



Class Ruling

Income tax: Westfield Group Plans – Westfield Corporation employees

Contents	Para
LEGALLY BINDING SECTION:	
What this Ruling is about	1
Date of effect	7
Scheme	8
Ruling	28
NOT LEGALLY BINDING SECTION:	
Appendix 1:	
Explanation	38
Appendix 2:	
Detailed contents list	61

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 provisions 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 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997)
- section 83A-110 of the ITAA 1997
- section 83A-120 of the ITAA 1997
- section 130-80 of the ITAA 1997, and
- subsection 995-1(1) of the ITAA 1997.

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

Class of entities

3. The class of entities to which this Ruling applies is individuals who:

- are residents of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936*, including by virtue of the operation of any Australian Tax Treaties between Australia and any other country on 30 June 2014 (Implementation Date)
- are not temporary residents as defined in subsection 995-1(1) on the Implementation Date
- hold one or more of Performance Rights, Indeterminate Performance Rights, an Award under the Executive Deferred Award Plan (EDAP) or an Award under the Partnership Incentive Plans (PIPs) (the EDAP and PIPs together are the Cash Awards) on the Implementation Date (collectively, WDC Awards)
- were employees of Westfield Limited (WL)(now Scentre Limited), a wholly owned subsidiary of Westfield Holdings Limited (WHL)(now Scentre Group Limited), at the time the WDC Awards were granted
- are employees of Westfield Corporation Limited (WCL) or a 100% subsidiary of WCL following the implementation of the Proposal
- have not qualified for a payout in relation to their Cash Awards, and
- are not subject to the taxation of financial arrangements rules in Division 230.

(Note: Division 230 will generally not apply to individuals unless they 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 Participant.

Qualifications

4. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.

5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 8 to 27 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.

Date of effect

7. This Ruling applies from 1 July 2013 to 30 June 2020. 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

8. 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 21 May 2014
- Westfield Group Securityholder Booklet dated 14 April 2014 and Westfield Group Supplementary Securityholder Booklet dated 9 May 2014
- Westfield Performance Rights Plan dated 10 December 2010 as amended on 8 April 2014 and Westfield Performance Rights Plan dated March 2011 as amended on 8 April 2014 (collectively referred to as the PRPs)
- Westfield Performance Rights Plan dated 1 June 2008 as amended on 15 May 2012 and 8 April 2014 (Indeterminate PRP)
- Westfield 2011 EDAP – AU & NZ dated March 2010 as amended on 8 April 2014
- Westfield 2010 PIP – AU & NZ dated March 2010 as amended on 8 April 2014 and Westfield 2011 PIP – AU & NZ dated March 2010 as amended on 8 April 2014 (collectively referred to as PIPs), and
- Correspondence from the Applicant dated 26 June 2014 and 13 August 2014.

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

9. The Westfield Group was formed in July 2004 by the stapling of the Australian Securities Exchange (ASX) listed securities of WHL, a public company, to Westfield Trust (WT) and Westfield America Trust (WAT), both public unit trusts, and collectively WHL, WT and WAT are referred to as the WDC Group. The stapled securities were quoted and traded together on the ASX under the code 'WDC' (WDC Securities).

10. The Westfield Retail Trust (WRT) was established in December 2010. WRT is an ASX listed stapled property trust. WRT comprises two public unit trusts, WRT1 and WRT2. The securities of WRT1 and WRT2 were quoted and traded together on the ASX under the code 'WRT' (WRT Securities).

11. WHL has issued rights (for nil consideration) to acquire WDC Securities to Participants which are exercisable for nil consideration under the PRPs. These rights were issued before 1 January 2012 and are not cash settleable (Performance Rights). There are no performance hurdles applying to the Performance Rights.

12. WHL has also issued rights on or after 1 January 2012 (for nil consideration) that were able to be settled through the transfer or issue of WDC Securities or the payment of cash under the Indeterminate PRP (Indeterminate Performance Rights).

13. Broadly, the PRPs and the Indeterminate PRP provide for the issue of rights with a 3 to 5 year vesting period. During the vesting period, a Participant's entitlement to the rights lapses if the Participant ceases employment with the WDC Group, and additionally for Indeterminate Performance Rights, if performance hurdles are not met.

14. The EDAP is a cash bonus plan administered by WHL. The quantum of the cash award was determined by reference to the market value of WDC Securities on the relevant payment date.

15. The PIPs are cash bonus plans administered by WHL. The quantum of the cash award was determined by reference to the market value of WDC Securities on the relevant payment date.

16. The EDAP and PIPs are cash based plans with similar vesting and forfeiture provisions.

Proposal

17. On 4 December 2013, the WDC Group and WRT jointly announced a proposal to restructure the WDC Group and merge the group's Australian and New Zealand assets with WRT to create two separate ASX listed stapled groups:

- Westfield Corporation (WC), which will own and operate shopping centres in the US, UK and Europe, and
- Scentre Group (SG), which will own and operate shopping centres in Australia and New Zealand.

This restructure is hereinafter referred to as the Proposal.

18. The Proposal was approved by WDC Group Securityholders on 29 May 2014 and WRT Securityholders on 20 June 2014 and involved three main steps:

- Step 1 Restructure
- Step 2 De-stapling, and

- Step 3 Merger.

19. Just after the implementation of the Proposal WDC Securityholders will own 1 stapled security in WC and 1.246 stapled securities in SG for every 1 WDC Group stapled security they owned just before the Implementation Date.

Impact of the Proposal on Performance Rights

20. Before the implementation of the Proposal the terms of the PRPs were varied so that on vesting the Performance Rights are settled with WC Securities (PRP Amendments). The Applicant has advised that:

- the number of Performance Rights was adjusted to ensure that Participants were not advantaged or disadvantaged as a result of the Proposal in a way that was inconsistent with the impact of the Proposal on WDC Securityholders, and
- the vesting conditions continue to apply to the Performance Rights as varied.

Following implementation of the Proposal the obligation to provide WC Securities on exercise of a Participant's Performance Rights was novated from WHL to WCL (the PRP Novation).

Impact of the Proposal on Indeterminate Performance Rights

21. Before the implementation of the Proposal the terms of the Indeterminate PRP were varied so that on vesting the Indeterminate Performance Rights are settled with WC Securities or satisfied with a cash payment determined by reference to the market value of WC Securities (Indeterminate PRP Amendments). The Applicant has advised that:

- the number of Indeterminate Performance Rights was adjusted to ensure that Participants were not advantaged or disadvantaged as a result of the Proposal in a way that was inconsistent with the impact of the Proposal on WDC Securityholders, and
- the minimum employment and disposal restrictions continue to apply to the Indeterminate Performance Rights. The performance hurdles that applied before the Proposal have already been tested, and therefore have not been replicated or have been waived.

Following implementation of the Proposal the obligation to provide WC Securities or the payment of cash on exercise of a Participant's Indeterminate Performance Rights was novated from WHL to WCL (the Indeterminate PRP Novation).

Impact of the Proposal on the Cash Awards

22. Before the implementation of the Proposal the terms of the Cash Awards Plans were varied so that on vesting of a Cash Award, the cash amount will be determined by reference to the market value of WC Securities (Cash Awards Amendments). The Applicant has advised that:

- the cash payment that a Participant will receive following the Cash Awards Novation will be adjusted to ensure that Participants were not advantaged or disadvantaged as a result of the Proposal in a way that was inconsistent with the impact of the Proposal on WDC Securityholders, and
- the minimum employment and disposal restrictions continue to apply to the Cash Awards. The performance hurdles that applied before the Proposal have already been tested, and therefore have not been replicated or have been waived.

Following implementation of the Proposal the obligation to provide the Cash Awards was novated from WHL to WCL (the Cash Awards Novation).

Other

23. The Applicant has advised that prior to and subsequent to the PRP Amendments and implementation of the Proposal, each Performance Right:

- is an ESS interest for the purposes of Division 83A, and
- is subject to a real risk of forfeiture, such that the ESS deferred taxing points in section 83A-120 apply as all of the other conditions in section 83A-105 are satisfied.

24. The Applicant has advised that prior to and subsequent to the Indeterminate PRP Amendments and implementation of the Proposal, each Indeterminate Performance Right:

- is capable of becoming an ESS interest for the purposes of Division 83A, and
- is an indeterminate right for the purposes of section 83A-340 and for which the taxing points are determined under section 83A-120 when satisfied with WDC Securities (prior to) or WC Securities (subsequent).

25. On the Implementation Date each Participant had their employment transferred to WCL (or a wholly owned subsidiary of WCL), and the PRP Novation, Indeterminate PRP Novation and Cash Awards Novation occurred.

26. In this Ruling a reference to Restructure refers to the implementation of the Proposal and the PRP Amendments, Indeterminate PRP Amendments, or the Cash Award Amendments as applicable.

27. The Applicant has advised that at the time of the Restructure Participants acquired their replacement ESS interests in WC, no Participant held a beneficial interest in more than 5% of the securities in WC and were not in a position to cast or control the casting of more than 5% of the maximum number of votes that might be cast at a general meeting of WC.

Ruling

Performance Rights

28. The Restructure and the PRP Novation did not give rise to an ESS deferred taxing point for the purposes of section 83A-120.

29. The Restructure and the PRP Novation did not result in a capital gain or capital loss arising for Participants in respect of their Performance Rights.

30. If a subsequent ESS deferred taxing point occurs to a Performance Right, the market value of the Performance Right (as determined by reference to WC Securities) (less any cost base) is included in the assessable income of a Participant at that time (section 83A-110).

Indeterminate Performance Rights

31. The Restructure and the Indeterminate PRP Novation did not give rise to an ESS deferred taxing point for the purposes of section 83A-120 in respect of Indeterminate Performance Rights that are subsequently settled with WC Securities.

32. The Restructure and the Indeterminate PRP Novation did not result in a capital gain or capital loss arising for Participants who hold Indeterminate Performance Rights that are subsequently settled with WC Securities or satisfied in cash.

33. If a subsequent ESS deferred taxing point occurs to an Indeterminate Performance Right that is settled with WC Securities, the market value of the Indeterminate Performance Right (as determined by reference to WC Securities) (less any cost base) is included in the assessable income of a Participant at that time (section 83A-110).

34. Where an Indeterminate Performance Right is satisfied solely in cash, the cash payment will be included in the assessable income of a Participant as salary and wages in the year in which it is received under section 6-5. The Restructure and the Indeterminate PRP Novation did not result in these Participants deriving assessable income pursuant to section 6-5 at the time of the Restructure.

Cash Awards

35. The Restructure and the Cash Awards Novation did not result in Participants deriving ordinary income that is assessable under section 6-5 or the realisation of a capital gain or loss in respect of their Cash Awards.

36. The amount of the cash payment received on vesting of the Cash Awards will be included in the Participant's assessable income as salary and wages in the income year in which it is received under section 6-5.

Reportable fringe benefits amount

37. A 'reportable fringe benefits amount' (as defined in subsection 995-1(1)) did not arise for a Participant as a result of the Restructure and the PRP Novation, the Indeterminate PRP Novation and the Cash Awards Novation as applicable.

Commissioner of Taxation

3 September 2014

Appendix 1 – Explanation

❗ *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.*

Performance Rights

38. A stapled security is treated in the same way as a share for the purposes of Division 83A under section 83A-335, provided that at least one of the elements in the stapled security is a share in a company. Rights to acquire such stapled securities are treated as rights to acquire shares.

No ESS deferred taxing point – Restructure

39. Under subsection 83A-110(1), an amount will be included in the assessable income of a Participant in respect of their ESS interest in the income year in which the ESS deferred taxing point occurs.

40. The ESS deferred taxing point for a right is worked out under section 83A-120.

41. Section 83A-120 provides that the ESS deferred taxing point for the Performance Rights will occur at the earliest of the following times:

- when the Performance Rights have not been exercised, there is no real risk of forfeiting the Performance Rights, and the scheme no longer genuinely restricts disposal of the Performance Rights (subsection 83A-120(4))
- when the Participant ceases employment in respect of which they acquired the Performance Rights within the meaning of section 83A-330 (subsection 83A-120(5))
- seven years after the Participant acquired the Performance Rights (subsection 83A-120(6)), and
- when there is no real risk of forfeiting the Performance Rights, or underlying securities and the scheme no longer genuinely restricts exercise of the Performance Rights or disposal of the resulting securities (subsection 83A-120(7)).

42. However, if the Participant disposes of the Performance Rights (or the securities acquired on exercise of the Performance Rights) within 30 days of the time which would otherwise be the ESS deferred taxing point, the ESS deferred taxing point will instead be the time of disposal (subsection 83A-120(3)).

43. Subject to section 83A-130, a deferred taxing point will occur as a result of the Restructure and the PRP Novation as there is a disposal of the Performance Rights and a cessation of the Participant's employment.

44. Section 83A-130 relevantly provides that where as a result of a restructure (including the structure of the ownership) of a company (the old company):

- an employee stops holding ESS interests in the old company that were acquired under an employee share scheme
- the employee acquires replacement ESS interests in a new company that can reasonably be regarded as matching the old ESS interests
- the replacement ESS interests relate to ordinary shares
- the employee is employed by the new company, or a subsidiary of the new company, or a holding company of the new company, or a subsidiary of a holding company of the new company at or about the time of the restructure, and
- the employee at the time they acquire the replacement ESS interests:
 - does not hold a beneficial interest in more than 5% of the shares in the new company, or
 - is not in a position to cast or control the casting of more than 5% of the maximum number of votes that might be cast at a general meeting of the new company,

the replacement ESS interests will, for the purposes of Division 83A, be treated as a continuation of the employee's ESS interests in the old company and their employment with the new company will be regarded as a continuation of the employment that may otherwise have ceased under 83A-330.

45. The Commissioner accepts that the Restructure and the PRP Novation is a restructure for the purposes of Division 83A and that as a result of the restructure a Participant:

- stopped holding ESS interests (WDC Securities) in an old company that were acquired under an employee share scheme
- acquired replacement ESS interests (WC Securities) in a new company:
 - that can reasonably be regarded as matching their ESS interests in WDC Group, and
 - that relate to ordinary shares, and
- their employment with WCL or a subsidiary of WCL on the Implementation Date will be regarded as a continuation of their employment with WL.

46. Accordingly, as Participants are employed by WCL after the Restructure and no Participant will have a beneficial interest in more than 5% of the shares in the new company or be in a position to cast or control the casting of more than 5% of the maximum number of votes that might be cast at a general meeting of the new company:

- the Participant's replacement rights in WC are, for the purposes of Division 83A, treated as a continuation of their rights in the WDC Group, and
- their employment will be continuing,

there is no ESS deferred taxing point under section 83A-120.

CGT

47. Subsection 130-80(1) will apply to disregard any capital gain or capital loss arising as a result of the Restructure and the PRP Novation as each of the requirements in the provision are satisfied. Specifically:

- only CGT events E4, G1 and K8 are excluded from the operation of section 130-80, but none of these events are relevant for present purposes, and
- any CGT event would happen before an ESS deferred taxing point occurs.

48. Therefore, no capital gain or capital loss will arise for Participants as a result of the Restructure and the PRP Novation.

Subsequent ESS deferred taxing point

49. The Performance Rights, following implementation of the Proposal, will wholly relate to WC Securities. As such, the market value of a Performance Right as determined by reference to the WC Securities at the time of the ESS deferred taxing point (reduced by any cost base) will be included in the Participant's assessable income under section 83A-110.

Indeterminate Performance Rights

No ESS deferred taxing point for Indeterminate Rights settled with WC Securities

50. For similar reasons as outlined in paragraphs 39 to 46 of this Ruling, the Restructure and the Indeterminate PRP Novation will not give rise to a deferred taxing point for Participants where the Indeterminate Rights are settled with WC Securities as the Restructure and the Indeterminate PRP Novation satisfies the conditions in section 83A-130.

Assessable Income

51. The Restructure and the Indeterminate PRP Novation does not result in a Participant whose Indeterminate Performance Rights are settled wholly or partially with cash deriving assessable income pursuant to section 6-5 at the time of the Restructure.

CGT

52. For similar reasons as outlined in paragraphs 47 to 48 of this Ruling, no capital gain or capital loss will arise as a result of the Restructure and the Indeterminate PRP Novation for Indeterminate Performance Rights to the extent that they are settled with WC Securities.

Subsequent ESS deferred taxing point

53. If a subsequent ESS deferred taxing point arises for the Indeterminate Performance Right, then under section 83A-110, the market value of the Indeterminate Performance Right (as determined by reference to the WC Securities) at the time of the ESS deferred taxing point (reduced by any cost base) will be included in the Participant's assessable income.

Indeterminate Performance Rights satisfied wholly or partially with cash

54. Where a Participant's Indeterminate Performance Rights are satisfied wholly or partially by a cash payment with no WC Securities provided, Division 83A will have no application (section 83A-340) and the payment will be included in a Participant's assessable income under section 6-5.

CGT

55. To the extent that an Indeterminate Performance Right is settled by a cash payment it is merely a right to future payment of remuneration. Any cash payment will be included in assessable income in the income year in which it is received in accordance with section 6-5. Accordingly, no capital gain or capital loss arises for a Participant as a result of the Restructure and the Indeterminate PRP Novation for Indeterminate Performance Rights to the extent settled with cash.

Cash Awards

56. The Restructure and the Cash Awards Novation did not result in Participants realising a capital gain or capital loss in respect of their Cash Awards for similar reasons as those outlined in paragraph 55 of this Ruling. Furthermore, the Restructure and the Cash Awards Novation did not result in Participants deriving assessable income pursuant to section 6-5.

57. The quantum of the cash payment received on vesting of the Cash Awards will be included in the Participant's assessable income in the income year in which it is received pursuant to section 6-5.

Reportable fringe benefits amount

58. For Performance Rights and Indeterminate Performance Rights that are settled with WC Securities no reportable fringe benefit amount arises for Participants because paragraph (h) of the definition of 'fringe benefit' in section 136 of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) provides that an ESS interest to which Subdivision 83A-C applies is not a fringe benefit.

59. Paragraph (f) of the definition of 'fringe benefit' in section 136 of the FBTAA excludes a payment of salary and wages. Accordingly, for Indeterminate Performance Rights that are wholly satisfied in cash, and for the Cash Awards, the payment of cash is exempt from FBT as it is a payment of salary or wages.

60. Therefore, the Restructure and the PRP Novation, the Indeterminate PRP Novation and the Cash Awards Novation as applicable did not result in a 'reportable fringe benefit amount' (as defined in subsection 995-1(1)) arising for a Participant.

Appendix 2 – Detailed contents list

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

	Paragraph
What this Ruling is about	1
Relevant provision(s)	2
Class of entities	3
Qualifications	4
Date of effect	7
Scheme	8
Proposal	17
Impact of the Proposal on Performance Rights	20
Impact of the Proposal on Indeterminate Performance Rights	21
Impact of the Proposal on the Cash Awards	22
Other	23
Ruling	28
Performance Rights	28
Indeterminate Performance Rights	31
Cash Awards	35
Reportable fringe benefits amount	37
Appendix 1 – Explanation	38
Performance Rights	38
<i>No ESS deferred taxing point – Restructure</i>	39
<i>CGT</i>	47
<i>Subsequent ESS deferred taxing point</i>	49
Indeterminate Performance Rights	50
<i>No ESS deferred taxing point for Indeterminate Rights settled with WC Securities</i>	50
<i>Assessable Income</i>	51
<i>CGT</i>	52
<i>Subsequent ESS deferred taxing point</i>	53
<i>Indeterminate Performance Rights satisfied wholly or partially with cash</i>	54
<i>CGT</i>	55
Cash Awards	56
Reportable fringe benefits amount	58
Appendix 2 – Detailed contents list	61

References

<i>Previous draft:</i>	- ITAA 1997 Subdiv 83A-C
Not previously issued as a draft	- ITAA 1997 83A-105
	- ITAA 1997 83A-110
<i>Related Rulings/Determinations:</i>	- ITAA 1997 83A-110(1)
TR 2006/10	- ITAA 1997 83A-120
	- ITAA 1997 83A-120(3)
	- ITAA 1997 83A-120(4)
<i>Subject references:</i>	- ITAA 1997 83A-120(5)
- capital gains tax	- ITAA 1997 83A-120(6)
- CGT asset	- ITAA 1997 83A-120(7)
- capital receipts	- ITAA 1997 83A-130
- employee share schemes	- ITAA 1997 83A-330
- ESS interest	- ITAA 1997 83A-335
- ESS deferred taxing point	- ITAA 1997 83A-340
- fringe benefits tax	- ITAA 1997 130-80
- income	- ITAA 1997 130-80(1)
	- ITAA 1997 Div 230
<i>Legislative references:</i>	- ITAA 1997 995-1(1)
- ITAA 1936 6(1)	- TAA 1953
- ITAA 1997 6-5	- FBTAA 1986 136
- ITAA 1997 Div 83A	

ATO references

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