

CR 2001/7 - Income tax: Coca-Cola Amatil capital return

⚠ This cover sheet is provided for information only. It does not form part of *CR 2001/7 - Income tax: Coca-Cola Amatil capital return*

⚠ This document has changed over time. This is a consolidated version of the ruling which was published on *18 April 2001*



Class Ruling

Income tax: Coca-Cola Amatil capital return

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Preamble

*The number, subject heading, and the **What this Class Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Withdrawal**, **Arrangement** and **Ruling** parts of this document are a ‘public ruling’ in terms of Part IVAAA of the **Taxation Administration Act 1953**. CR 2001/1 explains **Class Rulings** and **Taxation Rulings** TR 92/1 and TR 97/16 together explain when a **Ruling** is a public ruling and how it is binding on the Commissioner.*

What this Class Ruling is about

1. This Ruling sets out the Commissioner’s opinion on the way in which the ‘tax law(s)’ identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates.

Tax law(s)

2. The tax law(s) dealt with in this Ruling are:
- Section 45A of the *Income Tax Assessment Act 1936*;
 - Section 45B of the *Income Tax Assessment Act 1936*;
 - Subsection 6(1) of the *Income Tax Assessment Act 1936*;
 - Subsection 6(4) of the *Income Tax Assessment Act 1936*;
 - Section 6D of the *Income Tax Assessment Act 1936*;
 - Section 160ARDM of the *Income Tax Assessment Act 1936*.

Class of persons

3. The class of persons to whom this Ruling applies is/are; All shareholders in Coca-Cola Amatil Limited who will receive a 40c per share distribution of capital following the sale by Coca-Cola Amatil of its Philippines business, Coca-Cola Bottlers Philippines, Inc.

Qualifications

4. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.
5. The class of persons defined in this Ruling may rely on its contents provided the arrangement described below at paragraphs 10 to 14 is carried out in accordance with the details of the arrangement provided in this Ruling.
6. If the arrangement described in this Ruling is materially different from the arrangement that is actually carried out:
 - (a) this Ruling has no binding effect on the Commissioner because the arrangement entered into is not the arrangement on which the Commissioner has ruled, and
 - (b) this Ruling may be withdrawn or modified.
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Date of effect

8. This Ruling applies from 18 April 2001. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Withdrawal

9. This Ruling is withdrawn and ceases to have effect after 31 December 2001. The Ruling continues to apply, in respect of the tax laws ruled upon, to all persons within the specified class who enter into the specified arrangement during the term of the Ruling. Thus, the Ruling continues to apply to those persons, even following its withdrawal, for arrangements entered into prior to the withdrawal of the Ruling. This is subject to there being no change in the arrangement or in the persons' involvement in the arrangement.

Arrangement

10. Coca-Cola Amatil Limited ('CCA') is proposing to dispose of its indirect shareholding in Coca-Cola Bottlers Philippines, Inc. ('CCBPI') through which it has carried on bottling operations in the Philippines. This disposal is subject to shareholder approval.

11. CCA acquired its interest in CCBPI in 1997. This acquisition was funded exclusively from share capital. Under the current proposal, these interests will be disposed of for an amount less than their original cost of acquisition.

12. Following the disposal of CCBPI, CCA is planning to use most of the proceeds of the sale to reduce its share capital. The majority of the proceeds of the sale will be used to fund a selective reduction of capital that will be effected by a share buy-back. This transaction is not the subject of this Ruling.

13. Following the planned share buy-back, CCA proposes to make a capital return of 40c per share to the remaining shareholders. This capital return will also be funded from the proceeds of the CCBPI sale and will be debited to the share capital account of CCA.

14. Further, the proposed capital return of 40c per share will not impact CCA's decisions with respect to future dividend pay-out ratios or the issue of bonus shares.

Ruling

15. The proposed 40c per share return of capital does not constitute a dividend for the purposes of the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997*.

Explanations

16. The term 'dividend' is defined in subsection 6(1) of the *Income Tax Assessment Act 1936* to include any distribution made by a company to any of its shareholders. However, the ambit of this broad definition is confined by later paragraphs of the definition which specifically exclude some items from being a dividend for income tax purposes. Subparagraph (d) of the definition of 'dividend' is such a paragraph that limits the definition of a dividend which is of particular relevance in the present situation. The subparagraph reads as follows:

“moneys paid or credited by a company to a shareholder or any other property distributed by a company to shareholders (not

being moneys or other property to which this paragraph, by reason of subsection (4), does not apply or moneys paid or credited, or property distributed for the redemption or cancellation of a redeemable preference share) where the amount of the moneys paid or credited, or the amount of the value of the property, is debited against an amount standing to the credit of the share capital account of the company.”

17. This subparagraph would exclude the proposed capital distribution from being regarded as a dividend unless a more specific section of the *Income Tax Assessment Act 1936* would operate to make the proposed capital distribution a dividend.

18. In this context, subsection 6(4) of the *Income Tax Assessment Act 1936* would not make the distribution a dividend as it is not considered that the purchase and sale of CCBPI was pursuant to an arrangement to build up the share capital account for payment to another person.

19. Further, CCA has stated that its share capital account is not tainted for the purposes of 160ARMD of the *Income Tax Assessment Act 1936*, as no amounts have been transferred to its share capital account from any of its other accounts. Accordingly, its share capital account would satisfy section 6D of the *Income Tax Assessment Act 1936* and be available to fund distributions which would not be considered dividends as per the section 6(1) definition referred to above.

20. Section 45A of the *Income Tax Assessment Act 1936* applies in a situation where advantaged shareholders receive a capital benefit and it is reasonable to assume that disadvantaged shareholders will receive dividends. Implicit in the section’s operation is the ‘streaming’ of benefits; i.e., the provision of different benefits to different shareholders. In the present case, all remaining shareholders after the buy-back transaction will receive identical capital benefits and dividend entitlements. As such, it is considered that the proposed return of capital does not constitute the streaming of capital benefits. Accordingly, section 45A of the *Income Tax Assessment Act 1936* would have no application to the proposed return of capital.

21. Section 45B of the *Income Tax Assessment Act 1936* applies in a situation where certain (capital) payments are paid in substitution for dividends and operates to ensure that the ‘capital’ payments are treated as dividends for taxation purposes. In the present context, CCA believes that the first two elements necessary for the application of the section would be satisfied.¹ In order for section 45B of the

¹ As a capital benefit is provided and a relevant taxpayer will obtain a tax benefit, refer to paragraphs (a) and (b) of subsection 45B(2) of the *Income Tax Assessment Act 1936*.

Income Tax Assessment Act 1936 to have application to the proposed return of capital, the third element that must be satisfied is paragraph 45B(2)(c) of the *Income Tax Assessment Act 1936*, which reads as follows:

“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 taxpayer (the relevant taxpayer) to obtain a tax benefit.”

22. Having regard to the relevant circumstances² surrounding the proposed 40c per share capital return, it has been concluded that the return of capital is not being proposed for the purpose of enabling a taxpayer to obtain a tax benefit. As such, section 45B of the *Income Tax Assessment Act 1936* would have no application to the proposed return of capital.

Detailed contents list

23. Below is a detailed contents list for this Class Ruling:

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Commissioner of Taxation

18 April 2001

² The relevant circumstances are listed in subsection 45B(5) of the *Income Tax Assessment Act 1936*.

CR 2001/7

Previous draft:

Not previously released in draft form

Related Rulings/Determinations:

CR 2001/1

Subject references:

- return of capital

Legislative references:

- ITAA 1936 45A

- ITAA 1936 45B

- ITAA 1936 6(1)

- ITAA 1936 6(4)

- ITAA 1936 6D

- ITAA 1936 160ARDM

ATO References

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