


# ***CR 2012/26 - Income tax: scrip for scrip: merger of Adamus Resources Limited and Endeavour Mining Corporation***

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## Class Ruling

# Income tax: scrip for scrip: merger of Adamus Resources Limited and Endeavour Mining Corporation

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### **📌 This publication provides you with the following level of protection:**

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 provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

### Relevant provision(s)

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;
- section 112-30 of the ITAA 1997;
- Division 115 of the ITAA 1997;
- section 116-20 of the ITAA 1997;

- section 116-30 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 are the shareholders of Adamus Resources Limited (Adamus), who:

- (a) acquired shares in Adamus post 21 September 1999 and whose shares are held on capital account;
- (b) disposed of their shares in Adamus in exchange for shares in Endeavour Mining Corporation (Endeavour);
- (c) were residents of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* at the time of disposal; and
- (d) are not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on their Adamus shares.

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

## **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 23 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

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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

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9. The following description of the scheme is based on information provided by the applicant. The following documents, or relevant parts of them form part of and are to be read with the description:

- application for Class ruling dated 2 December 2011;
- the scheme booklet for the proposed merger with Endeavour Mining Corporation; and
- Merger implementation agreement dated 21 August 2010.

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

10. On 21 August 2011, Adamus and Endeavour entered into a definitive merger implementation agreement. The merger of Adamus and Endeavour will be implemented by way of a scheme of arrangement between Adamus and its shareholders.

## **Adamus**

11. Adamus is an Australian public company, listed on the Australian Securities Exchange (ASX), TSX Venture Exchange Canada, and the Frankfurt Stock Exchange Open Market.

## **Endeavour**

12. Endeavour is a non resident company of Australia, listed on the Toronto Stock Exchange.

13. Adamus and Endeavour agreed to merge by means of a Scheme of Arrangement under Part 5.1 of the *Corporations Act 2001*.

## **Scheme of Arrangement**

14. The Scheme of Arrangement Booklet was lodged with the Australian Securities and Investments Commission and the ASX on 21 October 2011.

15. Subject to and upon the terms and conditions of the Scheme, all of the Adamus shares held by Adamus shareholders (the Participants) will be transferred to Endeavour Gold Corporation, a wholly owned subsidiary of Endeavour.

16. In exchange for all of the shares in Adamus, Endeavour will provide each Participant with the Scheme Consideration.

## **Scheme Consideration**

17. As provided in the Scheme booklet, the Participants will receive Scheme Consideration, being 0.285 new shares in Endeavour (in the form of shares or CDIs) for the transfer of each Adamus share held at the record date.

18. A 'CDI', or CHESS Depository Interest, is the instrument through which foreign company shares are able to be traded on the ASX. Each Endeavour CDI will represent a beneficial interest in one Endeavour share and will have rights that are economically equivalent to the rights attaching to an Endeavour share.

19. Eligible Scheme Participants will receive:

- Endeavour CDIs to the extent that their Adamus shares are held on the Adamus issuer sponsored sub register or the Adamus CHESS register; and
- Endeavour shares to the extent that their Adamus shares are held on the Adamus Canadian Branch register.

20. All existing Adamus shares at the Adamus Record Date (7pm on 12 December 2011 (Sydney Time)) will be transferred to Endeavour Gold Corporation, being a wholly owned subsidiary of Endeavour.

21. On implementation of the merger, Adamus will become a wholly owned subsidiary of Endeavour.

22. All conditions precedent to the merger are to be satisfied or waived on or before 8am on the Second Court Date (2 December 2011) other than approval of the scheme by the Federal Court of Australia and the lodgement of the orders with the Australian Securities and Investments Commission.

### **Non resident shareholders**

23. Restrictions in certain jurisdictions outside of Australia may make it impractical or unlawful for Endeavour shares to be issued under the scheme. In these instances, although limited, ineligible foreign shareholders will not receive Endeavour shares, instead all ineligible foreign Adamus shareholders will have the Endeavour shares that would otherwise have been issued to them under the scheme issued to a Sale Agent, as nominee in trust. The Sale Agent will sell the Endeavour shares and remit the proceeds (less selling costs) to the ineligible foreign Adamus shareholders.

## **Ruling**

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### **CGT event A1 happened on the disposal of Adamus shares to Endeavour**

24. CGT event A1 happens as a result of the disposal by a shareholder of their Adamus shares to Endeavour under the Scheme described in this Ruling (subsections 104-10(1) and 104-10(2)).

25. The time of the event was when the Adamus shares were transferred to Endeavour on the Implementation Date of the Scheme (paragraph 104-10(3)(b)).

### **Capital gain or capital loss**

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

### **Capital proceeds**

27. The capital proceeds from the disposal of each Adamus share is the market value of the Endeavour shares received (worked out at the time that CGT event A1 happened) that is reasonably attributable to the disposal of an Adamus share (subsections 116-20(1) and 116-40(1)).

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

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

29. The Commissioner accepts that the market value of an Endeavour share on the Implementation Date may be determined by reference to the volume weighted average price of Endeavour shares traded on the ASX on that day. As per page 21 of the Scheme Booklet fractional entitlements will be rounded down.

### **If a capital gain is made**

#### ***Scrip for scrip roll-over***

30. Subject to the qualification in paragraph 31 of this Ruling, a shareholder who makes a capital gain from the disposal of an Adamus share to Endeavour is eligible to choose scrip for scrip roll-over (section 124-780 and subsection 124-785(1)).

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

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

### **Discount capital gain**

33. A shareholder in Adamus who makes a capital gain where roll-over is not chosen, or cannot be chosen, can treat the capital gain as a discount capital gain provided they satisfy the requirements of Division 115.

### **Acquisition date of new Endeavour shares (CDI)**

34. Adamus shareholders will acquire the new Endeavour shares or CDI's in accordance with item 2 in the table in section 109-10, being the date when the equity interests are issued or allotted.

**Cost base of Endeavour shares**

35. The method for calculating the cost base and reduced cost base of the Endeavour shares received by a shareholder in Adamus depends on whether the shareholder chooses scrip for scrip roll-over.

***Scrip for scrip roll-over is not chosen***

36. 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 Endeavour share is equal to the market value of the Adamus shares that is reasonably attributable to the acquisition of the Endeavour share, worked out at the time of their acquisition on the Implementation Date (subsections 110-25(2) and 110-55(2), and section 112-30).

***Scrip for scrip roll-over is chosen***

37. Where scrip for scrip roll-over is chosen, the first element of the cost base and reduced cost base of each Endeavour share is equal to the part of the cost base of the relevant Adamus shares that is reasonably attributable to the acquisition of the Endeavour share (subsections 124-785(2) and 124-785(4)).

**Non resident Shareholders**

38. A non resident Adamus shareholder who participates in the scheme disregards any capital gain made when CGT Event A1 happens if their share is not 'taxable Australian property' (section 855-10). In this case the non resident Adamus shareholder cannot access the scrip for scrip roll-over due to the operation of subsection 124-795(1).

39. If the Adamus share of a non resident shareholder is taxable Australian property, a non resident shareholder is not eligible to choose roll-over relief if the replacement Endeavour share (CDI) is not taxable Australian property (subsection 124-795(1)).

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**Commissioner of Taxation**24 April 2012]

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## Appendix 1 – Explanation

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**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.*

### **Availability of scrip for scrip roll-over**

40. 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.

41. 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.

42. 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**

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

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## References

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- Previous draft:*
- ITAA 1997 104-10
- Not previously issued as a draft
- ITAA 1997 109-10
  - ITAA 1997 110-25
- Related Rulings/Determinations:*
- ITAA 1997 110-55
  - ITAA 1997 112-30
- TR 2006/10
- ITAA 1997 Div 115
  - ITAA 1997 116-20
- Subject references:*
- CGT Rollover
  - ITAA 1997 116-30
  - ITAA 1997 Subdiv 124-M
  - Corporations Act 2001 Pt 5.1
- Legislative references:*
- ITAA 1936 6(1)
  - TAA 1953
  - ITAA 1997
  - Copyright Act 1968
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### ATO references

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