


***CR 2020/63 - Murray Goulburn Co-operative Co. Limited (in liquidation) - interim liquidator's distribution***

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## Class Ruling

### Murray Goulburn Co-operative Co. Limited (in liquidation) – interim liquidator’s distribution

#### **📌 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 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 tax consequences for Australian-resident shareholders of Murray Goulburn Co-operative Co. Limited (in liquidation) (MGCL) in relation to the interim liquidator’s distribution paid following the voluntary liquidation of the company.
2. Full details of the scheme are set out in paragraphs 10 to 18 of this Ruling.
3. All legislative references in this Ruling are to provisions of the *Income Tax Assessment Act 1936* unless otherwise indicated.

#### **Who this Ruling applies to**

4. This Ruling applies to you if you were a holder of ordinary shares in MGCL who:
  - was listed on the MGCL share register on 5 October 2020, being the date for determining entitlements to receive the return of capital, and
  - held your shares on capital account (that is, you neither held your MGCL shares as ‘revenue assets’ nor as ‘trading stock’ (as defined in section 977-50 and subsection 995-1(1) of the *Income Tax Assessment Act 1997* (ITAA 1997) respectively).

A holder of ordinary shares in MGCL is referred to as an MGCL shareholder.

5. This Ruling does not apply to anyone who is subject to the taxation of financial arrangements rules in Division 230 of the ITAA 1997 in relation to the scheme outlined in paragraphs 10 to 18 of this Ruling.

**Note:** Division 230 of the ITAA 1997 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 2020 to 30 June 2021.

## Ruling

### Distribution not a dividend

7. No part of the interim liquidator's distribution will be a deemed dividend under section 47.

### Section 45B

8. The Commissioner will not make a determination under paragraph 45B(3)(b) that section 45C applies to treat the interim liquidator's distribution paid to you as a dividend.

### Part IVA

9. The Commissioner will not make a determination under section 177F in relation to the scheme.

## Scheme

10. 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.

11. MGCL is an unlisted company.

12. On 27 October 2017, the company announced the sale of its operating assets and operating liabilities to Saputo Dairy Australia Pty Ltd (Saputo) for \$1.31 billion. The sale to Saputo was completed on 1 May 2018.

13. As part of the Saputo transaction, MGCL agreed to retain liabilities associated with class actions by MGCL Unit Trust unitholders against it (Retained Litigation). MGCL set aside some of the sale proceeds from the Saputo transaction to appropriately manage any potential exposure it had in respect of the Retained Litigation. The remainder of the sale proceeds were distributed to MGCL shareholders, convertible preference shareholders, and equity note holders.

14. Following Federal Court of Australia approval of the settlements of the Retained Litigation, the MGCL board called an extraordinary general meeting for the purpose of obtaining approval from MGCL shareholders for a shareholders' voluntary winding up.

15. MGCL entered into voluntary liquidation on 26 June 2020.

16. MGCL had an amount of \$287.436 million standing to the credit of its issued capital accounts immediately prior to the liquidator's distribution.

17. The liquidator has made an interim liquidator's distribution on 19 October 2020 of 43c per ordinary share, which equates to a total distribution of approximately \$145 million to MGCL shareholders. This distribution was debited to the issued capital accounts of MGCL.

18. MGCL's share capital account is not tainted for the purposes of Division 197 of the ITAA 1997.

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**Commissioner of Taxation**11 November 2020

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**Appendix – Explanation**

**①** *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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**Distribution not a dividend**

19. Section 47 deals with distributions by a liquidator. It states that distributions to shareholders of a company by a liquidator in the course of winding up the company, to the extent to which they represent income derived by the company (whether before or during liquidation) other than income which has been properly applied to replace a loss of paid-up share capital, shall for the purposes of this Act be deemed to be dividends paid to the shareholders by the company out of profits derived by it.

20. The interim distribution of 43c per MGCL share will not be deemed to be dividend paid to the shareholders by the company out of profits derived by it.

**Section 45B**

21. Section 45B applies where the conditions in subsection 45B(2) are met and it is concluded that certain capital benefits are provided to shareholders in substitution for dividends.

22. Where the requirements of subsection 45B(2) are met, paragraph 45B(3)(b) empowers the Commissioner to make a determination that section 45C applies in relation to the whole, or a part, of the capital benefit such that it will be treated as an unfranked dividend, so that it can be included in the assessable income of the relevant taxpayer.

23. The payment of the interim liquidator's distribution by the voluntary liquidator of MGCL will constitute a scheme under which the shareholders are provided with a capital benefit (paragraph 45B(5)(b)).

24. For the provision to apply, among other things, paragraph 45B(2)(c) requires that, having regard to the relevant circumstances of the scheme, it would be concluded that the person, or one of the persons, entered into the scheme or carried out the scheme or any part of the scheme for the purpose, other than an incidental purpose, of enabling a taxpayer to obtain a tax benefit. A non-exhaustive list of relevant circumstances of the scheme is provided in subsection 45B(8).

25. Having regard to the relevant circumstances surrounding the interim liquidator's distribution, it cannot be concluded that MGCL, the shareholders or any other person entered into or carried out the scheme for the purpose of enabling the shareholders to obtain a tax benefit.

26. Accordingly, the Commissioner will not make a determination under paragraph 45B(3)(b) that section 45C applies to treat the whole, or part of, a capital benefit that arises from the interim liquidator's distribution as a dividend in the hands of the shareholders.

#### **Part IVA**

27. The Commissioner will not make a determination under section 177F in relation to the scheme.

28. Based upon the specific facts and circumstances of this scheme, the Commissioner will not make a determination under section 177F in relation to the scheme as it does not constitute a scheme to which Part IVA applies.

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## References

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*Previous draft:*

Not previously issued as a draft

- ITAA 1936 45C
- ITAA 1936 47
- ITAA 1936 Pt IVA
- ITAA 1936 177F
- ITAA 1997 Div 197
- ITAA 1997 Div 230
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- TAA 1953

*Legislative references:*

- ITAA 1936 45B
  - ITAA 1936 45B(2)
  - ITAA 1936 45B(2)(c)
  - ITAA 1936 45B(3)(b)
  - ITAA 1936 45B(5)(b)
  - ITAA 1936 45B(8)
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ATO references

NO: 1-MH5UY5B

ISSN: 2205-5517

BSL: PGI

ATOlaw topic: Income tax ~~ Capital management ~~ Anti avoidance rules ~~ Section 45A  
Income tax ~~ Capital management ~~ Anti avoidance rules ~~ Section 45B  
Income tax ~~ Capital management ~~ Anti avoidance rules ~~ Section 45C

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