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Manager, International Tax Treaties Unit
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Re: The Westfield Group's Comments on Australia's Intergovernmental Agreement to Implement the United States' Foreign Account Tax Compliance Act ("FATCA")

Background

On 26 July 2012, the U.S. Department of the Treasury published a model intergovernmental agreement (the "Model IGA") to facilitate the negotiation of bilateral agreements with jurisdictions regarding the implementation of FATCA. Under such a bilateral agreement, a financial institution in the applicable jurisdiction may comply with FATCA by reporting information to its national taxing authority instead of entering into a foreign financial institution agreement with the United States. We understand that the Australian Government is considering entering into such an IGA with the United States in order to minimize compliance costs for Australian stakeholders and enhance existing tax cooperation arrangements between Australia and the United States. As part of its feasibility study of whether to negotiate an IGA with the United States, the Australian Government has invited comments on the Model IGA by interested parties.[1]

Summary

If the Australian Government decides to enter into an IGA on FATCA compliance with the United States, The Westfield Group (ASX: WDC) proposes that the agreement clarify that the definition of a "foreign financial institution" ("FFI") excludes listed Australian property trusts ("LAPTs"), Australian entities the stock of which is stapled to an LAPT, and all members of an LAPT's or stapled entity's expanded affiliated group. These entities thus would qualify as "non-financial foreign entities" ("NFFEs") under section 1472(a) of the U.S. Internal Revenue Code of 1986, as amended (the "Code"). We believe this exclusion is appropriate as the entities described present a very low risk of being used by United States persons to evade United States tax obligations. Such an exclusion could be accomplished by listing the entities in Annex II of the IGA as Non-Reporting Australian Financial Institutions in the manner described in Exhibit A.

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[1] http://www.treasury.gov.au/ConsultationsandReviews/Submissions/2012/Intergovernmental-agreement-to-implement-FATCA

Reasons

1. Listed Australian Property Trusts and listed entities the stock of which is stapled to a Listed Australian Property Trust

Section 1471(a) and (b) of the Code imposes withholding and reporting requirements on foreign financial institutions. We believe LAPTs and the listed entities the stock of which is stapled to an LAPT ("LAPT Group Entities") should not be subject to these requirements. The definition of a financial institution should not be interpreted so broadly as to include LAPT Group Entities. Even if a broad interpretation were adopted, LAPT Group Entities should not be classified as financial institutions subject to FATCA's withholding and reporting requirements because they should qualify for the non-financial holding companies exception.

Should not be treated as financial institutions

Under Proposed Regulation section 1.1471-5(e)(1), a financial institution:

> (i) Accepts deposits in the ordinary course of a banking or similar business...; (ii) Holds, as a substantial portion of its business ..., financial assets for the account of others; (iii) Is engaged ... primarily ... in the business of investing, reinvesting, or trading in securities ..., partnership interests, commodities ..., notional principal contracts ..., insurance or annuity contracts, or any interest ... in such security, partnership interest, commodity, notional principal contract, insurance contract, or annuity contract; or (iv) Is an insurance company ... that issues or is obligated to make payments with respect to a financial account under [FATCA].

LAPT Group Entities should not qualify as financial institutions. They are not in the banking business. While "financial assets" is not defined in the proposed FATCA regulations, LAPTs' holding of stock in subsidiaries that own real estate and stapled entity's holding of stock in operating subsidiaries should not make these entities financial institutions subject to the same reporting and withholding regime as banks. Further, LAPT Group Entities should not be treated as engaged primarily in investing, reinvesting, or trading in securities or other financial assets. Rather, LAPT Group Entities should be recognized as acting together to invest in and operate real estate. Finally, LAPT Group Entities are not insurance companies. Accordingly, although the technical language of the definition does not permit a definitive determination of LAPT Group Entities' FFI status, we believe LAPT Group Entities should not fall within the definition of financial institutions as they do not operate in the financial industry and are not likely to be used to evade United States tax obligations.

Should be exempt as non-financial holding companies

We note that some entities that fall within the above definition of financial institution are nonetheless excluded from the FATCA withholding and reporting requirements under the "non-financial holding companies" exclusion in Proposed Regulation section 1.1471-5(e)(5)(i). An entity is excluded from the definition of a financial institution under this provision if it is a "foreign entity substantially all of the activities of which is to own (in whole or in part) the outstanding stock of one or more subsidiaries that engage in trades or businesses, provided that no such subsidiary is a financial institution." An entity is not excluded by paragraph (e)(5)(i) if the entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund *or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes.* (emphasis added).

Even if the definition of a financial institution in Proposed Regulation section 1.1471-5(e)(1) were interpreted as including LAPT Group Entities, the non-financial holding companies exclusion in Proposed Regulation section 1.1471-5(e)(5)(i) should be interpreted to exclude LAPT Group Entities from treatment as financial institutions. LAPTs primarily own direct interests in real property or interests in non-financial subsidiaries that own real estate. In addition, companies the stock of which is stapled to LAPTs, also own interests in non-financial subsidiaries that conduct related activities in respect of the real estate owned by the LAPTs.

LAPT Group Entities do not fall within any of the enumerated categories of investment vehicles in the proposed regulations (private equity funds, venture capital funds, and leveraged buyout funds), nor are they similar to any of the enumerated categories. In addition, despite the potentially broad application of the technical language of the provision, LAPT Group Entities are not in our view the types of entities the final category described in the emphasized language above was meant to cover.

LAPTs are widely-held, publicly traded entities, meant to afford investors the opportunity to gain exposure to real estate investments, much like publicly traded real estate investment trusts ("REITs") in the United States. In fact, LAPTs are now known as "Australian real estate investment trusts" or "A-REITs" in Australia. By being listed on the Australian Securities Exchange ("ASX"), LAPTs allow investors to purchase an interest in a diversified and professionally managed portfolio of real estate in the same way an investor would purchase a share in a company. An LAPT's real estate portfolio can include commercial, industrial, retail, or a combination of real estate assets. The purpose of LAPTs is not to "acquire or fund companies for investment purposes," and we do not consider this language should be read so broadly as to include LAPTs.

In addition, LAPTs are recognized by the United States as favored entities afforded reduced withholding rates pursuant to the United States-Australia tax treaty – treatment that would not be provided to an entity that is considered a potential tax shelter for U.S. investors. Under Article 10(4)(d) of Australia's tax treaty with the United States, dividends from a REIT to a LAPT are generally subject to a reduced treaty rate which provides foreign shareholders with a convenient local investment vehicle to invest in U.S. real estate. By reducing the REIT dividend rate for LAPTs in this treaty, the United States has acknowledged the LAPT as a legitimate structure for investment in United States real estate by Australian investors.

LAPTs are required to have a responsible entity that is responsible for the operation of the LAPT. Often, the stock of the responsible entity is stapled to the LAPT. Further, the Australian practice is that LAPTs only conduct activity that results in "good" income with the income from associated activity that is inappropriate for a trust to earn to instead be earned in a company that is stapled to the LAPT[2]. As the stock of the "ancillary activity" company is stapled to, and trades with, the stock of the LAPT, it only makes sense for both to be excluded from the definition of a financial institution under Proposed Regulation section 1.1471-5(e)(5)(i). Moreover, as with LAPTs, the purpose of the responsible entity or "ancillary activity" company is not to "acquire or fund companies ... for investment purposes." Again, neither entity poses a material risk of being used by United States persons to evade United States tax obligations.

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[2] In Australia the A-REIT tax rules operate differently to the US REIT tax rules. In the US the "bad" income of a REIT group is earned in a TRS (taxable REIT subsidiary) owned by the REIT. Under Australian tax rules a LAPT cannot own, or control, a TRS style company and instead such companies are stapled to an LAPT. The result under both the Australian and US REIT tax rules is similar, in that the "good" income is concessionally taxed in the REIT or LAPT and the "bad" income is subject to ordinary corporate tax rates in the TRS or stapled "ancillary activity" company.

LAPT Group Entities are also subject to the Corporations Act 2001 and the Listing Rules of the Australian Securities Exchange. They are not private funds offering investors the opportunity to sequester money without any type of reporting or oversight. For example, LAPT groups on the ASX must disclose the names of the twenty largest holders of each class of quoted equity securities, the number of equity securities each holds, and the percentage of capital or interests each holds in its annual report. Further, owners with 5% or greater interests in a LAPT group must disclose their holdings (including 1% movements in their interests).

As LAPT Group Entities are not in the financial industry and are widely-held, publicly traded holding entities subject to Australian securities law, we believe that an Australia-United States IGA should clarify that these entities are not financial institutions under FATCA.

2. All members of the expanded affiliated groups of LAPT Group Entities.

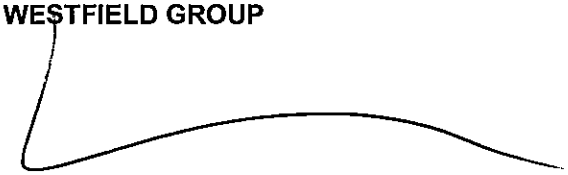
Members of the expanded affiliated groups of LAPT Group Entities should also be excluded from the definition of an FFI under FATCA. LAPTs commonly use subsidiary entities to hold interests in the LAPT's real estate portfolio. Likewise, a company stapled to an LAPT commonly uses subsidiary entities to operate and manage the LAPT's real estate portfolio. As described above, LAPT Group Entities should be excluded from the definition of a financial institution due to the low risk that such entities would be used by a U.S. person to evade income tax and on a similar basis the expanded affiliated groups of these entities should likewise be excluded from financial institution status.

Thus all corporate and non-corporate members of the expanded affiliated groups of LAPT Group Entities should be excluded from financial institution status under FATCA, and we believe the IGA should ensure that this treatment is afforded.

We appreciate that by requesting that all LAPT Group Entities should be confirmed under an Australian-United States IGA as exempt from FFI status (and instead be NFFEs) will mean that various entities outside Australia will have their status for FATCA purposes determined by the Australian-United States IGA. In our view such an outcome should be accepted by the US. The alternatives of either seeking an amendment to the FATCA regulations, or seeking to add a "LAPT clause" in several different IGAs that the US negotiates with countries in which LAPT group subsidiaries operate in would be much more difficult and time consuming. In our view the best and most efficient forum for dealing with the global consequences of a LAPT Group (that is headquartered in Australia and only listed on the Australian Securities Exchange) is the IGA between Australia and the United States.

We appreciate the opportunity to share our views on the Model IGA. Please do not hesitate to contact me should you wish to discuss any of the above.

Yours sincerely,
WESTFIELD GROUP



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