


CR 2022/19 - Boral Limited - return of capital

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Status: **legally binding**

Class Ruling

Boral Limited – return of capital

📌 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 Boral Limited (Boral) who received the return of capital payment of \$2.65 per ordinary share on 14 February 2022 (Payment Date).
2. Full details of this return of capital are set out in paragraphs 13 to 32 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 Boral share register on 7 February 2022 (Record Date)
 - held your Boral shares on capital account on the Record Date; that is, you did not hold your Boral 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 \$2.65 per Boral share 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 13 to 32 of this Ruling.

Note: Division 230 does 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 2021 to 30 June 2022.

Ruling

Return of capital is not a dividend

7. No part of the return of capital paid to you by Boral on the Payment Date is 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) of the ITAA 1936 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 of \$2.65 per Boral share you received on the Payment Date.

Capital gains tax consequences

CGT event G1

9. CGT event G1 happened to you on the Payment Date in respect of each Boral share you owned at the Record Date and continued to own at the Payment Date (section 104-135).

CGT event C2

10. CGT event C2 happened to you on the Payment Date in respect of your right to receive the return of capital for each Boral share you owned at the Record Date where you ceased to own that Boral share before the Payment Date (section 104-25).

Discount capital gain

11. 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 Boral shares at least 12 months before the Payment Date (subsection 115-25(1)), provided the other conditions in Subdivision 115-A are satisfied.

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Foreign-resident shareholders

12. You disregard under section 855-10 any capital gain from CGT event G1, and any capital gain or capital loss from CGT event C2, if you are a foreign resident just before the event and your Boral share or your right to receive the return of capital on the Boral shares:

- had not been used at any time by you in carrying on a business through a permanent establishment in Australia (table item 3 of section 855-15), or
- was not covered by subsection 104-165(3) (table item 5 of section 855-15, about individuals choosing to disregard capital gains upon ceasing to be Australian residents).

Scheme

13. 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

14. Boral is an Australian incorporated public company listed on the Australian Securities Exchange and the head company of an Australian income tax consolidated group.

15. Boral carries on a business of producing and supplying construction materials.

16. As at 30 June 2021, Boral had:

- share capital of \$3,839.5 million
- retained earnings of \$401.7 million
- reserves of \$122.8 million.

17. Boral has a single class of shares on issue, being ordinary shares.

18. Seven Group Holdings Limited owns approximately 69.6% of those ordinary shares. The remainder are owned by a range of retail and institutional investors in Australia and overseas.

Disposal of assets

19. During the income year ending 30 June 2022, the Boral group disposed of, or entered into contracts to dispose of, interests in several businesses being its:

- North American building products business
- North American fly ash business
- 50% interest in its North American brick joint venture, Meridian Brick
- Australian timber business
- Australian roof tiles and masonry businesses.

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20. Overall, once completed, the Boral group received approximately \$4.26 billion of sale proceeds in respect of the disposals of these investments. The disposal of these investments by Boral gave rise to an overall loss.

21. Boral determined that, after these disposals, \$3 billion was surplus to its capital requirements.

Return of capital payment and dividend

22. On 1 February 2022, Boral announced it will return \$3 billion to its shareholders by way of:

- a return of capital of \$2.65 per share, or \$2,923 million
- an unfranked dividend of 7 cents per share, or \$77.2 million.

23. The return of capital was debited to Boral's share capital account and the following accounting entry was recorded:

DR Share capital		\$2.923 billion
	CR Cash	\$2.923 billion

24. The return of capital was paid to each holder of a Boral share registered on the Boral share register on the Record Date.

25. The return of capital was funded by Boral's available cash balances.

26. The return of capital was an equal capital reduction under section 256B of the *Corporations Act 2001*. Boral had previously obtained shareholder approval for the return of capital by way of ordinary resolution under section 256C of the *Corporations Act 2001* passed at its Annual General Meeting held on 28 October 2021.

Other matters

27. Boral has paid regular dividends up to April 2020, either fully or partly franked.

28. Boral expects to recommence paying regular dividends to shareholders on the basis the trading environment normalises and improves and subject to circumstances and necessary board approvals at the time.

29. Boral's share capital account (as defined in section 975-300) is not tainted (within the meaning of Division 197).

30. No shareholders in Boral held their Boral shares as pre-CGT assets.

31. Boral shareholders consist of both Australian residents and foreign residents. As at September 2021, approximately 7% of Boral shareholders were foreign residents.

32. No foreign-resident Boral shareholder held a non-portfolio interest (within the meaning of section 960-195) in Boral throughout a 12-month period in the 24 months immediately before and on the Payment Date.

Commissioner of Taxation

2 March 2022

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Appendix – Explanation

❶ *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

33. The term 'dividend' is defined in subsection 6(1) of the ITAA 1936 and includes any distribution made by a company to any of its shareholders. However, paragraph (d) of the definition of dividend excludes a distribution from the meaning of dividend if the amount of the distribution is debited against an amount standing to the credit of the company's share capital account.

34. The term 'share capital account' is defined in section 975-300 as an account which the company keeps of its share capital, or any other account created on or after 1 July 1998 where the first amount credited to the account was an amount of share capital.

35. Subsection 975-300(3) provides that an account is generally taken not to be a share capital account if it is tainted. Boral has confirmed that its share capital account is not tainted within the meaning of Division 197.

36. The return of capital was recorded as a debit to Boral's untainted share capital account. As such, paragraph (d) of the definition of dividend in subsection 6(1) of the ITAA 1936 applies and the return of capital is not a dividend.

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

37. Sections 45A and 45B of the ITAA 1936 are anti-avoidance provisions which, if they apply, 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 a capital return received by shareholders is treated as an unfranked dividend paid out of profits of the company.

38. Section 45A of the ITAA 1936 generally applies where a company streams capital benefits to some shareholders who would benefit more from them than other shareholders, and dividends to those other shareholders. As the return of capital was paid to all Boral shareholders that held Boral shares on the Record Date, no such streaming occurred under the scheme.

39. Section 45B of the ITAA 1936 generally applies where, having regard to the relevant circumstances of the scheme as set out in subsection 45B(8) of the ITAA 1936, a company provided certain capital payments to its shareholders for a more than incidental purpose of enabling a taxpayer to obtain a demerger benefit or a tax benefit. Having had regard to the relevant circumstances of the scheme the Commissioner has not concluded

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that the scheme was entered into for a more than incidental purpose to enable a taxpayer to obtain a tax benefit.

40. Therefore, 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 the whole or any part of the return of capital received by Boral shareholders.

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References

Previous draft:

Not previously issued as a draft

Legislative references:

- ITAA 1936 6(1)
 - ITAA 1936 45A
 - ITAA 1936 45A(2)
 - ITAA 1936 45B
 - ITAA 1936 45B(3)(b)
 - ITAA 1936 45B(8)
 - ITAA 1936 45C
 - ITAA 1997 104-25
 - ITAA 1997 104-135
 - ITAA 1997 104-165(3)
 - ITAA 1997 Subdiv 115-A
 - ITAA 1997 115-25(1)
 - ITAA 1997 Div 197
 - ITAA 1997 Div 230
 - ITAA 1997 855-10
 - ITAA 1997 855-15
 - ITAA 1997 960-195
 - ITAA 1997 975-300
 - ITAA 1997 975-300(3)
 - ITAA 1997 995-1(1)
 - TAA 1953
 - Corporations Act 2001 256B
 - Corporations Act 2001 256C
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ATO references

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 Income tax ~ Capital management ~ Anti avoidance rules ~ Section 45B
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