


# ***CR 2014/77 - Income tax: Westfield Retail Trust: Merger with Westfield Group's Australian/New Zealand business***

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## Class Ruling

### Income tax: Westfield Retail Trust: Merger with Westfield Group's Australian/New Zealand business

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#### **① 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 provision(s) 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 99B of the *Income Tax Assessment Act 1936* (ITAA 1936)
- section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997)
- Division 104 of the ITAA 1997
- section 109-5 of the ITAA 1997
- section 109-10 of the ITAA 1997
- subsection 112-25 of the ITAA 1997
- Division 115 of the ITAA 1997

- Division 725 of the ITAA 1997, and
- section 855-10 of the ITAA 1997.

All subsequent legislative references are to the ITAA 1997 unless otherwise specified.

## **Class of entities**

3. The class of entities to which the class ruling applies is owners of Westfield Retail Trust stapled securities (WRT Securities) who:

- were registered on the unit registers of Westfield Retail Trust 1 (WRT1) and Westfield Retail Trust 2 (WRT2) at 7.00pm AEST on 27 June 2014 (Record Date)
- held their WRT Securities on capital account for income tax purposes
- were not 'Ineligible Foreign Securityholders' as defined in the Westfield Retail Trust Securityholder Booklet dated 14 April 2014 (Westfield Retail Trust Securityholder Booklet), and
- were not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on their WRT Securities.

(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 WRT Securityholder.

## **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 21 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.

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## Date of effect

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7. This Ruling applies from 1 July 2013 to 30 June 2014. The Ruling continues to apply after 30 June 2014 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).

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## Scheme

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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 4 April 2014;
- Westfield Retail Trust Securityholder Booklet, Supplementary Securityholder Booklet dated 9 May 2014, and Second Supplementary Securityholder Booklet dated 3 June 2014, and
- Correspondence from the Applicant dated up to and including 3 September 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.

## Background

9. The Westfield Group was formed in July 2004 by the stapling of the Australian Securities Exchange (ASX) listed securities of Westfield Holdings Limited (WHL)(now Scentre Group Limited), a public company, to Westfield Trust (WT)(now Scentre Group Trust 1) 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). The WDC Securities could not be traded separately and the holders of WDC Securities are referred to in this Ruling as WDC Group Securityholders.

10. The Westfield Retail Trust (WRT) was established in December 2010. WRT was an ASX listed stapled property trust. WRT comprises of two public unit trusts, WRT1 (now Scentre Group Trust 2) and WRT2 (now Scentre Group Trust 3). The stapled securities of WRT1 and WRT2 were quoted and traded together on the ASX under the code 'WRT' and are referred to as WRT Securities. WRT Securities could not be traded separately.

## Proposal

11. 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.

12. Just after implementation of the Proposal on 30 June 2014 (Implementation Date):

- (a) WDC Group Securityholders owned 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; and
- (b) WRT Securityholders owned 0.918 stapled securities in SG for every 1 stapled security in WRT they owned just before the Implementation Date.

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

- Step 1 Restructure
- Step 2 De-stapling, and
- Step 3 Merger.

Only Step 3 impacts on WRT Securityholders.

## Merger

14. The merger step involved the following elements that all occurred on the Implementation Date:

### *WRT capital return*

- WRT1 made a capital distribution of \$0.2853 per unit in cash (total distribution \$850 million) to WRT1 unitholders who were registered on the unit register of WRT1 on the Record Date (WRT Capital Distribution). WRT1 reduced its Contributed Capital Account by \$850 million.

### *Stapling Arrangement*

- Each WHL share and each WT unit was converted to 1.246 WHL shares and 1.246 WT units.

- Each WRT1 unit and each WRT2 unit was converted to 0.918 WRT1 units and 0.918 WRT2 units.
- WT paid a capital distribution of \$0.0011 per converted WT unit (total distribution \$2.8 million) to WT unitholders who were registered on the unit register of WT on the Record Date (WT Stapling Distribution). WT reduced its Contributed Capital Account by \$2.8 million.
- The WT Stapling Distribution was applied on behalf of WT unitholders to apply for one unit in WRT1 (\$0.001) and one unit in WRT2 (\$0.0001) for each converted WT unit held.
- WRT1 paid a capital distribution of \$0.0011 per converted unit (total distribution \$3 million) to WRT1 unitholders who were registered on the unit register of WRT1 on the Record Date (WRT Stapling Distribution). WRT1 reduced its Contributed Capital Account by \$3 million.
- The WRT Stapling Distribution was applied on behalf of WRT1 unitholders to apply for one share in WHL (\$0.0001) and one unit in WT (\$0.001) for each converted WRT1 unit held.
- The shares in WHL and the units in WT were stapled to units in WRT1 and WRT2 to form SG stapled securities.
- Collectively the WT Stapling Distribution, the WRT Stapling Distribution and the stapling of shares in WHL and units in WT, WRT1 and WRT2 are, in this Ruling, referred to as the Stapling Arrangement.

### **Other**

15. WRT1 is treated as a flow through trust under Division 6 of Part III of the ITAA 1936 and is not a corporate unit trust under Division 6B of Part III of the ITAA 1936 or a public trading trust for the purposes of Division 6C of Part III of the ITAA 1936.

16. WRT2 is a public trading trust under Division 6C of Part III of the ITAA 1936.

17. The sum of the direct participation interests (within the meaning of section 960-190) held by each WRT Securityholder and its associates in WRT1 or WRT2 is not 10% or more at the time the merger is undertaken or throughout a 12 month period during the 24 months before that time.

18. The units in WRT1 held by foreign resident WRT Securityholders are not taxable Australian real property interests within item 1 of the table in section 855-15.

19. For the purposes of item 2 in section 855-15, the units will not pass the non-portfolio interest test (section 960-195) as at 30 June 2014, or throughout a 12 month period that began no earlier than 30 June 2012 and ended no later than 30 June 2014 (paragraph 855-25(1)(a)).

20. No entity, either alone or together with its associates, would be regarded as controlling WHL, WT, WRT1 and WRT2 for value shifting purposes under the tests in sections 727-355 and 727-360 during the period starting when the scheme is entered into and ending when it has been carried out.

21. Some WRT Securityholders are treated as having acquired their WRT1 units before 20 September 1985 for the purpose of section 109-5.

## Ruling

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### WRT Capital Distribution

#### ***Non-assessable payments***

22. The WRT Capital Distribution paid to WRT Securityholders is not included in the assessable income of a WRT Securityholder under section 6-5 or section 99B of the ITAA 1936.

#### ***CGT event E4***

23. CGT event E4 in section 104-70 happened to each WRT1 unit upon the receipt of the WRT Capital Distribution. A resident WRT Securityholder who makes a capital gain when CGT event E4 happened may be eligible to treat the gain as a 'discounted capital gain' provided they satisfy the requirements in Subdivision 115-A.

24. Any capital gain made as a result of CGT event E4 happening to a WRT1 unit the WRT Securityholder acquired before 20 September 1985 (pre-CGT) will be disregarded (subsection 104-70(7)).

25. Any capital gain made by a WRT Securityholder that is a foreign resident, or the trustee of a foreign trust for CGT purposes, as a result of CGT event E4 happening is disregarded under section 855-10 if their WRT1 unit is not taxable Australian property.

26. No capital loss can be made from CGT event E4.

### WRT Stapling Distribution

#### ***Non-assessable payments***

27. The WRT Stapling Distribution is not included in the assessable income of a WRT Securityholder under section 6-5 or section 99B of the ITAA 1936.

**CGT event E4**

28. CGT event E4 in section 104-70 happened to each WRT1 unit as a result of the WRT Stapling Distribution. A resident WRT Securityholder who makes a capital gain when CGT event E4 happened may be eligible to treat the gain as a 'discounted capital gain' provided they satisfy the requirements in Subdivision 115-A.

29. Any capital gain made by a WRT Securityholder as a result of CGT event E4 happening to a pre-CGT WRT1 unit will be disregarded (subsection 104-70(7)).

30. Any capital gain made by a WRT Securityholder that is a foreign resident, or the trustee of a foreign trust for CGT purposes, as a result of CGT event E4 happening is disregarded under section 855-10 if their WRT1 unit is not taxable Australian property.

31. No capital loss can be made from CGT event E4.

**Cost base and reduced cost base of WT units and WHL shares**

32. The first element of a WRT Securityholder's cost base and reduced cost base in each:

- WT unit acquired under the Stapling Arrangement is \$0.001 per unit; and
- WHL share acquired under the Stapling Arrangement is \$0.0001 per share.

**Acquisition date of WT units and WHL shares**

33. A WRT Securityholder's acquisition date for the WT units and WHL shares will be the Implementation Date (items 2 and 3 of the table in section 109-10).

**CGT event H2**

34. There are no CGT consequences arising for a WRT Securityholder under CGT event H2 with respect to the Stapling Arrangement.

**Application of Division 725**

35. Division 725 will not apply to the Stapling Arrangement.

**Stapling of WT units, WHL shares, WRT1 units and WRT2 units**

36. No CGT event in Division 104 will happen as a result of the stapling of WT units, WHL shares, WRT1 units and WRT2 units.



## **Conversion of the units in WRT1 and WRT2**

37. The conversion of the units in WRT1 and WRT2 on a 0.918 for 1 basis will not result in a CGT event happening.

38. Each WRT Securityholder will be taken to have a cost base and reduced cost base in each of their converted units equal to the sum of the corresponding cost base and reduced cost base of the original units and which reflects the ratio for the conversion of the units (subsection 112-25(4)).

39. Each WRT Securityholder will be taken to have acquired their converted WRT1 units at the time they acquired their original WRT1 units and WRT2 units (subsection 109-5(1)).

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**Commissioner of Taxation**

1 October 2014

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## 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.*

### **WRT Capital Distribution**

#### ***Non-assessable payments***

40. Subsection 99B(1) of the ITAA 1936 provides that an amount, being property of a trust estate, paid to, or applied for the benefit of, a beneficiary of the trust estate who was a resident at any time during the year of income, is the assessable income of the beneficiary, subject to the exceptions in subsection 99B(2) of the ITAA 1936.

41. The exception in paragraph 99B(2)(a) of the ITAA 1936 reduces the amount that would otherwise be included in assessable income by the amount that represents corpus of the trust estate and is not attributable to amounts derived by the trust estate that, if they had been derived directly by a taxpayer being a resident, would have been included in the assessable income of that taxpayer.

42. Section 6-5 provides that a taxpayer's assessable income includes income according to ordinary concepts (ordinary income).

43. As the capital distribution to WRT Securityholders by WRT1 is a reduction in the contributed capital of WRT1 it will be corpus of the trust.

44. The contributed equity capital has the quality of capital in the hands of the trustee and that characterisation does not change if the relevant amounts were derived by a hypothetical resident taxpayer.

45. Accordingly, the WRT Capital Distribution is not included in the assessable income of WRT Securityholders under subsection 99B(1) of the ITAA 1936 as it represents corpus of WRT1. The capital distribution (being a payment of corpus) is not ordinary income under section 6-5.

#### ***CGT event E4***

46. Under section 104-70, CGT event E4 will happen when the trustee of a trust makes a payment to a unitholder in respect of their unit in the trust, and some or all of the payment is not included in the unitholder's assessable income (the non-assessable part).

47. If CGT event E4 happens during an income year, a unitholder will make a capital gain if the total of the amounts of the non-assessable parts of the payments made by the trustee during the income year in respect of the unit exceeds the cost base of the unit (subsection 104-70(4)).

48. However, if the total of the amounts of the non-assessable parts of the payments made by the trustee during the income year is not more than the cost base of the unit, the cost base and reduced cost base of the unit are reduced by that total amount (subsection 104-70(6)).

49. The amount of the capital distribution by WRT1 to WRT Securityholders was \$0.2853 per WRT1 unit. As no part of this capital distribution will be included in the assessable income of WRT Securityholders, CGT event E4 happened to a WRT Securityholder as a result of the receipt of the capital distribution.

50. Subsection 104-70(3) provides that the time of CGT event E4 is:

- just before the end of the income year in which the trustee makes the payment; or
- if another CGT event (except CGT event E4) happens in relation to the unit after the trustee makes the payment but before the end of that income year – just before the time of that other CGT event.

51. A resident WRT Securityholder who made a capital gain when CGT event E4 happened will be eligible to treat all or part of the gain as a discount capital gain provided they satisfy the requirements in Subdivision 115-A.

52. Under subsection 855-10(1), an entity can disregard a capital gain or capital loss made from a CGT event if they are a foreign resident, or the trustee of a foreign trust for CGT purposes, just before the CGT event happens in relation to a CGT asset that is not taxable Australian property under section 855-15.

53. The units in WRT1 are not taxable Australian property within item 1 of the table in section 855-15. In addition, for non-resident WRT Securityholders whose income year ended 30 June 2014, as none of their units in WRT1 pass the non-portfolio interest test, their units are not an 'indirect Australian real property interest' (section 855-25) at the time that CGT event E4 happened, for the purposes of item 2 of the table in section 855-15. If items 3, 4 and 5 of the table in section 855-15 do not apply to the units held in WRT1, a WRT Securityholder who is a foreign resident, or the trustee of a foreign trust for CGT purposes, will disregard any capital gain from CGT event E4 happening (section 855-10).

54. Non-resident WRT Securityholders whose income year does not end on 30 June 2014 (as a result of having a substituted accounting period) will need to assess at the time CGT event E4 happened whether their units pass the non-portfolio interest test such that their units are taxable Australian property and any capital gain from CGT event E4 is not disregarded.

**WRT Stapling Distribution*****Non-assessable payments***

55. The WRT Stapling Distribution is not included in the assessable income of a WRT Securityholder under section 6-5 or section 99B of the ITAA 1936.

***CGT event E4***

56. As stated in paragraph 27 above, no part of the WRT Stapling Distribution will be included in the assessable income of WRT Securityholders. As each membership interest in WRT1 constitutes a unit in a unit trust, CGT event E4 happened with respect to each WRT1 unit as a result of the WRT Stapling Distribution.

57. The consequences of CGT event E4 as outlined in paragraphs 46 to 54 will equally apply to the WRT Stapling Distribution.

***Cost base and reduced cost base of WT units and WHL shares***

58. Pursuant to subsection 110-25(2) and 110-55, the first element of the cost base and reduced cost base of a CGT asset is the money a taxpayer paid, or is required to pay, in respect of acquiring it.

59. Under the Stapling Arrangement, RE1 Limited, as the responsible entity of WRT1 (on behalf of each WRT Securityholder) applied the WRT Stapling Distribution to acquire a unit in WT and a share in WHL. Relevantly, \$0.001 was applied for the subscription of each unit in WT and \$0.0001 was applied for the subscription of each share in WHL.

60. Accordingly, the first element of the cost base and reduced cost base for a WRT Securityholder in each:

- WT unit acquired under the Stapling Arrangement is \$0.001 per unit; and
- WHL share acquired under the Stapling Arrangement is \$0.0001 per share.

***Acquisition date of WT units and WHL shares***

61. Pursuant to item 3 of the table in section 109-10, where a trustee of a unit trust issues units in circumstances where no contract is entered into in respect of the acquisition, the units will be deemed to have been acquired at the time of issue. In relation to the issue of equity interests in a company, item 2 of the table in section 109-10 similarly provides that, where a company issues equity interests in circumstances where no contract is entered into in respect of the acquisition, the equity interests will be deemed to have been acquired at the time of issue.

62. Accordingly, each WRT Securityholder will be taken to have acquired the WT units and WHL shares at the time they are issued under the Stapling Arrangement, being the Implementation Date.

## ***CGT event H2***

63. CGT event H2 in section 104-155 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.

64. There are no CGT consequences arising for a WRT Securityholder under CGT event H2 with respect to the Stapling Arrangement.

## ***Application of Division 725***

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

66. 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.

67. Subdivision 727-E sets out the circumstances in which an entity will be regarded as controlling another entity for value shifting purposes.

68. On the basis of the information provided by the Applicant no entity, either alone or together with its associates, would be regarded as controlling WHL, WT, WRT1 and WRT2 for value shifting purposes under the tests in sections 727-355 and 727-360 during the period starting when the Stapling Arrangement is entered into and ending when it has been carried out.

69. Therefore, as the threshold requirement in paragraph 725-50(b) is not satisfied, Division 725 can have no consequences for the WRT Securityholders in respect of the Stapling Arrangement.

## ***Stapling of WT units, WHL shares, WRT1 units and WRT2 units***

70. The effect of stapling of WT units, WHL shares, WRT1 units and WRT2 units is to apply restrictions on the transferability of the relevant individual units/shares that together make up the SG stapled securities. Each individual unit/share retains its legal character without any change in beneficial ownership. There will be no variation to the rights or obligations attaching to, or the ownership of, the individual units/shares as a consequence of the stapling of those units/shares to each other.

71. Therefore, no CGT event in Division 104 happened as a consequence of the stapling of WT units, WHL shares, WRT1 units and WRT2 units.

### **Conversion of the units in WRT1 and WRT2**

72. The units in WRT1 and WRT2 were converted on a 0.918 for 1 basis.

73. Subsection 112-25(4) provides that if two or more CGT assets are merged into a single asset, where the beneficial ownership of the old and new assets remains the same, the merger does not result in the happening of a CGT event. It also provides that each element of the cost base and reduced cost base of the new asset (at the time of merging) is the sum of the corresponding elements of each original asset.

74. Accordingly, the conversion of the units in WRT1 and WRT2 did not result in a CGT event happening to WRT Securityholders.

75. Each WRT Securityholder will be taken to have a cost base and reduced cost base for their converted units based on the cost base and reduced cost base of their original units and which reflects the conversion ratio.

76. Subsection 109-5(1) generally provides that a CGT asset is acquired when it commences to be owned.

77. If one or more converted units can be formed from a parcel of original units that all have the same acquisition date, the WRT Securityholder will be taken to have acquired those converted units on the date of acquisition of the original units.

## Appendix 2 – Detailed contents list

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

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## References

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*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

TR 2006/10

*Subject references:*

- acquisition dates
  - capital gains
  - CGT cost base
  - CGT events
  - CGT events E1-E9 - trusts
  - CGT events H1-H2 - special capital receipts
  - CGT reduced cost base
  - income
  - value shifting – entity interests
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- ITAA 1997 Div 104
  - ITAA 1997 104-70
  - ITAA 1997 104-70(3)
  - ITAA 1997 104-70(4)
  - ITAA 1997 104-70(6)
  - ITAA 1997 104-70(7)
  - ITAA 1997 104-155
  - ITAA 1997 109-5
  - ITAA 1997 109-5(1)
  - ITAA 1997 109-10
  - ITAA 1997 110-25(2)
  - ITAA 1997 110-55
  - ITAA 1997 112 -25
  - ITAA 1997 112-25(4)
  - ITAA 1997 Div 115
  - ITAA 1997 Subdiv 115-A
  - ITAA 1997 Div 725
  - ITAA 1997 725-50(b)
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  - ITAA 1997 727-355
  - ITAA 1997 727-360
  - ITAA 1997 855-10
  - ITAA 1997 855-10(1)
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  - ITAA 1997 960-190
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  - TAA 1953

*Legislative references:*

- ITAA 1936 Pt III Div 6
  - ITAA 1936 Pt III Div 6B
  - ITAA 1936 Pt III Div 6C
  - ITAA 1936 99B
  - ITAA 1936 99B(1)
  - ITAA 1936 99B(2)
  - ITAA 1936 99B(2)(a)
  - ITAA 1997
  - ITAA 1997 6-5
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ATO references

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