


# ***CR 2021/99 - Vortiv Limited - return of capital***

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## Class Ruling

### Vortiv Limited – return of capital

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#### 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 for shareholders of Vortiv Limited (Vortiv) who received the return of capital payment of 10 cents per ordinary Vortiv share on 30 April 2021 (Payment Date).
2. Full details of this scheme are set out in paragraphs 14 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 Vortiv share register on 23 April 2021 (Record Date)
  - held your Vortiv shares on capital account; that is, you did not hold your shares as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)) on the Record Date, and
  - received the return of capital payment of 10 cents per Vortiv 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 14

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to 29 of this Ruling. 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 2020 to 30 June 2021.

## **Ruling**

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

7. The return of capital is not a dividend as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936).

### **Sections 45A, 45B and 45C of the ITAA 1936 do not apply**

8. The Commissioner will not make a determination under either subsection 45A(2) or paragraph 45B(3)(b) of the ITAA 1936 that section 45C of the ITAA 1936 applies to any part of the return of capital you received on the Payment Date.

### **Capital gains tax consequences**

#### **CGT event G1**

9. CGT event G1 happened to you when Vortiv paid you the return of capital of 10 cents per share in respect of each Vortiv 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 of 10 cents per Vortiv share you received was more than the share's cost base (subsection 104-135(3)). No capital loss can be made from CGT event G1 (Note 1 to subsection 104-135(3)).

11. If the return of capital of 10 cents per Vortiv share you received was not more than the cost base of the share, the cost base and reduced cost base of each share is reduced by the amount of the return of capital (subsection 104-135(4)).

### **Discount capital gain**

12. You can treat a capital gain made when CGT event G1 happened as a 'discount capital gain' under Subdivision 115-A provided that you acquired your Vortiv share at least 12 months before the Payment Date (subsection 115-25(1)) and the other conditions in Subdivision 115-A are satisfied.

### **Foreign residents**

13. 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

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under subsection 855-10(1) as a Vortiv share is not an 'indirect Australian real property interest' (table item 2 of section 855-15), provided that:

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

## **Scheme**

14. 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**

#### ***Vortiv Limited***

15. Vortiv is an Australian-resident company listed on the Australian Securities Exchange (ASX). Vortiv is also the head company of an income tax consolidated group.

16. Vortiv is a technology-based company focused on the financial services sector. Vortiv is involved in providing a range of information technology management services and continues to hold a non-controlling interest in TSI India, a company installing and managing a network of automated teller machines (ATMs) on behalf of major banks in India.

17. On 22 October 2020, Vortiv announced on the ASX it had executed a conditional share sale agreement (the Disposal) to sell 100% of its interests in the following operating entities for \$25 million:

- Decipher Works Pty Ltd (DWX), and
- Cloudten Industries Pty Ltd (C10).

### **Return of capital**

18. On 11 March 2021, and later updated on the 18 March 2021, Vortiv announced that an amount of \$21.85 million would be returned to shareholders as a consequence of the Disposal, comprising:

- a fully franked dividend of \$7.8 million, and
- an equal access capital return (EACR) of \$14.05 million, equivalent to 10 cents per share on issue.

19. The EACR was approved by shareholders at an Extraordinary General Meeting held on 19 April 2021.

20. Vortiv conducted the return of capital because it:

- disposed a significant part of its business, and

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- had undertaken a review of its capital requirements for its ongoing operations to be able to make the distribution of capital following the Disposal of the group's DWX and C10 businesses.

21. The total amount of the EACR of \$14.05 million was paid to shareholders on 30 April 2021.

22. The total amount of the return of capital was debited against Vortiv's share capital account and was funded entirely from Vortiv's cash reserves of \$22.7 million.

### **Capital structure**

23. Vortiv's financial position as at 31 March 2021 disclosed:

Total Assets	\$28,986,000
Total Liabilities	\$8,064,000
Total Net Assets	\$20,922,000
Contributed Equity	\$41,989,000
Reserves	\$802,000
Accumulated Losses	\$21,869,000

24. Vortiv had 140,524,363 ordinary shares on issue as at 31 March 2021.

25. There were 47 Vortiv shareholders registered in jurisdictions outside of Australia. The aggregated shareholding of all foreign resident shareholders is 1.070%.

26. Vortiv had 'cash and cash equivalents' as at 31 March 2021 of \$22,709,000.

27. On the Payment Date, Vortiv's share capital account was not tainted within the meaning of section 197-50.

### **Other information**

28. Vortiv did not declare or pay any dividend from 1 July 2011 to 10 March 2021.

29. A Vortiv share is not an 'indirect Australian real property interest' as defined in section 855-25.

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**Commissioner of Taxation**

15 December 2021

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## Appendix – Explanation

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**①** *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**

30. The term 'dividend' is defined in subsection 6(1) of the ITAA 1936 to include 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.

31. As the return of capital was recorded as a debit to Vortiv's share capital account (which was not tainted), the return of capital is not a dividend.

### **Sections 45A, 45B and 45C of the ITAA 1936 do not apply**

32. Sections 45A and 45B of the ITAA 1936 are anti-avoidance provisions which, if applicable, allow the Commissioner to make a determination that section 45C of the ITAA 1936 applies. The effect of such a determination is that all or part of the return of capital received by Vortiv shareholders is treated as an unfranked dividend.

### **Section 45A – streaming of dividends and capital benefits**

33. Section 45A of the ITAA 1936 generally applies when a company streams the provision of capital benefits (such as the distribution of share capital by way of the return of capital) to shareholders who would derive a greater benefit from the capital benefits than other shareholders while those other shareholders have received, or are likely to receive, dividends.

34. As all Vortiv's shareholders received the 'equal access' return of capital, there was no streaming of capital benefits to some shareholders. Accordingly, section 45A of the ITAA 1936 does not apply.

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### ***Section 45B – scheme to provide capital benefits***

35. Section 45B of the ITAA 1936 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.

36. Having regard to the relevant circumstances of the scheme, the Commissioner considers that it cannot be concluded that the return of capital was entered into or carried out for a more than incidental purpose of enabling Vortiv shareholders to obtain a tax benefit. Accordingly, section 45B of the ITAA 1936 does not apply.

### **Capital gains tax consequences**

#### ***CGT event G1***

37. CGT event G1 happened to you when Vortiv paid you the return of capital in respect of your Vortiv share which you owned on the Record Date and continued to own on the Payment Date (section 104-135).

38. You made a capital gain when CGT event G1 happened if the return of capital of 10 cents per Vortiv share you received was more than the cost base of the share. The capital gain is equal to the difference, and you reduce both the cost base and reduced cost base of your Vortiv share to nil (subsection 104-135(3)). You cannot make a capital loss when CGT event G1 happens (Note 1 to subsection 104-135(3)).

39. If the return of capital of 10 cents per Vortiv share you received was not more than the cost base of your share, you reduce both the cost base and reduced cost base of the share by the amount of the return of capital (subsection 104-135(4)).

### ***Discount capital gain***

40. You can treat a capital gain made when CGT event G1 happened as a 'discount capital gain' under Subdivision 115-A provided that you acquired your Vortiv share at least 12 months before the Payment Date (subsection 115-25(1)) and the other conditions in that Subdivision are satisfied.

### ***Foreign residents***

41. You disregard a capital gain or capital loss you made from a CGT event if:

- just before the CGT event happened, you are a foreign resident, or the trustee of a foreign trust for CGT purposes, and
- the CGT event happens in relation to a share that is not taxable Australian property (subsection 855-10(1)).

42. If you were a foreign resident or the trustee of a foreign trust for CGT purposes, you disregard a capital gain you made when CGT event G1 happened to your Vortiv share under subsection 855-10(1), as a Vortiv share is not an indirect Australian real property interest (table item 2 of section 855-15), provided also that:

- you did not use the Vortiv share at any time in carrying on a business through a permanent establishment in Australia (table item 3 of section 855-15), or

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- the Vortiv share was not covered by subsection 104-165(3) about individuals who defer capital gains upon ceasing to be Australian residents (table item 5 of section 855-15).



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## References

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### *Previous draft:*

Not previously issued as a draft

- ITAA 1997 104–135(3)
  - ITAA 1997 104–135(4)
  - ITAA 1997 104-165(3)
  - ITAA 1997 Subdiv 115-A
  - ITAA 1997 115-25(1)
  - ITAA 1997 197-50
  - ITAA 1997 Div 230
  - ITAA 1997 855-10(1)
  - ITAA 1997 855-15
  - ITAA 1997 855-25
  - ITAA 1997 977-50
  - ITAA 1997 995-1(1)
  - TAA 1953
- 

### *Legislative references:*

- ITAA 1936 6(1)
  - ITAA 1936 45A
  - ITAA 1936 45A(2)
  - ITAA 1936 45A(3)(b)
  - ITAA 1936 45B
  - ITAA 1936 45B(8)
  - ITAA 1936 45C
  - ITAA 1997 104-135
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### ATO references

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end of a CGT asset  
Income tax ~~ Capital gains tax ~~ CGT events ~~ CGT events G1 to G3 -  
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Income tax ~~ Capital gains tax ~~ Capital proceeds  
Income tax ~~ Capital gains tax ~~ Discount capital gains  
Income tax ~~ Capital management ~~ Anti avoidance rules ~~ Section 45A  
Income tax ~~ Capital management ~~ Anti avoidance rules ~~ Section 45B  
Income tax ~~ Capital management ~~ Anti avoidance rules ~~ Section 45C  
Income tax ~~ Capital management ~~ Returning capital ~~ Share capital  
return

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