


# ***CR 2024/17 - Invex Therapeutics Ltd - return of capital***

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Status: **legally binding**

## Class Ruling

### Invex Therapeutics Ltd – 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 Invex Therapeutics Ltd (Invex) who received the return of share capital of \$0.1863 per Invex share (Capital Return) on 18 December 2023 (Payment Date).
2. Details of this scheme are set out in paragraphs 16 to 29 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:
  - received the Capital Return payment on the Payment Date, and
  - held your Invex shares on capital account – that is, you did not hold your Invex 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 16 to 29 of this Ruling.

**Note:** Division 230 will not apply to individuals unless they have made an election for it to apply.

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**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 Capital Return you received from Invex on the Payment Date 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 has been debited against an amount standing to the credit of Invex's share capital account. Therefore, no part of the Capital Return is included in your assessable income as a dividend under subsection 44(1) of the ITAA 1936.

**Anti-avoidance provisions**

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

- subsection 45A(2) of the ITAA 1936 – because there was no streaming of capital benefits to some Invex shareholders and dividends to other Invex 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 on the Payment Date when Invex paid you the Capital Return in respect of each Invex share you owned on 11 December 2023 (Record Date) and continued to own on the Payment Date (section 104-135).

10. You made a capital gain when CGT event G1 happened if the Capital Return you received was more than your Invex share's cost base (subsection 104-135(3)).

11. If the Capital Return you received was not more than the cost base of your Invex share, the cost base or reduced cost base of your Invex share is reduced by the amount of the Capital Return (subsection 104-135(4)).

**CGT event C2**

12. CGT event C2 happened to your right to receive the Capital Return on the Payment Date when Invex paid you the Capital Return in respect of each Invex share you owned on the Record Date but ceased to own before the Payment Date (section 104-25).

13. You made a capital gain under CGT event C2 if the capital proceeds from the ending of the right (being the Capital Return amount) were more than the cost base of the right. You made a capital loss if the capital proceeds from the ending of the right were less than the reduced cost base of the right (subsection 104-25(3)).

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### **Discounted capital gains**

14. You treat a capital gain made when CGT event G1 or CGT event C2 happened as a discount capital gain if you acquired your Invex shares at least 12 months before the Payment Date (subsection 115-25(1)), provided the other conditions in Subdivision 115-A are satisfied.

### **Foreign-resident shareholders**

15. If you were a foreign resident or the trustee of a foreign trust for CGT purposes as defined in subsection 995-1(1) on the Payment Date, you disregard any capital gain made from CGT event G1 or any capital gain or capital loss from CGT event C2 happening to your Invex shares, pursuant to subsection 855-10(1), unless you:

- have used your Invex shares at any time in carrying on a business through a permanent establishment in Australia (table item 3 of section 855-15), or
- are an individual and your Invex shares were covered by subsection 104-165(3) (choosing to disregard a capital gain or capital loss on ceasing to be an Australian resident) (table item 5 of section 855-15).

## **Scheme**

16. 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.

### **Invex Therapeutics Limited**

17. Invex is a public company incorporated in Australia on 8 March 2019 and listed on the Australian Securities Exchange on 3 July 2019.

18. Invex is a biopharmaceutical drug development company that seeks to develop treatments for neurological conditions resulting from raised intracranial pressure.

19. Invex has 75,153,848 ordinary fully paid shares on issue, to the value of \$36,413,432.

20. As of 30 June 2023, Invex had accumulated losses of \$8.22 million and a reserve of \$2.38 million in addition to its share capital of \$36.4 million.

### **Return of capital**

21. The Return of Capital enabled Invex to repatriate capital in excess of its current and anticipated medium-term requirements to shareholders.

22. On 1 November 2023 Invex announced it would distribute \$14 million by way of an equal reduction of share capital.

23. The Capital Return was approved by the Invex shareholders on 5 December 2023.

24. On the Payment Date, Invex shareholders received the Capital Return (being \$0.1863 per Invex share).

25. The Capital Return was paid from the available cash balance of Invex.

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26. The total Capital Return amount of \$14.0 million was debited to Invex's share capital account.

27. There was no change to the proportionate interest of each Invex shareholder following the Capital Return.

#### **Other matters**

28. The share capital account (as defined in section 975-300) of Invex is not tainted within the meaning of Division 197.

29. Less than 50% of the market value of Invex's assets were 'taxable Australian real property' (as defined in section 855-20).

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**Commissioner of Taxation**

20 March 2024

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Status: **not legally binding**


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## Appendix – Explanation

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**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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### **Capital gains tax consequences of return of capital**

#### ***CGT event G1***

30. 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 104-135).

31. CGT event G1 happened when Invex made the Capital Return to you in respect of Invex shares you owned at the Record Date and continued to own at the Payment Date (section 104-135).

#### ***CGT event C2***

32. If, after the Record Date but before the Payment Date, you ceased to own an Invex share in respect of which the Capital Return was payable, the right to receive the Capital Return in respect of that share was retained by you and was a separate CGT asset from the Invex share.

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

#### **Section 45B of the ITAA 1936**

34. 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

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- under the scheme a taxpayer (relevant 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 relevant taxpayer to obtain a tax benefit.

35. 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 Invex shareholders to obtain a tax benefit.

36. Accordingly, the Commissioner will not make a determination under subsection 45B(3) of the ITAA 1936 that section 45C of the ITAA 1936 applies in relation to the whole, or a part, of the Capital Return received by the Invex shareholders.

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Status: **not legally binding**


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## References

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### *Legislative references:*

- |                       |                          |
|-----------------------|--------------------------|
| - ITAA 1936 6(1)      | - ITAA 1997 104-135(3)   |
| - ITAA 1936 44(1)     | - ITAA 1997 104-135(4)   |
| - ITAA 1936 45A(1)    | - ITAA 1997 104-165(3)   |
| - ITAA 1936 45A(2)    | - ITAA 1997 Subdiv 115-A |
| - ITAA 1936 45B       | - ITAA 1997 115-25(1)    |
| - ITAA 1936 45B(2)    | - ITAA 1997 Div 197      |
| - ITAA 1936 45B(3)    | - ITAA 1997 Div 230      |
| - ITAA 1936 45B(3)(b) | - ITAA 1997 855-10(1)    |
| - ITAA 1936 45C       | - ITAA 1997 855-15       |
| - ITAA 1936 47        | - ITAA 1997 855-20       |
| - ITAA 1997 104-25    | - ITAA 1997 975-300      |
| - ITAA 1997 104-25(3) | - ITAA 1997 977-50       |
| - ITAA 1997 104-135   | - ITAA 1997 995-1(1)     |
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### ATO references

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