Status: **legally binding**

# Class Ruling

# Tower 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.

**Table of Contents** **Paragraph**



## What this Ruling is about

1. This Ruling sets out the income tax consequences for holders of ordinary shares in Tower Limited (Tower) who received the return of share capital payment of A$1.0777 per ordinary share on 31 March 2025 (Payment Date).

2. Details of this scheme are set out in paragraphs 13 to 29 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:

- were registered on the Tower share register on 19 March 2025 (Record Date)
- are a 'resident of Australia' as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936)
- are not a 'temporary resident' as defined in subsection 995-1(1)
- held your Tower shares on capital account – that is, you did not hold your Tower shares as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)), and
- received the return of capital of A$1.0777 per ordinary 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 13 to 29 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 2024 to 30 June 2025.

## Ruling

### Return of capital is not a dividend

7. No part of the return of capital of A$1.0777 per share paid to you by Tower on the Payment Date is a dividend as defined in subsection 6(1) of the ITAA 1936. This is because the entire amount of the return of capital has been debited against an amount standing to the credit of Tower's share capital account.

8. Therefore, no part of the return of capital of A$1.0777 per share is included in your assessable income as a dividend under subparagraph 44(1)(a)(i) of the ITAA 1936.

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

9. The Commissioner will not make a determination that section 45C of the ITAA 1936 applies to any part of the return of capital 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 Tower shareholders and dividends to other Tower 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 C2*

10. CGT event C2 happened on 20 March 2025 (Implementation Date), being the date your Tower 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 Tower share were more than the cost base of your Tower share. You made a capital loss from CGT event C2 happening if the capital proceeds from the cancellation of your Tower share were less than the reduced cost base of your Tower share (subsection 104-25(3)).

12. The capital proceeds from CGT event C2 happening on the cancellation of your Tower share are equal to the amount of the return of capital of A$1.0777 you received for each Tower share that was cancelled (subsection 116-20(1)).

Status: **legally binding**

## Scheme

13. 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.

### Tower Limited

14. Tower is a company incorporated in New Zealand. Tower listed on the New Zealand Exchange and the Australian Securities Exchange in September 1999.

15. Tower is licensed to undertake general insurance business in New Zealand under the *Insurance (Prudential Supervision) Act 2010* (NZ).

16. As at 30 September 2024, Tower had:

- accumulated losses of NZ$12.413 million
- contributed equity of NZ$460.734 million, and
- 379,483,987 ordinary shares on issue, being the only class of shares on issue.

### Return of capital

17. On 6 September 2024, Tower announced a proposed return of capital of NZ$1.1858 for each Tower share to be cancelled (totalling approximately NZ$45 million), to be implemented by way of a court-approved scheme of arrangement.

18. The board of Tower determined that Tower was holding excess capital relative to the requirements of the business following:

- the disposal of certain material capital assets (including each of Tower’s Papua New Guinea, Solomon Islands and Vanuatu businesses) for approximately NZ$15.4 million
- a reduction in Tower’s regulatory capital requirements from NZ$25 million to NZ$0 effective from 16 August 2024, and
- a lack of large-scale claim events against its NZ$45m large claims allowance for the financial year ended 30 September 2024.

19. On 11 February 2025, the proposed return of capital was approved at Tower’s annual shareholders meeting.

20. On 12 March 2025, the High Court of New Zealand issued final orders approving the proposed return of capital under Part 15 of the *Companies Act 1993* (NZ).

21. On the Implementation Date, a total of 38,060,062 Tower shares were cancelled, being one ordinary share for every 10 ordinary shares held on the Record Date, with fractions rounded up or down to the nearest whole share (with 0.5 rounded down).

22. On the Payment Date, each Tower shareholder who held shares on the Record Date received NZ$1.1858 (with shareholders with an Australian address on the share register on the Record Date receiving A$1.0777, being NZ$1.1858 converted at the NZ$ to A$ exchange rate of 0.908,843) for each Tower share that was cancelled under the scheme.

23. The total return of capital of approximately NZ$45.1 million was paid from Tower's available cash balances and debited to Tower's share capital account.

24. Following the cancellation of shares under the scheme, Tower had 342,552,063 ordinary shares on issue.

## Other matters

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

26. Since the announcement of an updated dividend policy on 23 February 2021, Tower has paid regular dividends in line with the policy.

27. For the financial year ended 30 September 2024, Tower paid interim and final dividends totalling approximately NZ$36.1 million.

28. As at 30 September 2024, the majority of Tower's shareholders were foreign residents. Approximately 22.49% of the Tower shares on issue were held by shareholders with an Australian address on the Tower share register.

29. All Tower shares on issue were acquired by shareholders on or after 20 September 1985.

**Commissioner of Taxation**
16 April 2025

Status: **not legally binding**

# References

*Legislative references:*
- ITAA 1936 6(1)
- ITAA 1936 44(1)(a)(i)
- 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 116-20(1)
- ITAA 1997 Div 197
- ITAA 1997 Div 230
- ITAA 1997 975-300
- ITAA 1997 977-50
- ITAA 1997 995-1(1)

*Other references:*
- Companies Act 1993 (NZ)
- Insurance (Prudential Supervision) Act 2010 (NZ)

ATO references

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