

CR 2025/43 - Otto Energy Limited - return of capital and dividend



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Status: **legally binding**

Class Ruling

Otto Energy Limited – return of capital and dividend

❶ 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 of the distribution of A\$0.008 per share (Distribution) to shareholders of Otto Energy Limited (Otto) on 16 June 2025 (Payment Date), which comprised a return of capital of A\$0.00657 per share (Capital Return) and a dividend of A\$0.00143 per share (Dividend).
2. Details of this scheme are set out in paragraphs 21 to 44 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1936* or 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 Otto share register on 30 May 2025 (Record Date) and received the Distribution on the Payment Date
 - held your Otto shares on capital account – that is, you did not hold your Otto shares as ‘revenue assets’ (as defined in section 977-50) or as ‘trading stock’ (as defined in subsection 995-1(1)), and
 - were not a ‘temporary resident’ of Australia as defined in subsection 995-1(1) 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 21 to 44 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 2024 to 30 June 2025.

Ruling

Dividends

7. The Dividend is a 'dividend' as defined in subsection 6(1).

8. If you are a 'resident of Australia' (as defined in subsection 6(1)), you include the Dividend in your assessable income (subparagraph 44(1)(a)(i)).

9. If you are a non-resident, the Dividend is non-assessable non-exempt income and not included in your assessable income (paragraph 802-15(1)(a)). You are also not liable to pay withholding tax in respect of the Dividend (paragraph 802-15(1)(b)).

Return of capital is not a dividend

10. The Capital Return that you received from Otto on the Payment Date is not a 'dividend' as defined in subsection 6(1).

11. As the Capital Return is not a dividend, it is not required to be included in your assessable income under subsection 44(1).

Sections 45A and 45B do not apply to the return of capital

12. We will not make a determination under either subsections 45A(2) or 45B(3) that section 45C applies to any part of the Capital Return you received from Otto on the Payment Date.

Capital gains tax consequences

CGT event G1

13. CGT event G1 happened on the Payment Date when you received the Capital Return for each Otto share you owned at the Record Date and continued to own at the Payment Date (section 104-135).

14. You made a capital gain from CGT event G1 happening if the Capital Return per Otto share was more than the share's cost base (subsection 104-135(3)). The capital gain is the difference and you reduce both the cost base and reduced cost base of your Otto share to nil.

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15. If the Capital Return per Otto share was not more than the share's cost base, you reduce the cost base and reduced cost base of the share (but not below nil) by the amount of the Capital Return (subsection 104-135(4)).

16. You cannot make a capital loss from CGT event G1 (Note 1 to subsection 104-135(3)).

CGT event C2

17. CGT event C2 happened on the Payment Date when you received the Capital Return for each Otto share you owned at the Record Date but ceased to own before the Payment Date (section 104-25).

18. You made a capital gain from CGT event C2 of A\$0.00657 per Otto share that you owned on the Record Date but ceased to own before the Payment Date, as the Capital Return constitutes the capital proceeds you received when your right to receive the Capital Return ended on the Payment Date (subsections 104-25(3) and 116-20(1)).

Discount capital gain

19. 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 Otto shares 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

20. If you were a foreign resident or the trustee of a foreign trust for CGT purposes (as defined in subsection 995-1(1)) immediately before the Payment Date, 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), provided that:

- you did not use your Otto shares (or, if CGT event C2 happened, your right to receive the Capital Return) at any time in carrying on a business through a permanent establishment in Australia (table item 3 of section 855-15), or
- your Otto shares or right to receive the Capital Return were 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

21. 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.

Otto Energy Limited

22. Otto is a company incorporated in Australia and has been a tax resident of Australia since it was incorporated on 7 January 2004. Otto's shares were listed on the Australian Securities Exchange on 22 December 2004.

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23. Otto is an oil and gas exploration and production company focused on the Gulf Coast of the United States of America. Otto has producing assets within the Gulf Coast and holds an overriding royalty in an Alaskan oil and gas project. Otto does not own any Australian land assets and does not have any Australian projects.

24. Otto has a functional currency of United States dollars for financial reporting and income tax purposes.

Capital structure and policy

25. Otto has a single class share capital structure consisting of ordinary shares.

26. On and immediately before the Payment Date, Otto had:

- 4,795,009,773 ordinary shares on issue
- approximately 48.34% of its shares held by one non-resident shareholder
- accumulated losses of US\$101,878,000 and no profits reserve
- no franking credits, and
- issued share capital of A\$4,795,009,773.

27. The only prior dividend distribution by Otto was made on 26 June 2015.

Capital management and corporate activity

28. Otto raised capital of A\$8.5 million in 2017 which, together with the cash balance as at 30 September 2017, funded a number of projects including exploration in Alaska.

29. Otto also raised capital in 2018, 2019 and 2020, which was used to fund ongoing exploration of its Green Canyon 21 project in the Gulf of Mexico and working capital.

30. In 2015, Otto acquired Borealis Petroleum Pty. Ltd. (Borealis) for A\$1.2 million, which was paid for by the issue of 17,518,250 Otto shares.

31. On 18 January 2021, Otto transferred Borealis Alaska LLC (a subsidiary of Borealis) to Pantheon Resources Plc (Pantheon) in exchange for 14,272,592 shares issued by Pantheon.

32. In October 2021, Otto sold 11 million Pantheon shares for US\$10.5 million.

33. In November and December 2023, Otto sold the remaining 3,272,592 Pantheon shares for US\$1,050,000.

34. Otto incurred costs in relation to the sale of the Pantheon shares of A\$373,000.

35. The total equity of Otto at 30 June 2022 was US\$55,452,000.

36. The total equity of Otto at 30 June 2024 was US\$46,757,000.

Distribution

37. On 30 November 2023, at Otto's annual general meeting, it was resolved that Otto would make a return of capital of up to A\$40 million, or A\$0.008 per share, to its shareholders in proportion to their shareholding.

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38. On the Payment Date, Otto made the Distribution of a total amount of A\$38,360,078, which equated to A\$0.008 per Otto share, comprising the:

- Capital Return of A\$31,503,214, or A\$0.00657 per share, and
- Dividend of A\$6,856,864, or A\$0.00143 per share.

39. The Dividend was unfranked and was declared by Otto in the distribution statement issued to be 'conduit foreign income' (as defined in Subdivision 802-A).

40. The Distribution was sourced from Otto's existing surplus cash reserves in the balance sheet.

41. The Capital Return was debited against Otto's share capital account.

42. The Dividend was not debited against Otto's share capital account.

Other matters

43. Otto's 'share capital account' (as defined in section 975-300) was not 'tainted' (within the meaning of Division 197) as at the Payment Date.

44. On and immediately before the Payment Date, the sum of the market values of Otto's assets that were 'taxable Australian real property' (as defined in section 855-20) did not exceed the sum of the market values of its other assets for the purposes of section 855-30.

Commissioner of Taxation

2 July 2025

Status: **not legally binding**

Appendix – Legislative provisions

45. This paragraph sets out the details of the provisions of the *Income Tax Assessment Act 1936* or *Income Tax Assessment Act 1997* ruled upon or referenced in this Ruling.

Table 1: Provisions of the *Income Tax Assessment Act 1936* and *Income Tax Assessment Act 1997* ruled upon or referenced in this Ruling

| | |
|---------------------------------------|--------------------------|
| <i>Income Tax Assessment Act 1936</i> | subsection 6(1) |
| <i>Income Tax Assessment Act 1936</i> | subsection 44(1) |
| <i>Income Tax Assessment Act 1936</i> | subparagraph 44(1)(a)(i) |
| <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> | subsection 45B(3) |
| <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> | 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> | Subdivision 802-A |
| <i>Income Tax Assessment Act 1997</i> | paragraph 802-15(1)(a) |
| <i>Income Tax Assessment Act 1997</i> | paragraph 802-15(1)(b) |
| <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 855-20 |
| <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) |

Status: **not legally binding**

References

ATO references

NO: 1-12CO2FNB
ISSN: 2205-5517
BSL: PG
ATOlaw topic: Income tax ~~ Capital management ~~ Share capital return
Capital gains tax ~~ CGT events ~~ C1 to C3 - end of a CGT asset
Capital gains tax ~~ CGT events ~~ G1 to G3 - shares

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