



Class Ruling

Income tax: return of capital: Metgasco Limited

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1 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 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:
- section 45B of the *Income Tax Assessment Act 1936* (ITAA 1936), and
 - section 45C of the ITAA 1936.

All subsequent references are to the ITAA 1936 unless otherwise indicated.

Class of entities

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

- were registered on the Metgasco share register on 11 November 2016, the date for determining entitlement to the return of capital
- held their Metgasco shares on capital account, and

- are not subject to the taxation of financial arrangements rules in Division 230 of the *Income Tax Assessment Act 1997* (ITAA 1997) in relation to their gains and losses on their Metgasco 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 a Metgasco shareholder.

Qualifications

4. 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 7 to 26 of this Ruling.
5. 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

6. This Ruling applies from 1 July 2016 to 30 June 2017. The Ruling continues to apply after 30 June 2017 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

7. 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.

Background

8. Metgasco Limited (Metgasco) is a public company, incorporated in Australia and listed on the Australian Securities Exchange (ASX) since 23 December 2004.
9. Metgasco specialises in gas exploration, appraisal, investment and development of associated energy infrastructure.
10. Metgasco has historically financed these projects by way of equity raisings.
11. Metgasco's business has primarily focused on coal seam gas assets in Northern NSW. Its principal activities have included gas exploration, appraisal, development and commercialisation of hydrocarbon assets.
12. Following a settlement with the NSW Government in December 2015 which resulted in the cancellation of Metgasco's NSW exploration licences, Metgasco has undergone a strategic review of its operations and future direction. As a result of this review, a Capital Return was proposed following the board's mandate from shareholders to rationalise the operations of the company in a depressed market (Oil & Gas).
13. Metgasco has identified funds previously deployed for capital projects which it no longer needs under its revised business strategy.
14. Metgasco's current projects primarily include a funding agreement with an ASX-listed gas exploration company. Under the agreement, Metgasco will subscribe for Convertible Notes and will receive unlisted options in the gas exploration company, and an option to acquire a 10% interest to farm-into the company's project.

Return of Capital

15. Metgasco proposed to reduce its share capital and return part of the paid up share capital, a total of AUD \$9,961,621, to all shareholders (Capital Return).
16. The Capital Return was approved by Metgasco's shareholders in the General Meeting held on 12 September 2016.
17. The return of capital was effected by way of an equal reduction of capital under section 256B of the *Corporations Act 2001*, which requires shareholder approval by ordinary resolution under section 256C of the *Corporations Act 2001*.
18. The return of capital of AUD \$0.025 per share was made to all Metgasco shareholders on 16 November 2016 (Payment Date).
19. The return of capital was debited against Metgasco's share capital account and funded entirely by cash at bank held by Metgasco. The journal entries to record the return of capital were:

DR Share Capital	AUD \$9,961,621
CR Cash	AUD \$9,961,621

Other Matters

20. As at 30 June 2016, the equity of Metgasco comprised of 401,108,520 fully paid ordinary shares (Metgasco Shares), share capital of AUD \$121,524,352, accumulated losses of AUD \$92,793,619 and reserves of AUD \$8,652.

21. The Metgasco share capital account is not tainted within the meaning of Division 197 of the ITAA 1997.

22. As at 30 June 2016, Metgasco has 95.9% of its issued share capital held by owners domiciled within Australia, and 4.1% of Metgasco's shares were held by owners who are not domiciled within Australia.

23. Metgasco has returned share capital to shareholders in the past through a share buy-back conducted from 4 February 2016 to 4 April 2016 and an Unmarketable Parcel Share Sale Facility on 11 April 2016. In total, 41,371,151 shares were cancelled for a total cost of approximately AUD \$2.45 million.

24. Metgasco has not paid a dividend in the past 11 years and is not anticipating paying a dividend in the immediate future as at the date of this ruling. The balance of Metgasco's franking account as at 30 June 2016 is nil.

25. Prior to the return of capital, as at 30 June 2016, Metgasco had a cash balance of approximately AUD \$28.649 million.

26. After the return of capital, Metgasco had issued share capital of approximately AUD \$111,562,731 and a cash balance of AUD \$18,869,171.

Ruling

Application of sections 45B and 45C

27. The Commissioner will not make a determination under subsection 45B(3) that section 45C applies in relation to the return of capital to Metgasco shareholders.

Commissioner of Taxation

14 December 2016

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.*

Application of sections 45B and 45C

28. Section 45B applies where certain capital payments are made to shareholders in substitution for dividends. Specifically the provision applies where:

- there is a scheme under which a person is 'provided with a capital benefit' by a company (paragraph 45B(2)(a)), and
- 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 (paragraph 45B(2)(b)), and
- having regard to the relevant circumstances of the scheme, it would be concluded that the person, or one of the persons, who entered the scheme or carried out the scheme or any part of the scheme did so for a purpose, other than incidental purpose, of enabling (the **relevant taxpayer**) to obtain a tax benefit (paragraph 45B(2)(c)).

29. The arrangement involving the return of capital to Metgasco shareholders will constitute a scheme for the purposes of section 45B.

30. The return of capital will be recorded as a debit to Metgasco's share capital account and Metgasco shareholders will receive a distribution of AUD \$0.025 per share. Therefore, Metgasco shareholders will be provided with a capital benefit (paragraph 45B(5)(b)).

31. The meaning of 'obtaining a tax benefit' is defined in subsection 45B(9) as occurring where the amount of tax payable from the treatment of a return of capital distribution as a capital benefit under the CGT provisions would, apart from the operation of section 45B, be less than the amount that would be payable if the distribution had instead been a dividend.

32. As a return of capital will generally result in a lesser amount of tax payable than a dividend, Metgasco shareholders will obtain a tax benefit.

33. Paragraph 45B(2)(c) sets out an objective purpose test for the Commissioner to consider having regard to the 'relevant circumstances' of the scheme set out in subsection 45B(8).

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34. Having regard to the relevant circumstances of the scheme set out in subsection 45B(8), it cannot be concluded that the scheme was entered into or carried out for a more than incidental purpose of enabling Metgasco shareholders to obtain a tax benefit.

35. Accordingly, the Commissioner will not make a determination under subsection 45B(3) that section 45C applies to the whole, or part, of the payment for the return of capital.

Appendix 2 – Detailed contents list

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

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Legislative references:

- | | |
|-----------------------|-------------------------|
| - ITAA 1936 | - ITAA 1936 45B(2)(c) |
| - ITAA 1936 45B | - ITAA 1936 45B(3) |
| - ITAA 1936 45B(2)(a) | - ITAA 1936 45B(5)(b) |
| - ITAA 1936 45B(2)(b) | - ITAA 1936 45B(8) |
| | - ITAA 1936 45B(9) |
| | - ITAA 1936 45C |
| | - TAA 1953 |
| | - ITAA 1997 |
| | - ITAA 1997 Div 197 |
| | - ITAA 1997 Div 230 |
| | - Corporations Act 2001 |
-

ATO references

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