

# ***CR 2021/25 - Blossomvale Holdings Ltd - return of capital***



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## Class Ruling

### Blossomvale Holdings Ltd – return of capital

#### **① 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.

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#### **What this Ruling is about**

1. This Ruling sets out the tax consequences for shareholders of Blossomvale Holdings Ltd (Blossomvale) who received the return of capital payment of 2.44 cents per ordinary share in Blossomvale on 17 July 2020 (Payment Date).
2. Full details of this return of capital are set out in paragraphs 14 to 31 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997* unless otherwise indicated.

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

4. This Ruling applies to you if you:
  - were registered on the Blossomvale share register on 10 July 2020 (Record Date)
  - held your Blossomvale shares on capital account, that is, you did not hold your 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 2.44 cents per Blossomvale share on the Payment Date.
5. This Ruling does not apply to anyone who is subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 14 to 31 of this Ruling.

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

## When this Ruling applies

6. This Ruling applies from 1 July 2020 to 30 June 2021.

## Ruling

### Return of capital is not a dividend

7. The return of capital is not a dividend as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936).

### Sections 45A, 45B and 45C do not apply

8. The Commissioner will not make a determination under either subsection 45A(2) or paragraph 45B(3)(b) that section 45C of the ITAA 1936 applies to any part of the return of capital you received on the Payment Date.

### Capital gains tax consequences

#### CGT event G1

9. CGT event G1 happened to you when Blossomvale paid you the return of capital of 2.44 cents per share in respect of each Blossomvale share you owned at the Record Date and continued to own at the Payment Date (section 104-135).

10. You made a capital gain when CGT event G1 happened if the return of capital of 2.44 cents per Blossomvale share you received was more than the share's cost base (subsection 104-135(3)).

11. If the return of capital of 2.44 cents per Blossomvale share you received was not more than the cost base of the share, the cost base and reduced cost base of each share is reduced by the amount of the return of capital (subsection 104-135(4)).

#### Discount capital gain

12. You can treat a capital gain made when CGT event G1 happened as a 'discount capital gain' under Subdivision 115-A provided that you acquired your Blossomvale share at least 12 months before the Payment Date (subsection 115-25(1)) and the other conditions in Subdivision 115-A are satisfied.

#### Foreign residents

13. If you were a foreign resident or the trustee of a foreign resident trust for capital gains tax (CGT) purposes, you disregard any capital gain made from CGT event G1 under subsection 855-10(1) as a Blossomvale share is not an indirect Australian real property interest (table item 2 of section 855-15), provided also that:

- you did not use the Blossomvale share at any time in carrying on a business through a permanent establishment in Australia (table item 3 of section 855-15), or

- the Blossomvale share was not covered by subsection 104-165(3) about individuals who defer capital gains upon ceasing to be Australian residents (table item 5 of section 855-15).

## **Scheme**

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

## **Background**

15. Blossomvale was an Australian-resident company limited by shares and listed on the Australian Securities Exchange (ASX). Blossomvale was also the head company of a consolidated group with 28 subsidiaries.

16. Blossomvale's activities included providing topside and subsea inspection, maintenance and repair solutions to the oil and gas, maritime, and renewable energy industries.

## **Return of capital payment**

17. On 12 May 2020, Blossomvale announced it would conduct a return of capital estimated at 3.255 cents per share.

18. On 3 July 2020, Blossomvale announced, subject to shareholder approval, that the return of capital payment would be 2.44 cents per share.

19. On 6 July 2020, Blossomvale shares were suspended from trading.

20. Blossomvale conducted a return of capital because:

- it ceased trading activities, disposed of its entire operating businesses (11 subsidiaries), and delisted from the ASX, and
- it used the balance of its profit appropriation reserves (\$11,898,136) to distribute fully franked dividends on 17 April 2020 and 28 May 2020. An accounting gain of \$4,276,136 was included in the profit appropriation reserves resulting from the disposal of its entire operating businesses. There were no other available profits that Blossomvale could distribute (apart from an end balance of \$31).

21. Blossomvale set aside amounts required to settle all third-party outstanding creditor amounts, including estimated ongoing costs required to wind-up the remaining 18 dormant Blossomvale entities.

22. On 6 July 2020, Blossomvale shareholders voted to approve the return of capital.

23. The total amount of the return of capital of \$1,499,168 was paid to shareholders on 17 July 2020.

24. The total amount of the return of capital was debited against Blossomvale's share capital account and was funded entirely from Blossomvale's existing cash reserves.

## Other matters

25. Blossomvale's financial position as at 30 June 2020 disclosed:
- total assets of \$39.83 million
  - total liabilities of \$16.56 million
  - issued capital of \$273.54 million, and
  - accumulated losses of \$248.54 million.
26. Blossomvale paid shareholders fully franked dividends on 17 April 2020 and 28 May 2020, of \$5.68 million and \$6.22 million respectively, following the disposal of key business entities. Prior to 17 April 2020, Blossomvale had only paid two fully franked dividends in the last five years.
27. On the Record Date, Blossomvale had 61,441,291 ordinary shares on issue.
28. On the Payment Date, Blossomvale's share capital account was not tainted within the meaning of section 197-50.
29. Blossomvale's shareholder profile included a mix of shareholder types and a relatively large percentage (88.4%) of non-resident shareholders.
30. Blossomvale and its subsidiaries do not hold any assets which constitute Australian real property.
31. Blossomvale was removed from the Official List of the ASX at the close of trading on 17 July 2020.

**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.*

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**Return of capital is not a dividend**

32. The term 'dividend' is defined in subsection 6(1) of the ITAA 1936 to include any distribution made by a company to any of its shareholders but excludes a distribution debited against an amount standing to the credit of the company's share capital account.

33. As the return of capital was recorded as a debit to Blossomvale's share capital account (which was not tainted), the return of capital is not a dividend.

**Sections 45A, 45B and 45C do not apply**

34. Sections 45A and 45B of the ITAA 1936 are anti-avoidance provisions which, if applicable, allow the Commissioner to make a determination that section 45C of the ITAA 1936 applies. The effect of such a determination is that all or part of the return of capital is treated as an unfranked dividend.

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

35. Section 45A of the ITAA 1936 generally applies when a company streams the provision of capital benefits (such as the distribution of share capital by way of the return of capital) to shareholders who would derive a greater benefit from the capital benefits than other shareholders while those other shareholders have received, or are likely to receive, dividends.

36. As all Blossomvale shareholders received the return of capital, there was no streaming of capital benefits to some shareholders. Accordingly, section 45A of the ITAA 1936 does not apply.

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

37. Section 45B of the ITAA 1936 applies where, having regard to the relevant circumstances of the scheme as set out in subsection 45B(8), a company provided certain

capital payments to its shareholders for a more than incidental purpose of enabling a taxpayer to obtain a tax benefit.

38. Having regard to the relevant circumstances of the scheme, the Commissioner considers that it cannot be concluded that the return of capital was entered into or carried out for a more than incidental purpose of enabling Blossomvale shareholders to obtain a tax benefit. Accordingly, section 45B of the ITAA 1936 does not apply.

### **Capital gains tax consequences**

39. CGT event G1 happened to you when Blossomvale paid you the return of capital in respect of your Blossomvale share which you owned at the Record Date and continued to own at the Payment Date (section 104-135).

40. You made a capital gain when CGT event G1 happened if the return of capital of 2.44 cents per Blossomvale share you received was more than the cost base of the share. The capital gain is equal to the difference, and you reduce both the cost base and reduced cost base of your Blossomvale share to nil (subsection 104-135(3)). You cannot make a capital loss when CGT event G1 happens (Note 1 to subsection 104-135(3)).

41. If the return of capital of 2.44 cents per Blossomvale share you received was not more than the cost base of your share, you reduce both the cost base and reduced cost base of your share by the amount of the return of capital (subsection 104-135(4)).

### **Discount capital gain**

42. You can treat a capital gain made when CGT event G1 happened as a 'discount capital gain' under Subdivision 115-A provided that you acquired your Blossomvale share at least 12 months before the Payment Date (subsection 115-25(1)) and the other conditions in Subdivision 115-A are satisfied.

### **Foreign residents**

43. You disregard a capital gain or capital loss you made from a CGT event if:

- just before the CGT event happened, you are a foreign resident, or the trustee of a foreign resident trust for CGT purposes, and
- the CGT event happens in relation to a share that is not 'taxable Australian property' (subsection 855-10(1)).

44. If you were a foreign resident or the trustee of a foreign resident trust for CGT purposes, you disregard a capital gain you made when CGT event G1 happened to your Blossomvale share under subsection 855-10(1) as a Blossomvale share is not an indirect Australian real property interest (table item 2 of section 855-15), provided also that:

- you did not use the Blossomvale share at any time in carrying on a business through a permanent establishment in Australia (table item 3 of section 855-15), or
- the Blossomvale share was not covered by subsection 104-165(3) about individuals who defer capital gains upon ceasing to be Australian residents (table item 5 of section 855-15).

**References***Previous draft:*

Not previously issued as a draft

- ITAA 1997 104-135(3)
- ITAA 1997 104-135(4)
- ITAA 1997 104-165(3)
- ITAA 1997 Subdiv 115-A
- ITAA 1997 115-25(1)
- ITAA 1997 197-50
- ITAA 1997 Div 230
- ITAA 1997 855-10(1)
- ITAA 1997 855-15
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- TAA 1953

*Legislative references:*

- ITAA 1936 6(1)
- ITAA 1936 45A
- ITAA 1936 45A(2)
- ITAA 1936 45A(3)(b)
- ITAA 1936 45B
- ITAA 1936 45B(3)(b)
- ITAA 1936 45B(8)
- ITAA 1936 45C
- ITAA 1997 104-135

## ATO references

NO: 1-MQPFTFJ

ISSN: 2205-5517

BSL PGI

ATOlaw topic: Income tax ~~ Assessable income ~~ Dividend income ~~ Dividend income  
 Income tax ~~ Capital gains tax ~~ CGT events ~~ CGT events C1 to C3 –  
 end of CGT asset  
 Income tax ~~ Capital gains tax ~~ CGT events ~~ CGT events G1 to G3 –  
 shares  
 Income tax ~~ Capital gains tax ~~ Capital proceeds  
 Income tax ~~ Capital gains tax ~~ Discount capital gains  
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 Income tax ~~ Capital management ~~ Anti avoidance rules ~~ Section 45B  
 Income tax ~~ Capital management ~~ Anti avoidance rules ~~ Section 45C  
 Income tax ~~ Capital management ~~ Returning capital ~~ Share capital  
 return

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