


# ***CR 2024/45 - Prestal Holdings Limited - return of capital and dividends***

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## Class Ruling

# Prestal Holdings Limited – return of capital and dividends

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### **📌 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 Prestal Holdings Limited (Prestal) who received the return of capital and dividends following the divestment of the Consumer Products business unit on 7 November 2023.
2. Details of this scheme are set out in paragraphs 18 to 37 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).

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

4. This Ruling applies to you if you:
  - were registered on the Prestal share register on 17 May 2024 (Capital Return Record Date) and received the return of capital of \$0.18 per ordinary share on 24 May 2024 (Capital Return Payment Date)
  - held your Prestal shares on capital account – that is, you did not hold your Prestal shares as ‘revenue assets’ (as defined in section 977-50) or as ‘trading stock’ (as defined in subsection 995-1(1)), and
  - were a ‘resident of Australia’ (as defined in subsection 6(1)).

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5. This Ruling also applies to you if you received the interim dividend of \$0.06 per share on 11 March 2024 or the special dividend of \$0.07 per share on 22 July 2024.

6. 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 18 to 37 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**

7. This Ruling applies from 1 July 2023 to 30 June 2025.

## **Ruling**

### **Dividends are frankable and assessable**

8. The interim dividend and the special dividend are each:
- a dividend (as defined in subsection 6(1))
  - a frankable distribution (section 202-40), and
  - required to be included in your assessable income (subparagraph 44(1)(a)(i)).

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

9. No part of the return of capital you received from Prestal on the Capital Return Payment Date is a dividend (subsection 6(1)).

### **Sections 45A, 45B and 45C do not apply to the return of capital**

10. The Commissioner will not make a determination under either subsection 45A(2) or paragraph 45B(3)(b) that section 45C applies to any of the return of capital you received from Prestal on the Capital Return Payment Date.

### **Capital gains tax consequences**

#### **CGT event G1**

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

12. You made a capital gain from CGT event G1 happening if the amount of the return of capital per Prestal 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 Prestal share to nil.

13. If the amount of the return of capital per Prestal share you received 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 return of capital (subsection 104-135(4)).

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

### **CGT event C2**

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

16. You made a capital gain equal to the amount of the return of capital, that is, \$0.18 per ordinary share (subsection 104-25(3)).

### **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 if you acquired your Prestal shares at least 12 months before the Capital Return Payment Date (subsection 115-25(1)), and the other conditions in Subdivision 115-A are satisfied.

## **Scheme**

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18. 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**

#### ***Prestal Holdings Limited***

19. Prestal (previously known as Pental Limited) is an Australian resident company incorporated in 1999 and has been listed on the Australian Securities Exchange (ASX) since 29 August 2000.

20. Prestal is in the business of manufacturing and distribution of personal, household and commercial products across Australia, New Zealand and Asia. Prestal had 2 main business units, being Consumer Products and Hampers with Bite.

### **Business disposal**

21. On 13 September 2023, Prestal announced it had entered into an arrangement with Selleys, a division of Dulux Group (Australia) Pty Ltd, to sell its Consumer Products business unit (excluding Duracell and Bondi Soap) and the Shepparton manufacturing facility for a total price of \$60 million, excluding debtors and creditors on a debit-free, cash-free basis, subject to adjustments and certain conditions precedent (Dulux Transaction).

22. Prestal also announced on 13 September 2023 that following the completion of the Dulux Transaction, and subject to further review, it intended to return an aggregate of up to approximately \$54.5 million (approximately \$0.31 per share) back to its shareholders through the following:

- a fully franked special dividend of up to approximately \$0.06 per share
- an intended return of capital of up to approximately \$0.18 per share, and

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- an additional fully franked special dividend of up to approximately \$0.07 per share to be paid 8 months after the completion of the Dulux Transaction.

23. On 9 November 2023, Prestal announced it had completed the Dulux Transaction. As a result of the Dulux Transaction, Prestal made an accounting gain of approximately \$23 million, predominantly from historical accounting impairments related to the assets disposed (that is, goodwill).

24. Subsequent to the Dulux Transaction, Prestal closed the Duracell business with the remaining inventory sold back at cost to the supplier and the Bondi Soap business was transferred to the entity which operates the Hampers with Bite business.

### **Capital management activities**

25. On 26 February 2024, Prestal announced via the ASX an ordinary dividend of \$0.06 per share to be paid on 11 March 2024. Prestal subsequently announced on 28 February 2024 via the ASX that the dividend was an interim dividend and not a special dividend.

26. On 13 May 2024, Prestal announced via the ASX a return of capital of \$0.18 per share to be paid on the Capital Return Payment Date.

27. On 8 July 2024, Prestal announced via the ASX a special dividend of \$0.07 per share to be paid on 22 July 2024.

28. Accordingly, Prestal undertook the following payments:

- an interim dividend of \$0.06 per share on 11 March 2024
- the return of capital on the Capital Return Payment Date, and
- a special dividend of \$0.07 per share on 22 July 2024.

29. The interim and special dividends were sourced from the \$23 million current-year accounting profits related to the assets disposed as part the Dulux Transaction.

30. The interim and special dividends were not debited against the share capital account of Prestal.

31. The return of capital was debited against the share capital account of Prestal. The total amount of the return of capital was \$30,682,710.

32. Prestal's 'share capital account' (as defined in section 975-300) was not 'tainted' (within the meaning of Division 197) on the Capital Return Payment Date.

### **Other matters**

33. Immediately before the Capital Return Payment Date:

- Prestal had accumulated losses of \$32,632,000
- Prestal's franking account balance was \$16,089,813
- Prestal had issued share capital of \$103,830,000
- less than 1% of Prestal shareholders were 'non-residents' (as defined in subsection 6(1)), and
- one individual shareholder (together with that shareholder's related entities) owned approximately 20.91% of Prestal's shares.

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34. On or around the Capital Return Payment Date, Prestal's market capitalisation was approximately \$31 million.

35. Since 2019, Prestal has paid regular ordinary dividends that are fully franked.

36. The accounting profits of \$23 million from the Dulux Transaction was carried into a profit reserve and not credited against accumulated losses nor to the share capital account.

37. Notwithstanding Prestal's ASX announcement on 10 May 2024 regarding the interim dividend, the dividend remained classified as an interim dividend.

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**Commissioner of Taxation**

31 July 2024

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## Appendix 1 – Explanation

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**ⓘ** *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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### **Dividends are frankable and assessable**

38. The term 'dividend' is defined in subsection 6(1) to include any distribution made by a company to any of its shareholders, whether in money or other property, but excludes a distribution debited against an amount standing to the credit of the share capital account of the company.

39. The interim and special dividends are 'dividends' as they were distributions of money made by Prestal to its shareholders and were not debited against its share capital account.

40. A distribution is a 'frankable distribution' to the extent it is not unfrankable (section 202-40). Section 202-45 sets out the circumstances under which an amount or distribution is taken to be unfrankable.

41. The interim and special dividends are 'frankable distributions' under section 202-40 as none of the circumstances in section 202-45 apply.

42. The assessable income of a shareholder includes dividends paid by a company out of profits derived by it from any source (subparagraph 44(1)(a)(i)).

43. As the interim and special dividends were paid by Prestal to you out of profits derived by Prestal from the Dulux Transaction, you are required to include the dividends in your assessable income.

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

44. Subsection 975-300(3) provides that if a company's share capital account is 'tainted' (as defined in Division 197), that account is taken not to be a share capital account for certain purposes of the income tax legislation (including the definition of dividend).

45. Prestal's share capital account was not 'tainted' within the meaning of Division 197 on the Capital Return Payment Date.

46. As the return of capital was debited against Prestal's untainted share capital account, the return of capital is not a 'dividend' within the meaning of subsection 6(1).

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

47. Sections 45A and 45B are anti-avoidance provisions which, if they apply, allow the Commissioner to make a determination that section 45C applies.
48. Section 45A generally applies where a company streams capital benefits to some shareholders who would derive a greater benefit from the receipt of capital than other shareholders, and it is reasonable to assume that those other shareholders have received, or will receive, dividends.
49. As the return of capital was paid to all Prestal shareholders in the same proportion to their shareholding in Prestal, no streaming of capital benefits occurred.
50. 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.
51. Having regard to the relevant circumstances of this scheme, it cannot be concluded that the scheme was entered into or carried out for a more than incidental purpose of enabling you to obtain a tax benefit.
52. 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.

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

53. 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).
54. The return of capital is a payment by Prestal to you in respect of your shareholding in Prestal.
55. Therefore, CGT event G1 happened when you received the return of capital for each Prestal share you owned at the Capital Return Record Date and continued to own at the Capital Return Payment Date (section 104-135).
56. The time of the CGT event G1 is when Prestal makes the payment, being the Capital Return Payment Date (subsection 104-135(2)).

**CGT event C2**

57. CGT event C2 generally happens if your ownership of an intangible CGT asset ends because the asset expires or is redeemed, cancelled, released, discharged, satisfied, abandoned, surrendered or forfeited (subsection 104-25(1)).
58. If, after the Capital Return Record Date but before the Capital Return Payment Date, you ceased to own a Prestal share in respect of which the return of capital was payable, your right to receive the return of capital in respect of that share was retained by you and was a separate intangible CGT asset from the Prestal share.
59. Therefore, CGT event C2 happened when your right to receive the return of capital ended by being discharged or satisfied when the return of capital was made to you.



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60. The time of the CGT event C2 is when the asset ends, being the Capital Return Payment Date (paragraph 104-25(2)(a)).

61. 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 Prestal share (subsection 116-20(1)).

62. The cost base of your right is worked out under Division 110 (as 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.

63. In those circumstances, you made a capital gain equal to the amount of the return of capital, being \$0.18 per Prestal share (subsection 104-25(3)).

64. For the purposes of Subdivision 109-A, you are considered to have acquired the right at the time when you acquired your corresponding Prestal share (sections 109-5 and 109-10).

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## Appendix 2 – Legislative provisions

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65. This paragraph sets out the details of the provisions of the Income Tax Assessment Acts 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>	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(8)
<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(1)
<i>Income Tax Assessment Act 1997</i>	paragraph 104-25(2)(a)
<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(2)
<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>	section 109-5
<i>Income Tax Assessment Act 1997</i>	section 109-10
<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>	section 202-40
<i>Income Tax Assessment Act 1997</i>	section 202-45
<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>	subsection 975-300(3)
<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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### ATO references

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