


CR 2021/50 - Woolworths Group Limited - demerger of Endeavour Group Limited

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Class Ruling

Woolworths Group Limited – demerger of Endeavour Group Limited

📌 Relying on this Ruling

This publication is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

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What this Ruling is about

1. This Ruling sets out the tax consequences of the demerger of Endeavour Group Limited (Endeavour) by Woolworths Group Limited (Woolworths) which was implemented on 1 July 2021 (Implementation Date).
2. Full details of this demerger are set out in paragraphs 33 to 58 of this Ruling.
3. In this Ruling, unless otherwise defined, capitalised terms have the meaning in the Glossary of the Demerger Booklet dated 10 May 2021.
4. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997* unless otherwise indicated.

Who this Ruling applies to

5. This Ruling applies to you if you held Woolworths shares and you:
 - were registered on the Woolworths Share Register in Australia at 7.00pm AEST on 25 June 2021 (Demerger Record Date), and
 - held your Woolworths shares on capital account on the Demerger Record Date, that is, you did not hold your Woolworths shares as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)) on the Demerger Record Date.

6. This Ruling does not apply to anyone who is subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 33 to 58 of this Ruling.

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

When this Ruling applies

7. This Ruling applies from 1 July 2020 to 30 June 2022.

Ruling

Demerger

8. A demerger, as defined in section 125-70, happened to the Woolworths demerger group, which included Woolworths and Endeavour.

Capital gains tax consequences – Australian resident Woolworths Group Limited shareholders

CGT event G1

9. On the Implementation Date, CGT event G1 happened when Woolworths paid to you the reduction of share capital in Woolworths shares by way of the transfer of Endeavour shares (section 104-135).

10. You will make a capital gain from CGT event G1 happening if the amount of the reduction of share capital for each Woolworths share (71 cents) was more than the cost base of the share. The capital gain is equal to the amount of the excess. No capital loss can be made from CGT event G1 (subsection 104-135(3)).

Demerger roll-over

11. You can choose to obtain demerger roll-over under subsection 125-55(1) for your Woolworths shares.

Consequences of choosing demerger roll-over

12. If you choose demerger roll-over for your Woolworths shares:

- any capital gain you made when CGT event G1 happened is disregarded (subsection 125-80(1))
- you must recalculate the first element of the cost base and reduced cost base of your Woolworths shares, and calculate the first element of the cost base and reduced cost base of the corresponding Endeavour shares you acquired under the demerger (subsection 125-80(2)) – see paragraphs 14 to 16 of this Ruling, and
- you acquired your Endeavour shares on the Implementation Date (section 109-5), however, for the purpose of determining your entitlement to a discount capital gain in relation to a subsequent CGT event that happens to the Endeavour shares, they will be taken to have been acquired when

you had acquired the corresponding Woolworths shares (section 115-25 and table item 2 of subsection 115-30(1)).

Consequences of not choosing demerger roll-over

13. If you did not choose demerger roll-over for your Woolworths shares:
- you cannot disregard any capital gain you made when CGT event G1 happened
 - you must recalculate the first element of the cost base and reduced cost base of your Woolworths shares, and calculate the first element of the cost base and reduced cost base of the corresponding Endeavour shares you acquired under the demerger (subsections 125-85(1) and (2)) – see paragraphs 14 to 16 of this Ruling, and
 - you acquired your Endeavour shares on the Implementation Date (section 109-5), however, for the purpose of determining your entitlement to a discount capital gain in relation to a subsequent CGT event that happens to the Endeavour shares, they will be taken to have been acquired when you had acquired the corresponding Woolworths shares (section 115-25 and table item 2 of subsection 115-30(1)).

Cost base and reduced cost base of your Woolworths Group Limited and Endeavour Group Limited shares

14. The first element of the cost base and reduced cost base of each Woolworths share and corresponding Endeavour share is worked out by:
- taking the total of the cost bases of your Woolworths shares just before the demerger, and
 - apportioning that total between your Woolworths shares and your Endeavour shares received under the demerger.
15. The apportionment is done on a reasonable basis having regard to the market values (just after the demerger) of the Woolworths shares and Endeavour shares, or an anticipated reasonable approximation of those market values (subsections 125-80(2) and (3)).
16. The Commissioner accepts that a reasonable apportionment is to attribute:
- 85.81% of the total of the cost bases of your Woolworths shares just before the demerger to your Woolworths shares, and
 - 14.19% of the total of the cost bases of your Woolworths shares just before the demerger to your corresponding Endeavour shares.

Sale of Endeavour Group Limited shares by Australian residents under the Sale Facility

17. If you are an Australian resident Small Shareholder who elected to use the Sale Facility, CGT event A1 happened on the Implementation Date when the Endeavour shares to which you were entitled were transferred to the Sale Agent (subsections 104-10(1) and (3)).

18. You will make a capital gain if the capital proceeds exceeded your cost base (subsection 104-10(4)). You will make a capital loss if the capital proceeds were less than your reduced cost base (subsection 104-10(4)).

19. In calculating any capital gain or capital loss:

- the capital proceeds are the Sale Facility Proceeds remitted to you (subsection 116-20(1)), and
- the first element of the cost bases and reduced cost bases of your Endeavour shares are worked out according to paragraphs 14 to 16 of this Ruling.

Capital gains tax consequences – foreign resident Woolworths Group Limited shareholders

CGT event G1

20. CGT event G1 happened on the Implementation Date (see paragraph 9 of this Ruling).

21. You will make a capital gain from CGT event G1 happening if the amount of the reduction of share capital for each Woolworths share (71 cents) was more than the cost base of the share. The capital gain is equal to the amount of the excess. No capital loss can be made from CGT event G1 (subsection 104-135(3)).

22. However, any capital gain you make from CGT event G1 is disregarded unless the Woolworths share was taxable Australian property (section 855-10).

23. A Woolworths share would have been taxable Australian property if it was:

- used by you (the foreign resident shareholder) in carrying on a business through a permanent establishment in Australia (table item 3 of section 855-15), or
- a CGT asset covered by subsection 104-165(3) (choosing to disregard a gain or loss on ceasing to be an Australian resident (table item 5 of section 855-15)).

24. If a Woolworths share was taxable Australian property, you may be able to choose to obtain demerger roll-over in respect of any capital gain under CGT event G1 if the Endeavour share you acquired under the demerger was also taxable Australian property just after you acquired it (subsection 125-55(2)).

Cost base and reduced cost base of Endeavour Group Limited shares

25. Whether or not demerger roll-over is available to you, you must work out the first element of the cost base and reduced cost base of each Woolworths share and corresponding Endeavour share in the same way as described in paragraphs 14 to 16 of this Ruling (subsections 125-80(2) and (3), and 125-85(1) and (2)).

Sale of Endeavour Group Limited shares by foreign residents under the Sale Facility

26. If you are a foreign resident whose Endeavour shares were sold through the Sale Facility, CGT event A1 happened on the Implementation Date when the Endeavour shares you were otherwise entitled to were transferred to the Sale Agent (subsections 104-10(1) and (3)).

27. However, any capital gain you make from CGT event A1 is disregarded unless the Endeavour share was taxable Australian property (section 855-10). Where your Endeavour share was taxable Australian property, any capital gain or capital loss arising from CGT event A1 is worked out according to paragraphs 18 to 19 of this Ruling.

Not a dividend

28. No part of the value of an Endeavour share transferred to you under the demerger will be included in your assessable income under subsection 44(1) of the *Income Tax Assessment Act 1936* (ITAA 1936). Although the part of the value of an Endeavour share that is not debited to the share capital account of Woolworths is a dividend under subsection 6(1) of the ITAA 1936, it will be a demerger dividend under subsections 44(3) to (5) of the ITAA 1936. A demerger dividend is non-assessable non-exempt income for you.

No dividend withholding tax

29. No part of the value of an Endeavour share transferred to you under the demerger will be subject to dividend withholding tax (subsection 128B(3D) of the ITAA 1936).

Anti-avoidance provisions in sections 45, 45A, 45B, 45BA and 45C of the ITAA 1936 will not apply to deem an assessable dividend

30. Section 45 of the ITAA 1936 will not apply to the Endeavour shares provided to you under the demerger. This is because all shareholders of Woolworths participated in the demerger based on their shareholding on the Demerger Record Date.

31. The Commissioner will not make a determination under subsection 45A(2) of the ITAA 1936 that section 45C of the ITAA 1936 applies to the whole, or any part, of the capital benefits provided to you under the demerger. This is because the circumstances of the demerger do not indicate that there was streaming of capital benefits to some shareholders and dividends to other shareholders.

32. As the purpose test in paragraph 45B(2)(c) of the ITAA 1936 is not satisfied, the Commissioner will not make a determination under either:

- paragraph 45B(3)(a) of the ITAA 1936 that section 45BA of the ITAA 1936 applies to the whole, or any part, of the demerger benefit provided to you under the demerger, or
- 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 you under the demerger.

Scheme

33. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

Woolworths Group Limited

34. Woolworths is an Australian-resident company listed on the Australian Securities Exchange (ASX).

35. The core business of Woolworths includes retail supermarkets in Australia and New Zealand, as well as Big W, and drinks.
36. Immediately before the demerger, Woolworths had on issue:
- 1,267,652,417 fully-paid ordinary shares, and
 - a number of unlisted rights issued to directors and employees, representing less than 3% of the total value of ownership interests (as defined in subsection 125-60(1)) in Woolworths.
37. All of the ownership interests in Woolworths were acquired after 19 September 1985. There were no other ownership interests (as defined in subsection 125-60(1)) in Woolworths.
38. As at 3 January 2021, Woolworths had approximately:
- \$6.281 billion credited to its share capital account
 - retained earnings of \$2.858 billion, and
 - reserves of \$271 million.
39. Woolworths shareholders include both Australian residents and foreign residents and are a mix of individuals, companies, trusts and superannuation funds. No foreign resident shareholder of Woolworths held an interest of 10% or more of the ordinary shares of Woolworths.
40. Woolworths has paid regular dividends since listing on the ASX.

Endeavour Group Limited

41. Endeavour is an Australian-resident company.
42. Endeavour operates a retail drinks and hospitality business across Australia.
43. Endeavour has one class of shares on issue, being fully-paid ordinary shares. Immediately before the demerger, Woolworths held approximately 85.4% of the ordinary shares in Endeavour.

The demerger of Endeavour Group Limited

44. On 10 May 2021, Woolworths announced to the ASX the proposed demerger of Endeavour.
45. On 18 June 2021, Woolworths shareholders voted at a General Meeting to approve a resolution to demerge Endeavour from Woolworths and a resolution under section 256C of the *Corporations Act 2001* to reduce the share capital of Woolworths by the Capital Reduction Amount.
46. The directors of Woolworths also passed a resolution to determine to pay a dividend for each Woolworths share on issue at the Demerger Record Date (Demerger Dividend).
47. On the Implementation Date, each Woolworths shareholder's entitlement to the Capital Reduction and Demerger Dividend was applied as consideration for the in specie transfer of approximately 70.8% of the issued Endeavour shares. Woolworths shareholders were entitled to receive one Endeavour share for each Woolworths share they held on the Demerger Record Date.
48. After the demerger, Woolworths held approximately 14.6% of the shares in Endeavour.

49. Endeavour shares were listed for quotation on the ASX and they commenced trading on a deferred settlement basis on 24 June 2021.

Accounting treatment and market valuation

50. Woolworths accounted for the demerger by debiting its:

- share capital account by \$903,753,798 (the Capital Reduction Amount), and
- demerger reserve account by \$6,964,273,194 (the Demerger Dividend Amount).

51. The Demerger Dividend Amount was the difference between the market value of the Endeavour shares transferred to the Woolworths shareholders and the Capital Reduction Amount.

Reasons for the demerger

52. The Woolworths Board formed the view that the demerger would:

- result in a simplified business and increase focus for both Woolworths and Endeavour
- enable Endeavour to pursue its own strategy and growth agenda
- provide an opportunity for Woolworths and Endeavour to realise the benefits of strategic partnership agreements
- result in stronger brand clarity for Woolworths and Endeavour, and
- allow current and future shareholders to have the flexibility to choose their level of investment in Woolworths and Endeavour.

Sale Facility for Ineligible Shareholders and Small Shareholders

53. A Sale Facility was used to sell Endeavour shares that would otherwise have been received by Ineligible Shareholders or any Selling Shareholders (being Small Shareholders who elected to participate in the facility).

54. Such Endeavour shares were transferred to the Sale Agent to be sold under the Sale Facility. Under the Sale Facility, the Sale Agent sold the Endeavour shares on the ASX and paid the Sale Facility Proceeds to the Ineligible Shareholders and Selling Shareholders.

Other matters

55. Immediately before the Implementation Date, Woolworths' share capital account was not tainted (within the meaning of Division 197).

56. Woolworths did not elect under subsection 44(2) of the ITAA 1936 that subsections 44(3) and (4) of the ITAA 1936 will not apply to the Demerger Dividend for all Woolworths shareholders.

57. Just after the demerger, CGT assets owned by Endeavour and its demerger subsidiaries representing at least 50% by market value of all the CGT assets owned by those entities were used in carrying on a business by those entities (subsection 44(5) of the ITAA 1936).

58. Employee share scheme interests in Woolworths have been issued in accordance with Division 83A and are interests to which either Subdivisions 83A-B or 83A-C applies.

Commissioner of Taxation

28 July 2021

References

<i>Previous draft:</i>	- ITAA 1997 104-10(4)
Not previously issued as a draft	- ITAA 1997 104-135
	- ITAA 1997 104-135(3)
<i>Legislative references:</i>	- ITAA 1997 104-165(3)
- ITAA 1936 6(1)	- ITAA 1997 109-5
- ITAA 1936 44(1)	- ITAA 1997 115-25
- ITAA 1936 44(2)	- ITAA 1997 115-30(1)
- ITAA 1936 44(3)	- ITAA 1997 116-20(1)
- ITAA 1936 44(4)	- ITAA 1997 125-55(1)
- ITAA 1936 44(5)	- ITAA 1997 125-55(2)
- ITAA 1936 45	- ITAA 1997 125-60(1)
- ITAA 1936 45A	- ITAA 1997 125-70
- ITAA 1936 45A(2)	- ITAA 1997 125-80(1)
- ITAA 1936 45B	- ITAA 1997 125-80(2)
- ITAA 1936 45B(2)(c)	- ITAA 1997 125-80(3)
- ITAA 1936 45B(3)(a)	- ITAA 1997 125-85(1)
- ITAA 1936 45B(3)(b)	- ITAA 1997 125-85(2)
- ITAA 1936 45BA	- ITAA 1997 Div 197
- ITAA 1936 45C	- ITAA 1997 Div 230
- ITAA 1936 128B(3D)	- ITAA 1997 855-10
- ITAA 1997 Div 83A	- ITAA 1997 855-15
- ITAA 1997 Subdiv 83A-B	- ITAA 1997 977-50
- ITAA 1997 Subdiv 83A-C	- ITAA 1997 995-1(1)
- ITAA 1997 104-10(1)	- TAA 1953
- ITAA 1997 104-10(3)	- Corporations Act 2001 256C

ATO references

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