

Promissory Note

Note: Funds received as a
Return of capital 28/3/22

Costs base \$130,237.10
Less ROC \$722,358.08
= CG \$592,120.98

Fairway HoldCo Pty Ltd ACN 657 067 868 (**Promisor**)

- 1 Promisor unconditionally promises to pay to Echelon Superannuation Pty Ltd ACN 600 829 981 as trustee for the Echelon Superannuation Fund or any person to whom this Promissory Note is assigned, transferred or endorsed in accordance with this Promissory Note (**Holder**) the sum of **\$722,358.08** (**Principal Sum**) on presentation of this Promissory Note by the Holder to Promisor for payment.
- 2 There is no interest due in respect of this Promissory Note.
- 3 The whole or any part of the Principal Sum of this Promissory Note may be repaid by Promisor at any time or from time to time without notice, bonus or penalty of any kind.
- 4 If this Promissory Note is not paid in full when due, Promisor agrees to pay all costs and expenses of collection, including reasonable legal fees.
- 5 This Promissory Note may be assigned, transferred or endorsed by the Holder, in whole but not in part, at any time, without the consent of Promisor.
- 6 The Promissory Note may be presented by the Holder for payment at any of:
 - (a) the registered office of Promisor; and
 - (b) any other agreed location following a demand being made.
- 7 Promisor must make all payments under this Promissory Note by bank cheque or in immediately available funds without set off, counter claim or other deduction.
- 8 Promisor's liability under this Promissory Note will be extinguished either by payment of the Principal Sum or upon endorsement to Promisor.
- 9 This Promissory Note will expire and have no further force or effect, and may not be presented, after the date that is 9 years and 6 months after the date of issue of this Promissory Note.
- 10 In this Promissory Note, a reference to:
 - (a) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (b) "\$" is a reference to the currency of Australia; and
 - (c) time is to local time in New South Wales, Australia.
- 11 This Promissory Note is governed by and is to be construed in accordance with the laws applicable in New South Wales. Promisor irrevocably submits to the non-exclusive jurisdiction of the courts having jurisdiction in New South Wales.

Dated:

Executed as a deed poll

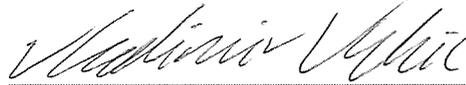
Executed by Fairway HoldCo Pty Ltd
ACN 657 067 868 in accordance with
Section 127 of the *Corporations Act*
2001



Director

Thomas Matthews

Name (print)



Director

Vladimir Vukic

Name (print)

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CGT event G1 — capital payment for shares

[S 104-135 as amended by Act No 91 of 2008. ITAA 1936 ref: former s 160L(1)(b); 160ZL(1), (2), (3). Transitional: ITTPA 1997 s 104-135.]

Section 104-135 contains the rules dealing with CGT event G1. CGT event G1 happens if a company makes a payment to a taxpayer in respect of a share the taxpayer owns in the company and some or all of the payment is not a “dividend” (s 995-1(1)), is not an amount that is a distribution by a liquidator which is taken to be a dividend under ITAA 1936 s 47 (s 104-135(1)) and is not included in the taxpayer’s assessable income. The amount that is not a dividend or taken to be a dividend under s 47 is referred to in s 104-135 as the “non-assessable part” in relation to the payment made by the company.

Section 104-135(1A) ensures that the non-assessable amounts are reduced by any part of the payment that is non-assessable non-exempt income (¶125-500), amounts repaid by the taxpayer (including compensation regarded as a repayment) or that are considered exempt under s 152-125 (¶171-640: applicable from the 2006/07 income year), consistent with the repaid rule for capital proceeds as provided in s 116-50 and to ensure that a payment disregarded under the 15-year exemption will have no other tax consequences and will not cause CGT event G1 to happen. However, the non-assessable part is not reduced by any part of the payment that the taxpayer can deduct (s 104-135(1B)).

CGT event G1 is typically intended to cover situations where a company makes a return of capital to shareholders. It will also apply to an interim distribution made by a liquidator, if the company is not dissolved within 18 months of the payment.

Payment received by taxpayer can include property

For the purposes of CGT event G1, the payment received from the company by the taxpayer in respect of the share can include property (s 104-135(1)). In such a situation, the market value of the property must be taken into account in working out the amount of the payment received (s 103-5).

When CGT event G1 does not happen

CGT event G1 does not happen if the payment made by the company to the taxpayer arises because:

- CGT event A1 (disposal of a CGT asset — s 104-10), or
- CGT event C2 (cancellation, surrender and similar endings — s 104-25),

happens to the taxpayer’s share in the company.

For example, CGT event C2 happens, rather than CGT event G1, if a payment is made by a company in relation to the redemption or cancellation of those shares.

Liquidator’s payment within 18 months of company ceasing to exist ignored

In the context of CGT event G1, a payment to a taxpayer by a liquidator is disregarded if the company ceases to exist within 18 months of the payment (s 104-135(6)). In such a case, the payment is included as part of the capital proceeds from CGT event C2 happening to the share when it ends as a result of

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the company being wound up. Prior to 1 April 2005, s 104-135(6) referred to a company being “dissolved” rather than ceasing to exist.

Taxation Determination TD 2001/14 deals with how the “exempt” 50% component of a capital gain attributable to goodwill is treated for the purposes of: (i) ITAA 1936 s 47 and 44; and (ii) the CGT provisions. The “exempt” 50% component of a capital gain is the part that is effectively exempted from CGT by s 152-205 (small business 50% reduction). For CGT purposes, the Determination states that the distribution by the liquidator of the “exempt” 50% component represents capital proceeds for the cancellation of the shares (CGT event C2: s 104-25) in the case of a final distribution or an interim distribution which is followed within 18 months by the dissolution of the company (s 104-25; 104-230(6)). It is an amount to which CGT event G1 in s 104-135 applies in the case of other interim liquidation distributions in respect of post-CGT shares.

Bonus issues

Bonus issues out of a share capital account are covered by the specific provisions of Subdiv 130-A, and not by CGT event G1. This is because CGT event G1 only happens if a company *pays* an amount of money or gives property. The crediting of shares out of a share capital account is not taken to be a payment for these purposes (*Taxation Determination* TD 32; *Taxation Ruling* IT 2603).

Time of CGT event G1

The time that CGT event G1 happens is when the company makes the payment to the taxpayer in respect of the share the taxpayer owns in the company (s 104-135(2)).

Capital gain from CGT event G1

A taxpayer makes a “capital gain” from CGT event G1 if the amount of the non-assessable part is more than the cost base (indexed, if appropriate) of the share (s 104-135(3)). The amount of the capital gain is the amount by which the non-assessable part exceeds the cost base (indexed, if appropriate) (s 102-22). The amount of the capital gain may be affected by certain exceptions and modifications (s 102-30).

Example 1: Capital gain from CGT event G1

Jongoco owns a share in a company. The share currently has a cost base (indexed) of \$20. Jongoco receives a payment from the company of \$100, which includes a non-assessable part of \$30. As a result, Jongoco makes a capital gain of \$10 (ie \$30 – \$20).

Legislative note 2 below s 104-135(3) states that a capital gain under former s 160ZL is also taken into account for the purposes of the subsection. This ensures that the cost base and reduced cost base of a share may also be reduced to nil if an amount was taken into account as a capital gain under former s 160ZL.

No capital loss can arise from CGT event G1

A taxpayer cannot make a capital loss from CGT event G1 happening to a share in a company. This is expressly stated in a legislative note below s 104-135(3).

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Exception for pre-CGT assets

If the taxpayer acquired the share before 20 September 1985, any capital gain made by the taxpayer in relation to the non-assessable part of a payment from the company is disregarded (s 104-135(5)). This means that a capital gain on a pre-CGT share is, in effect, exempt from CGT.

For the purpose of working out if a share was *acquired* before 20 September 1985, see Div 109.

Cost base adjustments arising from CGT event G1

Cost base and reduced cost base decreased to nil if capital gain

If a taxpayer makes a capital gain from CGT event G1, the cost base and reduced cost base of the share to the taxpayer are decreased to nil (s 104-135(3)).

Example 2: Cost base decreased to nil if capital gain

Amanda owns a share in a company. The share currently has a cost base (indexed) of \$50. The reduced cost base of the share is also currently \$50. Amanda receives a payment of \$200 from the company, which includes a non-assessable part of \$65. As a result, Amanda makes a capital gain of \$15 (ie \$65 – \$50).

Because Amanda has made a capital gain, the cost base and reduced cost base of the share is reduced to nil. This is relevant when another CGT event (including CGT event G1) happens to Amanda's share.

Cost base and reduced cost base decreased by non-assessable part

If CGT event G1 happens and the non-assessable part of a payment made by a company to a taxpayer in respect of a share in the company is *not* more than the cost base (indexed, if appropriate) of that share, the cost base and reduced cost base of the share in the hands of the taxpayer are decreased by the amount of the payment (s 104-135(4)).

Example 3: Cost base and reduced cost base decreased by non-assessable part

Assume the same facts as in Example 2, except that Amanda's share in the company currently has a cost base (indexed) of \$500. The reduced cost base of the share is also \$500. When the payment of \$200 is made by the company, it includes a non-assessable part of \$65. The cost base and reduced cost base of the share unit is decreased by the amount of \$65 to \$435.

If Amanda then sold the share for \$480, she would make a capital gain of \$45 (ie \$480 – \$435) from CGT event A1.

Cost base adjustments and demergers

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The legislative note to s 104-135(4) states that cost base adjustments are made only under Subdiv 125-B if there is a roll-over under that Subdivision for CGT event G1 happening as a result of a demerger (see further ¶¶161-910).

History and transitional provisions

Section 104-135(1) and (1A) were amended by Act No 91 of 2008, to insert references to assessable income and non-assessable non-exempt income respectively, applicable to rights issued on or after 1 July 2001. These amendments ensure that CGT event G1 does not happen at the time the rights to acquire shares are issued.

A transitional provision in the *Income Tax (Transitional Provisions) Act 1997* (ITTPA 1997) ensures that if a capital gain arose before the 1998/99 income year under ITAA 1936 former s 160ZL, the cost base and reduced cost base are reduced to nil in the same way that they are reduced to nil if a capital gain arises under CGT event G1 (ITTPA 1997 s 104-135).

Last reviewed on 1 August 2013

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