


# ***CR 2022/59 - Cedar Woods Properties Limited - bonus share plan***

 This cover sheet is provided for information only. It does not form part of *CR 2022/59 - Cedar Woods Properties Limited - bonus share plan*



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Status: **legally binding**

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## **Class Ruling**

# **Cedar Woods Properties Limited – bonus share plan**

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### **📌 Relying on this Ruling**

This publication (excluding appendix) 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 shareholders of Cedar Woods Properties Limited (CWP) who elect to receive bonus shares in lieu of dividends under the CWP bonus share plan (BSP).
2. Full details of this scheme are set out in paragraphs 13 to 21 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1936*, unless otherwise indicated.

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

4. This Ruling applies to you if you:
  - are a ‘resident of Australia’ as defined in subsection 6(1)
  - receive fully-paid ordinary shares in CWP in lieu of dividends under the BSP (bonus shares)
  - are listed on the share register of CWP as at the Record Date for a dividend, and
  - hold your CWP shares on capital account; that is, your CWP shares are neither held as revenue assets (as defined in section 977-50 of the *Income Tax Assessment Act 1997* (ITAA 1997)) nor as trading stock (as defined in subsection 995-1(1) of the ITAA 1997).

5. This Ruling does not apply to you if you are subject to the taxation of financial arrangements rules in Division 230 of the ITAA 1997 in relation to the scheme outlined in paragraphs 13 to 21 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 2022 to 30 June 2027.

## **Ruling**

### **Bonus shares not a dividend**

7. The value of bonus shares issued to you under the BSP is not a dividend as defined in subsection 6(1) and will not be taken to be a dividend under subsection 6BA(5).

8. If you choose to participate in the BSP and are issued with bonus 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 your assessable income under section 44 (subsections 6BA(5) and (6)).

### **Anti-avoidance provisions do not apply**

9. Section 45 will not apply in respect of the issue of bonus shares, as it is not the case that bonus shares will be received by certain shareholders while other shareholders receive minimally franked dividends (as defined in subsection 45(3)).

10. The Commissioner will not make a determination under subsection 45A(2) that section 45C applies to the whole, or any part, of the bonus shares.

### **Acquisition date of shares**

11. The bonus shares are taken to have been acquired when you acquired the original shares (table item 1 of subsection 130-20(3) of the ITAA 1997).

### **Cost base of shares**

12. If your 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 your CWP ordinary shares will be determined by apportioning the first element of the cost base of the CWP ordinary shares you owned before being issued with bonus shares (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)).

## **Scheme**

13. 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.

14. CWP is a property development company listed on the Australian Securities Exchange. It is a 'listed public company' as defined in subsection 995-1(1) of the ITAA 1997.

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

16. CWP will continue to offer its shareholders a choice to receive dividends or to participate in the BSP during the period to which the Ruling applies.

17. 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 BSP is voluntary and may be varied and terminated at any time subject to notice requirements.

18. 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.

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

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

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

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**Commissioner of Taxation**

29 June 2022

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Status: **not legally binding**

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## Appendix – Explanation

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**❶** *This Explanation 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.*

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### **Bonus shares not a dividend**

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

23. 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 you 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.

24. 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:

- the dividend is taken to be credited to the shareholder
- the dividend is taken to have been paid out of profits, and
- 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.

25. 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.

26. Subsection 6BA(6) states that subsection 6BA(5) will not apply if:

- a shareholder in a listed public company (as defined in subsection 995-1(1) 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
- the company does not credit its share capital account in connection with the issue of those shares.

27. As the requirements of subsection 6BA(6) are satisfied by the BSP, the value of those bonus shares will not be taken to be a dividend that is included in your assessable income under section 44.

28. Further, the Note to subsection 6BA(6) states '[i]f 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.

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**Section 45 does not apply**

29. Section 45 applies where a company streams the provision of shares (other than shares to which subsection 6BA(5) applies) and the payment of minimally franked dividends (as defined in subsection 45(3)) to its shareholders in such a way that:

- the shares are received by some shareholders but not all shareholders, and
- some or all of the shareholders who do not receive the shares receive or will receive minimally franked dividends.

30. Section 45 will not apply to you as the shareholders who do not participate in the BSP will receive dividends franked to 10% or more, which means they are not minimally franked dividends.

31. Therefore, the value of the bonus shares will not be taken to be a dividend under subsection 45(2).

**Cost base of shares**

32. If you acquired, or are taken to have acquired, your parcel of original shares on or after 20 September 1985, the first element of the cost base and reduced cost base of the bonus shares issued in respect of them will be determined by apportioning 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 (subsection 6BA(3) and table item 1 of subsection 130-20(3) of the ITAA 1997).

33. The Commissioner considers it reasonable to apportion the first element of the cost base and reduced cost base of each parcel of the original shares on a pro rata basis 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.

34. For example, if you own 1,000 original shares and the first element of the cost base is \$1 each, and you are subsequently issued with 250 bonus shares in respect of those original shares, the first element of the cost base and reduced cost base of your 1,250 CWP shares will become \$0.80 each (being 1,000 multiplied by \$1 divided by 1,250).

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Status: **not legally binding**

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## References

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*Previous Rulings/Determinations:*

CR 2011/18; CR 2018/9

*Legislative references:*

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| <ul style="list-style-type: none"> <li>- ITAA 1936 6(1)</li> <li>- ITAA 1936 6BA</li> <li>- ITAA 1936 6BA(1)</li> <li>- ITAA 1936 6BA(2)</li> <li>- ITAA 1936 6BA(3)</li> <li>- ITAA 1936 6BA(5)</li> <li>- ITAA 1936 6BA(6)</li> <li>- ITAA 1936 44</li> </ul> | <ul style="list-style-type: none"> <li>- ITAA 1936 45</li> <li>- ITAA 1936 45(1)</li> <li>- ITAA 1936 45(2)</li> <li>- ITAA 1936 45(3)</li> <li>- ITAA 1936 45A(2)</li> <li>- ITAA 1936 45C</li> <li>- ITAA 1997 130-20</li> <li>- ITAA 1997 130-20(3)</li> <li>- ITAA 1997 Div 230</li> <li>- ITAA 1997 977-50</li> <li>- ITAA 1997 995-1(1)</li> </ul> |
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ATO references

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