


CR 2012/65 - Income tax: proposed return of capital: Pan Pacific Petroleum NL

 This cover sheet is provided for information only. It does not form part of *CR 2012/65 - Income tax: proposed return of capital: Pan Pacific Petroleum NL*



Class Ruling

Income tax: proposed return of capital: Pan Pacific Petroleum NL

Contents	Para
LEGALLY BINDING SECTION:	
What this Ruling is about	1
Date of effect	8
Scheme	9
Ruling	24
NOT LEGALLY BINDING SECTION:	
Appendix 1:	
Explanation	34
Appendix 2:	
Detailed contents list	88

ⓘ This publication provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provision(s)

2. The relevant provisions dealt with in this Ruling are:

- subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936);
- subsection 44(1) of the ITAA 1936;
- section 45A of the ITAA 1936;
- section 45B of the ITAA 1936;
- section 45C of the ITAA 1936;
- section 128B of the ITAA 1936;
- section 104-25 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 104-135 of the ITAA 1997;

- section 855-10 of the ITAA 1997; and
- section 855-15 of the ITAA 1997.

All subsequent legislative references in this Ruling are to the ITAA 1997 unless stated otherwise.

Class of entities

3. The class of entities to which this Ruling applies is the holders of ordinary shares in Pan Pacific Petroleum NL (PPP) who:

- (a) are registered on the PPP share register on the Record Date, being the date for determining entitlements under the return of capital and dividend payment;
- (b) hold their ordinary shares in PPP (PPP shares) on capital account; and
- (c) are not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on their PPP shares.

(Note: Division 230 will generally not apply to individuals, unless they have made an election for it to apply to them.)

In this Ruling, a person belonging to this class of entities is referred to as a 'PPP shareholder'.

Qualifications

4. The Commissioner makes this ruling based on the precise scheme identified in this Ruling.

5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 10 to 23 of this Ruling.

6. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
- this Ruling may be withdrawn or modified.

7. This work is copyright. Apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without prior written permission from the Commonwealth. Requests and inquiries concerning reproduction and rights should be addressed to:

Commonwealth Copyright Administration
Copyright and Classification Policy Branch
Attorney-General's Department
3-5 National Circuit
Barton ACT 2600

or posted at: <http://www.ag.gov.au/cca>

Date of effect

8. This Ruling applies from 1 July 2012 to 30 June 2013. The Ruling continues to apply after 30 June 2013 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Scheme

9. The following description of the scheme is based on information provided by the applicant.

Note: certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under Freedom of Information legislation.

10. PPP is an Australian resident company (incorporated in NSW) that is dual listed on the New Zealand Securities Exchange and the Australian Securities Exchange.

11. PPP is the Australian parent holding company of a group that carries out oil and gas development and exploration activities in New Zealand, Australia, Vietnam and the joint production development area between Timor and Australia.

12. As at 30 June 2011, the issued share capital of PPP was \$64.52 million and the number of fully paid ordinary shares was 588,612,110.

13. As at 15 August 2011, PPP has 10,438 shareholders, comprised of individuals, companies, and foreign residents. Of the total shareholdings, 57.3% are held by New Zealand residents.

14. In September 2005, December 2005 and December 2006, PPP conducted substantial capital raising activities from the issue of ordinary shares raising approximately \$18 million of capital and approximately another \$23 million of capital from the exercise of options and rights. The capital raised totalled approximately \$42 million.

15. The majority of these capital raisings were applied to the development and exploration of the Tui oil fields and drilling activities of PPP in the Taranaki Basin by way of loans totalling approximately \$34 million made by PPP to its wholly owned subsidiary, WM Petroleum Limited (WMP), which is a New Zealand resident.

16. WMP subsequently repaid these loans plus interest to PPP by 30 October 2008. Further, during the year ended 30 June 2009, WMP paid a \$27 million dividend to PPP. PPP used part of this dividend to fund a partially franked (at 26.41%) special dividend of \$18 million.

17. On 9 November 2011, PPP announced that it is proposing to make a return of capital to all its ordinary shareholders. PPP stated that the return of capital represents surplus capital in excess of its working requirements and is subject to shareholder approval.

18. PPP proposes to distribute approximately \$29.5 million to its shareholders before 30 June 2013. This will be made up of a share capital component of approximately \$17.26 million (\$0.029 per share) which will be debited to the company's share capital account together with a dividend component of approximately \$12.24 million (\$0.021 per share). The return of share capital will be made uniformly across all participating shareholders and no shares will be cancelled.

19. The amount of share capital to be returned (\$17.26 million) and the dividend to be paid (\$12.24 million) are in proportion to the share capital (\$64.52 million), reserves (\$10.98 million) and retained earnings (\$45.74 million) of the PPP group of companies as set out in their accounts as at 31 December 2011.

20. The proposed return of capital will be paid equally to each holder of a PPP ordinary share listed on PPP's share register as at the Record Date.

21. PPP does not have a history of paying regular fully franked dividends. PPP has only paid one dividend, the special dividend referred to in paragraph 16 of this Ruling.

22. PPP has confirmed that its share capital account is not tainted within the meaning of Division 197.

23. PPP has confirmed that it does not own taxable Australian real property assets which equate to more than 50% of the market value of its assets.

Ruling

The dividend component

24. The dividend component of the distribution to PPP shareholders will constitute a 'dividend' as defined in subsection 6(1) of the ITAA 1936.

Assessability of the dividend component

25. PPP shareholders who receive the dividend component of the distribution and are residents of Australia, as defined in subsection 6(1) of the ITAA 1936, are required to include the dividend as assessable income under subparagraph 44(1)(a)(i) of the ITAA 1936.

26. In relation to foreign resident PPP shareholders, liability to withholding tax will need to be considered under section 128B of the ITAA 1936 and the relevant double taxation agreement.

The share capital component

27. The component of the distribution to PPP shareholders that represents a return of share capital and constitutes the provision of a capital benefit will not be a 'dividend', as defined in subsection 6(1) of the ITAA 1936.

The application of section 45A, 45B and 45C

28. Subject to the comments in paragraph 29 of this Ruling the Commissioner will not make a determination under either subsection 45A(2) of the ITAA 1936 or subsection 45B(3) of the ITAA 1936 that section 45C of the ITAA 1936 applies to the whole, or any part, of the capital benefit provided to PPP shareholders.

29. If the actual amounts of share capital, reserves and retained earnings at the time the scheme is implemented are materially different to those as at 31 December 2011, the application of section 45B of the ITAA 1936 will need to be re-examined.

Capital gains tax (CGT) consequences

30. CGT event G1 (section 104-135) will happen when PPP pays the return of share capital to a PPP shareholder in respect of a PPP share that they own at the Record Date and continue to own at the time of payment.

31. CGT event C2 (section 104-25) will happen when PPP pays the return of share capital to a PPP shareholder in respect of a PPP share that they own at the Record Date but do not own at the time of payment.

CGT consequences for foreign resident shareholders

32. A PPP shareholder who is a foreign resident, or the trustee of a foreign trust for CGT purposes, and who is paid the return of share capital, disregards any capital gain made when CGT event G1 happens to their PPP share if their PPP share is not 'taxable Australian property' (sections 855-10 and 855-15).

33. A foreign resident, or the trustee of a foreign trust for CGT purposes, who is paid the return of share capital and who owns a PPP share at the Record Date but not at the time of payment, disregards any capital gain made when CGT event C2 happens to their right to receive the return of share capital if their right to receive the return of share capital is not 'taxable Australian property' (sections 855-10 and 855-15).

Commissioner of Taxation

29 August 2012

Appendix 1 – Explanation

❶ This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.

The dividend component of the distribution

34. The term 'dividend' is defined in subsection 6(1) of the ITAA 1936 and includes any distribution made by a company to any of its shareholders.

35. The payment of the dividend will be a distribution in money made by PPP to its ordinary shareholders.

36. Paragraph (d) of the definition of 'dividend' in subsection 6(1) of the ITAA 1936 however, excludes from the definition of 'dividend' any:

moneys paid or credited by a company to a shareholder or any other property distributed by a company to shareholders (not being moneys or other property to which this paragraph, by reason of subsection (4), does not apply or moneys paid or credited, or property distributed for the redemption or cancellation of a redeemable preference share), where the amount of the moneys paid or credited, or the amount of the value of the property, is debited against an amount standing to the credit of the share capital account of the company.

37. The dividend will be sourced entirely from PPP's profits and PPP will not debit the dividend to its share capital account. Therefore, the exclusion in paragraph (d) will not apply and the dividend component of the distribution will constitute a 'dividend' for the purposes of subsection 6(1) of the ITAA 1936.

Assessability of the dividend component

38. Subparagraph 44(1)(a)(i) of the ITAA 1936 includes in the assessable income of an Australian resident shareholder in a company:

dividends (other than non-share dividends) that are paid to the shareholder by the company out of profits derived by it from any source.

39. As the dividend component of the distribution will be paid to PPP shareholders out of profits derived by PPP, PPP shareholders who are residents of Australia, as defined in subsection 6(1) of the ITAA 1936, are required to include the dividend as assessable income under subparagraph 44(1)(a)(i) of the ITAA 1936.

Distribution of share capital is not a dividend

40. Paragraph (d) of the definition of 'dividend' in subsection 6(1) of the ITAA 1936 excludes a distribution from the meaning of 'dividend' if the amount of a distribution is debited against an amount standing to the credit of the company's 'share capital account'.

41. 'Share capital account' is defined in section 975-300 as an account which the company keeps of its share capital, or any other account created on or after 1 July 1998 where the first amount credited to the account was an amount of share capital.

42. Subsection 975-300(3) states that an account is not a share capital account if it is tainted. Subsections 197-5(1) and 197-50(1) provide that a company's share capital account may become tainted if an amount is transferred to it from any of the company's other accounts.

43. The component of the distribution representing a return of share capital will be debited entirely to PPP's share capital account. On the basis of the information provided, as PPP's share capital account is not tainted within the meaning of Division 197 of the ITAA 1997, paragraph (d) of the definition of 'dividend' in subsection 6(1) of the ITAA 1936 will apply. Accordingly, the return of share capital will not be a dividend as defined in subsection 6(1) of the ITAA 1936.

Anti-avoidance provisions

44. Sections 45A and 45B of the ITAA 1936 are two anti-avoidance provisions which, if they apply, allow the Commissioner to determine that all or part of a distribution is treated as an unfrankable dividend that is paid by the company out of profits to the shareholder.

Section 45A – streaming of dividends and capital benefits

45. Section 45A of the ITAA 1936 applies in circumstances where capital benefits are streamed to certain shareholders who derive a greater benefit from the receipt of capital (the advantaged shareholders) and it is reasonable to assume that the other shareholders (the disadvantaged shareholders) have received or will receive dividends.

46. The proposed distribution which is to be made by PPP to all its shareholders in proportion to their respective membership interests will be comprised of two components. A capital component constituting a 'capital benefit' (as defined in paragraph 45A(3)(b) of the ITAA 1936) which will be debited to PPP's share capital account and a dividend component to be debited against its retained earnings account.

47. Consequently, it cannot be concluded that capital benefits are being provided to some shareholders who would derive a greater benefit from the receipt of capital benefits than other shareholders, while dividends are provided to the other shareholders.

48. Accordingly, section 45A of the ITAA 1936 will not apply to the return of share capital and 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 return of share capital to the shareholders of PPP.

Section 45B – schemes to provide capital benefits

49. Section 45B of the ITAA 1936 applies where certain payments are made to shareholders in substitution of dividends. Subsection 45B(2) of the ITAA 1936 sets out the conditions under which the Commissioner may make a determination under subsection 45B(3) of the ITAA 1936 that section 45C of the ITAA 1936 applies. These conditions are that:

- there is a scheme under which a person is provided with a capital benefit by a company (paragraph 45B(2)(a) of the ITAA 1936);
- under the scheme, a taxpayer (the relevant taxpayer), who may or may not be the person provided with the capital benefit, obtains a tax benefit (paragraph 45B(2)(b) of the ITAA 1936); and
- having regard to the relevant circumstances of the scheme, it would be concluded that the person, or one of the persons, who entered into or carried out the scheme or any part of the scheme did so for a purpose (whether or not the dominant purpose but not including an incidental purpose) of enabling the relevant taxpayer to obtain a tax benefit (paragraph 45B(2)(c) of the ITAA 1936).

50. Each of these conditions is considered below.

Scheme

51. A 'scheme' for the purposes of section 45B of the ITAA 1936 is taken to have the same meaning as provided in subsection 177A(1) of Part IVA of the ITAA 1936. That definition is widely drawn and includes any agreement, arrangement, understanding, promise, undertaking, scheme, plan or proposal.

52. The return of share capital by PPP will constitute a scheme for the purposes of paragraph 45B(2)(a) of the ITAA 1936.

53. The phrase 'provided with a capital benefit' is defined in subsection 45B(5) of the ITAA 1936. It states that a person is provided with a capital benefit if:

- (a) an ownership interest in a company is issued to the person;
- (b) there is a distribution to the person of share capital; or
- (c) the company does something in relation to an ownership interest that has the effect of increasing the value of the ownership interest (which may or may not be the same interest) held by that person.

Therefore, the proposed return of share capital by PPP will constitute the provision of a capital benefit under paragraph 45B(5)(b) of the ITAA 1936.

Tax benefit

54. A taxpayer 'obtains a tax benefit', as defined in subsection 45B(9) of the ITAA 1936, if:

- the amount of tax payable; or
- any other amount payable under the ITAA 1936 or the ITAA 1997,

would, apart from the operation of section 45B of the ITAA 1936:

- be less than the amount that would have been payable; or
- be payable at a later time than it would have been payable,

if the capital benefit had instead been a dividend.

55. On the basis of the information provided by PPP it is likely that its shareholders will obtain tax benefits from the return of share capital. A dividend would generally be included in the assessable income of a resident shareholder or, in the case of a foreign resident, be subject to dividend withholding tax under section 128B of the ITAA 1936. However, generally, a return of share capital would be subject to the CGT provisions of the income tax law. Unless the amount of the return of share capital exceeds the cost base of the shares, there will only be a cost base reduction under CGT event G1 (section 104-135). It is only to the extent (if any) that the return of share capital exceeds the cost base of the shares that a capital gain arises.

56. Additionally, a capital gain may not arise at all for certain foreign resident shareholders.

Relevant circumstances

57. Under paragraph 45B(2)(c) of the ITAA 1936, the Commissioner is required to consider the 'relevant circumstances' set out under subsection 45B(8) of the ITAA 1936 to determine whether any part of the scheme would be entered into for a purpose, other than an incidental purpose, of enabling a relevant taxpayer to obtain a tax benefit. However, the list of relevant circumstances in subsection 45B(8) is not exhaustive and regard may be had to other circumstances on the basis of their relevance.

58. The test of purpose is an objective one. The question is whether it would be concluded that a person who entered into or carried out the scheme did so for the purpose of obtaining a tax benefit for the relevant taxpayer. This requisite purpose does not have to be the most influential or prevailing purpose but it must be more than an incidental purpose.

59. The purpose which causes section 45B of the ITAA 1936 to apply may be the purpose of any party to the scheme. In this case, however, the Commissioner is only concerned with the purpose of PPP. The Commissioner cannot at this stage ascertain the purposes of PPP's numerous shareholders who are eligible to vote on the return of share capital under section 256C of the *Corporations Act 2001* and all of whom would participate in the proposed return of share capital. Nevertheless, in a case such as this, an objective conclusion as to the purpose of the company should, generally speaking, not be inconsistent with an objective conclusion as to the purpose of the shareholders, in particular those shareholders who will vote in favour of the proposal.

60. The relevant circumstances under subsection 45B(8) of the ITAA 1936 cover the circumstances of the company and the tax profile of the shareholders. However, on the basis of the information provided by PPP it is clear that the circumstances set out in paragraphs 45B(8)(i) and 45B(8)(j) of the ITAA 1936 are not relevant to the proposed distribution.

61. Additionally, since the return of share capital will be made to all PPP shareholders holding ordinary shares, regardless of those shareholders individual circumstances, it is considered that paragraphs 45B(8)(c) to 45B(8)(h) of the ITAA 1936 do not assist in determining the objective purpose of either PPP or its shareholders.

62. Consequently, the relevant matters that need to be considered in detail are those set out in paragraphs 45B(8)(a), 45B(8)(b) and 45B(8)(k) of the ITAA 1936.

63. Paragraph 45B(8)(a) of the ITAA 1936 refers to the extent to which the capital benefit is attributable to capital and profits (realised or unrealised) of the company or an associate (within the meaning of section 318 of the ITAA 1936) of the company.

64. PPP will return to its shareholders capital raised to fund the development of the Tui oil fields and drilling activities of PPP in the Taranaki Basin in New Zealand, together with a dividend sourced from profits.

65. On the basis of the information provided it is considered that it is reasonable to attribute the capital component of the proposed distribution to a return of share capital previously raised by PPP that the company has determined is excess to its operating and capital requirements. Also on the information provided it is not considered reasonable to attribute any part of the capital component to profits. Consequently, this circumstance does not point towards a purpose of enabling a taxpayer to obtain a tax benefit.

66. Paragraph 45B(8)(b) of the ITAA 1936 refers to the pattern of distributions made by a company or an associate (within the meaning of section 318 of the ITAA 1936) of the company. On the basis of the information provided it is clear that PPP does not have a history of paying regular fully franked dividends. To date, PPP has only paid one partially franked (at 26.41%) special dividend of approximately \$18 million, in June 2009, which was sourced out of profits generated from its Tui oil prospect in New Zealand. Under the scheme set out in paragraphs 10 to 23 of this Ruling, the proposed return of share capital will be made at the same time a dividend is paid. The amounts of the proposed return of share capital and dividend will be in proportion to the share capital, reserves and retained earnings of PPP. Accordingly, PPP's previous and proposed distributions do not point towards a purpose of enabling a taxpayer to obtain a tax benefit.

67. Paragraph 45B(8)(k) of the ITAA 1936 refers to the matters in subparagraphs 177D(b)(i) to 177D(b)(viii) of the ITAA 1936. These are matters by reference to which a scheme is able to be examined from a practical perspective in order to identify and compare its tax and non-tax objectives. The matters include the manner in which the scheme is carried out, its form and substance, and its financial and other implications for the parties involved.

68. On the basis of the information provided it is clear that both the form and substance of the proposed distribution is a return of excess share capital and the payment of a dividend from retained earnings.

69. On the basis of the information provided it is considered that the proposed distribution represents both an appropriate return of PPP's excess capital as well as a dividend from its retained earnings. Accordingly, it cannot be concluded that PPP or participating PPP shareholders entered into or carried out the scheme for the purpose of enabling the shareholders to obtain a tax benefit. As such, the Commissioner will not make a determination under subsection 45B(3) of the ITAA 1936 that section 45C of the ITAA 1936 applies to the whole or any part of the proposed return of share capital.

Section 45C – deeming dividends to be paid where determinations under section 45A or 45B are made

70. As the Commissioner will not make a determination under subsection 45A(2) of the ITAA 1936 or subsection 45B(3) of the ITAA 1936 in relation to the scheme as described, section 45C of the ITAA 1936 will not deem any part of the return of share capital to be an unfranked dividend for the purposes of the ITAA 1936 or of the ITAA 1997.

Capital gains tax consequences***CGT event G1 – section 104-135***

71. CGT event G1 will happen when PPP pays the return of share capital to a PPP shareholder in respect of a share that they own at the Record Date and continue to own at the time of payment (section 104-135).

72. A PPP shareholder will make a capital gain if the return of share capital is more than the cost base of their PPP share. The amount of the capital gain is equal to the excess (subsection 104-135(3)).

73. If a PPP shareholder makes a capital gain when CGT event G1 happens, the cost base and reduced cost base of the PPP share is reduced to nil. A PPP shareholder cannot make a capital loss when CGT event G1 happens (subsection 104-135(3)).

74. If the return of share capital is equal to or less than the cost base of the PPP share at the time of payment, the cost base and reduced cost base of the share will be reduced by the amount of the return of capital (subsection 104-135(4)).

75. A capital gain made when CGT event G1 happens will be eligible to be treated as a discount capital gain under Division 115 provided that the PPP share was acquired at least 12 months before the payment of the return of share capital (subsection 115-25(1)) and the other conditions of that Division are satisfied.

CGT event C2 – section 104-25

76. The right to receive the return of share capital is one of the rights inherent in a PPP share at the Record Date. If, after the Record Date but before the time of payment, a PPP shareholder ceases to own a PPP share in respect of which the return of share capital is payable, the right to receive the return of share capital in respect of that share will be retained by the shareholder and is a separate CGT asset.

77. CGT event C2 will happen when the return of share capital is paid (section 104-25). The right to receive the payment will end by the right being discharged or satisfied when the payment is made.

78. A PPP shareholder will make a capital gain if the capital proceeds from the ending of the right are more than its cost base. The capital gain is equal to the amount of the excess. A PPP shareholder will make a capital loss if the capital proceeds from the ending of the right are less than its reduced cost base. The capital loss is equal to the amount of the difference (subsection 104-25(3)).

79. In working out the capital gain or capital loss made when CGT event C2 happens, the capital proceeds will be the amount of the return of share capital (subsection 116-20(1)).

80. The cost base of the PPP shareholder's right to receive the return of share 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 share previously owned by a PPP shareholder that has been applied in working out a capital gain or capital loss made when a CGT event happened to the share – for example when the PPP shareholder disposed of the share after the Record Date.

81. Therefore, if the full cost base or reduced cost base of the PPP share has been previously applied in working out a capital gain or capital loss when a CGT event happened to that share, then the right to receive the return of share capital is likely to have a nil cost base. As a result, the PPP shareholder will generally make a capital gain equal to the amount of the return of share capital.

82. As the right to receive the payment of the return of share capital was inherent in the PPP share during the time it was owned, the right is considered to have been acquired at the time when the corresponding share was acquired (section 109-5). Accordingly, if the PPP share was acquired at least 12 months before the payment of the return of share capital, a capital gain made from the ending of the corresponding right will satisfy the requirements of section 115-25. Such a capital gain may be eligible to be treated as a discount capital gain under Division 115 provided the other conditions of that Division are satisfied.

CGT consequences for foreign resident shareholders

83. Under subsection 855-10(1), an entity disregards a capital gain or capital loss made from a CGT event if they are a foreign resident, or the trustee of a foreign trust for CGT purposes, just before the CGT event happens in relation to a CGT asset that is not 'taxable Australian property'.

84. Section 855-15 sets out when a CGT asset is 'taxable Australian property':

Item 1	taxable Australian real property;
Item 2	an indirect Australian real property interest not covered by item 5;
Item 3	a CGT asset used at any time in carrying on a business through a permanent establishment in Australia and which is not covered by item 1, 2, or 5;
Item 4	an option or right to acquire a CGT asset covered by item 1, 2 or 3; and
Item 5	a CGT asset that is covered by subsection 104-165(3) (choosing to disregard a gain or loss on ceasing to be an Australian resident).

85. Neither the PPP share nor the right to payment is 'taxable Australian real property' or 'an indirect Australian real property interest'. However, a capital gain cannot be disregarded under subsection 855-10(1) if the PPP share or the right to payment:

- (a) has been used at any time by the foreign resident PPP shareholder in carrying on a business through a permanent establishment in Australia (item 3 of the table in section 855-15); or
- (b) is covered by subsection 104-165(3) (item 5 of the table in section 855-15).

Pre-CGT shares

86. A capital gain made under CGT event G1 will be disregarded if the PPP shareholder acquired the PPP share before 20 September 1985 (subsection 104-135(5)).

87. A capital gain or capital loss made under CGT event C2 will be disregarded if the PPP shareholder acquired the PPP share before 20 September 1985 (paragraph 104-25(5)(a)).

Appendix 2 – Detailed contents list

88. The following is a detailed contents list for this Ruling:

	Paragraph
What this Ruling is about	1
Relevant provision(s)	2
Class of entities	3
Qualifications	4
Date of effect	8
Scheme	9
Ruling	24
The dividend component	24
Assessability of the dividend component	25
The share capital component	27
The application of section 45A, 45B and 45C	28
Capital gains tax (CGT) consequences	30
CGT consequences for foreign resident shareholders	32
Appendix 1 – Explanation	34
The dividend component of the distribution	34
Assessability of the dividend component	38
Distribution of share capital is not a dividend	40
Anti-avoidance provisions	44
Section 45A – streaming of dividends and capital benefits	45
Section 45B – schemes to provide capital benefits	49
<i>Scheme</i>	51
<i>Tax benefit</i>	54
<i>Relevant circumstances</i>	57
Section 45C – deeming dividends to be paid where determinations under section 45A or 45B are made	70
Capital gains tax consequences	71
<i>CGT event G1 – section 104-135</i>	71
<i>CGT event C2 – section 104-25</i>	76
CGT consequences for foreign resident shareholders	83
Pre-CGT shares	86
Appendix 2 – Detailed contents list	88

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Subject references:

- capital benefit
- capital gains tax
- capital reductions
- CGT event C1-C3 – end of a CGT asset
- CGT event G1-G3 – shares
- dividend
- return of capital on shares
- share capital
- shareholder payments

Legislative references:

- ITAA 1936
- ITAA 1936 6(1)
- ITAA 1936 44(1)
- ITAA 1936 45A
- ITAA 1936 45A
- ITAA 1936 45A(2)
- ITAA 1936 45A(3)(b)
- ITAA 1936 45B
- ITAA 1936 45B(2)
- ITAA 1936 45B(2)(a)
- ITAA 1936 45B(2)(b)
- ITAA 1936 45B(2)(c)
- ITAA 1936 45B(3)
- ITAA 1936 45B(5)
- ITAA 1936 45B(8)
- ITAA 1936 45B(8)(a)
- ITAA 1936 45B(8)(b)
- ITAA 1936 45B(8)(c)
- ITAA 1936 45B(8)(d)
- ITAA 1936 45B(8)(e)
- ITAA 1936 45B(8)(f)
- ITAA 1936 45B(8)(g)
- ITAA 1936 45B(8)(h)
- ITAA 1936 45B(8)(k)
- ITAA 1936 45B(9)
- ITAA 1936 45B(3)
- ITAA 1936 45C
- ITAA 1936 128B
- ITAA 1936 177A(1)
- ITAA 1936 177D(b)(i)
- ITAA 1936 177D(b)(ii)
- ITAA 1936 177D(b)(iii)
- ITAA 1936 177D(b)(iv)
- ITAA 1936 177D(b)(v)
- ITAA 1936 177D(b)(vi)
- ITAA 1936 177D(b)(vii)
- ITAA 1936 177D(b)(vii)
- ITAA 1936 318
- ITAA 1997
- ITAA 1997 104-25
- ITAA 1997 104-25(3)
- ITAA 1997 104-25(5)(a)
- ITAA 1997 104-135
- ITAA 1997 104-135(3)
- ITAA 1997 104-135(4)
- ITAA 1997 104-135(5)
- ITAA 1997 109-5
- ITAA 1997 Div 110
- ITAA 1997 Div 112
- ITAA 1997 Div 115
- ITAA 1997 115-25
- ITAA 1997 115-25(1)
- ITAA 1997 116-20(1)
- ITAA 1997 104-165(3)
- ITAA 1997 197-5(1)
- ITAA 1997 197-50(1)
- ITAA 1997 Div 230
- ITAA 1997 855-10
- ITAA 1997 855-15
- ITAA 1997 975-300
- ITAA 1997 975-300(3)
- ITAA 1997 995-1
- Corporations Act 2001
- TAA 1953
- Copyright Act 1968

ATO references

NO: 1-3NPRN8V

ISSN: 1445-2014

ATOlaw topic: Income Tax ~~ Return of capital
Income Tax ~~ Assessable income ~~ dividend, interest
and royalty income