

CR 2004/53 - Income tax: Westfield Holdings Limited - Westfield Group merger stapling arrangement

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Class Ruling

Income tax: Westfield Holdings Limited – Westfield Group merger stapling arrangement

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Preamble

*The number, subject heading, **What this Class Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Withdrawal**, **Arrangement** and **Ruling** parts of this document are a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**. CR 2001/1 explains *Class Rulings* and *Taxation Rulings* TR 92/1 and TR 97/16 together explain when a Ruling is a 'public ruling' and how it is binding on the Commissioner.*

What this Class Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax law(s)' identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates.

Tax law(s)

2. The tax laws dealt with in this Ruling are:

- subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936);
- section 44 of the ITAA 1936;
- Division 104 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 104-155 of the ITAA 1997;
- section 109-10 of the ITAA 1997;
- section 110-25 of the ITAA 1997;
- section 110-55 of the ITAA 1997;
- section 112-25 of the ITAA 1997;
- Part 3-6 of the ITAA 1997;
- section 207-20 of the ITAA 1997;
- Division 725 of the ITAA 1997;

- section 725-50 of the ITAA 1997;
- section 725-55 of the ITAA 1997;
- Subdivision 727-E of the ITAA 1997;
- section 727-355 of the ITAA 1997; and
- Subdivision 974-C of the ITAA 1997.

Class of persons

3. The class of persons to which this Ruling applies are those holders of ordinary shares (original WSF shares) in Westfield Holdings Limited (WSF) who:

- participate in the arrangement that is the subject of this Ruling;
- hold their original WSF shares on capital account;
- are residents of Australia within the meaning of that term in subsection 6(1) of the ITAA 1936; and
- are 'qualified persons' for the purposes of the imputation provisions in Part 3-6 of the ITAA 1997.

Qualifications

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

5. The class of persons defined in this Ruling may rely on its contents provided the arrangement actually carried out is carried out in accordance with the arrangement described in paragraphs 10 to 19.

6. If the arrangement actually carried out is materially different from the arrangement that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the arrangement entered into is not the arrangement on which the Commissioner has ruled; and
- this Ruling may be withdrawn or modified.

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Date of effect

8. This Ruling applies to the income year ending 30 June 2005. The arrangement will be completed within that income year.

Withdrawal

9. This Ruling is withdrawn and ceases to have effect after 30 June 2005. The Ruling continues to apply, in respect of the tax laws ruled upon, to all persons within the specified class who enter into the arrangement during the term of the Ruling.

Arrangement

10. The Arrangement that is the subject of the Ruling is described below. This description is based on the documents identified below. These documents, or the relevant parts of them, form part of and are to be read with this description. The relevant documents or parts of documents incorporated into this description of the arrangement are:

- Class Ruling request from Greenwoods & Freehills dated 24 February 2004;
- amendments to Class Ruling from Greenwoods & Freehills dated 8 April 2004 and 29 April 2004;
- draft Westfield Group stapling deed, and modified deed;
- draft deed poll (undated);
- draft Explanatory Memorandum in relation to a proposal to staple the shares of WSF and the units of

Westfield Trust (WFT) and Westfield America Trust (WFA) from Mallesons Stephen Jaques;

- draft Implementation Deed dated 20 April 2004;
- ASIC briefing note on Westfield Group restructure prepared by Mallesons Stephen Jaques dated 15 April 2004;
- draft WSF Special notice about the sale facility dated 13 May 2004;
- draft Westfield Group Merger – WSF overview dated 20 May 2004;
- notes of meetings between ATO, Greenwoods & Freehills and Speed & Stracey from 8 April 2004 to date; and
- e-mails from Greenwoods & Freehills from 19 February to date.

Note 1: certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under the Freedom of Information legislation.

Note 2: certain terms used in this Ruling are defined and explained in the Glossary of terms, at Appendix A.

Note 3: the dates presently contemplated for the events described below are set out in the diagram at Appendix B.

11. On 22 April 2004, WSF announced that it would merge with WFT and WFA. The merger is to be achieved by means of a scheme of arrangement between WSF and its shareholders and by amendment of the constitutions of WSF, WFT and WFA, resulting in the issue of securities in each entity to investors in each other entity. The securities will be stapled to form a Westfield Group stapled security.

12. The merger ratios determine the entitlement of existing share and unit holders to Westfield Group stapled securities and are as follows:

| Entity | Merger Ratio | No. of Westfield Group stapled securities per 1,000 existing securities |
|---------------|---------------------|--|
| WSF | 1.00 | 1,000 |
| WFT | 0.28 | 280 |
| WFA | 0.15 | 150 |

13. In order for the merger to proceed, five key steps must be completed:

| | |
|---------------|--|
| Step 1 | Approval by WSF shareholders of the share scheme resolution |
| Step 2 | Approval by WSF shareholders of the general resolutions |
| Step 3 | Approval of the WFT resolutions at a meeting of WFT members |
| Step 4 | Approval of the WFA resolutions at a meeting of WFA members |
| Step 5 | Approval by the Court of the share scheme and lodgment of the share scheme order with ASIC |

14. The arrangement that is the subject of this Ruling is referred to as the stapling arrangement. It is separate from the sale facility arrangement which is the subject of a separate class ruling (CR 2004/56).

Stapling arrangement

15. The stapling arrangement, as it relates to WSF shareholders on the stapling record date, consists of the following steps:

- the payment of a fully franked dividend of \$0.002 to the holder of each original WSF share;
- the application of the dividend by WSF on behalf of each shareholder to subscribe for one new unit in WFA (new WFA unit) for \$0.001 and one new unit in WFT (new WFT unit) for \$0.001; and
- the stapling of one new WFA unit and one new WFT unit to each original WSF share to form a Westfield Group stapled security which will be offered for listing on the Australian Stock Exchange.

16. All of the steps will take place on the implementation date for the scheme. It is presently contemplated that the stapling record date will be 12 July 2004 and the implementation date 16 July 2004.

17. The stapling will take place in accordance with the stapling deed. The effect of the deed is to impose restrictions on the transferability of the individual securities comprising the Westfield Group stapled security. Each individual security (that is, original WSF share, new WFA unit and new WFT unit) will retain its legal character. There will be no variation to the rights or obligations attaching to, or to the beneficial ownership of, the individual securities comprising the Westfield Group stapled security as a consequence of stapling.

18. Representatives of WSF have stated that the shares in WSF are equity interests within the meaning of that term in Subdivision 974-C of the ITAA 1997 before, during and after the arrangement.

Internalised Management

19. Once the arrangement is carried into effect, further development of property to be held by WFT or WFA primarily for the purpose of deriving rent may be carried out by the trusts themselves, assuming corresponding development risks, and so internalising the management of such developments. WFT or WFA may also manage the letting of their own properties for rent, assuming corresponding risks, and so internalising the management of such operations. No such changes of operation by WFT or WFA will have the effect of diverting any other trading business income to the trusts, or of conveying control over any activities producing such trading business income to the trusts.

Ruling

Dividend

20. Shareholders that are individuals, complying superannuation entities and companies that are paid the dividend will include it and an amount equal to the franking credit on the dividend in their assessable income. They will be entitled to a tax offset equal to the franking credit on the dividend (section 44 of the ITAA 1936 and section 207-20 of the ITAA 1997).

Issue of new shares and units

21. The first element of the cost base and reduced cost base of each new WFT unit and new WFA unit acquired under the arrangement will be \$0.001 (sections 110-25 and 110-55 of the ITAA 1997).

22. Each new WFT unit and new WFA unit will be acquired at the time they are issued on the implementation date (section 109-10 of the ITAA 1997).

23. The issue of new WFT and WFA units will not result in CGT event H2 in section 104-155 of the ITAA 1997 happening to WSF shareholders.

24. The issue of new WSF shares to stapling record date holders of WFA units and WFT units will not have any direct value shifting consequences for WSF shareholders because section 725-50 of the ITAA 1997 is not satisfied.

Stapling of securities

25. No CGT event in Division 104 of the ITAA 1997 will happen as a result of the stapling of each original WSF share to a new WFT unit and new WFA unit.

Explanation

Dividend Amount

26. Subsection 44(1) of the ITAA 1936 includes in the assessable income of a resident shareholder a dividend paid to the shareholder out of company profits.

27. A shareholder that receives a franked distribution (directly) will be required to also include the amount of the franking credit on the distribution in their assessable income under section 207-20 of the ITAA 1997. However, the shareholder will be entitled to a tax offset equal to the amount of the franking credit on the distribution.

28. Under the arrangement, WSF will pay to a WSF shareholder a fully franked dividend of \$0.002 for each share. This amount and the amount of the franking credit will form part of a shareholder's assessable income for the 2004-05 income year. However, the WSF shareholder will be entitled to a tax offset equal to the franking credit on the dividend.

Issue of shares and units

29. Sections 110-25 and 110-55 of the ITAA 1997 provide that the first element of the cost base and reduced cost base, respectively, of a CGT asset is the money paid in respect of its acquisition.

30. WSF shareholders will be taken to have paid \$0.001 for each new WFT unit and \$0.001 for each new WFA unit (as a result of those amounts being applied by WSF on the shareholder's behalf).

31. Accordingly, the first element of the cost base and reduced cost base of each new WFT unit and for each new WFA unit will be \$0.001.

32. Under Item 3 in the table in section 109-10 of the ITAA 1997, where a trustee issues units in circumstances where no contract is entered into in respect of the acquisition, the units are taken to have been acquired at the time of issue.

33. Accordingly, WSF shareholders will be taken to have acquired each new WFT unit and new WFA unit at the time they are issued on the implementation date.

CGT event H2

34. CGT event H2 in section 104-155 of the ITAA 1997 happens if:

- an act, transaction or event occurs in relation to a CGT asset owned by a taxpayer; and
- the act, transaction or event does not result in an adjustment being made to the asset's cost base or reduced cost base.

35. However, paragraph 104-155(5)(d) of the ITAA 1997 provides that CGT event H2 does not happen if a trustee of a unit trust issues units in the trust.

36. As the act, transaction or event that occurs under the arrangement in relation to the shares owned by WSF shareholders involves the issue of new units by WFT and WFA, CGT event H2 will not happen to the WSF shareholders.

Application of Division 725

37. Division 725 of the ITAA 1997 may apply where there is a direct value shift under a scheme involving equity interests in an entity. For Division 725 to have consequences for an equity interest, paragraph 725-50(b) requires, amongst other things, that the 'controlling entity test' be satisfied.

38. The 'controlling entity test' is satisfied for value shifting purposes if an entity (the controller) controls the target entity at some time during the period starting when the scheme is entered into and ending when the scheme has been carried out (section 725-55 of the ITAA 1997).

39. Subdivision 727-E of the ITAA 1997 sets out the circumstances when an entity will be regarded as controlling another entity for value shifting purposes. Section 727-355 is relevant to WSF.

40. On the basis of information provided regarding the beneficial ownership of WSF immediately before and after the arrangement, it is considered that there is no entity that would be regarded as controlling WSF. Therefore, as the threshold requirement in paragraph 725-50(b) of the ITAA 1997 is not satisfied, Division 725 can have no consequences for the shareholders in respect of the arrangement.

Stapling of securities

41. The effect of stapling is to apply restrictions to the transferability of the individual securities that make up the Westfield Group stapled security. Each individual security (that is, original WSF share, new WFT unit and new WFA unit) will retain its legal character without any change in beneficial ownership. There will be no variation to the rights or obligations attaching to, or to the beneficial ownership

of, the individual securities that make up the Westfield Group stapled security as a consequence of stapling.

42. No CGT event in Division 104 of the ITAA 1997 will happen as a consequence of the stapling of original WSF Shares to each new WFA unit and new WFT unit.

Detailed contents list

43. Below is a detailed contents list for this Class Ruling:

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CR 2004/53

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

CR 2001/1; TR 92/1; TR 97/16;
CR 2004/51; CR 2004/52;
CR 2004/53; CR 2004/54;
CR 2004/55

Legislative references:

- ITAA 1936 6(1)
- ITAA 1936 44
- ITAA 1936 44(1)
- ITAA 1997 Div 104
- ITAA 1997 104-155
- ITAA 1997 104-155(5)(d)

- ITAA 1997 109-10
- ITAA 1997 110-25
- ITAA 1997 110-55
- ITAA 1997 112-25
- ITAA 1997 Pt 3-6
- ITAA 1997 207-20
- ITAA 1997 Div 725
- ITAA 1997 725-50
- ITAA 1997 725-50(b)
- ITAA 1997 725-55
- ITAA 1997 Subdiv 727-E
- ITAA 1997 727-355
- ITAA 1997 Subdiv 974-C
- Copyright Act 1968
- TAA 1953 Pt IVAAA

ATO references

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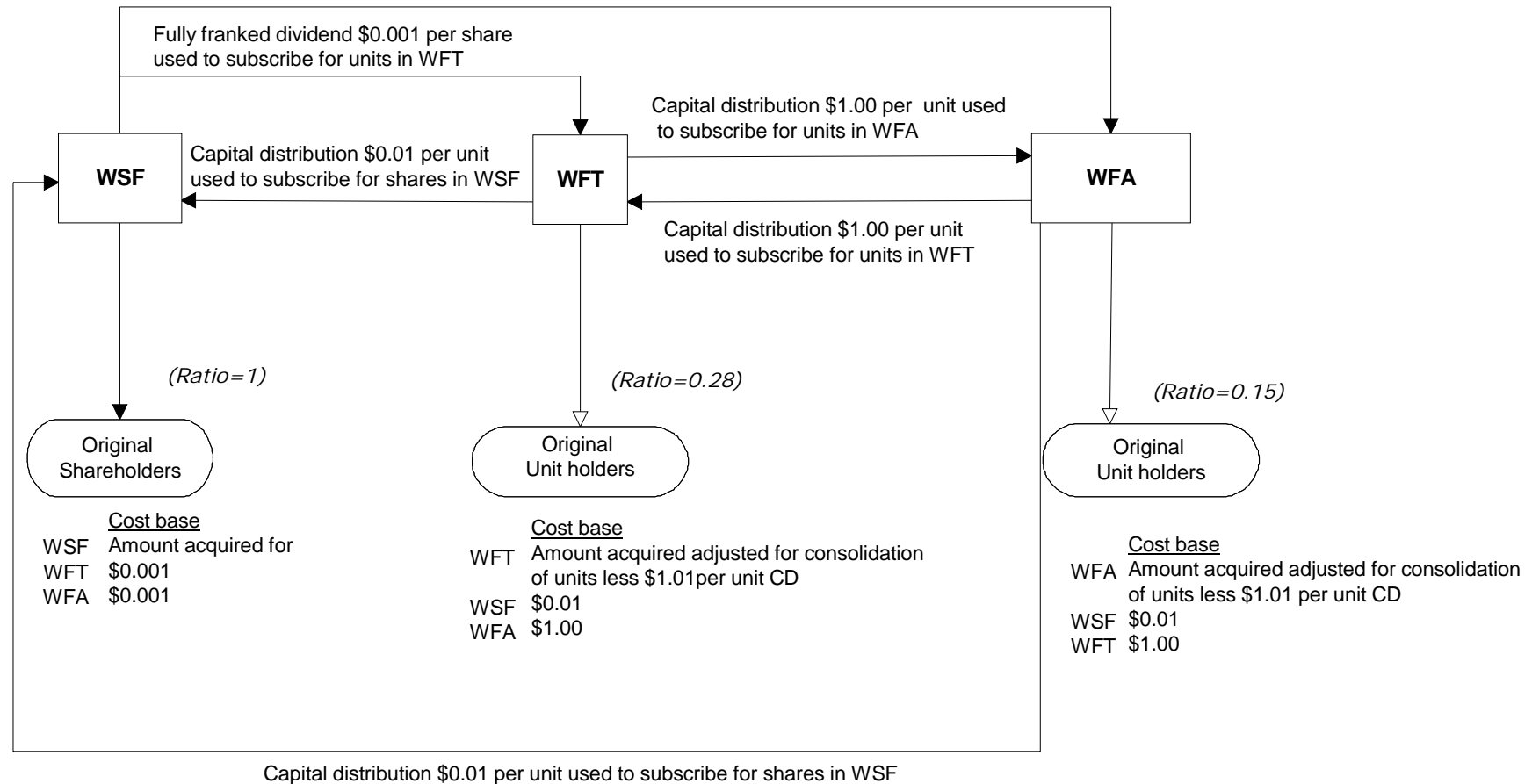
Appendix A*Glossary of Terms*

| <i>Ruling Terminology</i> | <i>Meaning</i> |
|--|---|
| <i>Certain terms used in this Ruling have the same meaning as corresponding terms in The Westfield Group Merger Explanatory Memorandum and sales facility notices in relation to a proposal to staple the shares of WSF and the units of WFT and WFA</i> | |
| effective date | Effective Date |
| implementation date | Implementation Date |
| original WSF share | Existing WSF share |
| share scheme | Share Scheme |
| stapling record date | Stapling Record Date |
| Westfield Group stapled security | Stapled Security |
| <i>Other terms used in this ruling have the following meaning</i> | |
| new WFT unit | A WFT unit issued to an existing owner of a WSF share on the implementation date |
| new WFA unit | A WFA unit issued to an existing owner of a WSF share or consolidated WFT unit on the implementation date |

Appendix B WESTFIELD STAPLED GROUP

(Implementation date - anticipated to be 16th July 2004)

Fully franked dividend \$0.001 per share
used to subscribe for units in WFA



WSF : Westfield Holdings Limited
WFT : Westfield Trust
WFA : Westfield America Trust
CD : Capital distribution

All subscriptions in the other two entities
are made on behalf of the securityholders.