


CR 2024/41 - Upper Yarra Community Enterprise Ltd - off-market share buy-back

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Status: **legally binding**

Class Ruling

Upper Yarra Community Enterprise Ltd – 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 Upper Yarra Community Enterprise Ltd (UYCEL) who participated in the UYCEL off-market share buy-back (Buy-Back) announced on 15 November 2023.
2. Details of this scheme are set out in paragraphs 17 to 35 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 the Appendix to this Ruling).

Who this Ruling applies to

4. This Ruling applies to you if you:
 - held shares in UYCEL and you sold some or all of those shares under the Buy-Back
 - held those shares on capital account – that is, you did not hold your UYCEL 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 35 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

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 UYCEL's share capital account.

Sale consideration

9. You are taken to have received the Buy-Back price of \$0.551 as consideration for each UYCEL share you sold in the Buy-Back on 21 June 2024 (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 June 2024 when you disposed of each of your UYCEL shares to UYCEL in the Buy-Back (section 104-10).

12. The Buy-Back price of \$0.551 per UYCEL share represents the capital proceeds for capital gains tax purposes you received for each UYCEL share (subsection 116-20(1)).

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

- capital gain on each UYCEL 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 UYCEL 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 UYCEL shares on or before 20 June 2023 and the other conditions of Subdivision 115-A are met.

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15. If you held your UYCEL 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 UYCEL 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 \$0.551 per UYCEL 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. UYCEL is an unlisted public company which was formed in October 1999. UYCEL trades its shares using a low volume financial market approved by the Australian Securities and Investments Commission.

19. UYCEL operates a Bendigo Bank Community Bank under a Community Banking Franchise Agreement (Franchise Agreement) with the Bendigo and Adelaide Bank Limited, which opened after the initial capital raising on 9 May 2002.

20. As at 30 June 2023, UYCEL had share capital of \$977,708 and retained earnings of \$1,412,579.

21. As at 30 June 2023, UYCEL had a total of 498 shareholders and 1,774,160 fully paid ordinary shares on issue. There are no partly paid shares or any other class of share on issue.

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

The franchise agreement

23. Relevant key terms of UYCEL's Franchise Agreement are:

- UYCEL 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, UYCEL may distribute an amount using a rate of return formula.
- UYCEL may provide some or all of the additional funds that it cannot distribute to shareholders 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.
- No shareholder, including any related parties, may hold more than 10% of the total issued capital in UYCEL.

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- 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

24. On 15 November 2023, UYCEL announced its intention to undertake an equal access off-market share buy-back of its own shares as part of its capital management strategy.

25. UYCEL proposed to purchase a maximum of 453,720 shares, representing approximately 25.6% of the total shares on issue.

26. The Buy-Back was conducted through an equal access offer to all shareholders who held shares prior to the announcement date of 15 November 2023. Participation in the Buy-Back was voluntary and UYCEL retained the discretion to vary the size of the Buy-Back, to repurchase a lesser amount of shares or no shares at all.

27. Where the number of shares tendered by shareholders exceeded the number of shares UYCEL determined to purchase in the Buy-Back, tenders were first accepted from shareholders who held 500 or less shares.

28. Due to the restrictions imposed regarding prohibited shareholders, priority was given to any shares offered by those with a prohibited shareholding interest to ensure that UYCEL was compliant with restrictions imposed within the company's constitution.

29. Under the Buy-Back, the number of shares bought back by UYCEL could be scaled back on a pro rata basis if the offer was over-subscribed.

30. The tender Period opened on 1 April 2024 and closed on 17 May 2024.

31. UYCEL purchased 160,050 shares under the Buy-Back representing approximately 9.02% of total shares on issue. A scale-back was not applied.

32. Participating shareholders received \$0.551 per share they sold in the Buy-Back on 21 June 2024.

33. UYCEL debited \$0.551 per share purchased under the Buy-Back to its untainted share capital account.

34. The Buy-Back price of \$0.551 per share represents UYCEL's average capital per share.

35. UYCEL cancelled all shares purchased under the Buy-Back.

Commissioner of Taxation

10 July 2024

Status: **not legally binding**

Appendix – Legislative provisions

36. 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 the 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>	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

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