

# ***CR 2025/37 - Fitzroy River Corporation Ltd - return of capital***



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Status: **legally binding**

## Class Ruling

# Fitzroy River Corporation Ltd – return of capital

### **❶ 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 Fitzroy River Corporation Ltd (Fitzroy) who received the return of share capital of \$0.02 per Fitzroy share (Capital Return) on 13 May 2025 (Payment Date).
2. Details of this scheme are set out in paragraphs 16 to 33 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 Fitzroy share register on 6 May 2025 (Record Date), and
  - held your Fitzroy shares on capital account – that is, you did not hold your Fitzroy 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 16 to 33 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 2024 to 30 June 2025.

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## **Ruling**

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### **Return of capital is not a dividend**

7. No part of the Capital Return you received from Fitzroy 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 Fitzroy'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.

### **Anti-avoidance provisions**

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 Fitzroy shareholders and dividends to other Fitzroy 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 Fitzroy paid you the Capital Return in respect of each Fitzroy share you owned at the Record Date and continued to own on 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 Fitzroy share's cost base (subsection 104-135(3)).

11. If the Capital Return you received was not more than the cost base of your Fitzroy share, the cost base or reduced cost base of your Fitzroy 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 Fitzroy paid you the Capital Return in respect of each Fitzroy share you owned on the 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)).

### **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 Fitzroy shares at least 12 months before the

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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 Fitzroy shares, pursuant to subsection 855-10(1), unless you:

- have used your Fitzroy 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 Fitzroy 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).

## **Scheme**

16. 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.

### **Fitzroy River Corporation Ltd**

17. Fitzroy is a public company incorporated in Australia in 1996. It has been listed on the Australian Securities Exchange since March 1998.

18. Fitzroy is an oil and gas and mineral investment holding company, with a focus on non-operational assets such as royalties and equity investments. It is the head company of an income tax consolidated group under Part 3-90.

19. As at 30 June 2024, Fitzroy had:

- \$43,785,284 share capital
- \$37,354,668 accumulated losses, and
- \$767,112 reserves.

20. Fitzroy has no interest bearing debt.

### **Share capital and dividend payment history**

21. Fitzroy has only one class of shares on issue, being ordinary shares.

22. The most recent issue of shares occurred in February and March 2021 in which Fitzroy raised a total of approximately \$2,590,902 from a non-renounceable entitlement offer of new shares.

23. As at 31 July 2024, Fitzroy had 107,954,251 shares on issue to 742 shareholders.

24. Approximately 5% of Fitzroy shares on issue are held by non-resident shareholders.

25. Historically, Fitzroy had not paid any dividends since it was listed in 1998. However, on 9 December 2022, Fitzroy declared a fully franked special dividend of 0.5 cents per

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share. The special dividend was paid on 23 December 2022. No dividends will be paid in the income year ending 30 June 2025.

#### **Return of capital**

26. On 26 March 2025, Fitzroy announced that it would distribute \$2,159,085 (equivalent to \$0.02 per share) by way of an equal reduction of share capital under section 256B of the *Corporations Act 2001*.
27. The Capital Return was approved by the shareholders of Fitzroy on 29 April 2025.
28. On the Payment Date, Fitzroy shareholders received \$0.02 for each Fitzroy share they held on the Record Date.
29. The Capital Return was paid from Fitzroy's available cash balance.
30. The entire Capital Return amount of \$2,159,085 was debited to Fitzroy's share capital account.
31. There was no change to the proportionate interest of each shareholder in Fitzroy following the Capital Return.

#### **Other matters**

32. The share capital account (as defined in section 975-300) of Fitzroy is not tainted within the meaning of Division 197.
33. Less than 50% of the market value of Fitzroy's assets were 'taxable Australian real property' (as defined in section 855-20).

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#### **Commissioner of Taxation**

28 May 2025

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## References

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*Related rulings and determinations:*

TR 2006/10; TR 2012/5

*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)
- ITAA 1997 104-135(4)
- ITAA 1997 104-165(3)
- ITAA 1997 Subdiv 115-A
- ITAA 1997 115-25(1)
- ITAA 1997 Div 197
- ITAA 1997 Div 230
- ITAA 1997 Pt 3-90
- ITAA 1997 855-10(1)
- ITAA 1997 855-15
- ITAA 1997 855-20
- 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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