

CR 2020/11 - BlackWall Limited - demerger of WOTSO Limited

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Class Ruling

BlackWall Limited – demerger of WOTSO 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.

Further, if we think that this Ruling disadvantages you, we may apply the law in a way that is more favourable to you.

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What this Ruling is about

1. This Ruling sets out the income tax consequences of the demerger of WOTSO Limited (WOTSO) by BlackWall Limited (BlackWall), which was implemented on 8 January 2020 (Implementation Date).
2. Full details of the demerger are set out in paragraphs 28 to 53 of this Ruling.

Who this Ruling applies to

3. This Ruling applies to you if you held ordinary shares in BlackWall and you:
 - were registered on the BlackWall share register on 6 January 2020 (Record Date), and
 - held your BlackWall shares on capital account on the Record Date, that is, you did not hold your shares in BlackWall as revenue assets (as defined in section 977-50 of the *Income Tax Assessment Act 1997* (ITAA 1997)) or as trading stock (as defined in subsection 995-1(1) of the ITAA 1997) on the Record Date.
4. This Ruling does not apply to anyone who is subject to the taxation of financial arrangements rules in Division 230 of the ITAA 1997 in relation to the scheme outlined in paragraphs 28 to 53 of this Ruling.

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

When this Ruling applies

5. This Ruling applies from 1 July 2019 to 30 June 2020.

Ruling**Demerger relief is available on the separation of WOTSO**

6. A demerger, as defined in section 125-70 of the ITAA 1997, happened to the BlackWall demerger group (which included BlackWall and WOTSO) under the scheme described in paragraphs 28 to 53 of this Ruling. This has income tax consequences for you as set out in paragraphs 7 to 27 of this Ruling.

CGT consequences – Australian resident BlackWall shareholders**CGT event G1**

7. CGT event G1 happened when you were paid an amount by BlackWall in respect of your BlackWall shares by way of the transfer to you of WOTSO shares.¹

8. You will make a capital gain from CGT event G1 happening if the amount of the reduction of share capital for each BlackWall share (5.54 cents) is more than the cost base of your share. The capital gain is equal to the amount of the excess. No capital loss can be made from CGT event G1.²

Choosing demerger rollover

9. You can choose to obtain demerger rollover under subsection 125-55(1) of the ITAA 1997 for your BlackWall shares.

10. If you choose demerger rollover for your BlackWall shares:

- any capital gain you made when CGT event G1 happened to your BlackWall shares under the demerger is disregarded³, and
- you must recalculate the first element of the cost base and reduced cost base of your BlackWall shares, and calculate the first element of the cost base and reduced cost base of the corresponding WOTSO shares you acquired under the demerger⁴ – see paragraphs 12 to 14 of this Ruling.

Not choosing demerger rollover

11. If you do not choose demerger rollover for your BlackWall shares:

- you cannot disregard any capital gain you made when CGT event G1 happened to your BlackWall shares under the demerger, and
- you must recalculate the first element of the cost base and reduced cost base of your BlackWall shares, and calculate the first element of the cost

¹ Section 104–135 of the ITAA 1997.

² Subsection 104–135(3) of the ITAA 1997.

³ Subsection 125–80(1) of the ITAA 1997.

⁴ Subsection 125–80(2) of the ITAA 1997.

base and reduced cost base of the corresponding WOTSO shares you acquired under the demerger⁵ – see paragraphs 12 to 14 of this Ruling.

New cost base and reduced cost base of your BlackWall and WOTSO shares

12. The first element of the cost base and reduced cost base of each BlackWall share and corresponding WOTSO share is worked out by:

- taking the total of the cost bases of the BlackWall shares just before the demerger, and
- apportioning that total between the BlackWall shares and the WOTSO shares acquired under the demerger.

13. The apportionment is done on a reasonable basis having regard to the market values (just after the demerger) of the BlackWall shares and WOTSO shares, or an anticipated reasonable approximation of those market values.⁶

14. The Commissioner accepts that a reasonable apportionment is to:

- attribute 80% of the total of the cost bases of the BlackWall shares just before the demerger to the BlackWall shares, and
- attribute 20% of the total of the cost bases of the BlackWall shares just before the demerger to the corresponding WOTSO shares.

Acquisition date of the WOTSO shares

15. For CGT purposes, you acquired the WOTSO share on the Implementation Date.⁷

16. However, for the purpose of determining whether you can make a discount capital gain from a future CGT event that happens to a WOTSO share you acquired under the demerger, you will be taken to have acquired the WOTSO share on the date you acquired, for CGT purposes, the corresponding BlackWall share (table item 2 of subsection 115-30(1) of the ITAA 1997). This will be the case whether or not you choose demerger rollover.

CGT consequences – foreign resident BlackWall shareholders

CGT event G1

17. CGT event G1 happened when you were paid an amount by BlackWall in respect of your BlackWall shares by way of the transfer to you of WOTSO shares.⁸

18. You will make a capital gain from CGT event G1 happening if the amount of the reduction of share capital for each BlackWall share (5.54 cents) is more than the cost base of your share. The capital gain is equal to the amount of the excess. No capital loss can be made from CGT event G1.⁹

⁵ Subsections 125–85(1) and (2) of the ITAA 1997.

⁶ Subsections 125–80(2) and (3) of the ITAA 1997.

⁷ Section 109–5 of the ITAA 1997.

⁸ Section 104–135 of the ITAA 1997.

⁹ Subsection 104–135(3) of the ITAA 1997.

19. However, any capital gain you make from CGT event G1 is disregarded unless the BlackWall share is taxable Australian property.¹⁰ A BlackWall share is taxable Australian property if:

- it was used by you (the foreign resident shareholder) in carrying on a business through a permanent establishment in Australia,¹¹ or
- it is a CGT asset that is covered by subsection 104-165(3) of the ITAA 1997 (choosing to disregard a gain or loss on ceasing to be an Australian resident).¹²

Limited availability of demerger rollover

20. If you are a foreign resident, you cannot choose to obtain demerger rollover under subsection 125-55(1) of the ITAA 1997 for your BlackWall shares, unless the WOTSO shares you acquire under the demerger are taxable Australian property just after you acquired them.¹³

Cost base and reduced cost base of WOTSO shares

21. Whether or not you choose demerger rollover or demerger rollover is available to you, you must work out the first element of the cost base and reduced cost base of each BlackWall share and corresponding WOTSO share in the same way as described in paragraphs 12 to 14 of this Ruling.¹⁴

Acquisition date of the WOTSO shares for the purpose of making a discount capital gain

22. For the purpose of determining whether you, as a foreign resident, can make a discount capital gain from a future CGT event that happens to a WOTSO share you acquired under the demerger, you will be taken to have acquired the WOTSO share on the date you acquired, for CGT purposes, the corresponding BlackWall share (table item 2 of subsection 115-30(1) of the ITAA 1997). This will be the case whether or not you choose demerger rollover.

Not a dividend

23. No part of the value of a WOTSO 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 a WOTSO share that is not debited to the share capital account of BlackWall is a 'dividend' under subsection 6(1) of the ITAA 1936, it will be a 'demerger dividend' under subsections 44(3), 44(4) and 44(5) of the ITAA 1936. A 'demerger dividend' is non-assessable non-exempt income for you.

¹⁰ Section 855-10 of the ITAA 1997.

¹¹ Table item 3 of section 855-15 of the ITAA 1997.

¹² Table item 5 of section 855-15 of the ITAA 1997.

¹³ Subsection 125-55(2) of the ITAA 1997.

¹⁴ Subsections 125-80(2) and (3), and subsections 125-85(1) and (2) of the ITAA 1997.

No dividend withholding tax for non-resident BlackWall shareholders

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

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

25. 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 all shareholders of BlackWall participated in the demerger based on the number of BlackWall shares they held on the Record Date, so that there was no streaming of capital benefits to only some BlackWall shareholders. Therefore, you will not include any part of the amount of the capital benefit (the reduction of share capital) in your assessable income under subsection 44(1) of the ITAA 1936.

26. The Commissioner will not make a determination under 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. This is because the purpose test in paragraph 45B(2)(c) of the ITAA 1936 is not satisfied. Therefore, you will not include any part of the amount of the demerger benefit (the market value of the WOTSO shares) in your assessable income under subsection 44(1) of the ITAA 1936.

27. The Commissioner will not make a determination under 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. This is because the purpose test in paragraph 45B(2)(c) of the ITAA 1936 is not satisfied. Therefore, you will not include any part of the amount of the capital benefit (the market value of the WOTSO shares to the extent that it is not a demerger dividend you receive) in your assessable income under subsection 44(1) of the ITAA 1936.

Scheme

28. 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.

BlackWall

29. BlackWall is an Australian resident company that was incorporated on 20 October 2010 and whose shares became listed on the Australian Securities Exchange (ASX) on 21 October 2011.

30. BlackWall is the head company of an Australian income tax consolidated group which includes WOTSO.

31. BlackWall's core business consists of property funds management, and property development and management activities in Australia.

32. Immediately before the demerger, BlackWall had on issue:

- 63,141,445 fully paid ordinary shares, and
- 4,500,000 unlisted options issued to directors and employees, representing more than 3% of the total number of ownership interests (as defined in subsection 125-60(1) of the ITAA 1997) in BlackWall.

33. There were no other ownership interests (as defined in subsection 125-60(1) of the ITAA 1997) in BlackWall.
34. As at 30 June 2019, BlackWall had:
 - \$17,555,000 credited to its share capital account
 - retained earnings of \$13,880,000, and
 - reserves of \$73,000.
35. BlackWall shareholders include both Australian residents and foreign residents and are a mix of individuals, companies, trusts and superannuation funds. No foreign resident shareholder of BlackWall held an interest in 10% or more of the ordinary shares of BlackWall.
36. BlackWall has paid regular dividends since listing on the ASX.

WOTSO

37. WOTSO is an Australian resident company that was incorporated on 9 October 2019.
38. WOTSO is a serviced office business which leases office space in suburbs close to the centre of various Australian capital cities, and grants renewable licences to individuals and small and medium enterprises to occupy that office space for a short duration. WOTSO all provides services to the licensees of its office space.
39. Immediately before the demerger, BlackWall held 100% of the ordinary shares in WOTSO.
40. Following the demerger, WOTSO proposes to raise capital to expand its operations.

The demerger of WOTSO

41. On 2 August 2019, BlackWall announced to the ASX the proposed demerger of WOTSO.
42. On 20 December 2019, BlackWall shareholders voted at the Extraordinary General Meeting to approve a resolution to reduce the share capital of BlackWall under sections 256B and 256C of the *Corporations Act 2001*. The date for determining the entitlement of BlackWall shareholders to receive WOTSO shares was 6 January 2020 (Record Date).
43. On 8 January 2020 (the Implementation Date), BlackWall satisfied the capital reduction by transferring 86% of all of the ordinary shares in WOTSO to BlackWall shareholders in proportion to their shareholdings in BlackWall.
44. On the Implementation Date, the BlackWall shareholders received one WOTSO ordinary share for every one BlackWall ordinary share they held at the Record Date for the demerger.
45. WOTSO intends to issue options in WOTSO to the same individuals who hold the existing options in BlackWall. The new options in WOTSO are intended to be in the same number and proportion as the existing BlackWall options. The BlackWall options are to be dealt with in such a way that the exercise price for the BlackWall options is to be reduced. It is intended that the total exercise price of the effectively exercisable BlackWall options and the new WOTSO options equals the exercise price of the existing BlackWall options just before the demerger.

46. After the demerger, BlackWall held 14% of the shares in WOTSO.

47. As a result of the demerger, BlackWall shareholders owned shares in both BlackWall and WOTSO.

Accounting treatment and market valuation

48. BlackWall accounted for the demerger by:

- debiting its share capital account by \$3,498,140.43 (the capital reduction amount), and
- debiting its retained earnings account by \$8,171,629.86 (the demerger dividend).

49. The demerger dividend was the difference between the market value of the WOTSO shares and the capital reduction amount.

Reasons for the demerger

50. The directors of BlackWall formed the view that:

- WOTSO's serviced office business is completely different from BlackWall's main property funds management, and property development and management activities
- a dedicated and independent management and focus for the development of the WOTSO assets will enable greater growth, and
- the capital needs of WOTSO's serviced office business are very different from those of BlackWall's main business.

Other matters

51. Immediately before the Implementation Date, BlackWall's share capital account was not tainted (within the meaning of Division 197 of the ITAA 1997).

52. BlackWall 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 BlackWall shareholders.

53. Just after the demerger, CGT assets owned by WOTSO 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).

References*Previous draft:*

Not previously issued as a draft

Legislative references:

- ITAA 1936 6(1)
- ITAA 1936 44(1)
- ITAA 1936 44(2)
- ITAA 1936 44(3)
- ITAA 1936 44(4)
- ITAA 1936 44(5)
- ITAA 1936 45A
- ITAA 1936 45B
- ITAA 1936 45B(2)(c)
- ITAA 1936 45B(3)(a)
- ITAA 1936 45B(3)(b)
- ITAA 1936 45BA
- ITAA 1936 45C
- ITAA 1936 128B(3D)
- ITAA 1997 104-135
- ITAA 1997 104-135(3)
- ITAA 1997 104-135(5)
- ITAA 1997 104-165(3)
- ITAA 1997 109-5
- ITAA 1997 Div 110
- ITAA 1997 115-30
- ITAA 1997 115-30(1)
- ITAA 1997 Div 125
- ITAA 1997 125-55(1)
- ITAA 1997 125-55(2)
- ITAA 1997 125-60(1)
- ITAA 1997 125-70
- ITAA 1997 125-80(1)
- ITAA 1997 125-80(2)
- ITAA 1997 125-80(3)
- ITAA 1997 125-85(1)
- ITAA 1997 125-85(2)
- ITAA 1997 Div 197
- ITAA 1997 Div 230
- ITAA 1997 855-10
- ITAA 1997 855-15
- ITAA 1997 977-50
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- TAA 1953
- Corporations Act 2001 256B
- Corporations Act 2001 256C

ATO references

NO: 1-JVY888J

ISSN: 2205-5517

BSL: PGI

ATOlaw topic: Income tax ~~ Assessable income ~~ Dividend income ~~ Dividend income
Income tax ~~ Capital gains tax ~~ CGT events ~~ CGT events G1 to G3 -
shares
Income tax ~~ Capital gains tax ~~ Cost base and reduced cost base
Income tax ~~ Capital gains tax ~~ Discount capital gains
Income tax ~~ Capital gains tax ~~ Exemptions ~~ Other
Income tax ~~ Capital gains tax ~~ Rollovers ~~ Demergers – Division 125-C
Income tax ~~ Capital management ~~ Anti avoidance rules ~~ Section 45B
Income tax ~~ Capital management ~~ Anti avoidance rules ~~ Section 45C

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