



CR 2012/22 - Income tax: demerger of Lyell Resources Limited by Bondi Mining Limited

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Class Ruling

Income tax: demerger of Lyell Resources Limited by Bondi Mining Limited

Contents	Para
LEGALLY BINDING SECTION:	
What this Ruling is about	1
Date of effect	8
Scheme	9
Ruling	33
NOT LEGALLY BINDING SECTION:	
Appendix 1:	
Explanation	53
Appendix 2:	
Detailed contents list	72

ⓘ This publication provides you with the following level of protection:

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

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provisions identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provisions

2. The relevant provisions dealt with in this Ruling are:

- subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936);
- section 44 of the ITAA 1936;
- section 45B of the ITAA 1936;
- section 45C of the ITAA 1936;
- section 104-135 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- subsection 109-5(2) of the ITAA 1997;
- section 115-30 of the ITAA 1997;
- Division 125 of the ITAA 1997; and
- Section 855-10 of the ITAA 1997.

Class of entities

3. The class of entities to which this Ruling applies consists of the shareholders of Bondi Mining Limited (Bondi) who:

- were listed on the share register of Bondi as at the Record Date (15 December 2011);
- held their Bondi Shares on capital account on the Record Date; and
- are not subject to the taxation of financial arrangements rules in Division 230 of the ITAA 1997 in relation to gains and losses on their Bondi shares.

(Note: Division 230 of the ITAA 1997 will generally not apply to individuals, unless they have made an election for it to apply to them).

Qualifications

4. The Commissioner makes this Ruling based on the precise Scheme identified in this Ruling.

5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 9 to 32 of this Ruling.

6. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
- this Ruling may be withdrawn or modified.

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Date of effect

8. This Ruling applies from 1 July 2011 to 30 June 2012. The Ruling continues to apply after 30 June 2012 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Scheme

9. The following description of the scheme is based on information provided by the applicant.

Note: where certain information has been provided on a commercial-in-confidence basis, it will not be disclosed or released under Freedom of Information legislation.

Background

10. On 29 August 2011, Bondi announced to the Australian Securities Exchange (ASX) that it proposed to undertake a merger with an unlisted public company World Titanium Resources Ltd (WTR), by way of a Scheme of Arrangement.

11. A condition precedent of this merger was that Bondi dispose of its non African assets.

12. At a General Meeting held on 5 December 2011 Bondi shareholders approved the disposal of Bondi's shareholding in Murphy Uranium Pty Ltd (Murphy Uranium) and Mount Owen Resources Pty Ltd (Mt Owen) to Lyell Resources Limited (Lyell Resources), and the subsequent demerger of Lyell Resources.

Relevant entities

13. Immediately prior to the demerger, Bondi was an Australian resident copper and uranium exploration company listed on the ASX.

14. Bondi had a focus on high-grade cycle-proof uranium targets in the Northern Territory and Queensland and also high quality copper-gold targets with the potential for hosting a world-class deposit in Tasmania and Namibia.

15. As at 4 November 2011, Bondi had 120,412,807 shares on issue. It also had 5,235,000 options on issue.

16. At the time of entering into the agreement with WTR, Bondi had 100% ownership interests in three companies, Mount Owen, Murphy Uranium and Bondi Mining Namibia.

17. All Bondi's non African assets were held in Mt Owen and Murphy Uranium.
18. In accordance with the resolutions passed at the General Meeting of Shareholders on 5 December 2011, 100% of Bondi's shareholding in Mt Owen and Murphy Uranium were transferred to Lyell Resources.
19. Immediately following this transaction, Bondi held 100% of the issued share capital of Lyell Resources.
20. On completion of the Scheme of Arrangement for the merger between WTR and Bondi on 30 December 2011, Bondi changed its name to World Titanium Resources Limited.

The demerger of Lyell Resources

21. On 5 December 2011 Bondi shareholders voted at a General Meeting to approve a capital reduction satisfied by an *in specie* distribution to the shareholders of Bondi of 100% of the ordinary shares in Lyell Resources held by Bondi.
22. Bondi shareholders received one Lyell Resources share for every ten shares held in Bondi.
23. Bondi option holders received one option in Lyell Resources for every ten options held in Bondi.
24. The demerger of Lyell Resources from Bondi was effected by a reduction in the share capital of Bondi and by payment of a demerger dividend that was satisfied by an *in specie* distribution of 100% of the shares in Lyell Resources held by Bondi to Bondi shareholders.
25. Bondi accounted for the demerger as follows:
- | | |
|------------------------------|--------------|
| DR Share Capital | \$11,435,000 |
| DR Share options reserve | \$530,000 |
| CR Shares in Lyell Resources | \$11,965,000 |

Note: Bondi raised \$530,000 for the issue of options to fund the acquisition of Murphy Uranium. This amount was recorded in a Share Options Reserve.

26. Bondi considered the main advantages from the demerger to be:
- allowing Bondi to focus on the development of projects in Africa;
 - facilitating the merger with WTR which had a requirement that all non African assets be disposed of prior to the merger; and
 - facilitating the raising of capital post-merger from investors with a particular focus on Africa.

27. As a result of the demerger, Bondi shareholders owned shares in both Bondi and Lyell Resources.

Other matters

28. Bondi confirmed that there have been no transfers to its share capital account, as defined in section 975-300 of the ITAA 1997 from any of its other accounts and accordingly its share capital account was not tainted (within the meaning of Division 197 of the ITAA 1997).

29. Bondi confirmed that capital gains tax (CGT) assets representing more than 50% of the market value of all the CGT assets of Lyell Resources and its subsidiaries would be used directly or indirectly in a business carried on by Lyell Resources or its subsidiaries just after the demerger.

30. Bondi has never paid a dividend to its shareholders.

31. Bondi confirmed that it did not make an election under subsection 44(2) of the ITAA 1936.

32. None of the Bondi shareholders acquired their shares in Bondi before 20 September 1985.

Ruling

CGT consequences

CGT event G1

33. CGT event G1 happened in relation to each Bondi share owned by a Bondi shareholder at the time Bondi made the payment of the capital reduction amount (section 104-135 of the ITAA 1997).

34. A Bondi shareholder made a capital gain when CGT event G1 happened if the market value of the capital reduction amount received for each Bondi share exceeded the cost base of that share. The capital gain is equal to the amount of the excess (subsection 104-135(3) of the ITAA 1997). No capital loss can be made when CGT event G1 happens.

Demerger roll-over relief

35. Bondi and its subsidiary Lyell Resources were part of a demerger group under subsection 125-65(1) of the ITAA 1997.

36. A demerger, as described under section 125-70 of the ITAA 1997, happened to this demerger group under the scheme.

37. Bondi shareholders are eligible to choose demerger roll-over relief under subsection 125-55(1) of the ITAA 1997.

CGT consequences of choosing roll-over

38. Bondi shareholders who choose demerger roll-over relief can disregard any capital gain made when CGT event G1 happened to their Bondi shares under the demerger (subsection 125-80(1) of the ITAA 1997).

Other CGT consequences of choosing roll-over

39. If Bondi shareholders choose roll-over relief, they must also recalculate the cost base and reduced cost base of their Bondi and Lyell Resources shares.

40. The first element of the cost base and reduced cost base of each Bondi share and corresponding Lyell Resources share received under the demerger is worked out as follows:

- sum the cost base of each Bondi share (just before the demerger); and
- apportion that sum over the Bondi shares and corresponding new Lyell Resources shares received under the demerger on a reasonable basis, having regard to the market values (just after the demerger) of the Bondi and Lyell Resources shares, or a reasonable approximation of those market values (subsections 125-80(2) and 125-80(3) of the ITAA 1997).

41. The Commissioner accepts that a reasonable apportionment of the total cost base is to:

- attribute 71.97% of the total cost base to the Bondi share; and
- attribute 28.03% of the total cost base to the Lyell Resources shares.

Bondi shareholders who do not choose roll-over

42. Bondi shareholders who do not choose demerger roll-over relief:

- are not entitled to disregard any capital gain made when CGT event G1 happened to their Bondi shares under the demerger; and
- the first element of the cost base and reduced cost base of each Bondi share and the corresponding Lyell Resources share is calculated in the same manner as if they had chosen demerger roll-over (see paragraph 40 and 41 of this Ruling) (subsections 125-85(1) and 125-80(2) of the ITAA 1997)).

Acquisition date of the Lyell Resources shares

43. For the purpose of determining eligibility for a discount capital gain, the Lyell Resources shares received by a Bondi shareholder will be taken to have been acquired on the date the shareholder acquired, for CGT purposes, the corresponding Bondi shares (item 2 in the table in subsection 115-30(1) of the ITAA 1997). This is the case whether demerger roll-over relief is chosen or not.

44. For all other CGT purposes, Bondi shareholders acquired their Lyell Resources shares on the date that the Lyell Resources shares were transferred to them by Bondi, being the Demerger Implementation Date (subsection 109-5(2) of the ITAA 1997).

Foreign resident shareholders

45. A foreign resident Bondi shareholder who received the *in specie* distribution of Lyell Resources shares disregards any capital gain made when CGT event G1 happens if their Bondi shares are not 'taxable Australian property' (section 855-10 of the ITAA 1997).

46. Bondi shareholders who are foreign residents cannot choose demerger roll-over under subsection 125-55(1) of the ITAA 1997 for their Bondi shares if the Lyell Resources shares they acquired under the demerger are not 'taxable Australian property' just after they acquired them (subsection 125-55(2) of the ITAA 1997).

47. The first element of the cost base and reduced cost base of each Bondi share and new Lyell Resources share is calculated in the same manner as if they had chosen demerger roll-over (see paragraphs 40 and 41 of this Ruling (subsections 125-85(1) and 125-85(2) of the ITAA 1997).

Dividend consequences

48. Any dividend arising under the demerger is a demerger dividend (subsection 6(1) of the ITAA 1936).

49. The demerger dividend is neither assessable income nor exempt income of the Bondi shareholders (subsections 44(3) and 44(4) of the ITAA 1936).

50. As the capital reduction amount was debited to Bondi's share capital account it is not a dividend, as defined in subsection 6(1) of the ITAA 1936.

Application of sections 45B, 45BA and 45C of the ITAA 1936

51. 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 any demerger benefit provided to Bondi shareholders under the demerger.

52. 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 participating Bondi shareholders under the demerger.

Commissioner of Taxation

4 April 2012

Appendix 1 – Explanation

❶ *This Appendix 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.*

CGT consequences

53. A significant tax consequence of the scheme is the availability of demerger roll-over under Division 125 of the ITAA 1997. Broadly, Bondi shareholders can choose roll-over to disregard a capital gain made under the demerger. There are special rules for calculating the cost base and reduced cost base of the Bondi and Lyell Resources shares for Bondi shareholders whether or not they choose roll-over.

Conditions for demerger roll-over relief

54. Subsection 125-55(1) of the ITAA 1997 provides that roll-over may be chosen if, at the time of the scheme:

- a shareholder owns a share in a company – this requirement was satisfied as participating shareholders owned shares in Bondi;
- the company is the head entity of a demerger group – this requirement was satisfied as Bondi was the head company of a demerger group (see paragraphs 13 to 20 of this Ruling);
- a demerger happens to the demerger group – this requirement was satisfied as a demerger happened to the Bondi demerger group (see paragraph 24 of this Ruling); and
- under the demerger a CGT event happens to the original interest and a new or replacement interest is acquired in the demerged entity – this requirement was satisfied because CGT event G1 happened to the Bondi shares (see paragraphs 33 to 34 of this Ruling) and Bondi shareholders received Lyell Resources shares under the demerger.

55. Under the scheme, the conditions for choosing demerger roll-over relief under Division 125 of the ITAA 1997 were satisfied. Therefore, Bondi shareholders can choose roll-over relief for the demerger.

56. However, under subsection 125-55(2) of the ITAA 1997, a foreign resident shareholder is not able to choose roll-over relief if the Lyell Resources shares received are not 'taxable Australian property' just after they were acquired.

Demerger Dividend

57. Subsection 44(1) of the ITAA 1936 operates to include in a shareholder's assessable income any dividend, within the meaning of that term in subsection 6(1) of the ITAA 1936, paid to a shareholder out of company profits.

58. Paragraph (d) of the definition of dividend in subsection 6(1) of the ITAA 1936 provides that a dividend excludes amounts debited against an amount standing to the credit of the share capital account of the company.

59. 'Share capital account' is defined in section 975-300 of the ITAA 1997 as an account that the company keeps of its share capital, or any other account created on or after 1 July 1998 where the first amount credited to the account was an amount of share capital.

60. However, subsection 975-300(3) of the ITAA 1997 provides that an account is not a share capital account if it is tainted. A share capital account is tainted if an amount to which Division 197 of the ITAA 1997 applies is transferred to the share capital account where the account is not already tainted.

61. In the circumstances of this demerger, Bondi debited a capital reduction amount to its 'share capital account' as that term is defined in subsection 6(1) of the ITAA 1936 and section 975-300 of the ITAA 1997. This amount is therefore not a dividend for the purposes of subsection 6(1) of the ITAA 1936 and is not assessable as a dividend under subsection 44(1) of the ITAA 1936.

62. However, Bondi shareholders received a dividend to the extent that the market value of the Lyell Resources shares distributed under the demerger exceeded the amount debited against the share capital account (see Taxation Ruling TR 2003/8).

63. This dividend is neither an assessable income nor an exempt income amount (subsections 44(3) and 44(4) of the ITAA 1936) if:

- the dividend is a demerger dividend (as defined in subsection 6(1) of the ITAA 1936);
- the head entity did not elect that subsections 44(3) and 44(4) of the ITAA 1936 do not apply to the demerger dividend (subsection 44(2) of the ITAA 1936); and
- subsection 44(5) of the ITAA 1936 is satisfied.

64. In the present circumstances, each of the conditions in paragraph 63 of this Ruling was satisfied. Therefore, any dividend received by Bondi shareholders under the demerger is neither assessable income nor exempt income by operation of subsections 44(3) and 44(4) of the ITAA 1936.

The application of sections 45B, 45BA and 45C of the ITAA 1936

65. Section 45B of the ITAA 1936 applies to ensure that relevant amounts are treated as dividends for taxation purposes if:

- (a) components of a demerger allocation as between capital and profit do not reflect the circumstances of the demerger; or
- (b) certain payments, allocations and distributions are made in substitution for dividends.

66. In this case, while the conditions of paragraphs 45B(2)(a) and 45B(2)(b) of the ITAA 1936 are met, the requisite purpose of enabling the Bondi shareholders to obtain a tax benefit (by way of a demerger benefit or a capital benefit) is not present.

67. Accordingly, the Commissioner will not make a determination under paragraphs 45B(3)(a) or 45B(3)(b) of the ITAA 1936 that either sections 45BA or 45C of the ITAA 1936 apply to the scheme to which this Ruling relates.

Foreign resident shareholders

68. Under subsection 855-10(1) of the ITAA 1997, an entity disregards a capital gain or capital loss from a CGT event if they are a foreign resident, or the trustee of a foreign trust for CGT purposes, just before the CGT event happens and the CGT event happens in relation to a CGT asset that is not 'taxable Australian property'.

69. The term 'taxable Australian property' is defined in the table in section 855-15 of the ITAA 1997. The table sets out five categories of CGT assets:

Item 1	taxable Australian real property;
Item 2	an indirect Australian real property interest not covered by item 5;
Item 3	a CGT asset used at any time in carrying on a business through a permanent establishment in Australia and which is not covered by item 1, 2 or 5;
Item 4	an option or right to acquire a CGT asset covered by item 1, 2 or 3; and
Item 5	a CGT asset that is covered by subsection 104-165(3) of the ITAA 1997 (choosing to disregard a gain or loss on ceasing to be an Australian resident).

70. A Bondi share is not an indirect Australian real property interest (as defined in section 855-25 of the ITAA 1997). Therefore a Bondi share will be 'taxable Australian property' if

- the Bondi share has been used at any time by the foreign resident Bondi shareholder in carrying on a

business through a permanent establishment in Australia (item 3 of the table in section 855-15 of the ITAA 1997), or

- the Bondi share is covered by subsection 104-165(3) of the ITAA 1997 (item 5 of the table in section 855-15 of the ITAA 1997).

71. A Bondi shareholder who is a foreign resident just before CGT event G1 happens disregards any capital gain made when CGT event G1 happens if their Bondi shares are not 'taxable Australian property' (section 855-10 of the ITAA 1997).

Appendix 2 – Detailed contents list

72. The following is a detailed contents list for this Ruling:

	Paragraph
What this Ruling is about	1
Relevant provisions	2
Class of entities	3
Qualifications	4
Date of effect	8
Scheme	9
Background	10
Relevant entities	13
The demerger of Lyell Resources	21
Other matters	28
Ruling	33
CGT consequences	33
<i>CGT event G1</i>	33
<i>Demerger roll-over relief</i>	35
<i>CGT consequences of choosing roll-over</i>	38
<i>Other CGT consequences of choosing roll-over</i>	39
<i>Bondi shareholders who do not choose roll-over</i>	42
<i>Acquisition date of the Lyell Resources shares</i>	43
<i>Foreign resident shareholders</i>	45
<i>Dividend consequences</i>	48
<i>Application of sections 45B, 45BA and 45C of the ITAA 1936</i>	51
Appendix 1 – Explanation	53
CGT consequences	53
Conditions for demerger roll-over relief	54
Demerger Dividend	57
The application of sections 45B, 45BA and 45C of the ITAA 1936	65
Foreign resident shareholders	68
Appendix 2 – Detailed contents list	72

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- Not previously issued as a draft
- ITAA 1936 45BA
 - ITAA 1936 45C
- Related Rulings/Determinations:*
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- capital benefit
 - capital gains
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 - demerger
 - demerger allocation
 - demerger benefit
 - demerger dividend
 - demerger group
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