


CR 2012/105 - Income tax: scrip for scrip: merger of Auzex Resources Limited and Bullabulling Gold Limited

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Class Ruling

Income tax: scrip for scrip: merger of Auzex Resources Limited and Bullabulling Gold Limited

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This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provisions identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provisions

2. The relevant provisions considered in this Ruling are:

- section 104-10 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 109-10 of the ITAA 1997;
- section 110-25 of the ITAA 1997;
- section 110-55 of the ITAA 1997;
- Subdivision 115-A of the ITAA 1997;
- section 116-20 of the ITAA 1997; and
- Subdivision 124-M of the ITAA 1997.

All subsequent legislative references are to the ITAA 1997 unless otherwise indicated.

Class of entities

3. The class of entities to which this Ruling applies consists of the shareholders of Auzex Resources Limited (Auzex) who:

- (a) held Auzex shares on the Record Date (5 April 2012) and received shares in Bullabulling Gold Limited (BBG) in exchange for their Auzex shares;
- (b) were residents of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* on the Record Date;
- (c) held their Auzex shares on capital account on the Record Date; and
- (d) are not subject to the taxation of financial arrangement rules in Division 230 in relation to the gains and losses on their Auzex shares.

(Note - Division 230 will generally not apply to individuals, unless they have made an election for it to apply to them).

In this Ruling, a person belonging to this class of entities is referred to as an 'Auzex shareholder'.

Qualifications

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

5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 9 to 32 of this Ruling.

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

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

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Date of effect

8. This Ruling applies from 1 July 2011 to 30 June 2012. The Ruling continues to apply after 30 June 2012 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Scheme

9. The following description of the scheme is based on information provided by the applicant.

Note: certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under Freedom of Information legislation.

Background

10. On 29 August 2011, Auzex announced to the Australian Securities Exchange (ASX) its intention to merge with GGG Resources plc (GGG) so that their respective 50% interests in the Bullabulling Gold Project would be combined under the common ownership of a new company, Bullabulling Gold Limited (BBG).

11. The merger was implemented through two main steps:

- a UK scheme of arrangement pursuant to which GGG re-domiciled from the United Kingdom to Australia and became a wholly owned subsidiary of an Australian company, BBG; and
- an Australian scheme of arrangement pursuant to which Auzex became a wholly owned subsidiary of BBG.

12. The Australian scheme of arrangement is the subject of this Ruling.

Relevant entities

Auzex Resources Limited

13. Auzex was a minerals exploration company. It was incorporated in Australia in September 2003 as a proprietary company and converted to a public company limited by shares in July 2005. It listed on the ASX in October 2005.

14. Subsequent to the demerger of Auzex Exploration Limited by Auzex (which was completed in January 2012), the only asset held by Auzex was a 50% interest in the Bullabulling Gold Project.

15. As at 17 February 2012, Auzex had 140,468,565 shares on issue. It also had 2,369,904 unlisted options on issue.

16. The unlisted options were issued pursuant to the Auzex employee share ownership plan. These options were dealt with under separate private contractual arrangements between Auzex, BBG and the individual option holders, and do not form part of the scheme, the subject of this Ruling.

Bullabulling Gold Limited

17. BBG was incorporated in Australia on 12 December 2011 as a public company limited by shares.

18. BBG was admitted to the official listing of the ASX on 21 March 2012.

19. Following the merger, BBG:

- holds 100% of the shares of Auzex;
- holds 100% of the shares in GGG; and
- has 100% ownership of the Bullabulling Gold Project through its holding of 100% of the shares of Auzex and 100% of the shares of GGG.

The scheme

20. On 17 February 2012 Auzex released the Scheme Booklet which proposed that BBG would acquire all the shares of Auzex by means of a scheme of arrangement under Part 5.1 of the *Corporations Act 2001*.

21. A Scheme Meeting was held on 22 March 2012 at which Auzex shareholders approved the scheme.

22. On 27 March 2012 the merger between Auzex and BBG by scheme of arrangement was approved by the Supreme Court of Queensland at the second Court hearing held on that date.

23. The Effective Date of the scheme was 29 March 2012.

24. The Record Date of the scheme was 5 April 2012.

25. The Implementation Date of the scheme was 11 April 2012.

26. As a result of the scheme, Auzex became a wholly owned subsidiary of BBG and Auzex shares were delisted from the ASX.

Scheme consideration

27. In consideration for the transfer of their Auzex shares to BBG, Auzex shareholders who held their shares on the Record Date received 0.909 BBG shares for every one Auzex share (other than Excluded Shares) they held on that date.

28. Under the scheme of arrangement, Excluded Shares were any Auzex Shares already owned by BBG or GGG or any of their related bodies corporate.

Ineligible foreign shareholders

29. Certain foreign Auzex shareholders who were resident in a jurisdiction that restricts or prohibits the distribution of BBG shares were ineligible foreign shareholders. Under the scheme, they were not issued with BBG shares. Instead, the BBG shares to which they were entitled were issued to a sale agent who sold the shares and remitted the net proceeds to the ineligible foreign shareholders.

Other matters

30. There were no 'significant stakeholders' or 'common stakeholders' in relation to the scheme within the meaning of those expressions in section 124-783.

31. Just before the Effective Date of the scheme, both Auzex and BBG had at least 300 members and did not have a concentrated ownership of the nature described in section 124-810.

32. For the purposes of subsections 124-780(4) and 124-780(5), just before the Effective Date of the scheme no original interest holder in Auzex was a member of a linked group that included BBG.

Ruling

Capital gains tax (CGT) event A1

33. CGT event A1 happened when an Auzex shareholder disposed of their Auzex shares to BBG (subsections 104-10(1) and 104-10(2)).

34. The time of the CGT event was when the Auzex shares were transferred to BBG on the Implementation Date of 11 April 2012 (paragraph 104-10(3)(b)).

Capital gain or capital loss

35. An Auzex shareholder made a capital gain when CGT event A1 happened if the capital proceeds from the disposal of each Auzex share exceeded its cost base. An Auzex shareholder made a capital loss if the capital proceeds were less than the reduced cost base of the Auzex share (subsection 104-10(4)).

Capital proceeds

36. The capital proceeds from the disposal of each Auzex share is the market value (worked out at the time that CGT event A1 happened) of the BBG share received in exchange for the Auzex share (paragraph 116-20(1)(b)).

37. In working out the market value of the BBG shares received that is reasonably attributable to the disposal of each Auzex share, the Commissioner accepts the following formula:

$$\text{Market value of BBG share} \times \frac{\text{Total number of BBG shares received}}{\text{Total number of Auzex shares exchanged for BBG shares}}$$

38. The Commissioner accepts that the market value of a BBG share on the Implementation Date may be determined by reference to the volume weighted average price of BBG shares traded on the ASX on that day.

If a capital gain is made***Scrip for scrip roll-over***

39. Subject to the qualification in paragraph 40 of this Ruling, an Auzex shareholder who made a capital gain from the disposal of an Auzex share to BBG is eligible to choose scrip for scrip roll-over (section 124-780 and subsection 124-785(1)).

40. Scrip for scrip roll-over cannot be chosen if any capital gain an Auzex shareholder made from the replacement BBG shares would be disregarded, except because of a roll-over (paragraph 124-795(2)(a)).

41. The only capital proceeds received by an Auzex shareholder were shares in BBG. Therefore, if a shareholder chooses scrip for scrip roll-over, the capital gain they made upon the disposal of an Auzex share to BBG is disregarded (subsection 124-785(1)).

Discount capital gain

42. An Auzex shareholder who made a capital gain where roll-over is not chosen, or cannot be chosen, may treat the capital gain as a 'discount capital gain' if the requirements of Subdivision 115-A are satisfied.

Cost base of BBG shares

43. The method for calculating the cost base and reduced cost base of the BBG shares received by an Auzex shareholder depends on whether the Auzex shareholder chooses scrip for scrip roll-over.

If scrip for scrip roll-over is chosen

44. Where scrip for scrip roll-over is chosen by the Auzex shareholder, the first element of the cost base and reduced cost base of each BBG share received is the cost base or reduced cost base of the relevant Auzex shares that is reasonably attributable to the acquisition of the BBG share (subsections 124-785(2) and 124-785(4)).

If scrip for scrip roll-over is not chosen, or cannot be chosen

45. Where scrip for scrip roll-over is not chosen, or cannot be chosen, the first element of the cost base and reduced cost base of each BBG share is equal to the market value of the Auzex shares that is reasonably attributable to the acquisition of the BBG share, worked out at the time of the acquisition of the BBG share (subsections 110-25(2) and 110-55(2)).

Acquisition date of the new BBG shares

46. The acquisition date of the BBG shares received in exchange for the Auzex shares is the date that the BBG shares were issued to the Auzex shareholder (item 2 of the table in section 109-10). That is, the Implementation Date of the scheme of 11 April 2012.

47. However, for the purpose of determining whether a capital gain made from any later disposal of the BBG shares is to be treated as a 'discount capital gain', an Auzex shareholder who chooses scrip for scrip roll-over is taken to have acquired their BBG shares when they acquired the corresponding Auzex shares (item 2 of the table in subsection 115-30(1)).

Commissioner of Taxation28 November 2012

Appendix 1 – Explanation

❶ *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

48. The significant tax consequence that is the subject of this Ruling is the availability of scrip for scrip roll-over under Subdivision 124-M. It enables a shareholder to disregard a capital gain from a share that is disposed of as part of a corporate takeover or merger if the shareholder receives a replacement share in exchange. It also provides special rules for calculating the cost base and reduced cost base of the replacement share.

49. Subdivision 124-M contains a number of conditions for, and exceptions to, a shareholder being eligible to choose scrip for scrip roll-over. The main requirements that are relevant to the scheme that is the subject of this Ruling are:

- (a) shares in a company are exchanged for shares in another company;
- (b) the exchange occurs as part of a single arrangement;
- (c) conditions for roll-over are satisfied;
- (d) further conditions are not applicable or are satisfied;
and
- (e) exceptions to obtaining scrip for scrip roll-over are not applicable.

50. Under the scheme that is the subject of this Ruling, the conditions for roll-over under Subdivision 124-M are satisfied. The Ruling section provides a detailed explanation of the Commissioner's decision in this regard. Therefore, no further explanation is warranted.

Appendix 2 – Detailed contents list

51. The following is a detailed contents list for this Ruling:

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Subject references:

- CGT roll-over relief
- scrip for scrip roll-over

Legislative references:

- ITAA 1936 6(1)
 - ITAA 1997
 - ITAA 1997 104-10
 - ITAA 1997 104-10(1)
 - ITAA 1997 104-10(2)
 - ITAA 1997 104-10(3)(b)
 - ITAA 1997 104-10(4)
 - ITAA 1997 109-10
 - ITAA 1997 110-25
 - ITAA 1997 110-25(2)
 - ITAA 1997 110-55
 - ITAA 1997 110-55(2)
 - ITAA 1997 Subdiv 115-A
 - ITAA 1997 115-30
 - ITAA 1997 115-30(1)
 - ITAA 1997 116-20
 - ITAA 1997 116-20(1)(b)
 - ITAA 1997 Subdiv 124-M
 - ITAA 1997 124-780
 - ITAA 1997 124-780(4)
 - ITAA 1997 124-780(5)
 - ITAA 1997 124-783
 - ITAA 1997 124-810
 - ITAA 1997 124-785
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ATO references

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