

[RULINGS](#) > [PRODUCT](#)

Vital Healthcare Property Trust

Issued: 26 February 2020

BR Prd 20/01

Applicant:

Vital Healthcare Property Trust

This ruling concerns the proposed separation of Vital Healthcare Property Trust's New Zealand and Australian real estate investments into separate holding vehicles.

The ruling is withdrawn from 11 May 2020 due to the proposed arrangement not proceeding.

START DATE - END DATE

26 February 2020 – 30 September 2021

Name of the person who applied for the Ruling

This Ruling has been applied for by Vital Healthcare Property Trust (VHPT).

Taxation Laws

All legislative references are to the Income Tax Act 2007 unless otherwise stated.

This Ruling applies in respect of ss CD 43(26), CX 56C and FL 2.

The Arrangement to which this Ruling applies

The Arrangement is the proposed separation of VHPT's New Zealand and Australian real estate investments into separate holding vehicles in the following manner:

- New Zealand assets are held through a New Zealand Portfolio Investment Entity (PIE) structure. VHPT will establish a New Zealand unit trust (Vital NZ) for this purpose.
- Australian assets continue to be held indirectly by VHPT through underlying Australian-managed investment trusts. VHPT will migrate its tax residence to Australia and be renamed Vital Australia (Vital Aus). Vital Aus will be a managed investment scheme registered with the Australian Securities and Investments Commission under the Corporations Act 2001 (Cth), and will qualify as an Australian-managed investment trust for Australian tax purposes.

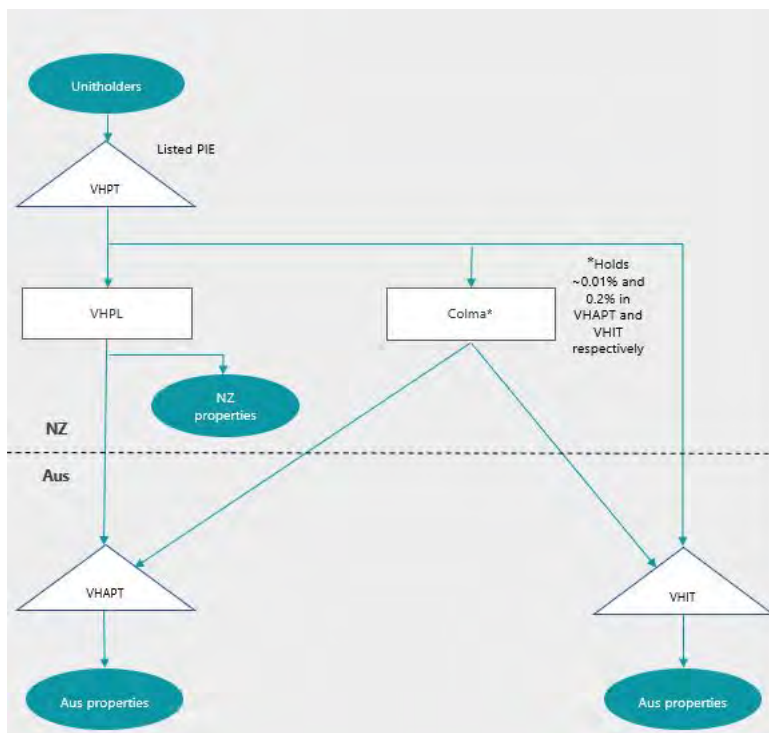
Units in Vital NZ and Vital Aus will be stapled together so they cannot be traded separately. The stapled units will be dual listed on the New Zealand Stock Exchange (NZX) and the Australian Securities Exchange (ASX).

Further details of the Arrangement are set out in the paragraphs below.

Current structure

1. VHPT is a New Zealand property unit trust, specialising in investment in healthcare properties, including surgical and medical hospitals and health support and health care facilities. VHPT has been listed on the NZX since 1999. For New Zealand tax purposes, VHPT is "New Zealand resident" (as defined in s YA 1) and a PIE. VHPT elected to become a "listed PIE" (as defined in s YA 1) effective from 1 October 2007.

2. VHPT indirectly owns properties in New Zealand and Australia from which it derives rental income. VHPT’s New Zealand properties are held by Vital Healthcare Property Limited (VHPL), and its Australian properties are held through two Australian unit trusts (which are managed investment trusts for Australian tax purposes): Vital Healthcare Australian Property Trust (VHAPT) and Vital Healthcare Investment Trust (VHIT).
3. Over time, a large proportion of VHPT's investment opportunities have been located in Australia, contributing to approximately 75 percent of VHPT’s assets being based in Australia and approximately 25 percent being based in New Zealand (as at 31 December 2019). However, only a small proportion (approximately 8 percent) of VHPT’s unitholders are Australian.
4. The following diagram summarises how the structure operates.



Proposed structure – steps

5. The seven steps to implement the proposed restructure are as follows:
 - Step 1: Vital NZ, after establishment as a New Zealand “unit trust” (as defined in s YA 1), will issue 100% of its units to VHPT. Vital NZ will be a managed investment scheme under the Financial Markets Conduct Act 2013, with a licensed manager and

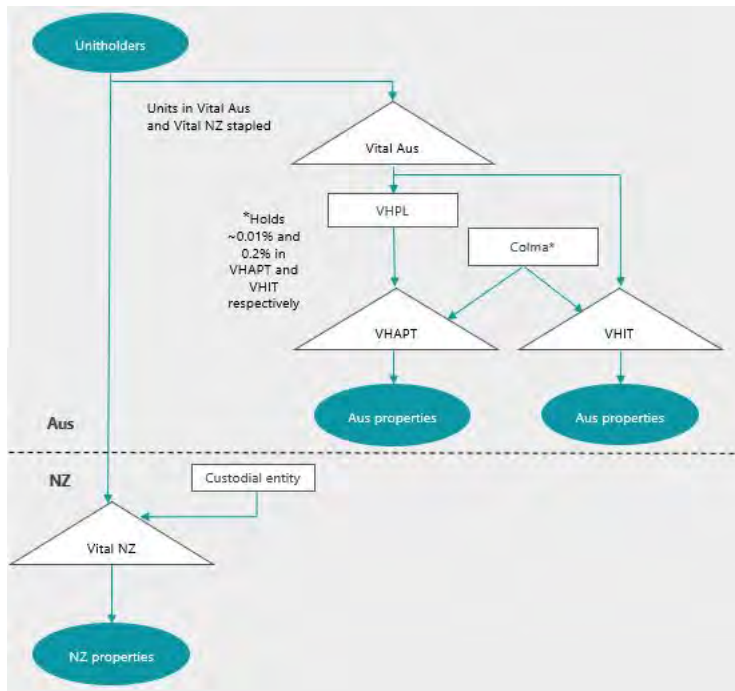
supervisor (being the existing VHPT manager and supervisor). Vital NZ will join the VHPT tax consolidated group.

- Step 2: VHPL will transfer the New Zealand properties to Vital NZ for market value consideration. The market value consideration will be satisfied by:
 - Vital NZ taking assignment of an existing bank loan from VHPL; and
 - Vital NZ issuing units to VHPL.
- Step 3: VHPL will transfer the Vital NZ units to VHPT in consideration for and repayment of an intercompany debt that VHPT has with VHPL.
- Step 4: VHPT will distribute all of its units in Vital NZ to unitholders on a pro-rata basis. No consideration will be payable by unitholders for the distribution. At the same time, units in Vital NZ and VHPT will be stapled together so that they must be traded together. Vital NZ units and VHPT (to be Vital Aus) units will appear as a single security, under a single ticker code, that can be traded on the NZX and on the ASX.
- Step 5: VHPL and Colma (which holds one unit in VHAPT and six of 3000 units in VHIT) will migrate to Australia by transferring their place of incorporation to Australia. All directorial and managerial functions of VHPL and Colma will also move from New Zealand to Australia.
- Step 6: VHPT will appoint an Australian responsible entity and become an Australian registered managed investment scheme and managed investment trust (Vital Aus). VHPT will cease being "New Zealand resident" (as defined in s YA 1) at this time.
- Step 7: Vital NZ will list on the NZX and ASX. Vital Aus will remain listed on the NZX throughout the transaction and will list on the ASX. Vital NZ will then elect to be a "listed PIE" (as defined in s YA 1).

Following the above steps, only Vital NZ will be a New Zealand tax resident. VHPL, Colma and VHPT (Vital Aus) will become Australian tax residents.

6. To implement the proposed structure, the VHPT trust deed will be amended to allow the transaction to take place and establish the stapled group. Broadly, the amendments fall into three categories:

- Distribution amendments: These amendments allow VHPT to make distributions of Vital NZ units to unitholders (the current VHPT trust deed contemplates distributions of only cash).
 - Stapling amendments: These amendments are the addition of clauses to provide for the stapling of Vital NZ units and Vital Aus units and to facilitate the operation of the stapled group.
 - Australian migration amendments: These amendments allow VHPT to migrate to Australia and become Vital Aus, and to make other changes that are consistent with it transitioning to an Australian managed investment scheme registered with the Australian Securities and Investments Commission under the Corporations Act 2001 (Cth). For clarity, Vital NZ will be a New Zealand managed investment scheme registered with the Financial Markets Authority under the Financial Markets Conduct Act 2013 (as VHPT is currently).
7. The proposed restructure does not involve changing:
- VHPT's underlying property assets, which will be split between Vital NZ and Vital Aus; or
 - a unitholder's proportionate beneficial interests in those underlying assets.
8. For example, a unitholder who owns 1 percent of all VHPT units on issue has a corresponding 1 percent proportionate beneficial interest in VHPT's assets. Following the Arrangement, the unitholder would have 1 percent of the Vital NZ units and 1 percent of the Vital Aus units, giving them a 1 percent proportionate beneficial interest in the assets of Vital NZ and Vital Aus, being the same assets owned by VHPT before the Arrangement.
9. The following diagram summarises how the structure will operate after implementation of the Arrangement:



Condition stipulated by the Commissioner

This Ruling is made subject to the following condition:

- a) VHPT is a “listed PIE” (as defined in s YA 1). It will maintain “listed PIE” status at the time of distributing the units in Vital NZ and until the time it loses that status by reason of migrating its tax residence (as per step 6 at [5]).

How the Taxation Laws apply to the Arrangement

Subject in all respects to any condition stated above, the Taxation Laws apply to the Arrangement as follows:

- a) The amount derived by each VHPT unitholder when VHPT distributes all its units in Vital NZ (as per step 4 at [5]) is excluded income under s CX 56C(1) if the unitholder:
 - is “resident in New Zealand” (as defined in s YA 1);
 - is a natural person or a trustee; and
 - does not include the amount as income in a return of income for the income year.

- b) If any one (or more) of the three criteria listed in a) does not apply to the unitholder, the amount derived by the unitholder when VHPT distributes all its units in Vital NZ (as per step 4 at [5]) is excluded income under s CX 56C(2) to the extent to which the amount is more than the amount that is fully credited as described in s CD 43(26).
- c) The distribution in money each VHPT unitholder is treated as being paid under s FL 2 on migration of VHPT's tax residence (as per step 6 at [5]) is excluded income under s CX 56C(1) if the unitholder:
- is "resident in New Zealand" (as defined in s YA 1);
 - is a natural person or a trustee; and
 - does not include the amount as income in a return of income for the income year.
- d) If any one (or more) of the three criteria listed in c) does not apply to the unitholder, the distribution in money the VHPT unitholder is treated as being paid under s FL 2 on migration of VHPT's tax residence (as per step 6 at [5]) is excluded income under s CX 56C(2) to the extent to which it is more than the amount that is fully credited as described in s CD 43(26).

The period or income year for which this Ruling applies

This Ruling will apply for the period beginning on 26 February 2020 and ending on 30 September 2021.

This Ruling is signed by me on the 26th day of February 2020.

Howard Davis
Group Leader
Tax Counsel Office

About this document

Product rulings are binding rulings on how the tax law applies to a particular "product", which is an arrangement that is likely to be entered into with a number of people on identical terms.