



CR 2018/31 - Income tax: sale of Westfield Group stapled securities to Unibail-Rodamco SE - capital gains consequences

 This cover sheet is provided for information only. It does not form part of *CR 2018/31 - Income tax: sale of Westfield Group stapled securities to Unibail-Rodamco SE - capital gains consequences*

 This document has changed over time. This is a consolidated version of the ruling which was published on *25 July 2018*



Class Ruling

Income tax: sale of Westfield Group stapled securities to Unibail-Rodamco SE – capital gains consequences

Contents	Para
LEGALLY BINDING SECTION:	
Summary – what this Ruling is about	1
Date of effect	7
Scheme	8
Ruling	38
NOT LEGALLY BINDING SECTION:	
Appendix 1:	
<i>Explanation</i>	90
Appendix 2:	
<i>Detailed contents list</i>	95

📌 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.

[Note: *This is a consolidated version of this document. Refer to the Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]*

Summary – 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 provisions

2. The relevant provisions dealt with in this Ruling are:
- section 102-5 of the *Income Tax Assessment Act 1997* (ITAA 1997)
 - section 102-10 of the ITAA 1997
 - Division 104 of the ITAA 1997
 - section 110-25 of the ITAA 1997
 - section 110-55 of the ITAA 1997
 - subsection 112-30(1) of the ITAA 1997

- Subdivision 115-A of the ITAA 1997
- section 116-20 of the ITAA 1997
- Subdivision 124-M of the ITAA 1997
- section 802-15 of the ITAA 1997
- Division 855 of the ITAA 1997
- section 44 of the *Income Tax Assessment Act 1936* (ITAA 1936)
- section 128B of the ITAA 1936.

All legislative references in this Ruling 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 Westfield Group stapled securities who:

- participated in the scheme that is the subject of this Ruling
- were registered on the unit register of WFD Trust (WFDT), the unit register of Westfield America Trust (WAT) and the share register of Westfield Corporation Limited (WCL) on the Record Date (1 June 2018) for participation in the scheme that is the subject of this Ruling
- are not an Ineligible Foreign Holder (as defined in clause 1.1 of the WCL Scheme of Arrangement and clause 28.1 of the amended Constitution of WAT)
- are not a Minimum Holder (as defined in clause 1.1 of the WCL Scheme of Arrangement and clause 28.1 of the amended Constitution of WAT)
- do not choose to use an applicable functional currency under Subdivision 960-D
- did not hold their Westfield Group stapled securities as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)) – that is, the holders held their stapled securities on capital account
- are not subject to the taxation of financial arrangements (TOFA) rules in Division 230 in relation to gains and losses on their Westfield Group 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 an Eligible Westfield Group stapled security holder.

Qualifications

4. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling. An Eligible Westfield Group stapled security holder can choose to use the calculator at the following webpage to work out the income tax outcomes of applying this Ruling. <https://www.ato.gov.au/Calculators-and-tools/Westfield-Group---2018-Calculator-Instructions/>

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 37 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
- this Ruling may be withdrawn or modified.

Date of effect

7. This Ruling applies from 1 July 2017 to 30 June 2018. The Ruling continues to apply after 30 June 2018 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 *Public Rulings*).

Scheme

8. The following description of the scheme is based on information provided by the applicant (Greenwoods and Herbert Smith Freehills Pty Ltd).

9. The following documents, or relevant parts of them, form part of and are to be read with the description:

- Class Ruling application dated 2 February 2018
- Implementation Agreement dated 12 December 2017, as revised on 9 April 2018
- Notices of Meetings and Securityholder Booklet and Demerger Booklet dated 12 April 2018

- correspondence from the applicant.

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

The Westfield Group

10. The Westfield Group is a stapled security listed on the Australian Securities Exchange (ASX). Each stapled security consists of one share in Westfield Corporation Limited (WCL), one unit in WFD Trust (WFDT) and one unit in Westfield America Trust (WAT). As a result of the stapling, the share and units cannot be sold or dealt with separately.

11. WFDT and WAT are each a registered managed investment scheme under Chapter 5C of the *Corporations Act 2001*.

12. WCL, WFDT and WAT own interests in real estate in Europe and the United States of America.

Transfer of shares in OneMarket Limited to WCL shareholders

13. On the Implementation Date (7 June 2018), before the sale of Westfield Group stapled securities to Unibail-Rodamco SE, WCL transferred all of its shares in OneMarket Limited to its shareholders (who were all Westfield Group stapled security holders) on a pro rata basis (one share in OneMarket Limited for every 20 WCL shares), pursuant to a scheme of arrangement under Part 5.1 of the *Corporations Act 2001*. The transfer of shares in OneMarket Limited was conditional on the sale of Westfield Group stapled securities to Unibail-Rodamco SE proceeding.

14. WCL made a distribution to its shareholders on the Implementation Date, debiting the amount of the market capitalisation of OneMarket Limited shares (based on the volume weighted average price on the first ten days of trading on the ASX) to its retained profits. This equates to a distribution of 6.77 cents per WCL share. WCL will declare the entire amount of the distribution to be conduit foreign income under Division 802. The amount of the distribution was applied to acquire the shares in OneMarket Limited on behalf of WCL shareholders, to whom the shares were then transferred.

The sale

15. Unibail-Rodamco SE is a French company that owns a large portfolio of European real estate. Unibail-Rodamco SE is listed on the Euronext Paris exchange and the Euronext Amsterdam exchange.

16. On 12 December 2017, Unibail-Rodamco SE announced a proposal to acquire all of the Westfield Group stapled securities for a combination of cash and shares.

17. The sale of all of the shares in WCL was implemented pursuant to a scheme of arrangement under Part 5.1 of the *Corporations Act 2001*.

18. The sale of all of the units in WFDT and WAT was implemented (after obtaining judicial advice) by amendments to the constitution of each trust, approved by a special resolution of the unit holders of each trust, and a resolution passed at a general meeting of the unit holders under section 604 and item 7 of the table in section 611 of the *Corporations Act 2001*.

19. The sale of all of the shares in TH Newco (see paragraphs 24 and 25 of this Ruling), which relates to the sale of all of the units in WFDT, was implemented pursuant to the same scheme of arrangement under Part 5.1 of the *Corporations Act 2001* as applied to the shares in WCL.

20. On the Implementation Date (7 June 2018), the following acts and transactions happened.

21. Initially, the shares in WCL, the units in WFDT and the units in WAT were de-stapled. This meant that they could be sold or dealt with separately.

22. All of the shares in WCL were transferred to Unibail-Rodamco SE.

23. All of the units in WAT were transferred to a US company (which is a wholly owned subsidiary of Newco BI). Westfield Group stapled security holders received 0.01844 class A ordinary shares in a Dutch company (Newco BI), and US\$2.25338 of cash, in exchange for each unit they held in WAT.

24. All of the units in WFDT were transferred to TH Newco, and then all of the shares in TH Newco were transferred to Unibail-Rodamco SE.

25. Westfield Group stapled security holders received one share in TH Newco (legal title to which was held by a Third Party Nominee on behalf of all Westfield Group stapled security holders) in exchange for each unit they held in WFDT.

26. Westfield Group stapled security holders then received:

- 0.0063987 of a share in Unibail-Rodamco SE in exchange for each share they held in WCL, and 0.0120413 of a share in Unibail-Rodamco SE in exchange for each share they held in TH Newco, totalling 0.01844 of a share in Unibail-Rodamco SE
- US\$0.41662 of cash in exchange for each share they held in TH Newco.

27. The shares in Unibail-Rodamco SE and the class A ordinary shares in Newco BI were then stapled, so that they cannot be sold or dealt with separately.

28. The new stapled security consisting of one share in Unibail-Rodamco SE and one class A ordinary share in Newco BI is now trading on the Euronext Paris exchange and the Euronext Amsterdam exchange. It also trades on the ASX in the form of CHESSE Depositary Interests (CDIs), which are units of beneficial ownership in securities. In this case, 20 CDIs represent one underlying share in Unibail-Rodamco SE and one class A ordinary share in Newco BI (legal title to which is held by CHESSE Depositary Nominees Pty Ltd).

29. The total cash component of the capital proceeds for the TH Newco shares and WAT units was US\$2.67. Eligible Westfield Group stapled security holders could elect to receive the cash component either in Australian dollars, New Zealand dollars or US dollars.

Other matters

30. All of the Westfield Group stapled security holders were offered the opportunity to participate in the Sale, and the Sale was available to all Westfield Group stapled security holders on the same terms.

31. Some of the units in WFDT and some of the shares in WCL are taken to have been acquired before 20 September 1985.

32. At the time of the Sale, there was only one class of shares on issue in WCL and one class of units on issue in WFDT and WAT.

33. WCL did not have a 'significant stakeholder' or a 'common stakeholder' in relation to the scheme within the meaning of those expressions in section 124-783.

34. Paragraph 124-780(3)(f) is satisfied in respect of the sale of WCL shares to Unibail-Rodamco SE.

35. Unibail-Rodamco SE will not make a choice that WCL shareholders cannot obtain Subdivision 124-M roll-over for CGT event A1 happening in relation to the exchange of WCL shares for the purposes of subsection 124-795(4).

36. Units in WAT and WFDT, and shares in WCL, are not 'taxable Australian property' under items 1, 2 or 4 of the table in section 855-15.

37. In this Ruling, all references to Unibail-Rodamco SE shares and Newco BI shares received by a Westfield Group stapled security holder include CDIs that represent Unibail-Rodamco SE shares and Newco BI shares.

Ruling

Demerger relief is not available for the transfer of OneMarket Limited shares

38. Demerger relief (being demerger roll-over under Division 125 of the ITAA 1997 and demerger dividend treatment under subsections 44(3) and (4) of the ITAA 1936) is not available for WCL's transfer of shares in OneMarket Limited to its shareholders, as the scheme does not qualify as a 'demerger' under subsection 125-70(1) of the ITAA 1997. Specifically, it fails the nothing else requirement in paragraph 125-70(1)(c) of the ITAA 1997.

39. The amount of the distribution was debited to WCL's retained profits (being 6.77 cents per WCL share) and is a dividend as defined in subsection 6(1) of the ITAA 1936.

40. Eligible Westfield Group stapled security holders who are residents of Australia must include the dividend (being 6.77 cents per WCL share) in their assessable income under subsection 44(1) of the ITAA 1936.

41. Eligible Westfield Group stapled security holders who are non-residents will not be subject to dividend withholding tax under subsections 128B(1) and (4) of the ITAA 1936 on the dividend because the whole dividend will be conduit foreign income (section 802-15 of the ITAA 1997).

42. The shares in OneMarket Limited were acquired by an Eligible Westfield Group stapled security holder when they were transferred by WCL on the Implementation Date (event number A1 (case 1) of the table in subsection 109-5(2)).

43. The first element of the cost base and reduced cost base of each share in OneMarket Limited transferred by WCL to Eligible Westfield Group stapled security holders is \$1.354, being the amount applied by WCL on behalf of Eligible Westfield Group stapled security holders (20 multiplied by 6.77 cents) to enable them to acquire the shares in OneMarket Limited (subsection 110-25(2)).

Separate CGT assets under section 108-5

44. Each unit in WFDT and WAT, and each share in WCL, is a separate CGT asset for the purposes of section 108-5.

45. Subsection 112-30(1) will apply to apportion the expenditure incurred on acquiring a CGT asset where only part of the expenditure relates to the acquisition of that CGT asset.

46. In such a case, the first element of the cost base and reduced cost base on acquiring each CGT asset that forms part of a stapled security will be that part of the expenditure that is reasonably attributable to the acquisition of that particular CGT asset.

47. The cost base of each unit in WFDT and WAT, and each share in WCL, is worked out by:

- taking the total expenditure incurred in acquiring a Westfield Group stapled security at the time it was originally acquired that can form part of the cost base of each unit in WFDT and WAT, and each share in WCL (whether as part of the 2004 restructure that was the subject of Class Rulings CR 2004/51, CR 2004/52 and CR 2004/53, the 2011 restructure that was the subject of Class Ruling CR 2010/77, the 2014 restructure that was the subject of Class Ruling CR 2014/78, or subsequently)
- reasonably attributing the total expenditure between the WFDT unit, the WAT unit and the WCL share, as required by subsection 112-30(1) (the Commissioner accepts that one method of reasonable attribution is using the Net Tangible Asset percentage of WFDT, WAT and WCL as at the 31 December or 30 June (whichever is later) immediately before that particular Westfield Group stapled security was acquired)
- reducing the cost base and reduced cost base of each WFDT unit and WAT unit by the amount of each tax deferred distribution received before the Implementation Date, as required by CGT event E4 in section 104-70.

De-stapling of Westfield Group stapled securities

48. No CGT event in Division 104 will happen as a result of the de-stapling of shares in WCL, units in WFDT and units in WAT.

CGT event A1 happened on the disposal of WCL shares, WFDT units and WAT units

49. CGT event A1 happened when Eligible Westfield Group stapled security holders disposed of each of their WCL shares, WFDT units and WAT units (section 104-10).

50. The time of CGT event A1 is on the Implementation Date (paragraph 104-10(3)(b)).

51. An Eligible Westfield Group stapled security holder made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of a WCL share, WFDT unit or WAT unit exceeded the cost base of that share or unit (subsection 104-10(4)).

52. An Eligible Westfield Group stapled security holder made a capital loss from CGT event A1 happening if the capital proceeds from the disposal of a WCL share, WFDT unit or WAT unit were less than the reduced cost base of that share or unit (subsection 104-10(4)).

53. The capital proceeds from CGT event A1 happening to a WCL share is the market value of the 0.0063987 of a share in Unibail-Rodamco SE received in respect of the disposal of that WCL share (subsection 116-20(1)). The market value of a share in Unibail-Rodamco SE is worked out as at the time of CGT event A1, which is on the Implementation Date.

54. The capital proceeds from CGT event A1 happening to a WAT unit is the total of US\$2.25338 and the market value of the 0.01844 class A ordinary shares in Newco BI received in respect of the disposal of that WAT unit (subsection 116-20(1)). The market value of a class A ordinary share in Newco BI is worked out as at the time of CGT event A1, which is on the Implementation Date.

55. Eligible Westfield Group stapled security holders who elected to receive the cash component of the capital proceeds in US dollars or New Zealand dollars must translate the cash component into Australian dollars using the exchange rate on the Implementation Date pursuant to item 5 of the table in subsection 960-50(6).

56. The capital proceeds from CGT event A1 happening to a WFDT unit is the market value of the TH Newco share received in respect of the disposal of that WFDT unit (subsection 116-20(1)). The market value of a TH Newco share is worked out as at the time of CGT event A1, which is on the Implementation Date.

57. A capital gain or capital loss made from a share in WCL or a unit in WFDT that is taken to have been acquired before 20 September 1985 is disregarded (paragraph 104-10(5)(a)).

CGT event A1 happened on the disposal of TH Newco shares

58. CGT event A1 happened when Eligible Westfield Group stapled security holders disposed of their TH Newco shares (section 104-10). Although legal title to the TH Newco shares was held by the Third Party Nominee, Eligible Westfield Group stapled security holders were absolutely entitled to the TH Newco shares. Therefore, Eligible Westfield Group stapled security holders are treated as owning the TH Newco shares (section 106-50).

59. The time of CGT event A1 is on the Implementation Date (paragraph 104-10(3)(b)).

60. An Eligible Westfield Group stapled security holder made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of a TH Newco share exceeded the cost base of that share (subsection 104-10(4)).

61. An Eligible Westfield Group stapled security holder made a capital loss from CGT event A1 happening if the capital proceeds from the disposal of a TH Newco share were less than the reduced cost base of that share (subsection 104-10(4)).

62. The capital proceeds from CGT event A1 happening to a TH Newco share is the total of US\$0.41662 and the market value of the 0.0120413 of a share in Unibail-Rodamco SE received in respect of the disposal of that TH Newco share (subsection 116-20(1)). The market value of a share in Unibail-Rodamco SE is worked out as at the time of CGT event A1, which is on the Implementation Date.

63. Eligible Westfield Group stapled security holders who elected to receive the cash component of the capital proceeds in US dollars or New Zealand dollars must translate the cash component into Australian dollars using the exchange rate on the Implementation Date pursuant to item 5 of the table in subsection 960-50(6).

Availability of scrip for scrip roll-over if a capital gain is made from the disposal of WCL shares

64. Subject to the qualification in the following paragraph, an Eligible Westfield Group stapled security holder who made a capital gain from the disposal of their WCL shares may choose to obtain scrip for scrip roll-over for the capital gain (sections 124-780 and 124-785).

65. Scrip for scrip roll-over cannot be chosen if any capital gain an Eligible Westfield Group stapled security holder might make from their replacement shares in Unibail-Rodamco SE would be disregarded, except because of a roll-over (paragraph 124-795(2)(a)).

Consequences if scrip for scrip roll-over is chosen in relation to WCL shares

66. If scrip for scrip roll-over is chosen, the capital gain from the disposal of WCL shares is disregarded (subsection 124-785(1)).

67. For the purposes of determining eligibility to make a discount capital gain, the shares in Unibail-Rodamco SE acquired in exchange for WCL shares are taken to have been acquired on the date an Eligible Westfield Group stapled security holder acquired, for CGT purposes, the corresponding WCL shares (item 2 of the table in subsection 115-30(1)).

Consequences if scrip for scrip roll-over is not chosen, or cannot be chosen, in relation to WCL shares

68. An Eligible Westfield Group stapled security holder who does not choose roll-over, or cannot choose roll-over, must take into account any capital gain or capital loss from CGT event A1 happening on the disposal of their WCL shares in working out their net capital gain or net capital loss for the income year in which CGT event A1 happens (sections 102-5 and 102-10).

69. An Eligible Westfield Group stapled security holder who makes a capital gain where roll-over is not chosen, or cannot be chosen, can treat the capital gain as a 'discount capital gain' provided that the conditions of Subdivision 115-A are met. In particular, the WCL shares that were disposed of must have been acquired by the Eligible Westfield Group stapled security holder at least 12 months before the Implementation Date.

70. The shares in Unibail-Rodamco SE were acquired by an Eligible Westfield Group stapled security holder when they were issued on the Implementation Date (item 2 of the table in section 109-10).

Cost base and reduced cost base of shares in Unibail-Rodamco SE received in relation to the disposal of WCL shares

71. The method for calculating the cost base and reduced cost base of the shares in Unibail-Rodamco SE acquired by an Eligible Westfield Group stapled security holder in exchange for their WCL shares depends on whether scrip for scrip roll-over is chosen.

Scrip for scrip roll-over is chosen

72. Where scrip for scrip roll-over is chosen, the first element of the cost base and reduced cost base of a replacement share in Unibail-Rodamco SE that is received is worked out by reasonably attributing to it the cost base and reduced cost base (respectively) of the WCL share for which it was exchanged and for which the roll-over was obtained (subsections 124-785(2) and (4)).

73. For WCL shareholders who are taken to have acquired their WCL shares before 20 September 1985, the first element of the cost base and reduced cost base of the Unibail-Rodamco SE shares they received for their WCL shares is the market value of the Unibail-Rodamco SE shares on the Implementation Date (subsection 124-800(1), subject to subsection 124-800(2)).

Scrip for scrip roll-over is not chosen, or cannot be chosen

74. Where scrip for scrip roll-over is not chosen, or cannot be chosen, the first element of the cost base and reduced cost base of a replacement share in Unibail-Rodamco SE that is received is equal to the market value of the WCL shares given in respect of acquiring the share in Unibail-Rodamco SE (subsections 110-25(2) and 110-55(2)). The market value of WCL shares is worked out as at the time of the acquisition, which is on the Implementation Date.

No CGT roll-over for the disposal of WAT units, WFDT units or TH Newco shares

75. There is no CGT roll-over available in relation to the disposal of WAT units, WFDT units or TH Newco shares. There is no roll-over for the exchange of interests in a trust (the WAT units) for a combination of shares in a company and cash. The disposal of WFDT units will not qualify for roll-over under Division 615 because the units are exchanged under a scheme for a merger between WFDT and Unibail-Rodamco SE, which includes the subsequent exchange of TH Newco shares (directly received for the disposal of WFDT units) for Unibail-Rodamco SE shares and cash. As such, the scheme does not satisfy paragraph 615-5(1)(c).

76. An Eligible Westfield Group stapled security holder must take into account any capital gain or capital loss from CGT event A1 happening on the disposal of their WFDT units, WAT units and TH Newco shares in working out their net capital gain or net capital loss for the income year in which CGT event A1 happens (sections 102-5 and 102-10).

77. An Eligible Westfield Group stapled security holder who makes a capital gain can treat the capital gain as a 'discount capital gain' provided that the conditions of Subdivision 115-A are met. In particular, the WFDT units and WAT units that were disposed of must have been acquired by the Eligible Westfield Group stapled security holder at least 12 months before the Implementation Date.

78. A capital gain from the disposal of TH Newco shares cannot be a 'discount capital gain' because it will not meet the conditions of Subdivision 115-A.

Cost base and reduced cost base of shares in Newco BI received in relation to the disposal of WAT units

79. The first element of the cost base and reduced cost base of a replacement share in Newco BI that is received is equal to the market value of the WAT units given in respect of acquiring the share in Newco BI (subsections 110-25(2) and 110-55(2)) less the US\$2.25338 cash component of the capital proceeds for those WAT units (subsection 112-30(1)). The market value of the WAT units is worked out as at the time of the acquisition of the shares in Newco BI, which is on the Implementation Date.

80. If an Eligible Westfield Group stapled security holder receives the cash component of the capital proceeds in US dollars or New Zealand dollars, it must be translated into Australian dollars using the exchange rate on the Implementation Date pursuant to item 5 of the table in subsection 960-50(6).

81. The shares in Newco BI were acquired by an Eligible Westfield Group stapled security holder when they were issued on the Implementation Date (item 2 of the table in section 109-10).

Cost base and reduced cost base of shares in TH Newco received in relation to the disposal of WFDT units

82. The first element of the cost base and reduced cost base of a replacement share in TH Newco that is received is equal to the market value of the WFDT unit given in respect of acquiring the share in TH Newco (subsections 110-25(2) and 110-55(2)). The market value of WFDT units is worked out as at the time of the acquisition of shares in TH Newco, which is on the Implementation Date.

83. The shares in TH Newco were acquired by an Eligible Westfield Group stapled security holder when they were issued on the Implementation Date (item 2 of the table in section 109-10).

Cost base and reduced cost base of shares in Unibail-Rodamco SE received in relation to the disposal of TH Newco shares

84. The first element of the cost base and reduced cost base of a replacement share in Unibail-Rodamco SE that is received is equal to the market value of the TH Newco shares given in respect of acquiring the share in Unibail-Rodamco SE (subsections 110-25(2) and 110-55(2)) less the US\$0.41662 cash component of the capital proceeds for those TH Newco shares (subsection 112-30(1)).

85. The market value of the TH Newco shares is worked out as at the time of the acquisition of the shares in Unibail-Rodamco SE, which is on the Implementation Date.

86. If an Eligible Westfield Group stapled security holder receives the cash component of the capital proceeds in US dollars or New Zealand dollars, it must be translated into Australian dollars using the exchange rate on the Implementation Date pursuant to item 5 of the table in subsection 960-50(6).

87. The shares in Unibail-Rodamco SE were acquired by an Eligible Westfield Group stapled security holder when they were issued on the Implementation Date (item 2 of the table in section 109-10).

Stapling of Unibail-Rodamco SE shares and Newco BI shares

88. No CGT event in Division 104 will happen as a result of the stapling of shares in Unibail-Rodamco SE and shares in Newco BI.

Foreign resident Westfield Group stapled security holders

89. Units in WAT and WFDT, and shares in WCL and TH Newco, are not 'taxable Australian property' under items 1, 2 or 4 of the table in section 855-15. Therefore, an Eligible Westfield Group stapled security holder who is a foreign resident, or the trustee of a foreign trust for CGT purposes, just before the Implementation Date will only make a capital gain or capital loss from the disposal of units in WAT and WFDT, and shares in WCL and TH Newco, if the units or shares are:

- a CGT asset that they have used at any time in carrying on a business through a permanent establishment in Australia (item 3 of the table in section 855-15); and
- a CGT asset that is covered by subsection 104-165(3) (choosing to disregard a gain or loss on ceasing to be an Australian resident) (item 5 of the table in section 855-15).

Commissioner of Taxation

4 July 2018

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.*

90. The tax consequences that arise concerning the scheme that is the subject of this Ruling are outlined in the Ruling part of this document.

91. The main tax consequence that is the subject of this Ruling is the availability of scrip for scrip roll-over under Subdivision 124-M in relation to the disposal of WCL shares only, and the absence of any CGT roll-over in relation to the disposal of WFDT units, WAT units and TH Newco shares.

92. The roll-over under Subdivision 124-M enables a shareholder in a company to disregard a capital gain from a share that is disposed of if the shareholder receives a replacement share in another company in exchange. It also provides special rules for calculating the cost base and reduced cost base of the replacement share.

93. Subdivision 124-M contains a number of conditions for, and exceptions to, a shareholder in a company being eligible to choose scrip for scrip roll-over. The main requirements that are relevant to the scheme that is the subject of this Ruling are:

- (a) shares are exchanged for shares in another company
- (b) the exchange is in consequence of a single arrangement
- (c) conditions for the roll-over are satisfied
- (d) further conditions, if applicable, are satisfied
- (e) exceptions to obtaining scrip for scrip roll-over are not applicable.

94. The disposal of WCL shares satisfies the requirements for the roll-over under Subdivision 124-M.

Appendix 2 – Detailed contents list

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

	Paragraph
Summary – what this Ruling is about	1
Relevant provisions	2
Class of entities	3
Qualifications	4
Date of effect	7
Scheme	8
The Westfield Group	10
Transfer of shares in OneMarket Limited to WCL shareholders	13
The sale	15
Other matters	30
Ruling	38
Demerger relief is not available for the transfer of OneMarket Limited shares	38
Separate CGT assets under section 108-5	44
De-stapling of Westfield Group stapled securities	48
CGT event A1 happened on the disposal of WCL shares, WFDT units and WAT units	49
CGT event A1 happened on the disposal of TH Newco shares	58
Availability of scrip for scrip roll-over if a capital gain is made from the disposal of WCL shares	64
Consequences if scrip for scrip roll-over is chosen in relation to WCL shares	66
Consequences if scrip for scrip roll-over is not chosen, or cannot be chosen, in relation to WCL shares	68
Cost base and reduced cost base of shares in Unibail-Rodamco SE received in relation to the disposal of WCL shares	71
<i>Scrip for scrip roll-over is chosen</i>	72
<i>Scrip for scrip roll-over is not chosen, or cannot be chosen</i>	74
No CGT roll-over for the disposal of WAT units, WFDT units or TH Newco shares	75
Cost base and reduced cost base of shares in Newco BI received in relation to the disposal of WAT units	79

Cost base and reduced cost base of shares in TH Newco received in relation to the disposal of WFDT units	82
Cost base and reduced cost base of shares in Unibail-Rodamco SE received in relation to the disposal of TH Newco shares	84
Stapling of Unibail-Rodamco SE shares and Newco BI shares	88
Foreign resident Westfield Group stapled security holders	89
Appendix 1 – Explanation	90
Appendix 2 – Detailed contents list	95

References

- Previous draft:*
- ITAA 1997 115-30(1)
- Not previously issued as a draft
- ITAA 1997 116-20
 - ITAA 1997 116-20(1)
- Related Rulings/Determinations:*
- ITAA 1997 Subdiv 124-M
 - ITAA 1997 124-780
 - ITAA 1997 124-780(3)(f)
 - ITAA 1997 124-783
 - ITAA 1997 124-785
 - ITAA 1997 124-785(1)
 - ITAA 1997 124-785(2)
 - ITAA 1997 124-785(4)
 - ITAA 1997 124-795(2)(a)
 - ITAA 1997 124-795(4)
 - ITAA 1997 124-800(1)
 - ITAA 1997 124-800(2)
 - ITAA 1997 Div 125
 - ITAA 1997 125-70(1)
 - ITAA 1997 125-70(1)(c)
 - ITAA 1997 Div 230
 - ITAA 1997 Div 615
 - ITAA 1997 615-5(1)(c)
 - ITAA 1997 Div 802
 - ITAA 1997 802-15
 - ITAA 1997 Div 855
 - ITAA 1997 855-15
 - ITAA 1997 Subdiv 960-D
 - ITAA 1997 960-50(6)
 - ITAA 1997 977-50
 - ITAA 1997 995-1(1)
 - Corporations Act 2001
 - Corporations Act 2001 Ch 5C
 - Corporations Act 2001 Part 5.1
 - Corporations Act 2001 604
 - Corporations Act 2001 611
 - TAA 1953
- Legislative references:*
- ITAA 1936
 - ITAA 1936 6(1)
 - ITAA 1936 44
 - ITAA 1936 44(1)
 - ITAA 1936 44(3)
 - ITAA 1936 44(4)
 - ITAA 1936 128B
 - ITAA 1936 128B(1)
 - ITAA 1936 128B(4)
 - ITAA 1997
 - ITAA 1997 102-5
 - ITAA 1997 102-10
 - ITAA 1997 Div 104
 - ITAA 1997 104-10
 - ITAA 1997 104-10(3)(b)
 - ITAA 1997 104-10(4)
 - ITAA 1997 104-10(5)(a)
 - ITAA 1997 104-70
 - ITAA 1997 104-165(3)
 - ITAA 1997 106-50
 - ITAA 1997 108-5
 - ITAA 1997 109-5(2)
 - ITAA 1997 109-10
 - ITAA 1997 110-25
 - ITAA 1997 110-25(2)
 - ITAA 1997 110-55
 - ITAA 1997 110-55(2)
 - ITAA 1997 112-30(1)
 - ITAA 1997 Subdiv 115-A
-

ATO references

- NO: 1-DX334NY
- ISSN: 2205-5517
- BSL: PGI
- ATOlaw topic: Income tax ~~ Assessable income ~~ Dividend income ~~
Dividend income
Income tax ~~ Capital gains tax ~~ Capital proceeds
Income tax ~~ Capital gains tax ~~ CGT events ~~ CGT
event A1 – disposal of a CGT asset
Income tax ~~ Capital gains tax ~~ Cost base and
reduced cost base
Income tax ~~ Capital gains tax ~~ Rollovers ~~ Scrip for
scrip – Subdivision 124-M

**© AUSTRALIAN TAXATION OFFICE FOR THE
COMMONWEALTH OF AUSTRALIA**

You are free to copy, adapt, modify, transmit and distribute this material as you wish (but not in any way that suggests the ATO or the Commonwealth endorses you or any of your services or products).