

# ***CR 2012/115 - Income tax: proposed return of capital: CSG Limited***

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## Class Ruling

### Income tax: proposed return of capital: CSG Limited

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

This publication (excluding appendixes) 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, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is 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

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

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

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

- subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936);
- section 45B of the ITAA 1936; and
- section 45C of the ITAA 1936.

All subsequent legislative references in this Ruling are to the ITAA 1936 unless otherwise stated.

## Class of entities

3. The class of entities to which this Ruling applies are shareholders of CSG Limited (CSG) who:

- (a) are registered on the CSG share register on the Record Date, being the date for determining entitlement to the return of capital payment;
- (b) hold their CSG shares on capital account; and
- (c) are not subject to the taxation of financial arrangements rules in Division 230 of the *Income Tax Assessment Act 1997* (ITAA 1997) in relation to gains and losses on their CSG shares.

(Note - Division 230 of the ITAA 1997 will generally not apply to individuals, unless they have made an election for it to apply to them)

In this Ruling, a person belonging to this class of entities is referred to as a 'CSG shareholder'.

## 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 9 to 28 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.

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## Date of effect

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8. This Ruling applies from 1 July 2012 to 30 June 2013. The Ruling continues to apply after 30 June 2013 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, this Ruling will 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 this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

## Scheme

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9. The following description of the scheme is based on information provided by the applicant. The following documents, or relevant parts of them form part of and are to be read with the description:

- the request for a class ruling lodged by the applicant on behalf of CSG dated 11 September 2012 and the attached appendixes;
- CSG Limited Financial Report 2012 provided to the Australian Stock Exchange (ASX) under listing rule 4.3A; and
- correspondence from the applicant providing further particulars.

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

10. CSG is an Australian resident company which was established in 1988 and has been listed on the ASX since 2007.

11. CSG is the head company of an Australian income tax consolidated group. As at 30 June 2012 CSG was a full service Australian information, communication and technology company delivering integrated technology solutions.

12. Essentially, up to 30 June 2012, the business of CSG could be separated into two divisions:

- Print Services; and
- Technology Solutions.

## Business disposal

13. On 30 May 2012, CSG announced that an agreement had been reached to sell the Technology Solutions division to an unrelated entity and the Board of Directors' intention was to distribute excess capital to shareholders in the most efficient manner after paying capital gains tax, restructuring and transition costs and reducing debt.

14. On 2 July 2012, CSG announced that it had completed the sale of its Technology Solutions division for a total consideration of \$227.5 million. The transaction was effected via the sale of the shares in two wholly owned subsidiaries: CSG Services Pty Ltd and CSG Solutions Pty Ltd.

15. Net proceeds from the sale after capital gains tax, transaction related costs and estimated working capital adjustment totalled approximately \$187 million. The pre-tax gain on the sale of the Technology Solutions division was approximately \$92.2 million.

16. Subsequent to the sale of the Technology Solutions division and from the proceeds received on the sale, CSG:

- repaid its entire debt facility of \$91 million on 2 July 2012; and
- paid all shareholders a fully franked 2012 final dividend of 20 cents per share on 18 September 2012, totalling approximately \$56.5 million.

## **Proposed return of capital**

17. CSG proposes to make a \$40 million return of capital (14.16 cents per share), funded from proceeds received on the sale of the Technology Solutions division, subject to satisfaction of certain conditions.

18. CSG stated that the return of capital to shareholders is due to the surplus capital funds in the company as a result of the sale of the Technology Solutions division and is subject to shareholder approval at the Extraordinary General Meeting (EGM) to be held in the first week of March 2013.

19. All of CSG's shareholders will be eligible to vote on the proposed return of capital.

20. The proposed return of capital will be made equally to each of the CSG's shareholders listed on CSG's share register on the Record Date and will be wholly debited against CSG's share capital account.

21. The proposed Record Date for the return of capital is within 7 days of approval by CSG shareholders of the scheme at the EGM. Payment of the proposed return of capital is expected to be made within 30 days of approval of the scheme.

22. As a result of the return of capital there will be no change in either the number of CSG shares on issue held by each CSG shareholder or the proportionate interest of each shareholder in CSG.

**Other matters**

23. CSG has a history of paying regular fully franked dividends. A fully franked interim dividend of approximately \$7.1 million for the year ended 30 June 2012 was paid to all shareholders on 4 April 2012.

24. Prior to the sale of the Technology Solutions division CSG has no history of returning capital or buying back shares since listing on the ASX.

25. CSG's dividend policy is under review by the Board of Directors and has not yet been finalised.

26. Prior to the sale of the Technology Solutions division CSG had an approximate market capitalisation of \$223 million. As at 30 June (and 11 September) 2012, there were 282,567,499 CSG ordinary shares on issue.

27. As at 30 June 2012, the balance of CSG's share capital account was \$200,724,000, and CSG has a retained profit of \$120,351,000. Excluding profits from the sale of the Technology Solutions division CSG made an operating loss for the year ended 30 June 2012.

28. CSG has confirmed that its share capital account (as defined in section 975-300 of the ITAA 1997) is not tainted (within the meaning of Division 197 of the ITAA 1997).

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**Ruling**

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**Proposed distribution of capital is not a dividend**

29. The proposed return of capital to CSG shareholders will not be a dividend as defined in subsection 6(1).

**The application of sections 45B and 45C**

30. The Commissioner will not make a determination under subsection 45B(3) that section 45C applies to the proposed return of capital. Accordingly, no part of the proposed return of capital will be taken to be a dividend for income tax purposes.

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**Commissioner of Taxation**12 December 2012

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## Appendix 1 – Explanation

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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.*

### **Proposed distribution of capital is not a dividend**

31. Subsection 44(1) includes in a shareholder's assessable income any dividends, as defined in subsection 6(1), paid to the shareholder out of profits derived by the company from any source (if the shareholder is a resident of Australia) and from an Australian source (if the shareholder is a non-resident of Australia).

32. The term 'dividend' is defined in subsection 6(1) and includes a distribution made by a company to any of its shareholders. However, paragraph (d) of the definition of 'dividend' excludes a distribution that is debited against an amount standing to the credit of the share capital account of the company.

33. 'Share capital account' is defined in section 975-300 of the ITAA 1997 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 975-300(3) of the ITAA 1997 states that an account is generally taken not to be a share capital account if it is tainted. Section 197-50 of the ITAA 1997 states that a share capital account becomes tainted when an amount to which Division 197 of the ITAA 1997 applies is transferred to the account and the account is not already tainted.

35. The proposed return of capital will be wholly debited against CSG's untainted share capital account. Accordingly, paragraph (d) of the definition of 'dividend' in subsection 6(1) applies, and the proposed return of capital will not be a dividend as defined in that subsection and will not be assessable income under subsection 44(1).

### **Section 45B – schemes to provide capital benefits**

36. Section 45B applies if certain capital payments are made to shareholders in substitution for dividends.

37. Subsection 45B(2) sets out the conditions under which the Commissioner may make a determination under subsection 45B(3) that section 45C applies to treat all or part of a distribution as an unfranked dividend. 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));

- 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)); 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)).

38. Each of these conditions is considered below.

### ***Scheme***

39. A 'scheme' for the purposes of section 45B is taken to have the same meaning as provided in subsection 177A(1) of Part IVA. That definition is widely drawn and includes any agreement, arrangement, understanding, promise, undertaking, scheme, plan or proposal.

40. The proposed return of capital by CSG will constitute a scheme for the purposes of paragraph 45B(2)(a).

41. The phrase 'provided with a capital benefit' is defined in subsection 45B(5). Relevantly, it includes a distribution to a person of share capital. As CSG will debit the proposed return of capital against its untainted share capital account, CSG shareholders will, under the scheme, be provided with a capital benefit.

### ***Tax benefit***

42. A relevant taxpayer 'obtains a tax benefit', as defined in subsection 45B(9), if:

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

by the relevant taxpayer would, apart from the operation of section 45B, be less than the amount that:

- would have been payable; or
- would be payable at a later time than it would have been payable;

if the capital benefit had instead been an assessable dividend.

43. In the event that the distribution were a dividend rather than a capital benefit, it is likely that the amount of tax payable by CSG shareholders would be greater than the amount payable in respect of the proposed return of capital payment (that payment being the capital benefit).

44. 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 foreign resident shareholders. By contrast, a dividend would generally be included in the assessable income of a resident shareholder or, in the case of a foreign resident be subject to dividend withholding tax under section 128B. Therefore, CSG shareholders will generally obtain a tax benefit from the scheme.

### ***Relevant circumstances***

45. Paragraph 45B(2)(c) requires the Commissioner to consider the 'relevant circumstances' of the scheme as set out in subsection 45B(8) to determine whether any part of the scheme is entered into for a purpose, other than an incidental purpose, of enabling the relevant taxpayer (that is, a shareholder in CSG) to obtain a tax benefit.

46. The test of purpose is an objective one. The question is whether it would be concluded that a person who enters into or carries out the scheme or any part of the scheme does so for the purpose of obtaining a tax benefit for the relevant taxpayer. This requisite purpose does not have to be the most influential or prevailing purpose but it must be more than an incidental purpose.

47. The purpose which causes section 45B to apply may be the purpose of any party to the scheme. In this case, however, the Commissioner is concerned only with the purpose of CSG. The Commissioner cannot ascertain the purposes of CSG's numerous shareholders, all of whom are eligible to vote on the return of capital under section 256C of the *Corporations Act 2001*, and all of whom may participate in the proposed return of capital. Nevertheless, in a case such as this, an objective conclusion as to the purpose of the company should, generally speaking, not be inconsistent with an objective conclusion as to the purpose of the shareholders, in particular those shareholders who will vote in favour of the payment.

48. The relevant circumstances under subsection 45B(8) cover the circumstances of the company and the tax profile of the shareholders. In this instance, as the return of capital will be made to all CSG shareholders regardless of individual circumstances, paragraphs 45B(8)(c) to (h) do not incline for or against a conclusion as to the requisite purpose. The circumstances covered by paragraphs 45B(8)(i) and (j), pertaining to the provision of ownership interests and demerger respectively, are not relevant in the context of the proposed distribution. Consequently, the relevant matters are those covered by the circumstances described in paragraphs 45B(8)(a), (b) and (k).

49. Paragraph 45B(8)(a) refers to the extent to which the capital benefit is attributable to capital and profits (realised or unrealised) of the company or an associate (within the meaning of section 318) of the company.

50. CSG made an operating loss in the 2011-12 income year, therefore, it had no 'ordinary' profit from business operations to distribute for the year. On the basis of the information provided by the applicant almost all of the net profits from the sale of the Technology Solutions division have been returned to CSG shareholders as dividends. The return is of capital in excess of CSG's operating and capital requirements obtained from the sale of the Technology Solutions division. Accordingly, the proposed return of capital is considered attributable to capital, not profit.

51. Paragraph 45B(8)(b) refers to the pattern of distributions made by a company or an associate (within the meaning of section 318) of the company. CSG has a history of making regular dividend distributions to its shareholders, and paid a final dividend of 20c per share consequent to the sale of the Technology Solutions division. CSG's dividend policy is under review by its Board of Directors due to the scale of the business structure sold. Overall, the pattern of distributions made by CSG does not suggest that the proposed return of capital will be made in substitution for dividends.

52. Paragraph 45B(8)(k) refers to the matters in subparagraphs 177D(b)(i) to (viii). 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, the timing of the scheme, its form and substance, and the financial and other implications for the parties involved.

53. CSG has demonstrated that the scheme seeks to return an amount of capital released from the disposal of a significant division of its business. The proposed distribution will return capital which CSG considers is in excess of CSG's ongoing operating requirements. The practical implications of the scheme for CSG and its shareholders are consistent with it being, in form and substance, a return of capital.

54. Therefore, having regard to the relevant circumstances it cannot be concluded that the scheme is to be entered into or carried out for a more than incidental purpose of enabling CSG shareholders to obtain a tax benefit. Accordingly, the Commissioner will not make a determination under subsection 45B(3) that section 45C applies to the whole, or a part, of the proposed return of capital.

### **Section 45C**

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

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

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

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## References

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- Previous draft:*
- ITAA 1936 45B(8)(f)
  - ITAA 1936 45B(8)(g)
- Not previously issued as a draft
- ITAA 1936 45B(8)(h)
  - ITAA 1936 45B(8)(i)
- Related Rulings/Determinations:*
- TR 2006/10
- ITAA 1936 45B(8)(j)
  - ITAA 1936 45B(8)(k)
- Subject references:*
- ITAA 1936 45B(9)
  - ITAA 1936 45C
  - ITAA 1936 128B
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  - ITAA 1936 177D(b)(i)
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  - ITAA 1936 177D(b)(iii)
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- Legislative references:*
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