



Status: **legally binding**

Class Ruling

Premier1 Lithium Limited – in specie distribution of Tully Investors Limited shares

❶ Relying on this Ruling

This publication (excluding appendixes) 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 for shareholders of Premier1 Lithium Limited (Premier1) who received an in specie distribution of shares in Tully Investors Limited (Tully) on 25 January 2024 (Implementation Date).
2. Details of this scheme are set out in paragraphs 22 to 38 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 Appendix 2 to this Ruling), unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you:
 - held shares in Premier1 on 23 January 2024 (Record Date), and
 - held your shares on capital account – that is, you did not hold your Premier1 shares as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)).
5. This Ruling does not apply to anyone who is subject to the taxation of financial arrangements rules in Division 230.

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

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When this Ruling applies

6. This Ruling applies from 1 July 2023 to 30 June 2024.

Ruling**Demerger relief not available**

7. Demerger relief (being demerger roll-over pursuant to Division 125 and demerger dividend treatment under subsections 44(3) and (4)) is not available as the requirements under subsection 125-70(1) were not satisfied.

Return of capital not a dividend

8. The return of capital you received in the form of an in specie distribution of shares in Tully is not a dividend as defined in subsection 6(1).

Return of capital not assessable as ordinary income

9. The return of capital you received in the form of an in specie distribution of shares in Tully is not assessable as ordinary income under section 6-5.

Sections 45B and 45C do not apply

10. The Commissioner will not make a determination under paragraph 45B(3)(b) that section 45C applies to the whole, or any part, of the return of capital you received in the form of an in specie distribution of shares in Tully.

Capital gains tax consequences**CGT event G1**

11. CGT event G1 happened to you when Premier1 paid you an amount in the form of an in specie distribution of shares in Tully in respect of each Premier1 share you owned on the Record Date and continued to own on the Implementation Date (section 104-135).

12. You made a capital gain from CGT event G1 happening if the return of capital amount of 6.7c per Premier1 share you received was more than the cost base of your Premier1 share. The capital gain is equal to the difference, and the cost base and reduced cost base of your Premier1 shares are reduced to nil (subsection 104-135(3)).

13. You cannot make a capital loss from CGT event G1 happening (Note 1 to subsection 104-135(3)).

14. If the return of capital amount of 6.7c per Premier1 share you received was not more than the cost base of your Premier1 share, each of the cost base and reduced cost base of your Premier1 shares is reduced by the amount of the return of capital (but not below nil) (subsection 104-135(4)).

Status: **legally binding**

CGT event C2

15. CGT event C2 happened to you on the Implementation Date when Premier1 paid you an amount in the form of an in specie distribution of shares in Tully in respect of the Premier1 shares that you owned on the Record Date but ceased to own before the Implementation Date (section 104-25).

16. You received capital proceeds of 6.7c in satisfaction of the right to receive a Tully share (paragraph 116-20(1)(a)).

17. You made a capital gain when CGT event C2 happened equal to the amount of the capital proceeds as you did not pay, or were not required to pay, for the right to receive a Tully share (subsection 104-25(3)).

Discount capital gain

18. You can treat a capital gain made when CGT event G1 or CGT event C2 happened in respect of the return of capital as a discount capital gain if you acquired your Premier1 share on or before 24 January 2023, which was at least 12 months before the Implementation Date (subsection 115-25(1)), provided the other conditions in Subdivision 115-A are satisfied.

Cost base and reduced cost base of Tully Investors Limited share

19. The first element of the cost base and reduced cost base of each Tully share you received is 6.7c, which we accept as being the market value of each Tully share (subsections 110-25(2) and 110-55(2)).

20. You are taken to have acquired the Tully share on the Implementation Date (table event number A1 (case 1) in subsection 109-5(2)).

Foreign-resident shareholders

21. If you were a foreign resident or the trustee of a foreign trust for CGT purposes as defined in subsection 995-1(1), you disregard any capital gain made from CGT event G1 or any capital gain made from CGT event C2 under subsection 855-10(1) as a Premier1 share or your right to receive the Tully share is not an 'indirect Australian real property interest' (table item 2 of section 855-15), provided that:

- you did not use your Premier1 share or right at any time in carrying on a business through a permanent establishment in Australia (table item 3 of section 855-15), or
- your Premier1 share or right was not covered by subsection 104-165(3) about individuals who defer capital gains upon ceasing to be an Australian resident (table item 5 of section 855-15).

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.

Status: **legally binding**

Background

23. Premier1 is an Australian-resident company that was incorporated on 7 November 2019 (as SensOre Ltd) and whose shares became listed on the Australian Securities Exchange on 11 February 2022.
24. Premier1 is a mineral exploration and technology company operating in Australia with exploration assets in Western Australia which are still at the exploration stage.
25. Tully is an Australian-resident company that was incorporated on 11 December 2023 and was a wholly owned subsidiary of Premier1. After incorporation, Tully became the holder of the technology assets of the group.
26. On 18 December 2023, Premier1 announced its decision to strategically divide its exploration and technology assets by privatising its technology assets. The directors of Premier1 formed the view that the separation of Tully from Premier1, among other things, would provide a structure that allowed for Tully to focus specifically on advancing the technology assets and for Premier1 to focus its efforts on its lithium and critical minerals projects.
27. On 19 December 2023, Premier1 released the Notice of Meeting to Premier1 shareholders for a general meeting to approve the reduction of capital and in specie distribution of Tully shares.

In specie distribution

28. On 17 January 2024, Premier1 shareholders approved the reduction of capital and in specie distribution of Tully shares at the general meeting.
29. On 25 January 2024, Premier1 implemented the in specie distribution of 80,274,094 Tully shares to Premier1 shareholders. Premier1 shareholders received one Tully share for every Premier1 share they held at the Record Date.
30. The in specie distribution received by Premier1 shareholders for each Tully share comprised of a return of capital of 6.7c per Premier1 share.
31. The total return of capital amount of \$5,578,137 was debited against Premier1's share capital account.
32. As at the Implementation Date, the value of a Tully share received by a Premier1 shareholder and the sale agent (in the case of an ineligible shareholder) was determined to be 6.7c calculated using a comparable transaction approach and the potential revenue flows from the technology.

Ineligible shareholders

33. Premier1 shareholders with a registered address outside Australia, or in Australia but had not declared their tax file number, tax file number exemption or Australian business number to the Premier1 Share Registry, were ineligible to receive the in specie distribution of Tully shares.
34. The Tully shares which ineligible shareholders were otherwise entitled to were transferred to the sale agent on the Record Date and sold on their behalf. The net proceeds were then paid to the ineligible shareholders.

Status: **legally binding**

Capital structure of Premier1 Lithium Limited

35. Just prior to the in specie distribution of Tully shares, Premier1 had:
- \$28,123,842 credited to its share capital account
 - accumulated losses of \$26,359,287
 - equity reserves of \$5,689,128, and
 - 80,274,094 ordinary shares on issue.
36. Premier1's share capital account (as defined in section 975-300) was not tainted for the purpose of section 197-50.

Other matters

37. Premier1's shareholders include both Australian and foreign residents and are a mix of individuals, companies, trusts and superannuation funds.
38. In conjunction with the in specie distribution of Tully shares and on the Implementation Date:
- Premier1 completed an acquisition via the issue of 34.3 million fully paid ordinary shares and 26 million options from joint-venture partner, Deutsche Rohstoff AG, of the 70% interest in Exploration Ventures AI Pty Ltd (for 100% ownership of certain lithium assets held by that company) that Premier1 did not already own. Deutsche Rohstoff AG thereby held a 19.9% interest in Premier1 after the Implementation Date.
 - Premier1 completed a capital raising of \$3 million for drilling at the Abbotts North lithium prospect. The capital raising was achieved through the allotment and issue of 60 million fully paid ordinary shares in Premier1 at \$0.05 per share to sophisticated and institutional investors. 7.5 million broker options were also allotted and issued to PAC Partners Securities Pty Ltd.

Commissioner of Taxation

2 October 2024

Status: **not legally binding**

Appendix 1 – Explanation

❶ *This Explanation 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.*

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Demerger relief not available

39. Demerger relief is not available as the scheme does not satisfy the requirements of a demerger under subsection 125-70(1). This is because the restructuring of the demerger group headed by Premier1 was taken to include the joint-venture asset acquisition and \$3 million capital raising, which resulted in the failure of the proportionate market value test in paragraph 125-70(2)(b) (that is, paragraph 125-70(1)(h) not being satisfied).

Return of capital is not a dividend

40. The term 'dividend' is defined in subsection 6(1) to include any distribution made by a company to any of its shareholders but excludes a distribution debited against an amount standing to the credit of the company's share capital account.

41. As the return of capital was debited to Premier1's untainted share capital account, it is not a dividend.

42. As the return of capital is not a dividend, no part of the return of capital is included in your assessable income under subsection 44(1).

Sections 45B and 45C do not apply

43. Section 45B is an anti-avoidance provision which applies where, having regard to the relevant circumstances of the scheme as set out in subsection 45B(8), a company provided certain capital payments to its shareholders for a more than incidental purpose of enabling a taxpayer to obtain a tax benefit.

44. Having regard to the relevant circumstances of the scheme, it cannot be concluded that it was entered into or carried out for a more than incidental purpose of enabling Premier1 shareholders to obtain a tax benefit. Accordingly, section 45B does not apply.

Status: **not legally binding**

Capital gains tax consequences**CGT event C2**

45. CGT event C2 (section 104-25) happened to you, in respect of your right to receive the in specie distribution, when Premier1 made the in specie distribution of a Tully share for every Premier1 share that you owned on the Record Date and no longer owned on the Implementation Date. That is, CGT event C2 happened, and not CGT event G1, if you disposed of your Premier1 shares after the Record Date but before the Implementation Date.

46. The cost base of your right to receive the in specie distribution is worked out under Division 110 (modified by Division 112). As you did not pay, or were not required to pay for the right, the cost base of the right is nil. The cost base of the right does not include the cost base or reduced cost base of the Premier1 share you previously owned which was applied in working out a capital gain or capital loss when CGT event A1 happened when you disposed of your Premier1 share after the Record Date but before the Implementation Date (section 104-10).

47. You made a capital gain when CGT event C2 happened equal to the amount of the capital proceeds of 6.7c as you did not pay, or were not required to pay, for the right to receive a Tully share (subsection 104-25(3)).

48. For the purposes of Subdivision 109-A, you are considered to have acquired the right at the time when you acquired your Premier1 share. Therefore, you can treat a capital gain made when CGT event C2 happened on the ending of the right as a discount capital gain under Subdivision 115-A if you acquired your Premier1 share on or before 24 January 2023, which was at least 12 months before the Implementation Date (subsection 115-25(1)) provided the other conditions in Subdivision 115-A are satisfied.

Foreign-resident shareholders

49. A capital gain from a CGT event G1 or a CGT event C2 is disregarded if:

- just before the CGT event happened, you are a foreign resident, or the trustee of a foreign trust for CGT purposes, and
- the CGT event happens in relation to a CGT asset that is not taxable Australian property (subsection 855-10(1)).

50. The term 'taxable Australian property' is defined in the table in section 855-15. Your Premier1 share or right to receive a Tully share was not an 'indirect Australian real property interest' (table item 2 in section 855-15). Therefore, your Premier1 share or right will constitute taxable Australian property if:

- you used your Premier1 share or right at any time in carrying on a business through a permanent establishment in Australia (table item 3 in section 855-15), or
- your Premier1 share or right was covered by subsection 104-165(3) about individuals who defer capital gains upon ceasing to be an Australian resident (table item 5 in section 855-15).

Status: **not legally binding****Appendix 2 – Legislative provisions**

51. 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 44(3)
<i>Income Tax Assessment Act 1936</i>	subsection 44(4)
<i>Income Tax Assessment Act 1936</i>	section 45B
<i>Income Tax Assessment Act 1936</i>	paragraph 45B(3)(b)
<i>Income Tax Assessment Act 1936</i>	subsection 45B(8)
<i>Income Tax Assessment Act 1936</i>	section 45C
<i>Income Tax Assessment Act 1997</i>	section 6-5
<i>Income Tax Assessment Act 1997</i>	section 104-10
<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>	Subdivision 109-A
<i>Income Tax Assessment Act 1997</i>	subsection 109-5(2)
<i>Income Tax Assessment Act 1997</i>	Division 110
<i>Income Tax Assessment Act 1997</i>	subsection 110-25(2)
<i>Income Tax Assessment Act 1997</i>	subsection 110-55(2)
<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>	paragraph 116-20(1)(a)
<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)(h)
<i>Income Tax Assessment Act 1997</i>	paragraph 125-70(2)(b)
<i>Income Tax Assessment Act 1997</i>	section 197-50
<i>Income Tax Assessment Act 1997</i>	Division 230
<i>Income Tax Assessment Act 1997</i>	subsection 855-10(1)
<i>Income Tax Assessment Act 1997</i>	section 855-15
<i>Income Tax Assessment Act 1997</i>	section 975-300
<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

ATO references

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