

CR 2024/44 - Pharmx Technologies Limited - return of capital



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Status: **legally binding**

Class Ruling

Pharmx Technologies Limited – return of capital

❶ 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 Pharmx Technologies Limited (PTL) who received the return of share capital payment of 0.75c per PTL ordinary share (Return of Capital) on 4 December 2023 (Payment Date).
2. Details of this scheme are set out in paragraphs 17 to 29 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:
 - were registered on the PTL share register on 27 November 2023 (Record Date), and
 - held your PTL shares on capital account on the Record Date – that is, you did not hold your PTL shares as trading stock (as defined in subsection 995-1(1)) or as revenue assets (as defined in section 977-50).
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 17 to 29 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.

Status: **legally binding**

Ruling

Return of capital is not a dividend

7. No part of the Return of Capital paid to you by PTL on the Payment Date is a dividend as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936). This is because the entire amount of the Return of Capital has been debited against an amount standing to the credit of PTL's share capital account. Therefore, 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

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

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

Capital gains tax consequences

CGT event G1

9. CGT event G1 happened on the Payment Date when PTL paid you the Return of Capital for each share you owned on the Record Date and continued to own on the Payment Date (section 104-135).

10. You made a capital gain when CGT event G1 happened if the Return of Capital per PTL share you received was more than the share's cost base (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 Return of Capital per PTL share you received was equal to or less than the share's cost base, 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

12. CGT event C2 happened on the Payment Date when PTL paid you the Return of Capital for each PTL share you owned on the Record Date but did not own on the Payment Date (section 104-25). The right to receive the Return of Capital is retained by you and is a separate CGT asset from the PTL share you disposed of between the Record Date and Payment Date.

13. You made a capital gain from CGT event C2 if the capital proceeds from the ending of your right to receive the Return of Capital were more than the cost base of the right (subsection 104-25(3)).

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14. 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 for each share you owned on the Record Date but ceased to own before the Payment Date (0.75c per PTL share) (subsection 116-20(1)), and
 - cost base of the right does not include the cost base or reduced cost base of the PTL share that you previously owned, to the extent that it was applied in working out a capital gain or capital loss made when a CGT event happened to that 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 0.75c per PTL share owned on the Record Date.

Discount capital gain

15. 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 PTL 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 are able to disregard any capital gain or capital loss

16. If you were a foreign resident or the trustee of a foreign trust (for CGT purposes, as defined in subsection 995-1(1)), you disregard any capital gain made from CGT event G1 or any capital gain or capital loss from CGT event C2 under subsection 855-10(1), provided that:

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

Scheme

17. 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.

18. PTL (formerly Corum Group Limited) is the head of an Australian tax consolidated group, incorporated in Australia. It has been listed on the Australian Securities Exchange since 1971.

19. PTL develops and distributes business software for the pharmacy industry with a focus on electronic ordering, online sales and marketing platforms.

20. As at 30 June 2023, PTL had issued share capital of \$98.4 million, and accumulated losses of \$76.3 million.

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21. As at 20 October 2023, PTL had 598,506,789 shares on issue to 1,868 shareholders.

Disposal of assets

22. On 29 September 2023, PTL disposed of 100% of its shares in subsidiary companies Corum Health Pty Ltd and Amfac Pty Ltd (Sale Transaction).

23. As part of the consideration received in respect of the Sale Transaction, PTL received \$4.75 million in cash.

24. PTL determined it had funds excess to its requirements following the disposal.

Return of capital

25. In October 2023, PTL made an announcement on the Australian Securities Exchange advising of its intention to seek shareholder approval for a return of capital of 0.75c per PTL share (approximately \$4.5 million).

26. The return of capital, being an equal capital reduction under section 256B of the *Corporations Act 2001*, was approved by PTL shareholders at its Annual General Meeting held on 21 November 2023.

27. On the Payment Date, PTL shareholders received 0.75c for each PTL share they held on the Record Date.

28. The entire return of capital was debited to PTL's share capital account.

Other matters

29. PTL confirmed that its share capital account (as defined in section 975-300) is not tainted within the meaning of Division 197.

Commissioner of Taxation
17 July 2024

Status: **not legally binding**

References

Legislative references:

- | | |
|------------------------|------------------------------|
| - ITAA 1936 6(1) | - ITAA 1997 104-135(4) |
| - ITAA 1936 44(1) | - ITAA 1997 104-165(3) |
| - ITAA 1936 45A | - ITAA1997 Subdiv 115-A |
| - ITAA 1936 45A(1) | - ITAA 1997 115-25(1) |
| - ITAA 1936 45A(2) | - ITAA 1997 116-20(1) |
| - ITAA 1936 45B | - ITAA 1997 Div 197 |
| - ITAA 1936 45B(2) | - ITAA 1997 Div 230 |
| - ITAA 1936 45B(3)(b) | - ITAA 1997 855-10(1) |
| - ITAA 1936 45C | - ITAA 1997 855-15 |
| - ITAA 1997 104-25 | - ITAA 1997 975-300 |
| - ITAA 1997 104-25(3) | - ITAA 1997 977-50 |
| - ITAA 1997 104-135 | - ITAA 1997 995-1(1) |
| - ITAA 1997 104-135(3) | - Corporations Act 2001 256B |
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ATO references

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