


# ***CR 2024/60 - NPR Trust No. 1 and NPR Trust No. 4 - scrip for scrip roll-over***

 This cover sheet is provided for information only. It does not form part of *CR 2024/60 - NPR Trust No. 1 and NPR Trust No. 4 - scrip for scrip roll-over*



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Status **legally binding**

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## Class Ruling

# NPR Trust No. 1 and NPR Trust No. 4 – scrip for scrip roll-over

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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 the Australian-resident unitholders of NPR Trust No.1 (NHT)<sup>1</sup> and NPR Trust No.4 (CPT)<sup>2</sup>, which were stapled under Newmark Property REIT (NPR) (NPR Stapled Security), who exchanged their units for units in the BWP Trust (BWP) by way of an off-market takeover (Offer) pursuant to Part 6.5 of the *Corporations Act 2001* (Corporations Act).
2. Details of this scheme are set out in paragraphs 26 to 55 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 an NPR Stapled Security as of 7.00pm (Sydney time) on 7 February 2024 (Record Date)
  - held your NHT units and CPT units on capital account for tax purposes – that is, you did not hold your units as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)), and

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<sup>1</sup> Trust name changed from Newmark Hardware Trust on 27 June 2024.

<sup>2</sup> Trust name changed from Newmark Capital (Chadstone) Property Trust on 27 June 2024.

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- 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.

### **When this Ruling applies**

5. This Ruling applies from 1 July 2023 to 30 June 2024.

### **When this Ruling does not apply**

6. This Ruling will not apply to you, if you:
- acquired your NHT units and CPT units pursuant to an employee share, options or rights plan, and
  - are subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 26 to 55 of this Ruling.

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

## **Ruling**

### **CGT event A1 will happen on the disposal of your Newmark Property REIT Stapled Securities**

7. CGT event A1 happened when you disposed of each of your NHT units and CPT units to the responsible entity of BWP under the scheme outlined in paragraphs 26 to 55 of this Ruling (subsection 104-10(1)). The disposal of your NHT units and CPT units results in separate CGT events.

8. If you accepted BWP's Offer to acquire all of your NHT units and CPT units before the Offer became unconditional, CGT event A1 happened on 21 March 2024, when the Offer became unconditional (paragraph 104-10(3)(a)).

9. If you accepted BWP's Offer on or after 21 March 2024, CGT event A1 happened when you accepted the Offer (paragraph 104-10(3)(a)).

10. If your NHT units and CPT units were compulsorily acquired, CGT event A1 happened when those units were compulsorily acquired by BWP (subsection 104-10(6)).

11. You will make a capital gain from CGT event A1 happening if the capital proceeds from the disposal of your NHT units and CPT units exceeded the cost base of those units, respectively. You will make a capital loss from CGT event A1 happening if the capital proceeds from the disposal of your NHT units and CPT units were less than the reduced cost base of those units, respectively (subsection 104-10(4)).

12. The capital proceeds from CGT event A1 happening in respect of the disposal of your NHT units and CPT units is worked out by:

- apportioning the BWP units, you received between the NHT units and CPT units that were exchanged under the Offer, based on a reasonable attribution (subsection 116-40(1)), and

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- determining the market value of the BWP units you received on the date the CGT events occurred and multiplying that market value by the number of BWP units received for each NHT unit and the number of BWP units received for each CPT unit to determine the capital proceeds for each NHT unit and CPT unit, respectively (paragraph 116-20(1)(b)).

13. We accept using the value of NHT's and CPT's net tangible assets (NTA) value on the date the Takeover Bid Implementation Deed (TBID) was executed as the basis of apportionment. This results in a reasonable attribution for the purpose of subsection 116-40(1). Based on NHT's and CPT's NTA value on 31 January 2024<sup>3</sup>, you will have received 0.3302 BWP units for each NHT unit and 0.0698 BWP units for each CPT unit.

#### **Availability of scrip for scrip roll-over if a capital gain is made**

14. If you make a capital gain from the disposal of your NHT units or your CPT units, you may choose to obtain scrip for scrip roll-over (section 124-781). The choice is made separately in respect of your NHT units and CPT units.

15. Scrip for scrip roll-over cannot be chosen if any capital gain you might subsequently make from your replacement BWP units would be disregarded, except because of a roll-over (paragraph 124-795(2)(a)).

#### **If scrip for scrip roll-over is chosen**

##### ***Capital gain is disregarded***

16. If you choose to obtain scrip for scrip roll-over, the capital gain you made from CGT event A1 happening in respect of the disposal of your NHT units or CPT units is disregarded to the extent that you received replacement BWP units (subsection 124-785(1)).

#### **Acquisition date of corresponding BWP Trust units**

17. If you choose to obtain scrip for scrip roll-over, the acquisition date of the BWP units for the purpose of making a discount capital gain is the date you acquired your corresponding NHT units, or corresponding CPT units, that were exchanged for your BWP units (table item 8C of section 109-55 and table item 2 of subsection 115-30(1)).

18. If you acquired your NHT units and CPT units on different days, the acquisition date for your replacement BWP units will also be on different days, where the number of BWP units you received for each NHT unit or CPT unit is worked out in accordance with paragraphs 12 and 13 of this Ruling.

#### **Cost base and reduced cost base of corresponding BWP Trust units**

19. The first element of the cost base and reduced cost base of each replacement BWP unit received is calculated by reasonably attributing to it the cost base and reduced cost base (respectively) of your original NHT unit and CPT unit for which it was exchanged (subsections 124-785(2) and (4)).

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<sup>3</sup> We accept using NHT's and CPT's NTA value as of 31 January 2024 to be a reasonable proxy for NHT's and CPT's NTA value as of 24 January 2024.

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20. In this case, due to each NHT unit and CPT unit being exchanged, in aggregate, for 0.4 BWP units, where scrip for scrip roll-over is chosen to apply in respect of both your NHT units and CPT units, the cost base (and reduced cost base) of each NHT unit and CPT unit you owned can be aggregated, and then divided by 0.4, to determine the first element of the cost base and reduced cost base for each replacement BWP unit you received.

21. Where scrip for scrip roll-over is chosen to apply in respect of either your NHT units or your CPT units (but not both), the cost base (and reduced cost base) for each replacement BWP will be the cost base (or reduced cost base) of your NHT units or your CPT units divided by the number of BWP units you received for each NHT unit or CPT unit worked out in accordance with paragraphs 12 and 13 of this Ruling.

### ***If scrip for scrip roll-over is not chosen or cannot be chosen***

#### ***Capital gain or capital loss not disregarded***

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

#### ***Acquisition date of corresponding BWP Trust units***

23. Under table item 3 of section 109-10, for NPR Stapled Security holders where scrip for scrip roll-over is not chosen or cannot be chosen:

- who accepted the Offer – the acquisition date of the BWP units is the date the contract was entered into (which is also the time at which CGT event A1 happens), or
- whose NHT units and CPT units were compulsorily acquired by BWP – the acquisition date of the BWP units is the date the BWP units were issued.

#### ***Cost base and reduced cost base of corresponding BWP Trust units***

24. Where scrip for scrip roll-over is not chosen or cannot be chosen, the first element of the cost base and reduced cost base of each BWP unit received is equal to that part of the market value of the NHT unit and CPT unit reasonably attributable to the BWP unit at the time of their acquisition (paragraph 110-25(2)(b), subsections 110-55(2) and 112-30(1)).

#### ***Discount capital gain***

25. If you make a capital gain from the disposal of your NHT units and CPT units, you will be eligible to treat the capital gain as a 'discount capital gain' provided you satisfy the positive conditions of Division 115 and do not satisfy the negative conditions of Division 115. In particular, your NHT units and CPT units that were disposed of must have been acquired (or taken to be acquired for CGT purposes) by you at least 12 months before CGT event A1 happened.

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## **Scheme**

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26. 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.

### **Relevant entities**

#### ***Newmark Property REIT, NPR Trust No.1 and NPR Trust No.4***

27. NPR was a listed real estate investment vehicle (REIT) on the Australian Securities Exchange (ASX), under the ASX code NPR.

28. NPR was listed on the ASX on 8 December 2021 and created by stapling units in NHT and CPT on a 1:1 basis. NPR was managed by Newmark Property Group Ltd and its subsidiaries.

29. NHT was established on 15 October 2012 and CPT was established on 7 December 2011.

30. NPR Management Limited<sup>4</sup> was an entity within the Newmark Group. Both NHT and CPT are attribution managed investment trusts (AMIT) as defined in section 276-10.

31. Both NHT and CPT remained separate managed investment schemes in accordance with the Corporations Act.

32. As of 24 January 2024, both NHT and CPT:

- each had 177,819,763 units on issue
- each had more than 300 members (unitholders), and
- each had only one class of ordinary units on issue.

33. NPR was removed from ASX listing on 23 May 2024.

### ***BWP Trust***

34. BWP is a listed REIT on the ASX under the ASX code BWP and invests in and manages commercial properties throughout Australia.

35. BWP Management Limited (BWPM) is the responsible entity for BWP.

36. As of 24 January 2024 BWP:

- had 642,383,803 ordinary units on issue
- had one class of units on issue (ordinary units) that bear voting rights – that is, one vote each and have equal rights to income and capital distributions
- had more than 300 unitholders and did not own any units in NHT or CPT prior to the Offer, and
- is a managed investment trust as defined in section 275-10 and an AMIT as defined in section 276-10.

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<sup>4</sup> Company name changed from Newmark REIT Management Limited on 27 March 2024.

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Status: **legally binding**

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**Acquisition of Newmark Property REIT by BWP Trust**

37. On 24 January 2024, a TBID between NPR Management Limited as the responsible entity for NHT and CPT, and BWPM as the responsible entity for BWP, was executed, under which BWP offered to acquire all the issued ordinary units in NHT and CPT by way of an off-market takeover under Chapter 6 of the Corporations Act.
38. The consideration under the offer was 0.40 BWP units for each NHT unit and CPT unit. The Offer was made to all NHT and CPT unitholders to participate in the scheme on substantially the same terms.
39. On the same day, Newmark Group Members<sup>5</sup>, via a Pre-Bid Acceptance Deed, conditionally accepted the Offer to dispose of their combined NPR Stapled Securities, representing 18.3% of the issued units in both NHT and CPT.
40. On 14 March 2024, BWP submitted a First Supplementary Bidder's Statement to the ASX, which extended the close of the offer period until 12 April 2024.
41. On 21 March 2024, BWP submitted a Second Supplementary Bidder's Statement to the ASX, which declared the offer to be unconditional.
42. On 11 April 2024, BWP extended the close of the offer period further until 24 April 2024.
43. On 24 April 2024, a further extension for the close of the offer period was announced to 17 May 2024.
44. On 13 May 2024, BWP announced its holding of more than 90% of NHT units and CPT units and commenced compulsory acquisition for the remaining units under Part 6.1A of the Corporations Act.
45. As of 16 May 2024, BWP had acquired 168,454,158 units in each of NHT and CPT representing approximately 94.73% of the units on issue in both NHT and CPT.
46. As of 17 May 2024 (the offer close date), 99.8% of unitholders in both NHT and CPT, who accepted the offer, were Australian residents.
47. On 21 June 2024, BWP announced that it completed compulsory acquisition of the remaining NHT units and CPT units and now held 100% of the issued NHT units and CPT units.
48. BWP issued 71,127,438 new BWP units over the offer period as takeover consideration under the arrangement to acquire all units in NHT and CPT.

**Ineligible Foreign Securityholders and Unmarketable Parcel Securityholders**

49. Under the terms of the TBID, NPR Ineligible Foreign Securityholders and Unmarketable Parcel Securityholders<sup>6</sup> were not eligible to receive BWP units in exchange for their NHT and CPT units. Instead, the BWP units which would have otherwise been issued to those NPR Stapled Security holders were sold by a nominee and the net proceeds paid to those NPR Stapled Security holders.

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<sup>5</sup> As defined in the Pre-Bid Acceptance Deed dated 24 January 2024.

<sup>6</sup> As defined in the BWP Bidder's Statement Clause 16 and NPR Target Statement Clause 10.

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Status: **legally binding**

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**Other matters**

50. The Offer was not carried out in contravention of paragraphs 612(a) to (g) of the Corporations Act, for the purposes of subsection 124-781(2A).

51. As the scheme was implemented prior to the record date for the 30 June 2024 6-monthly distribution, NPR Stapled Security holders who accepted the Offer will be entitled to BWP's distribution (expected to be 9.27 cents per BWP unit) for the 6-month period ended 30 June 2024. The TBID prevented NPR from declaring any distributions during the offer period.

52. BWPM, as the responsible entity for BWP, did not make a choice to deny a roll-over to the NHT and CPT unitholders under subsection 124-795(4).

53. NHT and CPT did not have 'significant stakeholders' or 'common stakeholders' within the meaning of those terms in section 124-783, prior to the arrangement.

54. Other information referenced is as follows:

- TBID and Pre-bid acceptance deed dated 24 January 2024.
- BWP Trust Bidder's Statement and NPR Target's statement dated 7 February 2024.
- First Supplementary Bidder's Statement dated 14 March 2024.
- Second Supplementary Bidder's Statement dated 21 March 2024.
- Deed of amendment to NHT constitution and CPT trust deed dated 27 June 2024.

55. NHT's and CPT's NTA value per unit as of 31 January 2024 was as follows:

| <b>Trust</b> | <b>NTA value per unit (\$)</b> | <b>%</b>       |
|--------------|--------------------------------|----------------|
| NHT          | 1.396                          | 82.55%         |
| CPT          | 0.295                          | 17.45%         |
| <b>Total</b> | <b>1.691</b>                   | <b>100.00%</b> |

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**Commissioner of Taxation**

25 September 2024

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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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### **Scrip for scrip roll-over**

56. Scrip for scrip roll-over under Subdivision 124-M enables a unitholder to disregard a capital gain from a unit that is disposed of if the unitholder receives a replacement unit in exchange. It also provides special rules for calculating the cost base and reduced cost base of the replacement unit.

57. Subdivision 124-M contains a number of conditions for, and exceptions to, a unitholder being able to choose scrip for scrip roll-over. The main requirements that are relevant to the Scheme that is the subject of this Ruling are:

- an entity (unitholder) exchanges units in one trust for units in another trust (paragraph 124-781(1)(a))
- entities (exchanging unitholders) have fixed entitlements to all of the income and capital of the original trust and the acquiring (replacement) trust (paragraph 124-781(1)(b))
- the exchange is in consequence of a single arrangement that (in this case) satisfies subsection 124-781(2A) (paragraph 124-781(1)(c))
- the conditions in subsection 124-781(3) and further conditions in subsections 124-781(4), if applicable, are satisfied (paragraph 124-781(1)(d)), and
- none of the exceptions for obtaining scrip for scrip roll-over in section 124-795 are applicable.

58. The Scheme that is the subject of this Ruling satisfies the requirements for roll-over under Subdivision 124-M.

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Status: **not legally binding**

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## References

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### *Legislative references:*

- ITAA 1936 6(1)
- ITAA 1997 102-5
- ITAA 1997 102-10
- ITAA 1997 104-10(1)
- ITAA 1997 104-10(3)(a)
- ITAA 1997 104-10(4)
- ITAA 1997 104-10(6)
- ITAA 1997 109-10
- ITAA 1997 109-55
- ITAA 1997 110-25(2)(b)
- ITAA 1997 110-55(2)
- ITAA 1997 112-30(1)
- ITAA 1997 Div 115
- ITAA 1997 115-30(1)
- ITAA 1997 116-20(1)(b)
- ITAA 1997 116-40(1)
- ITAA 1997 Subdiv 124-M
- ITAA 1997 124-781
- ITAA 1997 124-781(1)(a)
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- ITAA 1997 124-781(1)(c)
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- ITAA 1997 124-781(2A)
- ITAA 1997 124-781(3)
- ITAA 1997 124-781(4)
- ITAA 1997 124-783
- ITAA 1997 124-785(1)
- ITAA 1997 124-785(2)
- ITAA 1997 124-785(4)
- ITAA 1997 124-795
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- ITAA 1997 124-795(4)
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- ITAA 1997 275-10
- ITAA 1997 276-10
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- Corporations Act 2001 Ch 6
- Corporations Act 2001 Pt 6.1A
- Corporations Act 2001 612(a)
- Corporations Act 2001 612(b)
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- Corporations Act 2001 612(e)
- Corporations Act 2001 612(f)
- Corporations Act 2001 612(g)
- Corporations Act 2001 Pt 6.5

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### ATO references

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