



Status: **legally binding**

## Class Ruling

### Charter Hall Limited – capital reallocation

#### **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 holders of ordinary shares in Charter Hall Limited (CHL) who received a reduction of share capital of 24.52 cents per share (Capital Return) and a special dividend of 60.04 cents per share (Special Dividend) paid by CHL on 11 April 2025 (Payment Date).
2. Details of this scheme are set out in paragraphs 36 to 63 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 as a holder of CHL ordinary shares on the CHL share register at 5:00 pm (AEST) on 10 April 2025 (Record Date), and
  - held your CHL shares on capital account on the Record Date – that is, your CHL shares were neither held as revenue assets (as defined in section 977-50) nor 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 36 to 63 of this Ruling.

Note: Division 230 will not apply to individuals unless they have made an election for it to apply.

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**When this Ruling applies**

6. This Ruling applies from 1 July 2024 to 30 June 2025.

**Ruling****Reduction of share capital*****Reduction of share capital is not an assessable dividend***

7. No part of the Capital Return will be included in your assessable income under subsection 44(1) of the *Income Tax Assessment Act 1936* (ITAA 1936). This is because the entire amount of the Capital Return was debited to the share capital account of CHL, meaning that it is not a 'dividend' under subsection 6(1) of the ITAA 1936.

**Capital gains tax consequences*****CGT event G1***

8. CGT event G1 happened on the Payment Date when you were paid the Capital Return by CHL in respect of each of your CHL shares (section 104-135).
9. You made a capital gain from CGT event G1 happening if the Capital Return (24.52 cents per share) was more than the cost base of the CHL share. If so, the capital gain is equal to the amount of the excess.
10. You can treat a capital gain made from CGT event G1 as a discount capital gain under Subdivision 115-A if you acquired your CHL share at least 12 months before the Payment Date, excluding the day on which you acquired your CHL share and the day on which CGT event G1 happened (subsection 115-25(1)), and the other conditions in Subdivision 115-A are satisfied.
11. If the Capital Return was equal to or less than the cost base of the CHL share, you do not make a capital gain from CGT event G1. Instead, you reduce the cost base and reduced cost base of the CHL share by 24.52 cents per share (subsection 104-135(4)).
12. You cannot make a capital loss from CGT event G1 happening (subsection 104-135(3)).

***Foreign resident shareholders***

13. If you are a foreign resident, any capital gain you make from CGT event G1 is disregarded unless your CHL share is 'taxable Australian property' (section 855-10).
14. Your CHL share is taxable Australian property if it:
- was used by you (the foreign resident) at any time in carrying on a business through a permanent establishment in Australia (table item 3 in section 855-15), or
  - is a CGT asset that is 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 in section 855-15).

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**Specific anti-avoidance provisions will not apply to deem an assessable dividend**

15. Section 45 of the ITAA 1936 will not apply to the Capital Return. This is because CHL did not stream the provision of shares and the payment of minimally franked dividends to its shareholders. Therefore, you will not include any part of the Capital Return in your assessable income under subsection 44(1) of the ITAA 1936.

16. The Commissioner will not make a determination under subsection 45A(2) of the ITAA 1936 that section 45C of the ITAA 1936 applies in relation to the whole, or a part, of the capital benefits provided to you under the Capital Return. This is because CHL did not stream the provision of capital benefits and the payment of dividends to its shareholders as required by subsection 45A(1) of the ITAA 1936. Therefore, you will not include any part of the amount of the capital benefit (the amount of share capital distributed to you by CHL under the Capital Return) in your assessable income under subsection 44(1) of the ITAA 1936.

17. The Commissioner will not make a determination under paragraph 45B(3)(b) of the ITAA 1936 that section 45C of the ITAA 1936 applies to the whole, or any part, of the capital benefit provided to you under the Capital Return. This is because the purpose condition in paragraph 45B(2)(c) of the ITAA 1936 was not satisfied. Therefore, you will not include any part of the amount of the capital benefit (the amount of share capital distributed to you by CHL under the Capital Return) in your assessable income under subsection 44(1) of the ITAA 1936.

**Special Dividend**

18. The Special Dividend is a 'dividend' as defined in subsection 6(1) of the ITAA 1936.

19. The Special Dividend is a frankable distribution pursuant to section 202-40.

**Special Dividend is assessable income for Australian-resident shareholders**

20. If you are a resident of Australia and you received the Special Dividend, your assessable income includes the Special Dividend of 60.04 cents per share in respect of each CHL share (subparagraph 44(1)(a)(i) of the ITAA 1936).

21. Additionally, in the income year in which the Special Dividend was paid (subject to you being a 'qualified person' in relation to the Special Dividend), you will:

- have to include the franking credit on the Special Dividend in your assessable income (subsection 207-20(1)), and
- be entitled to a tax offset equal to the franking credit on the Special Dividend (subsection 207-20(2)).

22. Your entitlement to the franking credit tax offset under Division 207 in relation to the Special Dividend is subject to the refundable tax offset rules in Division 67, provided you are not excluded by the operation of section 67-25.

**Qualified person**

23. Paragraph 207-145(1)(a) refers to Division 1A of former Part IIIA of the ITAA 1936, which contains the conditions you must satisfy to be a 'qualified person' in relation to a franked distribution you have received.

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24. The main way in which you can be a qualified person is by satisfying the holding period rule.

25. The Special Dividend does not constitute a 'related payment' as defined in former section 160APHN of the ITAA 1936.

26. Therefore, you will satisfy the holding period rule in relation to the Special Dividend only if you held your CHL shares for a continuous period of at least 45 days during the primary qualification period for the Special Dividend (former paragraphs 160APHO(1)(a) and (2)(a) of the ITAA 1936).

27. The primary qualification period begins on the day after the day on which you acquired your CHL shares and ends on the 45th day after the day on which the shares became ex dividend (former section 160APHD of the ITAA 1936).

28. Former subsection 160APHE(1) of the ITAA 1936 states that a share in respect of which a dividend is to be paid 'becomes ex dividend on the day after the last day on which the acquisition by a person of the share will entitle the person to receive the dividend'.

29. The last day on which your acquisition of a CHL share would entitle you to receive the Special Dividend was 10 April 2025 (being the Record Date). Therefore, the Special Dividend became ex dividend on 11 April 2025.

30. In relation to the Special Dividend, during the period beginning on the day after the day on which you acquired your CHL shares and ending on 26 May 2025 (inclusive), you must have held each of your CHL shares for a continuous period of at least 45 days (not counting the day on which you acquired the shares and the day, if any, on which you disposed of the shares, and not counting the days, if any, on which you had 'materially diminished risks of loss or opportunities for gain' (as defined in former section 160APHM of the ITAA 1936) in respect of the CHL share).

31. Another way in which you can be a 'qualified person' in relation to the Special Dividend is under the small shareholder exception in former section 160APHT of the ITAA 1936. This will only apply to you if you are an individual, and the total amount of your franking credit tax offsets for the income year (from CHL and any other company, trust or partnership) does not exceed \$5,000.

32. The small shareholder exception in former section 160APHT of the ITAA 1936 only applies to the Special Dividend if you did not make a related payment (as defined in former section 160APHN of the ITAA 1936) in respect of the Special Dividend under any arrangement (former subsection 160APHT(2)).

### ***Special Dividend received by non-resident shareholders***

33. If you are a non-resident and you received the Special Dividend, and the Special Dividend is not attributable to a permanent establishment in Australia, no part of the Special Dividend will be included in your assessable income. This is because:

- the Special Dividend is non-assessable non-exempt income (section 128D of the ITAA 1936),
- you are not liable to pay withholding tax in respect of the Special Dividend (subparagraph 128B(3)(ga)(i) of the ITAA 1936), and
- you do not include the amount of the franking credits on the Special Dividend in your assessable income and you are not entitled to a tax offset for those franking credits (sections 207-20 and 207-70).

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34. If you are a non-resident and you received the Special Dividend, and the Special Dividend is attributable to a permanent establishment in Australia, you:

- include the Special Dividend in your assessable income (paragraph 44(1)(c) of the ITAA 1936)
- are not liable to pay withholding tax in respect of the Special Dividend (subsection 128B(3E) of the ITAA 1936), and
- include the amount of the franking credits on the Special Dividend in your assessable income and are entitled to a tax offset (which is not refundable under subsection 67-25(1DA)) equal to the amount of those franking credits, provided you are a 'qualified person' in relation to the Special Dividend (section 207-20 and subsection 207-75(2)).

### **Cost base and reduced cost base of units in Charter Hall Property Trust**

35. The fourth element of the cost base and reduced cost base of each unit you hold in Charter Hall Property Trust (CHPT) will be increased by 84.56 cents per share (subsections 110-25(5) and 110-55(2)).

## **Scheme**

36. 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.

### **Charter Hall Limited**

37. CHL is a company incorporated in Australia.

38. CHL has one class of shares on issue (ordinary shares).

39. Each ordinary share in CHL is stapled to a unit in CHPT, constituting a Charter Hall Group stapled security. As a result of the stapling, CHL ordinary shares and CHPT units can only be traded or otherwise dealt with together.

40. The Charter Hall Group stapled securities have been listed on the Australian Securities Exchange since 10 June 2005. They trade under the Australian Securities Exchange code 'CHC'.

41. CHL is the head company of an income tax consolidated group under Part 3-90.

42. CHL and its subsidiaries provide services to the Trustee of CHPT and the trustees of CHPT's subsidiary trusts such as property management, property development and funds management.

43. Immediately before the Payment Date, CHL had 472,997,199 fully paid ordinary shares and \$315.5 million credited to its share capital account.

44. CHL (on an accounting consolidated basis) had retained profits of \$777.3 million as of 31 December 2024.

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### **Charter Hall Property Trust**

45. The Trustee of CHPT owns (through subsidiary trusts) land and buildings in Australia from which it derives rental income.
46. CHPT is a registered managed investment scheme under Chapter 5C of the *Corporations Act 2001* and an attribution managed investment trust under section 276-10.
47. Charter Hall Funds Management Limited (a company incorporated in Australia) is the Trustee and responsible entity of CHPT.
48. Immediately before the Payment Date, the Trustee of CHPT owed more than \$400 million to CHL under a loan.
49. Immediately before the Payment Date, CHPT had 472,997,199 fully paid units.

### **The reduction of share capital and special dividend**

50. The directors of CHL formed the opinion that CHL was over-capitalised and CHPT was under-capitalised. The Trustee of CHPT needs a large amount of money to acquire assets and undertake capital works, as demonstrated by the loan made by CHL to the Trustee of CHPT.
51. The directors of CHL decided to distribute \$400 million to the shareholders of CHL, which would be compulsorily applied to subscribe for additional capital in CHPT. This was undertaken by a combination of an equal reduction of share capital under section 256B of the *Corporations Act 2001* and a special dividend.
52. At a general meeting on 20 November 2024, the shareholders of CHL approved an ordinary resolution under section 256C of the *Corporations Act 2001* to reduce the share capital of CHL by an amount up to a prescribed limit.
53. On 7 April 2025, the directors of CHL resolved to pay:
  - \$115,978,913 as a reduction of share capital (equating to 24.52 cents per share in respect of each CHL share), and
  - \$283,987,518 as a special dividend (equating to 60.04 cents per share in respect of each CHL share).
54. The date for determining the entitlement of the shareholders of CHL to receive the Capital Return and the Special Dividend was 5:00 pm (AEST) on 10 April 2025 (Record Date).
55. On the Payment Date (11 April 2025), CHL paid the Capital Return and the Special Dividend to the shareholders of CHL who were registered on the CHL share register on the Record Date.
56. CHL debited its:
  - share capital account by \$115,978,913, and
  - retained earnings account by \$283,987,518.
57. The total amount of the Capital Return and the Special Dividend was compulsorily applied (pursuant to an amendment to the constitution of CHPT under section 601GC of the *Corporations Act 2001* that was approved by the unit holders of CHPT at a general meeting on 20 November 2024) by CHL, on behalf of the shareholders of CHL, to subscribe for additional capital in respect of the existing units in CHPT.
58. The shareholders of CHL were identical to the unit holders of CHPT.

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59. No new units were issued in CHPT as a result of the compulsory application of the Capital Return and the Special Dividend paid by CHL to subscribe for additional capital in CHPT.

60. The Trustee of CHPT applied the \$399,966,431 of additional capital it received to reduce the balance of the loan it owed to CHL.

#### **Other matters**

61. CHL has never previously undertaken a reduction of share capital.

62. Immediately before the Payment Date, CHL's share capital account (as defined in section 975-300) was not tainted (within the meaning of Division 197).

63. CHL had a franking account balance of \$408.7 million immediately before the payment of the Special Dividend.

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**Commissioner of Taxation**

23 April 2025

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## References

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### *Related Rulings/Determinations:*

TD 2002/10

### *Legislative references:*

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  - ITAA 1936 44(1)
  - ITAA 1936 44(1)(a)(i)
  - ITAA 1936 44(1)(c)
  - ITAA 1936 45
  - ITAA 1936 45A(1)
  - ITAA 1936 45A(2)
  - ITAA 1936 45B(2)(c)
  - ITAA 1936 45B(3)(b)
  - ITAA 1936 45C
  - ITAA 1936 128B(3)(ga)(i)
  - ITAA 1936 128B(3E)
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  - ITAA 1936 former Pt IIIAA Div 1A
  - ITAA 1936 former 160APHD
  - ITAA 1936 former 160APHE(1)
  - ITAA 1936 former 160APHM
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  - ITAA 1936 former 160APHT
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  - ITAA 1997 67-25(1DA)
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  - ITAA 1997 Div 197
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  - ITAA 1997 Div 207
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  - ITAA 1997 207-20(1)
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  - ITAA 1997 207-70
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  - ITAA 1997 Div 230
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  - ITAA 1997 855-10
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  - ITAA 1997 995-1(1)
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