



Class Ruling

Australian Vintage Ltd – return of capital and share consolidation

❶ Relying on this Ruling

This publication 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.

Table of Contents	Paragraph
What this Ruling is about	1
Who this Ruling applies to	4
When this Ruling applies	7
Ruling	8
Scheme	24

What this Ruling is about

1. This Ruling sets out the tax consequences of the return of share capital (Return of Capital) by Australian Vintage Ltd (AVL) and the consolidation of the ordinary shares in AVL.
2. Full details of this scheme are set out in paragraphs 244 to 43 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 are a holder of AVL shares who:
 - was registered on the AVL share register on 6 July 2021 (Record Date), being the date for determining the entitlement to receive the Return of Capital
 - held their AVL shares on capital account (that is, shareholders who do not hold their AVL shares as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)), and
 - did not hold their AVL shares through an employee share scheme or otherwise as a result of employment by the AVL income tax consolidated group.
5. In this Ruling, a person belonging to this class of entities is referred to as an 'AVL shareholder'.

6. This Ruling does not apply to anyone who is subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 24 to 43 of this Ruling.

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

When this Ruling applies

7. This Ruling applies from 1 July 2021 to 30 June 2022.

Ruling

Not a dividend

8. No part of the Return of Capital will be included in the assessable income of AVL shareholders under section 44 of the *Income Tax Assessment Act 1936* (ITAA 1936).

9. The Commissioner will not make a determination under subsection 45A(2) of the ITAA 1936 that section 45C of the ITAA 1936 applies in relation to the whole, or any part, of the Return of Capital. This is because all shareholders of AVL participated in the Return of Capital based on the number of AVL shares they held on the Record Date, so that there was no streaming of capital benefits.

10. The Commissioner will not make a determination under paragraph 45B(3)(b) of the ITAA 1936 that section 45C of the ITAA 1936 applies in relation to the whole, or any part, of the Return of Capital. This is because, having regard to the relevant circumstances of the Return of Capital, the Commissioner considers that the scheme was not entered into or carried out for a more than incidental purpose of enabling AVL shareholders to obtain a tax benefit.

Capital gains tax consequences

CGT event G1

11. CGT event G1 happened to an AVL shareholder when AVL paid the amount of the Return of Capital to the AVL shareholder in respect of AVL shares that they owned at the Record Date and continued to own at 13 July 2021 (Payment Date) (section 104-135).

12. CGT event G1 happens because a company (AVL) made a payment to a shareholder in respect of a share they own in the company, some or all of the payment is not a dividend (or an amount that is taken to be a dividend under section 47 of the ITAA 1936), and the payment is not included in the shareholder's assessable income.

13. The amount of the Return of Capital to which CGT event G1 applies is 8.5 cents per AVL share (subsection 104-135(1)).

14. An AVL shareholder will make a capital gain from CGT event G1 happening if the amount of the Return of Capital of 8.5 cents is more than the cost base of the shareholder's AVL share. If so, the capital gain is equal to the amount of the excess and the cost base and reduced cost base of the AVL share is reduced to nil (subsection 104-135(3)). No capital loss can be made from CGT event G1 (Note 1 to subsection 104-135(3)).

15. A capital gain made when CGT event G1 happens will be a discount capital gain under Subdivision 115-A provided that the AVL share was acquired at least 12 months

before the CGT event (subsection 115-25(1)) and the other conditions in that Subdivision are satisfied.

16. If the amount of the Return of Capital is not more than the cost base of the shareholder's AVL share, the cost base and reduced cost base of the share are reduced by the amount of the Return of Capital of 8.5 cents (subsection 104-135(4)).

CGT event C2

17. CGT event C2 happened to an AVL shareholder when AVL paid the amount of the Return of Capital to the AVL shareholder in respect of AVL shares that they owned at the Record Date but ceased to own before the Payment Date (section 104-25).

18. CGT event C2 happened because, by ceasing to own an AVL share after the Record Date but before the Payment Date, an AVL shareholder retained the right to receive the Return of Capital (which is a separate CGT asset from the AVL share). When the Return of Capital was paid, the right to receive the Return of Capital (being an intangible CGT asset) ended by the right being discharged or satisfied.

19. An AVL shareholder will make a capital gain equal to the capital proceeds, being 8.5 cents per AVL share.

Foreign-resident shareholders

20. A foreign-resident AVL shareholder must disregard a capital gain from CGT event G1, and a capital gain from CGT event C2, where it happens in relation to a CGT asset that is not 'taxable Australian property' (section 855-10).

21. An AVL share or the right to receive the Return of Capital is taxable Australian property if the AVL share or right:

- has been used at any time by the shareholder or owner of the right in carrying on a business through a permanent establishment in Australia (table item 3 in section 855-15), or
- is covered by subsection 104-165(3) (table item 5 in section 855-15).

Share consolidation

22. No CGT event will occur as a result of the consolidation of shares in AVL (section 112-25).

23. The cost base of 10 AVL shares held by an AVL shareholder immediately prior to the share consolidation will become the total of the cost bases of the corresponding nine AVL shares held by that shareholder immediately after the share consolidation of AVL shares (subsection 112-25(4)). AVL shareholders should divide that total by nine to work out the cost base of each AVL share immediately after the share consolidation.

Scheme

24. 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.

Background

25. AVL is an Australian public company limited by shares that was incorporated on 30 May 1991 and has been listed on the Australian Securities Exchange (ASX) since 26 March 1992.

26. AVL operates in the wine industry and has a substantial portfolio of vineyards (both owned and leased), wineries and cellar-door facilities in Australia. It owns several brands (including McGuigan Wines) and the third-largest winery in Australia (at Buronga Hill in New South Wales). AVL generates approximately 40% of its sales from the United Kingdom market and 40% from the Australian domestic market, with the balance from bulk wine sales and grape processing for third parties.

Return of Capital

27. AVL shares have consistently traded below AVL's net tangible asset value for the last five years. AVL's shares are also thinly traded on the ASX with only 9.2% of the total shares traded in the income year ended 30 June 2020.

28. As a result of AVL's improved cash flow and gearing ratio, the directors of AVL concluded that AVL had share capital in excess of what is needed for its ongoing operations.

29. The directors of AVL formed the view that a return of share capital to shareholders (by way of an equal reduction of share capital), coupled with a subsequent share consolidation (as described in paragraphs 34 to 36 of this Ruling), would be an effective way to improve earnings per share, causing an increase in the AVL share price and the volume of shares that is publicly traded.

30. On 24 May 2021, AVL announced that it would propose the Return of Capital of approximately A\$23.86 million to all AVL shareholders in respect of their ordinary shares. The Return of Capital equates to 8.5 cents per AVL share and will not result in any AVL shares being cancelled.

31. At an extraordinary general meeting held on 30 June 2021, AVL shareholders approved an equal reduction of share capital of approximately \$23.86 million under section 256B of the *Corporations Act 2001*.

32. The Return of Capital of 8.5 cents per share was paid on 13 July 2021 (the Payment Date) to all AVL shareholders who held their AVL shares on the Record Date (6 July 2021).

33. The reduction of share capital of approximately \$23.86 million was debited in full against AVL's share capital account and was funded from existing cash and debt.

Share consolidation

34. At the extraordinary general meeting, AVL shareholders also approved a share consolidation. Once the Return of Capital was completed, AVL consolidated every 10 AVL shares held by AVL shareholders into nine AVL shares. Where the share consolidation resulted in a fraction of an AVL share, the fraction was rounded up to the nearest whole number. No consideration was paid by or to AVL shareholders for this consolidation.

35. The share consolidation was undertaken in accordance with section 254H of the *Corporations Act 2001*.

36. Following the Return of Capital and share consolidation, each AVL shareholder maintained the same proportionate ownership interest in AVL (other than any shares which were bought or sold in the interim, and the effect of any rounding up under the share

consolidation). There was no change in the amount credited to AVL's share capital account.

Other matters

37. Immediately prior to the Return of Capital and share consolidation, AVL had 280,708,071 ordinary shares on issue and a credit balance in its share capital account of \$309.2 million.

38. AVL's share capital account (as defined in section 975-300) is not tainted (within the meaning of Division 197).

39. AVL has paid a fully franked dividend to its shareholders every November since 2016 (with the exception of a 63% franked dividend paid in November 2020).

40. AVL has no history of returning share capital or buying back shares since listing on the ASX.

41. Approximately 26.35% of the shares in AVL are held by non-residents.

42. Shares in AVL are not 'taxable Australian property' under table items 1 or 4 of section 855-15. As less than 50% of the market values of AVL's assets are 'taxable Australian real property' under section 855-20, shares in AVL are not 'taxable Australian property' under table item 2 of section 855-15.

43. As at 31 December 2020, AVL had accumulated accounting losses of \$162.1 million.

Commissioner of Taxation

28 July 2021

References*Previous draft:*

Not previously issued as a draft

- ITAA 1997 104-165(3)
- ITAA 1997 112-25
- ITAA 1997 112-25(4)
- ITAA 1997 Subdiv 115-A
- ITAA 1997 115-25(1)
- ITAA 1997 Div 197
- ITAA 1997 855-10
- ITAA 1997 855-15
- ITAA 1997 855-20
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- TAA 1953
- Corporations Act 2001 254H
- Corporations Act 2001 256B

Legislative references:

- ITAA 1936 44
- ITAA 1936 45A(2)
- ITAA 1936 45B(3)(b)
- ITAA 1936 45C
- ITAA 1936 47
- ITAA 1997 104-25
- ITAA 1997 104-135
- ITAA 1997 104-135(1)
- ITAA 1997 104-135(3)
- ITAA 1997 104-135(4)

ATO references

NO: 1-P8LY5XL

ISSN: 2205-5517

BSL: PGI

ATOlaw topic: Income tax ~~ Assessable income ~~ Dividend income ~~ Dividend income
 Income tax ~~ Capital gains tax ~~ CGT events ~~ CGT events G1 to G3 -
 shares
 Income tax ~~ Capital gains tax ~~ Other
 Income tax ~~ Capital management ~~ Anti avoidance rules – Section 45A
 Income tax ~~ Capital management ~~ Anti avoidance rules – Section 45B
 Income tax ~~ Capital management ~~ Anti avoidance rules – Section 45C

© AUSTRALIAN TAXATION OFFICE FOR THE COMMONWEALTH OF AUSTRALIA

You are free to copy, adapt, modify, transmit and distribute this material as you wish (but not in any way that suggests the ATO or the Commonwealth endorses you or any of your services or products).