



## Class Ruling

### Suncorp Group 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.

Further, if we think that this Ruling disadvantages you, we may apply the law in a way that is more favourable to you.

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#### **What this Ruling is about**

1. This Ruling sets out the income tax consequences for shareholders who received the return of share capital (return of capital) from Suncorp Group Limited (SGL) on 24 October 2019 (Payment Date).
2. Details of this return of capital are set out in paragraphs 14 to 46 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 a holder of ordinary shares in SGL who:
  - was listed on the SGL share register on 1 October 2019 (Record Date), being the date for determining entitlements to receive the return of capital, and
  - held your shares on capital account (that is, you neither held your SGL shares as ‘revenue assets’ nor as ‘trading stock’ (as defined in section 977-50 and subsection 995-1(1) respectively).

In this Ruling a holder of ordinary shares in SGL, as described in this paragraph, is referred to as an SGL shareholder.

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 to 46 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 2019 to 30 June 2020.

## Ruling

### Return of capital not a dividend

7. No part of the return of capital SGL paid to you 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 do not apply

8. The Commissioner will not make a determination under sections 45A or 45B of the ITAA 1936 that section 45C of the ITAA 1936 applies to any part of the return of capital SGL paid to you on the Payment Date.

### CGT events G1 and/or C2 happen

9. CGT event G1 (section 104-135) happened to you when SGL paid you the return of capital in respect of the SGL shares you owned at the Record Date and continued to own at the Payment Date.

10. CGT event C2 (section 104-25) happened to you when SGL paid you the return of capital in respect of the SGL shares you owned at the Record Date and ceased to own at the Payment Date.

### CGT discount

11. You can treat a capital gain made when CGT event G1 or CGT event C2 happens as a discount capital gain under Subdivision 115-A provided you acquired your SGL shares at least 12 months before the Payment Date (subsection 115-25(1)) and the other conditions in that Subdivision are satisfied.

### Foreign resident shareholders able to disregard CGT

12. You can disregard any capital gain from CGT event G1, and a capital gain or capital loss from CGT event C2, where you are a foreign resident and the CGT event happens to your SGL shares that were not 'taxable Australian property' (section 855-10).

### No CGT event for share consolidation

13. No CGT event happened to you following the SGL share consolidation (section 112-25).

## **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**

15. SGL is an Australian resident non-operating holding company (NOHC) that is the Australian Securities Exchange (ASX) listed parent company of Suncorp Group. SGL is also authorised in Australia as an NOHC of Suncorp Group under the *Insurance Act 1973* and is subject to prudential regulation by the Australian Prudential Regulation Authority (APRA).

16. The Suncorp Group is a diversified financial services group that operates in general insurance, banking, life insurance and wealth management in Australia and New Zealand.

17. SGL is the head company of an income tax consolidated group, which consists of SGL and its wholly-owned subsidiaries.

## **Regulatory capital requirements**

18. As an NOHC of a group with regulated insurance subsidiaries, SGL is required to maintain eligible capital in excess of the Level 3 Prudential Capital Requirement (PCR). The Level 3 PCR aggregates the sum of the regulatory capital requirements of each of SGL's regulated subsidiaries, including Suncorp Life & Superannuation Limited (SLSL).

## **Australian life insurance business**

19. The Suncorp Group's Australian life insurance business was carried on by SLSL, a company registered under section 21 of the *Life Insurance Act 1995* (Life Act).

20. SLSL had operated as a life insurance company since 1997.

21. On 20 March 2007, Suncorp-Metway Limited (SML), which was the head company of the Suncorp Group at the time, acquired, through its wholly-owned subsidiary Suncorp Insurance Holdings Limited (SIHL), Promina Group Limited and its subsidiaries, including its wholly-owned subsidiary, Asteron Life Limited (ALL), a life insurance company registered under section 21 of the Life Act.

22. On 1 October 2009, Suncorp Life Holdings Limited (SLHL), a wholly-owned subsidiary of SML, acquired 100% of the ordinary shares in the life insurance entities of the Suncorp Group, being SLSL and ALL.

23. SLHL was capitalised by the issue of ordinary shares to SML before the company's acquisition of the 100% of the ordinary shares in SLSL and ALL.

24. On 7 January 2011, SGL replaced SML as the ASX-listed parent company of the Suncorp Group as part of a restructure, which resulted in SGL becoming the NOHC of the group.

25. On 1 January 2012, the business of ALL was transferred into SLSL pursuant to a court approved scheme of arrangement under Part 9 of the Life Act. This transfer resulted in SLSL holding the entire Australian life insurance business of the Suncorp Group.

**Review and sale of Australian life insurance business**

26. On 9 February 2017, SGL announced that the Suncorp Group was exploring strategic alternatives for the Australian life insurance business to better meet customer needs and maximise shareholder value.
27. On 4 September 2018, SGL announced that the Suncorp Group had signed a share sale deed with TAL Dai-ichi Life Australia Pty Ltd (TAL) to sell its Australian life insurance business for approximately \$725 million, and that, after allowing for separation and transaction costs, provisions and hybrid capital, it anticipated returning approximately \$600 million to shareholders following the completion of the transaction.
28. On 28 February 2019, SGL announced the successful completion of the sale of its Australian life insurance business. On completion SLHL received cash sale proceeds of \$640 million and approximately \$500 million of the proceeds were retained within the Suncorp Group to fund the return of capital.

**Special dividend**

29. On 22 March 2019, SGL announced that following the successful completion of the sale of SLSL, a fully franked special dividend of \$0.08 per SGL share would be paid. The special dividend represented approximately \$104 million of the approximately \$600 million of capital available to be returned to shareholders from the sale of the business.
30. The special dividend was paid on 3 May 2019, to shareholders listed on SGL's share register on the record date of 2 April 2019.

**Return of share capital**

31. At SGL's Annual General Meeting on 26 September 2019 (the AGM), SGL shareholders approved a pro-rata return of capital of \$0.39 per SGL share amounting to \$506 million.
32. SGL paid the return of capital of \$0.39 per SGL share on the Payment Date to shareholders listed on SGL's share register on the Record Date.
33. SGL debited the entire amount of the return of capital of \$506 million against the company's share capital account. There was no change in either the number of SGL shares on issue or the proportionate interest of each shareholder in SGL.
34. The return of capital was paid by SGL using the cash proceeds received by SGL from a return of capital undertaken by SLHL on 31 August 2019.

**Share consolidation**

35. At the AGM, SGL shareholders also approved a share consolidation, effective from 30 September 2019, in combination with the return of capital. Each SGL share was converted into 0.971 shares (share consolidation), with any resulting fractions in a share held by an SGL shareholder rounded up to the nearest whole number of shares.
36. The share consolidation resulted in the reduction in the number of shares on issue from 1,298,503,953 before the consolidation to 1,260,950,775 after the consolidation, representing a 2.9% reduction. The proportionate interest that each shareholder held in SGL was materially unchanged as the consolidation ratio was applied equally to all shares (subject to rounding).
37. The share consolidation was undertaken in accordance with section 254H of the *Corporations Act 2001* (Corporations Act).

**Dividend payments**

38. SGL's dividend policy is to maintain a payout ratio on its ordinary shares of between 60% and 80% of the Suncorp Group's cash earnings.
39. For the 2017-18 income year, however, SGL increased the dividend payout ratio slightly above the usual range to offset the impact on cash earnings of additional investment being undertaken.
40. All dividends paid by SGL since 2011 have been fully franked.

**Other matters**

41. As at 28 February 2019, the share capital account of SGL totalled \$12,957 million, the number of issued ordinary shares in SGL was 1,298,503,953, and SGL's total market capitalisation was \$17,595 million. There was no material change to the share capital account prior to the payment of the return of capital.
42. SGL determined that, after maintaining eligible capital in excess of the Level 3 PCR, there would be approximately \$600 million of net capital for returning to shareholders based on final sale proceeds of \$725 million for the sale of SLSL.
43. SGL received approval from APRA on 31 July 2019 for a reduction of capital up to \$611 million, inclusive of the special dividend.
44. SGL has confirmed that both SGL and SLHL's share capital accounts (as defined in section 975-300) are not tainted (within the meaning of Division 197).
45. At 30 June 2018, approximately 25% of SGL shareholders were foreign residents.
46. SGL has confirmed that its shares do not constitute indirect Australian real property interests as defined in section 855-25.

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**Commissioner of Taxation**6 November 2019

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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 not a dividend**

47. Subsection 6(1) of the ITAA 1936 provides that a dividend includes any distribution made by a company to any of its shareholders, but does not include a distribution that is debited against an amount standing to the credit of the company's share capital account.

48. Section 975-300 provides that a share capital account is an account which a 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. An account is generally taken not to be a share capital account if it is tainted. SGL has confirmed that its share capital account is not tainted within the meaning of Division 197.

49. The return of capital was recorded as a debit to SGL's untainted share capital account. As such, the distribution of capital is not a dividend as defined in subsection 6(1) of the ITAA 1936.

**Sections 45A, 45B and 45C do not apply**

50. Sections 45A and 45B of the ITAA 1936 are two 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 the distribution of capital received under the return of capital is treated as an unfranked dividend.

51. Section 45A of the ITAA 1936 applies where capital benefits are streamed to some shareholders, who would derive a greater benefit from the receipt of capital than other shareholders, who receive, or are likely to receive, dividends. Paragraph 45A(3)(b) of the ITAA 1936 provides that capital benefits include the distribution of share capital.

52. Although a 'capital benefit' was provided to SGL shareholders, the circumstances of the return of capital indicate that there was no streaming of capital benefits to some SGL shareholders and dividends to other SGL shareholders.

53. Accordingly, the Commissioner will not make a determination under subsection 45A(2) of the ITAA 1936 that section 45C of the ITAA 1936 applies in relation to the whole, or a part, of the return of capital.

54. Section 45B of the ITAA 1936 applies where certain capital payments are made to shareholders in substitution for dividends. In broad terms, section 45B of the ITAA 1936 applies where:

- there is a scheme under which a person is provided with a capital benefit by a company
- under the scheme, a taxpayer, who may or may not be the person provided with the capital benefit, obtains a tax benefit, and
- having regard to the relevant circumstances of the scheme, it would be concluded that the person, or one of the persons, who entered into or carried out the scheme or any part of the scheme did so for a purpose (whether or not the dominant purpose but not including an incidental purpose), of enabling a taxpayer to obtain a tax benefit.

55. The return of capital satisfies the first two conditions. However, having regard to the relevant circumstances of the scheme, it cannot be concluded that the scheme was entered into or carried out for a more than incidental purpose of enabling SGL shareholders to obtain a tax benefit.

56. Accordingly, the Commissioner will not make a determination under subsection 45B(3) of the ITAA 1936 that section 45C of the ITAA 1936 applies to the whole, or a part, of the payment of the return of capital.

### **CGT events G1 and/or C2 happen**

57. 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 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 104-135).

58. CGT event G1 happened to an SGL shareholder when SGL made the return of capital to them in respect of SGL shares they owned at the relevant Record Date and continued to own at the relevant Payment Date (section 104-135).

59. An SGL shareholder will make a capital gain from CGT event G1 happening if the amount of the return of capital of \$0.39 is more than the cost base of the shareholder's SGL share. If so, the capital gain is equal to the amount of the excess and the cost base and reduced cost base of the SGL share is reduced to nil (subsection 104-135(3)). No capital loss can be made from CGT event G1 (Note 1 to subsection 104-135(3)).

60. If the amount of the return of capital of \$0.39 is not more than the cost base of the shareholder's SGL share, the cost base and reduced cost base of the share are reduced by the amount of the return of capital (subsection 104-135(4)).

61. If, after the Record Date but before the Payment Date, an SGL shareholder ceased to own an SGL 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 the SGL shareholder and is a separate CGT asset.

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

63. An SGL shareholder will make a capital gain under CGT event C2 if the capital proceeds from the ending of the right were more than the cost base of the right. The capital gain is equal to the amount of the excess. An SGL shareholder will make a capital loss if the capital proceeds from the ending of the right were less than the reduced cost

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

64. In working out the capital gain or capital loss when CGT event C2 happens, the capital proceeds are equal to the amount of the return of capital (that is, \$0.39 per share) (subsection 116-20(1)).

65. The cost base of the SGL shareholder's 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 an SGL shareholder 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 the SGL shareholder disposed of the share after the relevant Record Date and before the Payment Date. Therefore, if the cost base or reduced cost base of the share previously owned by an SGL shareholder 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, an SGL shareholder will, in those circumstances, make a capital gain equal to the capital proceeds, being \$0.39 per SGL share owned at the Record Date.

### **Foreign resident shareholders able to disregard CGT**

66. Under subsection 855-10(1), an entity disregards a capital gain or capital loss made from a CGT event if:

- just before the CGT event happened, the entity is a foreign resident, or the trustee of a foreign trust for CGT purposes, and
- the CGT event happens in relation to a CGT asset that is not 'taxable Australian property'.

67. The term 'taxable Australian property' is defined in the table in section 855-15. The table sets out five categories of CGT assets:

Item 1	taxable Australian real property
Item 2	an indirect Australian real property interest not covered by item 5
Item 3	a CGT asset used at any time in carrying on a business through a permanent establishment in Australia and which is not covered by items 1, 2 or 5
Item 4	an option or right to acquire a CGT asset covered by items 1, 2 or 3
Item 5	a CGT asset that is covered by subsection 104-165(3) (choosing to disregard a gain or loss on ceasing to be an Australian resident)

68. An SGL shareholder, being a foreign resident, or the trustee of a foreign resident trust for CGT purposes, can disregard a capital gain or capital loss made when CGT event G1 happened to their SGL share under subsection 855-10(1) because their SGL share was not an indirect Australian real property interest, provided also that:

- their SGL share had not been used at any time by them in carrying on a business through a permanent establishment in Australia (table item 3 of section 855-15), or
- their SGL share 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).



69. An SGL shareholder, being a foreign resident, or the trustee of a foreign resident trust for CGT purposes, cannot disregard a capital gain or capital loss made when CGT event C2 happened to their right to receive a return of capital if:

- the right had been used at any time by them in carrying on a business through a permanent establishment in Australia (table item 3 of section 855-15), or
- the right was 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).

### **No CGT event in relation to share consolidation**

70. A CGT event will not happen if a company converts its shares into a smaller number of shares (the converted shares) in accordance with section 254H of the Corporations Act in that:

- the original shares are not cancelled or redeemed in terms of the Corporations Act
- there is no change in the total amount allocated to the share capital account of the company, and
- the proportion of equity owned by each shareholder in the share capital account is maintained.

While there is a change in the form of the original shares, there is no change in their beneficial ownership.

71. As all of the conditions in paragraph 70 of this Ruling are met, no CGT event happened as a result of SGL's share consolidation (section 112-25).

72. The converted shares will have the same date of acquisition as the original shares to which they relate.

**References***Previous draft:*

Not previously issued as a draft

*Legislative references:*

- ITAA 1997 112-25
- 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 855-25
- ITAA 1997 975-300
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- Corporations Act 2001 254H
- Insurance Act 1973
- Life Insurance Act 1995 21
- Life Insurance Act 1995 Pt 9
- ITAA 1936 6(1)
- ITAA 1936 45A
- ITAA 1936 45A(2)
- ITAA 1936 45A(3)(b)
- ITAA 1936 45B
- ITAA 1936 45B(3)
- ITAA 1936 45C
- ITAA 1936 47
- ITAA 1997 104-25
- ITAA 1997 104-25(3)
- ITAA 1997 104-135
- ITAA 1997 104-135(3)
- ITAA 1997 104-135(4)
- ITAA 1997 104-165(3)
- ITAA 1997 Div 110
- ITAA 1997 Div 112

## ATO references

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