


CR 2024/8 - Danakali Ltd - return of capital and special dividend

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Status: **legally binding**

Class Ruling

Danakali Ltd – return of capital and special dividend

📌 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 shareholders of Danakali Ltd (Danakali) who received the following payments:
 - unfranked special dividend of 14.7 cents per share (Special Dividend), and
 - return of capital of 27.3 cents per share (Capital Return).
2. Details of this scheme are set out in paragraphs 21 to 37 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:
 - were registered on the Danakali share register on 2 January 2024 (Record Date)
 - held your Danakali shares on capital account on the Record Date – that is, you did not hold your Danakali shares as trading stock (as defined in subsection 995-1(1)) or as revenue assets (as defined in section 977-50), and
 - received the unfranked Special Dividend of 14.7 cents and Capital Return of 27.3 cents per share on 8 January 2024 (Payment Date).

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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 21 to 37 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 2023 to 30 June 2024.

Ruling

Special dividend

7. The Special Dividend is a 'dividend' as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936).

8. If you are a resident of Australia as defined in subsection 6(1) of the ITAA 1936, you include the Special Dividend in your assessable income (paragraph 44(1)(a) of the ITAA 1936).

9. If you are a non-resident, the Special Dividend is non-assessable non-exempt income and not included in your assessable income as the distribution statement associated with the Special Dividend declared 100% of it to be conduit foreign income (paragraph 802-15(1)(a)). You are also not liable to pay withholding tax in respect of the Special Dividend (paragraph 802-15(1)(b)).

Return of capital

Return of capital is not a dividend

10. No part of the Capital Return is a dividend as defined in subsection 6(1) of the ITAA 1936.

11. No part of the Capital Return is included in your assessable income as a dividend under section 44 of the ITAA 1936.

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

12. The Commissioner will not make a determination under paragraph 45B(3)(b) of the ITAA 1936 that section 45C of the ITAA 1936 applies to any part of the Capital Return you received on the Payment Date.

Capital gains tax consequences

CGT event G1

13. CGT event G1 happened on the Payment Date when Danakali paid you the Capital Return for each share you owned on the Record Date and continued to own on the Payment Date (section 104-135).

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

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the difference, and the cost base and reduced cost base of your Danakali share is reduced to nil (subsection 104-135(3)).

15. If the Capital Return you received was equal to or less than the share's cost base, the cost base and reduced cost base of each share is reduced by the amount of the Capital Return (subsection 104-135(4)).

CGT event C2

16. CGT event C2 happened on the Payment Date when Danakali paid you the Capital Return for each share you owned on the Record Date but did not own on the Payment Date (section 104-25). The right to receive the Capital Return is retained by you and is a separate CGT asset from the Danakali share you disposed of between the Record Date and Payment Date.

17. You made a capital gain from CGT event C2 if the capital proceeds from the ending of your right to receive the Capital Return were more than the cost base of the right (subsection 104-25(3)).

18. In working out the capital gain when CGT event C2 happened the:

- capital proceeds are equal to the amount of the Capital Return for each share you owned on the Record Date but ceased to own before the Payment Date (subsection 116-20(1)), and
- cost base of the right does not include the cost base or reduced cost base of the share that you previously owned, to the extent that it was applied in working out a capital gain or capital loss made when a CGT event happened to that share.

Discount capital gain

19. If you made a capital gain from the Capital Return when CGT event G1 or CGT event C2 happened, you are entitled to treat the capital gain as a discount capital gain provided you acquired, or are taken to have acquired, your Danakali share on or before the 8 January 2023 (subsection 115-25(1) and the other conditions in Subdivision 115-A are satisfied).

Foreign-resident shareholders are able to disregard any capital gain or capital loss

20. If you were a non-resident or the trustee of a foreign trust (for CGT purposes, as defined in subsection 995-1(1)) just before the Capital Return Payment Date, and your Danakali shares were not taxable Australian property for the purposes of subsection 855-10(1), you disregard any capital gain made from CGT event G1 or any capital gain or capital loss made from CGT event C2, unless you:

- have used your Danakali 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 Danakali 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).

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Scheme

21. 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

22. Danakali is an Australian-incorporated and tax resident company listed on the Australian Securities Exchange (Australian Securities Exchange code: DNK) with a focus on mining exploration and development in Western Australia (up until 2013) and Eritrea (up until March 2023).

23. Danakali is the head company of an income tax consolidated group with only one subsidiary member (Danakali Investments Pty Ltd) the (former) 50% shareholder in Colluli Mining Share Company (CMSC) (Eritrea).

24. As at 2 January 2024, Danakali had approximately \$136 million in share capital, with 368,334,346 ordinary shares on issue.

Eritrean potash interest

25. Danakali, via its (former) 50% shareholding in CMSC, held a 50% interest in the Colluli potash project, based in Eritrea. The other 50% interest (shareholding) was owned by the Eritrean National Mining Corporation (a government authority).

26. On 15 April 2013, Danakali implemented a demerger of all of its non-potash assets, such that, after the demerger, the Colluli potash project was Danakali's only remaining asset.

27. On 28 September 2022, Danakali executed a non-binding term sheet with Sichuan Road and Bridge Group Co. Ltd, an unrelated third party, to sell its 50% shareholding in CMSC (and thereby its 50% interest in the Colluli potash project) for US\$166 million.

28. On 11 January 2023, Danakali executed a binding share sale agreement to give effect to the terms in paragraphs 26 and 27 of this Ruling.

29. The share sale transaction completed on 31 March 2023.

Distribution of proceeds

30. Danakali elected to return the majority of the proceeds from the sale of its interest in the Colluli potash project to its shareholders via the payment of the Special Dividend and Capital Return.

31. The Capital Return (being an equal reduction of capital under section 256B of the *Corporations Act 2001*) was approved by the shareholders of Danakali at the Extraordinary General Meeting held on 24 November 2023.

32. On the Payment Date, Danakali shareholders received both the Special Dividend and Capital Return.

33. The Special Dividend and Capital Return was paid from Danakali's available cash balance. The Special Dividend amount of \$54,233,692 was debited to accumulated profits. The entire Capital Return of \$100,466,732 was debited to Danakali's share capital account.

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34. There was no change to the proportional interest of each shareholder in Danakali following the payment of the Special Dividend and Capital Return.

35. The Special Dividend was declared to be conduit foreign income under section 802-15 and was distributed to shareholders in equal proportions.

Other matters

36. Danakali confirmed that its share capital account (as defined in section 975-300) is not tainted within the meaning of section 197-50.

37. Danakali does not hold any 'taxable Australian property' for the purposes of Division 855.

Commissioner of Taxation

14 February 2024

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Appendix – Explanation

ⓘ *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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Capital gains tax consequences of return of capital

CGT event G1

38. CGT event G1 happens if:

- a company makes a payment to a shareholder in respect of a share they own in the company
- some or all of the payment (the non-assessable part) is not a dividend, or an amount that is taken to be a dividend under section 47 of the ITAA 1936, and
- the payment is not included in the shareholder's assessable income (section 104-135).

39. CGT event G1 happened when Danakali made the Capital Return to you in respect of Danakali shares you owned at the Record Date and continued to own at the Payment Date (section 104-135).

CGT event C2

40. If, after the Record Date but before the Payment Date, you ceased to own a Danakali share in respect of which the Capital Return was payable, the right to receive the Capital Return in respect of that share is retained by you and is a separate CGT asset from the Danakali share.

41. CGT event C2 happened when the Capital Return was made. The right to receive the Capital Return, being an intangible asset, ended by the right being discharged or satisfied when the Capital Return was made (section 104-25).

Section 45B of the ITAA 1936 – no determination

42. Section 45B of the ITAA 1936 applies where certain capital payments are made to shareholders in substitution for dividends. In broad terms, section 45B of the ITAA 1936 applies where:

- there is a scheme under which a person is provided with a capital benefit by a company

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- under the scheme a taxpayer (relevant taxpayer), who may or may not be the person provided with the capital benefit, obtains a tax benefit, and
- having regard to the relevant circumstances of the scheme, it would be concluded that the person, or one of the persons, who entered into or carried out the scheme or any part of the scheme did so for a purpose (whether or not the dominant purpose but not including an incidental purpose), of enabling a relevant taxpayer to obtain a tax benefit.

43. The Capital Return satisfies the first 2 conditions referred to in paragraph 42 of this Ruling. However, having regard to the relevant circumstances of the scheme, it cannot be concluded that the scheme was entered into or carried out for a more than incidental purpose of enabling Danakali shareholders to obtain a tax benefit.

44. Accordingly, the Commissioner will not make a determination under subsection 45B(3) of the ITAA 1936 that section 45C of the ITAA 1936 applies in relation to the whole, or a part, of the Capital Return received by the Danakali shareholders.

Status: **not legally binding**

References

Legislative references:

- ITAA 1936 6(1)
 - ITAA 1936 44
 - ITAA 1936 44(1)(a)
 - ITAA 1936 45B
 - ITAA 1936 45B(3)
 - ITAA 1936 45B(3)(b)
 - ITAA 1936 45C
 - ITAA 1936 47
 - ITAA 1997 104-135
 - ITAA 1997 104-135(3)
 - ITAA 1997 104-135(4)
 - ITAA 1997 104-25
 - ITAA 1997 104-25(3)
 - ITAA 1997 104-165(3)
 - ITAA 1997 Subdiv 115-A
 - ITAA 1997 115-25(1)
 - ITAA 1997 116-20(1)
 - ITAA 1997 197-50
 - ITAA 1997 Div 230
 - ITAA 1997 802-15(1)(a)
 - ITAA 1997 802-15(1)(b)
 - 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
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ATO references

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