



Class Ruling

Income tax: return of capital: Altona Mining Limited

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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, 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 provisions 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:
- subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936)
 - section 45A of the ITAA 1936
 - section 45B of the ITAA 1936
 - section 45C of the ITAA 1936
 - section 104-25 of the *Income Tax Assessment Act 1997* (ITAA 1997)
 - section 104-135 of the ITAA 1997, and
 - Division 115 of the ITAA 1997.

All subsequent legislative references in this Ruling are to the ITAA 1936 unless otherwise stated.

Class of entities

3. The class of entities to which this Ruling applies are the holders of ordinary shares in Altona Mining Limited (Altona) who:

- are registered on the Altona share register on the date for determining entitlement to the return of the share capital payment (Record Date)
- are residents of Australia as defined in subsection 6(1)
- hold their fully paid ordinary Altona shares on capital account, and
- are not subject to the taxation of financial arrangements rules in Division 230 of the ITAA 1997 in relation to gains and losses on their Altona 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.)

In this Ruling, a person belonging to this class of entities is referred to as an Altona shareholder.

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 8 to 30 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.

Date of effect

7. This Ruling applies from 1 July 2014 to 30 June 2015. The Ruling continues to apply after 30 June 2015 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.

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.

Background

9. Altona is a mining company which first listed on the Australian Securities Exchange (ASX) as Universal Resources Limited (Universal) in 2002 as part of an initial public offer (IPO). Equity raised from the time of Universal's IPO through to 2010 was approximately \$64.6 million.

10. Universal originally owned an interest in the Roseby exploration tenements in Queensland and by 2010 was the sole registered tenement holder after acquiring all of the shares of Roseby Copper Pty Ltd. Exploration and evaluation activities on the Roseby tenement were funded from the proceeds of the IPO.

11. On 2 February 2010, Universal completed the acquisition of all the shares on issue in Vulcan Resources Limited (Vulcan), an Australian company listed on the ASX, by issuing \$28 million of scrip to Vulcan's shareholders. Following this merger with Vulcan, Altona's core assets consisted of the Roseby Copper Project (Roseby) and the Outokumpu Copper Project (Outokumpu).

12. Vulcan's main asset was Outokumpu located in Finland. Outokumpu was held by Vulcan's wholly owned subsidiary, Kuhmo Nickel Limited (Kuhmo), a United Kingdom incorporated company. Vulcan's assets at the time of acquisition consisted of shares in Kuhmo, the Vulcan inter-group loan and cash on hand.

13. In August 2010, Universal changed its name to Altona.

14. In February 2011, Altona undertook a \$70 million equity raising to expand Roseby and complete construction of Outokumpu.

Sale of Kuhmo

15. In February 2014, Altona received an unsolicited enquiry from Boliden Mineral AB (Boliden) as to whether Altona would consider the sale of most of the business operated by Kuhmo and its subsidiaries. On 7 July 2014, Vulcan executed an agreement to sell the business.

16. Pursuant to the agreement, Vulcan will assign the Vulcan inter-group loan and the Altona inter-group loan and sell the shares in Kuhmo to Boliden for a total purchase price of approximately \$110 million.

17. Following completion of the sale, Altona's remaining assets are:

- Roseby
- shares in Vulcan, and
- some Finnish assets.

18. Following the sale of Kuhmo, Altona will have cash of \$80.2 million which will be surplus to its capital requirements.

Distribution to Altona Shareholders

19. Subject to shareholder approval, Altona will make a distribution to its shareholders of \$80.2 million which will be funded entirely from cash reserves. The distribution equates to \$0.15 per share (the Distribution).

20. The Distribution will comprise of:

- an unfranked dividend of \$0.03 per share, and
- a return of capital of \$0.12 per share.

21. The Distribution will be paid equally to each holder of an Altona share who is registered on the Altona share register on the Record Date. The Distribution will not result in the cancellation of any shares.

22. Altona will debit the full amount of the return of capital against its share capital account which will result in a debit of approximately \$64.16 million to Altona.

23. The return of capital will be effected by way of an equal reduction of capital under section 256B of the *Corporations Act 2001* (Corporations Act) and requires shareholder approval by ordinary resolution under section 256C of the Corporations Act.

24. The unfranked dividend of \$0.03 per share (\$16.04 million in total) will be paid out of Altona's current year profit.

25. Altona has announced that it will retain between \$40 million and \$45 million in cash in order to further fund Roseby and for other corporate purposes.

Altona's share capital account

26. On 5 August 2014, Altona had a market capitalisation of approximately \$117 million (based on its share price on that date) with 532,184,704 shares on issue and, subject to the successful completion of the sale transaction would issue additional shares resulting in an estimated 534,678,592 shares being on issue as at the time of the capital reduction.

27. Altona has confirmed that its share capital account (as defined in section 975-300 of the ITAA 1997) is not tainted (within the meaning of Division 197 of the ITAA 1997).

28. Altona has not previously paid dividends or distributions of capital to its shareholders and does not have a formal dividend policy.

29. Altona's franking account balance was nil at 30 June 2014.

Altona's non-resident shareholders

30. No non-resident Altona shareholder, either alone or with associates, owns 10% or more of the shares in Altona.

Ruling

Return of capital is not a dividend

31. The return of capital that will be paid to Altona shareholders will not be a dividend as defined in subsection 6(1).

The application of sections 45A, 45B and 45C

32. The Commissioner will not make a determination under subsection 45A(2), or subsection 45B(3), that section 45C applies in relation to the return of capital received by Altona shareholders.

Capital gains tax (CGT) consequences

33. CGT event G1 (section 104-135 of the ITAA 1997) will happen when Altona pays the return of capital of \$0.12 per share to an Altona shareholder in respect of an Altona ordinary share that they own at the Record Date and continue to own at the Payment Date.

34. CGT event C2 (section 104-25 of the ITAA 1997) will happen when Altona pays the Distribution of \$0.15 per share to an Altona shareholder in respect of an Altona ordinary share that they owned at the Record Date, but ceased to own before the Payment Date.

35. Any capital gain made as a result of CGT event C2 happening to a former Australian resident Altona shareholder's right to receive the Distribution will be reduced by the unfranked dividend of \$0.03 per share that is included in the former Australian resident Altona shareholder's assessable income (section 118-20 of the ITAA 1997).

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.*

Return of capital is not a dividend

36. The term 'dividend' is defined in subsection 6(1) and includes a distribution made by a company to any of its shareholders. However, paragraph (d) of the definition of 'dividend' excludes a distribution that is debited against an amount standing to the credit of the share capital account of the company.

37. 'Share capital account' is defined in section 975-300 of the ITAA 1997 as an account which the company keeps of its share capital, or any other account created after 1 July 1998 where the first amount credited to the account was an amount of share capital.

38. Subsection 975-300(3) of the ITAA 1997 states that an account is generally taken not to be a share capital account if it is tainted.

39. The return of capital will be recorded as being wholly debited to Altona's share capital account. As Altona's share capital account is not tainted within the meaning of Division 197 of the ITAA 1997, paragraph (d) of the definition of 'dividend' in subsection 6(1) applies. Accordingly, the return of capital of \$0.12 per share will not be a dividend as defined in subsection 6(1).

Anti-avoidance provisions

40. Sections 45A and 45B are two anti-avoidance provisions which, if they apply, allow the Commissioner to make a determination that section 45C applies to treat all or part of the return of share capital received by Altona's shareholders as an unfranked dividend paid by the company out of profits.

Section 45A – streaming of dividends and capital benefits

41. Section 45A applies in circumstances where capital benefits are streamed to some shareholders (the advantaged shareholders) who would derive a greater benefit from the capital benefits than the other shareholders (the disadvantaged shareholders) and it is reasonable to assume that the disadvantaged shareholders have received, or will receive, dividends.

42. Although Altona will be providing its shareholders with a 'capital benefit' (as defined in paragraph 45A(3)(b)), the capital benefit is to be provided to all of Altona's shareholders in direct proportion to their individual shareholding.

43. All shareholders will benefit equally from the capital benefit and there is no indication of 'streaming' of capital benefits to some shareholders and dividends to others.

44. Accordingly, section 45A will not apply to the return of capital and the Commissioner will not make a determination under subsection 45A(2) that section 45C applies to the return of capital to the shareholders of Altona.

Section 45B – scheme to provide capital benefits

45. Section 45B applies where certain payments are made to shareholders in substitution for dividends. Specifically, the provision applies where:

- (a) there is a scheme under which a person is provided with a capital benefit by a company (paragraph 45B(2)(a)); and
- (b) under the scheme, a taxpayer (the relevant taxpayer), who may or may not be the person provided with the capital benefit, obtains a tax benefit (paragraph 45B(2)(b)); and
- (c) 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 taxpayer (the relevant taxpayer) to obtain a tax benefit (paragraph 45B(2)(c)).

46. The arrangement involving the return of capital to Shareholders will constitute a scheme for the purposes of section 45B.

47. The return of capital will be recorded as a debit to the share capital account and Shareholders will receive a distribution of share capital to the value of \$0.12 per share. Therefore, the Shareholders will be provided with a capital benefit under paragraph 45B(5)(b).

48. Paragraph 45B(2)(c) sets out an objective purpose test for the Commissioner to consider having regard to the 'relevant circumstances' of the scheme as set out in subsection 45B(8).

49. Altona will record an accounting profit from the sale of Kuhmo. Following this sale, Altona will make a Distribution to its Shareholders which is comprised of two components, an unfranked dividend and a return of capital. The amount of the unfranked dividend can be reasonably regarded as attributable to the profit from the sale of Kuhmo.

50. Further, the amount of the return of capital can be reasonably regarded as reflective of part of the share capital invested by Altona in the assets disposed of by the sale of Kuhmo.

51. Having regard to the relevant circumstances, it cannot be concluded that the scheme is to be entered into or carried out for a more than incidental purpose of enabling Altona's shareholders to obtain a tax benefit.

52. Accordingly, the Commissioner will not make a determination under subsection 45B(3) that section 45C applies to the whole, or a part, of the payment for the return of share capital.

CGT consequences

CGT event G1 – section 104-135

53. CGT event G1 will happen when a company makes a payment to a shareholder in respect of a share they own and some or all of the payment (the non-assessable part) is not a dividend as defined in subsection 995-1(1) of the ITAA 1997 or an amount that is taken to be a dividend under section 47.

54. Accordingly, CGT event G1 will happen when Altona pays the return of capital amount to an Altona shareholder in respect of an ordinary share that they own at the Record Date and continue to own at the Payment Date.

55. An Australian resident Altona shareholder will make a capital gain if the return of capital is more than the cost base of the shareholder's Altona share. The amount of the capital gain is equal to the excess (subsection 104-135(3) of the ITAA 1997).

56. If an Australian resident Altona shareholder makes a capital gain when CGT event G1 happens, the cost base and reduced cost base of the Altona share is reduced to nil. An Australian resident Altona shareholder cannot make a capital loss when CGT event G1 happens (subsection 104-135(3) of the ITAA 1997).

57. If the return of capital is equal to or less than the cost base of the Altona share at the Payment Date, the cost base and reduced cost base of the ordinary share will be reduced by the amount of the non-assessable part of the payment (subsection 104-135(4) of the ITAA 1997).

58. A capital gain made when CGT event G1 happens will be eligible to be treated as a discount capital gain under Division 115 of the ITAA 1997 provided that the Altona share was acquired at least 12 months before the payment of the return of share capital (subsection 115-25(1) of the ITAA 1997) and the other conditions of that Division are satisfied.

CGT event C2 – section 104-25

59. The right to receive the Distribution is one of the rights inherent in the Altona share at the Record Date. If, after the Record Date but before the Payment Date, an Altona shareholder ceased to own an Altona share in respect of which the Distribution was payable, the right to receive the Distribution in respect of that share is retained by the shareholder and is a separate CGT asset.

60. CGT event C2 happens when the Distribution is paid (section 104-25 of the ITAA 1997). The right to receive the payment ends by the right being discharged or satisfied when the payment is made.

61. An Australian resident Altona shareholder will make a capital gain if the capital proceeds from the ending of the right are more than the cost base of the right. The capital gain is equal to the amount of the excess. An Australian resident Altona shareholder will make a capital loss if the capital proceeds from the ending of the right are less than its reduced cost base. The capital loss is equal to the amount of the difference (subsection 104-25(3) of the ITAA 1997).

62. In working out the capital gain or capital loss made when CGT event C2 happens, the capital proceeds will be the amount of the Distribution paid by Altona (subsection 116-20(1) of the ITAA 1997).

63. The cost base of the Altona shareholder's right to receive the return of share capital is worked out under Division 110 of the ITAA 1997 (modified by Division 112 of the ITAA 1997). The cost base of the right does not include the cost base or reduced cost base of the share previously owned by an Altona shareholder that has been applied in working out a capital gain or capital loss made when a CGT event happened to the share, for example, when the Altona shareholder disposed of the share after the Record Date.

64. Therefore, if the full cost base or reduced cost base of the Altona share was applied in working out a capital gain or capital loss when a CGT event happened to that share, then the right to receive the Distribution is likely to have a cost base of nil. As a result, the Altona shareholder will generally make a capital gain equal to the amount of the Distribution.

65. As the right to receive the payment of the Distribution was inherent in the Altona share during the time it was owned, the right is considered to have been acquired at the time when the corresponding share was acquired (section 109-5 of the ITAA 1997).

66. Accordingly, if the Altona share was acquired at least 12 months before the payment of the Distribution, a capital gain made from the ending of the corresponding right will satisfy the requirements of section 115-25 of the ITAA 1997. Such a capital gain may be eligible to be treated as a discount capital gain under Division 115 of the ITAA 1997, provided the other conditions of that division are satisfied.

67. Any capital gain made as a result of CGT event C2 happening to a former Altona shareholder's right to receive the Distribution will be reduced by that part of the payment (\$0.03 per share) included in the former Altona shareholder's assessable income as an unfranked dividend (section 118-20 of the ITAA 1997).

Appendix 2 – Detailed contents list

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References

<i>Previous draft:</i>	- ITAA 1936 45B(2)(a)
Not previously issued as a draft	- ITAA 1936 45B(2)(b)
	- ITAA 1936 45B(2)(c)
<i>Related Rulings/Determinations:</i>	- ITAA 1936 45B(3)
TR 2006/10	- ITAA 1936 45B(5)(b)
	- ITAA 1936 45B(8)
<i>Subject references:</i>	- ITAA 1936 45C
- capital benefit	- ITAA 1936 47
- capital gains tax	- ITAA 1997
- capital reductions	- ITAA 1997 104-25
- CGT event C2	- ITAA 1997 104-25(3)
- CGT event G1	- ITAA 1997 104-135
- distributions	- ITAA 1997 104-135(3)
- dividend income	- ITAA 1997 104-135(4)
- ordinary shares	- ITAA 1997 109-5
- profits	- ITAA 1997 Div 110
- return of capital on shares	- ITAA 1997 Div 112
- share capital	- ITAA 1997 Div 115
- shareholder payments	- ITAA 1997 115-25
- unfranked dividends	- ITAA 1997 115-25(1)
	- ITAA 1997 116-20(1)
	- ITAA 1997 118-20
<i>Legislative references:</i>	- ITAA 1997 Div 197
- ITAA 1936	- ITAA 1997 Div 230
- ITAA 1936 6(1)	- ITAA 1997 975-300
- ITAA 1936 45A	- ITAA 1997 975-300(3)
- ITAA 1936 45A(2)	- ITAA 1997 995-1(1)
- ITAA 1936 45A(3)(b)	- Corporations Act 2001
- ITAA 1936 45B	- TAA 1953

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Income tax ~~ Capital gains tax ~~ CGT events ~~ CGT events G1 to G3 - shares

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