



Class Ruling

Income tax: Wesfarmers Limited – demerger of Coles Group Limited

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📌 This publication provides you with the following level of protection:

This publication (excluding appendices) 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 provisions 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:
- subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936)
 - section 44 of the ITAA 1936
 - section 45 of the ITAA 1936
 - section 45A of the ITAA 1936
 - section 45B of the ITAA 1936
 - section 45C of the ITAA 1936
 - section 128B of the ITAA 1936
 - section 26-55 of the *Income Tax Assessment Act 1997* (ITAA 1997)
 - section 30-15 of the ITAA 1997

- section 104-10 of the ITAA 1997
- section 104-135 of the ITAA 1997
- subsection 104-165(3) of the ITAA 1997
- section 109-5 of the ITAA 1997
- Division 110 of the ITAA 1997
- section 115-30 of the ITAA 1997
- Division 125 of the ITAA 1997
- Division 855 of the ITAA 1997.

Legislative references in this Ruling are to provisions of the ITAA 1936 or to provisions of the ITAA 1997 unless otherwise indicated.

Class of entities

3. The class of entities to which this Ruling applies is the holders of shares in Wesfarmers Limited (Wesfarmers) who:

- were listed on the share register of Wesfarmers as at 4.00pm Western Standard Time on 22 November 2018 (the Record Date)
- did not hold their shares in Wesfarmers as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)) on the Record Date: that is, they held their shares on capital account, and
- are not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on their shares in Wesfarmers.

(Note: Division 230 will generally not apply to individuals, unless they have made an election for the Division to apply to them.)

4. In this Ruling, a person belonging to this class of entities is referred to as a 'Wesfarmers Shareholder'.

Qualifications

5. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.

6. 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 9 to 35 of this Ruling.

7. 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

8. This Ruling applies from 1 July 2018 to 30 June 2019. The Ruling continues to apply after 30 June 2019 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 *Public Rulings*).

Scheme

9. 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.

10. The scheme that is the subject of this Ruling involves the demerger by Wesfarmers of Coles Group Limited (Coles) on 28 November 2018 (the Implementation Date).

Wesfarmers

11. Wesfarmers is an Australian resident public company listed on the Australian Securities Exchange (ASX) and the head company of an income tax consolidated group for the purposes of Part 3-90.

12. Before the demerger, Wesfarmers' diverse business operations covered supermarkets, liquor sales, hotels and convenience stores, home improvement, office supplies, department stores, and an industrial division with businesses in chemicals, energy and fertilisers, industrial and safety products and coal.

13. Immediately before the demerger, Wesfarmers had on issue:

- 1,133,840,242 fully paid ordinary shares, and
- a number of performance rights issued under Wesfarmers employee share schemes (ESS interests), representing less than 0.08% of the total value of ownership interests in Wesfarmers.

Coles

14. Before the demerger, Coles was a wholly owned subsidiary of Wesfarmers via Wesfarmers Retail Holdings Pty Ltd (WRH) and a member of the Wesfarmers income tax consolidated group. At that time, WRH owned all of the shares in Coles.

15. Immediately before the demerger, Wesfarmers had on issue 85% of the number of shares Coles had on issue.

Pre-demerger transactions

16. Before the demerger, Wesfarmers undertook a number of group restructuring activities to transfer the ownership of interests in businesses not forming part of the demerger. The entities subject to the demerger are the Coles subsidiaries which own the supermarkets, liquor sales, hotels and convenience store businesses of Wesfarmers and the property holding companies.

The demerger of Coles

17. The demerger of Coles was undertaken by a reduction of share capital under section 256B of the *Corporations Act 2001* (Corporations Act) and a court approved scheme of arrangement under Part 5.1 of the Corporations Act.

18. The shareholders of Wesfarmers voted at a meeting on 15 November 2018 to approve:

- an ordinary resolution under section 256C of the Corporations Act to reduce the share capital of Wesfarmers. The reduction of share capital equates to \$5.68 per Wesfarmers share, and
- the scheme of arrangement under subparagraph 411(4)(a)(ii) of the Corporations Act.

19. The directors of Wesfarmers also passed a resolution to declare a dividend for each share in Wesfarmers on issue at the Record Date.

20. Under the scheme of arrangement and on the Implementation Date, Wesfarmers paid WRH the following amounts (which the shareholders of Wesfarmers were entitled to), as consideration for the transfer (the Distribution) by WRH of 85% of the shares in Coles to the shareholders of Wesfarmers:

- the amount of the reduction of share capital (the capital reduction amount), and
- the dividend declared by the directors of Wesfarmers (the Demerger Dividend)

WRH retained 15% of the shares in Coles.

21. The difference between the market value of the Distribution and the capital reduction amount is the Demerger Dividend.
22. Shareholders received one Coles share for each Wesfarmers share they held on the Record Date.
23. Shares in Coles were listed for quotation on the ASX on 21 November 2018 and commenced trading on a deferred settlement basis. Normal trading of Coles shares commenced on the ASX on 29 November 2018.

Share capital account

24. Wesfarmers accounted for the Distribution by debiting its share capital account by the capital reduction amount.
25. The Demerger Dividend was debited to a reserve in accordance with Australian accounting standards.

Reasons for the demerger

26. Wesfarmers considers the demerger will:
 - enable Wesfarmers to reposition its portfolio to target a higher capital weighting toward businesses with strong future earnings growth prospects
 - facilitate enhanced focus on organic growth opportunities and value accretive transactions, with greater impact
 - deliver to shareholders an investment in two companies with different investment attributes. Coles is expected to be attractive to shareholders seeking earnings growth with defensive characteristics, strong cash generation and resilient earnings
 - extend Wesfarmers long history of proactive portfolio management, and
 - simplify the Wesfarmers portfolio and reduce operational complexity.

Sale Facility

27. 'Ineligible Overseas Shareholders' had the Coles shares to which they were entitled sold by Wesfarmers through a sale agent on the ASX (Sale Facility), who will remit the sale proceeds to the relevant shareholders. The shares of Ineligible Overseas Shareholders were transferred to the sale agent on the Implementation Date.
28. Ineligible Overseas Shareholders were shareholders who were not Eligible Shareholders at the Record Date.

29. Eligible Shareholders were shareholders whose registered address was shown in the Wesfarmers share register on the Record Date as being in Australia, New Zealand, Canada, Hong Kong, Singapore, the United Kingdom or the United States, or a jurisdiction in which Wesfarmers reasonably believes it is not prohibited or unduly onerous or impractical to implement the demerger and to transfer the Coles shares to those shareholders.

30. Small Shareholders were Eligible Shareholders who held up to 160 Wesfarmers shares as at the Record Date. They were able to choose to participate in the Sale Facility, receiving the sale proceeds of the Coles shares to which they were entitled. The shares of participating Small Shareholders were transferred to the sale agent on the Implementation Date.

31. Small Shareholders were also offered the opportunity by Wesfarmers to make a gift of their net sale proceeds from the Sale Facility to the Trustee of ShareGift Australia (ShareGift). ShareGift is endorsed as a deductible gift recipient under Division 30.

Other matters

32. Immediately before the demerger, Wesfarmers confirmed that its share capital account is not tainted (within the meaning of Division 197).

33. Wesfarmers did not elect under subsection 44(2) that subsections 44(3) and (4) will not apply to any demerger dividend.

34. Just after the demerger, CGT assets owned by Coles 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.

35. ESS interests in Wesfarmers have been issued in accordance with Division 83A and are interests to which either Subdivision 83A-B or Subdivision 83A-C applies.

Ruling

CGT consequences – Australian resident Wesfarmers Shareholders

CGT event G1

36. CGT event G1 happened at the time the payment of the capital reduction amount was satisfied by way of an in specie distribution of a Coles share to a Wesfarmers Shareholder in respect of the shares they owned in Wesfarmers (section 104-135).

Capital gain

37. Wesfarmers Shareholders will make a capital gain from CGT event G1 happening if the capital reduction amount for each Wesfarmers share, \$5.68, is more than the cost base of the Wesfarmers share. If so, the capital gain is equal to the amount of the excess. No capital loss can be made from CGT event G1 (Note 1 to subsection 104-135(3)).

Demerger roll-over

38. A demerger, as defined in section 125-70, happened to the Wesfarmers demerger group (which included Wesfarmers and Coles) under the scheme described in paragraphs 9 to 35 of this Ruling.

39. Therefore, Wesfarmers Shareholders can choose to obtain demerger roll-over under subsection 125-55(1) for their Wesfarmers shares.

Coles shares received by Wesfarmers Shareholders that hold pre-CGT Wesfarmers shares

40. All Wesfarmers Shareholders who acquired their Wesfarmers shares before 20 September 1985 (pre-CGT Wesfarmers shares) disregard any capital gain made when CGT event G1 happened to their Wesfarmers shares (subsection 104-135(5)).

41. Wesfarmers Shareholders who choose demerger roll-over for their pre-CGT Wesfarmers shares are taken to have acquired the corresponding Coles shares under the demerger before 20 September 1985 (subsections 125-55(1), 125-80(4), 125-80(5) and 125-80(6)).

42. For Wesfarmers Shareholders who own pre-CGT Wesfarmers shares and do not choose demerger roll-over:

- none of the corresponding Coles shares acquired under the demerger are taken to be pre-CGT shares
- those Coles shares were acquired on the Implementation Date (section 109-5), and
- the first element of the cost base and reduced cost base of those Coles shares is calculated in accordance with the rules in Division 110.

Coles shares received by Wesfarmers Shareholders that hold post-CGT Wesfarmers shares

43. For Wesfarmers Shareholders who choose demerger roll-over for their shares acquired after 19 September 1985 (post-CGT Wesfarmers shares):

- any capital gain made when CGT event G1 happened to their Wesfarmers shares under the demerger is disregarded (subsection 125-80(1))
- those Coles shares were acquired on the Implementation Date (except for the purpose of determining an entitlement to make a discount capital gain in relation to a subsequent CGT event that happens to the shares: see paragraph 48 of this Ruling) (section 109-5), and
- it is necessary to recalculate the first element of the cost base and reduced cost base of their post-CGT Wesfarmers shares, and calculate the first element of the cost base and reduced cost base of the corresponding Coles shares they acquired under the demerger (subsection 125-80(2)) – see paragraphs 44 to 46 of this Ruling for more details.

44. The first element of the cost base and reduced cost base of each post-CGT Wesfarmers share and corresponding Coles share is worked out by:

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

45. The apportionment of this total is done on a reasonable basis having regard to the market values (just after the demerger) of the Wesfarmers shares and Coles shares, or an anticipated reasonable approximation of those market values (subsections 125-80(2) and 125-80(3)).

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

- attribute 71.09% of the total of the cost bases of the post-CGT Wesfarmers shares just before the demerger to the Wesfarmers shares, and
- attribute 28.91% of the total of the cost bases of the post-CGT Wesfarmers shares just before the demerger to the corresponding Coles shares.

47. Wesfarmers Shareholders who own post-CGT Wesfarmers shares and do not choose demerger roll-over:

- cannot disregard any capital gain made when CGT event G1 happened to their Wesfarmers shares under the demerger, and
- must recalculate the first element of the cost base and reduced cost base of their post-CGT Wesfarmers shares, and calculate the first element of the cost base and reduced cost base of the corresponding Coles shares they acquired under the demerger, in the same way as described in paragraphs 44 to 46 of this Ruling (subsections 125-85(1) and (2)).

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

48. For the purpose of determining whether a Wesfarmers Shareholder can make a discount capital gain from a future CGT event that happens to a Coles share they acquired under the demerger:

- where the share corresponds with a post-CGT Wesfarmers share, it will be taken to have been acquired on the date the Wesfarmers Shareholder acquired, for CGT purposes, that Wesfarmers share (item 2 of the table in subsection 115-30(1)). This will be the case whether or not the Wesfarmers Shareholder chooses demerger roll-over
- where the share corresponds with a pre-CGT Wesfarmers share and the Wesfarmers Shareholder does not choose demerger roll-over, its date of acquisition is the Implementation Date (section 109-5). (See paragraph 41 of this Ruling for the case where the roll-over was chosen.)

CGT consequences – foreign resident Wesfarmers Shareholders

CGT event G1

49. CGT event G1 happened at the time the payment of the capital reduction amount was satisfied by way of an in specie distribution of a Coles share to a foreign resident Wesfarmers Shareholder in respect of the shares they owned in Wesfarmers (section 104-135).

Capital gain

50. Foreign resident Wesfarmers Shareholders will make a capital gain from CGT event G1 happening if the capital reduction amount for each Wesfarmers share, \$5.68, is more than the cost base of the

Wesfarmers share. If so, the capital gain is equal to the amount of the excess. No capital loss can be made from CGT event G1 (Note 1 to subsection 104-135(3)).

51. However, any capital gain is disregarded unless the Wesfarmers share is taxable Australian property (section 855-10). A Wesfarmers share is taxable Australian property if:

- the Wesfarmers share has been used at any time by the Wesfarmers Shareholder in carrying on a business through a permanent establishment in Australia (item 3 of the table in section 855-15), or
- the Wesfarmers share is covered by subsection 104-165(3) (item 5 of the table in section 855-15).

Availability of demerger roll-over

52. A foreign resident Wesfarmers Shareholder cannot choose to obtain demerger roll-over under Division 125 unless the Coles shares they acquire under the demerger are taxable Australian property just after they acquired them (subsection 125-55(2)).

Cost base and reduced cost base of Wesfarmers shares and Coles shares

53. A foreign resident Wesfarmers Shareholder must recalculate the first element of the cost base and reduced cost base of their Wesfarmers shares, and calculate the first element of the cost base and reduced cost base of the Coles shares they acquired under the demerger, in the same way as described in paragraphs 44 to 46 of this Ruling (subsections 125-85(1) and (2)).

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

54. For the purpose of determining whether a foreign resident Wesfarmers Shareholder can make a discount capital gain from a future CGT event that happens to a Coles share they acquired under the demerger:

- where the share corresponds with a post-CGT Wesfarmers share, it will be taken to have been acquired on the date the Wesfarmers Shareholder acquired, for CGT purposes, that Wesfarmers share (item 2 of the table in subsection 115-30(1)). This will be the case whether or not the Wesfarmers Shareholder chooses demerger roll-over
- where the share corresponds with a pre-CGT Wesfarmers share and the Wesfarmers Shareholder does not choose demerger roll-over, its date of

acquisition is the Implementation Date (section 109-5). (See paragraph 41 of this Ruling for the case where the roll-over was chosen.)

Sale of Coles shares under the Sale Facility

55. CGT event A1 happened in relation to the Coles shares that Ineligible Overseas Shareholders and Small Shareholders were entitled to receive under the demerger that were transferred to the sale agent for sale through the Sale Facility.

56. The time of CGT event A1 is the time when the shares were transferred to the sale agent on the Implementation Date (subsection 104-10(3)). The capital proceeds from the disposal of each such share are the proceeds for the share received by the relevant Ineligible Overseas Shareholder or Small Shareholder from the sale agent.

Donations to ShareGift

57. A Small Shareholder who makes a gift of their net sale proceeds from the Sale Facility to ShareGift may deduct the amount of the gift under section 30-15.

58. The amount of the deduction for the gift to ShareGift will be limited by the formula in section 26-55.

Dividend consequences

59. No part of the value of a Coles share transferred to a Wesfarmers Shareholder under the demerger will be assessable income of the Wesfarmers Shareholder under section 44 (subsection 6(1), definitions of 'dividend' and 'demerger dividend'; subsections 44(3), 44(4) and 44(5)).

Dividend withholding tax

60. No part of the value of a Coles share transferred to a non-resident Wesfarmers Shareholder under the demerger will be subject to dividend withholding tax (subsection 128B(3D)).

The application of sections 45, 45A and 45B

61. Section 45 will not apply in relation to the Distribution.

62. The Commissioner will not make a determination under subsection 45A(2) that section 45C applies to the whole, or any part, of the capital benefits provided to Wesfarmers Shareholders under the demerger.

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63. The Commissioner will not make a determination under paragraph 45B(3)(a) that section 45BA applies to the whole, or any part, of the demerger benefit provided to Wesfarmers Shareholders under the demerger.

64. The Commissioner will not make a determination under paragraph 45B(3)(b) that section 45C applies to the whole, or any part, of the capital benefit provided to Wesfarmers Shareholders under the demerger.

Commissioner of Taxation

14 December 2018

Appendix 1 – Explanation

❶ *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.*

CGT consequences

65. Demerger roll-over enables a shareholder to choose to disregard a capital gain made as a result of a CGT event that happens to their shares in the original company under a demerger.

66. The demerger roll-over provisions in Division 125 contain a number of conditions for eligibility to choose the roll-over. The main conditions that are relevant to the scheme that is the subject of this Ruling are:

- (a) a shareholder owns a share in a company – this requirement was satisfied as the shareholders owned shares in Wesfarmers
- (b) the company is the head entity of a demerger group – this requirement was satisfied as Wesfarmers was the head entity of a demerger group just before the Distribution
- (c) a demerger (as defined in subsection 125-70(1)) happens to the demerger group because there is a restructuring of the demerger group – this requirement was satisfied as Wesfarmers is the head company of a demerger group, and
- (d) under the restructuring of the demerger group, a CGT event happens to the share and a shareholder acquires a new or replacement interest in the demerged entity and nothing else – this requirement is satisfied because CGT event G1 happened to the Wesfarmers shares and Wesfarmers Shareholders only received Coles shares under the restructuring.

67. Under the scheme that is the subject of this Ruling, the conditions for choosing demerger roll-over under Division 125 were satisfied. However, where a share is held by a foreign resident shareholder, the shareholder can only choose the roll-over if the new share acquired under the demerger is taxable Australian property.

68. For the purposes of the cost base and reduced cost base apportionment under subsections 125-80(2) and (3), the Commissioner accepts the volume weighted average prices of \$12.8459 for the Coles shares and \$31.5848 for the Wesfarmers shares, as traded on the ASX on a deferred settlement basis over the first five trading days from (and including) 21 November 2018, as a reasonable approximation of the relative market value of those shares.

69. The apportionment of cost bases in paragraph 46 of this Ruling is based on the volume weighted average prices mentioned in paragraph 68 of this Ruling.

70. The Ruling section provides a detailed explanation of the consequences of demerger roll-over.

Donations to ShareGift

71. ShareGift is endorsed as a deductible gift recipient. Accordingly, a Small Shareholder who makes a gift of their net sale proceeds from the Sale Facility to ShareGift is entitled to a deduction under section 30-15.

72. The amount of the deduction is generally equal to the amount that Wesfarmers has advised the Small Shareholder that they have contributed to ShareGift on behalf of the Small Shareholder.

73. However, the amount of the deduction for the gift by a Small Shareholder to ShareGift is limited to the amount worked out under the formula in section 26-55. That amount is worked out by subtracting from the Small Shareholder's assessable income all their deductions except tax losses and the amount that can be deducted for making farm management deposits.

Dividend consequences

74. Subsection 44(1) includes in a shareholder's assessable income any dividends paid to the shareholder out of profits derived by the company from any source (if the shareholder is an Australian resident) or out of profits derived by the company from sources in Australia (if the shareholder is a non-resident).

75. The term 'dividend' is defined in subsection 6(1), and includes any distribution made by a company to any of its shareholders, whether in money or other property. However, paragraph (d) of the definition of 'dividend' excludes a distribution by a company to its shareholders from being a dividend to the extent that the amount of the money paid or credited, or the amount of the value of the property distributed, by a company to a shareholder is debited against an amount standing to the credit of the share capital account of the company.

76. The term 'share capital account' is defined in section 975-300 as an account which the company keeps of its share capital, or any other account created on or after 1 July 1998 where the first amount credited to the account was an amount of share capital.

77. An account is not a share capital account if it is tainted (subsection 975-300(3)).

78. Wesfarmers has advised that its share capital was not tainted immediately before the demerger.

79. The demerger of Coles was implemented, in part, by debiting \$6,440,754,547 (\$5.68 per Wesfarmers ordinary share) against an amount standing to the credit of the Wesfarmers share capital account.

80. As Wesfarmers share capital account was not tainted within the meaning of Division 197, this amount will not be a dividend as defined in subsection 6(1). Thus, it will not be included in the assessable income of a Wesfarmers Shareholder under subsection 44(1).

81. The balance of the Distribution (that is, the extent to which the value of the Distribution exceeds the amount debited to the share capital account of Wesfarmers) is a dividend. However, any such dividend will be a demerger dividend (as defined in subsection 6(1)), which is not assessable income or exempt income of Wesfarmers Shareholders under subsections 44(3), 44(4) and 44(5).

The application of sections 45, 45A and 45B

82. Section 45 applies where a company streams the provision of shares and the payment of minimally franked dividends to its shareholders in such a way that the shares are received by some but not all shareholders and shareholders who do not receive shares instead receive minimally franked dividends. Minimally franked dividends are dividends which are franked to less than 10%.

83. All Wesfarmers Shareholders were entitled to receive one Coles share for each Wesfarmers share owned. A sales agent acquired Coles shares from the Ineligible Overseas Shareholders and those Small Shareholders who elected to participate in the Sale Facility. The proceeds from the Sale Facility for these shareholders were remitted to them in consideration for the disposal of their Coles shares to the sale agent.

84. Therefore, there is no streaming, and so section 45 will not apply to the Coles shares received by Wesfarmers Shareholders under the demerger.

85. Section 45A applies in circumstances where a company streams capital benefits to certain shareholders who derive a greater benefit from the receipt of capital benefits (the advantaged shareholders) and it is reasonable to assume that the other shareholders have received or will receive dividends (the disadvantaged shareholders).

86. Because all Wesfarmers Shareholders were entitled to receive one Coles share for each Wesfarmers share they owned, there is no streaming. The Commissioner will not make a determination under subsection 45A(2) that section 45C applies to the whole, or any part, of the capital benefits.

87. The purpose of section 45B as set out in subsection 45B(1) is to ensure that relevant amounts distributed to shareholders of a company are treated as dividends for tax purposes if:

- (a) components of a demerger allocation as between capital and profit do not reflect the circumstances of the demerger, or
- (b) certain payments, allocations and distributions are made in substitution for dividends.

88. Section 45B(2) applies where:

- (a) there is a scheme under which a person is provided with a demerger benefit or a capital benefit by a company
- (b) under the scheme, a taxpayer obtains a tax benefit as defined in subsection 45B(9), and
- (c) having regard to the relevant circumstances of the scheme, it would be concluded that scheme was entered into or carried out for a more than incidental purpose of enabling the taxpayer to obtain the tax benefit.

89. In this case, while the conditions of paragraphs 45B(2)(a) and 45B(2)(b) are met, having regard to the relevant circumstances of the scheme in subsection 45B(8), the requisite purpose in paragraph 45B(2)(c) of enabling Wesfarmers Shareholders to obtain a tax benefit is not present.

90. Accordingly, the Commissioner will not make a determination under paragraphs 45B(3)(a) or 45B(3)(b) that either section 45BA or section 45C applies.

Appendix 2 – Detailed contents list

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

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