

CR 2024/7 - Tamboran Resources Limited - scrip for scrip roll-over



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Class Ruling

Tamboran Resources Limited – scrip for scrip roll-over

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 for the former shareholders of Tamboran Resources Limited (Tamboran) who disposed of their shares in Tamboran to Tamboran Resources Corporation (Tamboran US HoldCo) and received Tamboran US HoldCo Chess Depositary Interests (CDIs) as consideration under the scheme implemented on 13 December 2023 (Implementation Date).
2. Details of this scheme are set out in paragraphs 20 to 38 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 Tamboran shares and you:
 - were registered on the Tamboran share register as the holder of Tamboran shares on 11 December 2023 (Record Date)
 - held your Tamboran shares on capital account – that is, you did not hold your Tamboran shares as ‘revenue assets’, as defined in section 977-50, or as ‘trading stock’, as defined in subsection 995-1(1), on the Record Date
 - were either a
 - ‘resident of Australia’ as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936) on the Implementation Date, or

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- ‘foreign resident’, as defined in subsection 995-1(1), just before the Implementation Date and your Tamboran shares were ‘taxable Australian property’ as defined in section 855-15.

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 38 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

CGT event A1 happened on the disposal of your Tamboran shares

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

8. CGT event A1 happened on the Implementation Date, being 13 December 2023 (paragraph 104-10(3)(b)).

9. The capital proceeds in respect of CGT event A1 happening are the market value of the Tamboran US HoldCo CDIs you received as consideration for each Tamboran share you disposed of (subsection 116-20(1)). The market value of the Tamboran US HoldCo CDI received is worked out at the time of CGT event A1, being 13 December 2023 (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 Tamboran Shares were more than the cost base of that share (subsection 104-10(4)). The capital gain is the difference.

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

Availability of scrip for scrip roll-over

12. If you were a ‘resident of Australia’, as defined in subsection 6(1) of the ITAA 1936, you can choose to obtain scrip for scrip roll-over to disregard a capital gain on the disposal of your Tamboran shares to Tamboran US HoldCo (sections 124-780 and 124-785).

13. If you were a ‘foreign resident’, as defined in subsection 995-1(1), just before the Implementation Date and your Tamboran shares were ‘taxable Australian property’, as defined in section 855-15, you can choose to obtain scrip for scrip roll-over to disregard a capital gain on the disposal of your Tamboran shares to Tamboran US HoldCo (sections 124-780 and 124-785) if your Tamboran US HoldCo CDIs were also taxable Australian property just after you acquired them (subsection 124-795(1)).

14. However, you cannot choose scrip for scrip roll-over if any capital gain you might make from the replacement Tamboran US HoldCo CDI would be disregarded, otherwise than because of a roll-over (paragraph 124-795(2)(a)).

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If you choose scrip for scrip roll-over

15. If you choose to obtain scrip for scrip roll-over, the first element of the cost base and reduced cost base of a replacement Tamboran US HoldCo CDI (received in exchange for your original Tamboran share) is worked out by reasonably attributing the cost base and reduced cost base (respectively) of your original Tamboran share which was exchanged and for which the roll-over was obtained (subsections 124-785(2) and (4)). In this case, as one Tamboran share is exchanged for one Tamboran US HoldCo CDI, the cost base (and reduced cost base) of each Tamboran US HoldCo CDI will equal the cost base (and reduced cost base) of the Tamboran share for which it was exchanged.

16. The acquisition date of the Tamboran US HoldCo CDIs, for the purposes of making a 'discount capital gain' under Subdivision 115-A, is the date when you acquired your corresponding Tamboran shares for which you have chosen scrip for scrip roll-over (table item 2 of subsection 115-30(1)).

If you do not choose or cannot choose scrip for scrip roll-over

17. If you do not choose or cannot choose to obtain scrip for scrip roll-over, you must account for any capital gain or capital loss from CGT event A1 happening on the disposal of your Tamboran shares in working out your net capital gain or net capital loss for the income year in which CGT event A1 happened (sections 102-5 and 102-10).

18. Where scrip for scrip roll-over is not chosen, the first element of the cost base and reduced cost base of each Tamboran US HoldCo CDI is equal to the market value of the Tamboran share you gave for the acquisition of each Tamboran US HoldCo CDI on the Implementation Date (subsections 110-25(2) and 110-55(2)).

19. If you make a capital gain where scrip for scrip roll-over is not chosen, or cannot be chosen, you can treat the capital gain as a discount capital gain provided that the conditions of Subdivision 115-A are met. The Tamboran shares must have been acquired or taken to have been acquired by you at least 12 months before the Implementation Date (section 115-25).

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.

Tamboran Resources Limited

21. Tamboran is a company incorporated in Australia on 9 February 2009, listed on the Australian Securities Exchange. Tamboran and its subsidiaries (Tamboran Group) conduct exploration and mining operations principally in the Northern Territory.

22. As at the Record Date:

- Tamboran had 1,716,672,600 ordinary shares on issue.
- Tamboran had 2,341 shareholders.
- No single shareholder either individually, or together with their associates, held more than 20% of the shares in Tamboran.

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- Over 50% of the Tamboran shares were held by shareholders with an address in the United States of America (US).
- 54,501,222 Tamboran employee share options (Tamboran Options) were on issue with an expiry date of 26 May 2026.

The restructure

23. On 3 October 2023, Tamboran US HoldCo was incorporated in the state of Delaware, United States of America (US). On incorporation Tamboran US HoldCo did not have any shares on issue.

24. On 12 October 2023, Tamboran announced a proposal to re-domicile to the US by way of a Scheme of Arrangement under Part 5.1 of the *Corporations Act 2001*, under which Tamboran US HoldCo would acquire all the shares in Tamboran and Tamboran shareholders would receive Tamboran US HoldCo CDIs as consideration for the disposal of their Tamboran shares.

25. On 1 December 2023, Tamboran shareholders voted to approve the Scheme of Arrangement to re-domicile to the US.

26. The Scheme of Arrangement to re-domicile to the US was approved by the Federal Court of Australia on 6 December 2023.

27. The former shareholders of Tamboran received one Tamboran US HoldCo CDI for one Tamboran Share held at the Record Date and did not receive any other consideration for disposing their Tamboran shares to Tamboran US HoldCo. One Tamboran US HoldCo CDI represents a beneficial interest in 1/200th of a Tamboran US HoldCo share.

28. A share sale facility was established for certain foreign shareholders of Tamboran that were ineligible to participate in the Scheme of Arrangement (Ineligible Foreign Shareholders). Ineligible Foreign Shareholders were Tamboran shareholders who had an address shown on the Tamboran share register on the Record Date as a place outside Australia, Canada, Republic of Cyprus, Hong Kong, India, Italy, Luxembourg, Malaysia, New Zealand, Singapore, United Kingdom and US and other jurisdictions that Tamboran otherwise determined (in its absolute discretion).

29. Ineligible Foreign Shareholders had their Tamboran US HoldCo CDIs to which they were entitled sold by Tamboran US HoldCo through a sale agent who then remitted the cash proceeds to the Ineligible Foreign Shareholders.

30. On 13 December 2023, Tamboran became a wholly owned subsidiary of Tamboran US HoldCo.

31. On 14 December 2023, Tamboran US HoldCo CDIs commenced trading on the Australian Securities Exchange.

Other matters

32. Each Tamboran US HoldCo CDI is a Chess Unit of Foreign Security for the purposes of subsection 124-780(6).

33. There was no 'significant stakeholder' or 'common stakeholder' in Tamboran within the meaning of those terms in section 124-783.

34. Each Tamboran share and each Tamboran US HoldCo CDI satisfies the principal asset test in section 855-30.

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35. Tamboran is not treated as if it did not have at least 300 members under section 124-810.

36. A Tamboran shareholder, Tamboran and Tamboran US HoldCo were not all members of the same linked group within the meaning of section 170-260 just before the Scheme Implementation Deed was entered into on 12 October 2023.

37. All Tamboran Options at the Record Date continued on the same terms, except that on and from the Implementation Date, the entitlements of option holders to be issued Tamboran shares became entitlements to be issued Tamboran US HoldCo CDIs.

38. Tamboran US HoldCo did not make a choice under subsection 124-795(4) for scrip for scrip roll-over to not apply

Commissioner of Taxation

14 February 2024

Status: **not legally binding**

References

Legislative references:

- | | |
|--|--|
| <ul style="list-style-type: none"> - 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 110-25(2) - ITAA 1997 110-55(2) - 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 124-780 - ITAA 1997 124-780(6) | <ul style="list-style-type: none"> - ITAA 1997 124-783 - ITAA 1997 124-785 - ITAA 1997 124-785(2) - ITAA 1997 124-785(4) - ITAA 1997 124-795(1) - ITAA 1997 124-795(2)(a) - ITAA 1997 124-795(4) - ITAA 1997 124-810 - ITAA 1997 170-260 - ITAA 1997 Div 230 - ITAA 1997 855-15 - ITAA 1997 855-30 - ITAA 1997 977-50 - ITAA 1997 995-1(1) - Corporations Act 2001 Pt 5.1 |
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ATO references

NO: 1-Z4M2FPM
 ISSN: 2205-5517
 BSL: PG
 ATOLaw topic: Capital gains tax ~~ Rollovers ~~ Scrip for scrip
 Capital gains tax ~~ CGT events ~~ A1 - disposal of a CGT asset
 Income tax ~~ Capital management ~~ Exchange of shares / units

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