

8. Taxation implications

The following comments address the Australian and New Zealand taxation implications of the Offer for Eligible Retail Security Holders. The comments deal only with the taxation implications of the Offer for Security Holders holding their Securities on capital account and do not apply to Security Holders who are banks, insurance companies and taxpayers carrying on a business of trading in shares.

These comments are general in nature and are based on the law in force in Australia and New Zealand at the time of issue of this Prospectus. The precise taxation implications will depend upon each Security Holder's specific circumstances. Accordingly, all persons should seek their own independent taxation advice before reaching conclusions as to the possible taxation consequences of the Offer. Neither the Westfield Group, nor any of its officers, nor its taxation or other advisers, accepts any liability or responsibility in respect of any statement concerning the taxation consequences of the Offer.

8.1 AUSTRALIAN TAX IMPLICATIONS

(a) Double Tax Agreements

The existence of a taxation agreement between Australia and a relevant foreign country may affect the application of Australian domestic tax laws for non-residents. Non-residents should seek their own advice as to the implications for them of any relevant taxation agreements between Australia and other countries.

(b) Receipt of the Offer

Historically, rights to acquire shares or units offered by companies and trusts to their shareholders and unitholders have generally been treated as not giving rise to any assessable ordinary income for the shareholders or unit holders.

However, the High Court of Australia recently handed down its decision in the case of *Federal Commissioner of Taxation v McNeil*, relating to so-called 'sell back rights' provided by a bank to its shareholders. The majority decision in *McNeil* was that the value of such rights would be regarded as ordinary income in the hands of the bank's shareholders at the time the rights were provided.

The Westfield Group and its tax adviser have discussed the possible application of *McNeil* to the receipt of the Offer with the ATO and it is understood that the ATO will shortly issue a draft public ruling to the effect that:

- the receipt of rights to take up shares, where the rights can be dealt with independently of the shareholding in respect of which they are issued, for example by trading, selling or assigning the right (identified commercially as a renounceable right), will be characterised as income from property in the hands of shareholders and will give rise to an amount of assessable ordinary income in the hands of shareholders equal to the market value of the rights; but
- the receipt of a right which has neither a commercial existence outside of the contract to purchase a new share nor any inherent value in the hands of shareholders (identified commercially as a non-renounceable right) cannot be characterised as income from property. A receipt of such rights will not give rise to assessable ordinary income in the hands of shareholders.

In the present case, if you do not accept the Offer to acquire New Securities, the offer to you lapses. There is no ability for non-accepting Security Holders to deal with their entitlement outside of taking it up to acquire New Securities.

Based on discussions with the ATO, the Westfield Group's tax adviser have formed the view that the receipt of the Offer by Security Holders should not give rise to an amount of assessable income or capital gain or cost base reduction. The Westfield Group's tax adviser consider that this is the case notwithstanding that the Offer is in relation to stapled securities and not simply shares.

(c) If you accept the Offer

If you accept the Offer, you should not make a capital gain or otherwise derive assessable income from the acceptance. However, capital gains tax (CGT) will need to be considered upon disposal of the New Securities.

(d) If you do not accept the Offer

If you do not accept your Offer, any amount you receive from the Joint Lead Managers will, in the view of Westfield Group's tax adviser, based on discussions with the ATO, be treated as a receipt of ordinary assessable income and thus not eligible for the CGT discount (see (f) below). The assessable amount should be regarded as derived at the time of receipt of the amount.

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For Security Holders who are not an Australian resident for taxation purposes, any amount received from the Joint Lead Managers will likely have an Australian source and will therefore be treated as taxable in Australia, subject to any protection from Australian tax afforded under a double tax agreement.

For Security Holders who are residents of New Zealand for New Zealand tax purposes, the Australia/New Zealand double tax agreement will not prevent Australia from taxing an amount received from the Joint Lead Managers unless the Security Holder is a resident of New Zealand for the purposes of that agreement and the amount can be classified as a “business profit” of the Security Holder which is not attributable to an Australian permanent establishment of the Security Holder.

(e) Acquisition of New Securities by accepting the Offer

Each Westfield Share, WFT Unit and WFA Unit comprising a New Security can not be traded separately. However, each of the above securities constitutes a separate CGT asset. Accordingly, the acquisition of a New Security will be an acquisition for CGT purposes of each of the individual securities comprising that Security. That is, where a Security is acquired, it will need to be accounted for as the acquisition of a Westfield Share, a WFT Unit and a WFA Unit.

Your cost base in each of the individual securities comprising the New Securities will include so much of the amount you paid to acquire the New Securities (\$19.50 per New Security) plus any non-deductible incidental costs you incurred to acquire them, that is reasonably attributable to that security.

You will need to allocate the cost base of the individual securities comprising each New Security on a reasonable basis. In accordance with the ATO’s general practice, one possible method of apportionment is on the basis of the relative net tangible assets of the relevant stapled entities. That information is published every six months on the Westfield Group website at: www.westfield.com/corporate/investor/shareholderservices_tax.html.

Distributions to Security Holders in respect of New Securities will be subject to the same tax treatment as distributions on their existing Securities.

(f) Disposal of New Securities

As outlined above, each individual security comprising a New Security is a separate CGT asset. As such, the disposal of a New Security will constitute a disposal for CGT purposes in respect of each individual security comprising that New Security. Accordingly, the capital proceeds referable to the disposal of each individual security will be determined by apportioning the total capital proceeds received in respect of the disposal of the New Security on a reasonable basis.

If you are an Australian resident for tax purposes or a non-resident who holds New Securities through a permanent establishment in Australia, you will, upon disposal of a New Security make a capital gain in relation to a particular security if:

- the portion of the capital proceeds reasonably attributed to a Westfield Share exceeds the cost base of the Westfield Share;
- the portion of the capital proceeds reasonably attributed to a WFT Unit exceeds the cost base of the WFT Unit; or
- the portion of the capital proceeds reasonably attributed to a WFA Unit exceeds the cost base of the WFA Unit.

If you are an Australian resident for tax purposes or a non-resident who holds New Securities through a permanent establishment in Australia, you will, upon disposal of a New Security make a capital loss if:

- the portion of the capital proceeds reasonably attributed to a Westfield Share is less than the reduced cost base of the Westfield Share;
- the portion of the capital proceeds reasonably attributed to a WFT Unit is less than the reduced cost base of the WFT Unit; or
- the portion of the capital proceeds reasonably attributed to a WFA Unit is less than the reduced cost base of the WFA Unit.

Generally, a capital loss arising in respect of one security can offset a capital gain arising in respect of another, subject to specific loss rules for Security Holders who are companies or trusts.

Security Holders who are individuals, trustees or complying superannuation funds and who have held a New Security for 12 months or more at the time of sale should be entitled to apply the applicable CGT discount factor to reduce any capital gain (after offsetting capital losses) made on the sale of the New Security.

If you are not an Australian resident for tax purposes and do not hold your New Securities through a permanent establishment in Australia, recent changes in the CGT rules will have effect such that upon disposal of your New Securities:

- no CGT liability will arise in relation to the resulting disposal of the Westfield Share and WFA Unit components of the New Security; and
- no CGT liability will arise in relation to the resulting disposal of the WFT Unit component of the New Security unless you (and your associates) either:
 - at the time of disposal hold more than 10% or more of the issued capital in WFT; or
 - prior to the time of disposal, held 10% or more of the issued capital in WFT throughout a 12 month period that began no earlier than 24 months before the time of disposal and ended no later than that time.

(g) Goods and Services Tax (GST)

The acquisition of the New Securities acquired as a result of accepting the Offer will be classified as a “financial supply” for Australian GST purposes. As such, Australian GST of 10% will not be payable in respect of Application Monies paid for the acquisition of New Securities.

Any amount received from the Joint Lead Managers by a Security Holder who does not accept the Offer will not be consideration for a taxable supply. Accordingly, Australian GST will not be payable in respect of the receipt of such an amount.

8.2 NEW ZEALAND TAX IMPLICATIONS

The following comments are applicable only for New Zealand tax resident Eligible Retail Security Holders. New Zealand tax resident Eligible Retail Security Holders also need to consider any Australian Tax Implications to them as set out above.

(a) Receipt of the Offer

Historically, rights to acquire shares or units offered by companies and trusts to their shareholders and unitholders have generally been treated as not giving rise to ordinary income or dividend income for the shareholders or unitholders.

This should be the position under current New Zealand law.

However, the New Zealand courts could adopt the reasoning in the Australian case of *Federal Commission of Taxation v McNeil* or the New Zealand Inland Revenue Department could adopt the position adopted by the ATO (see the discussion above at section 8.1(b)). If this occurs, the consequences outlined in section 8.2(b) and (c) below could change. In particular, there is a risk that a Security Holder not accepting the Offer could be subject to New Zealand income tax in respect of any amount received from the Joint Lead Managers. To the extent that Australian tax is paid on that amount, the Australian tax paid may be credited against any New Zealand income tax payable.

(b) If you accept the Offer

If you accept the Offer, you should not derive assessable income from the acceptance for New Zealand income tax purposes.

(c) If you do not accept the Offer

If you do not accept your Offer, the better view is that under current New Zealand law any amount you receive from the Joint Lead Managers will not be assessable income either as ordinary income or as a dividend.

(d) Disposal of New Securities

If you dispose of your New Securities, the proceeds should not constitute assessable income for New Zealand income tax purposes unless:

- you acquired the New Securities for the dominant purpose or intention of sale;
- you carry on a business that comprises dealing in securities (however, as noted above, these New Zealand taxation comments do not apply to such Security Holders); or
- you derive the sale proceeds from the carrying on or carrying out of any undertaking or scheme entered into or devised for the purpose of making a profit.

(e) GST

The Offer and the New Securities acquired as a result of accepting an Offer will be classified as the supply of a “financial service” for New Zealand GST purposes. As such, no New Zealand GST will apply to any Application Monies paid in consideration for New Securities. No New Zealand GST will apply to any amount paid by the Joint Lead Managers to you if you do not accept the Offer on the basis that you will not make any supply to the Joint Lead Managers.

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(f) Taxation in respect of New Securities

The same New Zealand taxation rules will apply in respect of New Securities you acquire and your existing Securities.

New Zealand has recently enacted new rules for taxing offshore portfolio equity investments that will apply for many investors in relation to their Securities from 1 April 2007 (for investors that do not have a standard 31 March balance date, the commencement date of these new rules will be deferred) (**New Rules**). The new method which will generally be used for taxing offshore investment is being referred to as the 'fair dividend rate' method.

If the New Rules apply to you, under the fair dividend rate method you will be subject to New Zealand tax at your marginal tax rate on 5% of the opening market value (ie. generally as at the start of your income year which for most investors will be 1 April) of all your investments in non-New Zealand companies and unit trusts (taxed as a pool). Dividends from those investments and any gains on sale or redemption will not separately be subject to New Zealand tax.

The New Rules do not apply to:

- i. individuals (not family trusts or companies) whose aggregate holdings in foreign companies and unit trusts (other than interests which qualify for the Australian Listed Exemption or RWT Proxy Exemption (both described below)) at all times during the income year have a cost of less than NZ\$50,000. This exemption is likely to be relevant to many individual New Zealand investors holding Securities (**\$50,000 Exemption**);
- ii. investments in Australian tax resident companies (not including unit trusts) that are listed on the ASX and included in the ASX All Ordinaries Index (**Australian Listed Exemption**). However, under draft legislation which is likely to be enacted in its present form, this exemption will not be applicable to interests which are stapled, and therefore will not apply to the Securities; and
- iii. all investments in certain Australian unit trusts where specific withholding tax arrangements have been put in place (**RWT Proxy Exemption**). This exemption will not apply to the Securities because it is not intended that an "RWT proxy" be appointed as required by this exemption.

Therefore, for the Securities, only the \$50,000 Exemption is expected to be relevant. If the exemption applies to you, you will not be subject to the New Rules described above and will continue to be liable to New Zealand tax generally only on distributions received (subject to section 8.2(d) above in respect of sale proceeds).

If the New Rules do apply to you, you may be able to use a method other than the fair dividend rate method (for example, individuals and certain qualifying trusts whose non-New Zealand equity investments return less than 5% in an income year, are entitled and may prefer to elect to use the comparative value method; the cost method may also be available).