

CR 2023/72 - St Barbara Limited - return of capital by in specie distribution of ordinary shares in Genesis Minerals Limited



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Class Ruling

St Barbara Limited – return of capital by in specie distribution of ordinary shares in Genesis Minerals 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 for shareholders of St Barbara Limited (St Barbara) who received a return of capital from St Barbara on 11 July 2023 (Implementation Date) by way of an in specie distribution of ordinary shares in Genesis Minerals Limited (Genesis).
2. Details of this scheme are set out in paragraphs 23 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 a 'resident of Australia' as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936) at all relevant times
 - were registered on the St Barbara share register on 7 July 2023 (Record Date), and
 - held your St Barbara shares on capital account – that is, you did not hold your St Barbara shares as revenue assets (as defined in section 977-50) or 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 23 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 2023 to 30 June 2024.

Ruling

Return of capital is not a dividend

7. No part of the return of capital you received from St Barbara on the Implementation Date by way of the in specie distribution of shares in Genesis is a dividend as defined in subsection 6(1) of the ITAA 1936.

Return of capital is not assessable as ordinary income

8. No part of the return of capital you received from St Barbara on the Implementation Date by way of the in specie distribution of shares in Genesis is assessable as ordinary income under section 6-5.

Section 45A, 45B and 45C of the ITAA 1936 do not apply

9. The Commissioner will not make a determination under either subsection 45A(2) or paragraph 45B(3)(b) of the ITAA 1936 that section 45C of the ITAA 1936 applies to any part of the return of capital you received on the Implementation Date. Therefore, no part of the return of capital is taken to be an unfranked dividend and you will not include any part of the amount of the return of capital in your assessable income under subsection 44(1) of the ITAA 1936.

Capital gains tax consequences

CGT event G1

10. CGT event G1 happened on the Implementation Date when St Barbara made the in specie distribution to you in respect of the St Barbara shares you owned on the Record Date and continued to own on the Implementation Date (section 104-135).

11. You made a capital gain from CGT event G1 if the amount of the return of capital of 30.42 cents for each St Barbara share was more than the cost base of your St Barbara share. The capital gain is equal to the difference. If you made a capital gain, the cost base and reduced cost base of your St Barbara share is reduced to nil (subsection 104-135(3)).

12. You cannot make a capital loss from CGT event G1 happening (Note 1 to subsection 104-135(3)).

13. If the amount of the return of capital of 30.42 cents for each St Barbara share was not more than the cost base of your St Barbara share, the cost base and reduced cost

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base of your St Barbara share is reduced by the amount of the return of capital (but not below nil) (subsection 104-135(4)).

14. If you acquired your St Barbara shares before 20 September 1985, any capital gain you make because of CGT event G1 happening is disregarded (subsection 104-135(5)).

CGT event C2

15. CGT event C2 happened on the Implementation Date if you held St Barbara shares at the Record Date but disposed of them prior to the Implementation Date (section 104-25).

16. You received capital proceeds of \$1.21 in satisfaction of each right to receive one Genesis ordinary share in respect of approximately every 4 St Barbara shares you previously owned (paragraph 116-20(1)).

17. Your cost base of the right to receive a Genesis ordinary share is nil to the extent that the cost base or reduced cost base of the St Barbara shares you previously owned was wholly applied in working out a capital gain or capital loss on a CGT event that happened to those shares (Division 110, modified by Division 112).

18. You made a capital gain if the capital proceeds is more than the cost base of your right to receive the Genesis shares. The amount of the capital gain is equal to the difference (subsection 104-25(3)).

19. You made a capital loss if the capital proceeds is less than the reduced cost base of your right to receive the Genesis shares. The amount of the capital loss is equal to the difference (subsection 104-25(3)).

Discount capital gain

20. You can treat a capital gain made when CGT event G1 or C2 happened as a discount capital gain if you acquired your St Barbara share at least 12 months before the Implementation Date (subsection 115-25(1)), provided the other conditions in Subdivision 115-A are satisfied.

Cost base and reduced cost base of shares in Genesis Minerals Limited

21. The first element of the cost base and reduced cost base of each Genesis share you received on the Implementation Date was \$1.21 per Genesis share (subsections 110-25(2) and 110-55(2), section 112-20).

22. You are taken to have acquired the Genesis ordinary share you received by way of the in specie distribution on the Implementation Date (table event number A1 (case 1) of subsection 109-5(2)).

Scheme

23. 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.

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Background

24. St Barbara is an Australian-incorporated public company listed on the Australian Securities Exchange since 15 May 1969 and is the head company of an Australian income tax consolidated group under Part 3-90.

25. St Barbara is engaged in gold mining operations in Canada and Papua New Guinea, and until recently, in the Leonora region of Western Australia.

Disposal of the Leonora assets and the Genesis share distribution

26. On 15 May 2023 St Barbara announced an agreement with Genesis, whereby St Barbara would sell, and Genesis would purchase, the Leonora assets for cash of \$370 million and ordinary shares in Genesis. St Barbara intended to distribute the Genesis shares to its shareholders via a return of capital.

27. The Leonora assets constituted all of St Barbara's gold mining operations in the Leonora region of Western Australia and included associated tenements, licences, contracts, plant and equipment, ore stockpiles, inventory and shares in Bardoc Gold Limited.

28. In an extraordinary general meeting on 20 June 2023, St Barbara shareholders approved:

- the sale of the Leonora assets to Genesis, and
- an equal capital reduction under section 256B of the *Corporations Act 2001* by making a pro rata in specie distribution of up to 205,000,000 Genesis ordinary shares.

29. The sale of the Leonora assets to Genesis was completed on 30 June 2023.

30. On 11 July 2023, St Barbara implemented the in specie distribution of 203,124,311 Genesis ordinary shares to Eligible Shareholders in accordance with the Explanatory Booklet. St Barbara shareholders received 1 Genesis ordinary share for approximately every 4 St Barbara shares held on the Record Date (fractional entitlements were rounded down to the nearest whole Genesis share).

31. St Barbara debited its share capital account by \$248,484,884 to record the return of capital.

32. The return of capital equated to 30.42 cents for each share in St Barbara.

Other matters

33. At the Record Date, St Barbara had 816,841,645 fully paid ordinary shares on issue, being the only class of shares on issue.

34. As at 30 June 2023, St Barbara had:

- \$1,325.76 million share capital, and
- \$873.47 million accumulated consolidated accounting losses.

35. St Barbara did not pay dividends to its shareholders in the 2021–22 and 2022–23 financial years.

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36. As at 30 June 2023, approximately 2% of St Barbara's shareholders were foreign residents.

37. Immediately before the Implementation Date, St Barbara's share capital account (as defined in section 975-300) was not tainted (within the meaning of Division 197).

Commissioner of Taxation

13 December 2023

Status: **not legally binding**

References

Legislative references:

- ITAA 1936 6(1)
 - ITAA 1936 44(1)
 - ITAA 1936 45A
 - ITAA 1936 45A(2)
 - ITAA 1936 45B
 - ITAA 1936 45B(3)(b)
 - ITAA 1936 45C
 - ITAA 1997 6-5
 - ITAA 1997 104-25
 - ITAA 1997 104-25(3)
 - ITAA 1997 104-135
 - ITAA 1997 104-135(3)
 - ITAA 1997 104-135(4)
 - ITAA 1997 104-135(5)
 - ITAA 1997 109-5(2)
 - ITAA 1997 110-25(2)
 - ITAA 1997 110-55(2)
 - ITAA 1997 Div 110
 - ITAA 1997 Div 112
 - ITAA 1997 112-20
 - ITAA 1997 Subdiv 115-A
 - ITAA 1997 115-25(1)
 - ITAA 1997 116-20(1)
 - ITAA 1997 Div 197
 - ITAA 1997 Div 230
 - ITAA 1997 Part 3-90
 - ITAA 1997 975-300
 - ITAA 1997 977-50
 - ITAA 1997 995-1(1)
 - Corporations Act 2001 256B
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ATO references

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