Status: **legally binding**

Class Ruling

Wellard 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 Wellard Limited (Wellard) who received a return of capital payment of $0.02 per ordinary Wellard share (Capital Return) on 10 December 2024 (Payment Date).

2. Details of this scheme are set out in paragraphs 20 to 38 of this Ruling.

3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

4. The references to monetary values contained in this Ruling are expressed in Australian dollars.

Who this Ruling applies to

5. This Ruling applies to you if you:

- held ordinary shares in Wellard on 28 November 2024 (Record Date)
- held your shares in Wellard on capital account – that is, you did not hold your Wellard shares as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1))
- are not a 'temporary resident' of Australia within the meaning of subsection 995-1(1)
- are not exempt from Australian income tax, and
- received the Capital Return payment of $0.02 per Wellard share on the Payment Date.

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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 20 to 38 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 2024 to 30 June 2025.

Ruling

Return of capital is not a dividend

8. No part of the Capital Return paid to you by Wellard 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 Wellard's share capital account.

9. Therefore, no part of the Capital Return paid to you by Wellard on the Payment Date is included in your assessable income as a dividend under subsection 44(1) of the ITAA 1936.

Sections 45A, 45B and 45C of the ITAA 1936 do not apply

10. 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 Wellard shareholders and dividends to other Wellard 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

11. CGT event G1 happened on the Payment Date when Wellard paid you the Capital Return in respect of each Wellard share you owned on the Record Date and continued to own on the Payment Date (section 104-135).

12. You made a capital gain under CGT event G1 if the amount of the Capital Return you received (being $0.02 per Wellard share) was more than the cost base of your Wellard share (subsection 104-135(3)). The amount of the capital gain is equal to the excess. If you made a capital gain, the cost base and reduced cost base of your Wellard share are reduced to nil (subsection 104-135(3)).

13. If the Capital Return amount you received for each Wellard share was equal to or less than the cost base of your Wellard share, the cost base and reduced cost base of your Wellard share are reduced by the amount of the Capital Return (subsection 104-135(4)).

Status: **legally binding**

You cannot make a capital loss when CGT event G1 happens (Note 1 to subsection 104-135(3)).

CGT event C2

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

15. 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)).

16. In working out the capital gain or capital loss when CGT event C2 happened, the capital proceeds are equal to the amount of the Capital Return ($0.02 per Wellard share you owned on the Record Date) (subsection 116-20(1)).

17. The cost base of your right to receive the Capital Return 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 Wellard 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 that share – for example, 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 Capital Return will have a nil cost base. As a result, you will, in those circumstances, make a capital gain equal to the capital proceeds, being $0.02 per Wellard share owned at the Record Date.

Discount capital gain

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

Foreign resident shareholders

19. If you were a foreign resident (as defined in subsection 995-1(1)) just before the Payment Date, you disregard under subsection 855-10(1) any capital gain made from CGT event G1 or any capital gain or capital loss made from CGT event C2, provided that your Wellard share or your right to receive the Capital Return on your Wellard share:

- has not been used at any time in carrying on a business through a permanent establishment in Australia (table item 3 of section 855-15), and
- was not covered by subsection 104-165(3) (about individuals choosing to disregard a capital gain or capital loss on ceasing to be an Australian resident) (table item 5 of section 855-15).

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.

Wellard Limited

21. Wellard is an Australian public company, which was incorporated on 10 September 2015 and has been listed on the Australian Securities Exchange since 10 December 2015.

22. Wellard is the head company of an Australian income tax consolidated group under Part 3-90, as well as wholly owning a number of foreign subsidiaries (both directly and indirectly).

23. Wellard and its subsidiaries operate a livestock logistics services business.

24. As at 30 June 2024, Wellard had, on a consolidated basis, approximately:

- $596.7 million credited to its share capital
- $408.2 million debited to reserves, and
- $132.9 million in accumulated losses.

25. As at 30 June 2024, Wellard had 531,250,312 fully paid ordinary shares on issue.

Disposal of the MV Ocean Ute

26. In the year ended 30 June 2019, Wellard decided to strategically move its business operations away from livestock trading to livestock logistics services. As part of this strategic shift, Wellard subsequently disposed of its non-core assets and 2 of its livestock vessels.

27. On 3 September 2024, Wellard completed the sale of its oldest livestock vessel – the MV Ocean Ute – for approximately $18.1 million, resulting in net sale proceeds of approximately $17.8 million.

28. As a result of the sale, the Wellard board of directors considered that Wellard had capital in excess of its business requirements. Consistent with Wellard's strategy to reduce excess capital while maintaining sufficient cash to support its ongoing operations, the Wellard board of directors decided to return the majority of the net proceeds from the sale of the MV Ocean Ute to Wellard shareholders.

Return of capital

29. On 23 October 2024, Wellard made an announcement on the Australian Securities Exchange of its intention to seek shareholder approval at the company's annual general meeting to distribute up to approximately $10.6 million (or $0.02 per Wellard share) of the net proceeds from the sale of the MV Ocean Ute to Wellard shareholders by way of an equal reduction of share capital, in accordance with sections 256B and 256C of the *Corporations Act 2001*.

30. The Capital Return was approved by Wellard shareholders on 22 November 2024.

31. On the Payment Date, Wellard shareholders received the Capital Return, being $0.02 for each Wellard share they held on the Record Date.

Status: **legally binding**

32. The total Capital Return amount of $10,625,006 was paid from Wellard's available cash balance and was debited to Wellard's share capital account.

33. The Capital Return did not result in the cancellation of any Wellard shares and there was no change to the proportionate interest of each Wellard shareholder following the Capital Return.

Other matters

34. As at the Payment Date, the registered shareholders of Wellard consisted of approximately 67% Australian residents and 33% non-residents.

35. Wellard has not previously declared any dividends or returned any share capital to its shareholders prior to the Capital Return.

36. As at 30 June 2024, Wellard's franking account balance was nil.

37. As at the Payment Date, Wellard's share capital account (as defined in section 975-300) was not tainted within the meaning of Division 197.

38. On the Payment Date, the sum of the market values of the assets of Wellard and its subsidiaries that were 'taxable Australian real property' (as defined in section 855-20) did not exceed the sum of the market values of their assets that were not taxable Australian real property for the purposes of section 855-30.

Commissioner of Taxation
19 February 2025

Status: **not legally binding**

References

Legislative references:

- ITAA 1936 6(1)
- ITAA 1936 44(1)
- ITAA 1936 45A
- ITAA 1936 45A(1)
- ITAA 1936 45A(2)
- ITAA 1936 45B
- 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 Div 110
- ITAA 1997 Div 112
- ITAA 1997 Subdiv 115-A
- ITAA 1997 115-25(1)
- ITAA 1997 116-20(1)
- ITAA 1997 Div 197
- ITAA 1997 Div 230
- ITAA 1997 Pt 3-90
- ITAA 1997 855-10(1)
- ITAA 1997 855-15
- ITAA 1997 855-20
- ITAA 1997 855-30
- ITAA 1997 975-300
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- Corporations Act 2001 256B
- Corporations Act 2001 256C

ATO references

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