


CR 2013/48 - Income tax: exchange of shares in Bathurst Resources Limited for shares in NZ NewCo

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Class Ruling

Income tax: exchange of shares in Bathurst Resources Limited for shares in NZ NewCo

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① 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 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 dealt with in this Ruling are:

- section 104-10 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 109-55 of the ITAA 1997;
- section 112-115 of the ITAA 1997;
- section 115-30 of the ITAA 1997;
- section 124-10 of the ITAA 1997;
- section 124-15 of the ITAA 1997;
- Subdivision 124-G of the ITAA 1997; and
- section 124-360 of the ITAA 1997.

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

Class of entities

3. The class of entities to which this Ruling applies are the ordinary shareholders of Bathurst Resources Limited (BRL) who:

- (a) participate in the exchange of their shares in BRL (the BRL shares) for equivalent shares in NZ NewCo (the NZ NewCo shares);
- (b) hold their BRL shares on capital account, and not as revenue assets or trading stock;
- (c) are 'residents of Australia' for the purposes of subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936) at the time of disposal of their BRL shares; and
- (d) are not subject to the taxation of financial arrangements rules in Division 230 of the ITAA 1997 in relation to gains and losses on their BRL 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, this class of entities is referred to as 'participating shareholders'.

Qualifications

4. This Ruling does not provide guidance on whether the participating shareholders hold their shares as revenue assets (as defined by section 977-50) or that their shares constitute trading stock (as defined in section 995-1).

5. The class of entities defined in this Ruling may rely on its contents provided the arrangement actually carried out is carried out in accordance with the scheme described in paragraphs 8 to 25 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.

Date of effect

7. This Ruling applies from 1 July 2012 to 30 June 2014. However, this Ruling continues to apply after 30 June 2014 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

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

- Class Ruling application dated 8 April 2013 from PricewaterhouseCoopers (PwC); and
- Correspondence from PwC dated 20 May 2013.

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

Bathurst Resources Limited (BRL)

9. BRL and its 100% owned subsidiaries carry on the business of coal mining in New Zealand.

10. BRL is a public company limited by shares and resident of Australia for income tax purposes.

11. All of the shares in BRL are ordinary shares and were acquired by their respective holders on or after 20 September 1985.

12. BRL is not a head entity or a member of a tax consolidated group for Australian taxation purposes.

13. BRL is listed on both the Australian Securities Exchange (ASX) and the NZX Main Board (NZSX).

14. All of BRL's coal-producing assets are owned by wholly-owned New Zealand incorporated subsidiaries of BRL. All of BRL's New Zealand incorporated subsidiaries are residents of New Zealand for income tax purposes.

The proposed restructure

15. On 2 April 2013, BRL announced to both the ASX and NZSX, the intention to proceed with a re-organisation of BRL's corporate structure, subject to Federal Court, shareholder and regulatory approvals.

16. The re-organisation (the proposed restructure) will broadly involve the following steps:

- (a) the incorporation of a new holding company in New Zealand, (NZ NewCo);
- (b) the exchange, by BRL's existing shareholders, of their BRL shares for equivalent shares in NZ NewCo;
- (c) the exchange, by BRL's existing option holders, of their options in BRL for equivalent options in NZ NewCo;
- (d) the exchange, by BRL's existing performance rights holders, of their performance rights in BRL for equivalent performance rights in NZ NewCo;
- (e) the listing of NZ NewCo on both the ASX and NZSX;
- (f) the sale, by BRL, of the shares in its New Zealand subsidiaries (all of whom only hold New Zealand assets) to NZ NewCo; and
- (g) the in-specie distribution of any assets held by BRL to NZ NewCo.

17. The proposed restructure will be undertaken by way of a court approved scheme of arrangement (the scheme of arrangement) under section 411 of the *Corporations Act 2001 (Cth)*.

18. Under the proposed restructure, each participating shareholder will receive a whole number of shares in NZ NewCo equal to the percentage of shares held in BRL.

19. Moreover, each participating shareholder will receive NZ NewCo shares with a market value equal to the market value of their BRL shares.

20. All BRL shareholders registered on 27 June 2013 (the Record Date) will participate in the exchange.

21. The scheme of arrangement requires both shareholder and court approval. For the shareholders, approval was obtained by the requisite majority of ordinary shareholders, and by at least 75% in value of the votes cast, at the scheme meeting held on 13 June 2013.

22. If approved by the court, it is proposed that the interposition of NZ NewCo will be implemented on 28 June 2013 (the Implementation Date) in accordance with the terms of the scheme of arrangement by the following steps:

- (a) all of the ordinary shares in BRL will be transferred by their respective holders to NZ NewCo; and

- (b) in consideration for the ordinary shares, NZ NewCo will issue to each participating shareholder (or, in the case of certain foreign shareholders referred to at paragraph 23 of this Ruling, to a nominee or sale agent) one NZ NewCo share for each BRL share transferred.

Ineligible foreign shareholders

23. Certain overseas shareholders (Ineligible Foreign Shareholders) are ineligible to receive NZ NewCo shares under the scheme due to legislation in their country of residence. NZ NewCo shares that would otherwise have been issued to those shareholders in exchange for their ordinary shares will instead be issued to the nominee or sale agent.

24. Under the terms of the scheme, the NZ NewCo shares issued to the nominee or sale agent will be sold as soon as practicable after the Implementation Date. The sale proceeds (net of expenses) will be remitted to the relevant Ineligible Foreign Shareholder.

Other matters

25. BRL shares received by BRL option holders from the exercise of their options prior to the implementation of the scheme will be exchanged for equivalent shares in NZ NewCo. Therefore, they will be included as shareholders for the purposes of the proposed restructure.

Ruling

CGT event A1

26. CGT event A1 happens when the participating shareholders exchange their BRL shares for NZ NewCo shares (subsections 104-10(1) and 104-10(2)).

27. The time of the event is when the BRL shares are exchanged for NZ NewCo shares on the Implementation Date for the scheme of arrangement (paragraph 104-10(3)(b)).

Subdivision 124-G roll-over

28. The participating shareholders will be eligible to choose roll-over relief under Subdivision 124-G for the exchange of each of their BRL shares for NZ NewCo shares (subsection 124-360(1)).

BRL shares held on capital account

29. The consequences for choosing roll-over relief under Subdivision 124-G for the participating shareholders who hold their BRL shares on capital account, and not held as revenue assets or as trading stock, are as follows:

- (a) any capital gain or capital loss made on the disposal of each BRL share under the exchange will be disregarded (subsection 124-15(2)); and
- (b) the first element of the cost base and reduced cost base of each NZ NewCo share acquired under the exchange will be worked out as follows:
 - sum the cost bases of the BRL shares just before the exchange; and
 - apportion that sum over the NZ NewCo shares acquired under the exchange (subsections 124-10(3) and 124-15(3)).

30. Where a participating shareholder chooses to obtain a roll-over under Subdivision 124-G they will be taken to have acquired the NZ NewCo shares when they acquired their BRL shares (see item 9 of the table in section 112-115, item 8C of the table in section 109-55 and item 2 of the table in subsection 115-30(1)).

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.*

Roll-over under Subdivision 124-G

31. The participating shareholders can choose to obtain roll-over under subsection 124-360(1) because:

- (a) they are all Australian resident shareholders in BRL (the original company);
- (b) more than one shareholder owns all the shares in BRL (the exchanging members);
- (c) under the scheme for organising its affairs, the exchanging members dispose of all their shares in BRL to another company (the interposed company) in exchange for shares in the interposed company;
- (d) the requirements in section 124-20 have been satisfied for the Ineligible Foreign Shareholders; and
- (e) the other requirements in sections 124-365 and 124-380 have been satisfied.

BRL shares held on capital account

32. For the participating shareholders who hold their BRL shares on capital account, and not as revenue assets or trading stock, the roll-over consequences for the participating shareholders are as set out in paragraphs 29 to 30 of this Ruling.

Appendix 2 – Detailed contents list

33. 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:

- capital gains tax
- CGT replacement asset roll-over

Legislative references:

- ITAA 1936 6(1)
- ITAA 1997 104-10(1)
- ITAA 1997 104-10(2)

- ITAA 1997 104-10(3)(b)
 - ITAA 1997 109-55
 - ITAA 1997 112-115
 - ITAA 1997 115-30(1)
 - ITAA 1997 Subdiv 124-G
 - ITAA 1997 124-10(3)
 - ITAA 1997 124-15(2)
 - ITAA 1997 124-15(3)
 - ITAA 1997 124-20
 - ITAA 1997 124-360(1)
 - ITAA 1997 124-365
 - ITAA 1997 124-380
 - ITAA 1997 977-50
 - ITAA 1997 995-1
 - Taxation Administration Act 1953
 - Copyright Act 1968
 - Corporations Act 2001
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ATO references

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