


# ***CR 2021/57 - Primewest Group stapled securities - scrip for scrip roll-over***

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## Class Ruling

# Primewest Group stapled securities – scrip for scrip roll-over

### **📌 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.

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### **What this Ruling is about**

1. This Ruling sets out the income tax consequences for the Australian-resident holders of Primewest Group (PWG) stapled securities (consisting of shares in Primewest Group Limited (PGL) and units in Primewest Property Fund (PPF)) in relation to the acquisition of those securities by the Centuria Capital Group (Centuria).
2. Full details of this scheme are set out in paragraphs 43 to 67 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997* unless otherwise indicated.

### **Who this Ruling applies to**

4. This Ruling applies to you if you:
  - were a holder of PWG stapled securities
  - participated in the scheme that is the subject of this Ruling
  - were a resident of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936*, and not a 'temporary resident' within the meaning of that expression in subsection 995-1(1) at the time the scheme was implemented
  - did not acquire your PWG stapled securities pursuant to an employee share scheme, and
  - did not hold your PWG stapled securities as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)), that

is, the PWG stapled securities were held on capital account for tax purposes.

5. This Ruling does not apply to anyone who is subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 43 to 67 of this Ruling.

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

### **When this Ruling applies**

6. This Ruling applies from 1 July 2020 to 30 June 2022.

## **Ruling**

### **CGT event A1 happened on the disposal of your Primewest Group Limited shares**

7. CGT event A1 happened when you disposed of your PGL shares to Centuria Capital Limited (CCL) (section 104-10).

8. If you accepted Centuria's offer to acquire all of your PWG stapled securities (the Offer) before the Offer became unconditional, CGT event A1 happened when the Offer became unconditional (subsection 104-10(3)).

9. If you accepted the Offer on or after the date the Offer became unconditional, CGT event A1 happened when you accepted the Offer (subsection 104-10(3)).

10. If your PGL shares were compulsorily acquired, CGT event A1 happened when those shares were compulsorily acquired by CCL (subsection 104-10(6)).

11. The capital proceeds from CGT event A1 happening to each PGL share is the total of the cash and the market value of the CCL share you received in respect of your disposal of the PGL share (subsection 116-20(1)). The market value of the CCL shares is worked out as at the time of CGT event A1 happening.

12. You will make a capital gain from CGT event A1 happening if the capital proceeds from the disposal of your PGL share exceeded the cost base of that share (subsection 104-10(4)). You will make a capital loss from CGT event A1 happening if the capital proceeds from the disposal of your PGL share were less than the reduced cost base of that share (subsection 104-10(4)).

### **Availability of scrip for scrip roll-over for your Primewest Group Limited shares**

13. If you make a capital gain from the disposal of your PGL shares, you may choose to obtain scrip for scrip roll-over for that part of the capital gain that is attributable to the receipt of CCL shares (sections 124-780, 124-785 and 124-790).

14. Scrip for scrip roll-over cannot be chosen if any capital gain you might make from the replacement CCL shares would be disregarded, except because of a roll-over (paragraph 124-795(2)(a)).

**Consequences if you choose scrip for scrip roll-over for your Primewest Group Limited shares*****Capital gain is disregarded***

15. If you choose scrip for scrip roll-over, that part of the capital gain that is attributable to the receipt of CCL shares is disregarded (subsections 124-785(1) and 124-790(1)). Any part of the capital gain that is attributable to the receipt of cash is not disregarded because it is ineligible proceeds for which roll-over is not available (subsection 124-790(1)).

16. For the purposes of determining eligibility to make a discount capital gain, the CCL shares acquired in exchange for PGL shares are taken to have been acquired on the date you acquired, for capital gains tax (CGT) purposes, the corresponding PGL shares (table item 2 of subsection 115-30(1)).

***Cost base and reduced cost base of Centuria Capital Limited shares***

17. If you choose scrip for scrip roll-over, the first element of the cost base and reduced cost base of a replacement CCL share you received is worked out by reasonably attributing to it the cost base and reduced cost base (respectively) of the PGL shares for which it was exchanged and for which the roll-over was obtained (subsections 124-785(2) and (4)).

18. You will have to reduce the cost base and reduced cost base of your CCL shares by so much of it that is attributable to the cash component of the capital proceeds you received (subsection 124-785(3)).

19. You can calculate the first element of the cost base and reduced cost of each replacement CCL share by dividing the aggregate cost bases of your PGL shares (as reduced under subsection 124-785(3) for the cash component) by the number of replacement CCL shares you received (subsections 124-785(2) and (4)).

**Consequences if you do not choose, or cannot choose, scrip for scrip roll-over for your Primewest Group Limited shares*****Capital gain is not disregarded***

20. If you do not choose, or cannot choose, scrip for scrip roll-over, you must take into account any capital gain or capital loss from CGT event A1 happening on the disposal of your PGL shares in working out your net capital gain or net capital loss for the income year in which CGT event A1 happened (sections 102-5 and 102-10).

21. If you make a capital gain where roll-over is not chosen, or cannot be chosen, you can treat the capital gain as a discount capital gain provided that the conditions of Subdivision 115-A are met.

***Cost base and reduced cost base of Centuria Capital Limited shares***

22. If you do not choose, or cannot choose, scrip for scrip roll-over, the first element of the cost base and reduced cost base of a replacement CCL share that is received is equal to the market value of the PGL shares given in respect of acquiring the CCL share (subsections 110-25(2) and 110-55(2)), reduced by the proportion of the market value of the PGL shares that is reasonably attributable to the cash component of the capital proceeds you received (subsection 112-30(1)).

23. The market value of PGL shares is to be worked out as at the time when you acquired the CCL shares.

**Acquisition date of Centuria Capital Limited shares**

24. Under table item 2 of section 109-10, for PWG stapled security holders:
- who accepted the Offer – the acquisition date of the CCL shares is the date on which they entered into a contract with CCL, or
  - whose PGL shares were compulsorily acquired by CCL – the acquisition date of the CCL shares is when CCL issued CCL shares to them as consideration for their PGL shares.

**CGT event A1 happened on the disposal of your Primewest Property Fund units**

25. CGT event A1 happened when you disposed your PPF units to CCL as nominee for the trustee and responsible entity of the Centuria Capital Fund (CCF) (section 104-10).
26. If you accepted the Offer before the Offer became unconditional, CGT event A1 happened when the Offer became unconditional (subsection 104-10(3)).
27. If you accepted the Offer on or after the date the Offer became unconditional, CGT event A1 happened when you accepted the Offer (subsection 104-10(3)).
28. If your PPF units were compulsorily acquired, CGT event A1 happened when those units were compulsorily acquired by CCL as nominee for the trustee and responsible entity of CCF (subsection 104-10(6)).
29. The capital proceeds from CGT event A1 happening to each PPF unit is the total of the cash and the market value of the CCF units you received in respect of your disposal of the PPF unit (subsection 116-20(1)). The market value of the CCF units is worked out as at the time of CGT event A1 happening.
30. You will make a capital gain from CGT event A1 happening if the capital proceeds from the disposal of your PPF unit exceeded the cost base of that unit (subsection 104-10(4)). You will make a capital loss from CGT event A1 happening if the capital proceeds from the disposal of your PPF unit were less than the reduced cost base of that unit (subsection 104-10(4)).

**Availability of scrip for scrip roll-over for your Primewest Property Fund units**

31. If you make a capital gain from the disposal of your PPF units, you may choose to obtain scrip for scrip roll-over for that part of the capital gain that is attributable to the receipt of CCF units (sections 124-781, 124-785 and 124-790).
32. Scrip for scrip roll-over cannot be chosen if any capital gain you might make from the replacement CCF units would be disregarded, except because of a roll-over (paragraph 124-795(2)(a)).

**Consequences if you choose scrip for scrip roll-over for your Primewest Property Fund units****Capital gain is disregarded for your Primewest Property Fund units**

33. If you choose scrip for scrip roll-over, that part of the capital gain that is attributable to the receipt of CCF units is disregarded (subsection 124-785(1) and 124-790(1)). Any part of the capital gain that is attributable to the receipt of cash is not disregarded because it is ineligible proceeds for which roll-over is not available (subsection 124-790(1)).

34. For the purposes of determining eligibility to make a discount capital gain, the CCF units acquired in exchange for PPF units are taken to have been acquired on the date you acquired, for CGT purposes, the corresponding PPF units (table item 2 of subsection 115-30(1)).

#### ***Cost base and reduced cost base of Centuria Capital Fund units***

35. If you choose scrip for scrip roll-over, the first element of the cost base and reduced cost base of a replacement CCF unit you received is worked out by reasonably attributing to it the cost base and reduced cost base (respectively) of the PPF units for which it was exchanged and for which the roll-over was obtained (subsections 124-785(2) and (4)).

36. You will have to reduce the cost base and reduced cost base of your CCF units by so much of it that is attributable to the cash component of the capital proceeds you received (subsection 124-785(3)).

37. You can calculate the first element of the cost base and reduced cost of each replacement CCF unit by dividing the aggregate cost bases of your PPF units (as reduced under subsection 124-785(3) for the cash component) by the number of replacement CCF units you received (subsections 124-785(2) and (4)).

#### **Consequences if you do not choose, or cannot choose, scrip for scrip roll-over for your Primewest Property Fund units**

##### ***Capital gain is not disregarded for your Primewest Property Fund units***

38. If you do not choose, or cannot choose, scrip for scrip roll-over, you must take into account any capital gain or capital loss from CGT event A1 happening on the disposal of your PPF units in working out your net capital gain or net capital loss for the income year in which CGT event A1 happened (sections 102-5 and 102-10).

39. If you make a capital gain where roll-over is not chosen, or cannot be chosen, you can treat the capital gain as a discount capital gain provided that the conditions of Subdivision 115-A are met.

#### ***Cost base and reduced cost base of Centuria Capital Fund units***

40. If you do not choose, or cannot choose, scrip for scrip roll-over, the first element of the cost base and reduced cost base of a replacement CCF unit that is received is equal to the market value of the PPF units given in respect of acquiring the CCF unit (subsections 110-25(2) and 110-55(2)), reduced by the proportion of the market value of the PPF units that is reasonably attributable to the cash component of the capital proceeds you received (subsection 112-30(1)).

41. The market value of PPF units is to be worked out as at the time when you acquired the CCF units.

#### ***Acquisition date of Centuria Capital Fund units***

42. Under table item 3 of section 109-10, for PWG stapled security holders:

- who accepted the Offer – the acquisition date of the CCF units is the date the contract was entered into, or

- whose PPF units were compulsorily acquired by CCL as nominee for the trustee and responsible entity of CCF – the acquisition date of the CCF units is when the trustee and responsible entity of CCF issued CCF units to them as consideration for their PPF units.

## **Scheme**

43. 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.

### **Primewest Group Limited and Primewest Property Fund**

44. PGL is an Australian-resident company incorporated after 20 September 1985. It was the head company of an income tax consolidated group.

45. PPF is an Australian-resident unit trust settled after 20 September 1985, with Primewest Management Limited as its trustee and responsible entity. It is an attribution managed investment trust (AMIT) as defined in section 276-10.

46. The shares in PGL and the units in PPF were stapled on a 1:1 basis and were listed on the Australian Securities Exchange (ASX) as stapled securities under the ASX code 'PWG'.

47. Until the takeover, PGL had over 300 shareholders and PPF had over 300 unit holders.

### **Centuria Capital Limited and Centuria Capital Fund**

48. CCL is an Australian-resident company incorporated after 20 September 1985. It is the head company of an income tax consolidated group.

49. CCF is an Australian-resident unit trust settled after 20 September 1985, with Centuria Funds Management Limited as its trustee and responsible entity. It is an AMIT as defined in section 276-10.

50. The shares in CCL and the units in CCF are stapled on a 1:1 basis. CCL has been listed on the ASX since 26 March 2002. CCF units were stapled to CCL shares on 17 October 2016, and they have been listed on the ASX as Centuria stapled securities since that time.

51. CCL has over 300 shareholders and CCF has over 300 unit holders

### **The takeover of Primewest Group Limited and Primewest Property Fund**

52. On 18 April 2021, PGL, the trustee and responsible entity of PPF, CCL and the trustee and responsible entity of CCF entered into a Bid Implementation Deed under which CCL and the trustee and responsible entity of CCF (respectively) each promised to make an off-market takeover bid under Chapter 6 of the *Corporations Act 2001* (Corporations Act) to acquire all of the shares in PGL and all of the units in PPF (respectively).

53. For the purposes of acquiring PPF units pursuant to the takeover bid, the trustee and responsible entity of CCF appointed CCL as its agent and nominee (that is, CCL became the registered owner of the fully-paid units in PPF). Under the Bid Implementation Deed and the agreement governing the agency and nominee relationship, there are no circumstances in which CCL can decline to transfer the PPF units to the trustee and responsible entity of CCF when it is so requested.

54. The Offer was made to all PWG stapled security holders, and the Offer was available to all PWG stapled security holders on the same terms.

55. The Offer was open for acceptance during the period commencing on 17 May 2021 and ending on 24 June 2021.

56. The Offer was subject to several defeating conditions but was declared unconditional on 4 June 2021.

57. CCL and the trustee and responsible entity of CCF (respectively) became eligible to compulsorily acquire PGL shares and PPF units (respectively) under the Corporations Act. They began the compulsory acquisition process on 17 June 2021 and completed it on 19 July 2021.

58. On completion of the contract formed by PWG stapled security holders accepting the Offer, or the compulsory acquisition of PWG stapled securities under a power conferred by the Corporations Act, for each PWG stapled security transferred to Centuria, PWG stapled security holders received:

- 20 cents of cash (consisting of 6.7 cents for the acquisition of a PGL share and 13.3 cents for the acquisition of a PPF unit), and
- 0.473 of a Centuria stapled security.

59. Ineligible foreign-resident PWG stapled security holders and PWG stapled security holders who held an unmarketable parcel of PWG stapled securities were not issued with Centuria stapled securities. Instead, the Centuria stapled securities which would have otherwise been issued to those PWG stapled security holders were sold by a nominee in accordance with subsection 619(3) of the Corporations Act and the net proceeds paid in cash to those PWG stapled security holders.

60. The takeover resulted in CCL acquiring 100% of the PGL shares and CCL as nominee for the trustee and responsible entity of CCF acquiring 100% of the PPF units.

61. Following completion of the offer period, the PWG stapled security was removed from the official list of the ASX.

62. Following completion of the compulsory acquisition process, the PWG stapled security was unstapled.

### **Other matters**

63. The trustee and responsible entity of CCF is absolutely entitled to the PPF units held by CCL as the agent and nominee for the trustee and responsible entity of CCF under section 106-50.

64. There was no 'significant stakeholder' or 'common stakeholder' in PGL or PPF within the meaning of those terms in section 124-783.

65. Paragraph 124-780(3)(f) is satisfied in respect of the sale of PGL shares to CCL.

66. The PWG stapled security holders, PGL and CCL, and the PWG stapled security holders, PPF and CCF, were not all members of the same linked group (within the meaning given by section 170-260) just before the Bid Implementation Deed was entered into or the Offer opened.



67. Neither CCL nor the trustee and responsible entity of CCF made a choice under subsection 124-795(4) that PWG stapled security holders could not obtain Subdivision 124-M roll-over for CGT event A1 happening in relation to the exchange of PGL shares or PPF units.

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**Commissioner of Taxation**

18 August 2021

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Not previously issued as a draft

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- ITAA 1997 977-50

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*Legislative references:*

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## ATO references

NO: 1-P5YUUPH

ISSN: 2205-5517

BSL: PGI

ATOlaw topic: Income tax ~~ Capital gains tax ~~ CGT events ~~ CGT event A1 - disposal of a CGT asset

Income tax ~~ Capital gains tax ~~ Rollovers ~~ Scrip for scrip - Subdivision 124-M

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