


# ***CR 2019/39 - Talisman Mining Limited - return of capital***

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## Class Ruling

### Talisman Mining 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 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 main income tax consequences for Australian resident shareholders who received the return of capital from Talisman Mining Limited (Talisman) to its shareholders on 8 March 2019.
2. Details of this return of capital are set out in paragraphs 10 to 37 of this Ruling.

#### **Who this Ruling applies to**

3. This Ruling applies to you if you are an Australian resident shareholder of Talisman and you:
  - were registered on the Talisman share register on 28 February 2019 (the Record Date of for determining entitlements to receive the return of share capital), and
  - held your Talisman shares on capital account (that is, you neither held your Talisman 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 10 to 37 of this Ruling.

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**Note:** Division 230 of the ITAA 1997 will not apply to individuals, unless they have made an election for it to apply.

## 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 Talisman paid to you is a dividend as defined in subsection 6(1). This means you will not include any part of the return of capital as assessable income under section 44.

## Sections 45B and 45C do not apply

8. The Commissioner will not make a determination under section 45B that section 45C applies to any part of the return of share capital Talisman paid to you. This means no part of the return of capital will be treated as an unfranked dividend for tax purposes and will not be included in your assessable income under section 44.

## Capital gains tax (CGT) consequences

9. CGT event G1 (section 104-135 of the ITAA 1997) happened to you when Talisman paid you the return of share capital in respect of the Talisman shares you owned at the Record Date (28 February 2019) and continued to own at the Payment Date (8 March 2019). A capital gain may result depending on your cost base for the share (see paragraphs 48 to 53 of this Ruling).

10. CGT event C2 (section 104-25 of the ITAA 1997) happened to you when Talisman paid you the return of capital in respect of a Talisman share you owned at the Record Date (28 February 2019) but ceased to own before the Payment Date (8 March 2019). In this circumstance a capital gain will result for you under CGT event C2 (see paragraphs 54 to 58 of this Ruling).

## Scheme

11. 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

12. Talisman was incorporated in Australia on 1 August 1997.

13. Talisman was listed on the Australian Securities Exchange on 25 November 2005.

14. Talisman is a mineral exploration company with a portfolio of projects located in the Northern Murchison and Agnew/Wiluna regions of Western Australia and the Cobar/Mineral Hill region of New South Wales. Talisman is involved in exploration for, and development of, base metals and other minerals, including copper, copper-gold, gold and nickel.

15. Talisman's business has grown and evolved since listing by way of a series of project joint ventures, acquisitions and divestments.

16. Talisman has historically financed these projects and exploration programs by way of equity raisings.

### **Springfield project and share capital raisings**

17. Talisman's focus project from 2009 has been the Springfield Project which hosts copper-gold mineralisation including the Monty Prospect, later the Monty Deposit.

18. Talisman has undertaken share capital raisings and re-capitalisations in order to support its exploration activities in the Springfield Project.

19. In 2009, 2010, 2015 and 2016 Talisman raised \$5.2 million, \$9.15 million, \$8 million and \$16.7 million respectively through share placements.

### **Capital now excess to requirements**

20. The Springfield, Halloween and Halloween West Projects together formed the Doolgunna Copper-Gold Projects.

21. Talisman, through its subsidiary, Talisman A Pty Ltd (Talisman A) held a 30% interest in the Doolgunna Copper-Gold Projects joint venture with Sandfire Resources NL (SFR) holding the remaining 70% ownership interest.

22. On 12 October 2018 Talisman sold Talisman A, which included its 30% interest in the Doolgunna Copper-Gold Projects joint venture, to SFR.

23. Talisman received \$58.15 million in net cash proceeds for the sale of Talisman A.

24. Talisman has not sought to return share capital raised in the period between 2009 and 2016 to its shareholders previously.

### **Distributions to shareholders**

25. Talisman has never paid a dividend prior to 21 December 2018 and has not returned share capital prior to 8 March 2019.

26. On 1 November 2018 Talisman announced that it proposed to distribute to shareholders up to \$46.5 million of the cash received from the sale of Talisman A by way of a combination of a dividend and an equal capital reduction.

27. A special dividend of 6.375 cents per share which totalled approximately \$11.8 million was paid on 21 December 2018.

28. The return of share capital of 15.625 cents per share which totalled approximately \$29 million was paid on 8 March 2019.

29. Between the dividend of 21 December 2018 and return of share capital of 8 March 2019, Talisman returned cash of 22 cents per share which totalled approximately \$40.9 million.

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30. The dividend distribution on 21 December 2018 and the return of share capital on 8 March 2019 to shareholders were funded from Talisman's cash at bank after the sale of Talisman A.

## Other matters

31. As at 30 June 2018, Talisman had approximately:

- 185,699,879 shares on issue
- share capital of \$60,882,000 (credit).

32. The interim accounts of 12 October 2018 showed that Talisman had cash reserves of \$57.81 million.

33. Talisman's market capitalisation was approximately \$52,924,466 as at 25 October 2018.

34. Talisman's share capital account (as defined in section 975-300 of the ITAA 1997) was not tainted within the meaning of the Division 197 of the ITAA 1997.

## Profile of shareholders

35. Talisman, being a listed company, is widely held.

36. As at 30 October 2018, Talisman had 99.23% of its issued share capital held by beneficial owners domiciled within Australia. Accordingly, 0.77% of Talisman's issued share capital was held by beneficial owners who are not domiciled within Australia.

37. Talisman has one substantial shareholding that holds 18.23% of shares as at 30 September 2018.

**Appendix – Explanation**

**ⓘ** *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.*

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**Return of share capital not a dividend**

38. 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.

39. 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.

40. Subsection 975-300(3) of the ITAA 1997 provides that an account is generally taken not to be a share capital account if it is tainted. Talisman has confirmed that its share capital account was not tainted within the meaning of Division 197 of the ITAA 1997.

41. The return of share capital was recorded as a debit to Talisman's share capital account. As such, paragraph (d) of the definition of dividend in subsection 6(1) applies and the distribution of share capital is not a dividend as defined in subsection 6(1).

42. This means no part of the return of share capital will be included in your assessable income under section 44.

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

43. Section 45B is an anti-avoidance provision which, if it applies, allows the Commissioner to make a determination that section 45C applies to treat all or part of the return of share capital received by Talisman shareholders as an unfranked dividend paid by the company out of profits.

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

44. Section 45B applies where certain capital payments are made to shareholders in substitution for dividends. In broad terms, subsection 45B(2) applies where:

- there is a scheme under which a person is provided with a capital benefit by a company (paragraph 45B(2)(a)), and
- 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 a taxpayer (the **relevant taxpayer**) to obtain a tax benefit (paragraph 45B(2)(c)).

45. The return of share capital received by Talisman shareholders satisfies the conditions in paragraphs 45B(2)(a) and 45B(2)(b). However, having regard to the relevant circumstances of the scheme, it cannot be concluded that the scheme was entered into or carried out for a more than incidental purpose of enabling Talisman shareholders to obtain a tax benefit.

46. Accordingly, the Commissioner will not make a determination under subsection 45B(3) that section 45C applies to the whole, or a part, of the payment of the return of share capital. This means no part of the return of share capital will be treated as an unfranked dividend for tax purposes and will not be included in your assessable income under section 44.

## **Capital gains tax consequences**

### **CGT event G1**

47. CGT event G1 happens if a company makes a payment to a shareholder in respect of a share they own in the company, some or all of the payment (the non-assessable part) 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 (section 104-135 of the ITAA 1997).

48. CGT event G1 happened to you when Talisman made the return of share capital to you in respect of Talisman shares that you owned at the Record Date and continued to own at the Payment Date (section 104-135 of the ITAA 1997). The non-assessable part in respect of the share capital return is 15.625 cents per share.

49. You will make a capital gain under CGT event G1 if the non-assessable part is more than the cost base of your Talisman share. The amount of the capital gain is equal to the excess (subsection 104-135(3) of the ITAA 1997).

50. If you make a capital gain from CGT event G1 happening, the cost base and reduced cost base of your Talisman share is reduced to nil. You cannot make a capital loss when CGT event G1 happens (Note 1 to subsection 104-135(3) of the ITAA 1997).

51. A capital gain made when CGT event G1 happens is eligible to be treated as a discount capital gain if you are an Australian resident shareholder under Division 115 of the ITAA 1997 provided that you acquired your Talisman share at least 12 months before

the Payment Date (subsection 115-25(1) of the ITAA 1997) and the other conditions of Division 115 are satisfied.

52. If the non-assessable part is not more than the cost base of your Talisman share, the cost base and reduced cost base of the share are reduced (but not below nil) by the amount of the non-assessable part (subsection 104-135(4) of the ITAA 1997).

### **CGT event C2**

53. If, after the Record Date but before the Payment Date, you ceased to own a Talisman share in respect of which the return of share capital was payable, the right to receive the return of share capital in respect of that share is retained by you and is a separate CGT asset from the Talisman share.

54. CGT event C2 happened when the return of share capital was made. The right to receive the return of share capital (being an intangible asset) ended by the right being discharged or satisfied when the return of share capital was made (section 104-25 of the ITAA 1997).

55. 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).

56. In working out the capital gain or capital loss when CGT event C2 happens, the capital proceeds is equal to the amount of the return of share capital (that is, 15.625 cents per share) (subsection 116-20(1) of the ITAA 1997).

57. The cost base of your right to receive each return of share 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 Talisman 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 Talisman share between the Record Date and the Payment Date. Therefore, the right to receive the return of share capital will have a nil cost base. As a result, you will make a capital gain equal to the capital proceeds, being 15.625 cents per Talisman share you owned at the Record Date. You can treat this capital gain as a discount capital gain under Division 115 of the ITAA 1997 provided that you acquired your Talisman share at least 12 months before the Payment Date (subsection 115-25(1) of the ITAA 1997) and the other conditions of Division 115 are satisfied.

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## References

*Previous draft:*

Not previously issued as a draft

*Legislative references:*

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- ITAA 1936 6(1)
- ITAA 1936 44
- 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 45C
- ITAA 1936 47
- ITAA 1997
- ITAA 1997 104-25
- ITAA 1997 104-25(3)
- ITAA 1997 104-135
- ITAA 1997 104-135(3)
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- ITAA 1997 Div 110
- ITAA 1997 Div 112
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- ITAA 1997 Div 197
- ITAA 1997 Div 230
- ITAA 1997 975-300
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