

CR 2022/70 - Pambula & District Community Development Limited - off-market share buy-back

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Status: **legally binding**

Class Ruling

Pambula & District Community Development Limited – off-market share buy-back

📌 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 Pambula & District Community Development Limited (Pambula) who participated in Pambula's off-market share buy-back (Buy-Back).
2. Full details of this scheme are set out in paragraphs 14 to 33 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:
 - held shares in Pambula and you sold some or all of those shares under the Buy-Back
 - held those shares on capital account; that is, you did not hold your Pambula shares as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)), and
 - were a 'resident of Australia' as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936).
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 33 of this Ruling.

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

Status: **legally binding**

When this Ruling applies

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

Ruling

Sale consideration

7. You are taken to have received the Buy-Back price of \$1.00 per Pambula share as consideration (Sale Consideration) in respect of each Pambula share you sold in the Buy-Back on 1 March 2022 (Buy-Back Date) (section 159GZZZQ of the ITAA 1936), unless you are a corporate tax entity to which subsections 159GZZZQ(8) and (9) of the ITAA 1936 apply.

Capital gains tax consequences

8. You are taken to have disposed of your Pambula shares for capital gains tax purposes on the Buy-Back Date (CGT event A1 under section 104-10).

9. The Sale Consideration represents the capital proceeds you received for the disposal of each Pambula share (section 116-20).

10. Unless you are a partner in a partnership, you make a capital gain on the disposal of a Pambula share under the Buy-Back if the Sale Consideration exceeds the cost base of the share. Similarly, unless you are a partner in a partnership, you make a capital loss on the disposal of a share under the Buy-Back if the Sale Consideration is less than the reduced cost base of the share (subsection 104-10(4)).

11. If you are a partner in a partnership, any capital gain or capital loss will be made by the partners individually. Each partner in a partnership has a separate cost base and reduced cost base for the partner's interest in each Pambula share sold into the Buy-Back by the partnership (subsection 106-5(2)). Each partner is allocated an appropriate share of the Sale Consideration received by the partnership for the disposal of Pambula shares into the Buy-Back.

The anti-avoidance provisions

12. The Commissioner will not make a determination that section 45C of the ITAA 1936 applies to any part of the Buy-Back price of \$1.00 per Pambula share you received, under either:

- subsection 45A(2) of the ITAA 1936 – because there was no streaming of capital benefits to some Pambula shareholders and dividends to other Pambula 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.

13. Therefore, no part of the Buy-Back price you received will be treated as an unfranked dividend.

Status: **legally binding**

Scheme

14. 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

15. Pambula is a public company which was incorporated on 28 February 2008.

16. Pambula operates a Bendigo Bank Community Bank under a Community Banking Franchise Agreement (Franchise Agreement) with Bendigo and Adelaide Bank Limited.

17. As at 30 June 2021, Pambula had:

- 847,009 fully-paid ordinary shares on issue; there are no partly-paid shares or any other class of shares on issue
- share capital of \$847,009, and
- retained earnings of \$496,474.

18. There have been no corporate actions involving the shares in Pambula since its incorporation.

19. As at 30 June 2021, Pambula had a total of 232 shareholders consisting of individuals, companies, charitable trusts/other trusts, deceased estates and superannuation funds, none of which are foreign residents.

20. Pambula's share capital account (as defined in section 975-300) was not tainted for the purposes of section 197-50.

21. Relevant key terms of Pambula's Franchise Agreement are:

- Pambula may only distribute a maximum of 20% of the sum of its current year profits and retained earnings in each year ended 30 June or alternatively an amount using a rate of return formula
- Pambula may provide some or all of the additional funds that it cannot distribute to shareholders to community groups and other organisations to assist with implementing projects that have a benefit to the local community of each branch, such as seed funding for major projects like establishing a childcare centre
- each shareholder is only entitled to one vote at Pambula shareholder meetings regardless of the number of shares held
- no shareholder, including any related parties, may hold more than 10% of the total issued capital in Pambula, and
- shareholders are required to have a close connection with the community, whether living in the geographic location of the branch or having some connection with the local community.

Trading and distribution history

22. Ordinary shares in Pambula trade in a low-volume market administered in accordance with the Corporations (Low Volume Financial Markets) Instrument 2016/888.

Status: **legally binding**

The shares are not listed for quotation in the official list of a stock exchange in Australia or elsewhere.

23. Over the last 10 trades between 28 April 2015 and 22 December 2020, Pambula shares traded at prices ranging between \$0.90 and \$1.00 per share, with an average price of \$0.98.

24. Pambula has paid fully franked dividends in the last 3 income years within the maximum allowed under the Franchise Agreement and is expected to pay a similar fully franked dividend for the 2021–22 income year.

Off-market share buy-back

25. On 1 December 2021, Pambula announced its intention to undertake an equal access off-market share buy-back of its shares as part of its capital management strategy.

26. Pambula proposed to purchase a maximum of 84,700 shares at a Buy-Back price of \$1.00 per Pambula share, representing approximately 10% of total shares on issue.

27. Participation in the Buy-Back was voluntary for shareholders who held Pambula shares on 25 November 2021 (Record Date) and Pambula retained the discretion to vary the size of the Buy-Back, to repurchase a lesser amount of shares or no shares at all.

28. As the number of shares tendered by participating shareholders exceeded the number of shares Pambula determined to purchase in the Buy-Back, a scale back was applied. All tenders from participating shareholders with 500 or less Pambula shares on the Record Date, or as a result of the scale back, were bought back to ensure participating shareholders were not left with uneconomic parcels of shares.

29. The key dates for the Buy-Back are summarised in Table 1:

Table 1: Summary of key dates

Date	Details
25 November 2021	Record Date
15 December 2021	Opening Date for the tender period
14 February 2022	Closing Date for the tender period
1 March 2022	Buy-Back Date
21 March 2022	Payment Date

30. Pambula purchased 84,689 shares under the Buy-Back, representing approximately 9.99% of the total shares on issue.

31. The Buy-Back price of \$1.00 per share was debited entirely to Pambula's share capital account.

32. Participating shareholders received the Buy-Back price of \$1.00 per Pambula share on the Payment Date.

33. All shares purchased under the Buy-Back were cancelled by Pambula.

Commissioner of Taxation
3 August 2022

Status: **not legally binding**

References

Legislative references:

- ITAA 1936 6(1)
 - ITAA 1936 45A(1)
 - ITAA 1936 45A(2)
 - ITAA 1936 45B(2)
 - ITAA 1936 45B(3)(b)
 - ITAA 1936 45C
 - ITAA 1936 159GZZZQ
 - ITAA 1936 159GZZZQ(8)
 - ITAA 1936 159GZZZQ(9)
 - ITAA 1997 104-10
 - ITAA 1997 104-10(4)
 - ITAA 1997 106-5(2)
 - ITAA 1997 116-20
 - ITAA 1997 197-50
 - ITAA 1997 Div 230
 - ITAA 1997 975-300
 - ITAA 1997 977-50
 - ITAA 1997 995-1(1)
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ATO references

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