

# ***CR 2021/14 - Metgasco Ltd - return of capital by way of in specie distribution***



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## Class Ruling

### Metgasco Ltd – return of capital by way of in specie distribution

#### **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 penalties or interest in respect of the matters covered by this Ruling.

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#### **What this Ruling is about**

1. This Ruling sets out the tax consequences of the return of capital paid on 29 December 2020 (Payment Date) by Metgasco Ltd (Metgasco).
2. Full details of the return of capital are set out in paragraphs 8 to 22 of this Ruling.
3. All legislative references in this Ruling are to provisions of the *Income Tax Assessment Act 1997* unless otherwise indicated.

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

4. This Ruling applies to you if you were a holder of Metgasco shares who:
  - was listed on the Metgasco share register on 18 December 2020 (Record Date), being the date for determining entitlements to receive the return of capital, and continued to be listed on the register up to and including the Payment Date
  - held your Metgasco shares on capital account, that is, your Metgasco shares were neither held as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)), and
  - was paid the return of capital on the Payment Date by Metgasco.
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 8 to 22 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 2020 to 30 June 2021.

## Ruling

### Sections 45B and 45C of the ITAA 1936 do not apply

7. The Commissioner will not make a determination under paragraph 45B(3)(b) of the *Income Tax Assessment Act 1936* (ITAA 1936) that section 45C of the ITAA 1936 applies to the whole, or a part, of the Return of Capital.

## Scheme

8. 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

9. Metgasco is a public company, incorporated in Australia and listed on the Australian Securities Exchange (ASX) since 23 December 2004.
10. Metgasco specialises in gas exploration, appraisal, investment, and development of associated energy infrastructure.
11. Metgasco has historically financed these projects by way of equity raisings.
12. Metgasco's business has primarily focused on coal seam gas assets in northern New South Wales. Its principal activities have included gas exploration, appraisal, development, and commercialisation of hydrocarbon assets.
13. Metgasco holds equity interests in Byron Energy Limited (Byron). Metgasco held just under 4% of the issued capital in Byron prior to the in specie distribution.

## The in specie distribution to shareholders

14. As part of the Metgasco Board's considerations to unlock the value of the company's Byron investment for the benefit of shareholders, it was resolved that the bulk of Metgasco's Byron shares should be distributed to shareholders (In specie Distribution). The In specie Distribution was announced on the ASX on 1 October 2019.
15. The In specie Distribution occurred by way of a shareholder approved capital reduction pursuant to sections 256B and 256C(1) of the *Corporations Act 2001* and ASX Listing Rule 10, and involved the pro rata distribution of 20,000,000 Byron shares (of Metgasco's 38,879,621 Byron shares) to shareholders on an approximately 1:27.5 basis. Metgasco retained the remainder of the Byron shares.
16. The market value of the In specie Distribution to the shareholder is \$3,199,839, or 0.58 cents per Metgasco share. The distribution occurred on the Payment Date.

17. The distribution was debited against Metgasco's share capital account. The journal entries to record the return of capital were:

DR share capital	\$3,199,839	
CR investment in listed securities		\$3,199,839

**Other matters**

18. As at the Payment Date, Metgasco had approximately:

- \$114,927,561 share capital, and
- \$102,888,117 accumulated losses.

19. Metgasco has never paid dividends, whether franked or unfranked, to its shareholders, nor has it realised any economic trading profits. Metgasco has a nil franking account balance.

20. Metgasco had previously undertaken a return of capital to shareholders in 2016.

21. As at the Payment Date, Metgasco had 98.80% of its issued share capital held by registered owners domiciled within Australia. Accordingly, 1.20% of Metgasco's issued share capital is held by registered owners who are not domiciled within Australia.

22. The Metgasco share capital account is not tainted within the meaning of Division 197.

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**Commissioner of Taxation**17 February 2021

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## **Appendix – Explanation**

**❶** *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.*

### **Application of sections 45B and 45C of the ITAA 1936**

#### **Section 45B of the ITAA 1936 – scheme to provide capital benefits**

23. Section 45B of the ITAA 1936 applies where certain capital payments are made to shareholders in substitution for dividends. Specifically the provision applies where:

- there is a scheme under which a person is 'provided with a capital benefit' by a company (paragraph 45B(2)(a))
- 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)), and
- having regard to the relevant circumstances of the scheme, it would be concluded that the person, or one of the persons, who entered 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 (paragraph 45B(2)(c)).

24. The arrangement involving the return of capital to Metgasco shareholders constitutes a scheme for the purposes of section 45B of the ITAA 1936.

25. The return of capital was recorded as a debit to Metgasco's share capital account and Metgasco shareholders received a distribution of 0.58 cents per share. Therefore, Metgasco shareholders were provided with a capital benefit (paragraph 45B(5)(b) of the ITAA 1936).

26. The meaning of 'obtaining a tax benefit' is defined in subsection 45B(9) of the ITAA 1936 as occurring where the amount of tax payable from the treatment of a return of capital distribution as a capital benefit under the capital gains tax provisions would, apart from the operation of section 45B, be less than the amount that would be payable if the distribution had instead been a dividend.

27. As a return of capital will generally result in a lesser amount of tax payable than a dividend, Metgasco shareholders will obtain a tax benefit.

28. Paragraph 45B(2)(c) of the ITAA 1936 sets out an objective purpose test for the Commissioner to consider having regard to the 'relevant circumstances' of the scheme set out in subsection 45B(8) of the ITAA 1936.

29. Having regard to the relevant circumstances of the scheme set out in subsection 45B(8) of the ITAA 1936, it cannot be concluded that the scheme was entered into or carried out for a more than incidental purpose of enabling Metgasco shareholders to obtain a tax benefit.

30. Accordingly, 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 part, of the payment for the return of capital.

**References***Previous draft:*

Not previously issued as a draft

- ITAA 1936 45B(5)(b)

- ITAA 1936 45B(8)

- ITAA 1936 45B(9)

- ITAA 1936 45C

- ITAA 1997 Div 197

- ITAA 1997 Div 230

- ITAA 1997 977-50

- ITAA 1997 995-1(1)

- TAA 1953

- Corporations Act 2001 256B

- Corporations Act 2001 256C(1)

*Legislative references:*

- ITAA 1936 45B

- ITAA 1936 45B(2)(a)

- ITAA 1936 45B(2)(b)

- ITAA 1936 45B(2)(c)

- ITAA 1936 45B(3)

- ITAA 1936 45B(3)(b)

## ATO references

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