


# ***CR 2019/45 - Spicers Limited - return of capital***

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## Class Ruling

### Spicers Limited – return of capital

#### **❶ Relying on this Ruling**

This publication (excluding appendixes) 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 tax consequences for a shareholder of Spicers Limited (Spicers) who received the return of capital payment of \$0.03 per ordinary Spicers share on 16 July 2019.
2. Full details of this return of capital arrangement are set out in paragraphs 17 to 30 of this Ruling.
3. Legislative references are to provisions of the *Income Tax Assessment Act 1997* or the *Income Tax Assessment Act 1936* (as detailed in the table in Appendix 2 of this Ruling).

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

4. This Ruling applies to you if you:
  - were registered on the Spicers share register on 8 July 2019 (the Record Date)
  - held your Spicers shares on capital account. That is, you did not hold your Spicers shares as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)) on the Record Date, and

- received the return of capital payment of \$0.03 per Spicers share on 16 July 2019 (the Payment Date).

5. This Ruling does not apply to you if you are subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 17 to 30 of this Ruling.

**Note:** Division 230 will not apply to you if you are an individual unless you made an election for the Division to apply.

6. This Ruling does not set out any additional tax consequences for the disposal of your Spicers shares to Kokusai Pulp & Paper., Ltd (KPP) under the scheme of arrangement which also happened on 16 July 2019.

## When this Ruling applies

7. This Ruling applies from 1 July 2019 to 30 June 2020.

## Ruling

### Return of capital is not a dividend

8. No part of the return of capital payment will be included in your assessable income as a dividend under section 44.

9. The Commissioner will not make a determination under either subsection 45A(2) or paragraph 45B(3)(b) that section 45C applies in relation to the whole, or any part, of the return of capital payment.

### CGT consequences

#### CGT event G1

10. CGT event G1 happened on 16 July 2019 when you received the return of capital payment on your Spicers shares (section 104-135).

11. CGT event G1 happened because:

- Spicers made a payment to you in respect of shares you owned in Spicers
- 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 otherwise included your assessable income.

### Capital gain

12. You made a capital gain from CGT event G1 happening where the total amount of the return of capital payment (\$0.03 per Spicers share multiplied by the number of Spicers shares you held) was more than the cost base of your Spicers shares. If so:

- the capital gain is equal to the difference, and
- the cost base and reduced cost base of your Spicers shares which you held are reduced to nil (subsection 104-135(3)). You cannot make a capital loss from CGT event G1 happening (Note 1 to subsection 104-135(3)).

***If you do not make a capital gain***

13. Where the total amount of the return of capital payment (\$0.03 per Spicers share multiplied by the number of Spicers shares you held) was not more than the cost base of your Spicers shares, the cost base and reduced cost base of your Spicers shares are reduced by the total amount of the return of share capital payment (subsection 104-135(4)).

***Discount capital gain***

14. You are entitled to treat a capital gain made when CGT event G1 happened as a discount capital gain under Subdivision 115-A provided that you acquired your Spicers shares at least 12 months before 16 July 2019 being when the CGT event happened (subsection 115-25(1)) and the other conditions in that Subdivision are satisfied.

***Non-resident shareholders***

15. If you were a non-resident on 16 July 2019 (the Payment Date), you will not be liable to pay Australian dividend withholding tax on any part of the return of capital payment as the payment is not a dividend (subsections 128B(1) and (4)).

16. If you were a non-resident on 16 July 2019 (the Payment Date) and the CGT event happened in relation to a CGT asset that is not 'taxable Australian property' (section 855-10), you are required to disregard a capital gain from CGT event G1 happening.

**Scheme**

17. 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.

18. Other information referred to is the Scheme Implementation Agreement with KPP dated 17 January 2019.

**Background**

19. Spicers is an Australian resident company that has been listed on the Australian Securities Exchange since 17 April 2000 when it was known as PaperlinX Limited. PaperlinX Limited was separated from the Amcor group. The company was renamed Spicers Limited on 17 November 2015.

20. Spicers operates in the distribution of paper and other products in Australia and New Zealand. It provides a full suite of products and services to the printing, signage, visual display and graphics industries.

**Return of capital payment**

21. Spicers' core business was paper manufacturing and distribution operations in Australia. Spicers expanded in fine paper merchandising with businesses in Australia, New Zealand, United States of America and Asia.

22. On 26 September 2018, Spicers announced the sale of its Asian operations to Japan Pulp & Paper Co., Ltd for an enterprise value of SGD15 million. In addition, the transaction provided for Spicers to receive, as deferred consideration, the net proceeds

from the planned sale of the Singapore property owned by Spicers Paper (Singapore) Pte Ltd. At this time, the Spicers' Board foreshadowed a distribution, in some form, to shareholders from funds released from the sale of its Asian operations.

23. On 17 January 2019, Spicers announced that it had entered into a binding Scheme Implementation Deed (Implementation Agreement) with KPP under which KPP would acquire all of the shares in Spicers pursuant to a Scheme of Arrangement.

24. Relevantly, as part of the Scheme of Arrangement:

- Spicers shares were suspended from trading on 3 July 2019 (the Second Court Date and the Effective Date). However, Spicers shares could subsequently be transferred off-market until 7:00pm Sydney NSW time on 8 July 2019 (the Record Date)
- Spicers shareholders received the return of capital payment of \$0.03 per Spicers share on 16 July 2019 (the Payment Date), and
- Spicers shareholders disposed of their Spicers shares to KPP on 16 July 2019 (also the same date as the Payment Date).

25. The total amount of the return of capital payment of approximately \$63.8 million was debited against Spicer's share capital account and was funded from:

- the disposal of Spicers' Asian operations (\$32.6 million) including a subsequent land sale
- the disposal of Spicers' properties in Tasmania (\$4.4 million), and
- Spicers' existing cash reserves (\$26.8 million).

### **Other matters**

26. Immediately prior to the return of capital payment, Spicers had 2,107,142,649 ordinary shares on issue, and a credit balance in its share capital account of \$1,935 million. Spicers had accumulated losses of \$1,795 million and reserves of \$8 million.

27. Spicers' share capital account (as defined in section 975-300) is not tainted (within the meaning of Division 197).

28. Spicers has not paid any dividends to its shareholders since the year ended 30 June 2009.

29. The sale of Spicers' Asian operations, which includes the subsequent land sale and the sale of Spicers properties in Tasmania, resulted in negligible accounting profits.

30. KPP has not funded any part of the return of capital payment.

**Appendix 1 – 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 capital is not a dividend**

31. The return of capital payment is not a dividend as defined in subsection 6(1) as it was debited to Spicers untainted share capital account.

32. If section 45A or section 45B apply, then in turn, section 45C will apply to treat some or all of the return of capital payment as a dividend.

33. Section 45A applies when a company:

- streams the provision of 'capital benefits' (such as the distribution of share capital by way of the return of capital payment) to shareholders who would derive a greater benefit from the capital benefits than other shareholders, and
- it is reasonable to assume that the other shareholders have received, or will receive, dividends.

34. As all Spicers shareholders received the return of capital payment of \$0.03 per Spicers' share, there was no streaming of capital benefits to some shareholders, and accordingly, section 45A does not apply.

35. Section 45B applies where certain capital benefits are, having regard to the relevant circumstances of the scheme set out 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.

36. Having regard to the relevant circumstances of the scheme, the Commissioner considers the scheme was not entered into or carried out for a more than incidental purpose of enabling Spicers shareholders to obtain a tax benefit. Accordingly, section 45B does not apply.

**CGT consequences*****Non-resident shareholders***

37. Paragraph 16 of this Ruling sets out that a non-resident is required to disregard a capital gain made pursuant to CGT event G1 where the CGT event happens to a CGT asset that is 'taxable Australian property'.

38. A CGT asset constitutes 'taxable Australian property' where the asset:
- constituted an 'indirect Australian real property interest' (item 2 of the table in section 855-15)
  - was used at any time by the shareholder in carrying on a business through a permanent establishment in Australia (item 3 of the table in section 855-15), or
  - the Spicers share is covered by subsection 104-165(3) (item 5 of the table in section 855-15).
39. The Ruling section provides a detailed explanation of the Commissioner's decision for CGT event G1. Therefore, no further explanation is required.

**Appendix 2 – Legislative provisions**

40. This paragraph sets out details of the provisions ruled upon in this Ruling.

<i>Income Tax Assessment Act 1936</i>	section 6-1
<i>Income Tax Assessment Act 1936</i>	section 44
<i>Income Tax Assessment Act 1936</i>	section 45A
<i>Income Tax Assessment Act 1936</i>	section 45B
<i>Income Tax Assessment Act 1936</i>	section 45C
<i>Income Tax Assessment Act 1936</i>	section 47
<i>Income Tax Assessment Act 1936</i>	section 128
<i>Income Tax Assessment Act 1997</i>	section 104-135
<i>Income Tax Assessment Act 1997</i>	section 104-165
<i>Income Tax Assessment Act 1997</i>	section 202-5
<i>Income Tax Assessment Act 1997</i>	Subdivision 115-A
<i>Income Tax Assessment Act 1997</i>	section 115-25
<i>Income Tax Assessment Act 1997</i>	Division 197
<i>Income Tax Assessment Act 1997</i>	Division 230
<i>Income Tax Assessment Act 1997</i>	section 855-10
<i>Income Tax Assessment Act 1997</i>	section 855-15
<i>Income Tax Assessment Act 1997</i>	section 975-300
<i>Income Tax Assessment Act 1997</i>	section 977-50
<i>Income Tax Assessment Act 1997</i>	section 995-1



## References

<i>Previous draft:</i>	- ITAA 1936 128B(1)
Not previously issued as a draft	- ITAA 1936 128B(4)
	- ITAA 1997
<i>Related Rulings/Determinations:</i>	- ITAA 1997 104-135
TR 2006/10	- ITAA 1997 104-135(3)
	- ITAA 1997 104-135(4)
	- ITAA 1997 104-165(3)
<i>Legislative references:</i>	- ITAA 1997 Subdiv 115-A
- ITAA 1936	- ITAA 1997 115-25(1)
- ITAA 1936 6(1)	- ITAA 1997 Div 197
- ITAA 1936 44	- ITAA 1997 Div 230
- ITAA 1936 45A	- ITAA 1997 855-10
- ITAA 1936 45A(2)	- ITAA 1997 855-15
- ITAA 1936 45B	- ITAA 1997 975-300
- ITAA 1936 45B(3)(b)	- ITAA 1997 977-50
- ITAA 1936 45B(8)	- ITAA 1997 995-1(1)
- ITAA 1936 45C	- TAA 1953
- ITAA 1936 47	

### ATO references

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