Status: **legally binding**

Class Ruling

Euroz Hartleys Group Limited – capital return

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.

Table of Contents **Paragraph**

What this Ruling is about 1
Who this Ruling applies to 4
When this Ruling applies 6
Ruling **7**
Scheme **16**
Appendix – Legislative provisions **36**

What this Ruling is about

1. This Ruling sets out the income tax consequences for shareholders of Euroz Hartleys Group Limited (EZL) who received $1.2027 on 2 December 2022 (Payment Date) for every ordinary share in EZL that was cancelled under the scheme (Capital Return).

2. Details of this scheme are set out in paragraphs 16 to 35 of this Ruling.

3. All legislative references in this Ruling are to provisions of the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997* (as detailed in the table in the Appendix to this Ruling), unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you:

- were registered on the EZL share register on 25 November 2022 (Record Date)
- are a resident as defined in subsection 6(1) or a non-resident other than a non-resident who carries on a business at or through a permanent establishment[1] in Australia, and
- held your EZL shares on capital account on the Record Date; that is, you did not hold your EZL shares as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)).

[1] The term 'permanent establishment' is defined in the relevant international tax treaty (if there is one) or, if not, in subsection 6(1).

Status: **legally binding**

5. This Ruling does not apply to you if you:

- acquired your EZL shares under an EZL employee share plan and your deferred taxing point occurred on 28 November 2022 (Share Cancellation Date)
- are subject to the investment manager regime in Subdivision 842-I in relation to your EZL shares, or
- are subject to the taxation of financial arrangements rules in Division 230 in relation to your EZL shares.

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

When this Ruling applies

6. This Ruling applies from 1 July 2022 to 30 June 2023.

Ruling

Capital Return is not a dividend

7. No part of the Capital Return paid to you by EZL on the Payment Date is a dividend as defined in subsection 6(1). This is because the entire amount of the Capital Return has been debited against an amount standing to the credit of EZL's share capital account. Therefore, no part of the Capital Return is included in your assessable income as a dividend under subparagraph 44(1)(a)(i).

Sections 45A, 45B and 45C do not apply

8. The Commissioner will not make a determination that section 45C applies to any part of the Capital Return you received on the Payment Date under:

- subsection 45A(2), because there was no streaming of capital benefits to some EZL shareholders and dividends to other EZL shareholders as required by subsection 45A(1), or
- paragraph 45B(3)(b), because the requirements of subsection 45B(2) were not satisfied.

9. Therefore, no part of the Capital Return paid to you is taken to be an unfranked dividend.

Capital gains tax consequences

CGT event C2

10. CGT event C2 happened on the Share Cancellation Date, being the date your EZL share was cancelled (section 104-25).

11. You made a capital gain from CGT event C2 happening if the capital proceeds you received on the cancellation of your EZL share were more than the cost base of your EZL share. You made a capital loss from CGT event C2 happening if the capital proceeds from

the cancellation of your EZL share were less than the reduced cost base of your EZL share (subsection 104-25(3)).

12. The capital proceeds from CGT event C2 happening on the cancellation of your EZL share are equal to the amount of the Capital Return you received for each EZL share (subsection 116-20(1)).

Discount capital gain

13. If you made a capital gain from the disposal of your EZL share, you are eligible to treat the capital gain as a 'discount capital gain' provided you acquired, or are taken to have acquired, your EZL share on or before 27 November 2021 and the other conditions of Division 115 are satisfied (subsection 115-25(1)).

Foreign-resident shareholders

14. If you were a foreign resident or a trustee of a foreign trust for capital gains tax purposes, you disregard any capital gain or capital loss made from CGT event C2 unless the EZL share which has been cancelled is taxable Australian property (section 855-10).

15. Your EZL share is taxable Australian property if it was a CGT asset that is covered by subsection 104-165(3) (individuals who choose to disregard a capital gain or capital loss on ceasing to be an Australian residents (table item 5 of section 855-15).

Scheme

16. 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

17. EZL is an Australian-resident company limited by shares and listed on the Australian Securities Exchange (ASX).

18. EZL carries on a stockbroking, corporate finance and wealth management business.

19. On 21 April 2022, EZL received shares in WAM Capital Limited (WAM) as consideration for the sale of its investment in Westoz Investment Company Limited and Ozgrowth Limited, in which they held 26.25% and 41.58% of the issued shares respectively.

20. On 19 May 2022, EZL completed the sale of 100% of the WAM shares on market, receiving total cash consideration of approximately $103.9 million.

Capital Return

21. EZL determined it had share capital surplus to its requirements resulting from the sale of the WAM shares.

Status: **legally binding**

22. On 14 September 2022, EZL announced its intention to return up to $80 million of excess capital to shareholders, consisting of:

- the payment of a fully franked special dividend of $0.2027 per share, totalling approximately $40 million, and
- the Capital Return, implemented by way of an equal capital reduction and share cancellation on a pro rata basis in accordance with sections 256B and 256C of the *Corporations Act 2001*, totalling approximately $40 million.

23. On 17 November 2022, the Capital Return was approved by an ordinary resolution of EZL shareholders at EZL's annual general meeting.

24. On the Record Date, EZL had 197,297,073 ordinary shares on issue, being the only class of shares on issue.

25. On the Share Cancellation Date, a total of 33,257,006 EZL shares were cancelled, being equal to each EZL shareholder's pro rata amount of the Capital Return divided by $1.2027 per share, being the 4-day volume-weighted average share price of EZL's shares traded on the ASX up to and including the last day of trading on a 'cum capital reduction' basis prior to the Record Date, rounded down to the nearest whole share.

26. On the Payment Date, each EZL shareholder who held shares on the Record Date received $1.2027 for each EZL share that was cancelled under the scheme.

27. The Capital Return of $39,998,186.94 was paid from EZL's available cash balances and debited to EZL's share capital account.

28. Following the cancellation of shares under the scheme, EZL had 164,040,067 ordinary shares on issue.

Other matters

29. As at 30 June 2022, EZL had:

- retained earnings of $47,552,553
- share-based payments reserve of $8,971,497, and
- share capital of $136,740,320.

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

31. EZL has consistently paid fully franked dividends to shareholders, including a total of $0.11 per share for the 2021–22 financial year.

32. On 7 October 2022, EZL paid a special dividend of $0.2027 per EZL Share to shareholders.

33. EZL intends to continue to pay dividends into the future, following the payment of the special dividend and Capital Return.

34. As at the Share Cancellation Date, the majority of EZL's shareholders resided in Australia, with 482,230 EZL shares (0.244% of all shares on issue) held by shareholders with an address outside of Australia on the EZL share register.

Status: **legally binding**

35. On the Share Cancellation Date, the sum of the market values of the assets of EZL and its subsidiaries that are taxable Australian real property did not exceed the sum of the market values of their other assets for the purposes of section 855-30.

Commissioner of Taxation
18 January 2023

Status: **not legally binding**

Appendix – Legislative provisions

36. This paragraph sets out the details of the provisions ruled upon or referenced in this Ruling.

Income Tax Assessment Act 1936	subsection 6(1)
Income Tax Assessment Act 1936	subparagraph 44(1)(a)(i)
Income Tax Assessment Act 1936	section 45A
Income Tax Assessment Act 1936	subsection 45A(1)
Income Tax Assessment Act 1936	subsection 45A(2)
Income Tax Assessment Act 1936	subsection 45B(2)
Income Tax Assessment Act 1936	paragraph 45B(3)(b)
Income Tax Assessment Act 1936	section 45C
Income Tax Assessment Act 1997	section 104-25
Income Tax Assessment Act 1997	subsection 104-25(3)
Income Tax Assessment Act 1997	subsection 104-165(3)
Income Tax Assessment Act 1997	subsection 115-25(1)
Income Tax Assessment Act 1997	subsection 116-20(1)
Income Tax Assessment Act 1997	Division 197
Income Tax Assessment Act 1997	Division 230
Income Tax Assessment Act 1997	Subdivision 842-I
Income Tax Assessment Act 1997	section 855-10
Income Tax Assessment Act 1997	section 855-15
Income Tax Assessment Act 1997	section 975-300
Income Tax Assessment Act 1997	section 977-50
Income Tax Assessment Act 1997	section 995-1(1)

Status: **not legally binding**

References

Legislative references:

- Corporations Act 2001 256B
- Corporations Act 2001 256C

ATO references

NO:	1-VDRWUTY
ISSN:	2205-5517
BSL:	PGI
ATOlaw topic:	Capital gains tax ~~ CGT events ~~ C1 to C3 - end of a CGT asset Income tax ~~ Capital management ~~ Share capital return

© 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).