


CR 2026/2 - Delta Lithium Limited - in specie return of capital

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Status: **legally binding**

Class Ruling

Delta Lithium Limited – in specie return of capital

📌 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 Delta Lithium Limited (Delta Lithium) who received a return of capital from Delta Lithium by way of an in specie distribution of shares in Ballard Mining Limited (Ballard Mining) on 9 July 2025 (Implementation Date).
2. Details of this scheme are set out in paragraphs 26 to 44 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 Delta Lithium shares on 4 July 2025 (Record Date)
 - held your Delta Lithium shares on capital account – that is, you did not hold your Delta Lithium shares as ‘revenue assets’ (as defined in section 977-50) or as ‘trading stock’ (as defined in subsection 995-1(1))
 - are not taken for capital gains tax (CGT) purposes to have acquired your Delta Lithium shares before 20 September 1985
 - are either
 - a resident of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936) (and not a temporary resident as defined in subsection 995-1(1)), or
 - a non-resident of Australia who does not carry on a business at or through a permanent establishment in Australia, and

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- received the in specie distribution of shares in Ballard Mining 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 26 to 44 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 2025 to 30 June 2026.

Ruling

Demerger relief is not available

7. Demerger relief (being demerger roll-over under Division 125) is not available as the scheme does not satisfy one or more of the conditions in section 125-70.

CGT event G1

8. CGT event G1 happened when Delta Lithium made an in specie distribution of Ballard Mining shares to you in respect of the Delta Lithium shares you owned on the Record Date and continued to own on the Implementation Date (section 104-135).

9. You made a capital gain from CGT event G1 happening if the reduction of share capital for each Delta Lithium share (2.22c per share) was more than the cost base of the share (paragraph 104-135(1)(b) and subsection 104-135(3)). The capital gain is equal to the difference, and the cost base and reduced cost base of your Delta Lithium share is reduced to nil. You cannot make a capital loss from CGT event G1 (Note 1 to subsection 104-135(3)).

10. If you did not make a capital gain from CGT event G1, you reduce the cost base and reduced cost base of the Delta Lithium share by the reduction of share capital received for each Delta Lithium share (subsection 104-135(4)).

CGT event C2

11. CGT event C2 happened when Delta Lithium made an in specie distribution of Ballard Mining shares to you in respect of the Delta Lithium shares you owned on the Record Date but ceased to own before the Implementation Date (section 104-25).

12. You received capital proceeds in satisfaction of the right to receive Ballard Mining shares (subsection 116-20(1)).

13. Your cost base of the right to receive a Ballard Mining share is nil, to the extent that the cost base or reduced cost base of the Delta Lithium share you previously owned was wholly applied in working out your capital gain or capital loss on a CGT event that happened to those shares (Division 110, as modified by Division 112).

14. CGT event C2 happened because, by ceasing to own a Delta Lithium share after the Record Date but before the Implementation Date, you retained the right to receive the

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reduction of share capital (which is a separate CGT asset from the share in Delta Lithium). When the reduction of share capital was paid by the transfer of shares in Ballard Mining to you, the right to receive the reduction of share capital (being an intangible CGT asset) ended by the right being discharged or satisfied (paragraph 104-25(1)(b)).

15. You made a capital gain equal to the amount of the reduction of share capital (2.22c per Delta Lithium share) (subsection 104-25(3)).

Discount capital gain

16. You can treat a capital gain made when CGT event G1 or C2 happened as a discount capital gain if you acquired your Delta Lithium shares at least 12 months before the Implementation Date (subsection 115-25(1)) and the other conditions in Subdivision 115-A are satisfied.

Cost base and reduced cost base of your Ballard Mining Limited shares

17. The first element of the cost base and reduced cost base of each Ballard Mining share you acquired is the market value of that Ballard Mining share on the Implementation Date (subsections 110-25(2), 110-55(2) and 112-20(1)), being 25c.

Acquisition date of your Ballard Mining Limited shares

18. You are taken to have acquired the Ballard Mining shares on the Implementation Date (table event A1 (case 1) of subsection 109-5(2)).

Not an assessable dividend

19. The Ballard Mining shares you received from Delta Lithium are not ordinary income and not included in your assessable income under section 6-5.

20. No part of the value of a Ballard Mining share transferred to you on the Implementation Date will be included in your assessable income under subsection 44(1) of the ITAA 1936. This is because all the value of the Ballard Mining shares was debited to the share capital account of Delta Lithium, meaning that it is not a 'dividend' under subsection 6(1) of the ITAA 1936.

Anti-avoidance provisions do not apply to deem an assessable dividend

21. The Commissioner will not make a determination under subsection 45A(2) of the ITAA 1936 that section 45C of the ITAA 1936 applies in relation to the whole, or a part, of the capital benefits provided to you by the transfer of Ballard Mining shares on the Implementation Date.

22. The Commissioner will not make a determination under paragraph 45B(3)(b) of the ITAA 1936 that section 45C of the ITAA 1936 applies to the whole, or a part, of the capital benefits provided to you by the transfer of Ballard Mining shares on the Implementation Date.

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Foreign resident shareholders

23. If you were a foreign resident or the trustee of a foreign trust for CGT purposes (as defined in subsection 995-1(1)) that held Delta Lithium shares on the Implementation Date and those shares were not taxable Australian property for the purposes of subsection 855-10(1), you disregard any capital gain or capital loss you made from CGT event G1 or C2 happening.

24. Your Delta Lithium shares were taxable Australian property if they were:

- an 'indirect Australian real property interest' (table item 2 of section 855-15 and subsection 855-25(1))
- used by you at any time in carrying on a business through a permanent establishment in Australia (table item 3 of section 855-15), or
- a CGT asset covered by subsection 104-165(3) (choosing to disregard a capital gain or capital loss on ceasing to be an Australian resident) (table item 5 of section 855-15).

25. Your Delta Lithium shares were an indirect Australian real property interest if they passed:

- the non-portfolio interest test (section 960-195) – that is, you (and any of your associates as defined in section 318 of the ITAA 1936) held 10% or more of the shares in Delta Lithium
 - at the time of CGT event G1 or C2, or
 - throughout a 12-month period that began no earlier than 24 months before the time of CGT event G1 or C2 and ended no later than the time of CGT event G1 or C2, and
- the principal asset test (section 855-30) at the time of CGT event G1 or C2. Delta Lithium has stated that Delta Lithium shares were 'taxable Australian property' at the Implementation Date (being the time CGT event G1 or C2 happened).

Scheme

26. 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.

Delta Lithium Limited

27. Delta Lithium is an Australian-resident public company incorporated on 2 December 2003 and is listed on the Australian Securities Exchange. The principal activities of Delta Lithium were gold and lithium exploration and development projects in Australia.

28. Delta Lithium is the head company of an income tax consolidated group.

29. Immediately before the Implementation Date, Delta Lithium had 716,541,792 fully paid ordinary shares and \$272,221,897 credited to its share capital account.

30. Prior to the Implementation Date, Delta Lithium held 100% of Mt Ida Lithium Pty. Ltd., which holds tenements containing both lithium and gold deposits (Mt Ida Project).

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Ballard Mining Limited

31. In September 2024, following a strategic review of the gold opportunity at the Mt Ida Project and in line with Delta Lithium's strategy to maintain a principal focus on lithium assets, the directors concluded that the gold opportunity at the Mount Ida Project should be advanced on a stand-alone basis.
32. Prior to the steps described in paragraph 33 of this Ruling, Delta Lithium indirectly held all the rights, entitlements and interests conferred by tenements relating to the Mt Ida Project via Mt Ida AU Pty Ltd (Mt Ida AU).
33. To facilitate the separation of the gold asset, Delta Lithium transferred 100% of the share capital of Mt Ida AU to Ballard Mining, a newly incorporated wholly owned subsidiary of Delta Lithium. In consideration for the gold asset within Mt Ida AU, 220 million shares were issued in Ballard Mining to Delta Lithium, at an issue price of 25c per share.

Return of Ballard Mining Limited shares to Delta Lithium Limited shareholders

34. On 15 May 2025, Delta Lithium announced that it would make an in specie distribution of 63,689,106 Ballard Mining shares to the shareholders of Delta Lithium.
35. On 30 June 2025, the shareholders of Delta Lithium approved an ordinary resolution under section 256C of the *Corporations Act 2001* to reduce the share capital of Delta Lithium as an equal reduction by an amount equal to the pro rata market value of Delta Lithium's shares in Ballard Mining.
36. Each shareholder of Delta Lithium received 1 Ballard Mining share for every 11.25 Delta Lithium shares they held on the Record Date. Fractional entitlements were rounded down to the nearest whole number.
37. On the Implementation Date, Delta Lithium transferred the Ballard Mining shares to Delta Lithium shareholders in satisfaction of the shareholders' entitlement to receive the reduction of share capital.
38. Delta Lithium debited its share capital account to the value of 25c per Ballard Mining share. We will accept the amount of the in specie distribution as being 2.22c per Delta Lithium share.
39. On 14 July 2025, Ballard Mining shares were listed for quotation on the Australian Securities Exchange. Ballard Mining raised additional share capital by way of an initial public offering, including a priority offer to existing shareholders.
40. Following completion of this restructure, Delta Lithium retained a direct shareholding of 45.97% in Ballard Mining.

Other matters

41. More than 50% of the market value of Delta Lithium's assets were taxable real Australian property on the Implementation Date and in the 12 months prior to the Implementation Date (as defined in section 855-20).
42. Delta Lithium shareholders with a registered address not in an eligible country were ineligible to receive Ballard Mining shares.
43. The Ballard Mining shares held by Ineligible Shareholders (as defined in the Notice of Meeting) were transferred to a sale agent for sale on their behalf. The sale proceeds were then paid to the Ineligible Shareholders.

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44. Immediately before the Implementation Date, Delta Lithium's share capital account was not tainted (within the meaning in Division 197).

Commissioner of Taxation

4 February 2026

Status: **not legally binding**

References

Legislative references:

- ITAA 1997 6-5
 - ITAA 1997 104-25
 - ITAA 1997 104-25(1)(b)
 - ITAA 1997 104-25(3)
 - ITAA 1997 104-135
 - ITAA 1997 104-135(1)(b)
 - ITAA 1997 104-135(3)
 - ITAA 1997 104-135(4)
 - ITAA 1997 104-165(3)
 - ITAA 1997 109-5(2)
 - ITAA 1997 Div 110
 - ITAA 1997 110-25(2)
 - ITAA 1997 110-55(2)
 - ITAA 1997 Div 112
 - ITAA 1997 112-20(1)
 - ITAA 1997 Subdiv 115-A
 - ITAA 1997 115-25(1)
 - ITAA 1997 116-20(1)
 - ITAA 1997 Div 125
 - ITAA 1997 125-70
 - ITAA 1997 Div 197
 - ITAA 1997 Div 230
 - ITAA 1997 855-10(1)
 - ITAA 1997 855-15
 - ITAA 1997 855-20
 - ITAA 1997 855-25(1)
 - ITAA 1997 855-30
 - ITAA 1997 960-195
 - ITAA 1997 977-50
 - ITAA 1997 995-1(1)
 - ITAA 1936 6(1)
 - ITAA 1936 44(1)
 - ITAA 1936 45A(2)
 - ITAA 1936 45B(3)(b)
 - ITAA 1936 45C
 - ITAA 1936 318
 - Corporations Act 2001 256C
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ATO references

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