



Status: **legally binding**

Class Ruling

Talon Energy Ltd – return of capital

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.

Table of Contents	Paragraph
What this Ruling is about	1
Who this Ruling applies to	4
When this Ruling applies	6
Ruling	7
Scheme	22
Appendix – Legislative provisions	42

What this Ruling is about

1. This Ruling sets out the income tax consequences for shareholders of Talon Energy Ltd (Talon) who received the in specie return of 1,001,017,240 TMK Energy Limited (TMK) ordinary shares and 500,508,620 listed TMK options (TMKOB options) on 22 December 2023 (Payment Date).
2. Details of this scheme are set out in paragraphs 22 to 41 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), unless otherwise indicated.

Note: By issuing this Ruling, the ATO is not endorsing this scheme. Potential participants must form their own view about the scheme.

Who this Ruling applies to

4. This Ruling applies to you if you are:
 - a person who holds ordinary shares in Talon (Talon shares) as at the Record Date (being 15 December 2023)
 - either a resident or a non-resident of Australia for the purposes of the Australian income tax legislation, including by virtue of the operation of any double-tax agreement between Australia and any other country
 - not a ‘temporary resident’ of Australia within the meaning of subsection 995-1(1)

Status: legally binding

- a person who holds their Talon shares on capital account (and not as trading stock, on revenue account or a shareholder who acquired their shares in connection with their employment) for income tax purposes, and
- not exempt from Australian income tax.

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 22 to 41 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 2023 to 30 June 2024.

Ruling

Demerger relief is not available

7. Demerger relief (being demerger roll-over under Division 125) is not available for the transfer of TMK shares and TMKOB options by Talon to its shareholders as the scheme does not qualify as a 'demerger' as defined in subsection 125-70(1). This is because the restructuring of the demerger group (of which Talon was the head entity) included both the reduction of share capital by Talon (under which you acquired shares and options in TMK) and the acquisition of Talon shares by Strike Energy Limited (under which you acquired shares in Strike Energy Limited). This resulted in the failure of the 'nothing else' condition in paragraph 125-70(1)(c).

Return of capital is not assessable income

8. No part of the return of capital you received from Talon on the Payment Date is a dividend as defined in subsection 6(1). This is because the entire amount of the return of capital has been debited against an amount standing to the credit of Talon's share capital account. Therefore, no part of the return of capital is included in your assessable income as a dividend under subsection 44(1).

Anti-avoidance provisions

9. We will not make a determination that section 45C applies to any part of the return of capital you received on the Payment Date, under either:

- subsection 45A(2) – because there was no streaming of capital benefits to some Talon shareholders and dividends to other Talon shareholders as required by subsection 45A(1), or
- subsection 45B(3) – because the requirements of subsection 45B(2) were not satisfied.

Status: **legally binding**

Capital gains tax consequences**CGT event G1**

10. CGT event G1 happened on the Payment Date when Talon paid you the return of capital in respect of each Talon share you owned on the Record Date and continued to own on the Payment Date (section 104-135).
11. You made a capital gain when CGT event G1 happened if the capital proceeds you received was more than your Talon share's cost base (subsection 104-135(3)). You cannot make a capital loss when CGT event G1 happens (Note 1 to subsection 104-135(3)).
12. Your capital proceeds are equal to the market value of the TMK shares and TMKOB options you received on the Payment Date with reference to the market value substitution rule in section 116-30.
13. If the capital proceeds you received were equal to or less than the cost base of your Talon share, the cost base and reduced cost base of your Talon share is reduced by the amount of the capital proceeds (subsection 104-135(4)).

CGT event C2

14. CGT event C2 happened to your right to receive the return of capital on the Payment Date when Talon paid you the return of capital in respect of each Talon share you owned on the Record Date but ceased to own before the Payment Date (section 104-25).
15. You made a capital gain under CGT event C2 if the capital proceeds from the ending of the right were more than the cost base of the right. You made a capital loss if the capital proceeds from the ending of the right were less than the reduced cost base of the right (subsection 104-25(3)).
16. Your capital proceeds are equal to the right to the market value of the TMK shares and TMKOB options you received on the Payment Date (subsection 116-20(1)) with reference to the market value substitution rule in section 116-30.
17. The cost base of your right to receive the return of capital is worked out under Division 110 (modified by Division 112). The cost base of the right does not include the cost base or reduced cost base of the Talon shares previously owned by you to the extent that it was applied in working out a capital gain or capital loss made when a CGT event happened to those shares. Therefore, if the cost base or reduced cost base of the share previously owned by you has been fully applied in working out a capital gain or capital loss on the share, the right to receive the return of capital will have a nil cost base.

Discount capital gains

18. You treat a capital gain made when CGT event G1 or CGT event C2 happened as a discount capital gain if you acquired your Talon shares at least 12 months before the Payment Date (subsection 115-25(1)), provided the other conditions in Subdivision 115-A are satisfied.

Status: **legally binding**

Foreign resident shareholders

19. You disregard any capital gain made from CGT event G1 or any capital gain or capital loss from CGT event C2 happening to your Talon shares if:

- you were a foreign resident just before the Payment Date (that is, you were not a resident of Australia as defined in subsection 6(1)), and
- your Talon shares were not 'taxable Australian property' (as defined in section 855-15).

20. Your Talon shares were taxable Australian property if they were:

- an 'indirect Australian real property interest' (table item 2 of section 855-15 and subsection 855-25(1))
- used by you at any time in carrying on a business through a permanent establishment in Australia (table item 3 of section 855-15), or
- 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).

21. Your Talon shares were an 'indirect Australian real property interest' if they passed the:

- non-portfolio interest test (section 960-195) – that is, you (and any of your associates as defined in section 318) held 10% or more of the shares in Talon
 - at the time of the CGT event, or
 - throughout a 12-month period that began no earlier than 24 months before the time of the CGT event and ended no later than the time of the CGT event, and
- principal asset test (section 855-30) at the time of the CGT event if the sum of the market values of Talon's assets that are taxable Australian real property (as defined in section 855-20) exceeds the sum of the market values of Talon's assets that are not taxable Australian real property.

Scheme

22. 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.

Talon Energy Ltd

23. Talon is a company incorporated in Australia with shares listed on the Australian Securities Exchange.

24. Talon was administered from its head office in Perth, Western Australia and held interests in several Perth Basin permits. Talon also held a right to acquire an interest in Gurvantes XXXV.

25. Talon had a single class of shares on issue, being ordinary shares.

Status: **legally binding**

26. Before the return of capital, Talon had a share capital balance of \$93,671,674 and it had accumulated losses on a stand-alone and consolidated basis.

27. As at 31 December 2023, Talon's franking account balance was nil.

The Gurvantes Project

28. Gurvantes XXXV was a joint venture between Talon and the TMK Energy Limited (TMK) group targeting a coal seam gas project in Southern Mongolia (the Gurvantes Project).

29. Talon held a 33% beneficial interest in the Gurvantes Project through its indirectly wholly owned subsidiary Talon Energy Mongolia LLC (TEM), which was Mongolia incorporated.

30. TEM was wholly owned by Talon Energy Pte Ltd (Singapore incorporated), which was wholly owned by Talon.

Scheme of arrangement and demerger of the Gurvantes Project

31. On 14 August 2023, Talon announced that it had entered into a Scheme Implementation Deed with Strike Energy Limited by way of a scheme of arrangement under Part 5.1 of the *Corporations Act 2001*. In addition, Talon also announced the proposed demerger of the Gurvantes Project to Talon shareholders.

The Gurvantes Transaction

32. TMK is a company incorporated in Australia with shares listed on the Australian Securities Exchange.

33. On 8 December 2023, Talon completed a transaction with TMK (the Gurvantes Transaction) pursuant to which:

- TMK obtained Talon's 33% earned interest in the Gurvantes Project via the acquisition of Talon Energy Pte Ltd.
- TMK issued 1,092,000,000 fully paid ordinary shares in TMK and 546,000,000 listed TMKOB options (exercisable at \$0.025 on or before 30 April 2026) to Talon upon completion.
- Talon transferred a funding contribution payment of \$600,000 to TMK.

34. TMK had 6,122,579,300 ordinary shares and 969,052,867 TMKOB options on issue after the Gurvantes Transaction.

35. Talon made a net loss of \$1,233,403 for accounting purposes as a result of the Gurvantes Transaction.

The return of capital

36. On 22 December 2023, following settlement of the Gurvantes Transaction, Talon undertook an in specie distribution of 1,001,017,240 TMK ordinary shares and 500,508,620 listed TMKOB options to eligible Talon shareholders as at the Record Date by way of a reduction of share capital in accordance with sections 256B and 256C of the *Corporations Act 2001*.

Status: **legally binding**

37. The remaining 90,982,760 TMK ordinary shares and 45,491,380 listed TMKOB options were retained by Talon, some of which were provided to Talon's advisors to satisfy certain transaction costs resulting from the Gurvantes Transaction.

38. On the Payment Date, Talon shareholders received 1.511 TMK shares and 0.755 TMKOB options for each share held in Talon. The market value of the TMK shares and TMKOB options received in respect of each Talon share was \$0.013598.

39. On the Payment Date, the total market value of the distribution was \$9,009,155, which was entirely debited to Talon's share capital account.

Other matters

40. Talon's share capital account (as defined in section 975-300) was not tainted (within the meaning of Division 197).

41. On the Payment Date, non-resident shareholders held less than 2% of the shares in Talon.

Commissioner of Taxation

14 August 2024

Status: **not legally binding****Appendix – Legislative provisions**

42. This paragraph sets out the details of the provisions of the *Income Tax Assessment Act 1936* and *Income Tax Assessment Act 1997* ruled upon or referenced in this Ruling.

Table 1: Provisions of the Income Tax Assessment Act 1936 and Income Tax Assessment Act 1997 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 45A(1)
<i>Income Tax Assessment Act 1936</i>	subsection 45A(2)
<i>Income Tax Assessment Act 1936</i>	subsection 45B(2)
<i>Income Tax Assessment Act 1936</i>	subsection 45B(3)
<i>Income Tax Assessment Act 1936</i>	section 45C
<i>Income Tax Assessment Act 1936</i>	section 318
<i>Income Tax Assessment Act 1997</i>	section 104-25
<i>Income Tax Assessment Act 1997</i>	subsection 104-25(3)
<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 104-135(4)
<i>Income Tax Assessment Act 1997</i>	subsection 104-165(3)
<i>Income Tax Assessment Act 1997</i>	Division 110
<i>Income Tax Assessment Act 1997</i>	Division 112
<i>Income Tax Assessment Act 1997</i>	Subdivision 115-A
<i>Income Tax Assessment Act 1997</i>	subsection 115-25(1)
<i>Income Tax Assessment Act 1997</i>	subsection 116-20(1)
<i>Income Tax Assessment Act 1997</i>	section 116-30
<i>Income Tax Assessment Act 1997</i>	Division 125
<i>Income Tax Assessment Act 1997</i>	subsection 125-70(1)
<i>Income Tax Assessment Act 1997</i>	paragraph 125-70(1)(c)
<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 855-15
<i>Income Tax Assessment Act 1997</i>	section 855-20
<i>Income Tax Assessment Act 1997</i>	subsection 855-25(1)
<i>Income Tax Assessment Act 1997</i>	section 855-30
<i>Income Tax Assessment Act 1997</i>	section 960-195
<i>Income Tax Assessment Act 1997</i>	section 975-300
<i>Income Tax Assessment Act 1997</i>	subsection 995-1(1)

Status: **not legally binding**

References

Legislative references:

- Corporations Act 2001 Pt 5.1
 - Corporations Act 2001 256B
-

ATO references

NO: 1-11W2DOFX
ISSN: 2205-5517
BSL: PG
ATOlaw topic: Income tax ~~ Capital management ~~ Share capital return
Capital gains tax ~~ CGT events ~~ C1 to C3 – end of a CGT asset
Capital gains tax ~~ CGT events ~~ G1 to G3 – shares

© AUSTRALIAN TAXATION OFFICE FOR THE COMMONWEALTH OF AUSTRALIA

You are free to copy, adapt, modify, transmit and distribute this material as you wish (but not in any way that suggests the ATO or the Commonwealth endorses you or any of your services or products).