



Status: **legally binding**

Class Ruling

Next Science Limited – reduction of share 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
Who this Ruling applies to	4
When this Ruling applies	6
Ruling	7
Scheme	21

What this Ruling is about

1. This Ruling sets out the income tax consequences for shareholders of Next Science Limited (NXS) who received a reduction of share capital (Capital Return) consisting of an amount of \$0.145 per share on 10 February 2026 (Payment Date).
2. Details of this scheme are set out in paragraphs 21 to 42 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 held ordinary shares in NXS and you:
 - were registered on the NXS share register on 3 February 2026 (Record Date)
 - held your NXS shares on capital account – that is, your NXS shares were neither held as a revenue asset (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1))
 - did not acquire your shares in NXS under an employee share scheme (as defined in section 83A-10), and
 - received the Capital Return of \$0.145 per NXS 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 21 to 42 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 2025 to 30 June 2026.

Ruling**Capital Return is not a dividend**

7. No part of the Capital Return you received from NXS 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 the share capital account of NXS.

8. Therefore, no part of the Capital Return 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 to deem an assessable dividend

9. 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 benefit provided to you under the Capital Return. This is because NXS 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 NXS under the Capital Return) in your assessable income under subsection 44(1) of the ITAA 1936.

10. 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 NXS under the Capital Return) in your assessable income under subsection 44(1) of the ITAA 1936.

CGT event G1

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

12. You made a capital gain when CGT event G1 happened if the Capital Return you received in respect of your NXS share was more than the cost base of your NXS 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 NXS share is reduced to nil (subsection 104-135(3)).

13. If the Capital Return you received was equal to or less than the cost base of your NXS share, the cost base and reduced cost base of your NXS share is reduced by the amount of the Capital Return (subsection 104-135(4)). You cannot make a capital loss when CGT event G1 happens (Note 1 to subsection 104-135(3)).

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CGT event C2

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

15. CGT event C2 happened because, by ceasing to own your NXS share after the Record Date but before the Payment Date, you retained the right to receive the Capital Return (which is a separate CGT asset from the share in NXS). When the Capital Return was paid to you, the right to receive the Capital Return (being an intangible CGT asset) ended by the right being discharged or satisfied.

16. If the cost base or reduced cost base of the NXS share previously owned by you has been taken into account in working out a capital gain or capital loss from a CGT event happening to your NXS share, the right to receive the Capital Return will have a nil cost base. In that case, you will make a capital gain equal to the amount of the Capital Return (subsection 104-25(3)).

Discount capital gain

17. You can treat a capital gain you made when CGT event G1 or CGT event C2 happened as a discount capital gain if you acquired your NXS share at least 12 months before the Payment Date (excluding the date on which you acquired your NXS share and the Payment Date) (subsection 115-25(1)) and the other conditions in Subdivision 115-A are satisfied.

Foreign resident shareholders

18. If you are a foreign resident, any capital gain you make from CGT event G1 is disregarded unless your NXS share is taxable Australian property (section 855-10). If you are a foreign resident, any capital gain or capital loss you make from CGT event C2 is disregarded unless your right to receive the Capital Return is taxable Australian property (section 855-10).

19. Your NXS share was not an indirect Australian real property interest (table item 2 of section 855-15) because, on the Payment Date, the principal asset test in section 855-30 was not satisfied.

20. Accordingly, your NXS share or right to receive the Capital Return is taxable Australian property if it:

- was used by you at any time in carrying on a business through a permanent establishment in Australia (table item 3 of 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 of section 855-15).

Scheme

21. 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.

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Next Science Limited

22. NXS is an Australian biotechnology company involved in the development and commercialisation of science-based solutions to treat and manage biofilm infections in human health.

23. NXS was listed on the Australian Securities Exchange (ASX) in April 2019.

Transaction background

24. On 30 June 2025, NXS entered into an asset purchase agreement with Demetra Holdings S.p.A (Demetra) to sell substantially all the assets of NXS and its wholly owned subsidiaries (NXS Group) for a total sale price of US\$50 million and the assumption of certain agreed liabilities (Transaction).

25. The Transaction was announced to the ASX on 1 July 2025.

26. An extraordinary general meeting (EGM) was held on 28 August 2025 to obtain shareholder approval for the Transaction. At the EGM, 95.89% of shareholders agreed to the Transaction.

27. NXS's Durable Medical Equipment business was excluded from the sale to Demetra. NXS made unsuccessful attempts to separately sell this business to another third party. As such, the Durable Medical Equipment business was discontinued for a small loss.

28. On 15 September 2025, the Transaction was completed. This was announced to the ASX on 16 September 2025.

29. Demetra acquired most of the business of the NXS Group rather than any specific asset or specific part of the NXS Group's business.

30. Funds from the sale proceeds after repayment of debt, transaction costs, potential tax liabilities and winding down costs (including liquidation costs) were available to distribute to Shareholders.

Reduction of share capital

31. On 23 December 2025, NXS announced that an EGM would be held on 28 January 2026, with one of the formal items being to seek shareholder approval on the terms and conditions of an equal reduction in the share capital of approximately \$0.145 per share, being an estimated distribution amount of \$42.454 million (US\$28 million).

32. On 28 January 2026, NXS advised that a resolution for the return of capital had been passed by the requisite majority.

33. On 30 January 2026, NXS announced the return of capital. On 10 February 2026, an amount of \$0.145 per NXS share was paid to NXS shareholders who were registered on the share register on the Record Date.

34. The return of capital was undertaken by way of an equal reduction of share capital, in accordance with sections 256B and 256C of the *Corporations Act 2001*.

Other matters

35. Following the return of capital, NXS delisted and was removed from the official list of the ASX at close of trading on 11 February 2026.

36. On 30 March 2026, NXS was handed over to the management of a liquidator.

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37. The full amount of the return of capital was debited against NXS's share capital account. No amount has been, or will be, transferred to NXS's share capital account from any other account, such that the share capital account is not tainted within the meaning of section 197-50.

38. NXS had share capital of US\$137,231,000 on 19 December 2025. Following the return of capital, NXS had share capital of US\$109,231,000.

39. As at 31 December 2025, NXS had nil retained profits and had accumulated accounting losses of US\$55,836,571.

40. NXS has never paid a dividend or returned share capital and has a nil franking credit balance.

41. Since its inception, NXS has mainly been funded out of equity via successive share issuances and only had a small amount of short-term debt to fund working capital.

42. On the Payment Date, the sum of the market values of the assets of NXS 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

8 July 2026

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)(c)
 - ITAA 1936 45B(3)(b)
 - ITAA 1936 45C
 - ITAA 1997 83A-10
 - 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 Subdiv 115-A
 - ITAA 1997 115-25(1)
 - ITAA 1997 197-50
 - ITAA 1997 Div 230
 - ITAA 1997 855-10
 - ITAA 1997 855-15
 - ITAA 1997 855-20
 - ITAA 1997 855-30
 - ITAA 1997 977-50
 - ITAA 1997 995-1(1)
 - Corporations Act 2001 256B
 - Corporations Act 2001 256C
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ATO references

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