

CR 2021/93 - Encounter Resources Limited - demerger of Hamelin Gold Limited

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Class Ruling

Encounter Resources Limited – demerger of Hamelin Gold Limited

📌 Relying on this Ruling

This publication 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 Hamelin Gold Limited (Hamelin Gold) by Encounter Resources Limited (Encounter Resources), which was implemented on 29 October 2021 (Implementation Date).
2. Full details of the demerger are set out in paragraphs 19 to 47 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you held ordinary shares in Encounter Resources and you:
 - were registered on the Encounter Resources share register on 28 October 2021 (Record Date)
 - did not hold your shares in Encounter Resources as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)) on the Record Date – that is, you held your shares on capital account, and
 - were a resident of Australia (as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936)).

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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 19 to 47 of this Ruling. 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 happened

7. A demerger, as defined in section 125-70, happened to the Encounter Resources demerger group (which included Encounter Resources and Hamelin Gold).

Capital gains tax consequences

CGT event G1

8. CGT event G1 happened when you were paid an amount by Encounter Resources in respect of your Encounter Resources shares by way of the transfer to you of Hamelin Gold shares on the Implementation Date (section 104-135).

9. You made a capital gain from CGT event G1 happening if the amount of the reduction of share capital for each Encounter Resources share (2.6567 cents) was more than the cost base of the Encounter Resources 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)).

Demerger roll-over

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

Choosing demerger roll-over

11. If you choose demerger roll-over for your Encounter Resources shares:

- any capital gain you made when CGT event G1 happened to your Encounter Resources shares under the demerger is disregarded (subsection 125-80(1)), and
- you must recalculate the first element of the cost base and reduced cost base of your Encounter Resources shares, and calculate the first element of the cost base and reduced cost base of the corresponding Hamelin Gold shares you acquired under the demerger (subsection 125-80(2)) – see paragraphs 13 to 15 of this Ruling for more details.

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Not choosing demerger roll-over

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

Cost base and reduced cost base of your shares in Encounter Resources Limited and Hamelin Gold Limited

13. The first element of the cost base and reduced cost base of each Encounter Resources share and corresponding Hamelin Gold share is worked out by:
- taking the total of the cost bases of your Encounter Resources shares just before the demerger, and
 - apportioning that total between your Encounter Resources shares and the Hamelin Gold shares you acquired under the demerger.
14. The apportionment is done on a reasonable basis having regard to the market values of the Encounter Resources shares and Hamelin Gold shares just after the demerger 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:
- 84.37% of the total of the cost bases of your Encounter Resources shares just before the demerger to the Encounter Resources shares, and
 - 15.63% of the total of the cost bases of your Encounter Resources shares just before the demerger to the corresponding Hamelin Gold shares you acquired under the demerger.

Acquisition date of your shares in Hamelin Gold Limited for discount capital gain purposes

16. For the purpose of determining whether you can make a discount capital gain from a future capital gains tax (CGT) event that happens to a Hamelin Gold share you acquired under the demerger, you will be taken to have acquired the Hamelin Gold share on the date you acquired, for CGT purposes, the corresponding Encounter Resources share (table item 2 in subsection 115-30(1)). This will be the case whether or not you choose demerger roll-over.

Value of Hamelin Gold Limited shares not included in your assessable income

17. No part of the value of a Hamelin Gold share transferred to you under the demerger will be included in your assessable income under subsection 44(1) of the ITAA 1936. Although the part of the value of a Hamelin Gold share that is not debited to the share capital account of Encounter Resources is a 'dividend' under subsection 6(1) of the

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ITAA 1936, it will be a 'demerger dividend' under subsections 44(3) to (5) of the ITAA 1936. A 'demerger dividend' is non-assessable non-exempt income for you.

Sections 45B, 45BA and 45C of the ITAA 1936 do not apply

18. As the purpose condition in paragraph 45B(2)(c) of the ITAA 1936 is not satisfied, the Commissioner will not make a determination under subsection 45B(3) of the ITAA 1936 that:

- section 45BA of the ITAA 1936 applies to the whole, or any part, of the demerger benefit provided to you under the demerger, or
- section 45C of the ITAA 1936 applies to the whole, or any part, of the capital benefit provided to you under the demerger.

Scheme

19. 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.

Encounter Resources Limited

20. Encounter Resources is a company that was incorporated in Australia on 30 June 2004 and is listed on the Australian Securities Exchange (ASX).

21. Encounter Resources is an exploration and development company that is primarily focused on copper projects in Western Australia and the Northern Territory.

22. As at 28 October 2021, Encounter Resources had:

- 316,756,523 fully-paid ordinary shares on issue
- \$50,051,440 credited to its share capital account
- \$29,745,221 of accumulated accounting losses, and
- \$912,860 of reserves.

23. Just before the Implementation Date, Encounter Resources had:

- unlisted share options held by its employees representing less than 3% of the value of the total ownership interests (as defined in subsection 125-60(1)) in Encounter Resources, and
- unlisted share options that are adjusting instruments which satisfy subsection 125-75(4).

24. These options and the ordinary shares are the only ownership interests (as defined in subsection 125-60(1)) in Encounter Resources.

Hamelin Gold Limited

25. Hamelin Gold is a company incorporated in Australia. It is a gold exploration company that is focused on developing the West Tanami project in Western Australia.

26. Prior to the Implementation Date, all of the shares in Hamelin Gold were owned by Encounter Resources.

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The demerger of Hamelin Gold Limited

27. The demerger of Hamelin Gold was undertaken by a reduction of share capital under section 256B of the *Corporations Act 2001*.
28. On 22 October 2021, the shareholders of Encounter Resources voted at a meeting to approve an ordinary resolution under section 256C of the *Corporations Act 2001* to reduce the share capital of Encounter Resources as an equal capital reduction by \$8,415,115 (capital reduction amount).
29. The reduction of share capital equated to 2.6567 cents for each share in Encounter Resources.
30. The reduction of share capital was satisfied by the transfer of Hamelin Gold shares to Encounter Resources shareholders.
31. The date for determining the entitlement of Encounter Resources shareholders to receive Hamelin Gold shares was 28 October 2021 (Record Date).
32. On 29 October 2021 (Implementation Date), Encounter Resources shareholders received one Hamelin Gold share for every 5.279275 Encounter Resources shares they held on the Record Date, and nothing else.
33. After the demerger, Encounter Resources did not own any shares in Hamelin Gold.
34. As a result of the demerger, Encounter Resources shareholders owned shares in both Encounter Resources and Hamelin Gold.
35. Shares in Hamelin Gold were listed for quotation on the ASX on 5 November 2021.

Accounting treatment

36. Encounter Resources accounted for the demerger by debiting its:
- share capital account by \$8,415,115, and
 - accumulated loss account by \$2,074,698.
37. The demerger dividend was calculated as the difference between the market value of the Hamelin Gold shares that were transferred and the capital reduction amount.

Reasons for the demerger

38. The directors of Encounter Resources formed the opinion that the demerger would:
- allow Encounter Resources and Hamelin Gold to each focus on their differing mining portfolios
 - enable Encounter Resources and Hamelin Gold to adopt financial policies that are suitable for their different capital needs, and
 - deliver to shareholders an investment choice depending on their individual investment objectives.

Sale facility for certain foreign shareholders

39. Ineligible Shareholders had the Hamelin Gold shares to which they were entitled sold by Encounter Resources through a nominee on the ASX who remitted the net sale

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proceeds to the relevant shareholders. The shares of Ineligible Shareholders were transferred to the nominee on the Implementation Date.

40. Ineligible Shareholders were shareholders whose registered address on the Encounter Resources share register on the Record Date was not in an Eligible Country.

41. An Eligible Country is

- Australia or New Zealand
- Germany, Singapore and the United Kingdom (if certain conditions are met), and
- any other jurisdiction in respect of which Encounter Resources reasonably believes that it is not prohibited and not unduly onerous or impractical to issue shares in Hamelin Gold.

Other matters

42. All shares in Encounter Resources and Hamelin Gold were issued after 20 September 1985.

43. Just before the Implementation Date, more than 90% of the shares in Encounter Resources were held by Australian residents.

44. Immediately before the Implementation Date, the share capital account of Encounter Resources was not tainted within the meaning of Division 197.

45. Encounter Resources did not make an election under subsection 44(2) of the ITAA 1936 that subsections 44(3) and (4) of the ITAA 1936 will not apply to the demerger dividend for all Encounter Resources shareholders.

46. Just after the demerger, CGT assets owned by Hamelin Gold and its 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) of the ITAA 1936).

47. For the purposes of the cost base and reduced cost base apportionment under subsections 125-80(2) and (3), a reasonable approximation of the market values of an Encounter Resources share and a Hamelin Gold share just after the demerger has been calculated as:

- 17.87 cents for each Encounter Resources share, being the volume-weighted average price of Encounter Resources shares as traded on the ASX over the first five trading days from (and including) 5 November 2021.
- 17.48 cents for each Hamelin Gold share, being the volume-weighted average price of Hamelin Gold shares as traded on the ASX over the first five trading days from (and including) 5 November 2021.

Commissioner of Taxation

8 December 2021

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Legislative references:

- | | |
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| <ul style="list-style-type: none"> - ITAA 1936 6(1) - ITAA 1936 44(1) - ITAA 1936 44(2) - ITAA 1936 44(3) - ITAA 1936 44(4) - ITAA 1936 44(5) - ITAA 1936 45B - ITAA 1936 45B(2)(c) - ITAA 1936 45B(3) - ITAA 1936 45BA - ITAA 1936 45C | <ul style="list-style-type: none"> - ITAA 1997 104-135 - ITAA 1997 104-135(3) - ITAA 1997 115-30(1) - ITAA 1997 125-55(1) - ITAA 1997 125-60(1) - ITAA 1997 125-70 - ITAA 1997 125-75(4) - ITAA 1997 125-80(1) - ITAA 1997 125-80(2) - ITAA 1997 125-80(3) - ITAA 1997 125-85(1) - ITAA 1997 125-85(2) - ITAA 1997 Div 197 - ITAA 1997 Div 230 - ITAA 1997 977-50 - ITAA 1997 995-1(1) - Corporations Act 2001 256B - Corporations Act 2001 256C - TAA 1953 |
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ATO references

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 shares
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