



Status: **legally binding**

Class Ruling

OreCorp Limited – demerger of Solstice Minerals Limited

❶ Relying on this Ruling

This publication (excluding appendix) 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 Solstice Minerals Limited (Solstice Minerals) by OreCorp Limited (OreCorp), which was implemented on 22 April 2022 (Implementation Date).
2. Full details of this scheme are set out in paragraphs 20 to 44 of this Ruling.
3. All legislative references in this Ruling are to provisions of the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997* (as detailed in the table in the Appendix to this Ruling).

Who this Ruling applies to

4. This Ruling applies to you if you held ordinary shares in OreCorp and you:
 - were registered on the OreCorp share register on 13 April 2022 (Record Date)
 - held your shares in OreCorp on capital account on the Record Date; that is, you did not hold shares in OreCorp as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)), and
 - were a resident of Australia (as defined in subsection 6(1)) on the Implementation Date.

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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 20 to 44 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 relief is available on the separation of Solstice Minerals Limited

7. A demerger, as defined in section 125-70, happened to the OreCorp demerger group (which included OreCorp and Solstice Minerals) under the scheme described in paragraphs 20 to 44 of this Ruling. This has income tax consequences for you as set out in paragraphs 8 to 19 of this Ruling.

Capital gains tax consequences

CGT event G1

8. CGT event G1 happened when you were paid an amount by OreCorp in respect of your OreCorp shares by way of the transfer to you of Solstice Minerals 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 OreCorp share (\$0.0104) was more than the cost base of your OreCorp 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 a demerger roll-over

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

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

- any capital gain you made when CGT event G1 happened to your OreCorp shares under the demerger is disregarded (subsection 125-80(1))
- you must recalculate the first element of the cost base and reduced cost base of your OreCorp shares, and calculate the first element of the cost base and reduced cost base of the corresponding Solstice Minerals shares you acquired under the demerger (subsection 125-80(2)) (see paragraphs 13 to 15 of this Ruling for more details), and
- you are taken to have acquired Solstice Minerals 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 Solstice Minerals shares you received under the demerger – see paragraph 16 of this Ruling).

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Not choosing a demerger roll-over

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

Cost base and reduced cost base of your OreCorp Limited and Solstice Minerals Limited shares

13. The first element of the cost base and reduced cost base of each OreCorp share and corresponding Solstice Minerals share is worked out by:
- taking the total of the cost bases of your OreCorp shares just before the demerger, and
 - apportioning that total between your OreCorp shares and the Solstice Minerals 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 OreCorp shares and Solstice Minerals shares or an anticipated reasonable approximation of those market values (subsections 125-80(2) and (3)).
15. The Commissioner accepts that a reasonable apportionment is to attribute:
- 97.06% of the total of the cost bases of your OreCorp shares just before the demerger to the OreCorp shares, and
 - 2.94% of the total of the cost bases of your Solstice Minerals shares just before the demerger to the corresponding Solstice Minerals shares.

Acquisition date of Solstice Minerals Limited 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 Solstice Minerals share you acquired under the demerger, you will be taken to have acquired the Solstice Minerals share on the date you acquired, for CGT purposes, the corresponding OreCorp share (table item 2 of subsection 115-30(1)). This will be the case whether or not you choose a demerger roll-over.

Not an assessable dividend

17. No part of the value of a Solstice Minerals share transferred to you under the demerger will be included in your assessable income under subsection 44(1). Although any part of the value of a Solstice Minerals share that exceeds the amount debited to the share capital account of OreCorp is a 'dividend' under subsection 6(1), it will be a 'demerger dividend' under subsections 44(3) to (5). A demerger dividend is non-assessable non-exempt income for you.

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

18. The Commissioner will not make a determination under subsection 45A(2) that section 45C applies in relation to the whole, or any 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 OreCorp shareholders under the demerger (subsection 45A(1)).

19. As the purpose condition in paragraph 45B(2)(c) is not satisfied, the Commissioner will not make a determination under subsection 45B(3) that either:

- section 45BA applies to the whole, or any part, of the demerger benefit provided to you under the demerger, or
- section 45C applies to the whole, or any part, of the capital benefit provided to you under the demerger.

Scheme

20. 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.

OreCorp Limited

21. OreCorp is an Australian-resident company that was incorporated on 27 January 2011 and whose shares were listed on the Australian Securities Exchange (ASX) on 4 August 2011.

22. OreCorp is a mineral development and exploration company with gold and base metal projects located in Tanzania and Western Australia.

23. Immediately before the Implementation Date, OreCorp had on issue:

- 397,797,558 single class fully-paid ordinary shares
- 6,289,495 unquoted share options under issue which give the shareholder the right to acquire shares in OreCorp; option holders do not have any rights to participate in any issues of shares or other interests in OreCorp or any other entity
- 2,090,090 performance rights giving the holder the right to acquire shares in OreCorp; performance right holders do not have any rights to participate in any issue of shares or other interests in OreCorp or any other entity.

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

25. Immediately before the Implementation Date, OreCorp had:

- \$140,764,748 credited to its share capital account, and
- accumulated losses of \$91,833,897.

26. Immediately before the Implementation Date, less than 10% of OreCorp shares were held by shareholders with a registered address outside of Australia.

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Solstice Minerals Limited

27. Solstice Minerals is a company incorporated in Australia.
28. Solstice Minerals holds (either directly or indirectly through its wholly-owned subsidiary GreenCorp Metals Pty Ltd) interests in Western Australian exploration assets (WA Assets).
29. Immediately before the Implementation Date, Solstice Minerals had 40 million fully-paid ordinary shares on issue, which were all owned by OreCorp.

The demerger of Solstice Minerals Limited

30. The demerger of Solstice Minerals was undertaken by a reduction of share capital under section 256B of the *Corporations Act 2001*.
31. The shareholders of OreCorp voted at a meeting on 7 April 2022 to approve an ordinary resolution under section 256C of the *Corporations Act 2001* to reduce the share capital of OreCorp by an amount (the capital reduction amount) equal to the market value of all the fully-paid ordinary shares in the capital of Solstice Minerals less a demerger dividend. The capital reduction amount equated to \$0.0104 per OreCorp share.
32. The date for determining the entitlement of OreCorp shareholders to receive Solstice Minerals shares was the Record Date (13 April 2022).
33. On the Implementation Date (22 April 2022), OreCorp transferred shares in Solstice Minerals to OreCorp shareholders. Each OreCorp shareholder received one Solstice Minerals share for every 9.9449 OreCorp shares they held on the Record Date, and nothing else.
34. After the demerger, OreCorp did not own any shares in Solstice Minerals.
35. Shares in Solstice Minerals were listed for quotation on the ASX on 2 May 2022.

Accounting treatment

36. OreCorp accounted for the demerger by debiting its:
- share capital account by \$4,134,194 (the capital reduction amount), and
 - accumulated losses account by \$4,366,109 (the demerger dividend).
37. The demerger dividend was calculated as the difference between the market value of the Solstice Minerals shares distributed and the capital reduction amount.

Sale facility

38. Ineligible Foreign Shareholders had the OreCorp shares to which they were entitled sold by OreCorp through a nominee on the ASX (Sale Facility), who remitted the net sale proceeds to the relevant shareholders. The shares of the Ineligible Foreign Shareholders were transferred to the nominee on the Implementation Date.
39. Ineligible Foreign Shareholders were OreCorp shareholders with registered addresses outside of Australia and New Zealand on the Record Date.

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Reasons for demerger

40. The demerger was undertaken to achieve the following objectives:
- unlocking value for OreCorp shareholders by establishing 2 listed entities with separate geographically-focused objectives
 - allowing OreCorp to focus its efforts on the Nyanzaga development in Tanzania
 - securing sufficient funding for accelerated exploration and further growth plans with respect to the WA Assets
 - providing OreCorp shareholders with the opportunity to participate in the exploration and possible development of the WA Assets through a separate entity that will have sufficient resources to further develop the assets and optimise their value, while maintaining their investment exposure to OreCorp's Nyanzaga development
 - delivering superior value for shareholders in both OreCorp and Solstice Minerals
 - enabling both Solstice Minerals and OreCorp to undertake more targeted marketing to investors as both companies will have clear and more easily understood investment propositions, and
 - allowing for Solstice Minerals and OreCorp to have separate governance and management.

Other matters

41. Immediately before the Implementation Date, OreCorp's share capital account was not tainted (within the meaning of Division 197).
42. The performance rights and unlisted options in OreCorp were either employee share scheme interests that satisfied the conditions in subsection 125-75(2) or adjusting instruments as defined in subsection 125-75(5).
43. OreCorp did not elect under subsection 44(2) that subsections 44(3) and (4) would not apply to the demerger dividend for all OreCorp shareholders.
44. Just after the demerger, CGT assets owned by Solstice Minerals and 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)).

Commissioner of Taxation

1 June 2022

Status: **not legally binding**

Appendix – Legislative provisions

45. This paragraph sets out the details of the provisions ruled upon or referenced in this Ruling.

<i>Income Tax Assessment Act 1936</i>	subsection 6(1)
<i>Income Tax Assessment Act 1936</i>	subsection 44(1)
<i>Income Tax Assessment Act 1936</i>	subsection 44(2)
<i>Income Tax Assessment Act 1936</i>	subsection 44(3)
<i>Income Tax Assessment Act 1936</i>	subsection 44(4)
<i>Income Tax Assessment Act 1936</i>	subsection 44(5)
<i>Income Tax Assessment Act 1936</i>	subsection 45A(1)
<i>Income Tax Assessment Act 1936</i>	subsection 45A(2)
<i>Income Tax Assessment Act 1936</i>	paragraph 45B(2)(c)
<i>Income Tax Assessment Act 1936</i>	subsection 45B(3)
<i>Income Tax Assessment Act 1936</i>	section 45BA
<i>Income Tax Assessment Act 1936</i>	section 45C
<i>Income Tax Assessment Act 1997</i>	section 104-135
<i>Income Tax Assessment Act 1997</i>	subsection 104-135(3)
<i>Income Tax Assessment Act 1997</i>	subsection 115-30(1)
<i>Income Tax Assessment Act 1997</i>	subsection 125-55(1)
<i>Income Tax Assessment Act 1997</i>	subsection 125-60(1)
<i>Income Tax Assessment Act 1997</i>	section 125-70
<i>Income Tax Assessment Act 1997</i>	subsection 125-75(2)
<i>Income Tax Assessment Act 1997</i>	subsection 125-75(5)
<i>Income Tax Assessment Act 1997</i>	subsection 125-80(1)
<i>Income Tax Assessment Act 1997</i>	subsection 125-80(2)
<i>Income Tax Assessment Act 1997</i>	subsection 125-80(3)
<i>Income Tax Assessment Act 1997</i>	subsection 125-85(1)
<i>Income Tax Assessment Act 1997</i>	subsection 125-85(2)
<i>Income Tax Assessment Act 1997</i>	Division 197
<i>Income Tax Assessment Act 1997</i>	Division 230
<i>Income Tax Assessment Act 1997</i>	section 977-50
<i>Income Tax Assessment Act 1997</i>	subsection 995-1(1)

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References

Legislative references:

- TAA 1953
 - Corporations Act 2001 256B
 - Corporations Act 2001 256C
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ATO references

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