



Status: **legally binding**

Class Ruling

Gamma Investments HoldCo Pty Ltd – reduction of share capital

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.

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What this Ruling is about

1. This Ruling sets out the income tax consequences for the shareholders of Gamma Investments HoldCo Pty Ltd (Gamma HoldCo) who, on 8 May 2024 (Payment Date), received a reduction of share capital of 10.7c for every Gamma HoldCo ordinary share they owned.
2. Details of this scheme are set out in paragraphs 12 to 35 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1936*, unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if:
 - you were registered as an ordinary shareholder on Gamma HoldCo's share register on the Payment Date
 - you were treated as a resident of Australia for tax purposes from the date you acquired your ordinary shares in Gamma HoldCo to the Payment Date
 - you always held your ordinary shares in Gamma HoldCo on capital account, meaning that you did not hold them as revenue assets (as defined in section 977-50 of the *Income Tax Assessment Act 1997* (ITAA 1997)) or as trading stock (as defined in subsection 995-1(1) of the ITAA 1997), and
 - on the Payment Date, you received a payment of 10.7c as a reduction of share capital for each ordinary share in Gamma HoldCo that you owned on the Payment Date.

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When this Ruling applies

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

Ruling**Reduction of share capital is not a dividend**

6. No part of the reduction of share capital you received from Gamma HoldCo on the Payment Date is a 'dividend' as defined in subsection 6(1). This is because the entire amount of the reduction of share capital was debited to Gamma HoldCo's share capital account.

CGT event G1

7. CGT event G1 happened on the Payment Date when you received the reduction of share capital for each Gamma HoldCo ordinary share you owned on the Payment Date (section 104-135 of the ITAA 1997).

8. You made a capital gain from CGT event G1 happening if the amount of the reduction of share capital for each Gamma HoldCo ordinary share that you owned on the Payment Date was more than your cost base for that share. The capital gain is equal to the amount of the excess (subsection 104-135(3) of the ITAA 1997).

Discount capital gain

9. If you made a capital gain from CGT event G1, it will be a discount capital gain if you held your Gamma HoldCo ordinary share for at least 12 months before the Payment Date (section 115-25 of the ITAA 1997), excluding the date on which you acquired the share and the Payment Date, and satisfied the other conditions of Subdivision 115-A of the ITAA 1997.

Reduction in cost base

10. If you did not make a capital gain from CGT event G1 happening, the cost base of each Gamma HoldCo ordinary share you own is reduced by the amount of the reduction of share capital you received for each of those shares on the Payment Date (subsection 104-135(4) of the ITAA 1997).

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

11. The Commissioner will not make a determination that section 45C applies to the reduction of share capital under either section 45A or section 45B. This is because Gamma HoldCo did not stream the provision of capital benefits and the payment of dividends to its shareholders as required by subsection 45A(1). The Commissioner has decided that the purpose condition in paragraph 45B(2)(c) was not satisfied on these facts. Therefore, you will not include any part of the amount of the reduction of share capital by Gamma HoldCo in your assessable income under subsection 44(1).

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Scheme

12. 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.

13. The Perth Radiological Clinic Partnership is a private medical imaging practice. It provides radiological services in Western Australia.

14. The Perth Radiological Clinic Partnership has a service entity, which is an unlisted public company incorporated in Australia called PerthRadClinic Ltd (PRCL).

15. The Perth Radiological Clinic Partnership undertook a series of transactions to restructure their group in 2019. As part of that restructure:

- PRCL was transferred into a new holding structure.
- Private equity interests acquired interests in PRCL's ultimate holding entity, and injected capital into the group.

16. PRCL is currently a subsidiary member of an income tax consolidated group under Part 3-90 of the ITAA 1997 (Gamma Group). PRCL's sole shareholder is New Vanguard Pty Ltd which is wholly owned by Gamma Investments BidCo Pty Ltd (Gamma BidCo). The head company of the Gamma Group is Gamma HoldCo.

17. Gamma HoldCo currently has the following share structure:

- ordinary shares, the majority of which are held by member doctors in the Perth Radiological Clinic Partnership, with the remainder held by private equity interests or management of the Gamma Group
- convertible preference shares held by private equity interests.

18. For accounting purposes, the Gamma Group recognises the convertible preference shares in Gamma HoldCo as a liability. The convertible preference shares are not represented in the Gamma Group's share capital.

19. Gamma HoldCo has never previously undertaken a reduction of share capital. Immediately before the Payment Date, Gamma HoldCo had \$279.7 million credited to its share capital account.

20. Since the 2019 restructure, the Gamma Group has invested in capacity building projects, including establishing additional clinics, expanding existing clinics, and acquiring new equipment to be used in the Gamma Group's business.

Debt arrangements and dividend history

21. The Gamma Group renegotiated its debt arrangements with banks after finalising its financial statements for the year ended 30 June 2023, including increasing its debt facilities.

22. The Gamma Group's debt ratio has changed in recent years. The Gamma Group's debt ratio (being total debt to assets) reduced by around 7.4% between the 2019 restructure and the Payment Date.

23. The Gamma Group has a policy of paying out substantially all its net profits (after tax) as dividends each income year.

24. Gamma HoldCo pays dividends to ordinary shareholders in addition to amounts due to convertible preference shareholders pursuant to their terms under the Shareholders Agreement.

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25. Gamma HoldCo paid \$15.5 million in dividends in the income year ended 30 June 2023, leaving a retained earnings balance of \$87,895.
26. Gamma HoldCo paid dividends representing the majority of its retained earnings in the income years ended 30 June 2020, 2021 and 2022.
27. Gamma HoldCo will pay dividends in the 2024 income year consistent with its current dividend practice and dividend history.

Reduction of share capital

28. Gamma decided to distribute approximately \$30 million to its ordinary shareholders as an equal reduction of share capital under section 256B of the *Corporations Act 2001*.
29. Gamma Bidco drew approximately \$30 million from its existing debt facilities to fund the payment of the reduction of share capital to Gamma HoldCo shareholders.
30. Gamma Bidco paid the borrowed funds to Gamma HoldCo and accounted for it by reducing existing inter-company loans it owed to Gamma HoldCo.
31. On 7 May 2024, the shareholders of Gamma HoldCo approved an ordinary resolution under section 256C of the *Corporations Act 2001* to reduce the share capital of Gamma HoldCo.
32. On 8 May 2024, Gamma HoldCo paid the reduction of share capital (equating to 10.7c per ordinary share) to each of its ordinary shareholders on the Payment Date.
33. Gamma HoldCo debited its share capital account by approximately \$30 million.
34. The reduction of share capital returned the Gamma Group's debt ratio nearer to the ratio that existed before the 2019 restructure.
35. Immediately before the Payment Date, Gamma HoldCo's share capital account (as defined in section 975-300 of the ITAA 1997) was not tainted (within the meaning of Division 197 of the ITAA 1997).

Commissioner of Taxation

15 May 2024

Status: **not legally binding**

References

Legislative references:

- ITAA 1936 6(1)
- ITAA 1936 44(1)
- ITAA 1936 45A(1)
- ITAA 1936 45A
- ITAA 1936 45A(1)
- ITAA 1936 45B
- ITAA 1936 45B(2)(c)
- ITAA 1936 45C
- ITAA 1997 104-135
- ITAA 1997 104-135(3)
- ITAA 1997 104-135(4)
- ITAA 1997 Subdiv 115-A
- ITAA 1997 115-25
- ITAA 1997 Div 197
- ITAA 1997 975-300
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- ITAA 1997 Pt 3-90
- Corporations Act 2001

ATO references

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