


CR 2022/56 - Tower Limited - capital return

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Status: **legally binding**

Class Ruling

Tower Limited – capital return

📌 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 Australian shareholders of Tower Limited (Tower) who, on 22 March 2022 (Payment Date), received A\$0.67039128 for every one ordinary share in Tower (Tower share) that was cancelled under the scheme (Capital Return).
2. Full details of this scheme are set out in paragraphs 14 to 32 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:
 - are a ‘resident of Australia’ as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936)
 - are not a ‘temporary resident’ as defined in subsection 995-1(1)
 - were registered on the Tower share register with an Australian address on 8 March 2022 (Record Date), and
 - held your Tower shares on capital account on the Record Date; that is, you did not hold your Tower 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 14 to 32 of this Ruling.

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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 2021 to 30 June 2022.

Ruling

Capital Return is not a share buy-back

7. The Capital Return is not a share buy-back for the purposes of Division 16K of Part III of the ITAA 1936 as Tower did not buy back your shares.

Capital Return is not a dividend

8. No part of the Capital Return paid to you by Tower on the Payment Date is a dividend as defined in subsection 6(1) of the ITAA 1936. This is because the entire amount of the Capital Return has been debited against an amount standing to the credit of Tower's share capital account. Therefore, no part of the Capital Return is included in your assessable income as a dividend under subparagraph 44(1)(a)(i) of the ITAA 1936.

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

9. 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:

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

10. Therefore, no part of the Capital Return is taken to be an unfranked dividend, under those provisions, that was paid by Tower to you.

Capital gains tax consequences

CGT event C2

11. CGT event C2 happened on 9 March 2022 (Implementation Date), being the date your Tower share was cancelled (section 104-25).

12. You made a capital gain from CGT event C2 happening if the capital proceeds you received on the cancellation of your Tower share were more than the cost base of your Tower share. You made a capital loss from CGT event C2 happening if the capital proceeds from the cancellation of your Tower share were less than the reduced cost base of your Tower share (subsection 104-25(3)).

13. The capital proceeds from CGT event C2 happening on the cancellation of your Tower share are equal to the amount of the Capital Return you received for each Tower share that was cancelled (subsection 116-20(1)).

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Scheme

14. 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

15. Tower is a public company listed on the New Zealand Exchange and the Australian Securities Exchange. It is incorporated in New Zealand and is a tax resident of New Zealand.

16. Tower is licensed to undertake general insurance business in New Zealand under the *Insurance (Prudential Supervision) Act 2010* (NZ).

17. Tower issued share capital of approximately NZ\$47.3 million in October 2019 to fund the acquisition of Youi NZ Pty Limited's New Zealand insurance portfolio (Youi transaction) and to address changes in its regulatory capital requirements.

18. The Youi transaction was completed in December 2019 for approximately NZ\$13 million.

19. As at 30 September 2021, Tower had:

- consolidated accumulated losses of NZ\$39.995 million
- contributed equity of NZ\$492.424 million, and
- 421,647,258 ordinary shares on issue, being the only class of shares on issue.

Capital Return

20. On 13 December 2021, Tower announced that a proposed capital return of NZ\$0.72 for each Tower share to be cancelled (totalling approximately NZ\$30.4 million) will be implemented by way of a court-approved scheme of arrangement.

21. Tower determined it had share capital surplus to its requirements following:

- the receipt of net proceeds of NZ\$42.1 million for the settlement of its claims against the Earthquake Commission in November 2020, and
- a reduction in Tower's regulatory capital requirements from NZ\$50 million to NZ\$25 million effective from March 2021.

22. On 2 February 2022, the proposed capital return was approved at Tower's annual shareholders meeting.

23. On 1 March 2022, the High Court of New Zealand issued final orders approving the proposed capital return under Part 15 of the *Companies Act 1993* (NZ).

24. On 9 March 2022 (Implementation Date), a total of 42,163,271 Tower shares were cancelled, being one ordinary share for every 10 ordinary shares held on 8 March 2022 (Record Date), with fractions rounded up or down to the nearest whole share (with 0.5 rounded down).

25. On 22 March 2022 (Payment Date), each Tower shareholder who held shares on the Record Date received NZ\$0.72 (with shareholders with an Australian address on the share register on the Record Date receiving \$A0.67039128, being NZ\$0.72 converted at the NZ\$/A\$ exchange rate of 0.931099) for each Tower share that was cancelled under

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the scheme.

26. The total capital return of NZ\$30.4 million was paid from Tower's available cash balances and debited to Tower's share capital account and the following accounting entry was recorded by Tower:

DR Contributed Equity	NZ\$30.4 million
	CR Cash
	NZ\$30.4 million

27. Following the cancellation of shares under the scheme, Tower had 379,483,987 ordinary shares on issue.

Other matters

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

29. Tower paid interim and final dividends for the financial year ended 30 September 2021, totalling approximately NZ\$21 million.

30. On 23 February 2021, Tower announced an updated dividend policy of maintaining a payout ratio on its ordinary shares of between 60% and 80% of its cash earnings, where prudent to do so.

31. As at 15 November 2021, the majority of Tower's shareholders resided outside of Australia, including its largest shareholder who held 19.99% of Tower shares, and approximately 12.8% of Tower shares were held by shareholders with an Australian address on the Tower share register.

32. All Tower shares on issue were acquired by shareholders on or after 20 September 1985.

Commissioner of Taxation

15 June 2022

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References

Legislative references:

- ITAA 1936 6(1)
- ITAA 1936 44(1)(a)(i)
- ITAA 1936 45A
- ITAA 1936 45A(1)
- ITAA 1936 45A(2)
- ITAA 1936 45B(2)
- ITAA 1936 45B(3)(b)
- ITAA 1936 45C
- ITAA 1936 Div 16K
- ITAA 1997 104-25
- ITAA 1997 104-25(3)

- ITAA 1997 116-20(1)
- ITAA 1997 Div 197
- ITAA 1997 Div 230
- ITAA 1997 975-300
- ITAA 1997 977-50
- ITAA 1997 995-1(1)

Other references:

- Companies Act 1993 (NZ) Pt 15
- Insurance (Prudential Supervision) Act 2010 (NZ)

ATO references

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