA 1997, paragraph (d) of the definition of 'dividend' in subsection 6(1) of the ITAA 1936 applies.

89. Accordingly the Capital Reduction Amount, being debited to the share capital account, is not a 'dividend' as defined in subsection 6(1) of the ITAA 1936. Therefore, it will not be included in the assessable income of Woolworths' shareholders under subsection 44(1) of the ITAA 1936.

**The application of sections 45A, 45B and 45C of the ITAA 1936 to the Capital Reduction Amount*****Section 45A – streaming of dividends and capital benefits***

90. Section 45A of the ITAA 1936 applies in circumstances where capital benefits are streamed to certain shareholders (the advantaged shareholders) who derive a greater benefit from the capital benefits than other shareholders, and it is reasonable to assume that the other shareholders (the disadvantaged shareholders) have received or will receive dividends.

91. Although this scheme involves the 'provision of a capital benefit' (as defined in paragraph 45A(3)(b) of the ITAA 1936) to Woolworths shareholders, the circumstances of the scheme indicate that there will be no streaming of capital benefits to some shareholders and dividends to other shareholders. All Woolworths shareholders as at the Record Date will receive the Capital Reduction Amount and the Dividend Component.

92. Accordingly, the Commissioner will not make a determination under subsection 45A(2) of the ITAA 1936 that section 45C of the ITAA 1936 applies to any part of the Capital Reduction Amount.

***Section 45B – schemes to provide capital benefits***

93. Section 45B of the ITAA 1936 is an anti-avoidance provision which, if applicable, allows the Commissioner to make a determination that all or part of a return of capital to be received by shareholders is to be treated as an unfranked dividend.

94. The purpose of section 45B of the ITAA 1936 is to ensure that the relevant amounts distributed to shareholders are treated as dividends for tax purposes if certain payments, allocations and distributions are made in substitution for dividends. Specifically, the provision applies where:

- (a) there is a scheme under which a person is provided with a demerger benefit or a capital benefit by a company (paragraph 45B(2)(a));
- (b) under the scheme a taxpayer, who may or may not be the person provided with the demerger benefit or the capital benefit, obtains a tax benefit (paragraph 45B(2)(b)); and
- (c) having regard to the relevant circumstances of the scheme, it would be concluded that the person, or one of the persons, who entered into or carried out the scheme or any part of the scheme did so for a purpose, (other than an incidental purpose) of enabling a taxpayer to obtain a tax benefit (paragraph 45B(2)(c)).

95. The arrangement involving the *in specie* distribution to Woolworths shareholders of units in the SCA Property Management Trust and the SCA Property Retail Trust constitutes a scheme for the purposes of section 45B of the ITAA 1936.

96. The phrase 'provided with a demerger benefit' is defined in subsection 45B(4) of the ITAA 1936. It must be provided 'in relation to a demerger'. As the scheme to which this Ruling applies is not a demerger as defined in section 125-70, there is no person who was provided with a demerger benefit. The references in section 45B of the ITAA 1936 to a demerger benefit are not applicable to this scheme.

97. The phrase 'provided with a capital benefit' is defined in subsection 45B(5) of the ITAA 1936 and includes the provision of ownership interests in a company to a person, or the distribution to a person of share capital.

98. The *in specie* distribution of units in the SCA Property Management Trust and the SCA Property Retail Trust, which is partly effected by the distribution to Woolworths shareholders of share capital (through the Capital Reduction Amount), means that Woolworths shareholders will be taken to have been provided with a capital benefit.

99. For the purposes of paragraph 45B(2)(c) of the ITAA 1936, the Commissioner is required to consider the relevant circumstances (as outlined in subsection 45B(8) of the ITAA 1936) of the scheme to determine whether it could be concluded that entities that entered into or carried out the scheme or any part of the scheme did so for a purpose (other than an incidental purpose) of enabling the relevant taxpayer (Woolworths shareholders) to obtain a tax benefit.

100. On the basis of the information surrounding the *in specie* distribution of units in the SCA Property Management Trust and the SCA Property Retail Trust as described in the Class Ruling application and further information, the Commissioner has formed the view that the capital benefits provided to Woolworths shareholders have not been made for a more than incidental purpose of obtaining a tax benefit.

101. Accordingly, the Commissioner will not make a determination under paragraph 45B(3)(b) of the ITAA 1936 that section 45C of the ITAA 1936 applies to the whole, or any part, of the capital benefit provided to Woolworths shareholders under the scheme.

**CGT consequences*****CGT event G1 – section 104-135***

102. CGT event G1 (section 104-135 of the ITAA 1997) happens when:

- a company makes a payment to a shareholder in respect of a share they own in the company;
- some or all of the payment is not a dividend (as defined in subsection 995-1(1) of the ITAA 1997) or an amount that is taken to be a dividend under section 47 of the ITAA 1936; and
- the payment is not included in the shareholder's assessable income.

103. The Capital Reduction Amount will not be a dividend. Accordingly, CGT event G1 will happen when Woolworths makes the Distribution to a Woolworths shareholder in respect of a Woolworths share that they own at the Record Date and continue to own at the date the Distribution is made.

104. If the Capital Reduction Amount (which equates to 14.598558 cents in respect of each Woolworths share for which a shareholder receives SCA Property Group stapled securities) is not more than the cost base of the Woolworths share at the date the Distribution is made, the cost base and reduced cost base of the share will be reduced (but not below nil) by the amount of the Capital Reduction Amount (subsection 104-135(4)).

105. A Woolworths shareholder will make a capital gain if the amount of the Capital Reduction Amount (which equates to 14.598558 cents in respect of each Woolworths share for which a shareholder receives SCA Property Group stapled securities) is more than the cost base of the Woolworths share (subsection 104-135(3)). The amount of the capital gain is equal to that excess.

106. If a Woolworths shareholder makes a capital gain from CGT event G1 happening, the cost base and reduced cost base of the Woolworths share are reduced to nil. A Woolworths shareholder cannot make a capital loss from CGT event G1 happening (subsection 104-135(3)).

107. If the Woolworths share to which the proposed return of capital relates was acquired by a resident Woolworths shareholder at least 12 months before the payment, a capital gain from CGT event G1 happening may qualify as a discount capital gain under subsection 115-25(1), provided the other conditions in Subdivision 115-A are satisfied.

**CGT event C2 – section 104-25**

108. The right to receive the Distribution is one of the rights inherent in a Woolworths share at the Record Date. If, after the Record Date but before the date the Distribution is made, a Woolworths shareholder ceases to own some, or all, of their shares in Woolworths, the right to receive the Distribution in respect of each of the shares disposed of will be retained by the shareholder and is considered to be a separate CGT asset.

109. CGT event C2 (section 104-25) will happen when the Distribution is made. The right to receive the Distribution (being an intangible CGT asset) will end by the right being discharged or satisfied when the Distribution is made. The Distribution is made by an *in specie* distribution of one unit in SCA Property Management Trust and one unit in SCA Property Retail Trust (forming one SCA Property Group stapled security) for every five Woolworths shares held as at the Record Date for the Distribution.

110. A Woolworths shareholder will make a capital gain if the capital proceeds from the ending of the right are more than its cost base. The capital gain is equal to the amount of the excess. A Woolworths shareholder will make a capital loss if the capital proceeds from the ending of the right are less than the reduced cost base of the right. The capital loss is equal to the amount of the difference (subsection 104-25(3)).

111. However, any capital gain made by a resident Woolworths shareholder as a result of CGT event C2 happening is reduced under the anti-overlap rule in section 118-20 of the ITAA 1997 by the amount of the Dividend Component of the Distribution. The Dividend Component is included in the assessable income of a resident Woolworths shareholder under section 44 of the ITAA 1936.

112. In working out the capital gain or capital loss made when CGT event C2 happens, the capital proceeds will be the amount of the Distribution (\$1.4397 for each SCA Property Group stapled security) (subsection 116-20(1)).

113. The cost base of a Woolworths shareholder's right to receive the Distribution is worked out under Division 110 (modified by Division 112). The cost base of the right does not include the cost base or reduced cost base of the share previously owned by the Woolworths shareholder that has been applied in working out a capital gain or capital loss made when a CGT event happened to the share – for example, when the Woolworths shareholder disposed of the share after the Record Date.

114. Therefore, if the full cost base or reduced cost base of a Woolworths share has been previously applied in working out a capital gain or capital loss made when a CGT event happened to that share, the right to receive the Distribution is likely to have a nil cost base.

115. As the right to receive the Distribution was inherent in the Woolworths share during the time it was owned, the right is considered to have been acquired at the time when the share was acquired (section 109-5).

116. Accordingly, if the Woolworths share was acquired by the resident Woolworths shareholder at least 12 months before the Distribution was made, a capital gain from CGT event C2 happening on the ending of the corresponding right may qualify as a discount capital gain under subsection 115-25(1), provided the other conditions in Subdivision 115-A are satisfied.

### ***Foreign resident shareholders***

117. Under subsection 855-10(1), an entity disregards a capital gain or capital loss from a CGT event if they are a foreign resident, or the trustee of a foreign trust for CGT purposes, just before the CGT event happens, and the CGT event happens in relation to a CGT asset that is not 'taxable Australian property'.

118. The term 'taxable Australian property' is defined in the table in section 855-15. The table sets out these five categories of CGT assets:

Item 1	taxable Australian real property;
Item 2	an indirect Australian real property interest not covered by item 5;
Item 3	a CGT asset used at any time in carrying on a business through a permanent establishment in Australia and which is not covered by item 1, 2 or 5;
Item 4	an option or right to acquire a CGT asset covered by item 1, 2 or 3, and
Item 5	a CGT asset that is covered by subsection 104-165(3) of the ITAA 1997 (choosing to disregard a capital gain or capital loss on ceasing to be an Australian resident).

119. As the foreign residents to whom this Ruling applies are foreign residents whose shares in Woolworths, or right to receive the Distribution, are not taxable Australian property, they will:

- disregard any capital gain made when CGT event G1 happens; or
- disregard any capital gain or capital loss made when CGT event C2 happens.

## Appendix 2 – Detailed contents list

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

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### *Previous draft:*

Not previously issued as a draft

### *Related Rulings/Determinations:*

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### *Subject references:*

- capital benefit
- capital gains
- capital return
- cost base adjustments
- distributions
- dividend
- dividend imputation
- dividend income
- dividend streaming
- dividend withholding
- foreign residents
- frankable dividends
- franked dividends
- franking credits
- holding period rule
- imputation system
- non-resident dividend withholding tax
- qualified person
- related payment rule
- return of capital on shares
- share capital
- stapled securities
- trusts

### *Legislative references:*

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