



# ***CR 2006/25 - Income tax: AMP Limited - proposed return of capital to shareholders***

 This cover sheet is provided for information only. It does not form part of *CR 2006/25 - Income tax: AMP Limited - proposed return of capital to shareholders*

 This document has changed over time. This is a consolidated version of the ruling which was published on *1 July 2005*



## Class Ruling

### Income tax: AMP Limited – proposed return of capital to shareholders

---

Contents	Para
<b>BINDING SECTION:</b>	
<b>What this Ruling is about</b>	<b>1</b>
<b>Date of effect</b>	<b>8</b>
<b>Withdrawal</b>	<b>9</b>
<b>Scheme</b>	<b>10</b>
<b>Ruling</b>	<b>24</b>
<b>NON BINDING SECTION:</b>	
<b>Appendix 1:</b>	
<b>Explanation</b>	<b>31</b>
<b>Appendix 2:</b>	
<b>Detailed contents list</b>	<b>66</b>

#### **ⓘ This Ruling provides you with the following level of protection:**

This publication (excluding appendices) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, we must apply the law to you in the way set out in the ruling (or in a way that is more favourable for you if we are satisfied that the ruling is incorrect and disadvantages you, and we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

## What this Ruling is about

---

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant taxation provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

#### **Relevant taxation provision(s)**

2. The relevant taxation provisions dealt with in this Ruling are:

- subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936);
- section 6D of the ITAA 1936;
- section 44 of the ITAA 1936;
- section 45A of the ITAA 1936;
- section 45B of the ITAA 1936;
- section 45C of the ITAA 1936;
- section 104-25 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 104-135 of the ITAA 1997;

- section 136-10 of the ITAA 1997; and
- section 136-25 of the ITAA 1997.

## **Class of entities**

3. The class of entities to which this Ruling applies is those entities who hold ordinary shares in AMP Limited (AMPL) and who are registered on the AMPL share register on the Record Date, being the date for determining entitlements to the proposed return of capital described in paragraphs 10 to 23 of this Ruling. In this Ruling, those entities are referred to as 'AMPL shareholders'.

## **Qualifications**

4. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.

5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 10 to 23 of this Ruling.

6. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
- this Ruling may be withdrawn or modified.

7. This work is copyright. Apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without prior written permission from the Commonwealth. Requests and inquiries concerning reproduction and rights should be addressed to:

Commonwealth Copyright Administration  
Attorney General's Department  
Robert Garran Offices  
National Circuit  
Barton ACT 2600

or posted at: <http://www.ag.gov.au/cca>

---

## Date of effect

---

8. This Ruling applies to the income year (as defined in subsection 995-1(1) of the ITAA 1997) for an AMPL shareholder in which the return of capital is paid by AMPL. The scheme, as described in paragraphs 10 to 23 of this Ruling, will be completed in that income year. For a shareholder that does not have a substituted accounting period, this will be the income year ending 30 June 2006. However, this Ruling does not apply to an AMPL shareholder to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of this Ruling. Furthermore, this Ruling only applies to the extent that:

- there is no material change in the scheme or in the class of entities involved in the scheme;
- it is not later withdrawn by notice in the *Gazette*; or
- the relevant taxation provisions are not amended.

---

## Withdrawal

---

9. This Ruling is withdrawn and ceases to have effect after 30 June 2006. However, the Ruling continues to apply after its withdrawal, in respect of the tax laws ruled upon, to all entities within the specified class who entered into the specified scheme during the term of the Ruling, subject to there being no change in the scheme or in the entity's involvement in the scheme.

---

## Scheme

---

10. The scheme that is the subject of this Ruling is described below. This description is based on a number of documents. These documents, or relevant parts of them, as the case may be, form part of and are to be read with this description. The relevant documents or parts of documents incorporated into this description of the scheme are:

- a) class ruling request from PricewaterhouseCoopers (PwC) dated 16 November 2005, which replaced an earlier application of 18 October 2005, incorporating further information provided in relation to that earlier application; and
- b) correspondence providing further particulars dated from 24 November 2005 to 31 March 2006 from PwC, Mallesons Stephen Jacques and AMPL.

**Note:** Certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under the Freedom of Information legislation.

11. AMPL is an Australian resident public company listed on the Australian Stock Exchange and is the ultimate parent of the AMP group. The company became the ultimate parent of the AMP group as part of the demutualisation of the Australian Mutual Provident Society (AMP Society) in 1998. The AMP Society upon demutualisation became AMP Life Limited (AMP Life), a subsidiary member of the AMP group. At the time of demutualisation, Division 9AA of Part III of the ITAA 1936 applied to base AMPL shareholders' cost of shares in AMPL for capital gains tax (CGT) purposes on the embedded value of the AMP Society.

12. In December 2003, the AMP group demerged its UK operations retaining a minority interest in the demerged UK entity.

13. On 16 February 2006, AMPL announced that it intended to return capital of \$750 million (proposed 2006 Capital Return) to AMPL shareholders, which equates to 40 cents per ordinary share.

14. The sources of the proposed 2006 Capital Return are:

- \$410 million which relates to the return of proceeds received in respect of the AMP group's minority shareholding in the demerged UK entity; and
- \$340 million which relates to excess shareholders' capital (in terms of section 61 of the *Life Insurance Act* 1995 (LIA)) in the statutory funds of AMP Life.

#### **Proceeds received in respect of the demerged UK entity**

15. On 22 April 2005, the AMP group received \$198 million in respect of a return of capital undertaken by the demerged UK entity following the sale of its life business. The AMP group recognised an accounting loss of \$18 million in respect of the return of capital.

16. On 5 September 2005, the AMP group announced a sale of its remaining shareholding in the demerged UK entity for a total consideration of \$212 million. The AMP group recognised an accounting profit of \$27 million on the sale.

17. The total proceeds received by AMP group as a consequence of the two transactions described in paragraphs 15 and 16 of this Ruling amounted to \$410 million. Although an overall accounting gain of \$9 million was recognised in respect of these transactions, the AMP group suffered a significant overall loss in respect of its capital investment in its UK operations, reflected in the significant prior year write-downs in the carrying value of the investment and the resulting negative impact on the retained earnings of the entity directly holding the investment and on the consolidated retained earnings of the AMP group. The proceeds received in respect of the demerged UK entity represent shareholders' capital which was not returned under the demerger in 2003.

**Excess capital in the statutory funds of AMP Life**

18. On 17 February 2005, the AMP group announced that it would begin its next phase of capital management, under which it would concentrate on the payment of debt and restoration of its credit rating, reinvestment for profitable growth in core businesses and the return of excess capital to its shareholders. On 16 June 2005, AMPL returned \$746 million (equating to 40 cents per share) of excess capital to its shareholders (2005 Capital Return). The Commissioner ruled on that arrangement in Class Ruling CR 2005/28: Income tax: AMP Limited: proposed capital return.

19. This component of the proposed 2006 Capital Return, like the 2005 Capital Return, is referable to the pre-demutualisation shareholders' capital (in terms of section 61 of the LIA) in the statutory funds of AMP Life which was integral to the business structure of the AMP group at demutualisation. The pre-demutualisation shareholders' capital formed part of the embedded value of the AMP Society before demutualisation, and is reflected in the cost base given to AMPL shares issued as part of the demutualisation as a result of the operation of Division 9AA of Part III of the ITAA 1936. It is proposed to return a further \$340 million from this source under the proposed 2006 Capital Return as AMPL's operating and regulatory requirements for capital have fallen following the demerger of its UK operations and the change in AMP Life's business following demutualisation.

**Other aspects of the return of capital**

20. AMPL has determined that the funds to be returned to AMPL shareholders are surplus to its capital requirements. The proposed 2006 Capital Return will be internally funded.

21. The proposed 2006 Capital Return is subject to AMPL shareholders' approval at an Annual General Meeting to be held on 18 May 2006. The proposed 2006 Capital Return will be applied equally to each holder of fully paid ordinary shares on the register at 5pm on 25 May 2006 (the Record Date), by way of cash distribution in proportion to the number of shares held on that date. Payment of the proposed 2006 Capital Return is to be made on 19 June 2006 (the Payment Date).

22. AMPL will debit the entire proposed 2006 Capital Return against the share capital of AMPL. AMPL's share capital account, as defined in section 6D of the ITAA 1936, is not tainted for income tax purposes. No shares will be cancelled as a result of the proposed 2006 Capital Return.

23. The proposed 2006 Capital Return will be made in addition to the payment of interim and final dividends anticipated by AMPL in respect of the year ended 31 December 2006. AMPL's dividend payout ratio is 75% of 'underlying contribution' (reported profits modified by a sustainability factor) and is expected to increase in 2007.

## Ruling

---

### **Distribution is not a dividend for income tax purposes**

24. As the proposed 2006 Capital Return will be debited to AMPL's share capital account it will not be a dividend, as defined in subsection 6(1) of the ITAA 1936. The Government has announced its intention to introduce laws with effect from 1 July 2002 dealing with the tainting of share capital accounts (the then Minister for Revenue and Assistant Treasurer's Press Release C104/02 of 27 September 2002). Although such laws may be relevant to the application of section 6D of the ITAA 1936, this Ruling does not extend to the application of these proposed laws.

### **Sections 45A, 45B and 45C**

25. The Commissioner will not make a determination under subsections 45A(2) or 45B(3) of the ITAA 1936 that section 45C of the ITAA 1936 applies to the proposed 2006 Capital Return. Accordingly, no part of the proposed 2006 Capital Return will be taken to be a dividend for income tax purposes.

### **Capital Gains**

26. CGT event G1 in section 104-135 of the ITAA 1997 will happen when AMPL pays the proposed 2006 Capital Return of 40 cents per share to an AMPL shareholder in respect of an AMPL share that they own at the Payment Date.

27. Under subsections 104-135(3) and (4) of the ITAA 1997, the cost base and reduced cost base of each AMPL share will be reduced (but not below nil) by the amount of the proposed 2006 Capital Return of 40 cents per share. An AMPL shareholder will make a capital gain from CGT event G1 happening to each share to the extent (if any) that the payment exceeds the share's cost base in accordance with subsection 104-135(3).

28. CGT Event C2 (section 104-25 of the ITAA 1997) will happen when AMPL makes the proposed 2006 Capital Return to an AMPL shareholder in respect of an AMPL share they owned at the Record Date but which was disposed of before the Payment Date.

29. If CGT event C2 happens in respect of an AMPL shareholder's right to the payment, the AMPL shareholder will make a capital gain to the extent the payment exceeds the cost base of the right. An AMPL shareholder will make a capital loss to the extent the payment is less than the right's reduced cost base (subsection 104-25(3) of the ITAA 1997).

30. A non-resident AMPL shareholder that receives the proposed 2006 Capital Return will only make a capital gain if their share has the necessary connection with Australia (section 136-10 of the ITAA 1997). An AMPL share will have the necessary connection with Australia if, at any time during the 5 years before payment of the proposed 2006 Capital Return, the non-resident AMPL shareholder, together with their associates, owned 10% or more by value of the shares in AMPL (section 136-25 of the ITAA 1997).

---

**Commissioner of Taxation**12 April 2006

---

## Appendix 1 – Explanation

**❶** *This Appendix 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.*

### **Distribution is not a dividend for income tax purposes**

31. Subsection 44(1) of the ITAA 1936 includes in a shareholder's assessable income a dividend, as defined by subsection 6(1) of the ITAA 1936, which is paid to the shareholder out of company profits.

32. As the proposed 2006 Capital Return will be debited against an amount standing to the credit of AMPL's untainted share capital account, it does not constitute a dividend because of the exclusion in paragraph (d) in the definition of a 'dividend' in subsection 6(1) of the ITAA 1936. That paragraph excludes a distribution from the meaning of 'dividend' if the amount of a distribution is debited against an amount standing to the credit of the company's 'share capital account'.

33. Share capital account is defined in subsection 6(1) of the ITAA 1936 as having the meaning given by section 6D of the ITAA 1936, which in turn defines the term as an account which the company keeps of its share capital, or any other account created after 1 July 1998 where the first amount credited to the account was an amount of share capital.

34. Subsection 6D(3) of the ITAA 1936 states that an account is not a share capital account if it is tainted for the purposes of Division 7B of Part IIIA of the ITAA 1936. An account, that would otherwise be a share capital account, is tainted for the purposes of Division 7B if an amount is transferred from another account, except in the circumstances provided for by section 160ARDM of the ITAA 1936. AMPL has confirmed that there have been no transfers that have tainted its share capital account under that rule, which applies to transfers before 1 July 2002. The Government has announced its intention to introduce laws dealing with the tainting of share capital accounts (the then Minister for Revenue and Assistant Treasurer's Press Release C104/02 of 27 September 2002). Although such laws may be relevant to the application of section 6D of the ITAA 1936, this Ruling does not extend to the application of these proposed laws.

### **Sections 45A and 45B**

35. Sections 45A and 45B of the ITAA 1936 are two anti-avoidance provisions which, if they apply, allow the Commissioner to determine that all or part of a distribution is treated as an unfrankable dividend that is paid by the company out of profits to the shareholder.

**Section 45A – streaming of dividends and capital benefits**

36. Section 45A of the ITAA 1936 applies in circumstances where capital benefits are streamed to certain shareholders who derive a greater benefit from the receipt of capital (the advantaged shareholders) and it is reasonable to assume that the other shareholders have received or will receive dividends (the disadvantaged shareholders).

37. Although AMPL will be providing its shareholders with a 'capital benefit' (as defined in paragraph 45A(3)(b) of the ITAA 1936), the capital benefit is to be provided to all of the shareholders in AMPL. The circumstances of the scheme do not indicate that there is a 'streaming' of capital benefits to advantaged shareholders and of dividends to disadvantaged shareholders. Accordingly, section 45A of the ITAA 1936 will not apply to the proposed 2006 Capital Return and the Commissioner will not make a determination under subsection 45A(2) of the ITAA 1936 that section 45C of the ITAA 1936 applies to the proposed 2006 Capital Return.

**Section 45B – schemes to provide capital benefits in substitution for dividends**

38. Section 45B of the ITAA 1936 applies where certain payments are made to shareholders in substitution for dividends. Subsection 45B(2) sets out the conditions under which the Commissioner will make a determination under subsection 45B(3) that section 45C of the ITAA 1936 applies. These conditions are that:

- there is a scheme under which a person is provided with a capital benefit by a company (paragraph 45B(2)(a) of the ITAA 1936);
- under the scheme, a taxpayer (the relevant taxpayer) who may or may not be the person provided with the capital benefit, obtains a tax benefit (paragraph 45B(2)(b) of the ITAA 1936); 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 the relevant taxpayer to obtain a tax benefit (paragraph 45B(2)(c) of the ITAA 1936).

Each of the conditions is considered below.

39. The proposed 2006 Capital Return will be a 'scheme' for the purposes of section 45B of the ITAA 1936.

40. The phrase 'provided with a capital benefit' is defined in subsection 45B(5) of the ITAA 1936. Relevantly, it includes a distribution to a person of share capital. As AMPL proposes to debit the proposed 2006 Capital Return against its untainted share capital account, its shareholders will be provided with a capital benefit.

41. A shareholder 'obtains a tax benefit', as defined in subsection 45B(9) of the ITAA 1936, if:

- the amount of tax payable; or
- any other amount payable under the ITAA 1936 or the ITAA 1997,

would, apart from the operation of section 45B of the ITAA 1936:

- be less than the amount that would have been payable; or
- be payable at a later time than it would have been payable,

if the capital benefit had instead been a dividend.

42. Ordinarily, a return of capital would be subject to the CGT provisions of the income tax law. Unless the amount of the distribution exceeds the cost base of the shares, there will only be a cost base reduction under CGT event G1 (section 104-135 of the ITAA 1997). It is only to the extent (if any) that the distribution exceeds the cost base of the shares that a capital gain arises. A capital gain may not arise at all for certain non-resident shareholders: see paragraph 65 of this Ruling. By contrast a dividend would generally be included in the assessable income of a resident shareholder or in the case of a non-resident, be subject to dividend withholding tax. Therefore, AMPL shareholders will generally obtain tax benefits from a return of capital.

## Relevant circumstances

43. For the purposes of paragraph 45B(2)(c) of the ITAA 1936, the Commissioner is required to consider the circumstances set out under subsection 45B(8) of the ITAA 1936 to determine whether any part of the scheme would be entered into for a purpose, other than an incidental purpose, of enabling a relevant taxpayer to obtain a tax benefit.

44. The test of purpose is an objective one. The question is whether, objectively, it would be concluded that a person who entered into or carried out the scheme, did so for the purpose of obtaining a tax benefit for the relevant taxpayer in respect of the capital benefit. The purpose does not have to be the most influential or prevailing purpose but it must be more than an incidental purpose.

45. The relevant circumstances under subsection 45B(8) of the ITAA 1936 cover the circumstances of the company and the tax profile of the shareholders. In this instance, as the proposed return of capital is made to all AMPL shareholders regardless of individual circumstances, paragraphs 45B(8)(c) to (h) of the ITAA 1936 do not incline for or against a conclusion as to purpose. The circumstances covered by paragraphs 45B(8)(i) and (j) of the ITAA 1936 pertaining to the provision of ownership interests and demerger are not relevant here. So, in this case the relevant matters are those covered by the circumstances described in paragraphs 45B(8)(a), (b) and (k) of the ITAA 1936.

46. Paragraph 45B(8)(a) of the ITAA 1936 refers to the extent to which the capital benefit is attributable to capital and profits (realised and unrealised) of the company or an associate (within the meaning of section 318 of the ITAA 1936) of the company. In this case, the sources of the proposed return of capital are:

- proceeds received by the AMP group from the recent return of capital undertaken by the demerged UK entity and the sale of the group's minority interest in the demerged UK entity, which represented an overall loss in respect of the investment in that entity; and
- funds recognised as shareholders' capital (under section 61 of the LIA) in the statutory funds of AMP Life.

47. The AMP group suffered a significant loss in respect of its investment in the demerged UK entity, and the proceeds from the liquidated investment could not be regarded as anything other than shareholders' capital previously invested by the AMPL shareholders in the UK operations, which was not returned to them under the demerger. In these circumstances, the proposed 2006 Capital Return sourced from the proceeds received in respect of the demerged UK entity is attributable to capital and not to profits, realised or unrealised.

48. The other source of the proposed 2006 Capital Return is referable to the pre-demutualisation shareholders' capital (in terms of section 61 of the LIA) in the statutory funds of AMP Life which was integral to the business structure of the AMP group at demutualisation. The pre-demutualisation shareholders' capital was reflected in the cost base of the AMPL shares issued as part of the demutualisation as a result of the operation of Division 9AA of Part III of the ITAA 1936. Following the demerger of the UK operations and the change in AMP Life's business after demutualisation, a further \$340 million of the capital has been determined to be excess to AMPL's operating and regulatory requirements. The regulatory requirement for this capital has fallen as the AMP group's traditional business has matured and is winding down. In these circumstances, the proposed return of capital referable to the pre-demutualisation shareholders' capital in the statutory funds of AMP Life is attributable to capital and not to profits, realised or unrealised.

49. Paragraph 45B(8)(b) of the ITAA 1936 refers to the pattern of distributions made by a company or an associate (within the meaning of section 318 of the ITAA 1936) of the company. Since demutualisation, AMPL has maintained a policy of paying out most of the profits earned by the AMP group whereas the share capital of AMPL has increased markedly through various capital raisings. In regard to its share capital, AMPL has made only two distributions to shareholders, one as part of the demerger of 85% of its UK operations and the other, the return of capital in June 2005.

50. The proposed 2006 Capital Return will be made in addition to the payment of interim and final dividends anticipated by AMPL in respect of the year ended 31 December 2006. Following the demerger of its UK operations, the AMP group has maintained a dividend payout ratio of 75% of 'underlying contribution' (reported profits modified by a sustainability factor) which is expected to increase in 2007. Accordingly, the company's pattern of distributions does not suggest that the proposed capital distribution will be made in substitution for a dividend.

51. Paragraph 45B(8)(k) of the ITAA 1936 refers to the matters in subparagraphs 177D(b)(i) to (viii) of the ITAA 1936. These are matters by reference to which a scheme is able to be examined from a practical perspective in order to identify and compare its tax and non-tax objectives. The matters include the manner in which the scheme is carried out, its form and substance, and its financial and other implications for the parties involved. In this case, the practical implications of the scheme for AMPL and its shareholders are consistent with its being, in form and substance, a distribution of share capital.

52. Therefore, having regard to the relevant circumstances of the scheme to return capital to the AMPL shareholders, as discussed in paragraphs 45 to 51 of this Ruling, it would not be concluded that the parties who enter into or carry out the scheme do so for a more than incidental purpose of enabling the shareholders to obtain a tax benefit. Accordingly, the Commissioner will not make a determination under subsection 45B(3) of the ITAA 1936 that section 45C of the ITAA 1936 applies to the proposed return of capital.

#### **Section 45C – deeming dividends to be paid where determinations under section 45A or 45B are made**

53. As the Commissioner will not make a determination under subsection 45A(2) or subsection 45B(3) of the ITAA 1936 in relation to the scheme as described, section 45C of the ITAA 1936 will not deem any part of the proposed return of capital to be an unfranked dividend for the purposes of the ITAA 1936 or of the ITAA 1997.

**CGT Event G1 – section 104-135**

54. CGT event G1 in section 104-135 of the ITAA 1997 will happen when AMPL pays the proposed 2006 Capital Return amount in respect of a share that a AMPL shareholder owned at the Record Date and continues to own at the payment time, and some or all of the payment is not a dividend as defined in subsection 995-1(1) of the ITAA 1997.

55. AMPL proposes to make a payment to its shareholders out of its untainted share capital account. This payment will not be a dividend as defined in subsection 995-1(1) of the ITAA 1997. If the proposed 2006 Capital Return amount (40 cents per share) is not more than the cost base of the AMPL share at the time of the payment, the cost base and reduced cost base of the share are reduced by the amount of the capital return (subsection 104-135(4) of the ITAA 1997).

56. An AMPL shareholder will make a capital gain if the proposed 2006 Capital Return amount is more than the cost base of their AMPL share. The amount of the capital gain is equal to this excess (subsection 104-135(3) of the ITAA 1997).

57. If an AMPL shareholder makes a capital gain, the cost base and reduced cost base of the share are reduced to nil (subsection 104-135(3) of the ITAA 1997).

58. An AMPL shareholder cannot make a capital loss under CGT event G1.

**CGT event C2 – section 104-25**

59. If, after the Record Date but before the Payment Date, an AMPL shareholder ceases to own some, or all, of their shares in AMPL in respect of which the proposed 2006 Capital Return is payable, the right to receive the payment in respect of each of the shares disposed of is considered to be a separate CGT asset. That right is one of the rights inherent in the share at the Record Date and is retained by the shareholder when the share is sold.

60. An AMPL shareholder's right to receive the payment will be discharged or satisfied when the payment is made under the scheme, causing CGT event C2 to happen.

61. In working out the capital gain or capital loss made from CGT event C2 happening, the capital proceeds from the event will be the proposed 2006 Capital Return amount.

62. The cost base of the AMPL shareholder's right to receive a payment under the scheme is worked out in accordance with Division 110 of the ITAA 1997. However, the cost base of the right will be nil if the full cost base (or reduced cost base) of the share previously held by the AMPL shareholder has been applied in working out a capital gain or loss when a CGT event happened to the share – for example, when the AMPL shareholder disposed of the share. In these cases, the AMPL shareholder will generally make a capital gain equal to the amount paid under the scheme.

63. Because the right to a payment such as the proposed 2006 Capital Return was inherent in the share during the time it was owned, the right is considered to have been acquired at the time when the share was acquired (section 109-5 of the ITAA 1997).

64. Consequently, if the share to which the payment relates was originally acquired by an AMPL shareholder at least 12 months before the payment of the proposed 2006 Capital Return amount, a capital gain from CGT event C2 happening to the right may qualify as a discount capital gain under subsection 115-25(1) of the ITAA 1997 (provided the other conditions in Subdivision 115-A of the ITAA 1997 are satisfied).

## **Non-resident shareholders – Division 136**

65. A non-resident AMPL shareholder will make a capital gain from the proposed 2006 Capital Return only if their AMPL share has the necessary connection with Australia (section 136-10 of the ITAA 1997). Under category 5 of the table in section 136-25 of the ITAA 1997, an AMPL share will have the necessary connection with Australia if, at any time during the 5 years before the payment of the proposed 2006 Capital Return, the AMPL shareholder, together with their associates, owned 10% or more by value of the shares in AMPL.

## **Appendix 2 – Detailed contents list**

66. The following is a detailed contents list for this Ruling:

	<b>Paragraph</b>
<b>What this Ruling is about</b>	<b>1</b>
Relevant taxation provision(s)	2
Class of entities	3
Qualifications	4
<b>Date of effect</b>	<b>8</b>
<b>Withdrawal</b>	<b>9</b>
<b>Scheme</b>	<b>10</b>
Proceeds received in respect of the demerged UK entity	15
Excess capital in the statutory funds of AMP Life	18
Other aspects of the return of capital	20
<b>Ruling</b>	<b>24</b>
Distribution is not a dividend for income tax purposes	24
Sections 45A, 45B and 45C	25
Capital gains	26
<b>Appendix 1 – Explanation</b>	<b>31</b>
Distribution is not a dividend for income tax purposes	31
Sections 45A and 45B	35
Section 45A – streaming of dividends and capital benefits	36
Section 45B – schemes to provide capital benefits in substitution for dividends	38
Relevant circumstances	43
Section 45C – deeming dividends to be paid where determinations under section 45A or 45B are made	53
CGT event G1 – section 104-135	54
CGT event C2 – section 104-25	59
Non-resident shareholders – Division 136	65
<b>Appendix 2 – Detailed contents list</b>	<b>66</b>

## References

### *Previous draft:*

Not previously issued as a draft

### *Related Rulings/Determinations:*

CR 2005/28

### *Subject references:*

- capital benefit
- capital reductions
- dividend substitutions
- share capital

### *Legislative references:*

- ITAA 1936 6(1)
- ITAA 1936 6D
- ITAA 1936 6D(3)
- ITAA 1936 44
- ITAA 1936 44(1)
- ITAA 1936 45A
- ITAA 1936 45A(2)
- ITAA 1936 45A(3)(b)
- ITAA 1936 45B
- ITAA 1936 45B(2)
- ITAA 1936 45B(2)(a)
- ITAA 1936 45B(2)(b)
- ITAA 1936 45B(2)(c)
- ITAA 1936 45B(3)
- ITAA 1936 45B(5)
- ITAA 1936 45B(8)
- ITAA 1936 45B(8)(a)
- ITAA 1936 45B(8)(b)
- ITAA 1936 45B(8)(c)
- ITAA 1936 45B(8)(d)
- ITAA 1936 45B(8)(e)
- ITAA 1936 45B(8)(f)
- ITAA 1936 45B(8)(g)
- ITAA 1936 45B(8)(h)
- ITAA 1936 45B(8)(i)
- ITAA 1936 45B(8)(j)
- ITAA 1936 45B(8)(k)
- ITAA 1936 45B(9)
- ITAA 1936 45C
- ITAA 1936 Pt III Div 9AA
- ITAA 1936 Pt IIIA Div 7B
- ITAA 1936 160ARDM
- ITAA 1936 177D(b)(i)
- ITAA 1936 177D(b)(ii)
- ITAA 1936 177D(b)(iii)
- ITAA 1936 177D(b)(iv)
- ITAA 1936 177D(b)(v)
- ITAA 1936 177D(b)(vi)
- ITAA 1936 177D(b)(vii)
- ITAA 1936 177D(b)(viii)
- ITAA 1936 318
- 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 109-5
- ITAA 1997 Div 110
- ITAA 1997 Subdiv 115-A
- ITAA 1997 115-25(1)
- ITAA 1997 Div 136
- ITAA 1997 136-10
- ITAA 1997 136-25
- ITAA 1997 995-1(1)
- TAA 1953
- Copyright Act 1968
- Life Insurance Act 1995 61

### *Other references*

- Minister for Revenue and Assistant Treasurer's Press Release C104/02

### ATO references

NO: 2006/5586

ISSN: 1445-2014

ATOlaw topic: Income Tax ~~ Assessable income ~~ dividend, interest and royalty income  
Income Tax ~~ Capital Gains Tax ~~ CGT events G1 to G3 - shares  
Income Tax ~~ Capital Gains Tax ~~ CGT events C1 to C3 - end of a CGT asset