

# ***CR 2019/59 - Oceania Capital Partners Limited - off-market share buy-back***



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## Class Ruling

### Oceania Capital Partners Limited – off-market share buy-back

#### **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 shareholders of Oceania Capital Partners Limited (Oceania) who participated in Oceania's off-market share buy-back (the Buy-Back) announced on 24 May 2019.
2. Full details of the Buy-Back arrangement are set out in paragraphs 19 to 42 of this Ruling.
3. All 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 participated in the Buy-Back.
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 19 to 42 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.

## **When this Ruling applies**

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

## **Ruling**

### **Off-market share buy-back**

7. The Buy-Back was an off-market purchase for the purposes of section 159GZZZK.

### **No part of the Buy-Back price is a dividend**

8. No part of the Buy-Back price you received is a dividend under subsection 159GZZZP(1).

### **Sale consideration**

9. You are taken to have received \$2.30 (Sale Consideration) for each Oceania share sold in the Buy-Back as consideration on 11 September 2019 (section 159GZZZQ).

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

10. You are taken to have sold your Oceania shares for CGT purposes on 11 September 2019 (section 104-10, CGT event A1).
11. The Sale Consideration of \$2.30 represents the capital proceeds per Oceania share sold in the Buy-Back (Note 3 following subsection 116-20(1)). You made a capital gain on each share where the Sale Consideration is more than the share's cost base. The amount of the capital gain is the difference. You made a capital loss on each share where the Sale Consideration is less than the share's reduced cost base. The amount of the capital loss is the difference (subsection 104-10(4)).
12. Where you made a capital gain, you may be entitled to CGT discount treatment if you held your Oceania share since 11 September 2018 and the other requirements of Subdivision 115-A are met.

### **Oceania shares held as trading stock**

13. Where you held your Oceania shares sold in the Buy-Back as trading stock (as defined in subsection 995-1(1)) at the time of the Buy-Back, you include the Sale Consideration of \$2.30 per Oceania share in your assessable income under section 6-5 (subsection 70-80(1)).
14. While CGT event A1 also happened when you sold your shares in the Buy-Back, you may disregard any capital gain or loss you made from selling your shares in the Buy-Back where the shares were trading stock at the time of the disposal (subsection 118-25(1)).

***Oceania shares held as revenue assets***

15. Where you are an Australian resident who participated in the Buy-Back with an Oceania share that you held as a revenue asset (as defined in section 977-50), but not as trading stock, you include any net profit on selling the share in your assessable income under section 6-5. Correspondingly, you are entitled to claim any net loss on selling your Oceania share as an allowable deduction under section 8-1.

16. CGT event A1 also happened when you sold your Oceania share in the Buy-Back. Where you made a capital gain as a result of selling your Oceania share in the Buy-Back, you reduce the amount of the capital gain by the amount of net profit you otherwise include in your assessable income (section 118-20). The capital gain is reduced to zero if it is less than the amount of the other income. Where you are entitled to an allowable deduction for net losses on your Oceania share sold in the Buy-Back, you reduce the cost base or reduced cost base of your Oceania share for CGT purposes (subsections 110-45(2) and 110-55(9)).

***Non-resident shareholders***

17. If you were a non-resident when you sold your Oceania shares in the Buy-Back, you disregard any capital gain or capital loss made where the shares were not taxable Australian property (section 855-10).

***The anti-avoidance provisions***

18. The Commissioner will not make a determination under either subsection 45A(2) or paragraph 45B(3)(b) that section 45C applies to the whole, or any part, of the Buy-Back price you received.

**Scheme**

19. The following description of the scheme is based on information provided by the applicant and the Notice of General Meeting released on the Australian Securities Exchange (ASX) on 26 June 2019. If the scheme is not carried out as described, this Ruling cannot be relied upon.

**Background**

20. Oceania is an Australian investment company (formerly known as Allco Equity Partners Limited) which was incorporated on 12 November 2004. Oceania was listed on the ASX on 22 December 2004 following the completion of the initial public offering.

21. At the time of listing on the ASX, Oceania's share capital, net of adjustments, was \$538.70 million. The capital raised was intended for investments.

22. Since its listing on the ASX, Oceania has undertaken three share buy-backs as part of its capital management strategy:

- an on-market buy-back costing \$21.06 million over the period June 2007 – January 2008
- an on-market buy-back costing \$8.91 million over the period September 2008 – August 2011, and
- an off-market buy-back in February 2012 for approximately \$142.4 million.

23. Oceania has also undertaken three returns of share capital:

- \$59.74 million (\$0.65 per OCP share) on 9 July 2009
- \$27.57 million (\$0.30 per OCP share) on 9 June 2010, and
- \$27.60 million (\$0.30 per OCP share) on 5 January 2012.

24. Oceania completed a renounceable Entitlement Offer in 2013 where it raised capital of approximately \$14.9 million and increased the number of shares on issue from 8,570,573 to 35,307,209.

25. Oceania disclosed in its Annual Report for the year ended 31 March 2019 that it had 35,231,572 shares on issue and that it had:

Share capital of	\$243,359,000
Reserves of	\$25,513,000
Accumulated losses of	(\$169,913,000)

### **Share buy-back**

26. Oceania announced the Buy-Back and proposed delisting of the company on 24 May 2019.

27. The Buy-Back was to enable shareholders to realise some or all of their Oceania shares prior to the delisting of the company. Oceania's directors considered that the costs and administrative burdens of remaining an ASX-listed company outweighed the benefits as:

- there was low levels of liquidity in trading of Oceania shares
- the concentration of shareholding among the top 20 shareholders and the shareholder spread an orderly and liquid market for Oceania shares was unlikely, and
- Oceania does not require raising capital currently or in the foreseeable future.

28. Oceania proposed to purchase up to 10,570,000 (approximately 30% of Oceania shares on issue) for an amount capped at \$24,311,000.

29. The largest shareholder and two of Oceania's three directors disclosed in the Notice of General Meeting that they did not intend to participate in the Buy-Back.

30. The Buy-Back Price of \$2.30 per Oceania share:

- would be debited entirely to Oceania's share capital account, and
- represented a premium of approximately 13.3% over the 30 day volume weighted average price (VWAP) of Oceania shares to 23 May 2019.

31. Oceania shareholders were eligible to participate if they held their shares at 7:00pm (Sydney time) on 31 July 2019 (the Record Date).

32. Participation in the Buy-Back was voluntary. Oceania shareholders who wished to participate in the Buy-Back with all of their shares were not required to do anything. If Oceania shareholders did not wish to participate in the Buy-Back or wished to participate with some (but not all) of their shares, they were required to complete an Opt-Out Election Form.

33. The Opt-Out Period opened on 5 August 2019 and closed on 5 September 2019.

34. On 11 September 2019, Oceania announced that:

- it had successfully completed the share buy-back of 5,427,350 shares, representing approximately 15.4% of Oceania's shares on issue
- the total Buy-Back price was \$12,482,905, and
- a scale-back was not required.

35. The largest shareholder and the two Oceania directors did not participate in the Buy-Back.

36. All Oceania shares bought-back were cancelled.

37. Oceania debited the entire Buy-Back price of \$12,482,905 to its share capital account.

### **Other matters**

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

39. Before the Buy-Back, Oceania had 582 ordinary shareholders which comprised a mix of individuals, companies, trusts, partnerships and superannuation funds, some of whom are non-residents. Approximately 170 shareholders held a small holding of value \$500 or less.

40. All Oceania shares on issue were acquired after 19 September 1985.

41. Oceania shareholders also approved the company's delisting from the ASX at the General Meeting held on 25 July 2019. Oceania was delisted following the close of trading on 12 September 2019.

42. At the time of the Buy-Back, the market value of Oceania's assets that were 'taxable Australian real property' did not exceed the market value of Oceania's other assets.

**Appendix 1 – 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.*

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**Off-market share buy-back**

43. Although Oceania shares were listed on the ASX, the Buy-Back was not in the ordinary course of trading on the ASX. Therefore the Buy-Back was an off-market purchase (paragraph 159GZZZK(d)).

**Consideration received for shares sold*****Calculation of Sale Consideration***

44. The consideration you are taken to have received in respect of the disposal of your Oceania share (the Sale Consideration) is determined in accordance with section 159GZZZQ.

45. You are taken to have received an amount equal to the purchase price (in this case the Buy-Back price of \$2.30) as consideration in respect of the sale of your shares to Oceania (subsection 159GZZZQ(1)).

46. The remaining subsections in section 159GZZZQ do not apply to adjust the consideration received as the Buy-Back price does not contain a dividend component and is not at a discount to market value.

***Capital gains tax and other outcomes***

47. The tax consequences for you depends on whether you held your Oceania shares on capital account, as trading stock or otherwise on revenue account (but not as trading stock). Paragraphs 10 to 18 of this Ruling explain the different outcomes.

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

48. If you were a non-resident when you sold your Oceania shares under the Buy-Back, you disregard any capital gain or capital loss you made where the Oceania shares were not taxable Australian property (section 855-10).

49. The Oceania shares were 'taxable Australian property' under the tests in section 855-10 if:

- you used the shares in carrying on a business through a permanent establishment in Australia (table item 3 in section 855-15), or
- the shares were CGT assets covered by subsection 104-165(3) for an individual who previously chose to disregard a gain or loss when he or she ceased to be an Australian resident (table item 5 in section 855-15).

### **The anti-avoidance provisions**

#### ***Sections 45A and 45B***

50. If section 45A or section 45B applies, then section 45C will apply to treat some or all of the Buy-Back price as an unfranked dividend.

51. Section 45A generally applies when a company:

- streams capital benefits to some shareholders (such as the distribution of share capital by way of the return of capital payment) who are 'advantaged shareholders' (paragraph 45A(1)(a)), and
- it is reasonable to assume that the other shareholders who are 'disadvantaged shareholders' have received, or will receive, dividends (paragraph 45A(1)(b)).

52. Although you were provided a 'capital benefit' (as defined in paragraph 45A(3)(b)), the circumstances of the Buy-Back indicate that dividends will not be paid to 'disadvantaged shareholders' (paragraph 45A(1)(b) and subsection 45A(4)).

53. Section 45B generally 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.

54. Having regard to the following relevant circumstances of the Buy-Back, the Commissioner considers section 45B does not apply because the Buy-Back was not entered into or carried out for a more than incidental purpose of enabling shareholders to obtain a tax benefit as:

- while not free from doubt, the Capital Component cannot be said to be attributable to the profits of Oceania
- the pattern of Oceania's distributions
- Oceania adopted an 'average capital per share' method, and
- the profile of Oceania's shareholders.



**Appendix 2 – Legislative provisions**

55. This paragraph sets out the details of the provisions ruled upon or referenced in this Ruling.

<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 159GZZZK
<i>Income Tax Assessment Act 1936</i>	section 159GZZZP
<i>Income Tax Assessment Act 1936</i>	section 159GZZZQ
<i>Income Tax Assessment Act 1997</i>	section 6-5
<i>Income Tax Assessment Act 1997</i>	section 8-1
<i>Income Tax Assessment Act 1997</i>	section 70-80
<i>Income Tax Assessment Act 1997</i>	section 104-10
<i>Income Tax Assessment Act 1997</i>	section 104-165
<i>Income Tax Assessment Act 1997</i>	section 110-45
<i>Income Tax Assessment Act 1997</i>	section 110-55
<i>Income Tax Assessment Act 1997</i>	Subdivision 115-A
<i>Income Tax Assessment Act 1997</i>	section 116-20
<i>Income Tax Assessment Act 1997</i>	section 118-20
<i>Income Tax Assessment Act 1997</i>	section 118-25
<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***Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

TR 2006/10

*Legislative references:*

- ITAA 1936
- ITAA 1936 45A
- ITAA 1936 45A(1)(a)
- ITAA 1936 45A(1)(b)
- ITAA 1936 45A(2)
- ITAA 1936 45A(3)
- ITAA 1936 45A(3)(b)
- ITAA 1936 45A(4)
- ITAA 1936 45B
- ITAA 1936 45B(3)(b)
- ITAA 1936 45B(8)
- ITAA 1936 45C
- ITAA 1936 159GZZZK
- ITAA 1936 159GZZZK(d)
- ITAA 1936 159GZZZP
- ITAA 1936 159GZZZP(1)
- ITAA 1936 159GZZZQ
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- ITAA 1997
- ITAA 1997 6-5
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- ITAA 1997 70-80(1)
- ITAA 1997 104-10
- ITAA 1997 104-10(4)
- ITAA 1997 104-165(3)
- ITAA 1997 110-45(2)
- ITAA 1997 110-55(9)
- ITAA 1997 Subdiv 115-A
- ITAA 1997 115-25(1)
- ITAA 1997 116-20(1)
- ITAA 1997 118-20
- ITAA 1997 118-25(1)
- ITAA 1997 Div 197
- ITAA 1997 Div 230
- ITAA 1997 Div 855
- ITAA 1997 855-10
- ITAA 1997 855-15
- ITAA 1997 855-20
- ITAA 1997 975-300
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- TAA 1953

*Other references:*

- PS LA 2007/9

## ATO references

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a CGT asset

Income tax ~~ Capital management ~~ Anti avoidance rules – Section 45A

Income tax ~~ Capital management ~~ Anti avoidance rules – Section 45B

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