

CR 2022/110 - Heidelberg District Community Enterprise Limited - off-market share buy-back

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Class Ruling

Heidelberg District Community Enterprise Limited – off-market share buy-back

📌 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 Heidelberg District Community Enterprise Limited (Heidelberg) who participated in the Heidelberg off-market share buy-back (Buy-Back) announced on 19 August 2022.
2. Details of the scheme are set out in paragraphs 17 to 36 of this Ruling.
3. All legislative references in this Ruling are to provisions of the *Income Tax Assessment Act 1936* (ITAA 1936) or the *Income Tax Assessment Act 1997* (ITAA 1997) (as detailed in the Appendix to this Ruling).

Who this Ruling applies to

4. This Ruling applies to you if you:
 - held shares in Heidelberg and you sold some or all of those shares in the Buy-Back
 - held those shares on capital account; that is, you did not hold your Heidelberg 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 under subsection 6(1).

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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 17 to 36 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 2022 to 30 June 2023.

Ruling

Off-market share buy-back

7. The Buy-Back is an off-market purchase for the purposes of section 159GZZZK.

No part of the Buy-Back price is a dividend

8. No part of the Buy-Back price you received is taken to be a dividend under subsection 159GZZZP(1) as the whole amount was debited against the amounts standing to the credit of Heidelberg's share capital account.

Sale consideration

9. You are taken to have received the Buy-Back price of \$0.71 as consideration for each Heidelberg share you sold in the Buy-Back on 21 October 2022 (section 159GZZZQ).

10. The consideration you are taken to have received is not adjusted by subsections 159GZZZQ(2) to (9).

Capital gains tax consequences

11. CGT event A1 happened to you on 21 October 2022 when you disposed of each of your Heidelberg shares to Heidelberg in the Buy-Back (section 104-10).

12. The Buy-Back price of \$0.71 per Heidelberg share represents the capital proceeds for capital gains tax purposes you received for each Heidelberg share (subsection 116-20(1)).

13. If you did not hold your Heidelberg shares through a partnership, you made a:

- capital gain on each Heidelberg share if the Buy-Back price was more than the share's cost base (subsection 104-10(4)); the amount of the capital gain is the difference, or
- capital loss on each Heidelberg share if the Buy-Back price was less than the share's reduced cost base (subsection 104-10(4)); the amount of the capital loss is the difference.

14. Where you made a capital gain, you can treat the capital gain as a 'discounted capital gain' if you acquired your Heidelberg shares on or before 20 October 2021 and the other conditions of Subdivision 115-A are met.

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15. If you held the Heidelberg shares through a partnership, any capital gain or capital loss will be made by the partners individually (subsection 106-5(1)). Each partner in a partnership has a separate cost base and reduced cost base for the partner's interest in each Heidelberg share sold in the Buy-Back by the partnership (subsection 106-5(2)).

The anti-avoidance provisions

16. The Commissioner will not make a determination under subsections 45A(2) or 45B(3) that section 45C applies to treat any part of the Buy-Back price of \$0.71 per Heidelberg share you received as an unfranked dividend.

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.

Background

18. Heidelberg is a public company which was incorporated on 6 December 2000. Heidelberg shares are listed on the National Stock Exchange of Australia.

19. As at 31 December 2021, Heidelberg had share capital of \$1,641,165 and retained earnings of \$321,412.

20. As at 4 July 2022, Heidelberg had a total of 429 shareholders, all of whom are Australian residents, and 2,298,386 fully-paid ordinary shares on issue. There are no partly paid shares or any other class of share on issue.

21. There have been no corporate actions involving Heidelberg shares since incorporation.

22. Heidelberg operates a Bendigo Bank Community Bank under a Community Banking Franchise Agreement (Franchise Agreement) with Bendigo and Adelaide Bank Limited.

23. Heidelberg's share capital account (as defined in section 975-300) was not tainted for the purposes of section 197-50.

Franchise Agreement

24. Relevant key terms of Heidelberg's Franchise Agreement are:

- Heidelberg may only distribute a maximum of 20% of the sum of its current year profits and retained earnings in each year ended 30 June; alternatively, Heidelberg may distribute an amount using a rate of return formula
- Heidelberg may provide some or all of the additional funds that it cannot distribute to shareholders by way of grants to community groups and other organisations to assist with implementing projects that have a benefit to the local community of each branch
- each shareholder is only entitled to one vote at shareholder meetings regardless of the number of shares held

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- no shareholder, including any related parties, may hold more than 10% of the total issued capital in Heidelberg, and
- shareholders are required to have a close connection with the community, whether living in geographic location of the branch, or some connection with the local community.

Off-market share buy-back

25. On 19 August 2022, Heidelberg announced its intention to undertake an equal access off-market share buy-back of its shares as part of its capital management strategy.

26. Heidelberg proposed to purchase a maximum of 35,211 shares, representing approximately 1.5% of total shares on issue.

27. The Buy-Back was conducted through an equal access offer to all shareholders who held shares prior to the record date of 14 July 2021. Participation in the Buy-Back was voluntary and Heidelberg retained the discretion to vary the size of the Buy-Back, to repurchase a lesser amount of shares, or to repurchase no shares at all.

28. Where the number of shares tendered by shareholders exceeds the number of shares Heidelberg determined to purchase in the Buy-Back, tenders were first accepted from shareholders with holdings of 999 or less shares.

29. For shareholders who tendered to sell more than 999 shares, a maximum of 2% of those shares would be purchased to ensure the base number of shareholders was maintained to an appropriate level as specified in Heidelberg's Constitution.

30. If over-subscribed, the remaining shares Heidelberg intended to purchase in the Buy-Back would be scaled back on a pro-rata basis.

31. The Tender Period opened on 19 August 2022 and closed on 16 September 2022.

32. Heidelberg purchased 36,361 shares under the Buy-Back representing approximately 1.5% of total shares on issue. A scale-back was applied.

33. Participating shareholders received \$0.71 per share they sold in the Buy-Back on 21 October 2022.

34. Heidelberg debited \$0.71 per share purchased under the Buy-Back to its untainted share capital account.

35. The Buy-Back price of \$0.71 per share represents Heidelberg's average capital per share.

36. Heidelberg cancelled all shares purchased under the Buy-Back.

Commissioner of Taxation

7 December 2022

Page status: **not legally binding****Appendix – Legislative provisions**

37. This paragraph sets out the details of the provisions 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 45A(2)
<i>Income Tax Assessment Act 1936</i>	subsection 45B(3)
<i>Income Tax Assessment Act 1936</i>	section 45C
<i>Income Tax Assessment Act 1936</i>	section 159GZZZK
<i>Income Tax Assessment Act 1936</i>	subsection 159GZZZP(1)
<i>Income Tax Assessment Act 1936</i>	section 159GZZZQ
<i>Income Tax Assessment Act 1936</i>	subsection 159GZZZQ(2)
<i>Income Tax Assessment Act 1936</i>	subsection 159GZZZQ(3)
<i>Income Tax Assessment Act 1936</i>	subsection 159GZZZQ(4)
<i>Income Tax Assessment Act 1936</i>	subsection 159GZZZQ(5)
<i>Income Tax Assessment Act 1936</i>	subsection 159GZZZQ(7)
<i>Income Tax Assessment Act 1936</i>	subsection 159GZZZQ(8)
<i>Income Tax Assessment Act 1936</i>	subsection 159GZZZQ(9)
<i>Income Tax Assessment Act 1997</i>	section 104-10
<i>Income Tax Assessment Act 1997</i>	subsection 104-10(4)
<i>Income Tax Assessment Act 1997</i>	subsection 106-5(1)
<i>Income Tax Assessment Act 1997</i>	subsection 106-5(2)
<i>Income Tax Assessment Act 1997</i>	Subdivision 115-A
<i>Income Tax Assessment Act 1997</i>	subsection 116-20(1)
<i>Income Tax Assessment Act 1997</i>	section 197-50
<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>	section 977-50
<i>Income Tax Assessment Act 1997</i>	subsection 995-1(1)

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References

ATO references

NO: 1-UBETATJ
ISSN: 2205-5517
BSL: PGI
ATOlaw topic: Income tax ~~ Capital management ~~ Return of capital ~~ Share buy back
Income tax ~~ Capital gains tax ~~ CGT events ~~ CGT event A1 - disposal
of a CGT asset
Income tax ~~ Capital management ~~ Anti avoidance rules ~~ Section 45A
Income tax ~~ Capital management ~~ Anti avoidance rules ~~ Section 45B

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