


CR 2022/105 - Thorn Group Limited - return of capital and share consolidation

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Status: **legally binding**

Class Ruling

Thorn Group Limited – return of capital and share consolidation

📌 Relying on this Ruling

This publication 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 income tax consequences for shareholders of Thorn Group Limited (Thorn) who received the return of share capital of \$0.12 per Thorn share (Capital Return) and had their Thorn shares consolidated (Share Consolidation) on 14 October 2022 (Payment Date).
2. Details of this scheme are set out in paragraphs 18 to 35 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:
 - received the Capital Return payment and had your Thorn shares consolidated on the Payment Date, and
 - held your Thorn shares on capital account; that is, you did not hold your Thorn shares as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)).
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 18 to 35 of this Ruling.

Note: Division 230 will not apply to individuals unless they have made an election for it to apply.

Status: **legally binding**

When this Ruling applies

6. This Ruling applies from 1 July 2022 to 30 June 2023.

Ruling

Return of capital not a dividend

7. No part of the Capital Return you received from Thorn on the Payment Date is a dividend as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936). This is because the entire amount of the Capital Return has been debited against an amount standing to the credit of Thorn's share capital account. Therefore, no part of the Capital Return is included in your assessable income as a dividend under subsection 44(1) of the ITAA 1936.

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

8. The Commissioner will not make a determination that section 45C of the ITAA 1936 applies to any part of the Capital Return you received on the Payment Date, under either:

- subsection 45A(2) of the ITAA 1936 – because there was no streaming of capital benefits to some Thorn shareholders and dividends to other Thorn shareholders as required by subsection 45A(1) of the ITAA 1936, or
- paragraph 45B(3)(b) of the ITAA 1936 – because the requirements of subsection 45B(2) of the ITAA 1936 were not satisfied.

Capital gains tax consequences

CGT event G1

9. CGT event G1 happened on the Payment Date when Thorn paid to you the Capital Return in respect of each Thorn share you owned on 6 October 2022 (Capital Return Record Date) and continued to own at the Payment Date (section 104-135).

10. You made a capital gain when CGT event G1 happened if the Capital Return you received was more than your Thorn share's cost base (subsection 104-135(3)).

11. If the Capital Return you received was not more than the cost base of your Thorn share, the cost base and reduced cost base of your Thorn share is reduced by the amount of the Capital Return (subsection 104-135(4)).

CGT event C2

12. CGT event C2 happened to your right to receive the Capital Return on the Payment Date when Thorn paid you the Capital Return in respect of each Thorn share you owned on the Capital Return Record Date but ceased to own before the Payment Date (section 104-25).

13. You made a capital gain under CGT event C2 if the capital proceeds from the ending of the right were more than the cost base of the right. You made a capital loss if the capital proceeds from the ending of the right were less than the reduced cost base of the right (subsection 104-25(3)).

Status: **legally binding**

Discount capital gain

14. You can treat a capital gain made when CGT event G1 or CGT event C2 happened as a discount capital gain if you acquired your Thorn shares at least 12 months before the Payment Date (subsection 115-25(1)), provided the other conditions in Subdivision 115-A are satisfied.

Foreign-resident shareholders

15. If, on the Payment Date, you were a foreign resident or the trustee of a foreign trust for CGT purposes as defined in subsection 995-1(1), you disregard any capital gain made from CGT event G1 or any capital gain or capital loss from CGT event C2 happening to your Thorn shares, pursuant to subsection 855-10(1), unless you:

- have used your Thorn shares at any time in carrying on a business through a permanent establishment in Australia (table item 3 of section 855-15), or
- are an individual and your Thorn shares were covered by subsection 104-165(3) (choosing to disregard a capital gain or capital loss on ceasing to be an Australian resident) (table item 5 of section 855-15).

Share consolidation

16. No CGT event will occur as a result of the Share Consolidation (subsection 112-25(4)).

17. Each element of the cost base and reduced cost base of your consolidated Thorn shares is the sum of the corresponding element of each original Thorn share you held before the Share Consolidation (subsection 112-25(4)).

Scheme

18. 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.

Thorn Group Limited

19. Thorn is a public company incorporated in Australia on 23 January 1996. It has been listed on the Australian Securities Exchange (ASX) since 2006.

20. Thorn is in the business of providing of commercial finance to small and medium-sized enterprises and leasing of household products to consumers.

21. As at 31 March 2022, Thorn had:

- \$158.049 million credited to its share capital account, and
- \$60.858 million in accumulated losses.

22. On 31 August 2022, Thorn had 347,633,465 ordinary shares on issue to over 3,100 shareholders comprised of individuals, companies, trusts, partnerships and superannuation funds. Approximately 50% of the Thorn shares on issue were held by non-resident shareholders.

Status: **legally binding**

Disposal of the Radio Rentals business and the warehouse facility restructure

23. On 20 December 2021, Thorn disposed the assets of its Radio Rentals appliance leasing business to Credit Corp Group Limited for a net gain of \$11.7 million. The disposal consideration was \$43.9 million, with an additional amount of approximately \$2.3 million payable on a deferred and conditional basis.

24. On 3 August 2022, Thorn announced its securitised and rated warehouse facility, Thorn ABS Warehouse Trust No.1, had been restructured and re-commenced utilisation.

25. The proceeds from the disposal of the Radio Rentals assets and the restructure of Thorn ABS Warehouse Trust No.1 were in excess of Thorn's business requirements. As a result, the directors of Thorn decided to return the surplus funds back to Thorn shareholders.

Return of capital and share consolidation

26. On 19 August 2022, Thorn announced the Capital Return and Share Consolidation.

27. The Capital Return (being an equal reduction of capital under section 256B of the *Corporations Act 2001*) and the Share Consolidation (under section 254H of the same Act) were approved by the shareholders of Thorn in the Extraordinary General Meeting held on 30 September 2022.

28. On the Payment Date, Thorn shareholders:

- received the Capital Return (being \$0.12 per share) for each Thorn share they held on the Capital Return Record Date, and
- had every 10 of their Thorn shares held on 10 October 2022 (the record date for the Share Consolidation) consolidated to one Thorn share.

29. The Capital Return was paid from Thorn's available cash balance. The entire Capital Return amount of \$41,716,015.80 was debited to Thorn's share capital account.

30. Thorn shareholders received no consideration for the Share Consolidation.

31. The Capital Return and Share Consolidation were consistent with Thorn's commitment to efficient capital management.

32. There was no change to the proportionate interest of each shareholder in Thorn following the Capital Return and the Share Consolidation.

Other matters

33. The share capital account (as defined in section 975-300) of Thorn is not tainted within the meaning of Division 197.

34. Thorn paid a fully franked special dividend of \$0.07 per share on 9 February 2022, a year-end final dividend of \$0.01 per share on 25 July 2022 and a further fully franked special dividend of \$0.03 per share on 8 September 2022.

35. Thorn does not hold any 'taxable Australian property' for the purposes of Division 855.

Commissioner of Taxation

16 November 2022

Status: **not legally binding**

References

Related Rulings/Determinations:

TR 2006/10

- ITAA 1997 104-135(4)
- ITAA 1997 104-165(3)
- ITAA 1997 112-25(4)
- ITAA 1997 Subdiv 115-A
- ITAA 1997 115-25(1)
- ITAA 1997 Div 197
- ITAA 1997 Div 230
- ITAA 1997 Div 855
- ITAA 1997 855-10(1)
- ITAA 1997 855-15
- ITAA 1997 975-300
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- Corporations Act 2001 256B
- Corporations Act 2001 254H

Legislative references:

- ITAA 1936 6(1)
- ITAA 1936 44(1)
- ITAA 1936 45A(1)
- ITAA 1936 45A(2)
- ITAA 1936 45B(2)
- ITAA 1936 45B(3)(b)
- ITAA 1936 45C
- ITAA 1997 104-25
- ITAA 1997 104-25(3)
- ITAA 1997 104-135
- ITAA 1997 104-135(3)

ATO references

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shares

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