



Class Ruling

Income tax: capital gains: demerger of Pacific Mines Limited by Summit Resources Limited

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This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

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What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provision(s)

2. The relevant provisions dealt with in this Ruling are:

- section 44 of the *Income Tax Assessment Act 1936* (ITAA 1936);
- section 45B of the ITAA 1936;
- section 45BA of the ITAA 1936;
- section 45C of the ITAA 1936;
- section 104-135 of the *Income Tax Assessment Act 1997* (ITAA 1997); and
- Division 125 of the ITAA 1997.

Class of entities

3. The class of entities to which this Ruling applies is the shareholders of Summit Resources Limited (Summit) who:
- (a) participate in the scheme that is the subject of this Ruling;
 - (b) own ordinary shares in Summit and hold those shares on capital account at the time of the demerger; and
 - (c) are residents of Australia (as that term is defined in subsection 6(1) of the ITAA 1936) at the time of the demerger.
4. In this Ruling this class of entities is referred to as the 'participating Summit shareholders'.

Qualifications

5. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.
6. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 14 to 42 of this Ruling.
7. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:
- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
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Date of effect

9. This Class Ruling applies from 1 July 2006 to 30 June 2007. However, the Class Ruling continues to apply after this date to all participating Summit shareholders who entered into the specified scheme during the term of the Class Ruling, subject to there being no change in the scheme or in the entities involved in the scheme.

10. The Class Ruling does not apply to participating Summit shareholders to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling. Furthermore, the Class Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or
- the relevant provisions are not amended.

11. If this Class Ruling is inconsistent with a later public or private ruling, the participating Summit shareholders may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the TAA).

12. If this Class Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Class Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

13. If the above two conditions do not apply, the participating Summit shareholders may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Scheme

14. The following description of the scheme is based on information provided by the applicant.

Background

15. The scheme that is the subject of this Ruling involves the demerger by Summit of Pacific Mines Limited (PML).

Summit and PML

Summit

16. Summit is an Australian resident company listed on the Australian Stock Exchange (ASX).

17. Summit's business is the identification of and exploration for base metal and precious metal mineral deposits. It has acquired a number of mining tenements which relate to the pursuit of this business, including those held by its subsidiary PML (see below).

18. Summit's primary focus is currently on the exploration, discovery and commercial exploitation of its uranium and copper deposits and prospects.

19. At the time of the demerger, Summit will have 197,440,020 ordinary shares on issue. It will also have a number of options on issue, as follows:

- 7,000,000 director options;
- 850,000 employee options; and
- 500,000 consultant options.

20. There will be no other ownership interests in Summit just before the demerger.

21. The employee options and 4,000,000 of the director options are qualifying rights within the meaning of section 139CD of the ITAA 1936. Their total value as a percentage of the total value of all ownership interests in Summit is less than 3%.

22. The consultant options and the remaining director options are issued on terms which require the exercise price to be adjusted to reflect a capital reconstruction. These options represent less than 10% of the total of all ownership interests in Summit.

23. The ordinary shares and three categories of options will be the only type of ownership interests on issue by Summit at that time.

PML

24. PML is also an Australian resident company and is currently a wholly-owned subsidiary of Summit. PML holds a number of tenements in far north Queensland. Collectively these tenements are known as the Constance Range project, and primarily target iron ore and phosphate.

25. PML is focused on the mineral exploration and discovery of mineral deposits in the mining tenements it holds.

Pre-demerger transactions

26. Prior to the demerger, Summit and PML will undertake certain transactions to facilitate the demerger, including:

- PML will undertake a share split – the one share it currently has on issue will be divided into 40,000,000 shares;
- Summit will then subscribe for 10,000,000 ordinary shares in PML at 20c per share (or a total of \$2,000,000);
- PML will repay a debt owed to Summit, in the amount of approximately \$540,000; and
- PML will issue 16,000,000 options to acquire ordinary PML shares to Summit for no consideration.

27. The net effect of these transactions will be that, just before the demerger, Summit will own the following ownership interests in PML:

- 50,000,000 ordinary shares; and
- 16,000,000 options to acquire ordinary shares.

28. These will be the only types of ownership interest on issue in PML at the time of the demerger.

The demerger

29. Summit will then undertake a restructure where it will demerge PML to its shareholders. Summit shareholders will receive approximately 1 PML share for every 4 Summit shares they hold on the Record Date. The Record Date is the date on which Summit will determine the entitlements of shareholders to PML shares.

30. As a result of the demerger, Summit shareholders will own shares in both Summit and PML.

31. Summit will dispose of all its shares in PML, but will retain ownership of the 16,000,000 options issued by PML, thereby disposing of more than 80% of its ownership interests in PML by market value.

32. The demerger will be undertaken pursuant to a vote of shareholders at an Extraordinary General Meeting. At the Extraordinary General Meeting, shareholders will be asked to approve a return of capital in the amount of \$2,000,001 in total or approximately 1c per share (the capital reduction amount). If approved, the capital return will be satisfied by the *in specie* transfer by Summit to its shareholders, being the 50,000,000 shares in PML that it holds.

33. Summit will account for the demerger wholly as a return of share capital, in the following manner:

Dr	Share capital	\$2,000,001
Cr	Shares in PML	\$2,000,001

34. Summit shareholders that are not residents of Australia for tax purposes will participate in the share capital return and transfer of the PML shares on the same basis as resident Summit shareholders. However, the PML shares provided in satisfaction of the share capital return will be transferred to a nominee on behalf of each of those non-resident shareholders. The nominee will sell these PML shares and will remit the net proceeds to each of the non-resident shareholders.

35. The holders of options in Summit will not receive PML shares or options under the demerger.

36. The demerger will allow Summit and PML to separately pursue the uranium (and other precious metals) business and base metals business respectively. Summit will continue to focus on the uranium business. The demerger will therefore allow the other base metals business (iron ore and phosphate) to be driven forward as a separate stand-alone commercial operation with industry specific senior management, and without being hindered by political and other considerations associated with Summit's core uranium business. The demerger will also facilitate the raising of further funding to develop PML's tenements.

Listing and IPO

37. PML will undertake a capital raising by way of an Initial Public Offer shortly after the demerger. PML expects to be listed for trading on the ASX shortly thereafter. The demerger is conditional on PML receiving conditional approval to list on the ASX.

Other matters

38. None of the participating Summit shareholders acquired their shares in Summit before 20 September 1985.

39. Summit confirms that there have been no transfers to its share capital account, as defined in section 975-300 of the ITAA 1997, from any of its other accounts.

40. Just after the demerger, at least 50% of the market value of capital gains tax (CGT) assets owned by PML and its demerger subsidiaries will be used in the carrying on of a business by those entities.

41. Summit will not elect under subsection 44(2) of the ITAA 1936 that subsections 44(3) and (4) of the ITAA 1936 not apply to the demerger dividend.

42. Neither Summit nor PML will be members of a consolidated group for tax law purposes.

Ruling

CGT event G1

43. CGT event G1 (section 104-135 of the ITAA 1997) will happen to each of the shares of the Summit shareholders at the time of the capital reduction.

Demerger rollover relief

44. Summit and its subsidiary PML will be part of a demerger group under subsection 125-65(1) of the ITAA 1997.

45. A demerger, as described under section 125-70 of the ITAA 1997, will happen to this demerger group under the scheme.

46. Participating Summit shareholders will be eligible to choose demerger rollover under subsection 125-55(1) of the ITAA 1997 for their Summit shares.

Participating Summit shareholders who choose demerger rollover

47. Participating Summit shareholders who choose demerger rollover for their Summit shares can disregard any capital gain made in respect of CGT event G1 that will happen to their Summit shares (subsection 125-80(1) of the ITAA 1997).

48. If a Participating Summit shareholder chooses demerger rollover for their Summit shares, the first element of the cost base of each remaining Summit share and corresponding PML share they will receive under the demerger is worked out by taking the sum of the cost bases of their Summit shares (just before the demerger) and then apportioning that sum over their remaining Summit shares and new PML shares. The apportionment of this sum is done on a reasonable basis having regard to the market values (just after the demerger) of the Summit shares and PML shares, or a reasonable approximation of those market values (subsections 125-80(2) and (3) of the ITAA 1997).

Participating Summit shareholders who do not choose demerger rollover

49. For participating Summit shareholders who do not choose demerger rollover:

- they are not entitled to disregard any capital gain made in respect of CGT event G1 that happened to their Summit shares under the demerger; and
- the first element of the cost base and reduced cost base of each Summit share and the corresponding PML shares is calculated in the manner described in paragraph 48 of this Ruling (subsections 125-85(1) and (2) of the ITAA 1997).

Acquisition date of the PML shares for the purposes of the CGT discount

50. For the purpose of accessing the CGT discount, the PML shares received by the participating Summit shareholders will be taken to have been acquired on the date that the shareholder acquired the corresponding Summit shares (subsection 115-30(1) of the ITAA 1997 (item 2)).

Demerger dividend

51. Any dividend arising under the demerger will be a demerger dividend (subsection 6(1) of the ITAA 1936).
52. The demerger dividend will be neither assessable income nor exempt income of the participating Summit shareholders (subsections 44(3) and (4) of the ITAA 1936).
53. As the capital reduction amount will be debited to Summit's share capital account it will not be a dividend, as defined in subsection 6(1) of the ITAA 1936.

Application of sections 45B, 45BA and 45C

54. The Commissioner will not make a determination under paragraph 45B(3)(a) of the ITAA 1936 that section 45BA of the ITAA 1936 applies to the whole or any part of any demerger benefit provided to participating Summit shareholders under the demerger.
55. The Commissioner will not make a determination under paragraph 45B(3)(b) of the ITAA 1936 that section 45C of the ITAA 1936 applies to the whole or any part of the capital benefit provided to participating Summit shareholders under the demerger.

Commissioner of Taxation

21 February 2007

Appendix 1 – Explanation

❶ *This Appendix 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.*

CGT event G1

56. CGT event G1 (section 104-135 of the ITAA 1997) happens if a company makes a payment to a shareholder in respect of their interest in the company and some or all of that payment is not a dividend or an amount that is taken to be a dividend under section 47 of the ITAA 1936 (non-assessable payment). The payment can include the giving of property (subsection 104-135(1) of the ITAA 1997).

57. If CGT event G1 happens, a shareholder will make a capital gain if the non-assessable payment made by the company in relation to a share exceeds the cost base of the share (subsection 104-135(3) of the ITAA 1997).

58. CGT event G1 will happen upon the distribution by Summit of the capital reduction amount (subsection 104-135(2) of the ITAA 1997) as this amount will be neither a dividend nor an amount taken to be a dividend under section 47 of the ITAA 1936.

59. A capital gain will arise to Summit shareholders to the extent that the capital reduction amount of approximately \$0.01 exceeds the cost base of their Summit shares at the time of the demerger. Participating Summit shareholders who make a capital gain from the CGT event G1 happening to their Summit shares under the demerger of PML will be entitled to choose demerger rollover (see below) in order to disregard any capital gain (section 125-55 and subsection 125-80(1) of the ITAA 1997).

Demerger rollover

60. Demerger rollover enables a shareholder to disregard a capital gain as a result of CGT event G1 happening when a non-assessable payment is made in relation to a share under a demerger.

61. In order for the demerger rollover to apply the following conditions must be met.

Requirements for a demerger – Division 125

62. Subsection 125-55(1) of the ITAA 1997 provides that rollover may be chosen if, at the time of the scheme:

- a shareholder owns a share in a company – this requirement will be satisfied as participating Summit shareholders owned shares in Summit;

- the company is the head entity of a demerger group – this requirement will be satisfied as Summit will be the head company of a demerger group (refer to paragraph 65 to 66 of this Ruling);
- a demerger happens to the demerger group – this requirement will be satisfied as a demerger will happen to the Summit demerger group (refer to paragraph 68 of this Ruling); and
- under the demerger a CGT event happens to the original interest and a new or replacement interest is acquired in the demerged entity – this requirement will be satisfied because CGT event G1 will happen to the Summit shares (refer to paragraph 56 to 59 of this Ruling) and participating Summit shareholders will receive PML shares under the demerger.

63. Since the participating Summit shareholders to whom this Ruling applies are limited to Australian residents, the condition in subsection 125-55(2) of the ITAA 1997 is not relevant.

64. Therefore, participating Summit shareholders may choose rollover for the demerger.

Summit will be the head entity of a demerger group

65. A demerger group comprises one head entity and at least one demerger subsidiary (subsection 125-65(1) of the ITAA 1997). The demerger group in this case will include Summit as head entity and PML as a demerger subsidiary (Summit demerger group).

66. Summit will be the head entity because:

- PML will have no ownership interests in Summit (subsection 125-65(3) of the ITAA 1997); and
- there will be no other company or trust capable of being a head entity of a demerger group of which Summit can be a demerger subsidiary (subsection 125-65(4) of the ITAA 1997).

67. PML will be a demerger subsidiary of Summit because Summit will own ownership interests in PML that carry the right to:

- receive 100% of any distribution of income or capital of PML; and
- exercise 100% of the voting power in PML (subsection 125-65(6) of the ITAA 1997).

A demerger happens to a demerger group

68. A demerger will happen (subsections 125-70(1), (2) and (3) of the ITAA 1997) to the Summit demerger group because:

- there will be a restructuring (paragraph 125-70(1)(a) of the ITAA 1997) under which the Summit group disposes of at least 80% of its ownership interests in PML to the Summit shareholders (subparagraph 125-70(1)(b)(i) of the ITAA 1997);
- CGT event G1 will happen to the Summit shares, and Summit shareholders will acquire new shares in PML and nothing else (subparagraph 125-70(1)(c)(i) of the ITAA 1997);
- under the restructure, PML shares will be acquired by Summit shareholders on the basis of their ownership of shares in Summit (paragraph 125-70(1)(d) and subparagraph 125-70(1)(e)(i) of the ITAA 1997);
- paragraph 125-70(1)(g) of the ITAA 1997 will be satisfied since neither Summit or PML is a trust that is a superannuation fund;
- each Summit shareholder will acquire PML shares in the same proportion as they own Summit shares just before the demerger (paragraph 125-70(2)(a) of the ITAA 1997);
- each Summit shareholder will own, just after the demerger, the same proportionate total market value of Summit and PML shares as they own in Summit just before the demerger (paragraph 125-70(2)(b) of the ITAA 1997); and
- subsections 125-70(4) and (5) of the ITAA 1997 will have no application.

69. The three categories of options on issue in Summit are ownership interests for the purposes of subsection 125-60(1) of the ITAA 1997 since they give the owner the entitlement to acquire a share in Summit. However, they are either:

- employee share scheme options as described in subsections 125-75(1) and (2) of the ITAA 1997; or
- adjusting instruments for the purposes of subsection 125-75(4) of the ITAA 1997.

70. Since these options will account for less than 3% (in the case of the employee share scheme options) and less than 10% (in the case of adjusting instruments) of the total ownership interests in Summit at the time of the demerger, these options are disregarded in working out whether the requirements in subsection 125-70(2) of the ITAA 1997 will be met (subsections 125-75(3) and (4) of the ITAA 1997).

Participating Summit shareholders who choose demerger rollover

71. For participating Summit shareholders who choose demerger rollover, a capital gain made from CGT event G1 happening to their Summit shares under the demerger is disregarded (subsection 125-80(1) of the ITAA 1997).

72. Each participating Summit shareholder will be required to calculate the first element of the cost base and reduced cost base of their Summit shares and their corresponding new PML shares just after the demerger (subsections 125-80(2) and (3) of the ITAA 1997).

73. Section 125-80 of the ITAA 1997 requires participating Summit shareholders to apportion the total cost bases of their pre-demerger Summit shares over their remaining Summit shares and the new PML shares. The apportionment must have regard to the relative market values of the Summit and PML shares (or anticipated reasonable approximations of those market values) just after the demerger.

Participating Summit shareholders who do not choose demerger rollover

74. For participating Summit shareholders who do not choose demerger rollover, any capital gain made from CGT event G1 happening to their Summit shares under the demerger will not be disregarded.

75. The method of calculating the first element of the cost base and reduced cost base for a participating Summit shareholder's remaining Summit shares and the new PML shares is the same whether or not rollover is chosen (see paragraph 73 of this Ruling and subsection 125-85(2) of the ITAA 1997 and Note 1 to subsection 125-80(2) of the ITAA 1997).

Acquisition date of the PML shares for the purposes of the CGT discount

76. Before a capital gain can be reduced by the CGT discount, one of the conditions that must be satisfied is that the capital gain relates to an asset that was owned for at least 12 months (subsection 115-25(1) of the ITAA 1997).

77. For the purposes of this 12 month ownership condition, participating Summit shareholders will be taken to have acquired the PML shares they will receive under the demerger on the date they acquired the corresponding Summit shares (item 2 in the table in subsection 115-30(1) of the ITAA 1997).

Note: for general CGT purposes, shareholders will acquire their PML shares when those shares are received under the demerger (section 109-10 of the ITAA 1997). This means, for example, that when calculating a capital gain on the subsequent disposal of these PML shares, indexation will not be included in the cost base of those shares.

Demerger dividend

78. Subsection 44(1) of the ITAA 1936 operates to include in a shareholder's assessable income any dividends, within the meaning of that term in subsection 6(1) of the ITAA 1936, paid to a shareholder out of company profits.

79. Paragraph (d) of the definition of dividend in subsection 6(1) of the ITAA 1936 provides that a dividend excludes amounts debited against an amount standing to the credit of the share capital account of the company.

80. In the circumstances of this demerger, Summit will debit an amount of \$2,000,001 to its 'share capital account' (as that term is defined in subsection 6(1) of the ITAA 1936 and section 975-300 of the ITAA 1997). This amount will therefore not be a dividend for the purposes of subsection 6(1) of the ITAA 1936 and will not be assessable as a subsection 6(1) dividend under subsection 44(1) of the ITAA 1936.

81. Participating Summit shareholders will, however, receive a dividend to the extent that the market value of the PML shares distributed under the demerger will exceed the amount debited against the share capital account (see Taxation Ruling TR 2003/8).

82. This dividend will be neither assessable income nor exempt income (subsections 44(3) and (4) of the ITAA 1936) if:

- the dividend is a demerger dividend (as defined in subsection 6(1) of the ITAA 1936);
- the head entity does not elect that subsections 44(3) and (4) of the ITAA 1936 do not apply to the demerger dividend (subsections 44(2) of the ITAA 1936); and
- subsection 44(5) of the ITAA 1936 is satisfied.

83. In the present circumstances, each of the conditions in paragraph 82 of this Ruling will be satisfied. Therefore, any dividend received by participating Summit shareholders under the demerger will be neither assessable income nor exempt income by operation of subsections 44(3) and (4) of the ITAA 1936.

Application of sections 45B, 45BA and 45C

84. Section 45B of the ITAA 1936 applies to ensure that relevant amounts are treated as dividends for taxation purposes if:

- (a) components of a demerger allocation as between capital and profit do not reflect the circumstances of the demerger; or
- (b) certain payments, allocations and distributions are made in substitution for dividends (subsection 45B(1) of the ITAA 1936).

85. Specifically, the provision applies where:

- there is a scheme under which a person is provided with a demerger benefit or capital benefit by a company (paragraph 45B(2)(a) of the ITAA 1936);
- under the scheme a taxpayer, who may or may not be the person provided with the demerger benefit or the capital benefit, obtains a tax benefit (paragraph 45B(2)(b) of the ITAA 1936); 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 the scheme or carried out the scheme or any part of the scheme did so for a purpose, other than an incidental purpose, of enabling a taxpayer to obtain a tax benefit (paragraph 45B(2)(c) of the ITAA 1936).

86. Where the requirements of subsection 45B(2) of the ITAA 1936 are met, subsection 45B(3) of the ITAA 1936 empowers the Commissioner to make a determination that either section 45BA applies in relation to a demerger benefit or section 45C of the ITAA 1936 applies in relation to a capital benefit.

Scheme, demerger and capital benefit

87. The restructure that is the subject of this Ruling constitutes a 'scheme' within the broad meaning of that term (subsection 45B(10) of the ITAA 1936).

88. The provision of ownership interests to a shareholder under a demerger constitutes the shareholder being provided with a demerger benefit (subsection 45B(4) of the ITAA 1936) and a capital benefit (subsection 45B(5) of the ITAA 1936) to the extent that the demerger benefit is not a demerger dividend (subsection 45B(6) of the ITAA 1936).

89. In the present scheme, therefore, the provision of the PML shares will constitute the participating Summit shareholders receiving a demerger benefit and a capital benefit.

Tax benefit

90. For most shareholders, the tax payable on the demerger benefit and the capital benefit is less than it would be if they had been an assessable dividend or a dividend respectively. This arises because the CGT and dividend concessions ensure that the demerger is largely free of tax for shareholders. As such, the provision of those benefits will constitute the participating Summit shareholders obtaining a tax benefit (subsection 45B(9) of the ITAA 1936).

Purpose

91. In this case, while the conditions of paragraphs 45B(2)(a) and 45B(2)(b) of the ITAA 1936 are met, the requisite purpose of enabling the participating Summit shareholders to obtain a tax benefit (by way of a demerger benefit or a capital benefit) is not present. In other words, having regard to the relevant circumstances of the scheme set out in subsection 45B(8) of the ITAA 1936, it would not be concluded that any of the parties to the demerger entered into or carried out the scheme to obtain a tax benefit in the form of a demerger benefit or a capital benefit.

92. Those circumstances, particularly those enumerated in paragraph 177D(b) of the ITAA 1936 and incorporated by operation of paragraph 45B(8)(k) of the ITAA 1936, are concerned with the commercial or business effects of the demerger. Under the proposed scheme, it is apparent that a substantial purpose of the demerger is to achieve the separation of two distinct businesses for commercial purposes. Following their separation, each will operate independently with separate Boards and management who will focus on the specific commercial objectives of each business. This is consistent with the underlying object of the demerger's measure.

93. It is also apparent from the circumstances of the demerger that the capital and profit components of the demerger allocation are consistent with the commercial circumstances of the transaction. Having regard to the operational history of Summit, it is clear that the share capital distributed under this demerger reflects that share capital invested in the PML business.

94. In addition, there is nothing in the other relevant circumstances of the demerger, including the known circumstances of the shareholders, to suggest that the favourable tax outcome of the demerger for the participating Summit shareholders is anything more than the natural incident of the business restructure.

95. Therefore, the Commissioner will not make a determination under either paragraph 45B(3)(a) or (b) of the ITAA 1936 that sections 45BA or 45C of the ITAA 1936 applies to the scheme.

Appendix 2 – Detailed contents list

96. The following is a detailed contents list for this Ruling:

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2003/8

Subject references:

- capital benefit
- capital gains
- cost base adjustments
- demerger
- demerger allocation
- demerger benefit
- demerger dividend
- demerger group
- demerger subsidiary
- return of capital rollover
- schemes to provide certain benefits

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