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## Class Ruling

# Chalice Mining Limited – demerger of Falcon Metals Ltd

### **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.

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### **What this Ruling is about**

1. This Ruling sets out the income tax consequences of the demerger of Falcon Metals Ltd (Falcon) by Chalice Mining Limited (Chalice), which was implemented on 15 December 2021 (the Implementation Date).
2. Full details of the demerger are set out in paragraphs 27 to 55 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 held ordinary shares in Chalice and you:
  - were registered on the Chalice share register on 13 December 2021 (the Record Date)
  - did not hold your shares in Chalice as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)); that is, you held your shares on capital account
  - were either
    - a resident of Australia (as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936)) on the Implementation Date, or

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- a non-resident of Australia (as defined in subsection 6(1) of the ITAA 1936) on the Implementation Date, whose shares in Chalice did not constitute taxable Australian property (as defined in section 855-15), and
- did not acquire your shares in Chalice under an employee share scheme.

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 described in paragraphs 27 to 55 of this Ruling.

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

### **When this Ruling applies**

6. This Ruling applies from 1 July 2021 to 30 June 2022.

## **Ruling**

### **Demerger happened**

7. A demerger, as defined in section 125-70, happened to the Chalice demerger group (which included Chalice and Falcon) under the scheme described in paragraphs 27 to 55 of this Ruling.

### **CGT consequences – Australian-resident shareholders**

#### **CGT event G1**

8. CGT event G1 happened when you were paid an amount by Chalice in respect of your Chalice shares by way of the transfer to you of Falcon shares on the Implementation Date (section 104-135).

9. You will make a capital gain from CGT event G1 happening if the amount of the reduction of share capital for each Chalice share (0.81 of a cent) is more than the cost base of the Chalice share. If so, the capital gain is equal to the amount of the excess. No capital loss can be made from CGT event G1 (subsection 104-135(3)).

### **Choosing demerger roll-over**

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

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

- any capital gain you made when CGT event G1 happened to your Chalice shares under the demerger is disregarded (subsection 125-80(1)), and
- you must recalculate the first element of the cost base and reduced cost base of your Chalice shares, and calculate the first element of the cost base and reduced cost base of the corresponding Falcon shares you acquired under the demerger (subsection 125-80(2)) – see paragraphs 13 to 15 of this Ruling for more details.

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***Not choosing demerger roll-over***

12. If you do not choose demerger roll-over for your Chalice shares:
- you cannot disregard any capital gain you made when CGT event G1 happened to your Chalice shares under the demerger, and
  - you must recalculate the first element of the cost base and reduced cost base of your Chalice shares, and calculate the first element of the cost base and reduced cost base of the corresponding Falcon shares you acquired under the demerger (subsections 125-85(1) and 125-85(2)) – see paragraphs 13 to 15 of this Ruling.

***Cost base and reduced cost base of your Chalice Mining Limited and Falcon Metals Ltd shares***

13. The first element of the cost base and reduced cost base of each Chalice share and corresponding Falcon share is worked out by:
- taking the total of the cost bases of your Chalice shares just before the demerger, and
  - apportioning that total between your Chalice shares and the Falcon shares you acquired under the demerger.
14. The apportionment is done on a reasonable basis having regard to the market values (just after the demerger) of the Chalice shares and Falcon shares, or an anticipated reasonable approximation of those market values (subsections 125-80(2) and 125-80(3)).
15. The Commissioner accepts that a reasonable apportionment is to attribute:
- 98.56% of the total of the cost bases of your Chalice shares just before the demerger to the Chalice shares, and
  - 1.44% of the total of the cost bases of your Chalice shares just before the demerger to the corresponding Falcon shares.

***Acquisition date of Falcon Metals Ltd shares for discount capital gain purposes***

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

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

17. CGT event G1 happened when you were paid an amount by Chalice in respect of your Chalice shares by way of the transfer to you of Falcon shares on the Implementation Date (section 104-135).
18. You will make a capital gain from CGT event G1 happening if the amount of the reduction of share capital for each Chalice share (0.81 of a cent) is more than the cost base of the Chalice share. If so, the capital gain is equal to the amount of the excess. No capital loss can be made from CGT event G1 (subsection 104-135(3)).

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19. However, any capital gain you make from CGT event G1 is disregarded unless the Chalice share is taxable Australian property (section 855-10). A Chalice share is taxable Australian property if:

- it was used by you (the foreign resident shareholder) at any time in carrying on a business through a permanent establishment in Australia (table item 3 of section 855-15), or
- it is a CGT asset that is covered by subsection 104-165(3) (choosing to disregard a capital gain or capital loss on ceasing to be an Australian resident) (table item 5 of section 855-15).

#### ***Limited availability of demerger roll-over***

20. If you are a foreign resident, you cannot choose to obtain demerger roll-over under subsection 125-55(1) for your Chalice shares unless the Falcon shares you acquired under the demerger are taxable Australian property just after you acquired them (subsection 125-55(2)).

#### ***Cost base and reduced cost base of your Chalice Mining Limited and Falcon Metals Ltd shares***

21. Whether or not you choose demerger roll-over, or demerger roll-over is available to you, you must work out the first element of the cost base and reduced cost base of each Chalice share and corresponding Falcon share in the same way as described in paragraphs 13 to 15 of this Ruling (subsections 125-80(2), 125-80(3), 125-85(1) and 125-85(2)).

#### ***Acquisition date of the Falcon Metals Ltd shares for discount capital gain purposes***

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

#### ***Not an assessable dividend***

23. No part of the value of a Falcon share transferred to you under the demerger will be included in your assessable income under subsection 44(1) of the ITAA 1936. Although the part of the value of a Falcon share that is not debited to the share capital account of Chalice is a 'dividend' under subsection 6(1) of the ITAA 1936, it will be a 'demerger dividend' under subsections 44(3) to (5) of the ITAA 1936. A 'demerger dividend' is non-assessable non-exempt income for you.

#### ***No dividend withholding tax for non-resident shareholders***

24. If you are not a resident of Australia (as defined in subsection 6(1) of the ITAA 1936), no part of the value of a Falcon share transferred to you under the demerger will be subject to dividend withholding tax (subsection 128B(3D) of the ITAA 1936).

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**Specific anti-avoidance provisions do not apply to deem an assessable dividend**

25. The Commissioner will not make a determination under subsection 45A(2) of the ITAA 1936 that section 45C of the ITAA 1936 applies in relation to the whole, or a part, of the capital benefits provided to you under the demerger. This is because there was no streaming of capital benefits and dividends to the Chalice shareholders under the demerger (subsection 45A(1) of the ITAA 1936).

26. As the purpose condition in paragraph 45B(2)(c) of the ITAA 1936 is not satisfied, the Commissioner will not make a determination under subsection 45B(3) 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, or
- section 45C of the ITAA 1936 applies to the whole, or any part, of the capital benefit provided to you under the demerger.

**Scheme**

27. 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.

**Chalice Mining Limited**

28. Chalice is a public company that was incorporated in Australia on 13 October 2005 and listed on the Australian Securities Exchange (ASX) on 24 March 2006.

29. Chalice is an exploration company that owned a portfolio of precious and base metal projects including:

- the Julimar Nickel-Copper-PGE Project in the Avon region of Western Australia
- the Pyramid Hill Gold Project in the Bendigo region of Victoria, and
- South West and Barrabarra – Nickel-Copper-PGE Projects in the West Yilgarn province of Western Australia.

30. Immediately before the Implementation Date, Chalice had:

- \$199,916,350 credited to its share capital account
- 354,973,474 fully paid ordinary shares on issue
- 400,000 unlisted options on issue, and
- 6,088,821 performance rights on issue.

There were no other ownership interests (as defined in subsection 125-60(1)) in Chalice.

**Falcon Metals Ltd**

31. Falcon is a company incorporated in Australia.

32. Immediately before the demerger, Chalice owned all of the ordinary shares in Falcon.

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### **The demerger of Falcon Metals Ltd**

33. On 12 July 2021, Chalice announced to the ASX the proposed demerger of its gold assets. This was effected by the demerger of Falcon.
34. The demerger of Falcon was undertaken by a reduction of share capital under section 256B of the *Corporations Act 2001*.
35. The shareholders of Chalice voted at a meeting on 3 December 2021 to approve an ordinary resolution under section 256C of the *Corporations Act 2001* to reduce the share capital of Chalice as an equal reduction. The reduction of share capital equated to 0.81 of a cent per Chalice share.
36. The date for determining the entitlement of Chalice shareholders to receive Falcon shares was the Record Date (13 December 2021).
37. On the Implementation Date, Chalice satisfied the reduction of share capital by transferring all of the ordinary shares in Falcon to the shareholders of Chalice.
38. Chalice shareholders received one Falcon share for every 3.034 Chalice shares they held on the Record Date, and nothing else.
39. After the demerger, Chalice will not own any shares in Falcon.
40. As a result of the demerger, Chalice shareholders owned shares in both Chalice and Falcon.
41. Shares in Falcon were listed for quotation on the ASX on 22 December 2021.

### **Accounting treatment**

42. Chalice accounted for the demerger by:
  - debiting its share capital account by \$2,883,804.44 (the capital reduction amount), and
  - debiting its demerger reserve account by \$44,029,889.02 (the demerger dividend).
43. The demerger dividend was calculated as the difference between the market value of the Falcon shares that were transferred and the capital reduction amount.

### **Reasons for the demerger**

44. The directors of Chalice wish to focus on developing their existing nickel-copper-PGE projects (particularly Julimar).
45. The nickel-copper and gold markets have significant differences in characteristics and risk profiles. The demerger will help investors to have flexibility in choosing their exposure to either company based on their investment objectives.
46. The directors of Chalice formed the view that the demerger will allow Chalice and Falcon to each develop the corporate strategies, capital structures and financial policies which are best suited for their different mining projects. It will also facilitate future projects.

### **Sale facility**

47. Ineligible Overseas Shareholders had the Falcon shares to which they were entitled sold by Chalice through a nominee on the ASX (Sale Facility), who remitted the net

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sale proceeds to the relevant shareholders. The shares of Ineligible Overseas Shareholders were transferred to the nominee on the Implementation Date.

48. Ineligible Overseas Shareholders were shareholders who were not Eligible Shareholders on the Record Date.

49. Eligible Shareholders were shareholders whose registered address on the Chalice share register on the Record Date was in Australia or New Zealand.

#### **Other matters**

50. Just before the Implementation Date, approximately 32% of the shares in Chalice were held by foreign residents.

51. Just before the Implementation Date, an Australian resident and their associates held more than 10% of the shares in Chalice, but they did not hold any options or performance rights issued by Chalice.

52. Immediately before the Implementation Date, Chalice's share capital account was not tainted (within the meaning of Division 197).

53. Chalice 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 for all Chalice shareholders.

54. Just after the demerger, CGT assets owned by Falcon 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 (subsection 44(5) of the ITAA 1936).

55. For the purposes of the cost base and reduced cost base apportionment under subsections 125-80(2) and (3), a reasonable approximation of the market values of a Chalice share and a Falcon share just after the demerger has been calculated as:

- \$9.0298 for each Chalice share, being the volume weighted average price of Chalice shares as traded on the ASX over the first five trading days from (and including) 22 December 2021
- 40.1 cents for each Falcon share, being the volume weighted average price of Falcon shares as traded on the ASX over the first five trading days from (and including) 22 December 2021.

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**Commissioner of Taxation**

9 February 2022

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## References

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*Previous draft:*

Not previously issued as a draft

*Legislative references:*

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| <ul style="list-style-type: none"> <li>- ITAA 1936 6(1)</li> <li>- ITAA 1936 44(1)</li> <li>- ITAA 1936 44(2)</li> <li>- ITAA 1936 44(3)</li> <li>- ITAA 1936 44(4)</li> <li>- ITAA 1936 44(5)</li> <li>- ITAA 1936 45A(1)</li> <li>- ITAA 1936 45A(2)</li> <li>- ITAA 1936 45B(2)(c)</li> <li>- ITAA 1936 45B(3)</li> <li>- ITAA 1936 45BA</li> <li>- ITAA 1936 45C</li> <li>- ITAA 1936 128B(3D)</li> <li>- ITAA 1997 104-135</li> <li>- ITAA 1997 104-135(3)</li> </ul> | <ul style="list-style-type: none"> <li>- ITAA 1997 104-165(3)</li> <li>- ITAA 1997 115-30(1)</li> <li>- ITAA 1997 125-55(1)</li> <li>- ITAA 1997 125-55(2)</li> <li>- ITAA 1997 125-60(1)</li> <li>- ITAA 1997 125-70</li> <li>- ITAA 1997 125-80(1)</li> <li>- ITAA 1997 125-80(2)</li> <li>- ITAA 1997 125-80(3)</li> <li>- ITAA 1997 125-85(1)</li> <li>- ITAA 1997 125-85(2)</li> <li>- ITAA 1997 Div 197</li> <li>- ITAA 1997 Div 230</li> <li>- ITAA 1997 855-10</li> <li>- ITAA 1997 855-15</li> <li>- ITAA 1997 977-50</li> <li>- ITAA 1997 995-1(1)</li> <li>- TAA 1953</li> <li>- Corporations Act 2001 256B</li> <li>- Corporations Act 2001 256C</li> </ul> |
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ATO references

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