


CR 2019/68 - Brambles Limited - return of capital

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Class Ruling

Brambles Limited – return of capital

❶ Relying on this Ruling

This publication (excluding appendix) 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 pay any penalties or interest in respect of the matters covered by this Ruling.

Further, if we think that this Ruling disadvantages you, we may apply the law in a way that is more favourable to you.

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What this Ruling is about

1. This Ruling sets out the income tax consequences for the shareholders of Brambles Limited (Brambles) who received the return of share capital (return of capital) from Brambles on 22 October 2019 (Payment Date).
2. Full details of this return of capital are set out in paragraphs 12 to 31 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 a Brambles shareholder on 15 October 2019 (Record Date) being the date for determining entitlement to receive the return of capital, and you:
 - held your ordinary shares in Brambles (Brambles shares) on capital account (that is, you neither held the Brambles shares as ‘revenue assets’ nor as ‘trading stock’ (as defined in section 977-50 and subsection 995-1(1) respectively), and
 - are a ‘resident of Australia’ as the term is defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936).

In this Ruling a holder of Brambles shares, as described in this paragraph, is referred to as a Brambles shareholder.

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 12 to 31 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 2019 to 30 June 2020.

Ruling

Return of capital not a dividend

7. No part of the return of capital paid to you by Brambles on the Payment Date is a dividend as defined in subsection 6(1) of the ITAA 1936.

Sections 45A, 45B and 45C do not apply

8. The Commissioner will not make a determination under sections 45A or 45B of the ITAA 1936 that section 45C of the ITAA 1936 applies to any part of the return of capital paid to you by Brambles on the Payment Date.

CGT events G1 and/or C2 happen

9. CGT event G1 (section 104-135) happened to you when Brambles paid you the return of capital in respect of the Brambles shares you owned on the Record Date and you continued to own at the Payment Date.

10. CGT event C2 (section 104-25) happened to you when Brambles paid you the return of capital in respect of the Brambles shares you owned at the Record Date and you have ceased to own at the Payment Date.

CGT discount

11. You can treat a capital gain made when CGT event G1 or CGT event C2 happens as a 'discount capital gain' under Subdivision 115-A provided you acquired your Brambles shares at least 12 months before the Payment Date (subsection 115-25(1)) and the other conditions in that Subdivision are satisfied.

Scheme

12. 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.

Background

13. Brambles is an Australian resident public company listed on the Australian Securities Exchange and is the ultimate holding company of the global Brambles Group.

14. As at 3 June 2019, Brambles had 1,594,723,306 fully paid ordinary shares on issue and the balance of Brambles' share capital account was A\$7,838,744,402. Brambles have only ordinary shares on issue. There was no material change to the share capital account prior to the payment of the return of capital (other than shares bought back through the on-market buy-back).

15. In March 2011, Brambles acquired the IFCO Group for €923 million (US\$1.03 billion). The IFCO Group carries on business in Europe, North America, South America, Asia and South Africa. The IFCO Group does not have any business operations in Australia.

16. The acquisition of the IFCO Group was partly funded by additional equity raised by Brambles, which consisted of:

- an underwritten share placement plan of A\$110 million, and
- an underwritten dividend reinvestment plan for the interim dividend for the year ended 30 June 2011 (paid in April 2011) of A\$188.5 million.

The remaining funds for the acquisition were sourced from the Brambles Group's external debt facilities.

17. Following the acquisition, Brambles contributed additional equity of US\$115 million to the IFCO Group to fund additional acquisitions and ongoing business operations. These funds were sourced from the available working capital of the Brambles Group and external debt facilities.

Sale of IFCO Group

18. On 25 February 2019, Brambles announced that it had entered into a binding agreement to sell the IFCO Group for US\$2.51 billion to Triton (an investment firm which principally invests in European businesses) and Luxinva (a wholly-owned subsidiary of the Abu Dhabi Investment Authority) (Trade Sale).

19. Upon completion of the Trade Sale, the Brambles Group recognised an accounting profit of US\$959.3 million from the sale of the IFCO Group, which was determined as follows:

	US\$m
Sale proceeds – enterprise value of IFCO Group	2,480.4
Less IFCO Group net assets disposed, foreign exchange loss and transaction costs	(1,521.1)
Profit on sale	959.3

20. On 25 February 2019, Brambles announced that it expected to receive approximately US\$2.36 billion of net cash proceeds from the transaction, after taxes, transaction costs and balance sheet items subject to customary closing adjustments.

21. Completion of the Trade Sale occurred on 31 May 2019.

Return of capital

22. On 3 June 2019, Brambles announced that it intends to return up to US\$1.95 billion of the proceeds from the Trade Sale to its shareholders, through a combination of a pro-rata return of cash of approximately US\$300 million and an on-market share buy-back

of Brambles shares of up to US\$1.65 billion. The balance of the proceeds will be used to repay debt to maintain leverage in line with the Brambles Group Board's approved credit policy.

23. The return of cash consisted of a return of capital and a Special Dividend, which was paid in addition to Brambles' normal dividend distributions.

24. The Special Dividend of A\$0.17 per share was declared on 2 September 2019 and was paid on 22 October 2019. The Special Dividend was not franked (that is, its franking percentage was 0%). The unfranked part of the Special Dividend has been declared to be conduit foreign income.

25. At Brambles' Annual General Meeting held on 10 October 2019, Brambles shareholders approved a return of capital of A\$0.12 per Brambles share amounting to approximately US\$121 million.

26. Brambles paid the return of capital of A\$0.12 per share on the Payment Date. The return of capital was paid equally to each shareholder listed on Brambles' share register on the Record Date for the return of capital.

27. Brambles debited the entire amount of the return of capital against the company's share capital account. There was no change in either the number of Brambles shares on issue or the proportionate interest of each shareholder in Brambles as a consequence of the return of capital.

28. Brambles have confirmed that its share capital account, as defined in section 975-300, is not tainted within the meaning of Division 197.

Other matters

29. Brambles have consistently paid partly franked dividends in the previous five financial years. Special dividends have also been paid with final dividends in some years.

30. Brambles' shareholders are a mix of individuals, companies, trusts, partnerships and superannuation funds.

31. As at 3 June 2019, the shareholders of Brambles are, for Australian income tax purposes:

- 52.37% Australian residents, and
- 47.63% foreign residents.

Appendix – Explanation

ⓘ *This Explanation 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.*

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Return of capital not a dividend

32. Subsection 44(1) of the ITAA 1936 includes in a shareholder's assessable income any dividends paid to the shareholder out of profits derived by the company from any source if the shareholder is a resident of Australia.

33. 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. However, paragraph (d) of the definition of 'dividend' excludes a distribution from the meaning of dividend if the amount of the distribution is debited against an amount standing to the credit of the company's share capital account.

34. The term '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.

35. Subsection 975-300(3) provides that an account is generally taken not to be a share capital account if it is tainted. Brambles have confirmed that its share capital account is not tainted within the meaning of Division 197.

36. The return of capital was recorded as a debit to Brambles' untainted share capital account. As such, paragraph (d) of the definition of dividend in subsection 6(1) of the ITAA 1936 applies and the return of capital is not a dividend as defined in subsection 6(1).

Sections 45A, 45B and 45C do not apply

37. Sections 45A and 45B of the ITAA 1936 are two anti-avoidance provisions which, if they apply, allow the Commissioner to make a determination that section 45C of the ITAA 1936 applies to treat all or part of the return of capital received by Brambles shareholders as an unfranked dividend paid by the company out of profits.

Section 45A – streaming of dividends and capital benefits

38. Section 45A of the ITAA 1936 applies where capital benefits are streamed to some shareholders (Advantaged Shareholders), who would derive a greater benefit from the receipt of capital than other shareholders (Disadvantaged Shareholders) and it is reasonable to assume that the Disadvantaged Shareholders receive, or are likely to receive, dividends.

39. Paragraph 45A(3)(b) of the ITAA 1936 provides that a reference to the 'provision of a capital benefit to a shareholder in a company' includes the distribution to the shareholder of share capital.

40. Although a 'capital benefit' was provided to Brambles shareholders, the circumstances of the return of capital indicate that there was no streaming of capital benefits to some Brambles shareholders and dividends to other Brambles shareholders.

41. Accordingly, 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 return of capital.

Section 45B – scheme to provide capital benefits

42. Section 45B of the ITAA 1936 applies where certain capital payments are made to shareholders in substitution for dividends. In broad terms, section 45B of the ITAA 1936 applies where:

- there is a scheme under which a person is provided with a capital benefit by a company
- under the scheme, a taxpayer (relevant taxpayer), who may or may not be the person provided with the capital benefit, obtains a tax benefit, 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 a taxpayer (relevant taxpayer) to obtain a tax benefit.

43. The return of capital satisfies the first two conditions. However, 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 Brambles shareholders to obtain a tax benefit.

44. Accordingly, the Commissioner will not make a determination under subsection 45B(3) of the ITAA 1936 that section 45C of the ITAA 1936 applies in relation to the whole, or a part, of the return of capital.

CGT events G1 and/or C2 happen**CGT event G1**

45. CGT event G1 happens if a company makes a payment to a shareholder in respect of a share they own in the company, 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 of the ITAA 1936, and the payment is not included in the shareholder's assessable income (section 104-135).

46. CGT event G1 happened to a Brambles shareholder when Brambles made the return of capital to them in respect of Brambles shares they owned at the Record Date and continued to own at the Payment Date (section 104-135).

47. A Brambles shareholder will make a capital gain from CGT event G1 happening if the amount of the return of capital of A\$0.12 is more than the cost base of the shareholder's Brambles share. If so, the capital gain is equal to the amount of the excess and the cost base and reduced cost base of the Brambles share is reduced to nil (subsection 104-135(3)). No capital loss can be made from CGT event G1 (Note 1 to subsection 104-135(3)).

48. If the amount of the return of capital of A\$0.12 per share is not more than the cost base of the shareholder's Brambles share, the cost base and reduced cost base of the share are reduced (but not below nil) by the amount of the return of capital (subsection 104-135(4)).

CGT event C2

49. If, after the Record Date but before the Payment Date, a Brambles shareholder ceased to own a Brambles share in respect of which the return of capital was payable, the right to receive the return of capital in respect of that share is retained by the Brambles shareholder and is a separate CGT asset from the Brambles share.

50. CGT event C2 happened when the return of capital was made. The right to receive the return of capital, being an intangible asset, ended by the right being discharged or satisfied when the return of capital was made (section 104-25).

51. A Brambles shareholder will make a capital gain under CGT event C2 if the capital proceeds from the ending of the right are more than the cost base of the right. The capital gain is equal to the amount of the excess. A Brambles shareholder will make a capital loss if the capital proceeds from the ending of the right are less than the reduced cost base of the right. The capital loss is equal to the amount of the difference (subsection 104-25(3)).

52. In working out the capital gain or capital loss when CGT event C2 happens, the capital proceeds are equal to the amount of the return of capital (A\$0.12 per share) (subsection 116-20(1)).

53. The cost base of the Brambles shareholder's right to receive each return of 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 Brambles shareholder to the extent that it was applied in working out a capital gain or capital loss made when a CGT event happened to the share, for example, when the Brambles shareholder disposed of the share after the Record Date and before the Payment Date. Therefore, if the cost base or reduced cost base of the share previously owned by a Brambles shareholder has been fully applied in working out a capital gain or capital loss on the share, the right to receive the return of capital will have a nil cost base. As a result, a Brambles shareholder will, in those circumstances, make a capital gain equal to the capital proceeds, being A\$0.12 per Brambles share owned at the Record Date.

References*Previous draft:*

Not previously issued as a draft

Legislative references:

- ITAA 1936 6(1)
- ITAA 1936 44(1)
- ITAA 1936 45A
- ITAA 1936 45A(2)
- ITAA 1936 45A(3)(b)
- ITAA 1936 45B
- ITAA 1936 45B(3)
- ITAA 1936 45C
- ITAA 1936 47
- 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 Div 110
- ITAA 1997 Div 112
- ITAA 1997 Subdiv 115-A
- ITAA 1997 115-25(1)
- ITAA 1997 116-20(1)
- ITAA 1997 Div 197
- ITAA 1997 Div 230
- ITAA 1997 975-300
- ITAA 1997 975-300(3)
- ITAA 1997 977-50
- ITAA 1997 995-1(1)

ATO references

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 Income tax ~~ Capital gains tax ~~ Discount capital gains
 Income tax ~~ Capital management ~~ Anti avoidance rules ~~ Section 45A
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 Income tax ~~ Capital management ~~ Returning capital ~~ Share capital
 return

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