



# ***CR 2002/6 - Income tax: Return of capital by Ranger Minerals Ltd***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *1 July 2001*



## **Class Ruling**

### **Income tax: Return of capital by Ranger Minerals Ltd**

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#### ***Preamble***

*The number, subject heading, and the **What this Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Arrangement** and **Ruling** parts of this document are a ‘public ruling’ in terms of Part IVAAA of the **Taxation Administration Act 1953**. CR 2001/1 explains Class Rulings and Taxation Rulings TR 92/1 and TR 97/16 together explain when a Ruling is a public ruling and how it is binding on the Commissioner.*

#### **What this Class Ruling is about**

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1. This Ruling sets out the Commissioner’s opinion on the way in which the ‘tax law(s)’ identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates.

#### **Tax law(s)**

2. This Ruling relates to the application of the following provisions of the *Income Tax Assessment Act 1936* (‘ITAA 1936’):

- section 45A (Streaming of dividends and capital benefits);
- section 45B (Schemes to provide capital benefits); and
- section 45C (Effect of determination under Section 45A and 45B).

#### **Class of persons**

3. All the ordinary shareholders of Ranger Minerals Ltd, registered as ordinary shareholders on the “Record Date” for the arrangement described in the ruling.

#### **Qualifications**

4. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.

5. The class of persons defined in this Ruling may rely on its contents provided the arrangement described below at paragraph 9 is carried out in accordance with the details of the arrangement provided in this Ruling.

6. If the arrangement described in this Ruling is materially different from the arrangement that is actually carried out:

- (a) this Ruling has no binding effect on the Commissioner because the arrangement entered into is not the arrangement on which the Commissioner has ruled; and
- (b) this Ruling may be withdrawn or modified.

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## Date of effect

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8. This Class Ruling applies to the year ended 30 June 2002.

## Arrangement

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9. The arrangement that is the subject of the Ruling is described below. This description is based on the application for the class ruling dated 18 December 2001 and further information provided on 12 February 2002 in relation to the proposal by Ranger to return capital to all ordinary shareholders. This document, or relevant parts of it, as the case may be, form part of and are to be read with this description.

**Note:** certain information received from Ranger has been provided on a commercial-in-confidence basis and will not be disclosed or released under the *Freedom of Information Act 1982*.

- (a) Ranger Minerals Ltd ("Ranger") is an Australian publicly listed company;

- (b) Ranger's former primary asset consisted of its 90% equity interest in Abosso Goldfields Limited ("AGL"), a gold mining company incorporated in Ghana. The shareholding in AGL was held through a 100% subsidiary of Ranger, Abosso Gold Holdings SA ("AGH"), a company incorporated in Luxembourg;
- (c) In October 2001, Ranger entered into a Memorandum of Understanding with Gold Fields Limited (South African based publicly listed company), Repadre Capital Corporation (Canadian publicly listed company) and AGH for the proposed sale of Ranger's beneficial interest in AGL. On 23 November 2001, a formal acquisition agreement was executed which provided for the disposal by AGH of the AGL shares and the assignment by Ranger of an associated debt interest in AGL and management agreement with AGL, for proceeds totalling \$80.3 million ("the sale transaction"). The proceeds comprised cash and shares in Repadre Capital Corporation;
- (d) The sale transaction was completed on 23 January 2002. As a result of the completion of the sale transaction, Ranger intends to refocus its business activities on an ongoing basis to primarily providing venture capital to the minerals sector and having some direct exposure to selected exploration projects. This will result in a significant rationalisation of its current activities, staffing needs and capital requirements for the future;
- (e) Due to the completion of the sale transaction, Ranger intends to return a portion of the capital shareholders have invested in Ranger, effectively representing a substantial portion of Ranger's investment in AGL;
- (f) Accordingly Ranger resolved to make a cash distribution to all registered ordinary shareholders, at the "Record Date" of the distribution, of 90 cents per share. Ranger's issued share capital currently totals approximately 64.7 million ordinary shares. The total distribution will therefore be approximately \$58 million;
- (g) The distribution represents approximately 70% of the total proceeds obtained from the sale transaction. The distribution will comprise both a repayment of capital to all ordinary shareholders and a fully franked dividend. Subsequent to lodging the request for a class ruling, it was resolved to pay the fully franked dividend

component of the total distribution, equating to 11 cents per share, on 14 February 2002 to all registered ordinary shareholders at the "Record Date" of the dividend payment. The return of capital component of the distribution being 79 cents per share, will be made to all registered ordinary shareholders at the "Record Date" of the return of capital. The fully franked dividend represents at least a distribution of the full after tax accounting profits derived by Ranger and AGH on the sale transaction, as determined at the date of completion of the sale transaction. The final calculations of the after tax accounting profits will be finalised prior to the return of capital being made;

- (h) Although the calculations of the after tax accounting profit are subject to finalisation, Ranger has advised that the 11 cent per share fully franked dividend more than adequately covers the distribution of the full after tax accounting profits.

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## **Ruling**

10. Subject to the qualifications in paragraphs 4 to 7 of this Ruling it is confirmed that the Commissioner will not make a determination (under section 45A or 45B of the ITAA 1936) that section 45C of the ITAA 1936 applies to the whole or any part, of the return of capital received by an ordinary shareholder.

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## **Explanations**

### **A. Application of section 45A**

11. Section 45A is an anti-avoidance provision that applies in circumstances where capital benefits are streamed to certain shareholders who derive a greater benefit from the receipt of capital (the advantaged shareholders) and it is reasonable to assume that the other shareholders have received or will receive dividends (the disadvantaged shareholders).

12. Although Ranger will provide the ordinary shareholders with a "capital benefit" (as defined in paragraph 45A(3)(b)) the circumstances of the repayment of capital indicates that there is no streaming of capital benefits to some shareholders, who are advantaged shareholders, and dividends to other shareholders, being disadvantaged shareholders. Accordingly section 45A has no application to the proposed return of capital.

**B. Application of section 45B**

13. Section 45B applies where certain capital payments are paid to shareholders in substitution for dividends. For the provision to apply paragraph 45B(2)(c) requires that having regard to the relevant circumstances of the scheme, it would be concluded that the person, or one of the persons, entered into the scheme or carried out the scheme or any part of the scheme for a purpose, other than an incidental purpose, of enabling a taxpayer to obtain a tax benefit.

14. Upon having regard to the relevant circumstances of the scheme (which are set out in section 45B(5)) it cannot be concluded that either Ranger or the shareholders entered into or carried out the scheme for the purpose of enabling the shareholders to obtain a tax benefit. The opinion that section 45B would not apply is based on the conclusion that the repayment of capital is not attributable to the profits of the company nor do the pattern of distributions indicate that it is being paid in substitution for a dividend.

**Detailed contents list**

15. Below is a detailed contents list for this Class Ruling:

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# CR 2002/6

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*Previous draft:*

Not previously released in draft form.

*Related Rulings/Determinations:*

CR 2001/1; TR 92/1; TR 97/16

*Subject references:*

- return of Capital

*Legislative references:*

- ITAA 1936 45A
- ITAA 1936 45A(3)(b)
- ITAA 1936 45B
- ITAA 1936 45B(2)(c)
- ITAA 1936 45B(5)
- ITAA 1936 45C

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ATO References

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