

CR 2024/33 - PointsBet Holdings Limited - return of capital



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Class Ruling

PointsBet Holdings Limited – return of capital

❶ 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 PointsBet Holdings Limited (PointsBet) who received either, or both, of the following payments:
 - a return of capital of \$1.00 per share on 22 September 2023 (Initial Return of Capital), and
 - a return of capital of \$0.39 per share on 16 May 2024 (Final Return of Capital).
2. Details of this scheme are set out in paragraphs 13 to 30 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:
 - With respect to the Initial Return of Capital, you were registered on the PointsBet share register on 7 September 2023 (Initial Record Date) and received the payment on 22 September 2023 (Initial Payment Date).
 - With respect to the Final Return of Capital, you were registered on the PointsBet share register on 1 May 2024 (Final Record Date) and received the payment on 16 May 2024 (Final Payment Date).
 - With respect to either the Initial or Final Return of Capital, you held your PointsBet shares on capital account at the Initial or Final Record Date – that

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is, you did not hold your PointsBet shares as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)).

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 30 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 2023 to 30 June 2024.

Ruling

Return of capital is not a dividend

7. No part of the Initial or Final Return of Capital paid to you by PointsBet 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 will be debited against an amount to the credit of PointsBet's share capital account. Therefore, no part of the return of capital will be included in your assessable income as a dividend under subsection 44(1) of the ITAA 1936.

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

8. The Commissioner will not make a determination that section 45C of the ITAA 1936 applies to any part of the Initial or Final Return of Capital you received, under either:

- subsection 45A(2) of the ITAA 1936, because there was no streaming of capital benefits to some PointsBet shareholders and dividends to other PointsBet 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 to you on the Initial or Final Payment Date in respect of each PointsBet share you owned at the relevant Initial or Final Record Date and continued to own at the respective Initial or Final Payment Date (section 104-135).

CGT event C2

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

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

Foreign-resident shareholders

12. If you were a foreign resident just before the Initial or Final Payment Date (that is, you were not a resident of Australia as defined in subsection 6(1) of the ITAA 1936) and your PointsBet shares were not 'taxable Australian property', you must disregard a capital gain or capital loss you made from CGT event G1 or C2 happening (section 855-10).

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. PointsBet is a company incorporated in Australia and listed on the Australian Securities Exchange.

15. PointsBet and its subsidiaries carry on business as a sports wagering operator and iGaming provider, offering sports and racing betting products direct to clients via its scalable cloud-based technology platform.

16. As at 30 June 2023, PointsBet had:

- issued capital of A\$1,204,351,000
- other reserves of A\$89,683,000
- accumulated losses of A\$792,579,166.

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

18. As at 30 June 2023, PointsBet had 307,077,723 ordinary fully paid shares on issue.

The sale

19. On 14 May 2023, PointsBet entered into a share sale agreement for approximately US\$150 million with FBG Enterprises Opco, LLC (FBG) in respect of:

- its United States sports wagering, advanced-deposit wagering and iGaming operations
- Banach Technology Limited, its Dublin-based provider of proprietary risk management platforms and quantitative driven trading models, and
- a copy of the software for, and a licence to use, PointsBet's proprietary technology platform (collectively, the US Business).

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20. On 27 June 2023, a revised and improved offer for PointsBet's US Business with FBG was agreed to, for approximately US\$225 million.
21. The sale constituted a disposal of PointsBet's main undertaking and required shareholder approval, which was received at the Extraordinary General Meeting held on 30 June 2023.
22. The proceeds for the transaction were received in 2 tranches. PointsBet received approximately US\$175 million upon initial completion on 1 September 2023, and approximately US\$50 million upon subsequent completion on 4 April 2024.
23. The disposal of the US Business gave rise to an overall loss.

The return of capital

24. Each holder of a PointsBet share, as registered on the PointsBet share register on the Initial Record Date, received the Initial Return of Capital, on the Initial Payment Date. Each holder of a PointsBet share, as registered on the PointsBet share register on the Final Record Date, received the Final Return of Capital, on the Final Payment Date.
25. The Initial and Final Returns of Capital were debited against PointsBet's share capital account.
26. The Initial and Final Returns of Capital were funded by the proceeds from the sale of the US Business, in line with the receipt of the initial completion and subsequent completion payments outlined at paragraph 22 of this Ruling. Further cash reserves that became surplus to operating requirements due to the sale of the US Business were also returned.
27. The Initial and Final Returns of Capital were an equal capital reduction under section 256B of the *Corporations Act 2001*. PointsBet obtained shareholder approval for this by way of resolution under section 256C of the *Corporations Act 2001* passed at its Extraordinary General Meeting held on 29 August 2023.

Other matters

28. PointsBet's share capital account (as defined in section 975-300) is not tainted (within the meaning of Division 197).
29. PointsBet has not declared any dividends or issued any bonus shares, nor has there been any prior return of capital since its incorporation.
30. PointsBet shareholders consist of both Australian residents and foreign residents. As at 30 June 2023, approximately 50% of PointsBet shareholders were foreign residents.

Commissioner of Taxation
19 June 2024

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Appendix – Explanation

❗ *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

31. 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, but paragraph (d) of that definition excludes a distribution debited against an amount standing to the credit of the company's share capital account.

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

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

34. The returns of capital were recorded as a debit to PointsBet'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 returns of capital are not dividends.

35. As the returns of capital do not constitute dividends within the meaning of subsection 6(1) of the ITAA 1936, no part of the returns of capital are included in your assessable income as a PointsBet shareholder under subsection 44(1) of the ITAA 1936.

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

36. 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 return of capital received by shareholders is treated as an unfranked dividend paid out of profits of the company.

37. Section 45A of the ITAA 1936 generally applies when a company streams capital benefits to some of its shareholders who would benefit more from them than other shareholders, and dividends to those other shareholders. As the returns of capital were paid to all PointsBet shareholders that held PointsBet shares on the Initial and Final Record Dates, no such streaming occurred under the scheme.

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

39. Therefore, the Commissioner will not make a determination under either subsection 45A(2) or paragraph 45B(3)(b) that section 45C of the ITAA 1936 applies to the whole or any part of the returns of capital received by PointsBet shareholders.

Capital gains tax consequences

CGT event G1

40. CGT event G1 happens if:

- a company makes a payment to a shareholder in respect of a share they own in the company
- some or all of the payment (the non-assessable part) is not a dividend, or an amount that is taken to be a dividend under section 47 of the ITAA 1936, and
- the payment is not included in the shareholder's assessable income (section 104-35).

41. CGT event G1 happened when PointsBet made the returns of capital to you in respect of PointsBet shares you owned at the Initial or Final Record Date and continued to own at the Initial or Final Payment Date respectively.

42. You made a capital gain from CGT event G1 if the return of capital you received exceeds the cost base of your PointsBet share. The capital gain is equal to the excess, and you reduce both the cost base and reduced cost base of the PointsBet share to nil (subsection 104-135(3)). No capital loss can be made when CGT event G1 happens (note 1 to subsection 104-135(3)).

43. If the return of capital you received is less than the cost base of your PointsBet share, you reduce the cost base and reduced cost base of your share (but not below nil) by the amount of the return of capital (subsection 104-135(4)).

CGT event C2

44. If, after the Initial or Final Record Date but before the respective Initial or Final Payment Date, you cease to own a PointsBet share in respect of which the return of capital was payable, the right to receive the return of capital in respect of that share is retained by you and is a separate CGT asset from the PointsBet share.

45. CGT event C2 happened when the return of capital was made. The right to receive the return of capital, being an intangible asset, ended by the right being discharged or satisfied when the return of capital was made (section 104-25).

46. You will make a capital gain under CGT event C2 if the capital proceeds from the ending of the right are more than the cost base of the right. The capital gain is equal to the amount of the excess. You will make a capital loss if the capital proceeds from the ending

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of the right are less than the reduced cost base of the right. The capital loss is equal to the amount of the difference (subsection 104-25(3)).

47. In working out the capital gain or capital loss when CGT event C2 happens, the capital proceeds are equal to the amount of the Initial or Final Return of Capital, as applicable (subsection 116-20(1)).

48. The cost base of your right to receive each return of capital 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 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 share; for example, when you disposed of the share after the Initial or Final Record Date and before the respective Initial or Final Payment Date. Therefore, if the cost base or reduced cost base of the share previously owned by you has been fully applied in working out a capital gain or capital loss on the share, the right to receive the return of capital will have a nil cost base. As a result, you will, in those circumstances, make a capital gain equal to the capital proceeds.

49. For the purposes of Subdivision 109-A, you are considered to have acquired the right at the time when you acquired your PointsBet share. Therefore, you can treat a capital gain made when CGT event C2 happened to your right to the payment of the return of capital as a discount capital gain under Subdivision 115-A if you acquired your PointsBet share at least 12 months before the respective Initial or Final Payment Date (subsection 115-25(1)) provided the other conditions in Subdivision 115-A are satisfied.

Foreign-resident shareholders

50. You disregard a capital gain or capital loss you make from a CGT event if you are a non-resident, or the trustee of a non-resident trust for CGT purposes just before the CGT event happens and the CGT event happens in relation to a CGT asset that is not taxable Australian property (subsection 855-10(1)).

51. The term 'taxable Australian property' is defined in the table in section 855-15. Where you are a non-resident or a trustee of a non-resident trust for CGT purposes just before CGT event G1 or C2 happened to your PointsBet shares, you cannot disregard a capital gain or capital loss you made from this CGT event happening (under subsection 855-10(1)) if your PointsBet shares were:

- an indirect Australian real property interest which is not covered by table item 5 of section 855-15 (table item 2 of section 855-15)
- used at any time in carrying on business through a permanent establishment in Australia (table item 3 of section 855-15), or
- covered by subsection 104-165(3), which is about choosing to disregard a gain or loss on ceasing to be an Australian resident (table item 5 of section 855-15).

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References

Legislative references:

- ITAA 1936 6(1)
 - ITAA 1936 44(1)
 - ITAA 1936 45(8)
 - ITAA 1936 45A
 - ITAA 1936 45A(1)
 - ITAA 1936 45A(2)
 - ITAA 1936 45B
 - ITAA 1936 45B(2)
 - ITAA 1936 45B(3)(b)
 - ITAA 1936 45C
 - ITAA 1936 47
 - ITAA 1997 104-25
 - ITAA 1997 104-25(3)
 - ITAA 1997 104-35
 - ITAA 1997 104-135
 - ITAA 1997 104-135(3)
 - ITAA 1997 104-135(4)
 - ITAA 1997 104-165(3)
 - ITAA 1997 Subdiv 109-A
 - ITAA 1997 Div 110
 - ITAA 1997 Div 112
 - ITAA 1997 Subdiv 115-A
 - ITAA 1997 115-25(1)
 - ITAA 1997 116-20(1)
 - ITAA 1997 Div 197
 - ITAA 1997 Div 230
 - ITAA 1997 855-10
 - ITAA 1997 855-10(1)
 - ITAA 1997 855-15
 - ITAA 1997 975-300
 - ITAA 1997 975-300(3)
 - ITAA 1997 977-50
 - ITAA 1997 995-1(1)
 - Corporations Act 2001 256B
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ATO references

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