CR 2005/115 - Income tax: capital gains tax: demerger by Minotaur Resources Limited of Minotaur Exploration Limited and merger of Minotaur Resources Limited with Oxiana Limited

Class Ruling

Income tax: capital gains tax: demerger by Minotaur Resources Limited of Minotaur Exploration Limited and merger of Minotaur Resources Limited with Oxiana Limited

Contents Para

Preamble

*The number, subject heading, **What this Class Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Withdrawal**, **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

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

Tax law(s)

2. The tax laws dealt with in this Ruling are:

- subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936);
- section 44 of the ITAA 1936;
- section 45B of the ITAA 1936;
- section 45BA of the ITAA 1936;
- section 45C of the ITAA 1936;
- section 104-135 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- Division 115 of the ITAA 1997;
- Subdivision 124-M of the ITAA 1997; and
- Division 125 of the ITAA 1997.

Class of persons

3. The class of persons to which this Ruling applies comprises the ordinary shareholders of Minotaur Resources Limited (Minotaur) who participated in the arrangement that is the subject of this Ruling and at the time of the arrangement:

(a) were 'residents of Australia' as that term is defined in subsection 6(1) of the ITAA 1936;

(b) were not 'significant stakeholders' of Minotaur within the meaning of that expression as used in Subdivision 124-M of the ITAA 1997; and

(c) held their Minotaur shares on capital account.

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 actually carried out was carried out in accordance with the arrangement described in paragraphs 11 to 26.

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

- 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
- this Ruling may be withdrawn or modified.

Date of effect

8. This Ruling applies to the year of income ended 30 June 2005 or where a substituted accounting period is used, the substituted accounting period in which the arrangement occurred.

9. However, this Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20). Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by *Gazette*;
- it is not taken to be withdrawn by an inconsistent later public ruling; or
- the relevant tax laws are not amended.

Withdrawal

10. This Ruling is withdrawn and ceases to have effect immediately after 30 June 2005. However, the Ruling continues to apply after its withdrawal, in respect of the tax laws ruled upon, to all persons within the specified class who entered into the arrangement during the term of the Ruling.

Arrangement

11. The arrangement that is the subject of this Ruling is described below. This description is based on the following documents provided by Grant Thornton Services (SA) Pty Ltd (Grant Thornton). These documents, or relevant parts of them as the case may be, form part of and are to be read with this description. The relevant documents or parts of documents incorporated into this description of the arrangement are:

- letter dated 22 December 2004 from Grant Thornton requesting the issue of a Class Ruling;
- copy of Scheme Booklet of Minotaur Resources Ltd; and
- correspondence from Grant Thornton dated 27 January 2005, 15 April 2005, 13 July 2005, 20 July 2005, 1 August 2005 and 29 September 2005 providing further information on the processes of the arrangement.

Note: Certain information received from Grant Thornton on behalf of Minotaur may have been provided on a commercial-in-confidence basis and will not be disclosed or released under the Freedom of Information Legislation.

12. Minotaur was incorporated on 9 February 2000 and listed on the Australian Stock Exchange (ASX) in December 2002. It had 48,005,004 ordinary shares on issue, and no other types of issued equity at the date of the demerger. More than 50% of the shares in Minotaur were owned by Australian residents.

13. Minotaur had a number of wholly owned subsidiaries which held mining tenements and other mining related assets. One of these subsidiaries held assets that formed part of the Prominent Hill Project.

14. The Prominent Hill Project was a joint venture in which Minotaur originally held a 19% interest through one of its wholly owned subsidiaries. In August 2003, Minotaur acquired the remaining 81% interest in the Prominent Hill project.

15. On 24 March 2004, Minotaur incorporated a wholly owned subsidiary, Minotaur Resources Holdings Pty Ltd. Minotaur held the only fully paid ordinary share. There were no other ownership interests in the company.

16. In November 2004, Minotaur Resources Holdings Pty Ltd became a public company and changed its name to Minotaur Exploration Limited (Minex).

17. All of Minotaur's non-Prominent Hill assets were transferred to Minex. In addition, all of Minotaur's liabilities were assumed by Minex except:

- any liabilities that related to the Prominent Hill project; and
- Minotaur's liability to pay an amount to one of the previous joint venturer partners. This liability was discharged by Oxiana Limited (Oxiana).

18. Minex issued an additional 48,005,003 shares to Minotaur, to replicate the number of shares in Minotaur.

Demerger

19. Minotaur demerged Minex on 17 February 2005. The demerger of Minex was conducted by way of a capital reduction, effected by an in specie distribution of all of Minotaur's 48,005,004 shares in Minex to Minotaur shareholders.

20. Under the capital reduction, a total of $15,639,893 of contributed capital was returned to Minotaur shareholders (capital reduction amount). This amounted to approximately $0.3258 per ordinary issued Minotaur share.

21. Minotaur shareholders acquired one share in Minex for each Minotaur share they held at the date of the demerger.

22. Minotaur did not make an election under subsection 44(2) of the ITAA 1936.

23. Just after the demerger, at least 50% of the market value of capital gains tax (CGT) assets owned by Minex and its demerger subsidiaries were used in the carrying on of a business by those entities.

24. Minex was listed on the ASX following the demerger.

Takeover

25. Under a separate scheme of arrangement, after the demerger, Oxiana acquired all the shares in Minotaur in exchange for the issue of shares in Oxiana to all Minotaur shareholders (scrip for scrip arrangement). Each Minotaur shareholder, just after the demerger, received 1.85 new shares in Oxiana in exchange for each of their Minotaur shares.

26. Under the scrip for scrip arrangement, foreign shareholders were not issued with new Oxiana shares, rather these were issued to nominees appointed on their behalf and sold. The proceeds from the sale of Oxiana shares were dispatched to foreign shareholders.

Ruling

[All legislative references are to the ITAA 1997 unless stated otherwise]

Demerger of Minex by Minotaur

Demerger rollover

27. Minotaur and its subsidiary Minex were part of a demerger group under subsection 125-65(1).

28. A demerger, as described under section 125-70, happened to this demerger group.

29. CGT event G1 (section 104-135) happened to each of the shares of the Minotaur shareholders at the time of the capital reduction.

30. Minotaur shareholders were eligible to choose demerger rollover under subsection 125-55(1) for their Minotaur shares.

Choosing demerger rollover

31. Minotaur shareholders who chose demerger rollover will disregard any capital gain made in respect of CGT event G1 that happened to those Minotaur shares (subsection 125-80(1)).

32. If a Minotaur shareholder chose demerger rollover, the first element of the cost base and reduced cost base of each Minotaur share acquired before the demerger date, and the corresponding Minex shares acquired under the demerger, is the sum of the cost bases of the Minotaur shares (just before the demerger), apportioned on a reasonable basis having regard to the market values (just after the demerger) of the Minotaur shares and new Minex shares, or an anticipated reasonable approximation of those market values (subsections 125-80(2) and (3)).

Not choosing demerger rollover

33. If a Minotaur shareholder did not choose demerger rollover:

- they were not entitled to disregard any capital gain made in respect of CGT event G1 that happened to their Minotaur shares under the demerger; and
- the first element of the cost base and reduced cost base of each Minotaur share and the corresponding Minex share is calculated in the same manner described in paragraph 32 (subsections 125-85(1) and (2)).

Acquisition date of the Minex shares for the purposes of the CGT discount

34. Under subsection 115-30(1) (item 2), for CGT discount purposes, the acquisition date of the Minex shares acquired under the demerger is the date that each shareholder acquired their corresponding Minotaur shares.

Demerger dividend

35. A dividend was paid under the demerger equal to the excess in the market value of the property distributed under the demerger that exceeded the amount debited by Minotaur to its share capital account. This was a demerger dividend and was not assessable income or exempt income for Minotaur shareholders, pursuant to subsection 44(4) of the ITAA 1936.

Application of section 45B of the ITAA 1936

36. The Commissioner will not make a determination under paragraph 45B(3)(a) of the ITAA 1936 that section 45BA of the ITAA 1936 applies to the whole, or any part, of any demerger benefit provided to Minotaur shareholders under the demerger.

37. 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 any part, of the capital benefit provided to Minotaur shareholders under the demerger.

Takeover of Minotaur by Oxiana under a scrip for scrip transaction

CGT event A1

38. CGT event A1 (section 104-10) happened when, after the demerger, Minotaur shareholders disposed of each of their Minotaur shares to Oxiana.

Scrip for scrip rollover

39. Minotaur shareholders can choose scrip for scrip rollover under paragraph 124-780(3)(d) for the disposal of a Minotaur share acquired after 19 September 1985 if:

- apart from the rollover, they would have made a capital gain from the disposal of the Minotaur share under the takeover; and
- they would have made a capital gain from a replacement share in Oxiana which would not be disregarded (except because of a rollover).

Choosing scrip for scrip rollover

40. If a shareholder chooses scrip for scrip rollover, any capital gain made in respect of CGT event A1 that happened to those Minotaur shares is disregarded. The first element of the cost base and reduced cost base of each Oxiana share received is worked out by attributing to it the cost base (or the part of it) of the shareholder's original Minotaur share for which it was exchanged (section 124-785).

Not choosing scrip for scrip rollover

41. If a Minotaur shareholder did not or could not choose scrip for scrip rollover:

- they were not entitled to disregard any capital gain made in respect of CGT event A1 that happened to their Minotaur shares under the takeover; and
- the first element of the cost base and reduced cost base of the Oxiana shares will be calculated in accordance with the rules in Division 110.

Acquisition date of the Oxiana shares for the purposes of the CGT discount

42. Under subsection 115-30(1) (item 2), for CGT discount purposes, the acquisition date of the Oxiana shares acquired under the takeover is the date that each shareholder acquired their corresponding Minotaur shares.

Explanation

Demerger of Minex by Minotaur

CGT event G1

43. CGT event G1 (section 104-135) happens if a company makes a payment to a shareholder in respect of their shares in the company and some or all of that payment is not a dividend or an amount that is taken to be a dividend under section 47 of the ITAA 1936 (non-assessable payment). The payment can include the giving of property (section 103-5).

44. If CGT event G1 happens during an income year, a shareholder will make a capital gain if the total of the non-assessable payments made by the company during the income year in relation to a share exceeds the cost base of the share.

45. CGT event G1 happened when the Minex shares were distributed to the Minotaur shareholders, as the value of the distribution represented, in part, a return of capital which was neither a dividend nor an amount taken to be a dividend under section 47 of the ITAA 1936.

Demerger rollover

46. Subsection 125-55(1) provides that rollover may be chosen if:

- a shareholder owns a share in a company – this requirement was satisfied as Minotaur shareholders owned shares in Minotaur;
- the company is the head entity of a demerger group – this requirement was satisfied as Minotaur was the head entity of a demerger group (refer to paragraphs 48 to 50 of this Ruling);
- a demerger happens to the demerger group – this requirement was satisfied as a demerger happened to the Minotaur demerger group (refer to paragraph 51 of this Ruling); and
- under the demerger a CGT event happens to the original interest (Minotaur shares) and a new or replacement interest is acquired in the demerged entity – this requirement was satisfied as CGT event G1 happened to the Minotaur shares (refer to paragraphs 43 to 45 of this Ruling) and Minotaur shareholders received Minex shares under the demerger.

47. Therefore, Minotaur shareholders can choose rollover for the demerger and disregard any capital gain made in respect of CGT event G1 that happened to their Minotaur shares under the demerger (subsection 125-80(1)).

Was Minotaur the head entity of a demerger group?

48. A demerger group comprises one head entity and at least one demerger subsidiary (subsection 125-65(1)). The demerger group in this case included Minotaur as head entity and Minex as a demerger subsidiary (Minotaur demerger group).

49. Minotaur was the head entity of the Minotaur demerger group because:

- no other member of the demerger group had any ownership interests in Minotaur (subsection 125-65(3)); and
- there was no other company or trust capable of being a head entity to which Minex could have been a demerger subsidiary (subsection 125-65(4)).

50. Minex was a demerger subsidiary of Minotaur because Minotaur owned ownership interests in Minex that carried the right to:

- receive 100% of any distribution of income or capital by Minex; and
- exercise 100% of the voting power in Minex (subsection 125-65(6)).

Has a demerger happened to the demerger group?

51. A demerger (subsections 125-70(1), (2) and (3)) happened to the Minotaur/Minex demerger group because:

- there was a restructuring (paragraph 125-70(1)(a)), and Minotaur disposed of at least 80% of its existing Minex shares to owners of original shares in Minotaur (subparagraph 125-70(1)(b)(i));
- CGT event G1 happened to Minotaur shares and Minotaur shareholders acquired new shares in Minex and nothing else (subparagraph 125-70(1)(c)(i));
- under the restructure, Minex shares were acquired by Minotaur shareholders on the basis of their ownership of their shares in Minotaur (paragraph 125-70(1)(d) and subparagraph 125-70(1)(e)(i));
- paragraphs 125-70(1)(f) and 125-70(1)(g) were satisfied;
- Minotaur shareholders acquired Minex shares in the same proportion as they owned Minotaur shares just before the demerger (paragraph 125-70(2)(a));

- the total market value of each shareholder's shares in each of Minotaur and Minex just after the demerger was reasonably proportionate to the total market value of the Minotaur shares before the demerger (paragraph 125-70(2)(b); and
- subsections 125-70(4) and (5) were not applicable.

Choosing demerger rollover

52. Under subsection 125-80(1) a capital gain made from CGT event G1 which happened to Minotaur shares on the return of capital made under the demerger was disregarded.

53. Each Minotaur shareholder was required to calculate the first element of the cost base and reduced cost base of their Minotaur shares and their corresponding new Minex shares just after the demerger (subsections 125-80(2) and (3)).

54. Section 125-80 requires shareholders to have apportioned the total of the cost bases of their Minotaur shares over those shares and the corresponding new Minex shares. The apportionment must have had regard to the relative market values of the Minotaur and Minex shares (or an anticipated reasonable approximation of those market values) just after the demerger. Note 2 to subsection 125-80(2) provides that the head entity or demerging entity may advise shareholders of the proportions. Minotaur has advised that the relevant percentages in respect of the apportionment are:

- 81.78% to Minotaur shares; and
- 18.22% to Minex shares.

Not choosing demerger rollover

55. Any capital gain made from CGT event G1 which happened to Minotaur shares on the return of capital made under the demerger was not disregarded.

56. The method of calculating the first element of the cost base and reduced cost base for a shareholder's Minotaur shares and the corresponding new Minex shares is the same whether or not rollover was chosen (see paragraph 53 of this Ruling and subsection 125-85(2) and Note 1 to subsection 125-80(2)).

Time of acquisition of Minex shares – CGT discount

57. For a capital gain to be reduced by the CGT discount, one of the conditions that must be satisfied is that the capital gain relates to an asset that was owned for at least 12 months (subsection 115-25(1)). For general CGT purposes, shareholders acquired their Minex shares when those shares were received under the demerger (section 109-10). However, for the purposes of accessing the CGT discount, Minex shareholders are taken to have acquired their Minex shares on the date they acquired their corresponding Minotaur shares (item 2 in the table in subsection 115-30(1)).

Demerger dividend

58. Subsection 44(1) of the ITAA 1936 includes in a shareholder's assessable income a dividend, as defined in subsection 6(1) of the ITAA 1936, paid to a shareholder out of company profits.

59. The definition of a dividend includes any amount distributed or credited by a company to any of its shareholders. However, paragraph (d) of the subsection 6(1) definition excludes amounts debited against an amount standing to the credit of the share capital account of the company.

60. In the circumstances of this demerger, Minotaur debited the capital distribution against the amount standing to the credit of the 'share capital account' as defined in section 6D of the ITAA 1936. That amount therefore does not constitute a dividend for the purposes of subsection 6(1) of the ITAA 1936 and is not assessable as a subsection 6(1) dividend under subsection 44(1) of the ITAA 1936.

61. Subsection 6D(3) provides that an account is not a share capital account if it is tainted for the purposes of Division 7B of Part IIIAA of the ITAA 1936. An account, that would otherwise be a share capital account, is tainted for the purposes of Division 7B if an amount is transferred from another account except in the circumstances provided for by section 160ARDM of the ITAA 1936. Minotaur has confirmed that there were no transfers that tainted its share capital account under that rule, which applies to transfers before 1 July 2002. There are presently no tainting rules dealing with transfers made on or after 1 July 2002. However, the Government has announced its intention to introduce laws dealing with the tainting of share capital accounts from 1 July 2002 (the then Minister for Revenue and Assistant Treasurer's Press Release C104/02 of 27 September 2002). Although such laws may be relevant to the application of section 6D, this Ruling does not extend to the application of these proposed laws.

62. After the demerger, the value of the Minex shares distributed under the demerger exceeded the amount debited against the share capital account. As such, the distribution of Minex shares by Minotaur included a dividend component.

63. The excess in the market value of the property distributed under the demerger over the amount debited by a company to its share capital account is taken to be a dividend paid out of profits derived by the company (see Taxation Ruling TR 2003/8).

64. A dividend is neither an assessable income nor an exempt income amount (subsections 44(3) and (4) of the ITAA 1936) where:

- the dividend is a demerger dividend (as defined in subsection 6(1) of the ITAA 1936);
- the head entity does not elect that subsections 44(3) and (4) of the ITAA 1936 do not apply to the demerger dividend (subsection 44(2) of the ITAA 1936); and
- subsection 44(5) of the ITAA 1936 is satisfied.

65. In the present circumstances, each of these conditions were satisfied. Therefore, the demerger dividend received by Minotaur shareholders under the demerger will be neither assessable income nor exempt income.

Section 45B – schemes to provide certain benefits

66. Section 45B of the ITAA 1936 applies to ensure that relevant amounts are treated as dividends for taxation purposes if:

- components of a demerger allocation as between capital and profit do not reflect the circumstances of a demerger; or
- certain payments, allocations and distributions are made in substitution for dividends.

67. Specifically, the provision applies where:

- there is a scheme under which a person is provided with a demerger benefit or a capital benefit by a company (paragraph 45B(2)(a) of the ITAA 1936);
- under the scheme a taxpayer, who may or may not be the person provided with the demerger benefit or the capital benefit, obtains a tax benefit (paragraph 45B(2)(b) of the ITAA 1936); and
- 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 (paragraph 45B(2)(c) of the ITAA 1936).

68. A demerger is a ‘scheme’ within the broad meaning of that term (subsection 45B(10) of the ITAA 1936).

69. The provision of ownership interests to a shareholder under a demerger constitutes their being provided with a demerger benefit (subsection 45B(4) of the ITAA 1936) and a capital benefit (subsection 45B(5) of the ITAA 1936) to the extent that the demerger benefit is not a demerger dividend (subsection 45B(6) of the ITAA 1936). Furthermore, as the tax payable on a demerger benefit and a capital benefit is less than it would be if they had been an assessable dividend or a dividend respectively, the provision of those benefits will constitute the shareholders obtaining a tax benefit (subsection 45B(9) of the ITAA 1936).

70. In this case, while the conditions of paragraphs 45B(2)(a) and 45B(2)(b) of the ITAA 1936 are met, the requisite purpose of enabling the Minotaur shareholders to obtain a tax benefit (by way of a demerger benefit or a capital benefit) is not present. In other words, having regard to the relevant circumstances of the scheme, set out in subsection 45B(8) of the ITAA 1936, it would not be concluded that any of the parties to the demerger entered into or carried out the scheme to obtain a tax benefit in the form of a demerger benefit or a capital benefit.

71. It is apparent that the demerger benefit and capital benefit provided to the Minotaur shareholders reflected the circumstances of the demerger. In this regard, it is considered that the attribution of the demerger allocation to profit and capital was reasonable. Also, the return of capital amount cannot be said to be attributable to the profits of the company, nor does Minotaur's pattern of distributions indicate that it was paid in substitution for a dividend. Furthermore, although the tax result for participating shareholders was favourable, there is nothing known of the circumstances of the Minotaur shareholders to indicate that the demerger was structured to provide tax benefits. The arrangement was undertaken with an aim to enhance shareholder value by separating two distinct operations to allow for the pursuit of growth and development of the Prominent Hill and non-Prominent Hill projects in an effective manner. Accordingly, in this case the relevant circumstances outlined in subsection 45B(8) of the ITAA 1936 do not incline for or against the relevant conclusion as to purpose.

Takeover of Minotaur by Oxiana under a scrip for scrip transaction

CGT event A1

72. CGT event A1 (section 104-10) happens if there is a change of ownership of an asset from one entity to another. A capital gain from CGT event A1 is made if the cost base of the asset is less than the capital proceeds for its disposal. A capital loss is made if the reduced cost base of the asset exceeds those capital proceeds.

73. CGT event A1 happened when Minotaur shareholders disposed of their Minotaur shares to Oxiana.

Availability of scrip for scrip rollover

74. Scrip for scrip rollover in Subdivision 124-M disregards a capital gain made from a share that is disposed of as part of a corporate takeover or merger if the shareholder receives in exchange replacement shares.

75. The capital gain is disregarded completely if the only capital proceeds the shareholder receives is the replacement shares.

76. Subdivision 124-M contains a number of conditions for, and exceptions to, the eligibility of a shareholder to choose scrip for scrip rollover. Below is an outline of the main conditions and exceptions which are relevant to the circumstances of the arrangement that is the subject of this Ruling.

Subparagraph 124-780(1)(a)(i) requires an entity to exchange a share in a company for a share in another company

77. This requirement was satisfied because Minotaur shareholders exchanged each of their shares in Minotaur for 1.85 shares in Oxiana.

Paragraph 124-780(1)(b) requires that the exchange of shares is in consequences of a singe arrangement

78. In the context of the scrip for scrip provisions, the exchange of ordinary shares under a Scheme of Arrangement is considered to be in consequences of a single arrangement.

Paragraph 124-780(2)(a) requires that the exchange of shares in consequence of a single arrangement results in the acquiring entity (Oxiana) becoming the owner of 80% or more of the voting shares in the original company (Minotaur)

79. Under the Scheme of Arrangement Oxiana became the owner of 100% of the voting shares in Minotaur and therefore this requirement was satisfied.

Paragraphs 124-780(1)(b) and 124-780(2)(b) require that the exchange of shares be in consequence of a single arrangement in which at least all the owners of voting shares in the original entity (Minotaur) (apart from the acquiring entity (Oxiana) or members of the acquiring entity's wholly-owned group) could participate

80. All owners of voting shares in Minotaur were able to participate in the Scheme of Arrangement and therefore this requirement was satisfied.

Paragraphs 124-780(1)(b) and 124-780(2)(c) require that the exchange of shares is in consequence of a single arrangement in which participation was available on substantially the same terms for all of the owners of interests of a particular type in the original entity (Minotaur)

81. This requirement was satisfied as all the ordinary shareholders in Minotaur who were able to participate under the Scheme of Arrangement were offered shares in Oxiana on the same terms.

Paragraphs 124-780(1)(c) and 124-780(3)(a) require the original interest holder (a Minotaur shareholder) to have acquired their original interest (a Minotaur share) on or after 20 September 1985

82. Minotaur was incorporated in February 2000. All Minotaur shares were acquired on or after 20 September 1985.

Paragraphs 124-780(1)(c) and 124-780(3)(b) require that, apart from the rollover, the original interest holder (a Minotaur shareholder) would make a capital gain from a CGT event happening in relation to the original interest (a Minotaur share)

83. Whether a Minotaur shareholder did, apart from the rollover, make a capital gain from the disposal of a share to Oxiana, is a question of fact that is dependent on the specific circumstances of each shareholder – in particular on the cost base of each Minotaur share and the value of the capital proceeds received. Paragraph 39 limits this Ruling in this regard.

Paragraphs 124-780(1)(c) and 124-780(3)(c) require that the replacement interest is in the acquiring entity (Oxiana)

84. This requirement was satisfied as the replacement share received by a Minotaur shareholder was in Oxiana.

Paragraphs 124-780(1)(c) and 124-780(3)(d) require that the original interest holder (a Minotaur shareholder) chooses to obtain the rollover

85. Whether a Minotaur shareholder chooses rollover is a question of fact.

Additional requirements in subsection 124-780(5) must be satisfied if the original interest holder (a Minotaur shareholder) and the acquiring entity (Oxiana) did not deal with each other at arm's length and:

(a) neither the original entity (Minotaur) nor the replacement entity (Oxiana) had at least 300 members just before the arrangement started: paragraph 124-780(4)(a); or

(b) the original interest holder (a Minotaur shareholder), the original entity (Minotaur) and the acquiring entity (Oxiana) were all members of the same linked group just before the arrangement started: paragraph 124-780(4)(b)

86. If Minotaur and Oxiana were dealing with each other at arms length, then paragraphs 124-780(4)(a) and 124-780(4)(b) do not apply.

87. Even if Minotaur and Oxiana were not dealing with each other at arms length, paragraph 124-780(4)(a) does not apply because Minotaur had at least 300 members just before the arrangement started. Section 124-810 does not apply to Minotaur as its ownership was not concentrated in the manner contemplated by that section.

Exceptions to obtaining scrip for scrip rollover

Paragraph 124-795(2)(a) provides that the rollover is not available if any capital gain the original interest holder (a Minotaur shareholder) might make from their replacement interest (Oxiana shares) would be disregarded

88. This exception may apply if, for example, the Oxiana shares are held as trading stock. Paragraph 3(c) limits this Ruling in this regard.

Paragraph 124-795(2)(b) provides that the rollover is not available if the original interest holder (a Minotaur shareholder) and the acquiring entity (Oxiana) are members of the same wholly-owned group just before the original interest holder stops owning their original interest (a Minotaur share), and the acquiring entity is a foreign resident

89. This exception does not apply as Oxiana is not a foreign resident.

Choosing scrip for scrip rollover

90. Under subsection 124-785(1) a capital gain made from CGT event A1 which happened to Minotaur shares on the disposal of those shares to Oxiana under the takeover was disregarded.

91. Each Minotaur shareholder was required to calculate the first element of the cost base and reduced cost base of each Oxiana share received by attributing to it the cost base (or the part of it) of the shareholder's original Minotaur share for which it was exchanged (section 124-785).

Not choosing scrip for scrip rollover

92. Any capital gain made from CGT event A1 which happened to each of the Minotaur shares on the disposal of those shares to Oxiana under the takeover was not disregarded.

93. The first element of the cost base and reduced cost base of each of the Oxiana shares is calculated in accordance with the rules in Division 110.

Time of acquisition of Oxiana shares – CGT discount

94. For a capital gain to be reduced by the CGT discount, one of the conditions that must be satisfied is that the capital gain relates to an asset that was owned for at least 12 months (subsection 115-25(1)). For general CGT purposes, shareholders acquired their Oxiana shares when those shares were received under the takeover (section 109-10). However, for the purposes of accessing the CGT discount, Oxiana shareholders are taken to have acquired their Oxiana shares on the date they acquired their corresponding Minotaur shares (item 2 in the table in subsection 115-30(1)).

Detailed contents list

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

Commissioner of Taxation
21 December 2005

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

CR 2001/1; TR 92/1; TR 92/20; TR 97/16; TR 2003/8

Subject references:

- arrangement
- capital benefit
- capital gains
- capital proceeds
- company
- cost base
- cost base adjustments
- demerger
- demerger allocation
- demerger benefit
- demerger dividend
- demerger group
- demerger subsidiary
- interests
- merger
- ordinary share
- original interest
- replacement interest
- resident roll-over
- roll-over relief
- schemes to provide certain benefits
- scrip
- scrip for scrip
- share
- shareholder

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