Status: **legally binding**

Class Ruling

Thorn Group Limited – return of capital

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.

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What this Ruling is about

1. This Ruling sets out the income tax consequences for shareholders of Thorn Group Limited (Thorn) who received the return of share capital of $0.26 per Thorn share (Capital Return) on 13 September 2023 (Payment Date).

2. Details of this scheme are set out in paragraphs 16 to 26 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:

- received the Capital Return payment on the Payment Date, and
- held your Thorn shares on capital account – that is, you did not hold your Thorn shares as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)).

5. 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 16 to 26 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

6. This Ruling applies from 1 July 2023 to 30 June 2024.

Status: **legally binding**

Ruling

Return of capital is not a dividend

7. No part of the Capital Return you received from Thorn on the Payment Date is a dividend as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936). This is because the entire amount of the Capital Return has been debited against an amount standing to the credit of Thorn's share capital account. Therefore, no part of the Capital Return is included in your assessable income as a dividend under subsection 44(1) of the ITAA 1936.

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

8. The Commissioner will not make a determination that section 45C of the ITAA 1936 applies to any part of the Capital Return you received on the Payment Date, under either:

- subsection 45A(2) of the ITAA 1936 – because there was no streaming of capital benefits to some Thorn shareholders and dividends to other Thorn shareholders as required by subsection 45A(1) of the ITAA 1936, or
- paragraph 45B(3)(b) of the ITAA 1936 – because the requirements of subsection 45B(2) of the ITAA 1936 were not satisfied.

Capital gains tax consequences

CGT event G1

9. CGT event G1 happened on the Payment Date when Thorn paid to you the Capital Return for each Thorn share you owned on 6 September 2023 (Record Date) and continued to own at the Payment Date (section 104-135).

10. You made a capital gain when CGT event G1 happened if the Capital Return you received was more than your Thorn share's cost base (subsection 104-135(3)).

11. If the Capital Return you received was not more than the cost base of your Thorn share, the cost base and reduced cost base of your Thorn share is reduced by the amount of the Capital Return (subsection 104-135(4)).

CGT event C2

12. CGT event C2 happened to your right to receive the Capital Return on the Payment Date when Thorn paid you the Capital Return in respect of each Thorn share you owned on the Record Date but ceased to own prior to the Payment Date (section 104-25).

13. You made a capital gain under CGT event C2 if the capital proceeds from the ending of the right (being the Capital Return amount) were more than the cost base of the right. You made a capital loss if the capital proceeds from the ending of the right were less than the reduced cost base of the right (subsection 104-25(3)).

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Discount capital gain

14. You can treat a capital gain made when CGT event G1 or CGT event C2 happened as a discount capital gain if you acquired your Thorn shares at least 12 months before the Payment Date (subsection 115-25(1)), and the other conditions in Subdivision 115-A are satisfied.

Foreign-resident shareholders

15. If you were a foreign resident or the trustee of a foreign trust for CGT purposes (as defined in subsection 995-1(1)) on the Payment Date, you disregard any capital gain made from CGT event G1 or any capital gain or capital loss from CGT event C2 in relation to your Thorn shares, pursuant to subsection 855-10(1), unless you:

- have used your Thorn shares at any time in carrying on a business through a permanent establishment in Australia (table item 3 of section 855-15), or
- are an individual and your Thorn shares were covered by subsection 104-165(3) (choosing to disregard a capital gain or capital loss on ceasing to be an Australian resident) (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.

Thorn Group Limited

17. Thorn is a public company incorporated in Australia on 23 January 1996. It has been listed on the Australian Securities Exchange since 2006.

18. Thorn is in the business of providing commercial financing to small and medium-sized enterprises and leasing of household products to consumers.

19. As at 31 March 2023, Thorn had:

- $117.818 million credited to its share capital account, and
- $65.168 million in accumulated losses.

20. On 1 August 2023, Thorn had 34,764,019 ordinary shares on issue to over 2,700 shareholders. Approxiately 50% of the Thorn shares on issue were held by non-resident shareholders.

Return of capital

21. On 1 August 2023, Thorn proposed to distribute the proceeds from the sale of the Thorn Asset Finance Portfolio to Resimac Group Ltd as a fully franked special dividend (Special Dividend) and a return of share capital to its shareholders. The total cash proceeds received from the sale was approximately $16.7 million.

22. The Capital Return (being an equal reduction of capital under section 256B of the *Corporations Act 2001*) was approved by the shareholders of Thorn in the Annual General Meeting held on 31 August 2023.

Status: **legally binding**

23. On the Payment Date, Thorn shareholders received the Capital Return (being $0.26 per share) in respect of each Thorn share they held on the Record Date.

24. The Capital Return was paid from the cash proceeds received from the sale of the Thorn Asset Finance Portfolio.

25. The total Capital Return amount of approximately $9.1 million was entirely debited to Thorn's share capital account.

26. There was no change to the proportionate interest of each shareholder in Thorn following the Capital Return.

Other matters

27. Thorn paid the Special Dividend of $0.19 per share on 22 September 2023.

28. The payments of Special Dividend and Captial Return were consistent with Thorn's strategy to reduce cash in excess of its business requirements.

29. The share capital account (as defined in section 975-300) of Thorn is not tainted within the meaning of Division 197.

30. Thorn does not hold any 'taxable Australian property' for the purposes of Division 855.

Commissioner of Taxation
6 December 2023

Status: **not legally binding**

References

Legislative references:

- ITAA 1936 6(1)
- ITAA 1936 44(1)
- ITAA 1936 45A(1)
- ITAA 1936 45A(2)
- ITAA 1936 45B(2)
- ITAA 1936 45B(3)(b)
- ITAA 1936 45C
- 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 104-165(3)
- ITAA 1997 Subdiv 115-A
- ITAA 1997 115-25(1)
- ITAA 1997 Div 197
- ITAA 1997 Div 230
- ITAA 1997 Div 855
- ITAA 1997 855-10(1)
- ITAA 1997 855-15
- ITAA 1997 975-300
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- Corporations Act 2001 256B

ATO references

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