



Class Ruling

Income tax: scrip for scrip roll-over: acquisition of Aluminex Resources Limited by Iron Mountain Mining Limited

Contents	Para
LEGALLY BINDING SECTION:	
What this Ruling is about	1
Date of effect	7
Scheme	8
Ruling	18
NOT LEGALLY BINDING SECTION:	
Appendix 1:	
<i>Explanation</i>	33
Appendix 2:	
<i>Detailed contents list</i>	37

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, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is 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 provisions

2. The relevant provisions dealt with in this Ruling are:
- subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936);
 - section 104-10 of the *Income Tax Assessment Act 1997* (ITAA 1997);
 - section 109-5 of the ITAA 1997;
 - section 110-25 of the ITAA 1997;
 - section 110-55 of the ITAA 1997;
 - Subdivision 115-A of the ITAA 1997;
 - Subdivision 115-C of the ITAA 1997;
 - section 116-20 of the ITAA 1997;

- Subdivision 124-M of the ITAA 1997;
- section 124-780 of the ITAA 1997;
- section 124-783 of the ITAA 1997;
- section 124-785 of the ITAA 1997; and
- section 124-795 of the ITAA 1997.

All subsequent 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 consists of entities who were ordinary shareholders of Aluminex Resources Limited (ALM) at the time of the scheme and who:

- (a) held their ALM shares on capital account;
- (b) accepted the offer made by Iron Mountain Mining Limited (IRM) to acquire their ALM shares or had their shares compulsorily acquired pursuant to section 661A of the *Corporations Act 2001*;
- (c) were 'residents of Australia' within the meaning of that expression in subsection 6(1) of the ITAA 1936; and
- (d) were not subject to the taxation of financial arrangements rules in Division 230 of the ITAA 1997 in relation to gains and losses on their ALM shares.

(Note: Division 230 of the ITAA 1997 will generally not apply to individuals, unless they have made an election for it to apply to them.)

Qualifications

4. 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 8 to 17 of this Ruling.

5. 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

7. This Ruling applies from 1 July 2009 to 30 June 2010. The Ruling continues to apply after 30 June 2010 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Scheme

8. The following description of the scheme is based on information provided by the applicant, Crowe Horwath, including:

- Class Ruling application dated 20 August 2010;
- IRM Bidder's Statement dated 5 October 2009;
- Independent expert's report relating to the takeover offer dated 15 October 2009;
- ALM Target's Statement dated 5 November 2009;
- Australian Securities Exchange (ASX) announcements by IRM from 6 October 2009 to 7 January 2010; and
- correspondence received from the applicant between 6 December 2010 and 7 December 2010.

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

Overview

9. Under the scheme, IRM acquired 100% of the issued shares in ALM.

10. As at 31 July 2009:

- ALM was an Australian resident public company incorporated in 2004;
- ALM delisted from the ASX on 31 July 2009;
- ALM had 45,293,106 fully paid ordinary shares and no other classes of share on issue;
- ALM had on issue 45,500,000 options to acquire ordinary shares;
- Some ALM shareholders were foreign residents;
- IRM was an Australian resident public company incorporated in 2005;
- IRM had 76,793,775 fully paid ordinary shares and no other classes of share on issue; and
- IRM had on issue 40,186,250 options to acquire shares.

The takeover

11. On 5 October 2009 IRM posted the IRM Bidder's Statement to ALM shareholders offering to provide one IRM share in exchange for one ALM share (the Offer).

12. The Offer did not extend to ALM issued options.

13. A contract for the sale of shares arose at the time when a shareholder accepted the Offer.

14. On 19 November 2009, before the end of the offer period, IRM held 43,491,606 shares in ALM which was 96.67% of the total shares on issue.

15. On 20 November 2009, IRM announced that compulsory acquisition of all remaining ALM shares would take place under section 661A of the *Corporations Act 2001*.

Foreign resident shareholders

16. Under the Offer, the IRM shares to which foreign resident ALM shareholders would otherwise have been entitled were issued to a nominee for sale in accordance with subsection 619(3) of the *Corporations Act 2001*. The proceeds, net of expenses, were distributed to those foreign resident ALM shareholders.

Other matters

17. There were no 'significant stakeholders' or 'common stakeholders' in relation to the scheme within the meaning of those expressions in section 124-783; and all entities dealt at arm's length.

Ruling**Acquisition of IRM shares by ALM Shareholders*****CGT event A1 happened on the disposal of ALM shares***

18. CGT event A1 happened when each ALM share was disposed of to IRM (subsections 104-10(1) and (2)).

19. Where an ALM shareholder accepted the Offer, CGT event A1 happened on the day that the ALM shareholder entered into the contract to dispose of their ALM shares to IRM (paragraph 104-10(3)(a)).

20. Where an ALM shareholder did not accept the Offer, and had their shares compulsorily acquired by IRM, CGT event A1 happened when IRM became the owner of the relevant ALM shares (subsection 104-10(6)).

Capital gain or capital loss

21. An ALM shareholder made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of their ALM share exceeded its cost base. The capital gain was the amount of the excess (subsection 104-10(4)).

22. An ALM shareholder made a capital loss if the capital proceeds were less than the reduced cost base of the ALM share. The capital loss was the amount of the difference (subsection 104-10(4)).

Capital proceeds

23. The capital proceeds for the disposal of each ALM share are the market value (as at the time that CGT event A1 happened) of the IRM share received (subsection 116-20(1)(b)).

24. The Commissioner accepts the market value of an IRM share as:

- (a) the closing price on the ASX of an IRM share on the date that CGT event A1 happened to the ALM shareholder, provided that the closing price does not vary by more than 5% from either the minimum or maximum traded price over the course of the day; or
- (b) if the closing price does vary by more than 5%, the volume-weighted average price (VWAP) for the IRM shares over that day.

Availability of scrip for scrip roll-over if a capital gain is made

25. Subject to the qualification in paragraph 27 of this Ruling, an ALM shareholder who made a capital gain from the disposal of their ALM shares to IRM is eligible to choose scrip for scrip roll-over (section 124-780 and subsection 124-785(1)).

26. If scrip for scrip roll-over is chosen, the capital gain is disregarded (subsection 124-785(1)).

27. Scrip for scrip roll-over cannot be chosen if any capital gain an ALM shareholder might make from the replacement IRM shares would be disregarded otherwise than because of a roll-over (paragraph 124-795(2)(a)).

Discount capital gain

28. If a participating ALM shareholder makes a capital gain and roll-over under Subdivision 124-M is not chosen or cannot be chosen, they may be eligible to treat the gain as a discount capital gain provided that the participating ALM shareholder satisfies the requirements of Subdivision 115-A and, if applicable, Subdivision 115-C.

Cost base of IRM shares

Scrip for scrip roll-over is not chosen

29. Where scrip for scrip roll-over is not chosen, the first element of the cost base and reduced cost base of each IRM share is the market value of the corresponding ALM share which was exchanged for the IRM share (subsections 110-25(2)(b) and 110-55(2)).

Scrip for scrip roll-over is chosen

30. Where scrip for scrip roll-over is chosen, the cost base and reduced cost base of each ALM share becomes the first element of the cost base and the reduced cost base respectively of the IRM share for which each ALM share was exchanged (subsections 124-785(2) and 124-785(4)).

Acquisition date of IRM shares

31. ALM shareholders acquired their IRM shares:

- if they accepted the Offer to dispose of their ALM shares, on the date when they entered into the contract for the disposal of their ALM shares in exchange for IRM shares (item 1 in the table in section 109-5(2)); or
- if their ALM shares were acquired by IRM by way of compulsory acquisition, when they became the owner of the IRM shares (item 2(b) in the table in section 109-5(2)).

32. For the purposes of applying the CGT discount to any later disposal of their IRM shares, ALM shareholders who choose scrip for scrip roll-over under the Offer are taken to have acquired their IRM shares when they acquired the corresponding ALM shares (item 2 in the table in subsection 115-30(1)).

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.*

Scrip for scrip roll-over

33. The Ruling section provides an explanation of the tax consequences and the relevant legislative provisions that relate to this scheme.

34. The significant tax consequence is availability of scrip for scrip roll-over under Subdivision 124-M. Scrip for scrip roll-over enables a shareholder to disregard a capital gain from a share that is disposed of as part of a corporate takeover or merger if the shareholder receives a replacement share in exchange. It also provides special rules for calculating the cost base and reduced cost base of the replacement share.

35. Subdivision 124-M contains a number of conditions for, and exceptions to, a shareholder being eligible to choose scrip for scrip roll-over. The main conditions that are relevant to the Scheme are:

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

36. Under the Scheme, the conditions for roll-over under Subdivision 124-M are satisfied. The Ruling section provides a detailed explanation of the Commissioner's decision. Therefore, no further explanation is warranted.

Appendix 2 – Detailed contents list

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

	Paragraph
What this Ruling is about	1
Relevant provision(s)	2
Class of entities	3
Qualifications	4
Date of effect	7
Scheme	8
Overview	9
The takeover	11
Foreign shareholders	16
Other Matters	17
Ruling	18
Acquisition of IRM shares by ALM Shareholders	18
<i>CGT event A1 happened on the disposal of ALM shares</i>	18
<i>Capital gain or capital loss</i>	21
<i>Capital proceeds</i>	23
Availability of scrip for scrip roll-over if a capital gain is made	25
<i>Discount capital gain</i>	28
Cost base of IRM shares	29
<i>Scrip for scrip roll-over is not chosen</i>	29
<i>Scrip for scrip roll-over is chosen</i>	30
Acquisition date of IRM shares	31
Appendix 1 – Explanation	33
Scrip for scrip roll-over	
Appendix 2 – Detailed contents list	37

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Subject references:

- arrangement
- CGT capital proceeds
- CGT event A1- disposal of CGT asset
- CGT events
- CGT cost base
- CGT roll-over relief
- disposal of shares
- market value cost base
- ordinary share
- schemes of arrangement
- scrip for scrip roll-over
- shareholders

Legislative references:

- ITAA 1936 6(1)
- ITAA 1997 104-10
- ITAA 1997 104-10(1)
- ITAA 1997 104-10(2)

- ITAA 1997 104-10(3)(a)
 - ITAA 1997 104-10(4)
 - ITAA 1997 104-10(6)
 - ITAA 1997 109-5
 - ITAA 1997 109-5(2)
 - ITAA 1997 110-25
 - ITAA 1997 110-25(2)(b)
 - ITAA 1997 110-55
 - ITAA 1997 110-55(2)
 - ITAA 1997 Subdiv 115-A
 - ITAA 1997 115-30(1)
 - ITAA 1997 Subdiv 115-C
 - ITAA 1997 116-20
 - ITAA 1997 116-20(1)(b)
 - ITAA 1997 Subdiv 124-M
 - ITAA 1997 124-780
 - ITAA 1997 124-783
 - ITAA 1997 124-785
 - ITAA 1997 124-785(1)
 - ITAA 1997 124-785(2)
 - ITAA 1997 124-785(4)
 - ITAA 1997 124-795
 - ITAA 1997 124-795(2)(a)
 - TAA 1953
 - Corporations Act 2001 619(3)
 - Corporations Act 2001 661A
 - Copyright Act 1968
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ATO references

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