


CR 2023/37 - Sovereign Metals Limited - demerger of NGX Limited

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Status: **legally binding**

Class Ruling

Sovereign Metals Limited – demerger of NGX Limited

❶ 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 NGX Limited (NGX) by Sovereign Metals Limited (SVM) which was implemented on 24 March 2023 (Implementation Date).
2. Details of this scheme are set out in paragraphs 20 to 42 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 shares in SVM and you:
 - were registered on the SVM share register on 23 March 2023 (Record Date)
 - held your SVM shares on capital account; that is, you did not hold your shares in SVM as 'revenue assets' (as defined in section 977-50) or as 'trading stock' (as defined in subsection 995-1(1)) on the Record Date, and
 - were a 'resident of Australia', as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936), on the Implementation Date.
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 20 to 42 of this Ruling.

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

Status: **legally binding**

When this Ruling applies

6. This Ruling applies from 1 July 2022 to 30 June 2023.

Ruling**Demerger**

7. A demerger, as defined in section 125-70, happened to the SVM demerger group, which included SVM and NGX under the scheme described in paragraphs 20 to 42 of this Ruling.

Capital gains tax consequences**CGT event G1**

8. CGT event G1 happened when you received or were taken to have received NGX shares (section 104-135).

9. You will make a capital gain from CGT event G1 happening if the cost base of your SVM share is less than the amount you received for your NGX share of 0.89 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 1 to subsection 104-135(3)).

Demerger roll-over is available

11. You can choose demerger roll-over for your SVM shares.

Consequences of choosing demerger roll-over

12. If you choose demerger roll-over for your SVM shares:

- any capital gain you made when CGT event G1 happened is disregarded (subsection 125-80(1)), and
- you must recalculate the first element of the cost base and reduced cost base of your SVM shares and calculate the first element of the cost base and reduced cost base of the corresponding NGX shares you acquired under the demerger (subsection 125-80(2)).

Consequences of not choosing demerger roll-over

13. If you did not choose demerger roll-over for your SVM shares:

- you cannot disregard a capital gain you made when CGT event G1 happened, and
- you must recalculate the first element of the cost base and reduced cost base of your SVM shares, and calculate the first element of the cost base and reduced cost base of the corresponding NGX shares you acquired under the demerger (section 125-85).

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Apportioning the cost base of your Sovereign Metals Limited and NGX Limited shares

14. The first element of the cost base and reduced cost base of each SVM share and corresponding NGX share is worked out by:

- taking the total of the cost bases of your SVM shares just before the demerger, and
- apportioning that total between your SVM shares and your NGX shares acquired under the demerger.

15. The apportionment is done on a reasonable basis having regard to the market values of your SVM shares and NGX shares just after the demerger, or an anticipated reasonable approximation of those market values (subsections 125-80(2) and (3)).

16. The Commissioner accepts that a reasonable apportionment is to attribute:

- 94.45% of the total of the cost bases of your SVM shares just before the demerger to the SVM shares, and
- 5.55% of the total of the cost bases of your SVM shares just before the demerger to the corresponding NGX shares.

Acquisition date of Sovereign Metals Limited shares for discount capital gain purposes

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

NGX Limited shares not included in assessable income

18. The value of the NGX shares you received, or were taken to have received, under the demerger is not included in your assessable income under subsection 44(1) of the ITAA 1936. Although the part of the value of the NGX share that is not debited to the share capital account of SVM is a dividend under subsection 6(1) of the 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.

Anti-avoidance provisions do not apply

19. As the purpose test in paragraph 45B(2)(c) of the ITAA 1936 is not satisfied, the Commissioner will not make a determination under either:

- paragraph 45B(3)(a) 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
- 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 you under the demerger.

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Scheme

20. 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.

Sovereign Metals Limited

21. SVM is a company incorporated in Australia on 20 July 2006, and is listed on the Australian Securities Exchange. SVM and its subsidiaries (SVM group) holds various exploration and prospecting licences in Malawi relating to the SVM group's rutile and graphite projects.

22. Immediately before the demerger, SVM had on issue:

- 470,875,023 fully paid ordinary shares
- 11,105,125 share options and 14,360,000 performance rights, which give the holder the right to be issued shares in SVM.

23. There were no other ownership interests (as defined in subsection 125-60(1)) in SVM.

24. Immediately before the demerger, SVM's share capital account had a credit balance of \$75,317,380.

25. As at 30 June 2022, SVM had accumulated losses of \$55,695,820.

26. SVM does not have a dividend policy and since incorporation has not paid any dividends.

NGX Limited

27. NGX is a company incorporated in Australia on 19 April 2021.

28. Immediately before the demerger, NGX held the SVM group's licences and mineral rights to mine graphite in Malawi (Graphite Projects).

The demerger of NGX Limited

29. On 7 December 2022, SVM announced the proposed demerger of NGX, a wholly-owned subsidiary, that will immediately before the demerger hold the SVM group's Graphite Projects. Following the demerger, SVM will focus on its Kasiya Rutile Project.

30. On 17 March 2023, SVM shareholders voted at the General Meeting to approve a resolution to reduce the share capital of SVM under sections 256B and 256C of the *Corporations Act 2001*. The date for determining the entitlement of SVM shareholders to receive NGX shares was the Record Date.

31. On the Implementation Date, SVM satisfied the capital reduction by transferring all the ordinary shares in NGX to SVM shareholders in proportion to their shareholdings in SVM. SVM shareholders received one NGX share for approximately every 11 ordinary shares they held in SVM at the Record Date for the demerger, and nothing else.

32. After the demerger, SVM shareholders owned shares in both SVM and NGX.

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Accounting treatment

33. SVM accounted for the demerger by:
- debiting its share capital account by \$4,178,114 (the capital reduction amount), and
 - debiting its reserves account by \$7,336,284 (the demerger dividend).
34. The demerger dividend was calculated as the difference between the market value of the NGX shares and the capital reduction amount.

Reasons for the demerger

35. The Board of SVM determined that the demerger would achieve the following objectives:
- allow SVM to better focus its efforts and resources on its Kasiya Rutile Project and in doing so remove the internal competition for valuable capital
 - provide SVM shareholders with the opportunity to participate in the development of the Graphite Projects, while maintaining their investment exposure to the Kasiya Rutile Project
 - secure sufficient funding to allow the exploration and development of the Graphite Projects
 - drive superior value for shareholders in both SVM and NGX, and
 - enable both SVM and NGX to undertake more targeted marketing to investors as separate investment propositions.

Sale facility for some foreign shareholders

36. Under a sale facility for shares held by certain ineligible overseas shareholders of SVM, the NGX shares they would have otherwise received were sold on-market by a nominee with the net sale proceeds remitted to those shareholders.

Other matters

37. SVM's share capital account was not tainted (within the meaning of Division 197).
38. SVM did not elect 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 SVM shareholders.
39. Just after the demerger, CGT assets owned by NGX 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).
40. The performance rights in SVM were issued in accordance with Division 83A and are interests to which Subdivision 83A-C applies.
41. The share options in SVM were adjusting instruments as defined in subsection 125-75(5).

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42. NGX was listed on the Australian Securities Exchange on 16 June 2023 and raised share capital of \$8.56 million (before costs) through a Priority Offer at an issue price of 0.20 cents per NGX share and share capital of \$1 million through a General Offer at an issue price of 0.20 cents per share.

Commissioner of Taxation

19 July 2023

Status: **not legally binding**

References

Legislative references:

- 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(2)(c)
 - ITAA 1936 45B(3)(a)
 - ITAA 1936 45B(3)(b)
 - ITAA 1936 45BA
 - ITAA 1936 45C
 - ITAA 1997 Div 83A
 - ITAA 1997 Div 83A-C
 - ITAA 1997 104-135
 - ITAA 1997 104-135(3)
 - ITAA 1997 115-30(1)
 - ITAA 1997 125-60(1)
 - ITAA 1997 125-70
 - ITAA 1997 125-80(1)
 - ITAA 1997 125-80(2)
 - ITAA 1997 125-80(3)
 - ITAA 1997 125-85
 - 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
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ATO references

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