


# ***CR 2013/57 - Income tax: return of share capital: Ridley Corporation Limited***

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## Class Ruling

### Income tax: return of share capital: Ridley Corporation 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 45A of the ITAA 1936;
- section 45B of the ITAA 1936; and
- 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; and
- subdivision 115-A of the ITAA 1997.

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 Ridley Corporation Limited (Ridley) who:

- (a) bought their shares before 26 June 2013 and are registered on the Ridley share register on the Record Date, being the date for determining entitlement to the return of share capital payment;
- (b) hold their Ridley shares on capital account; and
- (c) are not subject to the taxation of financial arrangements rules in Division 230 of the ITAA 1997 in relation to gains and losses on their Ridley 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)

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

## **Qualifications**

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

6. 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.

7. 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.

## **Date of effect**

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8. This Ruling applies from 3 July 2013 to 30 June 2014. The Ruling continues to apply after 30 June 2014 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.

**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. Ridley is an Australian resident company listed on the Australian Securities Exchange (ASX) since 13 August 1987.

11. Ridley's business comprised of both AgriProducts, provider of animal nutrition solutions, and Cheetham Salt, producer and refiner of value added solar salt.

12. On 22 February 2012, the Board of Directors resolved to pursue transaction opportunities for the divestment of the Cheetham Salt business.

### **Business Disposal**

13. On 29 November 2012, Ridley announced that it had entered into an agreement for the sale of all the shares in Cheetham Salt Limited (Cheetham) to an unrelated entity, for total consideration of \$150 million payable fully in cash on completion (Transaction). On 28 February 2013, Ridley announced that it had completed the sale of Cheetham.

14. Cheetham's Dry Creek salt field and all the assets associated with the non-operating Bowen, Lara and Moolap former salt field sites, did not form part of the Transaction and continue to be retained by Ridley following the Transaction.

15. Following certain transaction costs and repayments made on its debt facility, Ridley had excess funds which the Board proposed to distribute in the most effective manner.

### **Return of capital**

16. On 21 May 2013 Ridley released a notice and explanatory memorandum announcing that a General Meeting of Ridley shareholders was to be held to approve a return of share capital to the shareholders of approximately \$23.1 million (7.5 cents per share).

17. Ridley shareholders approved the return of share capital at a General Meeting held on 24 June 2013. All Ridley shareholders were eligible to vote on the proposed return of share capital.

18. The return of share capital payment was made equally to each Ridley shareholder listed on Ridley's share register on the Record Date being 7.00pm AEST on 2 July 2013. However, Ridley shareholders who acquired Ridley shares from commencement of market trade on 26 June 2013 (ex-capital return) were not entitled to the payment.

19. Ridley made the return of share capital payment to its shareholders on 5 July 2013.

20. Ridley debited the entire amount of the return of share capital payment against the company's share capital account. There was no change in either the number of Ridley shares on issue or the proportionate interest of each Ridley shareholder in Ridley.

21. The return of share capital payment was sourced from Ridley's existing cash funds and bank loan facilities.

## **Other matters**

22. On 20 February 2013 Ridley announced a consolidated after tax loss for the half year to 31 December 2012 of \$12.7 million, after accounting for transaction costs and providing for non-recurring write-downs and impairments of salt fields retained by Ridley, (together totalling \$24.9 million).

23. As a result of the impairment of assets and write-down of goodwill, the consolidated entity did not have any retained profits on either 31 December 2012 or 30 June 2013 and did not pay any dividends during this period.

24. When the return of capital payment was made on 5 July 2013, Ridley had no realised or unrealised profits. In addition, the transaction did not give rise to any liability for capital gain tax for the year ended 30 June 2013.

25. Ridley has a history of paying fully franked and unfranked dividends. Fully franked dividends of 7.5 cents per share were paid to all shareholders in respect of the year ended 30 June 2012. Unfranked dividends were paid to all of its shareholders in respect of the years ended 30 June 2009 to 2011.

26. Prior to the sale of Cheetham, Ridley had:

- 307,817,071 ordinary shares on issue as at 31 December 2012.
- no history of returning capital to shareholders or undertaking share buy-backs since listing on the ASX.

27. As at 22 August 2012, Ridley had 7,141 shareholders on its share registry of which the top 20 held approximately 73% of shares, foreign institutions held 1% of shares and Australian retail shareholders held 26% of shares.

28. Ridley 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).

## **Ruling**

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

29. The return of share capital payment made to Ridley shareholders will not be a dividend as defined in subsection 6(1).

### **The application of sections 45A, 45B and 45C**

30. The Commissioner will not make a determination under subsection 45A(2) or subsection 45B(3) that section 45C applies to the whole or any part of the return of share capital received by Ridley shareholders. Accordingly, no part of the capital return will be taken to be a dividend for income tax purposes.

### **Capital gains tax (CGT) consequences**

31. CGT event G1 (section 104-135 of the ITAA 1997) happened when Ridley made the return of share capital payment to a Ridley shareholder in respect of a share owned by the shareholder at the Record Date, 2 July 2013 which the shareholder continued to own on the Payment Date, 5 July 2013.

32. CGT event C2 (section 104-25 of the ITAA 1997) happened when Ridley made the return of share capital payment to a shareholder that owned a share at the Record Date, 2 July 2013 but no longer owned the share on the Payment Date, 5 July 2013.

### **Foreign resident shareholders**

33. A foreign resident Ridley shareholder who received the return of capital payment may disregard any capital gain made when CGT event G1 happened if their Ridley share did not constitute 'taxable Australian property' (section 855-10 of the ITAA 1997).

34. A foreign resident Ridley shareholder who received the return of capital payment may disregard any capital gain or capital loss made when CGT event C2 happened if their right to receive the payment was not 'taxable Australian property' (section 855-10 of the ITAA 1997).

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**Commissioner of Taxation**

31 July 2013

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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.*

### **Distribution is not dividend**

35. 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).

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

37. The term '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 on or after 1 July 1998 where the first amount credited to the account was an amount of share capital.

38. 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. Ridley has confirmed that its share capital account is not tainted within the meaning of Division 197 of the ITAA 1997.

39. The return of share capital payment was recorded as a debit to Ridley's share capital account. As the share capital account of Ridley was not tainted within the meaning of Division 197 of the ITAA 1997, paragraph (d) of the definition of 'dividend' in subsection 6(1) applies. Accordingly, the return of share capital payment was not a dividend as defined in subsection 6(1).

### **Anti-avoidance provisions**

40. Sections 45A and 45B are two anti-avoidance provisions which, if they apply, allow the Commissioner to make a determination that section 45C applies to treat all or part of the return of return of capital amounts received by Ridley shareholders as an unfranked dividend paid by the company out of profits.

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

41. Section 45A applies where capital benefits are streamed to some shareholders (the Advantaged Shareholders), who would derive a greater benefit from the receipt of capital than other shareholders (the Disadvantaged Shareholders) and the Disadvantaged Shareholders receive, or are likely to receive, dividends.

42. A reference to the 'provision of a capital benefit to a shareholder in a company' is defined in paragraph 45A(3)(b) to include the distribution to the shareholder of share capital. Ridley will provide its shareholders with a 'capital benefit' as defined in paragraph 45A(3)(b) when Ridley makes the return of share capital payment to its shareholders.

43. The capital benefit will be provided to all Ridley shareholders in the same proportion as their share holdings.

44. Accordingly, section 45A does not apply to the return of share capital payment and the Commissioner will not make a determination under subsection 45A(2) that section 45C applies in relation to the whole, or a part, of the return of share capital.

**Section 45B – scheme to provide capital benefits**

45. Section 45B applies where certain capital payments, including a return of share capital, are paid to shareholders in substitution for dividends. It allows the Commissioner to make a determination that section 45C applies to a capital benefit. Should section 45C apply, the capital benefit is taken to be a dividend. Specifically, the provision applies where:

- 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, entered into the scheme or carried out the scheme or any part of the scheme for a purpose, other than an incidental purpose, of enabling the relevant taxpayer to obtain a tax benefit (paragraph 45B(2)(c)).

Each of these conditions is considered in paragraphs 46 to 76 of this Explanation.

***Schemes to provide capital benefits***

46. 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. The return of capital payment constitutes a scheme.

47. The phrase 'provided with a capital benefit' is defined in subsection 45B(5). It states that a person is provided with a capital benefit if:

- an ownership interest in a company is provided to the person;
- there is a distribution to the person of share capital; or
- the company does something in relation to an ownership interest that has the effect of increasing the value of the ownership interest (which may or may not be the same interest) held by that person.

48. As the return of share capital was debited to Ridley's share capital account, Ridley is taken to have provided each shareholder with a capital benefit under paragraph 45B(5)(b) in the form of a distribution of share capital.

***Tax benefit***

49. A relevant taxpayer 'obtains a tax benefit' for the purposes of paragraph 45B(2)(b) as defined in subsection 45B(9) 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, 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.

50. As discussed in paragraph 48 of this Explanation, the return of capital to shareholders is a capital benefit. The tax consequences associated with a return of capital payment is that the cost base of the relevant shares are first reduced by the amount of the payment before any liability to capital gains tax arises. However, had the return of capital payment been a dividend instead, the shareholders would have been required to include the payment in their assessable income. Consequently, the receipt of the capital benefit results in shareholders obtaining a 'tax benefit'.

***Relevant circumstances***

51. For the purposes of paragraph 45B(2)(c), the Commissioner is required to consider the 'relevant circumstances' set out in subsection 45B(8) to determine if any part of the scheme was entered into for a purpose, other than an incidental purpose, of enabling a relevant taxpayer to obtain a tax benefit.

52. The test for 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'. A 'relevant taxpayer' in this instance is a Ridley shareholder. This requisite purpose does not have to be the most influential or prevailing purpose, the test will be met if it is more than a merely incidental purpose.

53. 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 Ridley. The Commissioner cannot ascertain the purposes of Ridley's numerous shareholders, all of whom voted on the proposed return of share capital payment under section 256C of the *Corporations Act 2001*, and most if not all of whom participated in the return of share capital. Nevertheless, in a case such as this, an objective conclusion as to the purpose of the company, generally speaking, should not be inconsistent with an objective conclusion as to the purpose of the shareholders, in particular those shareholders who voted in favour of the payment.

54. The relevant circumstances under subsection 45B(8) cover the circumstances of the company and the tax profile of the shareholders. In this instance, because the return of share capital was made to all Ridley shareholders, regardless of individual circumstances, paragraphs 45B(8)(c) to 45B(8)(e) do not incline for or against a conclusion as to purpose. The circumstances covered by paragraphs 45B(8)(i) and 45B(8)(j), which are concerned with the provision of ownership interests and demerger respectively, are not relevant. The relevant matters are those covered by the circumstances described in paragraphs 45B(8)(a), 45B(8)(b), 45B(8)(f), 45B(8)(h) and 45B(8)(k).

***Paragraph 45B(8)(a)***

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

56. To determine the extent to which a capital benefit is attributable to capital and to profits, it is necessary to consider the characteristics of share capital and profits, the availability of each in the circumstances of the company, and the context of the scheme.

57. Where a capital distribution is attributable to the disposal of business assets, a reasonable approach should be taken in determining the extent to which share capital was invested in the disposed assets and is available to be distributed to shareholders.

58. If the disposal also realised a profit, the fact that the disposal resulted in both a release of capital and realised a profit should be considered in determining the substance of a subsequent distribution of share capital.

59. In the current circumstances, Ridley disposed of Cheetham for \$150 million. The Sale Transaction did not include the Dry Creek salt fields and other assets associated with the non-operating Bowen, Lara and Moolap salt fields. The net proceeds from the disposal were applied towards retiring bank debt, with the balance of approximately \$23.1 million used to fund the return of share capital payment.

60. Ridley's consolidated accounts for the half year to 31 December 2012 disclosed that the company incurred a loss before tax and also disclosed no retained earnings.

61. As a result of the impairment of assets and write-down of goodwill, the consolidated entity did not have any retained profits between 31 December 2012 and 30 June 2013 and did not pay any dividends during this period.

62. When the return of capital payment was made on 5 July 2013, Ridley had no realised or unrealised profits.

63. The fact that the accounts of Ridley did not reveal either realised or unrealised profits suggests that the distribution is largely attributable to capital.

#### *Paragraph 45B(8)(b)*

64. 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.

65. The Board of Ridley has historically sought to maintain a dividend payout ratio in the vicinity of 80% of net profit. The dividends paid have been either fully franked or unfranked. Following the disposal of Cheetham, Ridley had an overall operating loss and no retained earnings for the period ending 31 December 2012.

66. As a result of the impairment of assets and write-off of goodwill, Ridley did not have retained profits available as at 30 June 2013.

67. Overall, Ridley's pattern of distributions does not suggest that the return of capital was made in substitution for a dividend.

*Paragraph 45B(8)(f)*

68. Paragraph 45B(8)(f) requires consideration of whether the cost base (for the purposes of Part 3-1 of the ITAA 1997) of the relevant share is not substantially less than the value of the capital benefit. If the cost base of the share is similar or greater in value than the capital benefit received the relevant taxpayer will not make a capital gain pursuant to CGT event G1 (subsection 104-135(1) of the ITAA 1997).

69. The capital return per share was 7.5 cents per share. Ridley issued ordinary and preference shares of 50 cents each with a premium of 20 cents with a view to funding the acquisition of Cheetham. Over the past 10 years the Ridley shares have generally traded at a price in excess of 7.5 cents. The cost base of the relevant ownership interest was not substantially less than the value of the capital benefit received. Consequently, the return of share capital payment would most likely have resulted in a reduction in the cost base of a Ridley share rather than a capital gain.

70. In the present context, it is considered that this circumstance does not incline towards the conclusion as to purpose.

*Paragraph 45B(8)(h)*

71. Paragraph 45B(8)(h) is concerned with whether the capital benefit was provided to a shareholder in circumstances where the shareholder's interest in the company was affected. If the shareholder continues to own the same number of shares and retains the same proportional interest in the company, the outcome is consistent with that which would be achieved in the context of a dividend.

72. Following the return of capital, no shares were cancelled. Furthermore, the individual interests as well as the relative interests of shareholders in Ridley were not affected. Shareholders' rights and obligations in respect of their shares were not affected. The outcome was consistent with the payment of a dividend.

73. This circumstance inclines towards the conclusion as to purpose.

*Paragraph 45B(8)(k)*

74. Paragraph 45B(8)(k) refers to the matters in subparagraphs 177D(b)(i) to (viii). These are matters which require examination of a scheme 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.

75. The Commissioner is satisfied that the scheme seeks to return an amount of capital released from the disposal of a substantial part of Ridley's business. Ridley considered that the amount used to fund the return of capital payment was in excess of Ridley's ongoing operating requirements. The practical implications of the scheme for Ridley and its shareholders are consistent with the scheme being, in form and substance, a return of capital.

76. Therefore, having regard to the relevant circumstances it cannot be concluded that the scheme was entered into or carried out for a more than incidental purpose of enabling Ridley 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 return of capital payment.

## **Section 45C**

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

## **Capital gains tax consequences**

### ***CGT event G1 – section 104-135 of the ITAA 1997***

78. CGT event G1 happened when Ridley made the return of share capital payment to a Ridley shareholder in respect of a share that the shareholder owned at the Record Date and continued to own at the time of payment (section 104-135 of the ITAA 1997).

79. A Ridley shareholder made a capital gain if the return of share capital is more than the cost base of the shareholder's Ridley share. The amount of the capital gain is equal to the excess (subsection 104-135(3) of the ITAA 1997).

80. If a Ridley shareholder made a capital gain when CGT event G1 happened, the cost base and reduced cost base of the Ridley share is reduced to nil. A Ridley shareholder cannot make a capital loss when CGT event G1 happened (subsection 104-135(3) of the ITAA 1997).

81. If the return of share capital payment is equal to or less than the cost base of the Ridley share at the time of payment, the cost base and reduced cost base of the share will be reduced by the amount of the payment (subsection 104-135(4) of the ITAA 1997). Where the cost base and reduced cost base of a Ridley share prior to the payment exceeds 7.5 cents per share, the cost base and reduced cost base is reduced by 7.5 cents.

82. A capital gain made when CGT event G1 happened will be eligible to be treated as a discount capital gain under Division 115 provided that the shareholder acquired the Ridley share at least 12 months before the return of share capital payment was made (subsection 115-25(1) of the ITAA 1997) and the other conditions of that Division are satisfied.

***CGT event C2 – section 104-25 of the ITAA 1997***

83. CGT event C2 happened when the return of share capital payment was made (section 104-25 of the ITAA 1997) to a shareholder that held the share at the Record Date but no longer owned the share at the Payment Date. The right to receive the return of share capital is one of the rights inherent in a Ridley share held at the Record Date. If, after the Record Date but before the time of payment, a Ridley shareholder ceased to own a Ridley share in respect of which the return of share capital was payable, the right to receive the return of share capital was retained by that shareholder and the right constitutes a separate CGT asset.

84. The right to receive the payment ended by the right being discharged or satisfied when the payment was made.

85. A Ridley shareholder made a capital gain if the capital proceeds from the ending of the right are more than the cost base of the right. The capital gain is equal to the amount of the excess. A Ridley shareholder will make a capital loss if the capital proceeds from the ending of the right are less than the reduced cost base of the right. The capital loss is equal to the amount of the difference (subsection 104-25(3) of the ITAA 1997).

86. In working out the capital gain or capital loss made when CGT event C2 happened, the capital proceeds will be the amount of the return of share capital (subsection 116-20(1) of the ITAA 1997).

87. The cost base of the Ridley shareholder's right to receive the return of share capital is worked out under Division 110 (modified by Division 112 of the ITAA 1997). The cost base of the right does not include the cost base or reduced cost base of the share previously owned by a Ridley shareholder that was applied in working out a capital gain or capital loss made when a CGT event happened to the share (when the Ridley shareholder ceased to own the share) for example when the Ridley shareholder disposed of the share after the Record Date.

88. Therefore, if the entire cost base or reduced cost base of the Ridley share was applied in working out a capital gain or capital loss when a CGT event happened to that share, then the right to receive the return of share capital is likely to result in a cost base of nil. Therefore, the Ridley shareholder will generally make a capital gain equal to the amount of the return of share capital payment of 7.5 cents per share.

89. As the right to receive the payment of the return of share capital was inherent in the Ridley share during the time it was owned, the right is considered to have been acquired at the time when the corresponding share was acquired (section 109-5 of the ITAA 1997). Accordingly, if the Ridley share was acquired at least 12 months before the payment of the return of share capital, a capital gain made from the ending of the corresponding right satisfies the requirements of section 115-25 of the ITAA 1997. The capital gain may be eligible to be treated as a discount capital gain under Division 115 of the ITAA 1997 provided the other conditions of that Division are satisfied.

### Foreign resident shareholders

90. Under subsection 855-10(1) of the ITAA 1997, an entity disregards a capital gain or capital loss made from a CGT event if:

- just before the CGT event happened, the entity is a foreign resident, or is the trustee of a foreign trust for CGT purposes; and
- the CGT event happens in relation to a CGT asset that is not 'taxable Australian property'.

91. The term 'taxable Australian property' is defined in the table in section 855-15 of the ITAA 1997. The table sets out five categories of CGT assets:

Item 1	taxable Australian real property;
Item 2	an indirect Australian real property interest not covered by item 5;
Item 3	a CGT asset used at any time in carrying on a business through a permanent establishment in Australia and which is not covered by item 1, 2, or 5;
Item 4	an option or right to acquire a CGT asset covered by item 1, 2 or 3; and
Item 5	a CGT asset that is covered by subsection 104-165(3) (choosing to disregard a gain or loss on ceasing to be an Australian resident).

92. A foreign resident, or the trustee of a foreign resident trust for CGT purposes, cannot disregard a capital gain or capital loss made when a CGT event G1 happened to their Ridley share under subsection 855-10(1) if:

- (a) their Ridley share was an indirect Australian real property interest (item 2 of the table in section 855-15 of the ITAA 1997); or
- (b) their Ridley share had been used at any time by them in carrying on a business through a permanent establishment in Australia (item 3 of the table in section 855-15 of the ITAA 1997); or

- (c) their Ridley share was covered by subsection 104-165(3) of the ITAA 1997 (item 5 of the table in section 855-15 of the ITAA 1997).

93. A foreign resident, or trustee of a foreign resident trust for CGT purposes, cannot disregard a capital gain or capital loss made when a CGT event C2 happened to their right to receive the return of capital payment if:

- (a) the right had been used at any time by them in carrying on a business through a permanent establishment in Australia (item 3 of the table in section 855-15 of the ITAA 1997); or
- (b) the right was covered by subsection 104-165(3) of the ITAA 1997 (item 5 of the table in section 855-15 of the ITAA 1997).

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

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94. 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)(h)
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- Related Rulings/Determinations:*
- ITAA 1936 45B(3)
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  - ITAA 1936 177D(b)(vi)
  - ITAA 1936 177D(b)(vii)
  - ITAA 1936 177D(b)(viii)
  - ITAA 1936 318
- Subject references:*
- capital benefit
  - capital gains tax
  - capital reductions
  - CGT event C1-C3 – end of a CGT asset
  - CGT event G1-G3 – shares
  - dividend
  - return of capital on shares
  - share capital
  - shareholder payments
- Legislative references:*
- ITAA 1936
  - ITAA 1936 6(1)
  - ITAA 1936 44(1)
  - ITAA 1936 45A
  - 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 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 Div 112
  - ITAA 1997 Div 115
  - ITAA 1997 115-25
  - ITAA 1997 115-25(1)
  - ITAA 1997 116-20(1)
  - ITAA 1997 104-165(3)
  - ITAA 1997 197-5(1)
  - ITAA 1997 197-50(1)
  - ITAA 1997 Div 230
  - ITAA 1997 855-10
  - ITAA 1997 855-15
  - ITAA 1997 975-300
  - ITAA 1997 975-300(3)
  - ITAA 1997 995-1
  - Corporations Act 2001
  - TAA 1953
  - Copyright Act 1968
- 

### ATO references

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Income Tax ~~ Capital Gains Tax ~~ CGT events C1 to C3 - end of a CGT asset  
Income Tax ~~ Return of capital

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