


# ***CR 2025/44 - FAR Ltd - return of capital***

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Status: **legally binding**

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## **Class Ruling**

### **FAR Ltd – return of capital**

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#### **📌 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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<b>Table of Contents</b>	<b>Paragraph</b>
What this Ruling is about	1
Who this Ruling applies to	4
When this Ruling applies	6
<b>Ruling</b>	<b>7</b>
<b>Scheme</b>	<b>17</b>

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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 receive a return of capital payment of A\$0.08 per ordinary FAR share on 12 June 2025 (Payment Date).
2. Details of this scheme are set out in paragraphs 17 to 37 of this Ruling.
3. All legislative references in this Ruling are to provisions of 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 FAR share register on 5 June 2025 (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 A\$0.08 (Capital Return) 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 17 to 37 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 2024 to 30 June 2025.

## **Ruling**

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

7. No part of the Capital Return you received from FAR 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 Capital Return has been debited against an amount standing to the credit of FAR's share capital account. Therefore, no part of the Capital Return is included in your assessable income as a dividend under subsection 44(1) of the ITAA 1936.

### **Anti-avoidance provisions**

8. 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 either:

- subsection 45A(2) of the ITAA 1936 – because there was no streaming of capital benefits to some FAR shareholders and dividends to other FAR 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 FAR paid you the Capital Return in respect of each FAR 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 Capital Return you received was more than your FAR share's cost base (subsection 104-135(3)). The amount of the gain is equal to the excess.

11. If the Capital Return you received was not more than the cost base of your FAR share, the cost base or reduced cost base of your FAR share is reduced by the amount of the Capital Return (subsection 104-135(4)).

#### **CGT event C2**

12. CGT event C2 happened to your right to receive the Capital Return on the Payment Date when FAR paid you the Capital Return in respect of each FAR share you owned on the Record Date but ceased to own before the Payment Date (section 104-25).

13. You made a capital gain under CGT event C2 if the capital proceeds from the ending of the right (being the Capital Return amount) were more than the cost base of the right. You made a capital loss if the capital proceeds from the ending of the right were less than the reduced cost base of the right (subsection 104-25(3)).

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14. The cost base of your right to receive the Capital Return 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 FAR share – when you disposed of the FAR share after the Record Date but before the Payment Date. Therefore, if the cost base or reduced cost base of the FAR share previously owned by you has been fully applied in working out a capital gain or capital loss on the FAR share, the right to receive the Capital Return will have a nil cost base. As a result, you will, in those circumstances, make a capital gain equal to the capital proceeds, being A\$0.08 per FAR share owned at 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 FAR shares 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**

16. If you were a foreign resident or the trustee of a foreign trust for CGT purposes as defined in subsection 995-1(1) on the Payment Date, you disregard any capital gain made from CGT event G1 or any capital gain or capital loss from CGT event C2 happening to your FAR shares, pursuant to subsection 855-10(1), unless you:

- have used your FAR shares at any time in carrying on a business through a permanent establishment in Australia (table item 3 of section 855-15), or
- are an individual and your FAR shares were covered by subsection 104-165(3) (choosing to disregard a capital gain or capital loss on ceasing to be an Australian resident) (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.

### **FAR Ltd**

18. FAR is a public company incorporated in Australia in 1984. It has been listed on the Australian Securities Exchange since 1986.

19. FAR is an independent Africa-focused oil and gas exploration and development company. It is the head company of an income tax consolidated group under Part 3-90.

20. As at 31 December 2024, FAR had approximately:

- US\$66,644,551 credited to its share capital
- US\$14,649,701 in accumulated losses, and
- US\$5,128,215 debited to reserves.

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21. At 31 December 2024, FAR had 92,409,648 ordinary shares on issue. Approximately 4.2% of FAR shares on issue were held by non-resident shareholders.

22. FAR has never declared any dividends and is not proposing to pay a dividend to any shareholders as at the date of this Ruling.

#### **Disposal of interest in Rufisque Sangomar and Sangomar Deep Offshore Blocks offshore Senegal and the relevant Joint Operating Agreement**

23. FAR held an interest in the Production Sharing Contract for the Rufisque, Sangomar, and Sangomar Deep Offshore Blocks offshore Senegal and the relevant Joint Operating Agreement (RSSD Project) through its wholly owned subsidiary, FAR Senegal RSSD SA.

24. The RSSD Project did not proceed as anticipated despite equity having been raised for its development in December 2019 and January 2020.

25. On 19 January 2021, FAR entered into a Sale and Purchase Agreement to dispose of its interest in the RSSD Project to Woodside Energy (Senegal) B.V.

26. Woodside Energy (Senegal) B.V paid US\$45 million and reimbursed FAR Senegal RSSD SA's share of working capital for the RSSD Project totalling approximately US\$81 million, resulting in total consideration received by FAR of approximately US\$126 million.

27. In addition, FAR obtained an entitlement to contingent payments of up to US\$55 million, the total of which is expected to be received by 2027. The contingent payments are dependent on the future oil price, and the production and timing of first oil.

28. The first contingent payment of approximately US\$11.6 million was received on 14 May 2025.

29. Following the disposal of the interest in the RSSD project, FAR conducted the following capital reductions:

- On 21 September 2021, FAR conducted a capital return of A\$0.80 per share, having an aggregate value of A\$79,832,394 on the basis of 99,790,492 shares on issue by way of an equal reduction of share capital under sections 256B and 256C of the *Corporations Act 2001*.
- 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 A\$0.70 per share at an aggregate cost to FAR of approximately A\$4.6 million. On 19 June 2023, the on-market share buyback was terminated.
- In the income year ended 31 December 2022, 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.
- On 24 August 2023, FAR conducted a capital return of A\$0.40 per share, having an aggregate value of A\$36,963,859 on the basis of 92,409,648 ordinary shares on issue by way of equal reduction of share capital under sections 256B and 256C of the *Corporations Act 2001*.

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**Capital Return**

30. On 23 April 2025, FAR announced that it would distribute approximately A\$7.4 million by way of an equal reduction of share capital under sections 256B and 256C of the *Corporations Act 2001*.
31. The Capital Return was approved by the shareholders of FAR on 30 May 2025.
32. On the Payment Date, FAR shareholders received the Capital Return (being A\$0.08 per share) in respect of each FAR share they held on the Record Date.
33. The Capital Return was paid from FAR's available cash balance.
34. The total Capital Return amount of A\$7,392,771.84 was debited to FAR's share capital account.
35. There was no change to the proportionate interest of each shareholder in FAR following the Capital Return.

**Other matters**

36. The share capital account (as defined in section 975-300) of FAR is not tainted within the meaning of Division 197.
37. Less than 50% of the market value of FAR's assets were 'taxable Australian real property' (as defined in section 855-20).

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**Commissioner of Taxation**

2 July 2025

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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)
  - ITAA 1936 45A(1)
  - ITAA 1936 45A(2)
  - ITAA 1936 45B(2)
  - ITAA 1936 45B(3)(b)
  - ITAA 1936 45C
  - ITAA 1997 104-25
  - ITAA 1997 104-25(3)
  - ITAA 1997 104-135
  - ITAA 1997 104-135(3)
  - ITAA 1997 104-135(4)
  - ITAA 1997 104-165(3)
  - ITAA 1997 Div 110
  - ITAA 1997 Div 112
  - ITAA 1997 Subdiv 115-A
  - ITAA 1997 115-25(1)
  - ITAA 1997 Div 197
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  - ITAA 1997 Pt 3-90
  - ITAA 1997 855-10(1)
  - ITAA 1997 855-15
  - ITAA 1997 855-20
  - ITAA 1997 975-300
  - ITAA 1997 977-50
  - ITAA 1997 995-1(1)
  - Corporations Act 2001 256B
  - Corporations Act 2001 256C
  - Corporations Act 2001 258F
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### ATO references

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