


# ***CR 2021/5 - PM Capital Asian Opportunities Fund Limited - off-market share buy-back***

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## Class Ruling

# PM Capital Asian Opportunities Fund Limited – off-market share buy-back

### **📌 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.

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

1. This Ruling sets out the tax consequences for shareholders of PM Capital Asian Opportunities Fund Limited (PAF) who participated in PAF's off-market share buy-back (Buy-Back) which PAF announced on 13 August 2020.
2. Full details of this Buy-Back are set out in paragraphs 16 to 26 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
  - were an Australian resident as defined under subsection 6(1), and
  - held your PAF shares on capital account (that is, you did not hold your PAF shares as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)).

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 16 to 26 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 2020 to 30 June 2021.

## **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 89.40 cents (Sale Consideration) for each PAF share sold in the Buy-Back on 26 October 2020 (section 159GZZZQ).

### **Capital gains tax**

10. You are taken to have sold your PAF shares for capital gains tax purposes on 26 October 2020 (CGT event A1, section 104-10).

11. The Sale Consideration of 89.40 cents per share represents the capital proceeds you received for each PAF share you sold in the Buy-Back (Note 3 following subsection 116-20(1)).

12. If you did not hold your PAF shares through a partnership, you made a:

- capital gain on each PAF share where the Sale Consideration is more than the share's cost base (subsection 104-10(4)). The amount of the capital gain is the difference.
- capital loss on each PAF share where the Sale Consideration is less than the share's reduced cost base (subsection 104-10(4)). The amount of the capital loss is the difference.

13. Where you made a capital gain, you can treat the capital gain as a 'discount capital gain' if you held your PAF share since 26 October 2019 and the other conditions of Subdivision 115-A are met.

14. If you held the PAF shares through a partnership, each partner in the partnership has a separate cost base and reduced cost for their interest in a PAF share sold in the Buy-Back by the partnership (subsection 106-5(2)). The partnership would allocate to each partner an appropriate share of the Sale Consideration which the partnership received for the sale of PAF shares in the Buy-Back.

**The anti-avoidance provisions**

15. The Commissioner will not make a determination under either subsections 45A(2) or 45B(3) that section 45C applies to the whole, or any part, of the Sale Consideration you received on the Implementation Date.

**Scheme**

16. 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.

**PM Capital Asian Opportunities Fund Limited**

17. PAF is an Australian-listed investment company which is listed on the Australian Securities Exchange (ASX).

18. As at 30 June 2020, PAF had 57,611,321 shares on issue. Its shareholder equity consisted of \$55,831,087 share capital and \$15,142 retained earnings.

19. PAF's share capital account (as defined in section 975-300) was not tainted for the purposes of Division 197.

20. All PAF shares on issue were acquired after 19 September 1985.

21. PAF has paid fully franked dividends to its shareholders since 14 September 2016.

**Buy-Back**

22. On 13 August 2020, PAF announced the Buy-Back under which it intended to acquire up to 5% of its issued shares at a price set at a 5% discount to the company's post-tax net tangible assets value per share (excluding deferred tax assets) as at 23 October 2020. The Buy-Back was announced as a 'capital only' off-market share buy-back.

23. Participation in the Buy-Back was open to all eligible Australian and New Zealand resident shareholders who were registered on PAF's share register on 18 September 2020. Each participating shareholder was entitled to dispose of up to 5% of their PAF shares to the company.

24. On 26 October 2020, PAF announced that it had successfully bought back 702,138 of its shares for a total consideration of \$627,711.37.

25. PAF debited the entire Buy-Back price of \$627,711.37 to its untainted share capital account.

26. PAF cancelled all the shares it purchased in the Buy-Back.

**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**

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

**Calculation of Sale Consideration**

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

29. You are taken to have received an amount equal to the purchase price (in this case the Buy-Back price of 89.40 cents per PAF share) as consideration in respect of the sale of your shares to PAF (subsection 159GZZZQ(1)).

30. Paragraphs 10 to 14 of this Ruling explain the capital gains tax outcomes.

**The anti-avoidance provisions**

31. 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.

**Section 45A**

32. Section 45A applies in circumstances where capital benefits are streamed to certain shareholders (the advantaged shareholders) who derive a greater benefit from the receipt of share capital and it is reasonable to assume that the other shareholders (the disadvantaged shareholders) have received or will receive dividends.

33. Although you were provided a 'capital benefit' (as defined in paragraph 45A(3)(b)) under the Buy-Back, the circumstances of the Buy-Back indicate that there was no streaming of capital benefits to some shareholders and dividends to other shareholders. Therefore, section 45A does not apply to the Buy-Back.

**Section 45B**

34. 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.

35. While the conditions of paragraphs 45B(2)(a) and (b) were met in respect of the Buy-Back, the requisite purpose of enabling a person to obtain a tax benefit, by way of capital distribution, was not present.

36. Having regard to the relevant circumstances (as set out in subsection 45B(8)) of the Buy-Back, it cannot be concluded that a person entered into, or carried out, the Buy-Back for a more than incidental purpose of enabling a participating shareholder to obtain a tax benefit. Therefore, section 45B does not apply to the Buy-Back.

**Appendix 2 – Legislative provisions**

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

<i>Income Tax Assessment Act 1936</i>	subsection 6(1)
<i>Income Tax Assessment Act 1936</i>	section 45A
<i>Income Tax Assessment Act 1936</i>	subsection 45A(2)
<i>Income Tax Assessment Act 1936</i>	paragraph 45A(3)(b)
<i>Income Tax Assessment Act 1936</i>	section 45B
<i>Income Tax Assessment Act 1936</i>	paragraph 45B(2)(a)
<i>Income Tax Assessment Act 1936</i>	paragraph 45B(2)(b)
<i>Income Tax Assessment Act 1936</i>	subsection 45B(3)
<i>Income Tax Assessment Act 1936</i>	subsection 45B(8)
<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>	paragraph 159GZZZK(d)
<i>Income Tax Assessment Act 1936</i>	subsection 159GZZZP(1)
<i>Income Tax Assessment Act 1936</i>	section 159GZZZQ
<i>Income Tax Assessment Act 1936</i>	subsection 159GZZZQ(1)
<i>Income Tax Assessment Act 1997</i>	section 104-10
<i>Income Tax Assessment Act 1997</i>	subsection 104-10(4)
<i>Income Tax Assessment Act 1997</i>	subsection 106-5(2)
<i>Income Tax Assessment Act 1997</i>	Subdivision 115-A
<i>Income Tax Assessment Act 1997</i>	subsection 116-20(1)
<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 975-300
<i>Income Tax Assessment Act 1997</i>	section 977-50
<i>Income Tax Assessment Act 1997</i>	subsection 995-1(1)

**References**

*Previous draft:*

Not previously issued as a draft

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## ATO references

NO: 1-NJ9LE0X  
ISSN: 2205-5517  
BSL: PGI  
ATOlaw topic: Income tax ~~ Capital gains tax ~~ CGT events ~~ CGT event A1 – disposal of a CGT asset  
Income tax ~~ Capital management ~~ Anti avoidance rules ~~ Section 45A  
Income tax ~~ Capital management ~~ Anti avoidance rules ~~ Section 45B  
Income tax ~~ Capital management ~~ Anti avoidance rules ~~ Section 45C  
Income tax ~~ Capital management ~~ Return of capital ~~ Share buy back

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