CR 2018/9 - Income tax: bonus share plan: Cedar Woods Properties Limited

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Class Ruling

Income tax: bonus share plan: Cedar Woods Properties Limited

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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.

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 6BA of the *Income Tax Assessment Act 1936* (ITAA 1936)
- section 44 of the ITAA 1936
- section 45 of the ITAA 1936
- section 130-20 of the *Income Tax Assessment Act 1997* (ITAA 1997).

All subsequent legislative references in this Ruling are to the ITAA 1936 unless otherwise indicated.

Class of entities

3. The class of entities to which this Ruling applies are the holders of ordinary shares in Cedar Woods Properties Limited (CWP) who:

- are listed on the share register of CWP as at the Record Date for a dividend
- do not hold their CWP shares as a revenue asset (as defined in section 977-50 of the ITAA 1997) nor as trading stock (as defined in subsection 995-1(1) of the ITAA 1997) – that is, they hold their shares in CWP on capital account
- are eligible, and choose, to participate in the Bonus Share Plan (BSP), and
- are not subject to the taxation of financial arrangements rules in Division 230 of the ITAA 1997 in relation to gains and losses on their CWP shares.

  (**Note:** Division 230 of the ITAA 1997 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 CWP shareholder'.

Qualifications

4. The Commissioner makes this Ruling based on the precise arrangement 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 16 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.

Date of effect

7. This Ruling applies from 1 July 2017 to 30 June 2022. The Ruling continues to apply after 30 June 2022 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).

Scheme

8. The following description of the scheme is based on information provided by 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.

9. CWP is a property development company listed on the Australian Securities Exchange. It is a 'listed public company' for the purposes of subsection 995-1(1) of the ITAA 1997.

10. CWP has historically paid fully franked dividends in respect of its ordinary shares for each year since 1998.

11. CWP is proposing to offer its shareholders a choice to receive dividends or to participate in the BSP from the 2018 calendar year.

12. Under the BSP, shareholders can choose to have some or all of their ordinary shares participate in the BSP (subject to minimum and maximum levels as determined from time to time by the directors of CWP). Participation in the proposed BSP is voluntary, and may be varied and terminated at any time subject to notice requirements.

13. If shareholders choose to participate in the BSP, they will not receive dividends in respect of the ordinary shares that they have chosen to participate in the BSP. Instead, they will be issued with fully paid ordinary shares in CWP to the equivalent value of the dividend foregone. Pursuant to the rules of the BSP, CWP will not credit its share capital account in connection with the issue of ordinary shares under the BSP.

14. CWP shareholders will only be eligible to participate in the BSP if they have a registered address in Australia or New Zealand.

15. All shareholders in CWP acquired their ordinary shares after 19 September 1985.

16. No dividend paid by CWP on its ordinary shares will be unfranked or franked to less than 10%.

Ruling

Section 44 – dividend

17. If an eligible CWP shareholder chooses to participate in the BSP and is issued with ordinary shares under the BSP, and if CWP does not credit its share capital account in connection with the issue of those shares, the value of those shares will not be taken to be a dividend that is included in the assessable income of the eligible CWP shareholder under section 44 (subsections 6BA(5) and (6)).

Section 45

18. Section 45 will not apply in respect of the issue of ordinary shares under the BSP, as it cannot be concluded that shares will be received by certain shareholders while other shareholders receive minimally franked dividends.

Cost base of shares

19. If the ordinary shares issued under the BSP (the 'bonus shares') are issued for no consideration, and are not a dividend or taken to be a dividend, the first element of the cost base and reduced cost base of an eligible CWP shareholder's ordinary shares will be determined by apportioning the first element of the cost base of the CWP ordinary shares they owned before being issued with ordinary shares under the BSP (the 'original shares') over both the bonus shares and the original shares (section 130-20 of the ITAA 1997 and subsections 6BA(3) and (6)).

Commissioner of Taxation
7 February 2018

Appendix 1 – Explanation

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.

Section 44 – dividend

20. Section 6BA provides the rules for the treatment of the issue of bonus shares.

21. Subsection 6BA(1) states that section 6BA applies if a shareholder holds shares in a company (the 'original shares') and the company issues other shares (the 'bonus shares') in respect of the original shares. The ordinary shares which an eligible CWP shareholder owned before being issued with ordinary shares under the BSP are the original shares. The ordinary shares issued under the BSP are the bonus shares.

22. Subsection 6BA(5) states that, subject to subsection 6BA(6), if a shareholder has a choice whether to be paid a dividend or to be issued shares and the shareholder chooses to be issued with shares:

(a) the dividend is taken to be credited to the shareholder

(b) the dividend is taken to have been paid out of profits, and

(c) subsections 6BA(2) and(3) apply in working out the consideration for the acquisition of the shares for the purposes of the income tax legislation.

23. The effect of subsection 6BA(5) is that the issue of shares will be treated as the payment of a dividend for income tax purposes and will be included in the assessable income of the shareholder under section 44.

24. The exception to this treatment is provided for in subsection 6BA(6). Pursuant to subsection 6BA(6), subsection 6BA(5) does not apply if:

(a) a shareholder in a listed public company (within the meaning of the ITAA 1997) has a choice whether to be paid a dividend (other than a minimally franked dividend within the meaning of subsection 45(3)) or to be issued shares, and the shareholder chooses to be issued with shares, and

(b) the company does not credit the share capital account in connection with the issue of those shares.

25. CWP is a 'listed public company' under subsection 995-1(1) of the ITAA 1997. If an eligible CWP shareholder chooses to participate in the BSP, they will be issued with ordinary shares under the BSP in lieu of receiving a more than minimally franked cash dividend. As CWP will not credit its share capital account in connection with the issue of those shares, the requirements of subsection 6BA(6) will be satisfied.

26. The effect of subsection 6BA(6) is that the value of those shares will not be taken to be a dividend that is included in the assessable income of the eligible CWP shareholder under section 44.

27. Further, the Note to subsection 6BA(6) states: 'If subsection (5) does not apply because of this subsection, subsection (3) will apply.' Subsection 6BA(3) provides the rules for determining the tax treatment of the bonus shares issued in the situation where the bonus shares are issued for no consideration for tax purposes and are not taken to be a dividend.

Section 45

28. Section 45 applies in respect of a company that, whether in the same year of income or in different years of income, streams the provision of shares (other than shares to which subsection 6BA(5) applies) and the payment of minimally franked dividends to its shareholders in such a way that:

(a) the shares are received by some shareholders but not all shareholders, and

(b) some or all of the shareholders who do not receive the shares receive or will receive minimally franked dividends.

29. If section 45 applies, the value of the share at the time that the shareholder is provided with the share is taken to be an unfrankable dividend that is paid by the company out of its profits. The effect is that the value of the share will be included in the assessable income of the shareholder under section 44.

30. A minimally franked dividend is defined in subsection 45(3) as a dividend that is not franked, or is franked to less than 10%, in accordance with section 202-5 or section 208-60 of the ITAA 1997. As no dividend paid by CWP on its ordinary shares will be unfranked or franked to less than 10%, no shareholder will receive a minimally franked dividend pursuant to subsection 45(3).

31. Accordingly, section 45 will not apply in respect of the issue of ordinary shares under the BSP, as it cannot be concluded that shares will be received by certain shareholders while other shareholders will receive minimally franked dividends.

32. This Ruling does not consider the application of section 45A. It should be noted that section 45A will not apply where ordinary shares are issued under the BSP, and it is reasonable to assume that the CWP shareholders who do not choose to participate in the BSP have received, or will receive, fully franked dividends (subsection 45A(5)).

Cost base of shares

33. If the requirements of subsection 6BA(6) are satisfied, subsection 6BA(5) will not apply. The Note to subsection 6BA(6) states: 'If subsection (5) does not apply because of this subsection, subsection (3) will apply.'

34. If the bonus shares are issued for no consideration by CWP, and since they are not a dividend (under section 44) or taken to be a dividend (under section 45), subsection 6BA(3) will apply. For the purposes of the income tax legislation, where any of the original shares or any of the bonus shares are not articles of trading stock of the eligible CWP shareholder, the following methodology is to be used in determining:

(i) the amount or value of the consideration paid in respect of the acquisition of any of those shares for the purposes of Part 3-1 or 3-3 of the ITAA 1997, or

(ii) the amount of any profit or loss arising on the sale or disposal of any of those shares.

35. The methodology prescribed by subsection 6BA(3) is that any amounts paid or payable by the shareholder in respect of the original shares (whether on purchase of the shares, on application for or allotment of the shares, to meet calls or otherwise) shall be deemed to have been paid or to be payable by the shareholder in respect of the original shares and the bonus shares in such proportions as the Commissioner considers appropriate in the circumstances.

36. This means that subsection 6BA(3) is relevant in determining the first element of the cost base and the reduced cost base of the original shares and the bonus shares.

37. The Commissioner considers that an appropriate apportionment in the circumstances of this scheme is that the first element of the cost base of each parcel of the original shares should be spread in a **pro rata** manner over both the parcel of original shares and the bonus shares issued in respect of them. The result of this apportionment will be the first element of the cost base and reduced cost base of each of those CWP shares.

38. A parcel of original shares refers to original shares acquired at the same time for the same consideration per share.

39. Subsection 130-20(1) of the ITAA 1997 states that section 130-20 sets out what happens if a shareholder owns shares in a company (the 'original equities') and the company issues other shares (the 'bonus equities') to the shareholder in relation to the original equities. The ordinary shares which an eligible CWP shareholder owned before being issued with shares under the BSP are the original equities. The ordinary shares issued under the BSP are the bonus equities.

40. Item 1 of the table in subsection 130-20(3) of the ITAA 1997 will apply if the following conditions are satisfied:

- none of the bonus equities are a dividend, or taken to be a dividend under subsection 45(2) or 45C(1); and
- an eligible CWP shareholder acquired the original equities on or after 20 September 1985.

41. If item 1 of the table in subsection 130-20(3) of the ITAA 1997 applies, the eligible CWP shareholder must apportion the first element of the cost base and reduced cost base of the original shares in a reasonable way over both the original shares and the bonus shares.

42. The Commissioner considers that a reasonable apportionment under item 1 of the table in subsection 130-20(3) of the ITAA 1997 in the circumstances of this scheme will produce the same outcome as subsection 6BA(3) for the first element of the cost base and reduced cost base of each of the original shares and the bonus shares.

Acquisition date of shares

43. Item 1 of the table in subsection 130-20(3) of the ITAA 1997 also provides an acquisition date for the bonus shares (section 6BA of the ITAA 1936 does not). The bonus shares are taken to have been acquired when an eligible CWP shareholder acquired the original shares. This will ensure, for the purposes of determining eligibility to make a discount capital gain under Division 115 of the ITAA 1997, that the bonus shares are taken to have been acquired on the same date as the original shares.

Appendix 2 – Detailed contents list

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

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Legislative references:

- ITAA 1936
- ITAA 1936 6BA
- ITAA 1936 6BA(1)
- ITAA 1936 6BA(2)
- ITAA 1936 6BA(3)
- ITAA 1936 6BA(5)
- ITAA 1936 6BA(6)
- ITAA 1936 44
- ITAA 1936 45
- ITAA 1936 45(2)
- ITAA 1936 45(3)
- ITAA 1936 45A
- ITAA 1936 45A(5)
- ITAA 1936 45C(1)
- ITAA 1997
- ITAA 1997 Pt 3-1
- ITAA 1997 Pt 3-3
- ITAA 1997 Div 115
- ITAA 1997 130-20
- ITAA 1997 130-20(1)
- ITAA 1997 130-20(3)
- ITAA 1997 202-5
- ITAA 1997 208-60
- ITAA 1997 Div 230
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- TAA 1953

ATO references

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