


# ***CR 2023/51 - FAR Ltd - return of capital***

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Status: **legally binding**

## Class Ruling

### FAR Ltd – return of capital

#### **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 FAR Ltd (FAR) who received a return of capital payment of 40c per ordinary FAR share on 31 August 2023 (Payment Date).
2. Details of this scheme are set out in paragraphs 19 to 33 of this Ruling.
3. All legislative references in this Ruling are to provisions of the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997* (as detailed in the table in the Appendix to this Ruling), unless otherwise indicated.

#### **Who this Ruling applies to**

4. This Ruling applies to you if you:
  - were registered on the FAR share register on 24 August 2023 (Record Date)
  - held your FAR shares on capital account – that is, you did not hold your FAR shares as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)), and
  - received the return of capital payment of 40c per FAR share on the Payment Date.
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 19 to 33 of this Ruling.

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**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 2023 to 30 June 2024.

## **Ruling**

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

7. No part of the return of capital paid to you by FAR on the Payment Date is a dividend as defined in subsection 6(1).
8. No part of the return of capital paid to you by FAR on the Payment Date is included in your assessable income as a dividend under section 44.

### **Sections 45A, 45B and 45C do not apply**

9. The Commissioner will not make a determination under either subsection 45A(2) or paragraph 45B(3)(b) that section 45C applies to any part of the return of capital paid to you by FAR on the Payment Date.

### **Capital gains tax consequences**

#### **CGT event G1**

10. CGT event G1 happened on the Payment Date in respect of each FAR share you owned on the Record Date and continued to own on the Payment Date (section 104-135).
11. You made a capital gain under CGT event G1 if the amount of the return of capital of 40c per FAR share was more than the share's cost base (subsection 104-135(3)). The amount of the gain is equal to the excess. If you made a capital gain, the share's cost base and reduced cost base are reduced to nil.
12. If the return of capital of 40c per FAR share was equal to or less than the share's cost base, under CGT event G1, the cost base and reduced cost base of the share are reduced by the amount of the return of capital (subsection 104-135(4)).

#### **CGT event C2**

13. CGT event C2 happened on the Payment Date in respect of each FAR share you owned on the Record Date but ceased to own prior to the Payment Date (section 104-25).
14. 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 are less than the reduced cost base of the right (subsection 104-25(3)).
15. 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 (40c per FAR share) (subsection 116-20(1)).

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**Status: legally binding**

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16. The cost base of your right to receive the return of capital is worked out under Division 110 (modified by Division 112). The cost base of the right does not include the cost base or reduced cost base of the FAR share previously owned by you to the extent that it was applied in working out a capital gain or capital loss made when a CGT event happened to the share – when you disposed of the share after the Record Date but before the Payment Date. Therefore, if the cost base or reduced cost base of the share previously owned by you has been fully applied in working out a capital gain or capital loss on the share, the right to receive the return of capital will have a nil cost base. As a result, you will, in those circumstances, make a capital gain equal to the capital proceeds, being 40c per FAR share owned at the Record Date.

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

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

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

18. If you were a foreign resident or a trustee of a foreign trust for capital gains tax purposes, you disregard any capital gain made from CGT event G1 or any capital gain or capital loss made from CGT event C2 under subsection 855-10(1) as a FAR share and the right to receive the return of capital were not an indirect Australian real property interest (table item 2 of section 855-15), provided that your FAR share or the right to receive the return of capital:

- had not been used at any time by you in carrying on a business through a permanent establishment in Australia (table item 3 of section 855-15), or
- was not covered by subsection 104-165(3) (table item 5 of section 855-15, about individuals who defer capital gains upon ceasing to be Australian residents).

## **Scheme**

19. 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**

20. FAR is an Australian-resident company limited by shares and listed on the Australian Securities Exchange.

21. Incorporated in Australia in 1984 as First Australian Resources NL, the company became a listed public entity in 1986, changing its name to FAR Ltd in 2010.

22. FAR is an independent Africa-focused oil and gas exploration and development company.

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**Return of capital payment**

23. On 19 June 2023, FAR made an Australian Securities Exchange announcement advising of its intention to seek shareholder approval for an equal share capital reduction without a cancellation of shares.
24. On 18 August 2023, FAR shareholders approved the return of capital of 40c per share.
25. FAR conducted this return of capital because:
- They held an interest in the Production Sharing Contract for the Rufisque, Sangomar, and Sangomar Deep Offshore Blocks offshore from Senegal and the relevant Joint Operating Agreement (the RSSD Project) through its wholly-owned subsidiary, FAR Senegal RSSD SA (FAR Senegal).
  - The RSSD Project did not proceed as anticipated despite equity having been raised for its development in December 2019 and January 2020.
  - On 19 January 2021, FAR, together with FAR Senegal, entered into an RSSD Sale and Purchase Agreement to dispose of the RSSD Project to Woodside Energy (Senegal) B.V.
  - Woodside Energy (Senegal) B.V. paid FAR Senegal US\$45 million and reimbursed FAR Senegal's share of working capital for the RSSD Project totalling approximately US\$81 million, resulting in a total receipt of approximately US\$126 million.
  - On 15 September 2021, FAR conducted an equal share capital reduction without cancellation of shares which was effected by a capital return (First Capital Return) via payment of 80c per share, having of an aggregate value of A\$79,832,394 on the basis of 99,790,482 shares on issue. The First Capital Return was debited to share capital account.
  - In December 2022, FAR commenced an on-market share buyback that resulted in approximately 6.5 million shares (approximately 6.6% of the FAR share capital) being bought back at an average price of approximately 70c per share at an aggregate cost to FAR of approximately A\$4.6 million. This was conducted as a means to return capital to shareholders while FAR continued to evaluate broader opportunities across the energy sector. On 19 June 2023, the on-market share buyback was terminated.
  - As at 30 June 2023, FAR had approximately US\$29.5 million of cash, which they determined was surplus to their needs as they had not identified an appropriate new business initiative that has the potential to offer significantly better returns to shareholders than returning surplus funds to shareholders.
26. The return of capital was distributed to shareholders on an equal basis.
27. The total amount of the return of capital payment of A\$36,963,859 was debited to FAR's share capital account.

**Other matters**

28. On the Record Date, FAR had 92,409,648 ordinary shares on issue.

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29. FAR's financial position as at 31 December 2022, incorporating the restatement noted in the half-year 30 June 2023 financial report, disclosed:

- total assets of about US\$35,470,000
- total liabilities of about US\$1,784,000
- total equity of about US\$33,686,000
- no accumulated profits
- accumulated losses of US\$55,000,000, and
- issued capital of about US\$93,079,000.

30. As at 31 December 2022, and as adjusted by the restatement noted in the half-year 30 June 2023 financial report, FAR reduced its share capital by US\$287,969,000 in accordance with section 258F of the *Corporations Act 2001*. This reduced accumulated losses deemed to be of a permanent nature by the same amount.

31. On the Payment Date, FAR's share capital account (as defined in section 975-300) was not tainted (within the meaning of Division 197).

32. FAR has not declared any dividends and is not proposing to pay a dividend to any shareholders as at the date of this Ruling.

33. On the Payment Date, the sum of the market values of the assets of FAR and its subsidiaries that are taxable Australian real property did not exceed the sum of the market values of their other assets for the purposes of section 855-30.

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**Commissioner of Taxation**

20 September 2023

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## Appendix – Legislative provisions

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34. 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 44
<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>	section 45B
<i>Income Tax Assessment Act 1936</i>	paragraph 45B(3)(b)
<i>Income Tax Assessment Act 1936</i>	section 45C
<i>Income Tax Assessment Act 1997</i>	section 104-25
<i>Income Tax Assessment Act 1997</i>	subsection 104-25(3)
<i>Income Tax Assessment Act 1997</i>	section 104-135
<i>Income Tax Assessment Act 1997</i>	subsection 104-135(3)
<i>Income Tax Assessment Act 1997</i>	subsection 104-135(4)
<i>Income Tax Assessment Act 1997</i>	subsection 104-165(3)
<i>Income Tax Assessment Act 1997</i>	Division 110
<i>Income Tax Assessment Act 1997</i>	Division 112
<i>Income Tax Assessment Act 1997</i>	Subdivision 115-A
<i>Income Tax Assessment Act 1997</i>	subsection 115-25(1)
<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>	subsection 855-10(1)
<i>Income Tax Assessment Act 1997</i>	section 855-15
<i>Income Tax Assessment Act 1997</i>	section 855-30
<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)

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## References

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*Legislative references:*

- Corporations Act 2001 258F
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ATO references

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