

CR 2023/2 - Euroz Hartleys Group Limited - employee share scheme - capital return



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Status: **legally binding**

Class Ruling

Euroz Hartleys Group Limited – employee share scheme – capital return

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 income tax consequences for employees of Euroz Hartleys Group Limited (EZL) who received \$1.2027 on 2 December 2022 (Payment Date) for every ordinary share in EZL, held under the terms of the EZL Performance Rights Plan (PRP), that was cancelled under the scheme (Capital Return).
2. Details of this scheme are set out in paragraphs 17 to 38 of this Ruling.
3. All legislative references in this Ruling are to provisions of the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997* (as detailed in the table in the Appendix to this Ruling), unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you:
 - are a resident as defined in subsection 6(1)
 - held an EZL share under the PRP (Plan Share) on 25 November 2022 (Record Date) which had not previously been subject to a deferred taxing event under Division 83A
 - had your Plan Share cancelled on 28 November 2022 (Share Cancellation Date), and
 - did not hold your Plan Share as trading stock (as defined in subsection 995-1(1)).

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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 17 to 38 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 2022 to 30 June 2023.

Ruling

ESS deferred taxing point

7. The PRP is an employee share scheme as defined in subsection 83A-10(2).

8. Performance rights granted under the PRP are ESS interests, as defined in paragraph 83A-10(1)(b).

9. Subdivision 83A-C applied to the performance rights granted to you, as the requirements set out in section 83A-105 for tax deferral were satisfied.

10. The ESS deferred taxing point in respect to a Plan Share that was cancelled under the Capital Return will be on the Share Cancellation Date, as determined in section 83A-120.

11. Your assessable income for the 2022–23 income year includes the market value, at the Share Cancellation Date, of the cancelled Plan Share, reduced by the cost base of the Plan Share, if any (subsection 83A-110(1)). EZL calculated the market value of a cancelled Plan Share to be \$1.2027 (which the Commissioner accepts), being the 4-day volume-weighted average (VWAP) share price of EZL's shares traded on the Australian Securities Exchange (ASX) up to and including the last day of trading on a 'cum capital reduction' basis prior to the Record Date.

12. Subdivision 83A-C will continue to apply to Plan Shares which have not been cancelled.

13. CGT event C2 happened to your Plan Share because it was cancelled on the Share Cancellation Date (section 104-25). However, you can disregard any capital gain or capital loss arising from CGT event C2 happening as the requirements set out in subsection 130-80(1) were satisfied.

Capital Return is not a dividend

14. No part of the Capital Return paid to you by EZL on the Payment Date is a dividend as defined in subsection 6(1). This is because the entire amount of the Capital Return has been debited against an amount standing to the credit of EZL'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).

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

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

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

16. Therefore, no part of the Capital Return paid to you is taken to be an unfranked dividend.

Scheme

17. 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

18. EZL is an Australian-resident company limited by shares and listed on the ASX.

19. EZL carries on a stockbroking, corporate finance and wealth management business.

20. On 21 April 2022, EZL received shares in WAM Capital Limited (WAM) as consideration for the sale of its investment in Westoz Investment Company Limited and Ozgrowth Limited, in which they held 26.25% and 41.58% of the issued shares respectively.

21. On 19 May 2022, EZL completed the sale of 100% of the WAM shares on market, receiving total cash consideration of approximately \$103.9 million.

EZL Performance Rights Plan

22. The PRP is designed to assist in the reward, retention and motivation of employees.

23. Under the PRP:

- employees may be granted a right to acquire one or more EZL shares (Performance Right)
- Performance Rights were granted for no consideration, and
- employees who were granted a Performance Right (Participants)
 - held the Performance Right subject to such vesting and performance conditions as stipulated in the invitation document, and
 - were prohibited from disposing of or otherwise dealing with the Performance Right.

24. Upon vesting and exercise of a Performance Right, and payment of the exercise price, if any, a Participant may acquire Plan Shares.

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25. Plan Shares acquired on exercise of a Performance Right are subject to:

- vesting and performance conditions, and
- restrictions as to disposal.

Capital Return

26. EZL determined it had share capital surplus to its requirements resulting from the sale of the WAM shares.

27. On 14 September 2022, EZL announced its intention to return up to \$80 million of excess capital to shareholders, consisting of:

- the payment of a fully franked special dividend of \$0.2027 per share, totalling approximately \$40 million, and
- the Capital Return, implemented by way of an equal capital reduction and share cancellation on a pro rata basis in accordance with sections 256B and 256C of the *Corporations Act 2001*, totalling approximately \$40 million.

28. On 17 November 2022, the Capital Return was approved by an ordinary resolution of EZL shareholders at EZL's annual general meeting.

29. On the Record Date, EZL had 197,297,073 ordinary shares on issue, being the only class of shares on issue.

30. On the Share Cancellation Date, a total of 33,257,006 EZL shares were cancelled, being equal to each EZL shareholder's pro rata amount of the Capital Return divided by \$1.2027 per share, being the 4-day VWAP share price of EZL's shares traded on the ASX up to and including the last day of trading on a 'cum capital reduction' basis prior to the Record Date, rounded down to the nearest whole share.

31. On the Payment Date, each EZL shareholder who held shares on the Record Date received \$1.2027 for each EZL share that was cancelled under the scheme.

32. The Capital Return of \$39,998,186.94 was paid from EZL's available cash balances and debited to EZL's share capital account.

33. Following the cancellation of shares under the scheme, EZL had 164,040,067 ordinary shares on issue.

Other matters

34. As at 30 June 2022, EZL had:

- retained earnings of \$47,552,553
- share based payments reserve of \$8,971,497, and
- share capital of \$136,740,320.

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

36. EZL has consistently paid fully franked dividends to shareholders, including a total of \$0.11 per share for the 2021–22 financial year.

37. On 7 October 2022, EZL paid a special dividend of \$0.2027 per EZL Share to shareholders.

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38. EZL intends to continue to pay dividends into the future, following the payment of the special dividend and Capital Return.

Commissioner of Taxation

18 January 2023

Status: **not legally binding**

Appendix – Legislative provisions

39. This paragraph sets out the details of the provisions ruled upon or referenced in this Ruling.

<i>Income Tax Assessment Act 1936</i>	subsection 6(1)
<i>Income Tax Assessment Act 1936</i>	subparagraph 44(1)(a)(i)
<i>Income Tax Assessment Act 1936</i>	section 45A
<i>Income Tax Assessment Act 1936</i>	subsection 45A(1)
<i>Income Tax Assessment Act 1936</i>	subsection 45A(2)
<i>Income Tax Assessment Act 1936</i>	subsection 45B(2)
<i>Income Tax Assessment Act 1936</i>	paragraph 45B(3)(b)
<i>Income Tax Assessment Act 1936</i>	section 45C
<i>Income Tax Assessment Act 1997</i>	Division 83A
<i>Income Tax Assessment Act 1997</i>	paragraph 83A-10(1)(b)
<i>Income Tax Assessment Act 1997</i>	subsection 83A-10(2)
<i>Income Tax Assessment Act 1997</i>	Subdivision 83A-C
<i>Income Tax Assessment Act 1997</i>	section 83A-105
<i>Income Tax Assessment Act 1997</i>	subsection 83A-110(1)
<i>Income Tax Assessment Act 1997</i>	section 83A-120
<i>Income Tax Assessment Act 1997</i>	section 104-25
<i>Income Tax Assessment Act 1997</i>	subsection 130-80(1)
<i>Income Tax Assessment Act 1997</i>	Division 197
<i>Income Tax Assessment Act 1997</i>	Division 230
<i>Income Tax Assessment Act 1997</i>	section 975-300
<i>Income Tax Assessment Act 1997</i>	section 995-1(1)

Status: **not legally binding**

References

Legislative references:

- Corporations Act 2001 256B
- Corporations Act 2001 256C

ATO references

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