



Class Ruling

Income tax: scrip for scrip roll-over: acquisition of Bolnisi Gold NL by Coeur d'Alene Mines Corporation

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1 This publication provides you with the following level of protection:

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.

If you rely on this ruling, we must apply the law to you in the way set out in the ruling (unless we are satisfied that the ruling is incorrect and disadvantages you, in which case we may apply the law in a way that is more favourable for you – provided we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

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 provision dealt with in this Ruling is:

- Subdivision 124-M of the *Income Tax Assessment Act 1997* (ITAA 1997).

All legislative references in this Ruling are to the ITAA 1997 unless otherwise indicated.

Class of entities

3. The class of entities to which this Ruling applies are the owners of ordinary shares in Bolnisi Gold NL (Bolnisi) who:

- (a) are residents of Australia within the meaning of that expression in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936);

- (b) hold their Bolnisi shares on capital account;
- (c) participate in the Bolnisi Scheme of Arrangement;
- (d) acquired their Bolnisi shares on or after 20 September 1985;
- (e) choose roll-over under Subdivision 124-M; and
- (f) are not a 'significant stakeholder' or 'common stakeholder' within the meaning of Subdivision 124-M.

Qualifications

4. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.

5. 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 13 to 23 of this Ruling.

6. 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
- this Ruling may be withdrawn or modified.

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Date of effect

8. This Ruling applies from 1 July 2007 to 30 June 2008. However, the Ruling continues to apply after 30 June 2008 to all entities within the specified class who entered into the specified scheme during the term of the Ruling.

9. The Ruling does not apply to taxpayers 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 Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or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

10. If this Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

11. If this Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the 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.

12. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Scheme

13. The following description of the scheme is based on information provided by Minter Ellison Lawyers (the Applicant). The following documents, or relevant parts of them, form part of and are to be read with the description:

- Class Ruling application dated 14 August 2007 from the Applicant;
- Scheme Booklet for the Scheme of Arrangement between Bolnisi and Coeur d'Alene Mines Corporation (Coeur); and
- email correspondence with the Applicant between 27 August 2007 and 25 October 2007.

Note: certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under the Freedom of Information legislation.

14. On 3 May 2007, Bolnisi, Coeur, Coeur d'Alene Mines Australia Pty Ltd (Coeur Australia), and Coeur Sub Two Inc. (Coeur Sub Two) entered into a Merger Implementation Agreement under which Coeur agreed to acquire all of the shares in Bolnisi by way of a Scheme of Arrangement under Part 5.1 of the *Corporations Act 2001*.

15. Under the Scheme of Arrangement, on the Implementation Date – expected to be on or after 4 December 2007 – Bolnisi shares will be transferred to Coeur Australia, an Australian resident subsidiary of Coeur. Coeur Australia does not presently own any shares in Bolnisi.

16. Coeur Australia is a member of the wholly-owned group of which Coeur is the ultimate holding company.

17. In consideration for the transfer of Bolnisi shares to Coeur Australia, Bolnisi shareholders can elect to receive one of the following in exchange:

- \$0.004 in cash and 0.682 of a Coeur share (dual-listed on the New York Stock Exchange and the Toronto Stock Exchange) for each Bolnisi share; or
- \$0.004 in cash and CHESS Depository Interests (CDIs) listed on the Australian Securities Exchange (ASX) representing 0.682 of a Coeur share for each Bolnisi share.

18. CDIs are units of beneficial ownership in securities. In this case, each CDI represents an underlying Coeur share. The legal title to the Coeur shares will be held by CHESS Depository Nominees Pty Ltd (CDN). CDN will hold the Coeur shares on trust for the benefit of the Bolnisi shareholders who elect to receive CDIs.

19. A CDI is a Chess Unit of Foreign Security for the purposes of subsection 124-780(6).

20. Bolnisi shareholders whose address on the shareholder register is outside of Australia, New Zealand or the United States of America (Ineligible Overseas Shareholders) will not be entitled to exchange their Bolnisi shares for Coeur shares or CDIs. However, subject to an exception, the Coeur shares or CDIs that they would otherwise have received will be issued to a sale agent, who will sell the Coeur shares or CDIs on their behalf and remit the net proceeds (after deduction of brokerage, costs, taxes and charges) to Bolnisi. Bolnisi will pay the net proceeds to the Ineligible Overseas Shareholders.

21. Bolnisi was listed on the ASX on 19 July 1984.

22. As at 31 May 2007, Bolnisi had 285,542,321 fully paid ordinary shares on issue. Each share carries the same rights to vote, receive dividends and receive capital.

23. Bolnisi does not have any other class of shares on issue, nor does it have on issue any options over Bolnisi shares or other interests.

Ruling

Availability of scrip for scrip roll-over

24. Bolnisi shareholders are eligible to choose scrip for scrip roll-over to the extent that they receive Coeur shares or CDIs in exchange for their Bolnisi shares under the Scheme of Arrangement if:

- (a) they acquired their Bolnisi shares on or after 20 September 1985;

- (b) apart from the roll-over under Subdivision 124-M, they would make a capital gain from CGT event A1 (section 104-10) happening in relation to their Bolnisi shares (paragraph 124-780(3)(b)); and
- (c) they could not disregard (except because of a roll-over) any capital gain they might make from a replacement Coeur share or CDI (paragraph 124-795(2)(a)).

25. If a Bolnisi shareholder chooses the roll-over, a capital gain from a Bolnisi share is disregarded to the extent that the shareholder receives a Coeur share or CDI. The capital gain is not disregarded to the extent that the shareholder receives cash for the disposal of their Bolnisi share (section 124-790). The cash is referred to as the 'ineligible proceeds'.

26. If a Bolnisi shareholder chooses the roll-over, the first element of the cost base of a replacement Coeur share or CDI is worked out by reasonably attributing to it the cost base of any Bolnisi share for which it was exchanged and for which the shareholder will obtain a partial roll-over. However, the cost base of the Bolnisi share must first be reduced by so much of that cost base as will be taken into account in working out the shareholder's capital gain or capital loss relating to the cash proceeds (subsections 124-785(2) and (3)).

Commissioner of Taxation

28 November 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.*

Disposal of Bolnisi shares to Coeur Australia

27. CGT event A1 happens if there is a change in the ownership of an asset from one entity to another. The event happens when a contract to dispose of the asset is entered into, or if there is no contract, when the change of ownership occurs (section 104-10).

28. The time when CGT event A1 happens determines the income year in which any capital gain or capital loss is made, and whether the CGT discount applies to any capital gain.

29. Under the Scheme, the disposal does not happen under a contract (see paragraph 9 of Taxation Determination TD 2002/4). CGT event A1 will happen at the time Bolnisi shares are transferred to Coeur Australia, when the change of ownership occurs on the Implementation Date.

30. The capital proceeds for each Bolnisi share will be:

- \$0.004 in cash and the market value of 0.682 of a Coeur share at the time the Bolnisi shares are transferred to Coeur Australia on the Implementation Date (subsection 116-20(1)); or
- \$0.004 in cash and the market value of CDIs (listed on the ASX) representing 0.682 of a Coeur share at the time the Bolnisi shares are transferred to Coeur Australia on the Implementation Date (subsection 116-20(1)).

31. A Bolnisi shareholder will make a capital gain from CGT event A1 happening if the capital proceeds in respect of the disposal of a Bolnisi share exceeds its cost base. A Bolnisi shareholder will make a capital loss if the capital proceeds in respect of the disposal of a Bolnisi share are less than its reduced cost base (subsection 104-10(4)).

32. The time of CGT event A1 happening is also relevant to determining the capital proceeds received for each Bolnisi share. Subsection 116-20(1) provides that the capital proceeds from a CGT event are the money, and the market value of any other property, received or entitled to be received, worked out as at the time of the event happening.

Consequences of choosing scrip for scrip roll-over

33. Where scrip for scrip roll-over is chosen in respect of the capital gain arising on the disposal of a Bolnisi share, the capital gain from the disposal is disregarded to the extent that a shareholder receives a Coeur share or CDI.

34. If a Bolnisi shareholder chooses roll-over, the cost base of each Coeur share or CDI is worked out by reasonably attributing to it a proportion of the cost base of the Bolnisi share for which it was exchanged and for which the shareholder will obtain a partial roll-over. The cost base of the Bolnisi share must first be reduced by so much of that cost base as will be taken into account in working out the shareholder's capital gain or capital loss relating to the ineligible proceeds. The ineligible proceeds will be the cash of \$0.004 per Bolnisi share (subsections 124-785(2) and (3)).

35. A Bolnisi shareholder who makes a capital gain in relation to the ineligible proceeds may be eligible to treat it as a discount capital gain in respect of those Bolnisi shares that the shareholder held for at least 12 months, provided the other requirements of Subdivision 115-A are satisfied (section 115-25).

Requirements for scrip for scrip roll-over – Subdivision 124-M

36. Subdivision 124-M contains a number of requirements for a shareholder to be eligible to choose scrip for scrip roll-over, and exceptions where a shareholder cannot obtain the roll-over. The main requirements and exceptions that are relevant to the scheme that is the subject of this Ruling are:

- (a) shares are exchanged for shares in another company;
- (b) the exchange occurs as part of a single arrangement;
- (c) conditions for the roll-over are satisfied;
- (d) further conditions, if applicable, are satisfied; and
- (e) exceptions to obtaining scrip for scrip roll-over are not applicable.

These requirements are explained below.

Shares are exchanged for shares in another company

37. Paragraph 124-780(1)(a) is satisfied if an entity (a Bolnisi shareholder) exchanges a share in a company (Bolnisi) for a share in another company.

38. This requirement will be satisfied by a Bolnisi shareholder who receives a Coeur share and cash as consideration for the disposal of their Bolnisi share under the Scheme of Arrangement. Roll-over is available to the extent that the Bolnisi shareholder receives Coeur shares for their Bolnisi shares.

39. This requirement will also be satisfied by a Bolnisi shareholder who receives a Coeur CDI and cash as consideration for the disposal of their Bolnisi share under the Scheme of Arrangement. A Coeur CDI is a Chess Unit of Foreign Security. Under subsection 124-780(6), section 124-780 applies to the holder of a Chess Unit of Foreign Security as if the holder held the underlying interests that the unit represents. The underlying interest that a Coeur CDI represents is a Coeur share. Roll-over is available to the extent that the Bolnisi shareholder receives Coeur CDIs for their Bolnisi shares.

The exchange occurs as part of a single arrangement

40. Paragraph 124-780(1)(b) requires that shares in a company (Bolnisi – the original entity) be exchanged for shares in another company in consequence of a single arrangement.

41. In the context of the scrip for scrip roll-over provisions, the offer to Bolnisi shareholders was a 'single arrangement'. The single arrangement must also satisfy the following conditions in subsection 124-780(2).

(a) 80% ownership

42. Paragraph 124-780(2)(a) is satisfied if the arrangement results in a company that is a member of a wholly-owned group (Coeur Australia – the acquiring entity) increasing the percentage of voting shares that it owns in the original entity (Bolnisi). The acquiring entity or members of the group must become the owner of 80% or more of those shares in Bolnisi.

43. Under the Scheme of Arrangement, Coeur Australia proposes to acquire all of the shares owned by Bolnisi shareholders. The only shares on issue are ordinary shares. Each of these ordinary shares satisfies the definition of a 'voting share' in subsection 995-1(1). Coeur Australia is a member of a wholly-owned group, of which Coeur is the holding company. Although Coeur Australia does not presently own any voting shares in Bolnisi, it can still satisfy paragraph 124-780(2)(a).

(b) All owners of voting shares can participate

44. Paragraph 124-780(2)(b) requires that the arrangement be one in which at least all owners of voting shares in the original entity, Bolnisi (apart from the acquiring entity or members of the acquiring entity's wholly-owned group), could participate.

45. This requirement is satisfied because, under the Scheme of Arrangement, all the owners of voting shares in Bolnisi are entitled to participate.

(c) Participation available on substantially the same terms

46. Paragraph 124-780(2)(c) requires that the arrangement be one in which participation is available on substantially the same terms for all of the owners of interests of a particular type in the original entity (Bolnisi).

47. This requirement is satisfied as all of the ordinary shareholders in Bolnisi are entitled to participate in the Scheme of Arrangement on substantially the same terms. In addition to the cash, Bolnisi shareholders can elect to receive either Coeur shares or CDIs representing the same number of Coeur shares.

48. Under the Scheme of Arrangement, Coeur shares or CDIs that would have been received by Ineligible Overseas Shareholders will be issued to a sale agent, who will sell the Coeur shares or CDIs on their behalf. The sale agent will remit the net proceeds (after deduction of brokerage, costs, taxes and charges) to Bolnisi. Bolnisi will pay the net proceeds to the Ineligible Overseas Shareholders.

49. Note 2 to subsection 124-780(2) of the ITAA 1997 states that 'participation will be on substantially the same terms if, for example, matters such as those referred to in subsections 619(2) and (3) of the *Corporations Act 2001* affect the capital proceeds that each participant can receive.' The terms that apply to Ineligible Overseas Shareholders are consistent with subsection 619(3) of the *Corporations Act 2001*. Therefore, this will not prevent the arrangement being on substantially the same terms for all shareholders in Bolnisi.

Conditions for roll-over are satisfied

50. Paragraph 124-780(1)(c) requires that the conditions for roll-over in subsection 124-780(3) are satisfied. These conditions must be met in relation to each Bolnisi share for which scrip for scrip roll-over is chosen.

51. The conditions in subsection 124-780(3) are as follows.

(a) Bolnisi shares are post-CGT shares

52. Paragraph 124-780(3)(a) requires the original interest holder (a Bolnisi shareholder) to have acquired its original interest (a Bolnisi ordinary share) on or after 20 September 1985.

53. As Bolnisi was listed on the ASX on 19 July 1984, some Bolnisi shareholders may have acquired their shares before 20 September 1985. Roll-over is only available for capital gains arising on those Bolnisi shares acquired by a shareholder on or after 20 September 1985.

(b) Bolnisi shareholder would otherwise make a capital gain

54. Paragraph 124-780(3)(b) requires that, apart from the roll-over, the original interest holder (a Bolnisi shareholder) would make a capital gain from a CGT event happening in relation to its original interest (the Bolnisi share).

55. Whether a Bolnisi shareholder would, apart from the roll-over, make a capital gain from the disposal of any of their shares to Coeur Australia is a question of fact that is dependent on the specific circumstances of each shareholder – in particular, on the cost base of each Bolnisi share and the value of the capital proceeds received. Therefore, whether this condition is satisfied will depend on the individual circumstances of a Bolnisi shareholder.

(c) Bolnisi shareholder receives an interest in the group acquiring their share

56. Paragraph 124-780(3)(c) is satisfied if the original interest holder's replacement interest is in a company that is the ultimate holding company of the wholly owned group of which the acquiring entity (Coeur Australia) is a member.

57. This requirement has been satisfied as Bolnisi shareholders will receive shares in Coeur, the ultimate holding company of the wholly-owned group of which the acquiring entity is a member.

(d) Bolnisi shareholder must choose to obtain scrip for scrip roll-over

58. Paragraph 124-780(3)(d) requires that the original interest holder (Bolnisi shareholder) chooses to obtain the roll-over, or if section 124-782 applies to the shareholder for the arrangement, they and the replacement entity jointly choose to obtain the roll-over.

59. Subject to their eligibility (see paragraph 24 of this Ruling), whether a Bolnisi shareholder chooses to obtain the roll-over in relation to the disposal of a Bolnisi share is a question of fact for each Bolnisi shareholder.

60. Paragraphs 124-780(3)(d) and 124-780(3)(e), which relate to the additional requirements in section 124-782, will not be relevant to the Scheme of Arrangement if there is not a 'significant stakeholder' or 'common stakeholder' (as defined in section 124-783) for the arrangement.

61. Paragraph 124-780(3)(d) requires that the original interest holder (Bolnisi shareholder) and the replacement entity (Coeur) jointly choose to obtain the roll-over if section 124-782 applies to the Bolnisi shareholder for the arrangement. Under subsection 124-782(1), this requirement applies where the original interest holder:

- (a) obtains a roll-over; and
- (b) is a significant stakeholder or a common stakeholder for the arrangement.

62. The class of entities to whom this Ruling applies is limited to Bolnisi shareholders who are not a 'significant stakeholder' or 'common stakeholder' within the meaning of Subdivision 124-M. Under subsection 124-783(5), on the basis that Bolnisi will have at least 300 members just before the Implementation Date, no Bolnisi shareholder will be a 'common stakeholder' for the purposes of Subdivision 124-M.

Further conditions, if applicable, are satisfied

63. Subsection 124-780(4) provides that the additional conditions specified in subsection 124-780(5) must be satisfied if the original interest holder (a Bolnisi shareholder) and an acquiring entity (Coeur Australia) did not deal with each other at arm's length and:

- (a) neither the original entity (Bolnisi) nor the replacement entity (Coeur) had at least 300 members just before the arrangement started (paragraph 124-780(4)(a)); or
- (b) the original interest holder (a Bolnisi shareholder), the original entity (Bolnisi) and an acquiring entity (Coeur Australia) were all members of the same linked group just before the arrangement started (paragraph 124-780(4)(b)).

64. Coeur Australia, acting under the direction of Coeur, will deal with all Bolnisi shareholders at arm's length. All of the Bolnisi shareholders have been given the opportunity to dispose of their Bolnisi shares under the terms of the Scheme of Arrangement. Therefore, the further conditions in subsection 124-780(4) are not relevant.

65. Even if Coeur Australia did not deal with a Bolnisi shareholder at arm's length, paragraph 124-780(4)(a) is not satisfied because one or both of Bolnisi and Coeur will have at least 300 members just before the Implementation Date. Further, paragraph 124-780(4)(b) is not satisfied as Bolnisi and Coeur Australia will not be members of the same linked group just before the Implementation Date.

Exceptions to obtaining scrip for scrip roll-over are not applicable

66. Section 124-795 contains a number of exceptions where scrip for scrip roll-over cannot be chosen. These exceptions are as follows.

(a) Bolnisi shareholders are foreign residents

67. Subsection 124-795(1) provides that a Bolnisi shareholder cannot obtain the roll-over if, just before they stop owning their Bolnisi share, they are a foreign resident unless, just after they acquire their replacement interest (Coeur shares or CDIs), the Coeur shares or CDIs are taxable Australian property.

68. The class of entities to whom this Ruling applies is limited to Bolnisi shareholders who are residents of Australia at the Implementation Date of the Bolnisi Scheme of Arrangement. As a consequence, the exception in subsection 124-795(1) does not operate to limit the Ruling.

(b) A capital gain would (apart from the roll-over) be otherwise disregarded

69. Paragraph 124-795(2)(a) provides that a Bolnisi shareholder cannot obtain the roll-over if any capital gain they might make from their replacement interest (Coeur shares or CDIs) would be disregarded, except because of a roll-over.

70. Whether the capital gain arising from the disposal of a Bolnisi share is disregarded because of the operation of another provision of the ITAA 1997 (for example, if a Bolnisi share is trading stock of the shareholder) is a question of fact for each Bolnisi shareholder.

(c) Acquiring entity is a foreign resident

71. Paragraph 124-795(2)(b) provides that a Bolnisi shareholder cannot obtain the roll-over if they and the acquiring entity (Coeur Australia) are members of the same wholly-owned group just before the Bolnisi shareholder stops owning their Bolnisi share, and the acquiring entity is a foreign resident.

72. Even if a Bolnisi shareholder and Coeur Australia were members of the same wholly-owned group just before the Implementation Date, this exception will not apply because Coeur Australia is not a foreign resident.

(d) Roll-over is available under either Division 122 or Subdivision 124-G

73. Subsection 124-795(3) provides that a Bolnisi shareholder cannot obtain the roll-over for the CGT event happening in relation to the exchange of their Bolnisi shares if they can choose a roll-over under Division 122 or Subdivision 124-G.

74. This exception will not apply because the circumstances of the Scheme of Arrangement are such that a roll-over under Division 122 or Subdivision 124-G is not available.

Consequences of roll-over

75. Scrip for scrip roll-over enables a shareholder to disregard all or part of a capital gain from a share that is disposed of if the shareholder receives a replacement share in exchange (subsection 124-785(1)).

76. If the only capital proceeds the shareholder receives are replacement shares, the capital gain is disregarded completely (subsection 124-785(1)). All of the cost base of the original shares will be attributed to the replacement shares (subsection 124-785(2)).

77. If the shareholder receives other capital proceeds as well as the replacement shares, part of the capital gain is disregarded (subsection 124-790(1)). Only a part of the cost base of the original shares can be attributed to the replacement shares (subsections 124-785(2) and 124-785(3)).

Consequences of roll-over where cash and Coeur shares/CDIs are received as capital proceeds

78. The capital proceeds paid to Bolnisi shareholders in respect of their Bolnisi shares will consist of cash and either Coeur shares or CDIs. Therefore, a Bolnisi shareholder can obtain only a partial roll-over. Roll-over is not available to the extent that any capital gain is attributable to the cash of \$0.004 per Bolnisi share (subsection 124-790(1)). The cash is referred to as the 'ineligible proceeds'. The part of the Bolnisi shares for which it will receive the cash is referred to as the 'ineligible part'.

79. The cost base of the ineligible part is that part of the cost base of the shareholder's Bolnisi shares as is reasonably attributable to it (subsection 124-790(2)).

80. In making a reasonable apportionment of the cost base of a Bolnisi share, it would be appropriate for a shareholder to consider the value of the ineligible proceeds, fixed at \$0.004, and the market value of the Coeur shares or CDIs on the date that CGT event A1 happens to a Bolnisi share.

81. The cost base of the Bolnisi shares, reduced by the amount that is attributable to the ineligible part, forms the first element of the cost base and reduced cost base of the Coeur shares or CDIs (subsections 124-785(2), 124-785(3) and 124-785(4)).

Appendix 2 – Detailed contents list

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

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Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TD 2002/4

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- scrip for scrip roll-over

Legislative references:

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