CR 2005/73 - Income tax: capital distribution of Centro Retail Securities by Centro Property Trust

Class Ruling

Income tax: capital distribution of Centro Retail Securities by Centro Property Trust

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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 laws' identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates.

Tax law(s)

2. This Ruling relates to the application of the following provisions of the *Income Tax Assessment Act 1997* (ITAA 1997):

- section 104-70;
- section 104-155;
- section 109-5; and
- section 112-20.

Class of persons

3. The class of persons to which this Ruling applies is the owners of units in Centro Property Trust (CPT) and shares in Centro Properties Limited (CPL), which together are listed for quotation on the Australian Stock Exchange (ASX) as a Centro Properties Group stapled security (Centro Property security), who:

(a) are 'residents of Australia' as that term is defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936); and

(b) hold their CPT units and CPL shares on capital account.

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 24.

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- this Ruling may be withdrawn or modified.

Date of effect

8. This Ruling applies to the year of income ended 30 June 2006 or substituted accounting period. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of the Ruling (refer to paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Withdrawal

9. This Ruling is withdrawn after 30 June 2006. 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 this Ruling is described below. This description is based on the following documents provided by Greenwoods and Freehills. These documents, or relevant parts of them, as the case may be, form part of the arrangement described:

- Class Ruling request dated 24 May 2005;
- Correspondence dated 10 June 2005, 17 June 2005, 22 June 2005, 23 June 2005, 29 June 2005, 1 July 2005, 7 July 2005, 18 August 2005, and 22 August 2005 in response to requests for further information;
- Product Disclosure Statement and Prospectus in relation to the proposal to transfer Centro Retail stapled securities dated July 2005;
- CPT trust deed as amended up to 7 June 2004;
- Draft Fifth Supplemental Deed for Centro Direct Property Fund (New Zealand) (to be renamed as Centro Retail Trust (CER Trust)); and
- Statement of Financial Position for Centro Property Group as at 30 June 2004.

11. Under this arrangement, CPT unitholders received Centro Retail stapled securities (Centro Retail securities) following a capital distribution from CPT. These Centro Retail securities were then listed on the ASX.

12. CPT is a managed investment scheme under Chapter 5C of the *Corporations Act 2001*. It invests directly or indirectly through subsidiary trusts, in major urban shopping centres.

13. Each CPT unit is stapled to one CPL share to form one Centro Property security.

14. CER Trust is a dormant trust. Its fully paid units are owned by CPT and one partly paid unit is owned by an individual. The partly paid unit was subsequently fully paid. This unit will not be redeemed and no further partly paid or fully paid units will be issued by CER Trust under the arrangement.

15. CPT subscribed for a further 520 million units in CER Trust for approximately $800 million. CER Trust also borrowed additional funds.

16. Centro Trust (Centro Sub-Trust), a trust owned by CPT, transferred certain assets to CER Trust. CER Trust paid Centro Sub-Trust consideration, based on net tangible assets (NTA), for the asset transfer.

17. CPT also transferred certain assets to CER Trust. CER Trust paid consideration, based on NTA, for this asset transfer.

18. CPT owned aloof the shares in Centro Retail Limited (CER Limited), a dormant company. A wholly owned subsidiary of CPL will take on the property management role, development management role and project leasing role for Australian properties of CER Trust. A joint venture will manage the US properties of CER Trust. While CPT controls CER Limited, it does not control, directly or indirectly, the affairs or operations of any trading business of CER Limited, because it is a dormant company with no trading business.

19. After a share split by CER Limited, each CER Limited share was stapled to a CER Trust unit, forming one Centro Retail security. After stapling, CPT owned all of the Centro Retail securities except for the partly paid unit owned by the individual. The partly paid unit also participated in the stapling. The partly paid unit will not be redeemed and no further partly paid or fully paid units will be issued by CER Limited under the arrangement. CER Limited will continue to be a dormant company with negligible value after the stapling.

20. CPT distributed in specie half of its Centro Retail securities to its existing unitholders by way of a return of trust capital. CPT's trust deed was amended to ensure that the trustee was authorised to make the capital distribution. CPT unitholders received one Centro Retail security for every three CPT units they own.

21. At the time of the capital distribution CPT was not a public trading trust for the purposes of Division 6C of Part III of the ITAA 1936.

22. The amount of the return of capital was based on the NTA backing of each Centro Retail security of $1.50. As one Centro Retail security is distributed for every three CPT units held, the return of capital was $0.50 per CPT unit.

23. In total, 260 million Centro Retail securities were distributed pro-rata to CPT unitholders and the total value of the capital distribution to CPT unitholders was $390 million.

24. Centro Retail securities were listed on the ASX after the securities were distributed to CPT unitholders.

Ruling

Capital distribution

25. CGT event E4 (section 104-70 of the ITAA 1997) happens when CPT distributes Centro Retail securities to CPT unitholders.

26. The consequences for each CPT unitholder depend on the cost base of their CPT units at the time of the capital distribution (subsections 104-70(4) to (6) of the ITAA 1997).

27. CGT event H2 (section 104-155 of the ITAA 1997) does not apply to CPT unitholders in respect of the capital distribution.

Acquisition of Centro Retail securities

28. A CPT unitholder is taken to have acquired the Centro Retail security on the day of the capital distribution (section 109-5 of the ITAA 1997).

29. The first element of the cost base and reduced cost base of each Centro Retail security is its market value at the time of the capital distribution (section 112-20 of the ITAA 1997).

Explanation

Capital distribution

CGT event E4

30. CGT event E4 (section 104-70 of the ITAA 1997) happens if the trustee of a trust makes a payment to a beneficiary, in respect of their unit or interest in the trust, which is not included in the beneficiary's assessable income. The payment can include the giving of property (subsection 104-70(2) of the ITAA 1997).

31. Where the payment is the giving of property, the amount of the payment is the market value of the property given (section 103-5 of the ITAA 1997).

32. The consequence of CGT event E4 happening are determined either:

- just before the end of the income year in which a trustee makes a payment; or
- just before another CGT event (not CGT event E4) affects the unit or interest or part of it, after the trustee makes the payment but before the end of that income year (subsection 104-70(3) of the ITAA 1997).

33. CGT event E4 happens when the Centro Retail securities are distributed to CPT unitholders because the value of the securities is not included in the assessable income of the CPT unitholders.

34. CPT unitholders will make a capital gain if the total of the non-assessable payments made by the trustee during the income year in relation to their units exceeds the cost base of the units (subsection 104-70(4) of the ITAA 1997). In this case, CPT unitholders will make a capital gain if the market value of the Centro Retail securities they receive exceeds the cost base of their CPT units.

35. If the market value of the Centro Retail securities that CPT unitholders receive is not more than the cost base of their CPT units, the cost base and reduced cost base respectively of the CPT units are reduced by the market value of the Centro Retail securities they receive (subsection 104-70(6) of the ITAA 1997).

36. The market value of each Centro Retail security at the time of distribution (on 18 August 2005) has been determined by its volume weighted average price (VWAP) over the first ten days of trading after the distribution. There was no extraordinary trading to distort the VWAP over this period, so no adjustments were necessary. This information has been provided to the Centro Retail security holders on the Centro website.

Cost base of CPT units

37. Each Centro Property security consists of a separate CPT unit and CPL share, and the cost of acquiring the stapled security must be apportioned between the CPT unit and the CPL share (sections 108-5 and 110-25 of the ITAA 1997).

38. An appropriate method of apportioning the cost of the Centro Property security between the CPT unit and the CPL share is on the basis of the published details of NTA of CPT preceding the date of acquisition of the Centro Property security. This information is provided to CPT unitholders by the Centro group. The balance of the cost of the Centro Property security may then be allocated to the CPL share.

39. The apportionment of the cost of the Centro Property security between the CPT unit and CPL share happened at the time the stapled security was acquired. The cost base of the CPT unit may have been adjusted since that time (for example because CGT event E4 may have happened to the CPT unit following a non-assessable distribution to the CPT unitholder). Any adjustment to the cost base of the CPT unit because CGT event E4 happens to the CPT unit under this arrangement is to be made after any earlier CGT event E4 adjustment(s) have been made. Cost base adjustments under CGT event E4 are generally determined on an annual basis (subsection 104-70(4) of the ITAA 1997).

CGT event H2

40. CGT event H2 happens if an act, transaction or event occurs in relation to a CGT asset and no other CGT event happens because of that act, transaction or event (sections 104-155 and 102-25 of the ITAA 1997).

41. CGT event H2 did not happen to CPT unitholders as a result of the capital distribution because CGT event E4 happens and there will be a cost base adjustment to the cost base or reduced cost base of their CPT units.

CPT and its unit holders and Division 6C

42. If, after the capital distribution, CER Limited should begin to carry on a trading business, whether by taking on property management, development management and project leasing for any properties of CER Trust or otherwise, CPT would be able to control the affairs or operations of CER Limited in respect of its carrying on of that trading business. This capacity would follow from CPT's

continuing ownership of 50% of the shares in CER Limited. In that event, CPT would become a public trading trust for the purposes of Division 6C of Part III of the ITAA 1936. It would then be taxed as a company and its unit holders would be taxed as shareholders.

Acquisition of the Centro Retail security

43. Each Centro Retail security acquired under the capital distribution consists of a CER Trust unit stapled to a CER Limited share. A CPT unitholder is taken to have acquired the CER Trust units and CER Limited shares at the time of the capital distribution (section 109-5 of the ITAA 1997).

44. CPT unitholders will not incur any expenditure to acquire the Centro Retail securities. The cost base of each CER Trust unit and CER Limited share will be its market value at the time of the capital distribution (section 112-20 of ITAA 1997).

45. The market value of a Centro Retail security at that time has been determined by its VWAP over the first 10 days of trading after the distribution. There was no extraordinary trading to distort the VWAP over this period so no adjustments were necessary. This market value information and the appropriate basis of apportioning the market value between the CER Trust unit and CER Limited share has been provided to the Centro Retail security holders on the Centro website.

Part IVA

46. This arrangement constitutes a scheme for Part IVA of the ITAA 1936. This scheme has features of a CGT reduction arrangement which require it to be considered according to the principles as described in Taxation Determination TD 2003/3. As part of this scheme, CPT has been able to distribute assets to its unitholders without the tax consequences of the same type, or extent that would normally be expected upon such a disposal.

47. In connection with this scheme, CPT unitholders obtain a tax benefit in that the in specie distribution is not assessable income to them. CPT unitholders also obtain a tax benefit in that the existing cost base is not split between CPT and CER Trust units proportionately to the relative market values of the assets in the two entities after the distribution; existing cost base is allocated very largely to the CER Trust units.

48. CPT unitholders obtain a tax benefit even though the cost base of their CPT units is reduced under CGT event E4 for the capital distribution. Such a cost base reduction might result in future capital gains for CPT unitholders but it does not negate the tax benefit they obtain.

49. It is accepted that this arrangement is a commercially driven scheme where CPT lists CER Trust in order to meet investor demand for retail property investments with increased gearing of some classes of assets and reduced gearing of other classes of assets. In all the circumstances of this arrangement, it is accepted that the delivery of tax benefits to the unitholders will be merely an incidental aspect of a commercially driven scheme. Accordingly, for the purposes of Part IVA, in particular section 177D, it would not be concluded that the proposed scheme is entered into for the dominant purpose of enabling CPT unitholders to obtain a tax benefit.

Detailed contents list

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

Commissioner of Taxation
14 September 2005

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

CR 2001/1; TR 92/1; TR 92/20; TR 97/16; TD 2003/3

Subject references:

- arrangements
- base adjustments
- capital distribution rights
- CGT cost base
- CGT events E1-E9 – trusts
- CGT share value shifting
- cost
- cost base adjustments for value fixed entitlements
- indirect value shifting rules
- share consolidations and splits
- shift
- stapled companies
- stapled structure
- stapled trusts
- time of CGT event
- trusts
- value shifting – entity interests

Legislative references:

- ITAA 1936 6(1)
- ITAA 1936 Pt III Div 6C
- ITAA 1936 Pt IVA
- ITAA 1936 177D
- ITAA 1997 102-25
- ITAA 1997 103-5
- ITAA 1997 104-70
- ITAA 1997 104-70(2)
- ITAA 1997 104-70(4)
- ITAA 1997 104-70(5)
- ITAA 1997 104-70(6)
- ITAA 1997 104-155
- ITAA 1997 108-5
- ITAA 1997 109-5
- ITAA 1997 110-25
- ITAA 1997 112-20
- TAA 1953 Pt IVAAA
- Copyright Act 1968
- Corporations Act 2001 Ch 5C

ATO references

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