

# ***CR 2023/64 - Sunland Group Limited - return of capital***



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Status: **legally binding**

## Class Ruling

# Sunland Group Limited – return of capital

### **❶ Relying on this Ruling**

This publication (excluding appendixes) 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 Sunland Group Limited (Sunland) who received a return of capital payment of \$0.90 per Sunland share on 1 November 2023 (Payment Date).
2. Details of this scheme are set out in paragraphs 15 to 39 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 Appendix 2 of this Ruling), unless otherwise indicated.

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

4. This Ruling applies to you if you:
  - were a resident of Australia (as defined in subsection 6(1))
  - were registered on the Sunland share register on 25 October 2023 (Record Date)
  - held your Sunland shares on capital account – that is, you did not hold your Sunland 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 of \$0.90 per Sunland share on the Payment Date.

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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 15 to 39 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 2023 to 30 June 2024.

## **Ruling**

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

7. No part of the return of capital you received from Sunland on the Payment Date is a 'dividend' as defined in subsection 6(1).

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

8. 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 you received from Sunland on the Payment Date.

### **Capital gains tax consequences**

#### **CGT event G1**

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

10. You made a capital gain from CGT event G1 happening if the amount of the return of capital per Sunland share was more than the cost base of your Sunland share (subsection 104-135(3)). You cannot make a capital loss when CGT event G1 happens (Note 1 to subsection 104-135(3)).

11. If the amount of the return of capital per Sunland share you received was not more than the cost base of your Sunland share, you reduce the cost base and reduced cost base of the share (but not below nil) by the amount of the return of capital (subsection 104-135(4)).

#### **CGT event C2**

12. CGT event C2 happened on the Payment Date in respect of your right to receive the return of capital for each Sunland share you owned at the Record Date and ceased to own before the Payment Date (section 104-25).

13. You made a capital gain under CGT event C2 if the capital proceeds, being the amount of the return of capital per Sunland share, were more than the cost base of the right to receive that amount (subsection 104-25(3)).

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**Discount capital gain**

14. 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 Sunland shares at least 12 months before the Payment Date (subsection 115-25(1)), provided the other conditions in Subdivision 115-A are satisfied.

**Scheme**

15. 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**

16. Sunland is an Australian-resident company that was incorporated in 1983 and has been listed on the Australian Securities Exchange (ASX) since 28 February 1995.

17. Sunland is the head company of an income tax consolidated group (Sunland Group).

18. Sunland Group's principal activities have historically been residential property development and construction conducted in Australia.

19. Sunland has a single class of shares on issue, being ordinary shares.

**Strategic review – completion of projects and disposal of assets**

20. On 20 October 2020, following a strategic review of Sunland's operations by the directors, Sunland announced a strategic plan to sell certain inventory not under development and complete development of certain other projects. This plan was to occur over a period of approximately 3 years (or more), with the intention to convert assets to cash, repay all liabilities and returning net asset value to its shareholders by way of progressive dividend and capital payments, subject to sale of the inventory, financiers' satisfaction and regulatory and legislative requirements.

21. On 30 September 2022, Sunland provided an update on its strategic plan and announced that it expected to have no active projects or material business assets remaining by 30 June 2023, around which time Sunland may take steps to cease operating and potentially delist, subject to and in accordance with legal and financial advice, regulatory requirements and market conditions.

22. On 22 June 2023, Sunland announced that:

- it had completed its remaining projects and sold all undeveloped inventory
- it had some remaining assets, which were not material and expected to be sold over the next few months
- the capital requirements would be managed to satisfy remaining obligations including staff salaries, employee entitlements, necessary operating expenses, maintenance of completed projects, defects rectification as required by law, contingent liabilities, and costs that may crystallise as the strategy is completed

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- it had set aside sufficient funds to meet these remaining obligations as statutory defect periods run off for projects completed by Sunland Group, and
  - the last defects liability period was not scheduled to expire until December 2029.
23. On 22 June 2023, Sunland:
- declared a fully franked special dividend of \$0.20 per share to be paid on 27 July 2023, and
  - announced its intention to
    - pay an additional dividend of \$0.11 per share which directors anticipated would be declared following the release of Sunland Group's 2023 finance year results in August 2023 (forecast to be paid in September 2023), and
    - pay a capital distribution of \$0.90 per share which requires shareholders' approval.
24. On 16 August 2023, Sunland declared a fully franked dividend of \$0.11 per share to be paid on 20 September 2023.
25. On 24 August 2023, Sunland submitted a formal application to the ASX requesting that it be removed from the official list of the ASX (Official List), under the ASX Listing Rule 17.11.
26. On 29 September 2023, Sunland obtained shareholder approval by special resolution at its annual general meeting to delist from the ASX on 30 October 2023.
27. On 30 October 2023, Sunland delisted from the ASX.
28. On 31 October 2023, immediately prior to the return of capital, Sunland's share capital account balance was \$129,459,598.

### **Return of capital payment**

29. On 29 September 2023, Sunland obtained shareholder approval for the return of capital by ordinary resolution under section 256C of the *Corporations Act 2001* passed at its annual general meeting.
30. On 1 November 2023, the return of capital was paid to each holder of a Sunland share registered on the Sunland share register on the Record Date.
31. The return of capital was debited against the share capital account of Sunland. The total amount of share capital paid was \$123,218,564.
32. The return of capital was entirely funded by Sunland's available cash balances. Sunland did not have any assets besides cash at the time of the return of capital.
33. The return of capital satisfied all requirements under section 256B of the *Corporations Act 2001*.
34. Immediately following the return of capital, Sunland's share capital balance was \$6,241,034.

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**Other matters**

35. As at 31 October 2023:

- Sunland had 136,909,515 ordinary shares on issue
- Sunland shares were owned by a mix of individuals, companies, trusts, partnerships and superannuation funds both residents of Australia (as defined in subsection 6(1)) and non-residents (as defined in subsection 6(1))
- less than 1% of Sunland's shareholders were non-residents (as defined in subsection 6(1))
- one individual shareholder and the shareholder's related entities owned approximately 36.52% of Sunland shares, and
- a maximum of 9.5% of Sunland shares were pre-CGT assets.

36. Sunland has paid regular dividends, either fully or partly franked.

37. Other than the return of capital of \$0.90 per Sunland share paid by Sunland on 1 November 2023, Sunland has never returned capital to its shareholders.

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

39. As at 30 June 2020, the proportion of retained earnings and share capital to Sunland Group's total equity was 63% retained earnings and 37% capital respectively. Of the total distributions paid since Sunland announced its strategic plan on 20 October 2020 to 1 November 2023, 74% were dividends and 26% were capital (being the return of capital paid on 1 November 2023).

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**Commissioner of Taxation**

22 November 2023

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## Appendix 1 – Explanation

**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.*

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

40. The term 'dividend' is defined in subsection 6(1) and includes any distribution made by a company to any of its shareholders, but excludes a distribution debited against an amount standing to the credit of the company's share capital account.

41. As the return of capital was debited against Sunland's share capital account, which was not tainted, the return of capital is not a dividend.

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

42. Sections 45A and 45B are 2 anti-avoidance provisions which, if they apply, allow the Commissioner to make a determination that section 45C applies. The effect of such a determination is that all or part of the return of capital received by Sunland shareholders is treated as an unfranked dividend paid by Sunland out of profits.

43. Section 45A generally applies where a company streams capital benefits to some shareholders who would benefit more from them than other shareholders, and it is reasonable to assume that those other shareholders have received, or will receive, dividends.

44. As the return of capital was paid to all Sunland shareholders in the same proportion as their shareholdings, no streaming of capital benefits occurred.

45. Section 45B generally applies where, having regard to the relevant circumstances of the scheme (as set out in subsection 45B(8)), a company provided certain capital payments to its shareholders for a more than incidental purpose of enabling a taxpayer to obtain a tax benefit.

46. Having regard to the relevant circumstances of the scheme, it cannot be concluded that the scheme was entered into or carried out for a more than incidental purpose of enabling Sunland shareholders to obtain a tax benefit.

47. Therefore, the Commissioner will not make a determination under subsection 45A(2) or paragraph 45B(3)(b) that section 45C applies to the whole, or a part, of the return of capital.

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

48. CGT event G1 generally happens if a company makes a payment to you in respect of a share you own in the company and some or all of that payment is not a dividend and is not included in your assessable income (section 104-135).

49. CGT event G1 happened when you received the return of capital for each Sunland share you owned at the Record Date and continued to own at the Payment Date (section 104-135).

50. You made a capital gain from CGT event G1 happening if the return of capital per Sunland share was more than the cost base of your Sunland share. If you did make a capital gain, the cost base and reduced cost base of your Sunland share is reduced to nil (subsection 104-135(3)). You cannot make a capital loss when CGT event G1 happens (Note 1 to subsection 104-135(3)).

51. If the return of capital per Sunland share was not more than the cost base of your Sunland share, you reduce the cost base and reduced cost base of the share (but not below nil) by the amount of the return of capital (subsection 104-135(4)).

**CGT event C2**

52. CGT event C2 generally happens if your ownership of an intangible asset ends because the asset expires or is redeemed, cancelled, released, discharged, satisfied, abandoned, surrendered or forfeited (subsection 104-25(1)).

53. If, after the Record Date but before the Payment Date, you ceased to own a Sunland share in respect of which the return of capital was payable, the right to receive the return of capital in respect of that share was retained by you and was a separate CGT asset from the Sunland share.

54. CGT event C2 happened when the return of capital was made. The right to receive the return of capital, being an intangible asset, ended by the right being discharged or satisfied when the return of capital was made.

55. 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 (subsection 104-25(3)).

56. In working out the capital gain when CGT event C2 happened, the capital proceeds were equal to the amount of the return of capital you received for each Sunland share (subsection 116-20(1)).

57. The cost base of your right to receive each return of capital is worked out under Division 110 (modified by Division 112). The right would generally have a nil cost base as you would not have incurred any costs to acquire the right. As a result, you made a capital gain equal to the capital proceeds, being \$0.90 per Sunland share.

58. For the purposes of Subdivision 109-A, you are considered to have acquired the right at the time when you acquired your Sunland share. Therefore, you can treat a capital gain made when CGT event C2 happened to your right to receive the return of capital as a discount capital gain under Subdivision 115-A if you acquired your Sunland share at least 12 months before the Payment Date (subsection 115-25(1)), provided the other conditions in Subdivision 115-A are satisfied.



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## Appendix 2 – Legislative provisions

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59. 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 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>	subsection 45B(8)
<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(1)
<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>	Subdivision 109-A
<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>	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 256B
  - Corporations Act 2001 256C
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ATO references

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