


# ***CR 2023/16 - Sky Network Television Limited - capital return***

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Status: **legally binding**

## Class Ruling

# Sky Network Television Limited – capital return

### **① 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 Australian shareholders of Sky Network Television Limited (Sky TV) who received A\$2.21 on 29 November 2022 (Payment Date) for every one ordinary share in Sky TV (Sky TV share) that was cancelled under the scheme (Capital Return).
2. Details of this scheme are set out in paragraphs 14 to 34 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 a ‘resident of Australia’ as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936)
  - are not a ‘temporary resident’ as defined in subsection 995-1(1)
  - were registered on the Sky TV share register with an Australian address at 5:00 pm New Zealand time on 21 November 2022 (Record Date), and
  - held your Sky TV share on capital account on the Record Date; that is, you did not hold your Sky TV share as a revenue asset (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 14 to 34 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 2022 to 30 June 2023.

**Ruling****Capital Return is not a share buy-back**

7. The Capital Return is not a share buy-back for the purposes of Division 16K of Part III of the ITAA 1936 as Sky TV did not buy back your share.

**Capital Return is not a dividend**

8. No part of the Capital Return paid to you by Sky TV on the Payment Date is a dividend as defined in subsection 6(1) of the ITAA 1936. This is because the entire amount of the Capital Return has been debited against an amount standing to the credit of Sky TV's share capital account. Therefore, no part of the Capital Return is included in your assessable income as a dividend under subparagraph 44(1)(a)(i) of the ITAA 1936.

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

9. The Commissioner will not make a determination that section 45C of the ITAA 1936 applies to any part of the Capital Return you received on the Payment Date under:

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

10. Therefore, no part of the Capital Return paid by Sky TV to you is taken to be an unfranked dividend under those provisions.

**Capital gains tax consequences****CGT event C2**

11. CGT event C2 happened on 22 November 2022 (Implementation Date), being the date your Sky TV share was cancelled (section 104-25).

12. You made a capital gain from CGT event C2 happening if the capital proceeds you received on the cancellation of your Sky TV share were more than the cost base of your Sky TV share. You made a capital loss from CGT event C2 happening if the capital proceeds from the cancellation of your Sky TV share were less than the reduced cost base of your Sky TV share (subsection 104-25(3)).

13. The capital proceeds from CGT event C2 happening on the cancellation of your Sky TV share are equal to the amount of the Capital Return you received for each Sky TV share that was cancelled (subsection 116-20(1)).

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Status: **legally binding**

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## **Scheme**

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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. Sky TV is a public company listed on the New Zealand Exchange and the Australian Securities Exchange. It was incorporated in New Zealand on 25 January 2005 and is a tax resident of New Zealand.

16. Sky TV provides television and subscription-based services to its customers.

17. In May 2020, Sky TV issued share capital of approximately NZ\$157 million to ensure it was well capitalised to withstand the impacts of COVID-19 and positioned to execute on future growth opportunities once conditions improved.

18. In the years ended 30 June 2021 and 2022, Sky TV sold certain capital assets and properties realising total cash sale proceeds of approximately NZ\$69.5 million.

19. Following these events, and after the potential acquisition of other businesses did not proceed, Sky TV determined it had funds excess to its requirements.

20. As at 30 June 2022, Sky TV had share capital of approximately NZ\$769 million and a consolidated retained deficit of approximately NZ\$285 million.

21. On 25 August 2022, Sky TV had 174,688,323 fully-paid ordinary shares on issue, being the only class of shares on issue.

### **Capital Return**

22. On 25 August 2022, as part of its full year results announcement for the year ended 30 June 2022, Sky TV announced a proposed capital return totalling approximately NZ\$70 million by way of a High Court approved scheme of arrangement.

23. On 2 November 2022, the proposed capital return was approved at Sky TV's annual shareholders' meeting.

24. On 11 November 2022, the High Court of New Zealand issued final orders approving the proposed capital return under Part 15 of the *Companies Act 1993* (NZ).

25. On 22 November 2022 (Implementation Date), a total of 29,115,132 Sky TV shares were cancelled, being one ordinary share for every 6 ordinary shares held on 21 November 2022 (Record Date), with fractions rounded up or down to the nearest whole share (with 0.5 rounded up).

26. On 29 November 2022 (Payment Date), each Sky TV shareholder who held shares on the Record Date received NZ\$2.40 (with shareholders with an Australian address on the share register at 5:00 pm New Zealand time on the Record Date receiving \$A2.21, being NZ\$2.40 converted at the NZ\$/A\$ exchange rate of 0.921914) for each Sky TV share that was cancelled under the scheme.

27. The total capital return of NZ\$69,876,316.80 was debited to Sky TV's share capital account and paid from Sky TV's available cash.

28. Following the cancellation of shares under the scheme, Sky TV had 145,573,191 ordinary shares on issue.

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**Other matters**

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

30. Sky TV paid interim and final dividends consistently over the years ended 30 June 2014 to 2018, inclusive.

31. For the year ended 30 June 2019, Sky TV paid an interim dividend in March 2019 and paid no dividends in respect of the years ended 30 June 2020 and 30 June 2021.

32. On 23 September 2022, Sky TV paid a final dividend of NZ\$0.073 per share (totalling NZ\$12,752,248) in respect of the year ended 30 June 2022 in line with its dividend policy, which was updated in February 2022, being a payout ratio on its ordinary shares of between 50% and 80% of Free Cash Flow (excluding one-off items).

33. As at 25 August 2022, the majority of Sky TV's shareholders resided outside Australia, and approximately 27.66% of Sky TV shares were held by shareholders with an Australian address on the Sky TV share register.

34. At the Implementation Date, Sky TV had at least 300 'members' (as defined in section 960-130) and was not a company that was covered by section 116-35.

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**Commissioner of Taxation**

5 April 2023

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Status: **not legally binding**

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## References

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### *Legislative references:*

- ITAA 1936 6(1)
- ITAA 1936 44(1)(a)(i)
- 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 1936 Pt III Div 16K
- ITAA 1997 104-25
- ITAA 1997 104-25(3)
- ITAA 1997 116-20(1)
- ITAA 1997 116-35
- ITAA 1997 Div 197
- ITAA 1997 Div 230
- ITAA 1997 960-130
- ITAA 1997 975-300
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- Companies Act 1993 (NZ) Pt 15

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### ATO references

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