

CR 2019/37 - Chalice Gold Mines Limited - return of capital



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Class Ruling

Chalice Gold Mines Limited – return of capital

Relying on this Ruling

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

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or pay any penalties or interest in respect of the matters covered by this Ruling.

Further, if we think that this Ruling disadvantages you, we may apply the law in a way that is more favourable to you.

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What this Ruling is about

1. This Ruling sets out the tax consequences of the return of capital made by Chalice Gold Mines Limited (Chalice) to its shareholders.
2. Full details of this return of capital are set out in paragraphs 6 to 19 of this Ruling.

Who this Ruling applies to

3. This Ruling applies to you if you are a holder of ordinary shares in Chalice and you:
 - were registered on the Chalice share register on 30 November 2018 (the Record Date), and
 - held your Chalice shares on capital account (that is, you neither held your Chalice shares as ‘revenue assets’ nor as ‘trading stock’ (as defined in section 977-50 and section 995-1(1) of the *Income Tax Assessment Act 1997* (ITAA 1997) respectively).
4. This Ruling does not apply to anyone who is subject to the taxation of financial arrangements rules in Division 230 of the ITAA 1997 in relation to the scheme outlined in paragraphs 20 to 34 of this Ruling.

Note: Division 230 will not apply to individuals, unless they have made an election for it to apply.

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When this Ruling applies

5. This Ruling applies from 1 July 2018 to 30 June 2019.

Ruling

6. All legislative references in this Ruling are to the *Income Tax Assessment Act 1936* (ITAA 1936) unless otherwise indicated.

Return of capital not a dividend

7. No part of the share capital Chalice paid to you is a dividend as defined in subsection 6(1). Further, the Commissioner will not make a determination under paragraph 45B(3)(b) that section 45C applies in relation to any part, of the return of capital. This means you will not include any part of the return of share capital as assessable income under section 44.

Capital gains tax (CGT) consequences

CGT event G1

8. CGT event G1 (section 104-135 of the ITAA 1997) happened to you when Chalice paid you the return of capital in respect of Chalice shares you owned at the Record Date and continued to own at the Payment Date.
9. CGT event G1 happened because Chalice made a payment to a shareholder in respect of a share they own in Chalice, some or all of the payment is not a dividend, or an amount that is taken to be a dividend under section 47, and the payment is not included in the shareholder's assessable income.
10. The amount of the return of capital to which CGT event G1 applies is \$0.04 per Chalice share (subsection 104-135(1) of the ITAA 1997).
11. You will make a capital gain under CGT event G1 if the amount of the return of capital of \$0.04 per share is more than the cost base of your Chalice share. The capital gain is equal to the amount of the excess and the cost base and reduced cost base of the Chalice share are reduced to nil (subsection 104-135(3) of the ITAA 1997). You cannot make a capital loss when CGT event G1 happens (Note 1 to subsection 104-135(3) of the ITAA 1997).
12. A capital gain made when CGT event G1 happens is eligible to be treated as a discount capital gain under Subdivision 115-A of the ITAA 1997 provided you acquired your Chalice share at least 12 months before the Payment Date (subsection 115-25(1) of the ITAA 1997) and the other conditions in that Subdivision are satisfied.
13. If the amount of the return of capital is not more than the cost base of your Chalice share, the cost base and reduced cost base of the share are reduced by the amount of the return of capital (subsection 104-135(4) of the ITAA 1997).

CGT event C2

14. CGT event C2 happened to you when Chalice paid you the amount of the return of capital in respect of Chalice shares that you owned at the Record Date but ceased to own at the Payment Date (section 104-25 of the ITAA 1997).
15. CGT event C2 happened because, by ceasing to own a Chalice share after the Record Date but before the Payment Date, you retained the right to receive the return of

capital (which is a separate CGT asset from the Chalice share). When the return of capital was paid, the right to receive the return of capital (being an intangible CGT asset) ended by the right being discharged or satisfied.

16. You will make a capital gain under CGT event C2 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. You 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).

17. In working out the capital gain or capital loss made from CGT event C2, the capital proceeds will be the amount of the return of capital of \$0.04 per Chalice share (subsection 116-20(1) of the ITAA 1997).

18. The cost base of your right to receive the return of capital is worked out under Division 110 of the ITAA 1997 (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 Chalice share you previously owned that was applied in working out a capital gain or capital loss made when a CGT event happened to the share – for example, when you disposed of the share after the Record Date. Therefore, the right to receive the return of capital will have a nil cost base. As a result, you will make a capital gain equal to the capital proceeds, being \$0.04 per Chalice share.

Foreign resident shareholders

19. If you are a foreign resident, you must disregard a capital gain from CGT event G1, and a capital gain or capital loss from CGT event C2, where it happens in relation to a CGT asset that is not 'taxable Australian property' (section 855-10 of the ITAA 1997).

20. A Chalice share is taxable Australian property if:

- the Chalice share has been used at any time by you 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
- the Chalice share is covered by subsection 104-165(3) of the ITAA 1997 (item 5 of the table in section 855-15 of the ITAA 1997).

Scheme

21. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

Background

22. Chalice is an Australian resident company dual listed on the Australian Securities Exchange since 24 March 2006 and the Toronto Stock Exchange.

23. In the past, Chalice focused primarily on gold mine development and exploration in East Africa. Chalice has not been active in East Africa since its exit from Eritrea in 2013.

Return of capital

24. Chalice's business model has evolved with a renewed focus on earlier stage exploration projects.

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25. As a result, the directors of Chalice have formed the opinion that Chalice had share capital in excess of the requirements for its ongoing operations.

26. At the Annual General Meeting on 27 November 2018, the shareholders of Chalice approved an equal return of capital of \$10,662,725.

27. A return of capital of \$0.04 per share was paid to all shareholders of Chalice on the Payment Date.

28. The return of capital of \$10,622,725 was debited in full against Chalice's share capital account and was funded from Chalice's existing cash reserves.

Other matters

29. As at the Record Date, Chalice had:

- a credit balance in its share capital account of \$40,476,276
- 266,568,134 ordinary shares on issue, and
- no current year profits and accumulated losses of \$3,163,351.

30. Chalice's assets are recorded at fair value and all projects are at exploration stage.

31. Chalice's 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).

32. At the Record Date, 25.12% of Chalice's shares are held by foreign shareholders. There are no non-resident shareholders who directly hold over 10% of the shares in Chalice at the Record Date.

33. Chalice's 20 largest shareholders at 30 June 2018 constitute 70.56% of ownership.

34. Chalice has never declared a dividend to shareholders and Chalice's franking account balance was nil when the return of capital was paid.

35. Chalice has not forecast the declaration of a dividend to its shareholders in the foreseeable future, based on its proposed business operations.

Appendix – Explanation

❶ *This Explanation 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.*

36. The tax consequences and relevant legislative provisions that arise concerning the scheme that is the subject of this Ruling are outlined in the Ruling section of this document.

37. The main issues that arise under the scheme are:

- the return of capital will not give rise to a dividend for income tax purposes under the definition of 'dividend' in subsection 6(1) (as the entire amount of the return of capital was debited against an amount standing to the credit of the share capital account of Chalice), and hence will not be included in the assessable income of Chalice shareholders under section 44
- the return of capital will not give rise to a dividend for income tax purposes under section 45B (pursuant to section 45C) that would otherwise be included in the assessable income of Chalice shareholders under section 44, and
- the return of capital will cause CGT event G1 or CGT event C2 to happen.

38. Section 45B applies where certain capital benefits are, having regard to the relevant circumstances of the scheme in subsection 45B(8) considered to have been provided to shareholders by a company for a more than incidental purpose of enabling a taxpayer to obtain a tax benefit. Where section 45B applies, the Commissioner may make a determination that all or part of the capital benefit is taken to be a dividend paid by the company for income tax purposes.

39. Having regard to the relevant circumstances of Chalice's return of capital, the Commissioner considers that the scheme was not entered into or carried out for a more than incidental purpose of enabling Chalice shareholders to obtain a tax benefit. Accordingly, the Commissioner will not make a determination under paragraph 45B(3)(b) that section 45C applies in relation to the whole, or a part, of the capital benefit constituted by the distribution of share capital to Chalice shareholders. No part of the return of capital will be treated as a dividend for income tax purposes under section 45B.

References*Previous draft:*

Not previously issued as a draft

Legislative references:

- ITAA 1936
- ITAA 1936 6(1)
- ITAA 1936 44
- ITAA 1936 45B
- ITAA 1936 45B(3)(b)
- ITAA 1936 45B(8)
- ITAA 1936 45C
- ITAA 1936 47
- ITAA 1997
- ITAA 1997 104-25
- ITAA 1997 104-25(3)
- ITAA 1997 104-135
- ITAA 1997 104-135(1)
- ITAA 1997 104-135(3)
- ITAA 1997 104-135(4)
- ITAA 1997 104-165(3)
- ITAA 1997 Div 110
- ITAA 1997 Div 112
- ITAA 1997 Subdiv 115-A
- ITAA 1997 115-25(1)
- ITAA 1997 116-20(1)
- ITAA 1997 Div 197
- ITAA 1997 Div 230
- ITAA 1997 855-10
- ITAA 1997 855-15
- ITAA 1997 975-300
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- TAA 1953

ATO references

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