

CR 2023/4 - Controlled Thermal Resources Limited - exchange of shares for shares in Controlled Thermal Resources Holdings Inc



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Status: **legally binding**

Class Ruling

Controlled Thermal Resources Limited – exchange of shares for shares in Controlled Thermal Resources Holdings Inc

❗ Relying on this Ruling

This publication (excluding appendix) 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 the former shareholders of Controlled Thermal Resources Limited (CTR) that exchanged their shares in CTR for shares in Controlled Thermal Resources Holdings Inc (CTR US) under the scheme implemented by CTR on 14 December 2022 (Implementation Date).
2. Details of this scheme are set out in paragraphs 21 to 37 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:
 - were registered on the CTR share register on 13 December 2022 (Record Date)
 - were a resident of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936) at the Implementation Date, and
 - held your CTR shares on capital account; that is, your CTR shares were neither held as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)).

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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 21 to 37 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 2022 to 30 June 2023.

Ruling

CGT event A1 happened on disposal of Controlled Thermal Resources Limited shares

7. CGT event A1 happened because you disposed of each of your CTR shares to CTR US under the scheme (subsection 104-10(1)).

8. CGT event A1 happened when you no longer owned your CTR shares on the Implementation Date, being 14 December 2022 (paragraph 104-10(3)(b)).

9. The capital proceeds in respect of CGT event A1 happening is the market value of the CTR US shares received by you as consideration for each CTR share exchanged (subsection 116-20(1)). The market value of the CTR US share received is worked out as at the time of CGT event A1, being the Implementation Date (paragraph 116-20(1)(b)).

10. You made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of your CTR shares were more than the cost base of that share (subsection 104-10(4)). The capital gain is the amount of that excess.

11. You made a capital loss from CGT event A1 happening if the capital proceeds from the disposal of your CTR shares were less than the reduced cost base of that share (subsection 104-10(4)). The capital loss is the amount of the difference.

Availability of roll-over

12. You can choose to obtain a roll-over because all relevant conditions under Division 615 are satisfied when you disposed of your CTR shares to CTR US in exchange for CTR US shares (and nothing else) (section 615-5).

If you choose roll-over

13. If you choose to obtain a roll-over under Division 615, you can disregard any capital gain or capital loss made from the disposal of the CTR shares in exchange for the corresponding CTR US shares (sections 615-5 and 615-40, and subsection 124-15(2)).

14. The first element of the cost base and reduced cost base of each CTR US share received under the scheme will equal the total of the cost base of all the original CTR shares (worked out at the time of their disposal) apportioned over the number of CTR US shares issued in exchange (section 615-40 and subsection 124-15(3)).

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15. As you received one CTR US share for each CTR share you held, the first element of the cost base and reduced cost base of each CTR US share acquired by you will equal the cost base of the CTR share you exchanged for that CTR US share.

16. For the purposes of determining any discount capital gain under Division 115, you will be taken to have acquired your CTR US shares on the same date that you acquired your corresponding CTR share (table item 2 of subsection 115-30(1)).

If you do not choose roll-over

17. If you do not choose to obtain a roll-over under Division 615, you must take into account any capital gain or capital loss from CGT event A1 happening on the disposal of your CTR shares in working out your net capital gain or net capital loss for the 2022–23 income year (sections 102-5 and 102-10).

18. If you make a capital gain on disposal of your CTR shares, you can treat the capital gain as a discount capital gain provided the conditions of Subdivision 115-A are met. In particular, the CTR shares that were disposed of must have been acquired by you at least 12 months before the Implementation Date (section 115-25).

19. The date of acquisition of the CTR US shares you received under the scheme is the date those shares were issued to you, being the Implementation Date (table item 2 of section 109-10).

20. The first element of the cost base and reduced cost base of each replacement CTR US share received is equal to the market value of the CTR share you exchanged for that CTR US share (subsections 110-25(2) and 110-55(2)).

Scheme

21. 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.

Controlled Thermal Resources Limited

22. CTR is an unlisted public company, incorporated in Australia on 6 November 2013.

23. CTR was the holding company for the CTR group, which comprises of subsidiaries incorporated in the United States of America (US).

24. As at 31 May 2022:

- CTR had 493,101,462 ordinary shares on issue held by over 250 shareholders
- approximately 50.4% of the CTR shares were held by one shareholder
- approximately 96% of the CTR shares were held by shareholders with addresses in Australia, and
- CTR did not have any shareholders whose address was a place outside Australia, the US, New Zealand, Switzerland and the United Kingdom (Ineligible Foreign Holders).

25. Substantially all of the CTR group's assets, employees and management are located in the US. The main operation of the CTR group is a lease over a site in

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California, US, where it is developing a geothermal renewable energy power facility together with a lithium extraction facility.

Controlled Thermal Resources Holdings Inc

26. CTR US is a US company and tax resident, incorporated under the laws of the State of Delaware on 30 August 2022, for the sole purpose of re-domiciling the parent company of the CTR group to the US.

27. Prior to the Implementation Date, CTR US did not have any shareholders (as allowed under Delaware law).

Reasons for the Restructure

28. CTR believed that the interposition of CTR US between CTR and its former shareholders (Restructure) would:

- streamline its business operations as the corporate structure would be aligned with the core of its business operations
- broaden and diversify CTR group's shareholder base and enhance CTR group's visibility in the US, where substantially all of its assets and operations are already located
- attract further investments and provide increased funding on more attractive terms when compared to an Australian-domiciled company
- increase access to lower-cost debt or equity capital, as the US capital markets are larger and more diverse than Australian capital markets, and
- increase attraction and attention of US investors, who are likely to better understand a US corporate structure, US debt issues and the potential future listing of a US-domiciled company on a recognised securities exchange in the US, such as Nasdaq. Increasing US investors will also increase demand for CTR US shares and generally provide greater access to the broader and deeper investment capital that is available in the US.

The Restructure

29. The Restructure was undertaken by way of a court-approved scheme of arrangement under Part 5.1 of the *Corporations Act 2001*, as there were more than 50 shareholders.

30. The Restructure was governed by a Scheme Implementation Deed (the Deed) executed between CTR and CTR US on 30 September 2022.

31. Under the Deed:

- the Effective Date is defined as the date the order of the Court is made under paragraph 411(4)(b) of the *Corporations Act 2001* (which occurred on 12 December 2022)
- the Record Date is defined as the second business day following the Effective Date or such other date after the Effective Date agreed by the parties (which occurred on 13 December 2022), and

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- the Implementation Date is defined as the fifth business day after the Record Date or such other date agreed by the parties (which occurred on 14 December 2022).

32. As at the Record Date, CTR had 521,450,485 ordinary shares on issue held by 341 shareholders.

33. On the Implementation Date, all CTR shares held by CTR shareholders on the Record Date were transferred to CTR US in exchange for CTR US shares, at an exchange ratio of one CTR US share for one CTR share. Consequently, on the Implementation Date, CTR US acquired the entire issued share capital of CTR and became the new holding company of the CTR group and CTR became a directly wholly-owned subsidiary of CTR US.

34. While a share sale facility was established for Ineligible Foreign Holders, there were no Ineligible Foreign Holders as at the Implementation Date.

35. The former shareholders of CTR did not receive any other consideration in relation to the Restructure.

Other matters

36. The CTR US shares received under the Restructure are common stock (not redeemable) and:

- carry the same rights and obligations as the CTR shares
- rank equally in all respects with all issued and outstanding CTR US shares, and
- are validly issued, fully paid and free from any encumbrance or other third-party rights.

37. CTR US has chosen that section 615-65 applies within 2 months after the Implementation Date.

Commissioner of Taxation

15 February 2023

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Appendix – 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.*

Division 615 roll-over

38. To be eligible to choose roll-over, you must satisfy all the relevant conditions in Division 615.

39. You were a former shareholder of CTR and therefore a member of a company for the purposes of satisfying paragraph 615-5(1)(a).

40. CTR's share capital as at the Record Date was held by 341 shareholders. That is, all of the shares in CTR were owned by at least 2 shareholders, satisfying paragraph 615-5(1)(b).

41. Under the Restructure, all the former shareholders of CTR disposed of all their CTR shares to CTR US in exchange for CTR US shares and received nothing else. Therefore, paragraph 615-5(1)(c) is satisfied.

42. CTR US owns all the shares in CTR immediately after all the former shareholders of CTR disposed of their CTR shares (the completion time), satisfying section 615-15.

43. As the former shareholders of CTR exchanged their CTR shares for CTR US shares at an exchange ratio of 1:1, immediately after the completion time the former shareholders of CTR:

- each owned a whole number of shares in CTR US, satisfying paragraph 615-20(1)(a), and
- owned a percentage of shares in CTR US equal to the percentage of shares they owned in CTR, satisfying paragraph 615-20(1)(b) and subsection 615-20(2).

44. Subsection 615-20(3) is satisfied as you were an Australian resident as defined in subsection 6(1) of the ITAA 1936 at the time of disposal of your CTR shares, being the Implementation Date.

45. The shares issued in CTR US under the Restructure are common stock and not redeemable shares, satisfying subsection 615-25(1).

46. Prior to the Restructure, CTR US did not have any shareholders (as allowed under Delaware law). Therefore, immediately after the completion time, the former shareholders of CTR owned all the shares in CTR US, satisfying paragraph 615-25(3)(a).

47. CTR US has chosen that section 615-65 applies within 2 months after the Implementation Date, satisfying subsection 615-30(1).

48. Therefore, as all the relevant conditions are satisfied, you can choose to obtain roll-over pursuant to Division 615 in respect of the disposal of your CTR shares to CTR US in exchange for CTR US shares.

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References

Legislative references:

- ITAA 1936 6(1)
 - ITAA 1997 102-5
 - ITAA 1997 102-10
 - ITAA 1997 104-10(1)
 - ITAA 1997 104-10(3)(b)
 - ITAA 1997 104-10(4)
 - ITAA 1997 109-10
 - ITAA 1997 110-25(2)
 - ITAA 1997 110-55(2)
 - ITAA 1997 Div 115
 - ITAA 1997 Subdiv 115-A
 - ITAA 1997 115-25
 - ITAA 1997 115-30(1)
 - ITAA 1997 116-20(1)
 - ITAA 1997 116-20(1)(b)
 - ITAA 1997 124-15(2)
 - ITAA 1997 124-15(3)
 - ITAA 1997 Div 230
 - ITAA 1997 Div 615
 - ITAA 1997 615-5
 - ITAA 1997 615-5(1)(a)
 - ITAA 1997 615-5(1)(b)
 - ITAA 1997 615-5(1)(c)
 - ITAA 1997 615-15
 - ITAA 1997 615-20(1)(a)
 - ITAA 1997 615-20(1)(b)
 - ITAA 1997 615-20(2)
 - ITAA 1997 615-20(3)
 - ITAA 1997 615-25(1)
 - ITAA 1997 615-25(3)(a)
 - ITAA 1997 615-30(1)
 - ITAA 1997 615-40
 - ITAA 1997 615-65
 - ITAA 1997 977-50
 - ITAA 1997 995-1(1)
 - Corporations Act Pt 5.1
 - Corporations Act 411(4)(b)
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ATO references

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