CR 2020/74 - Iluka Resources Limited - demerger of Deterra Royalties Limited

Class Ruling

Iluka Resources Limited – demerger of Deterra Royalties Limited

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.

Table of Contents **Paragraph**

What this Ruling is about

1. This Ruling sets out the income tax consequences of the demerger of Deterra Royalties Limited (Deterra) by Iluka Resources Limited (IRL), which was implemented on 2 November 2020 (Implementation Date).

2. Full details of the demerger are set out in paragraphs 22 to 50 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 of this Ruling), unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you held ordinary shares in IRL and you:

- were registered on the IRL share register at 4:00pm (AWST) on 26 October 2020 (Record Date), and
- held your IRL shares on capital account on the Record Date, that is, you did not hold your shares in IRL 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 in relation to the scheme outlined in paragraphs 22 to 50 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 2020 to 30 June 2021.

Ruling

Demerger happened

7. A demerger, as defined in section 125-70, happened to the IRL demerger group, which included IRL and Deterra.

Capital gains tax (CGT) consequences

CGT event G1

8. CGT event G1 happened when you received, or were taken to have received, the Deterra shares (section 104-135, note to subsection 125-70(1), and section 125-235).

9. You make a capital gain from CGT event G1 happening if the cost base of your IRL share is less than 2.37 cents. If so, the capital gain is equal to the amount of the difference (subsection 104-135(3)).

10. No capital loss can be made from CGT event G1 (note to subsection 104-135(3)).

Choosing demerger roll-over

11. If you are an Australian resident, you can choose to obtain demerger roll-over for your IRL shares (subsection 125-55(1)).

12. If you are a foreign resident, you cannot choose to obtain demerger roll-over for your IRL shares unless you used the Deterra shares you acquired under the demerger in carrying on a business through a permanent establishment in Australia just after you acquired them (subsection 125-55(2) and table item 3 of section 855-15).

You chose roll-over and you had post-CGT IRL shares

13. If you did choose demerger roll-over and you acquired your IRL shares after 19 September 1985:

- you disregard any capital gain you made under CGT event G1 on your IRL shares (subsection 125-80(1))
- you apportion the total of the cost bases of your IRL shares just before the demerger amongst those shares and the corresponding Deterra shares you received under the demerger (subsection 125-80(2)), and
- your Deterra shares were acquired on the Implementation Date (section 109-5). However, for the purpose of determining your entitlement to a discount capital gain in relation to a subsequent CGT event that happens to the Deterra shares, they will be taken to have been acquired when you acquired the IRL shares (section 115-25 and table item 2 of subsection 115-30(1)).

You chose roll-over and you had pre-CGT IRL shares

14. If you did choose demerger roll-over and you acquired your IRL shares before 20 September 1985:

- you disregard any capital gain you made under CGT event G1 on your IRL shares (subsection 104-135(5)), and
- you are also taken to have acquired the corresponding Deterra shares you received under the demerger before 20 September 1985 (subsections 125-80(4), 125-80(5) and 125-80(6)).

Not choosing demerger roll-over

You did not choose roll-over and you had post-CGT IRL shares

15. If you did not choose demerger roll-over and you acquired your IRL shares after 19 September 1985:

- if you were an Australian resident, you cannot disregard a capital gain you made under CGT event G1 in relation to your IRL shares
- if you were a foreign resident, you cannot disregard a capital gain you made under CGT event G1 in relation to your IRL shares if
  - you have used the IRL shares at any time in carrying on a business in Australia through a permanent establishment (table item 3 of section 855-15), or
  - they are covered by subsection 104-165(3) (table item 5 in section 855-15)
- you apportion the total of the cost bases of your IRL shares amongst those shares and the corresponding Deterra shares you received under the demerger (section 125-85), and
- your Deterra shares were acquired on the Implementation Date (section 109-5). However, for the purpose of determining your entitlement to a discount capital gain in relation to a subsequent CGT event that happens to the Deterra shares, they will be taken to have been acquired when you acquired the IRL shares (section 115-25 and table item 2 in subsection 115-30(1)).

You did not choose roll-over and you had pre-CGT IRL shares

16. If you did not choose demerger roll-over and you acquired your IRL shares before 20 September 1985:

- you disregard any capital gain you made under CGT event G1 on your IRL shares (subsection 104-135(5))
- the first element of the cost bases and reduced cost bases of the corresponding Deterra shares you received under the demerger is their market value when you acquired them (subsections 110-25(2), 110-55(2) and 112-20(1)), and
- you are taken to have acquired those Deterra shares on the Implementation Date (section 109-5).

Apportioning the cost base of your IRL and Deterra shares

17. The apportionment of the total of the cost bases of your IRL shares amongst those shares and the corresponding Deterra shares you received under the demerger must be done on a reasonable basis, having regard to the market values of your IRL shares and Deterra shares just after the demerger, or an anticipated reasonable approximation of those market values (subsections 125-80(2) and 125-80(3)). The Commissioner accepts that a reasonable apportionment is to attribute:

- 54.91% of the total of the cost bases, just before the demerger, of your IRL shares you acquired after 19 September 1985 to those shares, and
- 45.09% of the total of the cost bases, just before the demerger, of your IRL shares you acquired after 19 September 1985 to the corresponding Deterra shares.

Deterra shares not included in assessable income

18. The value of the Deterra shares you received, or were taken to have received, under the demerger, is not included in your assessable income under subsection 44(1).

No dividend withholding tax

19. If you are not a resident of Australia (as defined in subsection 6(1)), the Deterra shares you received, or were taken to have received, are not subject to dividend withholding tax (subsection 128B(3D)).

Anti-avoidance provisions do not apply

20. The Commissioner will not make a determination under subsection 45A(2) or paragraph 45B(3)(b) that section 45C applies.

21. The Commissioner will not make a determination under paragraph 45B(3)(a) that section 45BA applies.

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.

Iluka Resources Limited

23. IRL is an Australian-resident company listed on the Australian Securities Exchange (ASX) and is the head company of a consolidated group for the purposes of Part 3-90.

24. IRL is a major participant in the global mineral sands industry. It is involved in the exploration, project development, mining and marketing of mineral sands products and rehabilitation of mine sites. The IRL group operates a mineral sands mining business and a royalty business.

25. The mineral sands business has operations in Western Australia, South Australia and Sierra Leone. The royalty business includes a royalty over iron ore sales revenues from specific tenements of Mining Area C (MAC) in the Pilbara region of Western Australia.

The MAC royalty was acquired in December 1998 when IRL (then called Westralian Sands Ltd) acquired RGC Limited by way of a scheme of arrangement.

Demerger of royalty business

26. On 31 October 2019, IRL announced to the ASX a strategic review to consider the optimal corporate and capital structure for its businesses. A range of options was canvassed, including a structural separation of the mineral sands and royalty businesses via a demerger. The review concluded that a demerger was the best option, and on 20 February 2020, IRL announced to the ASX its intention to proceed with that option.

27. IRL carried out a preparatory internal restructure to establish Deterra and its demerger subsidiaries as an identifiable and separate corporate group to hold all the assets of the royalty business. This involved:

- the incorporation of Deterra (registered on 15 June 2020) as a wholly-owned subsidiary of IRL
- the incorporation of Deterra Royalties Holdings Limited (DRHL) (registered on 24 June 2020) as a wholly-owned subsidiary of Deterra
- the transfer of all the shares in Deterra Royalties (MAC) Limited (formerly Iluka Royalty Holdings Limited) to Deterra on 30 June 2020, and
- the transfer of the St Ives royalty from Renison Ltd to DRHL on 22 July 2020.

28. On 16 October 2020, an Extraordinary General Meeting was held at which IRL shareholders approved:

- under subsection 256C(1) of the *Corporations Act 2001*, an equal reduction (within the meaning of subsection 256B(2) of that Act) of IRL's share capital under section 256B of that Act, to be applied equally against each IRL share at the Record Date, and
- an in specie distribution of 80% of Deterra shares to IRL shareholders, in satisfaction of the capital reduction amount and a demerger dividend.

29. Deterra was listed on the ASX on 23 October 2020, whereupon its shares commenced trading on the ASX on a deferred-settlement basis.

30. Immediately prior to the demerger, the ownership interests (as defined in paragraph 125-60(1)(a)) in IRL comprised:

- 422,769,681 issued ordinary shares (IRL Shares), and
- 1,726,822 performance rights issued pursuant to various employee incentive plans (ESS interests). These represented less than 3% of the total value of ownership interests in IRL, taking into account both their value and number.

31. The demerger occurred on 2 November 2020 with the transfer of Deterra shares to Eligible Shareholders (as defined in paragraph 41 of this Ruling) other than those who participated in the share sale facility.

32. At the time of the demerger, IRL shareholders were allocated one Deterra share for each IRL share they held at the Record Date and IRL retained no more than (20%) of the shares in Deterra.

33. IRL accounted for the demerger by:

- debiting its share capital account by $10,000,000 (the capital reduction amount), and
- debiting its retained earnings account by $1,798,224,365 (the demerger dividend).

Reasons for demerger

34. The arguments advanced by IRL in favour of a demerger were:

- shareholders would have greater flexibility to choose their level of investment in IRL and Deterra, as the two businesses have different characteristics, assets and risk profiles
- distinct business plans and growth strategies could be pursued for each business
- shareholders would have greater investment choice
- greater flexibility and discipline would be possible when pursuing growth opportunities for each business
- each business could adopt a capital structure and financial polices appropriate to its needs, and
- it would be possible to better align management incentives with underlying strategy, performance and shareholder value creation.

35. The independent expert's report noted that:

- royalty companies provide investors with commodity price and exploration optionality while limiting exposure to many of the risks of operating mining companies
- they do not need to fund unscheduled capital expenditures, have a high margin with low overheads, and use their free cash flow to raise capital for new opportunities and expand their portfolio
- the proposed demerger would provide shareholders with the flexibility to consider whether Deterra was an appropriate investment given their preferred risk/return profile and relative desire for income from their investments, and
- Deterra was anticipated to attract a new set of investors who would not otherwise invest in IRL in its current form.

Deterra business plan and growth strategy

36. As a standalone business, Deterra (as stated in the demerger booklet sent to shareholders) aims to replicate on the ASX the listed royalty investment business model that is well-established in North America by growing and diversifying its royalty portfolio, leveraging the MAC royalty as its cornerstone asset. Its stated objective is to maximise long-term value to shareholders by:

- maximising the value of existing royalties
- adopting a 'scaleable' corporate structure
- distributing all available profits and franking credits to shareholders, and

- investing in new royalties that are complementary and 'value accretive'.

37. Deterra has been set up with low debt and will have sufficient debt funding capacity to pursue value accretive growth. Deterra's key royalty investing activities will comprise:

- the acquisition of royalties (most likely in-production royalties) from third parties, and
- providing finance to resources companies in return for royalties (most likely over projects at a pre-production stage).

38. Deterra's investment strategy will involve undertaking royalty investments that are value accretive by way of:

- increasing its earnings and dividends per share
- increasing the asset values of the underlying royalty portfolio, and
- diversifying the royalty portfolio in order to reduce the risk of investing in any one commodity, operator or royalty area.

39. Deterra hired a board and management team with a diverse range of expertise in the global resources sector which are focused on developing and optimising the performance of the royalty business. In the months leading up to the demerger, Deterra was already actively engaged in exploring investment opportunities which it intended to further explore following the demerger. Whilst it was not guaranteed acquisitions would result from these early forays, Deterra expected acquisitions to be made over the medium term.

40. Deterra expects to be competitive in its market. It is the only listed Australian royalty investment company of significant scale. Australia has a well-developed large scale resources sector which provides significant opportunities to deploy capital, and which Deterra's local presence, knowledge and relationships will help it to exploit. Deterra will also not be competing in the same niche as many other global royalty sector participants, which exclusively or heavily invest in precious metals. Its board and management team has broad relationships and expertise in a diverse range of commodities, financing and deal structuring, and will supplement this by drawing on external expertise in commodity marketing, geology and mining operations as necessary.

Sale facility for ineligible overseas shareholders and small shareholders

41. IRL determined that IRL shareholders with registered addresses on IRL's share register at the Record Date in the following jurisdictions were eligible to receive Deterra shares under the distribution:

- Australia, New Zealand, Singapore, Hong Kong, the United Kingdom and the United States of America (which accounted for 99.49% of IRL shareholders and 99.97% of IRL shares), and
- other jurisdictions where IRL reasonably believed it was not prohibited or unduly onerous or impractical to implement the demerger and to transfer Deterra shares to IRL shareholders (Eligible Shareholders).

42. IRL shareholders who were not Eligible Shareholders (Ineligible Overseas Shareholders) did not receive Deterra shares under the demerger. Instead, the Deterra shares allocated to them were compulsorily sold through a share sale facility.

43. Eligible Shareholders with shareholdings of 500 or less IRL shares as at the Record Date (Small Shareholders) were able to elect to participate in the share sale facility.

44. The Deterra shares sold through the share sale facility were sold on the ASX by the Sale Agent, and the proceeds, calculated on an averaged basis, were remitted to them free of brokerage costs or stamp duty.

Other matters

45. Just before the demerger, approximately 28.7% of IRL's shares were held by foreign resident entities. At that time, none of these held a non-portfolio interest (within the meaning of section 960-195) in IRL, nor had any done so for a 12-month period during the 24 months preceding the demerger.

46. Just before the demerger, no IRL shareholder beneficially held more than 20% of IRL's shares.

47. IRL did not make an election under subsection 44(2) that subsections 44(3) and 44(4) will not apply.

48. Just before the demerger, IRL's share capital account was not tainted (within the meaning of Division 197).

49. Just after the demerger, the MAC royalty (a CGT asset) owned by Deterra Royalties (MAC) Limited, a demerger subsidiary of Deterra, alone represented more than 50% by market value of all the CGT assets owned by Deterra and its demerger subsidiaries, and was used in carrying on a business by those entities (subsection 44(5)).

50. The market values of an IRL share and a Deterra share just after the demerger have been calculated as:

- $5.208294 for each IRL share, being the volume-weighted average price (VWAP) of IRL shares as traded on the ASX over the first five trading days from (and including) 23 October 2020, and
- $4.277091 for each Deterra share, being the VWAP of Deterra shares as traded on the ASX on a deferred-settlement basis over those same five days.

Commissioner of Taxation
9 December 2020

Appendix 1 – Explanation

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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Capital gains tax consequences

CGT event G1

51. CGT event G1 happens when a company makes a payment to a shareholder in respect of a share they own in the company, some or all of the payment (the non-assessable part) is not a dividend, or an amount that is taken to be a dividend under section 47, and the payment is not included in the shareholder's assessable income (subsection 104-135(1)).

52. In respect of the IRL shares you owned, IRL made a payment to you, or was taken to have made a payment to you, in the form of an in specie distribution of Deterra shares. Part of the payment represents a reduction of share capital. This part is not treated as a dividend and is not included in your assessable income. Therefore, CGT event G1 happened to your shares.

Choosing demerger roll-over

Eligibility for choice

53. Shareholders in a company that is the head entity of a demerger group to which a demerger happens may choose a demerger roll-over where, under the demerger, a CGT event happens to their shares in the company and they acquire new shares in the demerged entity (subsection 125-55(1)). However, foreign-resident shareholders may only choose the roll-over in restricted circumstances as stated in paragraph 12 of this Ruling (subsection 125-55(2)).

54. The consequences of choosing, or not choosing, the demerger roll-over are detailed in paragraphs 13 to 16 of this Ruling.

IRL was head entity of demerger group to which a demerger happened

55. IRL was the head entity of a demerger group consisting of itself, Deterra, and its wholly-owned subsidiaries.

56. A demerger happened to that demerger group because there was a restructuring of the group under which:

- IRL disposed of 80% of its shares in Deterra (the demerged entity) to IRL shareholders
- IRL shareholders acquired nothing else apart from those Deterra shares, and
- only IRL shareholders acquired Deterra shares (subsection 125-70(1)).

Further:

- each IRL shareholder acquired under the demerger the same proportion of the disposed shares in Deterra as they held in IRL before the demerger (one Deterra share for every IRL share), and
- just after the demerger, each IRL shareholder had the same proportionate total market value of IRL shares and Deterra shares as they owned in IRL just before the demerger (each IRL share on issue was of the same class, as was each Deterra share) (subsection 125-70(2)).

Apportioning the total of the cost bases of your IRL shares among those shares and your Deterra shares

57. You will need to carry out the apportionment described in paragraph 17 of this Ruling if either paragraph 13 or 15 of this Ruling applies to you. The following example is provided to assist you.

Example – cost base of IRL and Deterra shares after the in specie distribution

58. *During 2011, Peter acquired a parcel of 500 IRL shares for $15.00, including brokerage and stamp duty. During 2017, Peter acquired another parcel of 1,000 IRL shares for $9.00, including brokerage and stamp duty. Peter still holds these shares at the Record Date and receives 1,500 Deterra shares under the demerger.*

59. *Peter works out the first element of the cost bases of his IRL shares and Deterra shares just after the demerger as follows:*

Step 1: Peter adds up the cost bases of his IRL shares as they were just before the demerger: (500 × $15.00) + (1,000 × $9.00) = $16,500

Step 2: Peter attributes 54.91% of $16,500 =$9,060 to his IRL shares (per paragraph 17 of this Ruling)

Step 3: Peter attributes 45.09% of $16,500 = $7,440 to his Deterra shares (per paragraph 17 of this Ruling).

Step 4: The first element of the cost base and reduced cost base of Peter's IRL shares just after the demerger is $9,060 / 1,500 = $6.04

Step 5: The first element of the cost base and reduced cost base of Peter's Deterra shares just after the demerger is $7,440/ 1,500 = $4.96

(This shows that the total of the cost bases of the IRL shares originally acquired ($16,500) is spread across the cost bases of the IRL and Deterra shares just after the demerger.)

Deterra shares not included in assessable income

60. Subsection 44(1) includes in a shareholder's assessable income any dividends paid to the shareholder out of profits derived by the company from any source (if the shareholder is a resident) or out of profits derived by the company from sources in Australia (if the shareholder is a non-resident).

61. The term 'dividend' is defined in subsection 6(1) and includes 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.

62. The demerger of Deterra was implemented, in part, by debiting $10,000,000 (2.37 cents per IRL ordinary share) against an amount standing to the credit of IRL's share capital account. As IRL's share capital account was not tainted, this amount was not a dividend as defined in subsection 6(1). Therefore, it will not be included in the assessable income of an IRL shareholder under subsection 44(1).

63. The balance of the in specie distribution (being the market value of the Deterra shares distributed to IRL shareholders less the amount debited to IRL's share capital account) was a dividend. However, the dividend was a demerger dividend (as defined in subsection 6(1)), which is not assessable income or exempt income of IRL shareholders under subsections 44(3), (4) and (5).

Anti-avoidance provisions do not apply

64. Section 45A applies in circumstances where a company streams capital benefits to certain shareholders who derive a greater benefit from the receipt of capital benefits (the advantaged shareholders) and it is reasonable to assume that the other shareholders have received or will receive dividends (the disadvantaged shareholders).

65. Because all IRL shareholders were allocated one Deterra share for each IRL share they owned, there is no streaming. The Commissioner will not make a determination under subsection 45A(2) that section 45C applies to the whole, or any part, of the capital benefits.

66. Section 45B applies where certain capital benefits are, having regard to the relevant circumstances of the scheme set out in subsection 45B(8), considered to have been provided to shareholders by a company for a more than incidental purpose of enabling a taxpayer to obtain a tax benefit.

67. Having regard to the relevant circumstances of the scheme, the Commissioner concludes that the scheme was not entered into or carried out for a more than incidental purpose of enabling IRL shareholders to obtain a tax benefit.

68. Accordingly, the Commissioner will not make a determination under paragraph 45B(3)(a) or (b) that section 45BA or 45C (respectively) applies.

Appendix 2 – Legislative provisions

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

Income Tax Assessment Act 1936	subsection 6(1)
Income Tax Assessment Act 1936	subsection 44(1)
Income Tax Assessment Act 1936	subsection 44(2)
Income Tax Assessment Act 1936	subsection 44(3)
Income Tax Assessment Act 1936	subsection 44(4)
Income Tax Assessment Act 1936	subsection 44(5)
Income Tax Assessment Act 1936	section 45A
Income Tax Assessment Act 1936	subsection 45A(2)
Income Tax Assessment Act 1936	section 45B
Income Tax Assessment Act 1936	paragraph 45B(3)(a)
Income Tax Assessment Act 1936	paragraph 45B(3)(b)
Income Tax Assessment Act 1936	subsection 45B(8)
Income Tax Assessment Act 1936	section 45BA
Income Tax Assessment Act 1936	section 45C
Income Tax Assessment Act 1936	section 47
Income Tax Assessment Act 1936	subsection 128B(3D)
Income Tax Assessment Act 1997	section 104-135
Income Tax Assessment Act 1997	subsection 104-135(1)
Income Tax Assessment Act 1997	subsection 104-135(3)
Income Tax Assessment Act 1997	subsection 104-135(5)
Income Tax Assessment Act 1997	subsection 104-165(3)
Income Tax Assessment Act 1997	section 109-5
Income Tax Assessment Act 1997	subsection 110-25(2)
Income Tax Assessment Act 1997	subsection 110-55(2)
Income Tax Assessment Act 1997	subsection 112-20(1)
Income Tax Assessment Act 1997	section 115-25
Income Tax Assessment Act 1997	subsection 115-30(1)
Income Tax Assessment Act 1997	subsection 125-55(1)
Income Tax Assessment Act 1997	subsection 125-55(2)
Income Tax Assessment Act 1997	paragraph 125-60(1)(a)
Income Tax Assessment Act 1997	section 125-70
Income Tax Assessment Act 1997	subsection 125-70(1)
Income Tax Assessment Act 1997	subsection 125-70(2)
Income Tax Assessment Act 1997	subsection 125-80(1)

Income Tax Assessment Act 1997	subsection 125-80(2)
Income Tax Assessment Act 1997	subsection 125-80(3)
Income Tax Assessment Act 1997	subsection 125-80(4)
Income Tax Assessment Act 1997	subsection 125-80(5)
Income Tax Assessment Act 1997	subsection 125-80(6)
Income Tax Assessment Act 1997	section 125-85
Income Tax Assessment Act 1997	section 125-235
Income Tax Assessment Act 1997	Division 197
Income Tax Assessment Act 1997	Division 230
Income Tax Assessment Act 1997	Part 3-90
Income Tax Assessment Act 1997	section 855-15
Income Tax Assessment Act 1997	section 960-195
Income Tax Assessment Act 1997	section 977-50
Income Tax Assessment Act 1997	subsection 995-1(1)

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Legislative references:

- Corporations Act 2001 256B
- Corporations Act 2001 256B(2)
- Corporations Act 2001 256C
- Corporations Act 2001 256C(1)

ATO references

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