Status: **legally binding**

Class Ruling

Calima Energy Limited – return of capital

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.

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What this Ruling is about

1. This Ruling sets out the income tax consequences for shareholders of Calima Energy Limited (Calima) who received a return of capital payment of 12.63c per ordinary Calima share on 21 June 2024 (Payment Date).

2. Details of this scheme are set out in paragraphs 20 to 37 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 of this Ruling), unless otherwise indicated. The references to monetary values contained in this Ruling are expressed in Australian dollars.

Who this Ruling applies to

4. This Ruling applies to you if you:

- held ordinary shares in Calima on 14 June 2024 (Record Date)
- are either a resident or non-resident of Australia for the purposes of the Australian income tax legislation, including by virtue of the operation of any double-taxation agreement between Australia and any other country
- are not a 'temporary resident' of Australia within the meaning of subsection 995-1(1)
- held your shares in Calima on capital account – that is you did not hold your Calima shares as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)), and did not acquire your Calima shares under the Executive and Employee Option Plan

- are not exempt from Australian income tax, and
- received the return of capital payment of 12.63c per Calima share on the Payment Date.

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 20 to 37 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.

Ruling

Return of capital is not a dividend

7. No part of the return of capital paid to you by Calima on the Payment Date is a dividend as defined in subsection 6(1).

8. No part of the return of capital paid to you by Calima on the Payment Date is included in your assessable income as a dividend under subsection 44(1).

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

9. The Commissioner will not make a determination under subsection 45A(2) or paragraph 45B(3)(b) that section 45C applies to the whole, or any part, of the return of capital paid to you by Calima on the Payment Date.

Capital gains tax consequences

CGT event G1

10. CGT event G1 happened on the Payment Date in respect of each Calima share you owned on the Record Date and continued to own on the Payment Date (section 104-135). You cannot make a capital loss when CGT event G1 happens (Note 1 to subsection 104-135(3)).

11. You made a capital gain under CGT event G1 if the amount of the return of capital of 12.63c per Calima share was more than the cost base of your Calima share (subsection 104-135(3)). The amount of the capital gain is equal to the excess. If you made a capital gain, the share's cost base and reduced cost base is reduced to nil.

12. If the return of capital of 12.63c per Calima share was equal to or less than the share's cost base, under CGT event G1, the cost base and the reduced cost base of the share is reduced by the amount of the return of capital (subsection 104-135(4)).

Status: **legally binding**

CGT event C2

13. CGT event C2 happened on the Payment Date in respect of each Calima share you owned on the Record Date but ceased to own prior to the Payment Date (section 104-25).

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

15. In working out the capital gain or capital loss when CGT event C2 happened, the capital proceeds are equal to the amount of the return of capital (12.63c per Calima share) (subsection 116-20(1)).

16. The cost base of your right to receive the return of capital is worked out under Division 110 (modified by Division 112). The cost base of the right does not include the cost base or reduced cost base of the Calima share previously owned by you to the extent that it was applied in working out a capital gain or capital loss made when a CGT event happened to the share – when you disposed of the share after the Record Date but before the Payment Date. Therefore, if the cost base or reduced cost base of the share previously owned by you has been fully applied in working out a capital gain or capital loss on the share, the right to receive the return of capital will have a nil cost base. As a result, you will, in those circumstances, make a capital gain equal to the capital proceeds, being 12.63c per Calima share owned at the Record Date.

Discount capital gain

17. You can treat a capital gain made when CGT event G1 or CGT event C2 happened in respect of the return of capital as a discount capital gain under Subdivision 115-A if you acquired the Calima share 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

18. If you were a foreign resident as defined in subsection 995-1(1), and you received the return of capital, you may disregard a capital gain or capital loss from a CGT event where it happens in relation to a CGT asset that is not 'taxable Australian property' (section 855-10). Taxable Australian property includes 'taxable Australian real property' and 'indirect Australian real property interests' (section 855-15).

19. Your Calima share will not be taxable Australian property provided that:

- you did not use your Calima share at any time in carrying on a business through a permanent establishment in Australia, or
- your Calima share was not covered by subsection 104-165(3) about individuals who defer capital gains upon ceasing to be Australian residents.

Status: **legally binding**

Scheme

20. 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.

Calima Energy Limited

21. Calima is a predominantly Australian-owned publicly listed company that derives its revenue from the exploration for oil and gas.

22. Calima was incorporated on 21 November 2005 as Kiyua Energy Limited and was listed on the Australian Securities Exchange in July 2006 as Rialto Energy Limited, before changing its name to Calima Energy Limited in 2017.

23. Calima operates in Australia and Canada and is administered by its head office in West Leederville, Western Australia.

24. Over the relevant period, Calima was a production-focused energy company pursuing the exploration and development of oil and natural gas assets in the Western Canadian Sedimentary Basin.

Return of capital payment

25. On 12 April 2024, Calima made an announcement on the Australian Securities Exchange of its intention to seek shareholder approval at the company's Annual General Meeting for the issued share capital of Calima to be reduced by up to $80 million in accordance with sections 256B and 256C of the *Corporations Act 2001* and that such capital reduction be effected, subject to the Board's discretion, by Calima paying each shareholder an amount per share.

26. On 24 May 2024, Calima shareholders approved the return of capital.

27. Calima conducted this return of capital because:

- In early 2023 Calima's 3 key assets were Montney, Blackspur and Throsby, all operating in the same sector and located in the same region of Canada.
- During 2023, Calima noted a weakening of the oil market and lower than expected energy prices which was reflective of the conditions Calima would be required to face in future periods.
- As a result of market uncertainty, weakening revenues and a steadily declining share price, Calima began disposing of its assets in 2023. Calima entered into disposal contracts for both the Montney and Blackspur (which included the Throsby assets) projects during the income year ended 31 December 2023.
- Both sales are contemporaneous parts of Calima's strategy to wind down operations of these key assets and return excess funds to shareholders, and the relevant investments were sold for an aggregate loss. The total proceeds Calima received for the disposals of the Montney and Blackspur projects was approximately $92,300,000, with capital investment totalling approximately $136 million. These assets were funded entirely using share capital invested by shareholders of Calima.

- The amount of the return of capital was considered to be surplus to Calima's requirements. The balance of the proceeds from the disposals, following the return of capital, are intended to be used to fund Calima's future exploration programs and to pay for ongoing operational and administrative costs.

28. The return of capital was distributed to shareholders on an equal basis.

29. The total amount of the return of capital payment of $80 million was paid from the available cash balance and was debited to Calima's share capital account.

30. The return of capital did not result in the cancellation of any Calima shares.

Other matters

31. As at 31 December 2023, Calima had the following financial position:

- net assets of $82,557,000
- share capital account of $358,676,000
- share based payments of $22,136,000
- FX reserves of $8,329,000
- accumulated losses of $350,736,000.

32. As at 31 December 2023, Calima's franking account balance was nil.

33. Calima has not declared any dividends and is not proposing to pay a dividend to any shareholders as at the date of this Ruling.

34. As at 31 January 2024, the registered shareholders of Calima consisted of approximately 93.96% Australian residents and 6.04% non-residents.

35. No amount has been, or will be, transferred to Calima's share capital account from any other account, such that the share capital account is not tainted within the meaning of section 197-50.

36. On the Payment Date, the sum of the market values of the assets of Calima 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.

Capital structure of Calima Energy Limited

37. Calima's capital structure following the payment of the return of capital on the Payment Date is:

- shares on issue: 633,439,019
- performance rights: 2,672,000
- options: 12,439,000

Commissioner of Taxation
3 July 2024

Appendix – Legislative provisions

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

Table 1: Provisions of the Income Tax Assessment Act 1936 and the Income Tax Assessment Act 1997 ruled upon or referenced in this Ruling

Income Tax Assessment Act 1936	subsection 6(1)
Income Tax Assessment Act 1936	subsection 44(1)
Income Tax Assessment Act 1936	section 45A
Income Tax Assessment Act 1936	subsection 45A(2)
Income Tax Assessment Act 1936	section 45B
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	section 104-135
Income Tax Assessment Act 1997	subsection 104-135(3)
Income Tax Assessment Act 1997	subsection 104-135(4)
Income Tax Assessment Act 1997	subsection 104-165(3)
Income Tax Assessment Act 1997	Division 110
Income Tax Assessment Act 1997	Division 112
Income Tax Assessment Act 1997	Subdivision 115-A
Income Tax Assessment Act 1997	subsection 115-25(1)
Income Tax Assessment Act 1997	subsection 116-20(1)
Income Tax Assessment Act 1997	section 197-50
Income Tax Assessment Act 1997	Division 230
Income Tax Assessment Act 1997	section 855-10
Income Tax Assessment Act 1997	section 855-15
Income Tax Assessment Act 1997	section 855-30
Income Tax Assessment Act 1997	section 977-50
Income Tax Assessment Act 1997	subsection 995-1(1)

Status: **not legally binding**

References

Legislative references:

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

ATO references

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