Class Ruling

Income tax: Advanced Share Registry Limited – Return of Share Capital

Contents Para

LEGALLY BINDING SECTION:

What this Ruling is about 1

Date of effect 7

Scheme 8

Ruling 30

NOT LEGALLY BINDING SECTION:

Appendix 1:

***Explanation* 36**

Appendix 2:

***Detailed contents list* 102**

This publication provides you with the following level of protection:

This publication (excluding appendixes) 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.

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provision(s)

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 45A of the ITAA 1936
- section 45B of the ITAA 1936
- section 45C of the ITAA 1936
- section 128B of the ITAA 1936
- section 104-25 of the *Income Tax Assessment Act 1997* (ITAA 1997)
- section 104-135 of the ITAA 1997, and
- section 855-10 of the ITAA 1997.

All legislative references in this Ruling are to the ITAA 1936 unless otherwise stated.

Class of entities

3. The class of entities to which this Ruling applies are the shareholders of ordinary shares in Advanced Share Registry Limited (ASW) who:

(a) are registered on the ASW share register on 19 August 2015 (Record Date) being the date for determining entitlement for the return of capital payment made on 20 August 2015 (Implementation Date)

(b) hold their ASW shares on capital account, and

(c) are not subject to the taxation of financial arrangements rules in Division 230 of the ITAA 1997 in relation to gains and losses on their ASW shares.

(Note: Division 230 of the ITAA 1997 will generally not apply to individuals, unless they have made an election for it to apply to them)

In this Ruling, a person belonging to this class of entities is referred to as an 'ASW shareholder'.

Qualifications

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

5. 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 8 to 29 of this Ruling.

6. 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

7. This Ruling applies from 1 July 2015 to 30 June 2016. The Ruling continues to apply after 30 June 2016 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).

Scheme

8. The following description of the scheme is based on information provided by the applicant. The following documents, or relevant parts of them form part of and are to be read with the description:

- Application for class ruling dated 8 July 2015
- Notice of general meeting held on 13 August 2015
- Correspondence from 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.

9. Advanced Share Registry Limited (ASW) is an Australian incorporated company and resident of Australia for income tax purposes.

10. ASW has been listed on the ASX since 10 June 2008 after a successful Initial Public Offering (IPO) raising $5,000,000 which allowed for the completion of the acquisition of the business of Advanced Share Registry Services and provided approximately $2,825,000 in surplus cash for business development and working capital.

11. ASW carries on a business of providing share registry services to listed and unlisted clients.

12. As at 30 June 2015, ASW's entire issued share capital was made up of 42,746,500 ordinary shares.

13. The majority of shareholders are Australian residents.

14. The major shareholder of ASW is KMC Automation Pty Ltd as trustee for Meiko Trust, a resident discretionary trust.

15. The total original cost base of all shares in ASW is $7,254,625.

16. After the IPO $2,000,000 of excess cash was placed in a term deposit. Since this initial transfer of funds into a term deposit all interest earned and the principal amount received after maturity have been continually reinvested into term deposits on an ongoing basis.

17. As at 30 June 2015, the total amount in term deposits is $3,500,000. Apart from the term deposits, $1,242,000 is also being held in a Cash Reserve bank account. As at 31 December 2014, ASW had cash and cash equivalents of $4,848,339.

18. After a review of its operations and the strategy that ASW intends to follow, ASW considered that it has cash surplus to its present and future needs.

19. The Directors considered the possibility for reducing the surplus cash by returning capital to shareholders at a board meeting.

20. ASW's management determined that ASW would distribute $1,043,015 of capital on a pro rata basis between all of ASW's shareholders. The return of capital was subject to shareholders approval and shareholders approved the capital reduction at a general meeting on 13 August 2015.

21. The record date for determining entitlement to participate in the capital return was 19 August 2015. The return of $1,043,015 was made on 20 August 2015 to all ASW shareholders which is a return of capital of 2.44 cents per share.

22. This was the first time that ASW has made a return of capital to its shareholders. After the return of capital ASW had approximately $3,698,985 held in cash reserves.

23. The return of capital did not change the number of ordinary shares held by each of ASW's shareholders, or the proportionate interest of each shareholder. No shares were cancelled as a result of the return of capital.

24. The return of capital was made simultaneously with the payment of the final dividend for 2015 of 1.70 cents per share which absorbed the majority of profits derived during the year. ASW had previously declared a half year dividend in relation to the year ended 30 June 2015 of 2.00 cents per share.

25. After payment of the dividend and the return of capital, the company held approximately $2,972,295 in cash reserves.

26. ASW has paid dividends from profits each year as follows:

Year ended	Dividend per Share (cents)
30 June 2010	3.60
30 June 2011	3.85
30 June 2012	3.70
30 June 2013	3.85
30 June 2014	3.70
30 June 2015	3.70

27. The return of capital was debited against ASW's share capital account.

28. The journal entries to record the capital return are as follows:

DR	Issued Capital	$1,043,015	
CR	Cash at bank		$1,043,015

29. ASW's share capital account (as defined in section 975-300 of the Income Tax Assessment Act 1997 (ITAA 1997) is not tainted for the purpose of section 197-50 of the ITAA 1997.

Ruling

Return of capital not a dividend

30. The return of share capital to ASW's shareholders will not be a dividend as defined in subsection 6(1) and will not be subject to dividend withholding tax pursuant to section 128B.

The application of sections 45A, 45B and 45C

31. The Commissioner will not seek to make a determination under section 45A or section 45B that section 45C applies to the whole, or any part, of the capital return made by ASW to its shareholders.

Capital gains tax (CGT) consequences

32. CGT event G1 (section 104-135 of the ITAA 1997) happened when ASW paid the return of capital to an ASW shareholder in respect of a share owned by the shareholder at the Record Date which the shareholder continued to own on the Implementation Date.

33. CGT event C2 (section 104-25 of the ITAA 1997) happened when ASW paid the return of capital to an ASW shareholder that owned a share at the Record Date, but no longer owned the share on the Implementation Date.

Foreign resident shareholders

34. A foreign resident ASW shareholder who received the return of capital may disregard any capital gain made when CGT event G1 happened if their ASW share did not constitute 'taxable Australian property' (section 855-10 of the ITAA 1997).

35. A foreign resident ASW shareholder who received the return of capital may disregard any capital gain or capital loss made when CGT event C2 happened if the right to receive the payment was not 'taxable Australian property' (section 855-10 of the ITAA 1997).

Commissioner of Taxation
30 September 2015]

Appendix 1 – Explanation

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.

Return of capital not a dividend

36. Subsection 44(1) includes in a shareholder's assessable income any dividends as defined in subsection 6(1), paid to the shareholder out of profits derived by the company from any source (if the shareholder is a resident of Australia) and from an Australian source (if the shareholder is a non-resident).

37. The term 'dividend' in subsection 6(1) includes any distribution made by a company to any of its shareholders. However, paragraph 6(1)(d) of the definition of 'dividend' specifically excludes a distribution from the definition of 'dividend' if the amount of the distribution is debited against an amount standing to the credit of the share capital account of the company.

38. 'Share capital account' is defined in section 975-300 of the ITAA 1997 as an account which the company keeps of its share capital, or any other account created after 1 July 1998 where the first amount credited to the account was an amount of share capital.

39. Subsection 975-300(3) of the ITAA 1997 states that an account is generally taken not to be a share capital account if it is tainted. Section 197-50 of the ITAA 1997 states that a share capital account is tainted if an amount to which Division 197 of the ITAA 1997 applies, is transferred to the account and the account is not already tainted.

40. ASW's issued share capital consists solely of ordinary shares. The return of share capital was debited against ASW's share capital account by the following journal entry:

DR		Issued Capital	$1,043,015	
	CR	Cash at bank		$1,043,015

41. The ASW share capital account is not tainted for the purpose of section 197-50 of the ITAA 1997.

42. The exclusion in paragraph 6(1)(d) of the definition of dividend is limited by subsection 6(4), which applies in circumstances where under an arrangement:

(a) a company raises share capital, receiving either cash or property from a person or group of persons, crediting the amount of money or value of the property to its share capital account; and

(b) returns the cash or property received to another person or group of persons, debiting the amount of money or value of the property to its share capital account.

43. Subsection 6(4) will have no application in respect of ASW's return of capital. The funds for the return of capital are sourced from capital originally raised from ASW's shareholders as seed capital and from the IPO. The return of funds was made to the same shareholders in addition to new shareholders. As such, it cannot be said that funds were returned to another person or group of persons within the scope and intent of subsection 6(4).

44. Paragraph 6(1)(d) of the definition of 'dividend' in subsection 6(1) applies to exclude the distribution of capital from falling within the definition of a dividend. Therefore, the return of share capital will not constitute a dividend for income tax purposes and ASW's shareholders will not be liable for dividend withholding tax on the return of capital pursuant to section 128B.

The application of sections 45A, 45B and 45C

Section 45A – scheme to stream capital benefits

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

46. By distributing an amount as a return of capital, the company will provide shareholders with a 'capital benefit' (as defined in paragraph 45A(3)(b)). However, there is nothing in the arrangement to indicate that there is a 'streaming' of capital benefits to some shareholders and dividends to other shareholders as all shareholders will receive the capital return in direct proportion to their shareholding. Therefore section 45A does not apply to the distribution.

Section 45B – scheme to provide capital benefits

47. Section 45B applies where certain capital payments, including a return of capital, are paid to shareholders in substitution for dividends. The purpose of section 45B is to ensure that relevant amounts distributed to shareholders of a company are treated as dividends for tax purposes if certain payments, allocations and distributions are made in substitution for dividends.

48. Subsection 45B(2) sets out the conditions under which the Commissioner may make a determination under subsection 45B(3) that section 45C applies. Specifically, the conditions provided for under subsection 45B(2) are that:

(a) there is a scheme under which a person is provided with a capital benefit by a company;

(b) under the scheme, a taxpayer (the relevant taxpayer), who may or may not be the person provided with the capital benefit, obtains a tax benefit; and

(c) having regard to the relevant circumstances of the scheme, it would be concluded that the person, or one of the persons, who entered into or carried out the scheme or any part of the scheme did so for a purpose, other than an incidental purpose of enabling the relevant taxpayer to obtain a tax benefit.

49. Each condition is considered below.

Scheme

50. For paragraph 45B(2)(a) to be satisfied, a taxpayer must be provided with a capital benefit by a company under a scheme. A scheme for the purposes of section 45B of the ITAA 1997 has the meaning given by subsection 995-1(1) of the ITAA 1997 (see subsection 45B(10)). A scheme is broadly defined in subsection 995-1(1) of the ITAA 1997 to mean:

(a) any arrangement; or

(b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

51. The phrase 'provided with a capital benefit' is defined in subsection 45B(5). Relevantly, it includes the provision of ownership interests in a company to a person, and the distribution to a person of share capital (see paragraphs 45B(5)(a) and (b)).

52. As ASW's return of capital to its shareholders was debited to ASW's share capital account, the Commissioner considers that the capital return arrangement is a scheme under which a person is provided with a capital benefit by the company. Therefore, the arrangement involving the return of capital to ASW shareholders will constitute a scheme for the purposes of section 45B.

Tax Benefit

53. For paragraph 45B(2)(b) to be satisfied, a taxpayer must obtain a tax benefit. Pursuant to subsection 45B(9), a 'tax benefit' will be obtained from a capital benefit if the amount of tax payable by the relevant taxpayer would, apart from this section, be less than the amount that would have been payable if the capital benefit had been a dividend. Generally, where there is a distribution of share capital, a tax benefit will arise as a shareholder or the relevant taxpayer will pay less tax on the distribution than they would have if the amount had instead been a 'dividend'.

54. In addition to this general circumstance, the relevant taxpayer also obtains a tax benefit where the distribution of share capital by the company forestalls the distribution of franked dividends.

55. The return of capital distributed by ASW will not be assessable in the hands of its shareholders because the payment would be excluded from the definition of 'dividend' in subsection 6(1). For this reason, the shareholders will obtain a tax benefit as defined in subsection 45B(9). Therefore, paragraph 45B(2)(b) will be satisfied in respect of ASW's return of capital to its shareholders.

Relevant circumstances

56. Paragraph 45B(2)(c) sets out an objective purpose test, having regard to the relevant circumstances of the scheme (under which the capital benefit is provided). Paragraph 45B(2)(c) requires the Commissioner to objectively consider the 'relevant circumstances of the scheme' pursuant to subsection 45B(8) as to whether any part of the scheme would be entered into for a purpose, other than an incidental purpose, of enabling a taxpayer to obtain a 'tax benefit'. The test is not satisfied if the purpose (of obtaining a tax benefit) is only incidental, notwithstanding this, the purpose does not have to be the dominant purpose of the scheme. That is, the test is satisfied so long as the purpose of obtaining a tax benefit is not 'incidental'.

57. In the application of the purpose test consideration is given to the relevant circumstances of the scheme as set out in paragraphs 45B(8)(a) to (k). However, the list of relevant circumstances in subsection 45B(8) is not exhaustive and regard may be had to other circumstances on the basis of their relevance.

58. For the purposes of this specific ruling, the relevant circumstances of the company and the tax profile of its shareholders are addressed below.

Capital benefit attributable to profits of the company

59. Paragraph 45B(8)(a) refers to the extent to which the capital benefit is attributable to capital or profits (realised and unrealised) of the company or an associate (within the meaning of section 318) of the company. Whether the return of capital is attributable to profit is essentially concerned with determining whether there is a discernible connection between the amount distributed as share capital and the share capital and profits that are available for distribution.

60. The objective purpose of ASW's payment was to return to shareholders the excess capital that was raised at the time of the initial public offering. The capital being returned was surplus to ASW's present and future needs.

61. The Commissioner accepts that the total shareholder funds disclosed in ASW's most recent accounts of 31 December 2014 are indicative of ASW's total equity available for distribution.

62. On the basis of a comparison between the return of capital made from equity available for distribution, and the payment of dividend from profits, the return of capital was made on a proportionate basis. Therefore, the amount of the return of capital is within the range of what would be expected, and reflects that the amount has been sourced from capital.

63. This circumstance tends towards the capital return being attributable to the excess capital contributed by the shareholders and not to realised or unrealised profits.

64. This circumstance does not incline towards the conclusion as to requisite purpose.

Pattern of distributions

65. Paragraph 45B(8)(b) refers to the pattern of distributions of dividends, bonus shares and returns of capital or share premium by the company or by an associate (within the meaning in section 318) of the company. The Commissioner has explained in paragraph 77 of Law Administration Practice Statement PS LA 2008/10 *Application of section 45B of the Income Tax Assessment Act 1936 to share capital reductions* that a pattern of making capital distributions (with the capital performing the function of dividends) may point towards the company engaging in dividend substitution.

66. ASW has not made any returns of capital previously. Since 2010, ASW has paid dividends of between 3.60 and 3.85 cents per share. For the 2015 financial year ASW paid a dividend of 3.70 cents per share in line with their pattern of previous dividend payments. The pattern of distributions indicates that the return of capital was not in substitution for a dividend.

67. The funds for the return of capital were sourced from the original capital that was raised by ASW from the issue of shares. The capital return was made in addition to a payment of a dividend in approximately the same proportion to the underlying equity of ASW. The capital return has not impacted on ASW's payment of dividend for the 2015 financial year.

68. This circumstance does not incline towards the conclusion as to requisite purpose.

Capital losses

69. Paragraph 45B(8)(c) refers to whether shareholders have capital losses that, apart from the scheme, would be carried forward to a later year of income.

70. This circumstance does not incline towards the conclusion as to requisite purpose.

Pre-CGT ownership interests

71. Paragraph 45B(8)(d) refers to whether any of the ownership interests in the company or an associate of the company were held by the shareholders on or before 19 September 1985.

72. ASW was listed on the Australian stock exchange on 10 June 2008 and therefore all interests in the company were acquired after 19 September 1985.

73. This circumstance does not incline towards the conclusion as to requisite purpose.

Residency of the shareholders

74. Paragraph 45B(8)(e) directs attention to whether the relevant taxpayer is a non-resident. The implication of non-residency is that it would normally point towards a tax preference for a distribution of capital rather than of profits because a distribution of capital to a non-resident shareholder would not be assessable to that shareholder.

75. The majority of ASW shareholders are Australian residents and the major shareholder of ASW is an Australian resident.

76. This circumstance does not incline towards the conclusion as to requisite purpose.

Cost base of the shares

77. For the purposes of paragraph 45B(8)(f), if the cost base of the relevant ownership interest is substantially less than the return of capital, this circumstance may be indicative of purpose.

78. This circumstance inclines towards the conclusion as to requisite purpose.

Nature of the interest after the return of capital

79. Paragraph 45B(8)(h) requires consideration of whether the capital benefit was provided to a shareholder in circumstances where the shareholder's interest in the company was affected. If the shareholder continues to own the same number of shares and retains the same proportional interest in the company, the outcome is consistent with that which would be achieved in the context of a dividend.

80. Following the return of capital, no shares were cancelled and there was no dilution of shareholding in ASW as a consequence of the capital return.

81. This circumstance does not incline towards the conclusion as to requisite purpose.

Any matters referred to in s 177D(2)

82. Paragraph 45B(8)(k) also includes any matters referred to in subsection 177D(2) to be a relevant circumstance of the scheme. The matters provided in subsection 177D(2) are:

(a) the manner in which the scheme was entered into or carried out;

(b) the form and substance of the scheme;

(c) the time at which the scheme was entered into and the length of the period during which the scheme was carried out;

(d) the result in relation to the operation of this Act that, but for this Part, would be achieved by the scheme;

(e) any change in the financial position of the relevant taxpayer that has resulted, will result, or may reasonably be expected to result, from the scheme;

(f) any change in the financial position of any person who has, or has had, any connection (whether of a business, family or other nature) with the relevant taxpayer, being a change that has resulted, will result or may reasonably be expected to result, from the scheme;

(g) any other consequence for the relevant taxpayer, or for any person referred to in paragraph (f), of the scheme having been entered into or carried out;

(h) the nature of any connection (whether of a business, family or other nature) between the relevant taxpayer and any person referred to in paragraph (f).

83. The benefit received by the major shareholder and its beneficiaries has to be considered alongside the other factors relevant for the purposes of subsection 177D(2) including the manner, form and time that the capital is being returned to shareholders. In considering the information surrounding the return of capital as described in the Class Ruling application and further information provided, the Commissioner considers that on balance, the matters raised in paragraphs 177D(2)(a) to 177D(2)(h) do not lead to a conclusion that a purpose other than an incidental purpose of obtaining a tax benefit exists in relation to the entering of the scheme.

Conclusion

84. Having regard to the relevant circumstances as set out in paragraphs 47 to 83 above, it cannot be concluded that the scheme was entered into or carried out for a more than incidental purpose of enabling ASW shareholders to obtain a tax benefit. Accordingly, the Commissioner will not make a determination under subsection 45B(3) that section 45C applies to the whole, or a part, of the return of capital.

Section 45C

85. As the Commissioner will not make a determination under section 45A or 45B in relation to the scheme as described, section 45C will not apply to treat any part of the return of capital as an unfranked dividend for the purposes of the ITAA 1936 or the ITAA 1997.

Capital gains tax (CGT) consequences

CGT event G1 – section 104-135 of the ITAA 1997

86. Shareholders will make a capital gain or loss if a CGT event happens. CGT event G1 (section 104-135 of the ITAA 1997) happens when a company makes a payment to a shareholder in respect of a share they own at the record date and continue to own at the time of the payment provided that some or all of the payment is not a dividend as defined in subsection 995-1(1) of the ITAA 1997.

87. The return of capital that was debited against ASW's untainted share capital account will not be a dividend in accordance with paragraph 6(1)(d).

88. CGT event G1 happened when ASW made the return of capital to an ASW shareholder in respect of a share that the shareholder owned at the Record Date of 19 August 2015 and continued to own at the time of the Implementation Date of 20 August 2015 (section 104-135 of the ITAA 1997). An ASW shareholder made a capital gain if the return of the capital component amount was more than the cost base of their ASW share. The capital gain is equal to the amount of the excess (subsection 104-135(3) of the ITAA 1997).

89. If an ASW shareholder made a capital gain when CGT event G1 happened, the cost base and reduced cost base of the ASW share is reduced to nil. An ASW shareholder cannot make a capital loss when CGT event G1 happened (subsection 104-135(3) of the ITAA 1997.

90. If the return of capital is equal to or less than the cost base of the ASW share at the time of payment, the cost base and reduced cost base of the share is reduced by the amount of the payment (subsection 104-135(4) of the ITAA 1997). Where the cost base and reduced cost base of an ASW share prior to the payment exceeds 2.44 cents per share, the cost base and reduced cost base is reduced by 2.44 cents.

91. A capital gain made when CGT event G1 happened will be eligible to be treated as a discount capital gain under Division 115 of the ITAA 1997 provided that the shareholder acquired the ASW share at least 12 months before the return of capital payment was made (subsection 115-25(1) of the ITAA 1997) and the other conditions of that Division are satisfied. Foreign or temporary resident individuals must meet further conditions to apply the CGT discount – for CGT events occurring after 8 May 2012, the application of the discount percentage will depend on:

- whether the CGT asset was held before or after 8 May 2012, and
- the residency status of the individual who has made the capital gain.

CGT event C2 – section 104-25 of the ITAA 1997

92. CGT event C2 happened when the return of capital was made (section 104-25 of the ITAA 1997) to an ASW shareholder that held the share at the Record Date of 19 August 2015 but no longer owned the share at the Implementation Date of 20 August 2015. The right to receive the return of capital is one of the rights inherent in an ASW share held at the Record Date. If, after the Record Date but before the Implementation Date, an ASW shareholder ceased to own an ASW share in respect of which the return of capital was payable, the right to receive the return of capital was retained by that shareholder and the right constitutes a separate CGT asset.

93. The right to receive the payment ended when the right was discharged or satisfied when the payment was made.

94. An ASW shareholder made a capital gain if the capital proceeds from the ending of the right are more than the cost base of the right. The capital gain is equal to the amount of the excess. An ASW shareholder will make a capital loss if the capital proceeds from the ending of the right are less than the reduced cost base of the right. The capital loss is equal to the amount of the difference (subsection 104-25(3) of the ITAA 1997).

95. In working out the capital gain or capital loss made when CGT event C2 happened, the capital proceeds will be the amount of the return of capital of 2.44 cents per ASW share (subsection 116-20(1) of the ITAA 1997).

96. The cost base of the ASW shareholder's right to receive the return of capital is worked out under Division 110 of the ITAA 1997 (modified by Division 112 of the ITAA 1997). The cost base of the right does not include the cost base or reduced cost base of the share previously owned by an ASW shareholder that was applied in working out a capital gain or capital loss made when a CGT event happened to the share (when the ASW shareholder ceased to own the share) for example when the ASW shareholder disposed of the share after the Record Date.

97. Therefore, in this case for ASW shareholders, if the entire cost base or reduced cost base of the ASW share was applied in working out a capital gain or capital loss when a CGT event happened to that share, then the right to receive the return of capital is likely to result in a cost base of nil. Therefore, ASW shareholders will generally make a capital gain equal to the amount of the return of share capital payment of 2.44 cents per share.

98. As the right to receive the return of capital was inherent in the ASW share during the time it was owned, the right is considered to have been acquired at the time when the corresponding share was acquired (section 109-5 of the ITAA 1997). Accordingly, if the ASW share was acquired at least 12 months before the return of capital payment was made, a capital gain made from the ending of the corresponding right satisfies the requirements of section 115-25 of the ITAA 1997. The capital gain may be eligible to be treated as a discount capital gain under Division 115 of the ITAA 1997 provided the other conditions of that Division are satisfied. As discussed above, from 8 May 2012, foreign or temporary resident individuals must meet further conditions to apply the CGT discount.

Foreign resident shareholders

99. Pursuant to Division 855 of the ITAA 1997, a foreign resident shareholder or the trustee of a foreign trust who has the right to the payment of the return of capital will disregard any capital gain or capital loss provided their ASW share is not ‘taxable Australian Property’ as defined in section 855-15 of the ITAA 1997. The term ‘taxable Australian property’ is defined in the table in section 855-15 of the ITAA 1997. The table sets out five categories of CGT assets:

Item 1	taxable Australian real property
Item 2	an indirect Australian real property interest not covered by item 5
Item 3	a CGT asset used at any time in carrying on a business through a permanent establishment in Australia and which is not covered by item 1, 2 or 5
Item 4	an option or right to acquire a CGT asset covered by item 1, 2 or 3, and
Item 5	a CGT asset that is covered by subsection 104-165(3) (choosing to disregard a gain or loss on ceasing to be an Australian resident.

100. Not all of the categories in the table will apply in the case of the CGT event G1. A foreign resident, or the trustee of a foreign resident trust for CGT purposes, cannot disregard a capital gain or capital loss made when a CGT event G1 happened to their ASW shares under subsection 855-10(1) of the ITAA 1997 if the ASW shares:

- were an indirect Australian real property interest (item 2 of the table in section 855-15 of the ITAA 1997)
- had been used at any time by them in carrying on a business through a permanent establishment in Australia (item 3 of the table in section 855-15 of the ITAA 1997), or
- were covered by subsection 104-165(3) of the ITAA 1997 (item 5 of the table in section 855-15 of the ITAA 1997).

101. Not all of the categories in the table will apply in the case of the CGT event C2. A foreign resident, or trustee of a foreign resident trust for CGT purposes, cannot disregard a capital gain or capital loss made when a CGT event C2 happened to their right to receive the return of capital if the right:

- had been used at any time by them in carrying on a business through a permanent establishment in Australia (item 3 of the table in section 855-15 of the ITAA 1997), or
- was covered by subsection 104-165(4) of the ITAA 1997 (item 5 of the table in section 855-15 of the ITAA 1997).

Appendix 2 – Detailed contents list

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

	Paragraph
What this Ruling is about	**1**
Relevant provision(s)	2
Class of entities	3
Qualifications	4
Date of effect	**7**
Scheme	**8**
Ruling	**30**
Return of capital not a dividend	30
The application of sections 45A, 45B and 45C	31
Capital gains tax (CGT) consequences	32
Foreign resident shareholders	34
Appendix 1 – Explanation	**36**
Return of capital not a dividend	36
The application of sections 45A, 45B and 45C	45
Section 45A – scheme to stream capital benefits	45
Section 45B – scheme to provide capital benefits	47
Scheme	50
Tax Benefit	53
Relevant circumstances	56
Capital benefit attributable to profits of the company	59
Pattern of distributions	65
Capital losses	69
Pre-CGT ownership interests	71
Residency of the shareholders	74
Cost base of the shares	77
Nature of the interest after the return of capital	79
Any matters referred to in s 177D(2)	82
Conclusion	84
Section 45C	85
Capital gains tax (CGT) consequences	86
CGT event G1 – section 104-135 of the ITAA 1997	86
CGT event C2 – section 104-25 of the ITAA 1997	92
Foreign resident shareholders	99
Appendix 2 – Detailed contents list	**102**

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Subject references:

- Capital benefit
- Capital gains tax
- Capital reductions
- CGT event C1-C3 – end of a CGT asset
- CGT event G1-G3 – shares
- Return of capital on shares
- Share capital
- Shareholder payments

Legislative references:

- ITAA 1936
- ITAA 1936 6(1)
- ITAA 1936 6(1)(d)
- ITAA 1936 6(4)
- ITAA 1936 44
- ITAA 1936 44(1)
- ITAA 1936 45A
- ITAA 1936 45A(3)(b)
- ITAA 1936 45B
- ITAA 1936 45B(2)
- ITAA 1936 45B(2)(a)
- ITAA 1936 45B(2)(b)
- ITAA 1936 45B(2)(c)
- ITAA 1936 45B(3)
- ITAA 1936 45B(5)
- ITAA 1936 45B(5)(a)
- ITAA 1936 45B(5)(b)
- ITAA 1936 45B(8)
- ITAA 1936 45B(8)(a)
- ITAA 1936 45B(8)(b)
- ITAA 1936 45B(8)(c)
- ITAA 1936 45B(8)(d)
- ITAA 1936 45B(8)(e)
- ITAA 1936 45B(8)(f)
- ITAA 1936 45B(8)(h)
- ITAA 1936 45B(8)(i)
- ITAA 1936 45B(8)(j)
- ITAA 1936 45B(8)(k)
- ITAA 1936 45B(9)
- ITAA 1936 45B(10)
- ITAA 1936 45C
- ITAA 1936 128B
- ITAA 1936 177D(2)
- ITAA 1936 177D(2)(a)
- ITAA 1936 177D(2)(b)
- ITAA 1936 177D(2)(c)
- ITAA 1936 177D(2)(d)
- ITAA 1936 177D(2)(e)
- ITAA 1936 177D(2)(f)
- ITAA 1936 177D(2)(g)
- ITAA 1936 177D(2)(h)
- ITAA 1936 318
- ITAA 1997
- ITAA 1997 104-25
- ITAA 1997 104-25(3)
- ITAA 1997 104-135
- ITAA 1997 104-135(3)
- ITAA 1997 104-135(4)
- ITAA 1997 109-5
- ITAA 1997 Div 110
- ITAA 1997 Div 115
- ITAA 1997 115-25
- ITAA 1997 115-25(1)
- ITAA 1997 116-20(1)
- ITAA 1997 Div 197
- ITAA 1997 197-50
- ITAA 1997 Div 230
- ITAA 1997 Div 855
- ITAA 1997 855-10
- ITAA 1997 855-10(1)
- ITAA 1997 855-15
- ITAA 1997 975-300
- ITAA 1997 975-300(3)
- ITAA 1997 995-1(1)
- TAA 1953

Other references:

- Law Administration Practice Statement PS LA 2008/10 Application of section 45B of the Income Tax Assessment Act 1936 to share capital reductions

ATO references

NO:	1-721JP56
ISSN:	2205-5517
ATOlaw topic:	Income tax ~~ Capital gains tax ~~ CGT events ~~ CGT events G1 to G3 – shares Income tax ~~ Capital gains tax ~~ CGT events ~~ CGT events C1 to C3 – end of a CGT asset Income tax ~~ Capital management ~~ Assessability of distribution