

# ***CR 2022/44 - AVA Risk Group Limited - return of capital***



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Status: **legally binding**

## Class Ruling

### AVA Risk Group Limited – return of capital

#### **❶ Relying on this Ruling**

This publication 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 income tax consequences for shareholders of AVA Risk Group Limited (AVA) who received the return of share capital (return of capital) payment of 3.114 cents per AVA ordinary share (AVA share) on 5 May 2022 (Payment Date).
2. Full details of this scheme are set out in paragraphs 17 to 32 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 AVA share register on 28 April 2022 (Record Date), and
  - held your AVA shares on capital account on the Record Date; that is, you did not hold your AVA 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 anyone who is subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 17 to 32 of this Ruling.

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

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**When this Ruling applies**

6. This Ruling applies from 1 July 2021 to 30 June 2022.

**Ruling****Return of capital is not a dividend**

7. No part of the return of capital paid to you by AVA on the Payment Date is a dividend as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936). This is because the entire amount of the return of capital has been debited against an amount standing to the credit of AVA's share capital account. Therefore, no part of the return of capital payment is included in your assessable income as a dividend under subsection 44(1) of the ITAA 1936.

**Sections 45A, 45B and 45C of the ITAA 1936 do not apply**

8. The Commissioner will not make a determination that section 45C of the ITAA 1936 applies to any part of the return of capital of 3.114 cents per AVA share you received on the Payment Date, under either:

- subsection 45A(2) of the ITAA 1936 – because there was no streaming of capital benefits to some AVA shareholders and dividends to other AVA shareholders as required by subsection 45A(1) of the ITAA 1936, or
- paragraph 45B(3)(b) of the ITAA 1936 – because the requirements of subsection 45B(2) of the ITAA 1936 were not satisfied.

**Capital gains tax consequences****CGT event G1**

9. CGT event G1 happened on the Payment Date when AVA paid you the return of capital of 3.114 cents for each AVA share you owned on the Record Date and continued to own on the Payment Date (section 104-135).

10. You made a capital gain when CGT event G1 happened if the return of capital of 3.114 cents per AVA share you received was more than the share's cost base (subsection 104-135(3)).

11. If the return of capital of 3.114 cents per AVA 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)).

**CGT event C2**

12. CGT event C2 happened to your right to receive the return of capital on the Payment Date when AVA paid you a return of capital of 3.114 cents for each AVA share you owned at the Record Date (section 104-25).

13. You made a capital gain under CGT event C2 if the capital proceeds from the ending of the right were more than the cost base of the right. You made a capital loss if the capital proceeds from the ending of the right were less than the reduced cost base of the right (subsection 104-25(3)).

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14. In working out the capital gain or capital loss when CGT event C2 happened, the capital proceeds are equal to the amount of the return of capital (3.114 cents per AVA share) (subsection 116-20(1)).

### ***Discount capital gain***

15. You can treat a capital gain made when CGT event G1 or CGT event C2 happened as a discount capital gain if you acquired your AVA share at least 12 months before the Payment Date (subsection 115-25(1)), provided the other conditions in Subdivision 115-A are satisfied.

### ***Foreign-resident shareholders***

16. If you were a foreign resident or the trustee of a foreign trust for capital gains tax (CGT) purposes as defined in subsection 995-1(1), you disregard any capital gain made from CGT event G1 or any capital gain or capital loss from CGT event C2 under subsection 855-10(1), as an AVA share is not an 'indirect Australian real property interest' (table item 2 of section 855-15), provided that:

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

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.

### **AVA Risk Group Limited**

18. AVA is a public company incorporated in Australia. It has been listed on the Australian Securities Exchange since 2015.

19. AVA is a provider of risk management services and technologies.

20. As at 30 June 2021, AVA had:

- \$59.062 million credited to its share capital account, and
- \$32.54 million of accumulated losses.

21. As at 14 March 2022, AVA had 242,963,185 ordinary shares on issue to a mixture of shareholders comprising individuals, companies, trusts, partnerships and superannuation funds.

### **Disposal of AVA Global DMCC LLC**

22. On 16 August 2021, AVA disposed of its shares in AVA Global DMCC LLC, an indirect wholly-owned foreign-resident subsidiary, for approximately \$63.1 million. The

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disposal transaction resulted in AVA realising a net accounting profit after tax of approximately \$31.9 million.

23. AVA determined it had funds excess to its requirements following the disposal.

#### **Return of capital**

24. In February 2022, AVA announced a return of capital of 3.114 cents per AVA share totalling \$7,567,874 and the payment of an unfranked special dividend of 13 cents per AVA share totalling \$31,585,214 to be paid on 10 March 2022.

25. The return of capital, being an equal reduction of capital under section 256B of the *Corporations Act 2001*, was approved by AVA shareholders in the Extraordinary General Meeting held on 22 April 2022.

26. On the Payment Date, AVA shareholders received 3.114 cents for each AVA share they held on the Record Date.

27. The return of capital was paid from AVA's available cash balances. The entire return of capital of \$7,567,874 was debited to AVA's share capital account.

28. The return of capital is consistent with AVA's commitment to efficient capital management.

#### **Other matters**

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

30. On 10 March 2022, AVA paid an unfranked special dividend of 13 cents per AVA share totalling \$31,585,214.

31. The market value of AVA's assets that are taxable Australian real property within the meaning of section 855-20 is less than the market value of AVA's other assets for the purposes of section 855-30.

32. As at 30 June 2021, approximately 5.8% of AVA's shareholders were 'foreign residents' as the term is defined in subsection 995-1(1).

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**Commissioner of Taxation**

18 May 2022

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## References

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*Legislative references:*

- ITAA 1936 6(1)
- ITAA 1936 44(1)
- ITAA 1936 45A
- ITAA 1936 45A(1)
- ITAA 1936 45A(2)
- ITAA 1936 45B
- ITAA 1936 45B(2)
- ITAA 1936 45B(3)(b)
- ITAA 1936 45C
- ITAA 1997 104-25
- ITAA 1997 104-25(3)
- ITAA 1997 104-135
- ITAA 1997 104-135(3)
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- ITAA 1997 104-165(3)
- ITAA 1997 Subdiv 115-A
- ITAA 1997 115-25(1)
- ITAA 1997 116-20(1)
- ITAA 1997 Div 197
- ITAA 1997 Div 230
- ITAA 1997 855-10(1)
- ITAA 1997 855-15
- ITAA 1997 855-20
- ITAA 1997 855-30
- ITAA 1997 975-300
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- TAA 1953
- Corporations Act 2001 256B

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ATO references

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