

CR 2016/16 - Income tax: Global Resource Masters Fund Limited - return of capital



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Class Ruling

Income tax: Global Resource Masters Fund Limited – return of capital

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① 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 45B(3) of the ITAA 1936
- section 45C of the ITAA 1936, and
- section 104-135 of the *Income Tax Assessment Act 1997* (ITAA 1997).

All legislative references in this Ruling are to the ITAA 1936 unless otherwise stated.

Class of entities

3. The class of entities to which this Ruling applies is shareholders of Global Resource Masters Fund Limited (GRF) who:

- (a) are residents of Australia within the meaning of subsection 6(1) of the ITAA 1936
- (b) are registered on the GRF share register on 2 March 2016 (Record Date) and who continue to hold those shares on 9 March 2016 when the return of capital was paid
- (c) hold their GRF shares on capital account, that is, the shares are neither held as revenue assets (as defined in section 977-50 of the ITAA 1997) nor as trading stock (as defined in subsection 995-1(1) of the ITAA 1997), and
- (d) are not subject to the taxation of financial arrangements rules in Division 230 of the ITAA 1997 in relation to gains and losses on their GRF shares.

(Note: Division 230 of the ITAA 1997 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 'Participating 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 8 to 29 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.

Date of effect

7. This Ruling applies from 1 July 2015 to 30 June 2016. The Ruling continues to apply after 30 June 2016 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

8. 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.

9. GRF is an Australian public company limited by shares that was listed on the Australian Securities Exchange (ASX).

10. GRF was removed from the official list of the ASX as at the close of trading 11 March 2016 following confirmation of payment of the return of capital.

11. GRF was established in January 2009 to invest in various funds.

12. GRF employed a fund of funds or multi-manager style of investment in global fund products and managers specialising in the natural resources sector.

13. GRF's share capital structure consists only of ordinary shares.

14. GRF is a listed investment company as defined in section 115-290 of the ITAA 1997.

15. As at 29 January 2016:

- GRF had 23,663,477 ordinary shares on issue and 1,265 shareholders on the share register
- all shareholders on the GRF register were residents of Australia within the meaning of subsection 6(1). The shareholders are predominantly individuals and self-managed superannuation funds, and
- the share capital account of GRF was \$44,919,224.

16. As at 31 December 2015, GRF disclosed total accumulated losses in the accounts of \$14,444,782 (being the sum of accumulated losses of \$4,748,902 and Reserves of \$9,695,880).

17. GRF paid an unfranked dividend of 4 cents per share on 26 March 2012. GRF has not made any other dividend payments.

18. On 20 November 2014, shareholders approved an on-market share buy-back of a maximum of 25% of GRF shares until 20 November 2015.

19. On 17 November 2015, shareholders further approved an on-market share buy-back of a maximum of 50% of GRF shares over the following 12 months from that date.

20. As at 29 January 2016, GRF had purchased approximately 22.7 million shares under the on-market share buy-back representing 48% of the pre-buy-back capital of GRF.

21. Due to the significant shareholder demand for the on-market share buy-back approved on 17 November 2015, GRF announced on 18 December 2015 that it proposed to return all capital to all shareholders.

22. In accordance with the Notice of meeting dated 13 January 2016, GRF shareholders were asked to approve the return of capital to a maximum of \$30,729,000 which represents a maximum of approximately \$1.27 per share.

23. At the General Meeting held on 19 February 2016, GRF shareholders approved the return of capital.

24. On 24 February 2016, GRF announced that it will pay the return of capital of \$1.27 per share.

25. GRF divested its entire portfolio with the majority of assets held in cash, which was used to fund the return of capital.

26. The return of capital was paid on 9 March 2016 (Payment Date).

27. At the time of the return of capital, GRF did not have any retained profits in its accounts. The return of capital was debited in full against GRF's share capital account.

28. GRF's share capital account (as defined in section 975-300 of the ITAA 1997) is not tainted (within the meaning of Division 197 of the ITAA 1997).

29. GRF expects to seek further shareholder approval during April 2016 to enable GRF to be wound-up and to facilitate the return of the remaining cash (after payment of transaction costs and other liabilities) to shareholders.

Ruling

Return of capital not a dividend

30. The return of capital paid to Participating Shareholders is not a dividend as defined in subsection 6(1).

Anti-avoidance provision will not apply

31. The Commissioner will not make a determination under subsection 45B(3) that section 45C applies to the return of capital.

Capital gains tax

32. CGT event G1 happened when GRF paid the return of capital to a Participating Shareholder in respect of a GRF share that they owned at the Record Date and continued to own it at the Payment Date (section 104-135 of the ITAA 1997).

Commissioner of Taxation

23 March 2016

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.*

Return of capital not a dividend

33. The term 'dividend' is defined in subsection 6(1) and includes any distribution made by a company to any of its shareholders. However, paragraph (d) of the definition of 'dividend' excludes a distribution that is debited against an amount standing to the credit of the share capital account of the company.

34. As the return of capital will be recorded as being wholly debited to GRF's share capital account, the return of capital will not be a dividend.

35. With the exception of any capital gains made pursuant to CGT event G1 (section 104-135 of the ITAA 1997), the return of capital is not included in assessable income pursuant to sections 6-5 and 6-10 of the ITAA 1997.

Anti-avoidance provision will not apply

36. Section 45B is an anti-avoidance provision which, if it applies, allows the Commissioner to make a determination that section 45C applies to treat all or part of the return of capital as an unfranked dividend.

37. Section 45B applies where certain capital payments are made to shareholders in substitution for dividends. In broad terms, there needs to be a scheme in which, having regard to the relevant circumstances of the scheme, it would be concluded that the person, or one of the persons, who entered into the scheme or carried out the scheme or any part of the scheme did so for a purpose, other than an incidental purpose, of enabling the relevant taxpayer to obtain a tax benefit.

38. As the return of capital will generally result in a lesser amount of tax payable than an assessable dividend, Participating Shareholders will obtain a tax benefit for the purposes of section 45B.

39. Subsection 45B(8) lists the 'relevant circumstances' of the scheme which the Commissioner must have regard to when determining whether or not the requisite purpose exists.

40. Having regard to the relevant circumstances of the scheme, it cannot be concluded that the scheme was entered into or carried out for a more than incidental purpose of enabling Participating Shareholders to obtain a tax benefit.

41. Accordingly, the Commissioner will not make a determination under subsection 45B(3) that section 45C applies to the whole, or a part, of the payment for the return of capital.

Capital gains tax

42. CGT event G1 (section 104-135 of the ITAA 1997) happens when a company makes a payment to a shareholder in respect of a share they own and some or all of the payment (the non-assessable part) is not a dividend or an amount that is taken to be a dividend under section 47.

43. Accordingly, CGT event G1 happened when GRF paid the return of capital to a Participating Shareholder in respect of a GRF share that they owned at the Record Date and continued to own at the Payment Date.

44. A Participating Shareholder will make a capital gain if the return of capital amount is more than the cost base of the shareholder's GRF share. The amount of the capital gain is equal to that excess (subsection 104-135(3) of the ITAA 1997).

45. If a Participating Shareholder makes a capital gain from CGT event G1 happening, the cost base and reduced cost base of the GRF share is reduced to nil. A Participating Shareholder cannot make a capital loss from CGT event G1 happening (subsection 104-135(3) of the ITAA 1997).

46. If the return of capital amount is equal to or less than the cost base of the GRF share at the Payment Date, the cost base and reduced cost base of the GRF share will be reduced by the amount of the payment (subsection 104-135(4) of the ITAA 1997).

47. If the GRF share was originally acquired by a Participating Shareholder at least 12 months before the payment of the return of capital, a capital gain made pursuant to CGT event G1 happening may qualify as a discount capital gain under subsection 115-25(1) of the ITAA 1997, provided the other conditions in Subdivision 115-A of the ITAA 1997 are satisfied.

Example

48. If a Participating Shareholder acquired their GRF shares for \$1.60 and continued to hold those shares at the Payment Date, the cost base and reduced cost base of the GRF share will reduce to \$0.33 per share following the \$1.27 return of capital.

Appendix 2 – Detailed contents list

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

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Legislative references:

- ITAA 1997 6-5
 - ITAA 1997 6-10
 - ITAA 1997 104-135
 - ITAA 1997 104-135(3)
 - ITAA 1997 104-135(4)
 - ITAA 1997 Subdiv 115-A
 - ITAA 1997 115-25(1)
 - ITAA 1997 115-290
 - ITAA 1997 Div 197
 - ITAA 1997 Div 230
 - ITAA 1997 975-300
 - ITAA 1997 977-50
 - ITAA 1997 995-1(1)
 - TAA 1953
 - ITAA 1936
 - ITAA 1936 6(1)
 - ITAA 1936 45B
 - ITAA 1936 45B(3)
 - ITAA 1936 45B(8)
 - ITAA 1936 45C
 - ITAA 1936 47
 - ITAA 1997
-

ATO references

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distribution

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