



Class Ruling

Keras Resources Plc – demerger of shares in Calidus Resources Limited

❶ Relying on this Ruling

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

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

Further, if we think that this Ruling disadvantages you, we may apply the law in a way that is more favourable to you.

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What this Ruling is about

1. This Ruling sets out the income tax consequences of the demerger of shares in Calidus Resources Limited (Calidus) by Keras Resources Plc (Keras), which was implemented on 25 November 2019 (Implementation Date).
2. Full details of the demerger are set out in paragraphs 28 to 46 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997* unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you are the holder of ordinary shares in Keras who:
 - was registered on the Keras share register at 6.00pm GMT on 19 November 2019 (Record Date), and
 - did not hold your shares in Keras as revenue assets (as defined in section 977-50 nor as trading stock (as defined in subsection 995-1(1)) on the Record Date – that is, you held your Keras shares on capital account.
5. This Ruling does not apply to anyone who is subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 28 to 46 of this Ruling.

Note: Division 230 will not apply to individuals, unless they have made an election for it to apply to them.

When this Ruling applies

6. This Ruling applies from 1 July 2019 to 30 June 2020.

Ruling

Demerger relief is available

7. A demerger, as defined in section 125-70, happened to the Keras demerger group (which included Keras and Calidus) under the scheme described in paragraphs 28 to 46 of this Ruling. This has income tax consequences for you as set out in paragraphs 8 to 267 of this Ruling.

CGT consequences – Australian resident Keras shareholders

CGT event G1

8. CGT event G1 happened at the time the payment of the amount of the reduction of share capital was satisfied by way of an in specie distribution to you of Calidus shares in respect of the shares you owned in Keras.¹

9. You will make a capital gain from CGT event G1 happening if the amount of the reduction of share capital for each Keras share (\$0.0053) is more than the cost base of the Keras share. If so, the capital gain is equal to the amount of the excess. No capital loss can be made from CGT event G1.²

Choosing demerger roll-over

10. You can choose to obtain demerger roll-over under subsection 125-55(1) for your Keras shares.

11. If you choose demerger roll-over for your Keras shares:

- any capital gain you made when CGT event G1 happened to your Keras shares under the demerger is disregarded³
- you are taken to have acquired Calidus shares on the Implementation Date (except for the purpose of determining whether you are entitled to make a discount capital gain in relation to a subsequent CGT event that happens to the Calidus shares you received under the demerger – see paragraph 16 of this Ruling)⁴, and
- you must recalculate the first element of the cost base and reduced cost base of your Keras shares, and calculate the first element of the cost base and reduced cost base of the corresponding Calidus shares you acquired

¹ Section 104-135.

² Subsection 104-135(3).

³ Subsection 125-80(1).

⁴ Section 109-5.

under the demerger⁵ – see paragraphs 12 to 14 of this Ruling for more details.

New cost base and reduced cost base of your Keras and Calidus shares

12. The first element of the cost base and reduced cost base of each Keras share and corresponding Calidus share is worked out by:

- taking the total of the cost bases of the Keras shares just before the demerger, and
- apportioning that total between the Keras shares and the Calidus shares acquired under the demerger.

13. The apportionment of this total is done on a reasonable basis having regard to the market values (just after the demerger) of the Keras shares and Calidus shares, or an anticipated reasonable approximation of those market values.⁶

14. The Commissioner accepts that a reasonable apportionment is to:

- attribute 47.237% of the total of the cost bases of the Keras shares just before the demerger to the Keras shares, and
- attribute 52.763% of the total of the cost bases of the Keras shares just before the demerger to the corresponding Calidus shares.

Not choosing demerger roll-over

15. If you do not choose demerger roll-over for your Keras shares:

- you cannot disregard any capital gain you made when CGT event G1 happened to your Keras shares under the demerger, and
- you must recalculate the first element of the cost base and reduced cost base of your Keras shares, and calculate the first element of the cost base and reduced cost base of the corresponding Calidus shares you acquired under the demerger⁷ – see paragraphs 12 to 14 of this Ruling.

Acquisition date of the Calidus shares for the purpose of making a discount capital gain

16. For the purpose of determining whether you can make a discount capital gain from a future CGT event that happens to a Calidus share you acquired under the demerger, you will be taken to have acquired the Calidus share on the date you acquired, for CGT purposes, the corresponding Keras share (table item 2 of subsection 115-30(1)). This will be the case whether or not you choose demerger roll-over.

⁵ Subsection 125-80(2).

⁶ Subsections 125-80(2) and (3).

⁷ Subsections 125-85(1) and (2).

CGT consequences – foreign resident Keras shareholders**CGT event G1**

17. CGT event G1 happened at the time the payment of the amount of the reduction of share capital was satisfied by way of an in specie distribution to you of Calidus shares in respect of the shares you owned in Keras.⁸

18. You will make a capital gain from CGT event G1 happening if the amount of the reduction of share capital for each Keras share (\$0.0053) is more than the cost base of the Keras share. If so, the capital gain is equal to the amount of the excess. No capital loss can be made from CGT event G1.⁹

19. However, any capital gain you make from CGT event G1 is disregarded unless the Keras share is taxable Australian property.¹⁰ A Keras share is taxable Australian property if:

- it was used by you (the foreign resident shareholder) in carrying on a business through a permanent establishment in Australia¹¹, or
- it is a CGT asset that is covered by subsection 104-165(3) (choosing to disregard a gain or loss on ceasing to be an Australian resident).¹²

Limited availability of demerger roll-over

20. If you are a foreign resident, you cannot choose to obtain demerger roll-over under Division 125 unless the Calidus shares you acquire under the demerger are taxable Australian property just after you acquired them.¹³

Cost base and reduced cost base of Calidus shares

21. If you are a foreign resident, you must recalculate the first element of the cost base and reduced cost base of your Keras shares, and calculate the first element of the cost base and reduced cost base of the corresponding Calidus shares you acquired under the demerger, in the same way as described in paragraphs 12 to 14 of this Ruling.¹⁴

Acquisition date of the Calidus shares for the purpose of making a discount capital gain

22. For the purpose of determining whether you, as a foreign resident, can make a discount capital gain from a future CGT event that happens to a Calidus share you acquired under the demerger, you will be taken to have acquired the Calidus share on the date you acquired, for CGT purposes, the corresponding Keras share (table item 2 of subsection 115-30(1)). This will be the case whether or not you choose demerger roll-over.

⁸ Section 104-135.

⁹ Subsection 104-135(3).

¹⁰ Section 855-10.

¹¹ Table item 3 of section 855-15.

¹² Table item 5 of section 855-15.

¹³ Subsection 125-55(2).

¹⁴ Subsections 125-85(1) and (2).

Not a dividend

23. No part of the value of a Calidus share transferred to you under the demerger will be included in your assessable income under subsection 44(1) of the ITAA 1936. Although part of the value of a Calidus share will be a 'dividend' under subsection 6(1) of the ITAA 1936 (using the definition before the amendments enacted by Schedule 3 to the *Taxation Laws Amendment (Company Law Review) Act 1998*, as Keras has shares with a par value), it will be a 'demerger dividend' under subsections 44(3), 44(4) and 44(5) of the ITAA 1936 that is non-assessable non-exempt income.

The anti-avoidance provisions in sections 45, 45A, 45B, 45BA and 45C of the ITAA 1936 will not apply to deem an assessable dividend

24. Section 45 of the ITAA 1936 will not apply to deem the value of the Calidus shares provided to you under the demerger to be a dividend. This is because all shareholders of Keras participated in the demerger based on the number of Keras shares they held on the Record Date, so that there was no streaming of the provision of shares to only some Keras shareholders. Therefore, you will not include any part of the value of the Calidus shares in your assessable income under subsection 44(1) of the ITAA 1936.

25. The Commissioner will not make a determination under subsection 45A(2) of the ITAA 1936 that section 45C of the ITAA 1936 applies to the whole, or any part, of the capital benefits provided to you under the demerger. This is because all shareholders of Keras participated in the demerger based on the number of Keras shares they held on the Record Date, so that there was no streaming of capital benefits to only some Keras shareholders. Therefore, you will not include any part of the amount of the capital benefit (the reduction of share capital) in your assessable income under subsection 44(1) of the ITAA 1936.

26. 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 the demerger benefit provided to you under the demerger. This is because the purpose test in paragraph 45B(2)(c) of the ITAA 1936 is not satisfied. Therefore, you will not include any part of the amount of the demerger benefit (the market value of the Calidus shares) in your assessable income under subsection 44(1) of the ITAA 1936.

27. 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 you under the demerger. This is because the purpose test in paragraph 45B(2)(c) of the ITAA 1936 is not satisfied. Therefore, you will not include any part of the amount of the capital benefit (the market value of the Calidus shares) in your assessable income under subsection 44(1) of the ITAA 1936.

Scheme

28. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

Keras

29. Keras is a company that was incorporated in the United Kingdom (UK) in 2010 and has been listed on the Alternative Investment Market (AIM) of the London Stock Exchange since 2011.

30. Keras is a mining company with interests in a gold project in Western Australia (through Calidus), and cobalt, nickel and manganese projects in Togo (through two subsidiary companies).

31. Immediately before the demerger, Keras had on issue 2,498,358,439 ordinary shares.

32. Keras has issued shares with a fixed nominal value (as required by section 542 of the UK *Companies Act 2006*, and also chose to issue shares at a premium (as permitted by section 610 of the UK *Companies Act 2006*). This means that Keras has shares with a par value. Therefore, the amendments enacted by Schedules 2, 3 and 5 to the *Taxation Laws Amendment (Company Law Review) Act 1998* do not apply to Keras.

33. Immediately before the demerger, 76% of the shares in Keras were held by entities that were not Australian residents. No shareholder who is not an Australian resident holds 10% or more of the shares in Keras.

Calidus

34. Calidus is an Australian resident company that has been listed on the Australian Securities Exchange (ASX) since 2017.

35. Calidus is seeking to develop the Warrawoona gold project in the Pilbara region of Western Australia.

36. Immediately before the demerger, Calidus had 2,140,137,024 fully paid ordinary shares on issue. Keras held 723,750,000 (approximately 33.8%) of the ordinary shares in Calidus.

37. Immediately before the demerger, Calidus also had on issue other types of 'ownership interest' (as defined in subsection 125-60(1)). These consisted of four series of options exercisable at different dates and for different prices, and two classes of performance rights converting into ordinary shares at different dates.

The demerger of Calidus

38. The demerger of Calidus was undertaken by a reduction of share capital.

39. The shareholders of Keras voted at a meeting on 14 October 2019 to approve a special resolution¹⁵ under section 641 of the UK *Companies Act 2006* to reduce the share capital of Keras. The reduction of share capital was subsequently confirmed by the High Court of England and Wales under section 648 of the UK *Companies Act 2006*.

40. The reduction of share capital equated to £0.0028 (under 3/10 of 1 penny) per Keras ordinary share. Using the translation rule in table item 5 of subsection 960-50(6), the reduction of share capital equated to A\$0.0053 per Keras share (just over half of 1 cent).

41. On the Implementation Date, the shareholders of Keras received one Calidus ordinary share for every 3.451963 Keras ordinary shares they held on the Record Date.

Accounting treatment

42. Keras debited two accounts to which it had credited share capital by the amount of the reduction of share capital.

¹⁵ Defined in section 283 of the UK *Companies Act 2006*.

43. Keras also debited a reserve account that was not an account to which it had credited share capital.

Reasons for the demerger

44. Keras has formed the view that the demerger of Calidus shares will:
- allow Keras to focus on commercialising its projects in Togo, and
 - give Keras shareholders the ability to independently deal with Calidus shares.

Other matters

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

46. Just after the demerger, CGT assets owned by Calidus and its demerger subsidiaries representing at least 50% by market value of all the CGT assets owned by those entities were used in carrying on a business by those entities.

Commissioner of Taxation

12 February 2020

References*Previous draft:*

Not previously issued as a draft

Legislative references:

- ITAA 1936 6(1)
- ITAA 1936 44(1)
- ITAA 1936 44(2)
- ITAA 1936 44(3)
- ITAA 1936 44(4)
- ITAA 1936 44(5)
- ITAA 1936 45A
- ITAA 1936 45B
- ITAA 1936 45BA
- ITAA 1936 45C
- ITAA 1997 104-135
- ITAA 1997 104-135(3)
- ITAA 1997 104-135(5)
- ITAA 1997 104-165(3)
- ITAA 1997 109-5
- ITAA 1997 Div 110
- ITAA 1997 115-30
- ITAA 1997 115-30(1)
- ITAA 1997 Div 125
- ITAA 1997 125-55(1)
- ITAA 1997 125-55(2)
- ITAA 1997 125-60(1)
- ITAA 1997 125-70
- ITAA 1997 125-80(1)
- ITAA 1997 125-80(2)
- ITAA 1997 125-80(3)
- ITAA 1997 125-80(4)
- ITAA 1997 125-80(5)
- ITAA 1997 125-80(6)
- ITAA 1997 125-85(1)
- ITAA 1997 125-85(2)
- ITAA 1997 Div 197
- ITAA 1997 Div 230
- ITAA 1997 Pt 3-90
- ITAA 1997 Div 855
- ITAA 1997 855-10
- ITAA 1997 855-15
- ITAA 1997 960-50(6)
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- Taxation Laws Amendment (Company Law Review) Act 1998

Other references:

- Companies Act 2006 (United Kingdom) (2006 c 46)

ATO references

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shares
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