


# ***CR 2022/68 - Ardent Leisure Group Limited - return of capital and special dividend***

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Status: **legally binding**

## Class Ruling

# Ardent Leisure Group Limited – return of capital and special dividend

### **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 income tax consequences for shareholders of Ardent Leisure Group Limited (ALG) who received the return of capital payment of 46.0699 cents per ordinary ALG share and unfranked special dividend of 48.9301 cents per ordinary ALG share on 13 July 2022 (the Payment Date).
2. Full details of this return of capital and special dividend are set out in paragraphs 21 to 35 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:
  - are an Australian resident as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936) or a non-resident (other than a non-resident who carries on a business at or through a permanent establishment in Australia)
  - were registered on the ALG share register on 6 July 2022 (the Record Date)
  - held your ALG shares on capital account on the Record Date; that is, you did not hold your ALG shares as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)), and
  - did not acquire your shares pursuant to an employee share plan.

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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 21 to 35 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 2022 to 30 June 2023.

## **Ruling**

### **Special dividend and the assessability of the special dividend**

7. The unfranked special dividend of 48.9301 cents per ALG share is a dividend as defined in subsection 6(1) of the ITAA 1936.

8. If you are a resident of Australia as defined in subsection 6(1) of the ITAA 1936, you include the special dividend in your assessable income under paragraph 44(1)(a) of the ITAA 1936.

9. If you are a non-resident, the special dividend is non-assessable non-exempt income and not included in your assessable income (section 802-15). You are not liable to pay withholding tax in respect of the special dividend which was declared by ALG in the distribution statement to be conduit foreign income (section 802-15).

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

10. No part of the return of capital of 46.0699 cents paid to you by ALG on the Payment Date is a dividend as defined in subsection 6(1) of the ITAA 1936 as the amount was debited to ALG's share capital account.

11. No part of the return of capital 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**

12. The Commissioner will not make a determination under either subsection 45A(2) of the ITAA 1936 or paragraph 45B(3)(b) of the ITAA 1936 that section 45C of the ITAA 1936 applies to any part of the return of capital of 46.0699 cents per ALG share you received on the Payment Date.

### **Capital gains tax consequences**

#### **CGT event G1**

13. CGT event G1 happened on the Payment Date when ALG paid you the return of capital of 46.0699 cents for each ALG share you owned on the Record Date and continued to own on the Payment Date (section 104-135).

14. If the return of capital of 46.0699 cents per ALG share you received was more than the share's cost base, you will make a capital gain when CGT event G1 happened. Your

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cost base and reduced cost base of each share is reduced to zero (subsection 104-135(3)).

15. If the return of capital of 46.0699 cents per ALG 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**

16. CGT event C2 happens to your right to receive the return of capital on the Payment Date when ALG paid you a return of capital of 46.0699 cents for each ALG share you owned at the Record Date but ceased to own before the Payment Date (section 104-25).

17. You make 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 make 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)).

18. 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 (46.0699 cents per ALG share) (subsection 116-20(1)).

#### **Discount capital gain**

19. 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 ALG 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**

20. You disregard under section 855-10 any capital gain from CGT event G1, and any capital gain or capital loss from CGT event C2, if you are a foreign resident just before the event and your ALG share or your right to receive the return of capital on the ALG shares was not covered by subsection 104-165(3) (table item 5 of section 855-15, about individuals choosing to disregard capital gains upon ceasing to be Australian residents).

### **Scheme**

21. 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.

#### **Background**

22. ALG is an Australian incorporated public company listed on the Australian Securities Exchange and the head company of an Australian income tax consolidated group.

23. ALG owned and operated leisure and entertainment assets across Australia and the United States of America (US).

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24. ALG will now be solely focused on its Australian Dreamworld theme park, the Whitewater World theme park and the Sky Point Observation Deck. This follows the profitable sale of the Australian businesses (being AMF and KingPin Bowling, d'Albora Marinas and Goodlife Health Clubs) and the US business (being Main Event Entertainment) by members of the group.

25. Following the sale of these businesses, ALG has determined that the group will have approximately \$455.7 million of surplus funds available for distribution to shareholders after the repayment of third-party debts and retaining some cash to fund future Australian business operations.

#### **The return of capital and special dividend**

26. On 13 July 2022, ALG distributed 46.0699 cents per share capital return and 48.9301 cents per share special dividend to all ALG shareholders on the share registry as at the Record Date.

27. The return of share capital was debited against the share capital account of ALG.

28. The entire special dividend was declared by ALG to be conduit foreign income pursuant to section 802-15 in the distribution statement provided to ALG shareholders on or before the Payment Date.

29. The special dividend was not franked.

#### **Other matters**

30. At the Record Date, ALG had approximately 479.7 million fully-paid ordinary shares on issue.

31. At the Record Date, ALG had a share capital balance of \$777,123,745.

32. ALG shareholders consist of both Australian residents and foreign residents. As at 16 June 2022, ALG had approximately 88% Australian-resident shareholders and 12% foreign-resident shareholders.

33. There were no shares in ALG held by foreign residents, either alone or together with their associates, that passed the non-portfolio interest test (within the meaning of section 960-195) throughout a 12-month period in the 24 months immediately before and ending on the Payment Date.

34. ALG's share capital account is a share capital account for income tax purposes in accordance with subsection 975-300(1). Further, ALG's share capital account is not tainted within the meaning of section 197-50.

35. For the 2018–19 to 2021–22 financial years, ALG did not declare any dividends.

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#### **Commissioner of Taxation**

27 July 2022

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## **Appendix – Explanation**

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**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.*

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

36. Sections 45A and 45B of the ITAA 1936 are anti-avoidance provisions which, if they apply, 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 a capital return received by shareholders is treated as an unfranked dividend paid out of profits of the company.

37. Section 45A of the ITAA 1936 generally applies where a company streams capital benefits to some shareholders who would benefit more from them than other shareholders, and dividends to those other shareholders. As the return of capital was paid to all ALG shareholders that held ALG shares on the Record Date, no such streaming occurred under the scheme.

38. Section 45B of the ITAA 1936 generally applies where, having regard to the relevant circumstances of the scheme as set out in subsection 45B(8) of the ITAA 1936, a company provided certain capital payments to its shareholders for a more than incidental purpose of enabling a taxpayer to obtain a demerger benefit or a tax benefit. Having had regard to the relevant circumstances of the scheme the Commissioner has not concluded that the scheme was entered into for a more than incidental purpose to enable a taxpayer to obtain a tax benefit.

39. Therefore, the Commissioner will not make a determination under either subsection 45A(2) or paragraph 45B(3)(b) of the ITAA 1936 that section 45C of the ITAA 1936 applies to the whole or any part of the return of capital received by ALG shareholders.

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## References

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### *Legislative references:*

- ITAA 1936 6(1)
  - ITAA 1936 44(1)
  - ITAA 1936 44(1)(a)
  - ITAA 1936 45A
  - ITAA 1936 45A(2)
  - ITAA 1936 45B
  - ITAA 1936 45B(3)(b)
  - ITAA 1936 45B(8)
  - ITAA 1936 45C
  - ITAA 1997 104-25
  - ITAA 1997 104-25(3)
  - ITAA 1997 104-135
  - 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 116-20(1)
  - ITAA 1997 197-50
  - ITAA 1997 Div 230
  - ITAA 1997 802-15
  - ITAA 1997 855-10
  - ITAA 1997 855-15
  - ITAA 1997 960-195
  - ITAA 1997 975-300(1)
  - ITAA 1997 977-50
  - ITAA 1997 995-1(1)
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### ATO references

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