


CR 2019/10 - Income tax: Alterra Limited - demerger of Carbon Conscious Investments Ltd

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Class Ruling

Income tax: Alterra Limited – demerger of Carbon Conscious Investments Ltd

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

This publication (excluding appendices) 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.

Summary – 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:

- subsection 6(1) of the *Income Tax Assessment Act 1936* (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)
- section 109-5 of the ITAA 1997
- section 115-30 of the ITAA 1997
- Division 125 of the ITAA 1997.

All 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 consists of all ordinary shareholders of Alterra Limited (Alterra) who:

- were listed on the share register of Alterra at the Record Date (28 December 2018) for the demerger of ordinary shares in Carbon Conscious Investments Ltd (Carbon Conscious Investments)
- are residents of Australia (within the meaning of subsection 6(1) of the ITAA 1936) and were not 'temporary residents' as defined in subsection 995-1(1) on the Record Date
- held their ordinary shares in Alterra on capital account on the Record Date, that is, the shares were neither held as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)), and
- were not subject to the taxation of financial arrangement rules in Division 230 in relation to gains and losses on their Alterra shares.

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

4. In this Ruling, a person belonging to this class of entities is referred to as an 'Alterra Shareholder'.

Qualifications

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

6. 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 36 of this Ruling.

7. 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

8. This Ruling applies from 1 July 2018 to 30 June 2019. The Ruling continues to apply after 30 June 2019 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 *Public Rulings*).

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.

Alterra

10. Alterra is a public company listed on the Australian Securities Exchange (ASX). Alterra was incorporated on 4 January 2008 and is an Australian resident for income tax purposes.

11. Alterra's principal activity historically was the development of its agro-forestry business, which developed and managed agro-forestry projects in Western Australia to generate Australian carbon credit units (ACCU) and voluntary carbon offsets (the Carbon Business). The Carbon Business was made up of the following entities:

- ACCU Asset management Pty Ltd
- Carbon Management WA Pty Ltd, and
- Carbon Conscious Pty Ltd.

12. Alterra also carried on agri-business activities including the development of dairy and horticulture assets (the Agri-Business).

13. Immediately prior to the demerger, Alterra had the following shares and options on issue:

- 147,599,988 fully paid ordinary shares, and
- 6,000,000 unlisted options.

14. There were no other ownership interests (as defined in subsection 125-60(1)) in Alterra immediately before the demerger.

15. Alterra has paid no dividends and has not generated franking credits since its incorporation in 2008.

Carbon Conscious Investments

16. Alterra incorporated a wholly-owned subsidiary ACCU Asset Management (ACCU) on 28 May 2018. ACCU is a resident of Australia for tax purposes.

17. Upon execution of the various novation agreements with customers and execution of the Demerger Implementation Agreement, Alterra novated or transferred certain assets associated with the Carbon Business to ACCU which included:

- forestry rights
- CSRs
- carbon licences
- carbon plantation agreements with customers
- ERF participation agreements
- carbon abatement contract, and
- plantation assets.

18. On 9 October 2018, Carbon Conscious Investments was incorporated.

19. Carbon Conscious Investments is an Australian resident company for income tax purposes and immediately prior to the demerger was a wholly-owned subsidiary of Alterra and a member of the Alterra tax consolidated group.

20. On 14 November 2018, Alterra announced that it proposed to undertake an internal restructure and demerger of the Carbon Business.

21. Upon completion of the transfer of the assets outlined in paragraph 17 of this Ruling, Alterra transferred 100% of the shares in ACCU, Carbon Conscious Pty Limited and Carbon Management WA Pty Limited to Carbon Conscious Investments. Alterra also transferred shares it held in an unrelated ASX listed company to Carbon Conscious Investments.

Shareholder meeting

22. At the Shareholders' meeting held on 20 December 2018, Alterra Shareholders approved:

- a reduction of capital, without cancelling any shares, by an amount equal to the market value of 147,599,988 Carbon Conscious Investments shares with effect as at 5.00pm AEST on the Record Date
- the reduction be satisfied by an *in specie* distribution of Carbon Conscious Investments shares to Alterra shareholders registered on the Record Date on a one for one basis, and

- that Alterra retain 15% of the shares in Carbon Conscious Investments after the demerger.

The demerger

23. To effect the demerger by Alterra of Carbon Conscious Investments on 31 December 2018 (Demerger Date), Alterra transferred 147,599,988 shares (85% of its ownership interests) in Carbon Conscious Investments to its shareholders by way of an equal capital reduction, without cancelling any of its shares, by an amount equal to the market value of 147,599,988 Carbon Conscious Investments shares with effect as at 5:00pm AEST on the Record Date. The capital reduction amount equates to \$0.04 per Alterra ordinary share.

24. The payment of the capital reduction amount was satisfied by an *in specie* distribution to Alterra Shareholders. The ordinary shares in Carbon Conscious Investments were transferred to Alterra Shareholders on a pro rata basis on 31 December 2018. Alterra Shareholders received one Carbon Conscious Investments Share for every one Alterra share they held on the Record Date for the demerger (28 December 2018). As a result of the demerger, Alterra Shareholders will own ordinary shares in both Alterra and Carbon Conscious Investments.

25. No Alterra shares were cancelled under the demerger. Alterra Shareholders continued to hold the same number and proportion of Alterra shares as they held before the demerger.

26. Immediately before the demerger, Alterra held 173,647,045 Carbon Conscious Investments shares.

27. Immediately before the demerger, there were no other ownership interests (as defined in subsection 125-60(1)) in Carbon Conscious Investments.

28. Alterra held 26,047,057 shares (15% of the ownership interests) in Carbon Conscious Investments immediately after the demerger.

29. Alterra Shareholders held 147,599,988 shares (85% of the ownership interests) in Carbon Conscious Investments immediately after the demerger.

30. Alterra Shareholders acquired shares in Carbon Conscious Investments and nothing else.

Accounting for the demerger

31. Alterra accounted for the market value of the *in specie* distribution of Carbon Conscious Investments shares transferred to Alterra Shareholders by debiting \$5,814,855 to Alterra's share capital account, being the value of the Carbon Conscious Investments shares (85% of the ownership interests) transferred to Alterra Shareholders.

32. The value of the demerger distribution amount was \$5,814,855.

Reasons for the demerger

33. Alterra expects that a number of advantages would accrue to its shareholders as a result of the demerger of Carbon Conscious Investments, including:

- the ability to dedicate its efforts to its dairy business and other new Agri-Business opportunities
- a corporate structure that allows a greater opportunity for the true value of the Carbon Business to be realised
- the removal of the internal competition for capital
- quarantining the Carbon Business assets so that the consistent cash-flow from the Carbon Business is not exposed to risk from Alterra's other Agri-Business ventures
- the ability to focus on developing Alterra's non-Carbon Business assets
- the ability to enhance the capacity of Alterra to raise funds and reduce its costs of equity capital
- provide Alterra Shareholders with the opportunity to retain exposure to the cash-flows associated with the Carbon Business, while maintaining their investment exposure to the dairy business and any new Agri-Business opportunities, and
- enable both Alterra and Carbon Conscious Investments to undertake more targeted marketing.

Other matters

34. None of the Alterra Shareholders acquired their shares in Alterra before 20 September 1985.

35. The share capital account was not tainted within the meaning of Division 197 immediately before the demerger.

36. Alterra has never paid a dividend to its shareholders.

Ruling

Capital gains tax (CGT)

CGT event G1

37. CGT event G1 happened in relation to each of the Alterra ordinary shares owned by Alterra Shareholders at the time Alterra made the payment of the capital reduction amount which was satisfied by the *in specie* distribution of Carbon Conscious Investments shares (section 104-135).

Capital gain

38. An Alterra Shareholder made a capital gain when CGT event G1 happened if the capital reduction amount of \$0.04 per Alterra ordinary share exceeded the cost base of that Alterra ordinary share. The amount of the capital gain is equal to this excess (subsection 104-135(3)). No capital loss can be made when CGT event G1 happens.

Demerger roll-over

39. A demerger, as defined in section 125-70, happened to the Alterra demerger group (which included Alterra and Carbon Conscious Investments) under the scheme that is the subject of this Ruling.

40. An Alterra Shareholder can choose demerger roll-over under Division 125 (subsection 125-55(1)).

CGT consequences of choosing demerger roll-over

41. An Alterra Shareholder who chooses demerger roll-over will disregard any capital gain made when CGT event G1 happened in relation to each of their Alterra shares under the demerger (subsection 125-80(1)).

42. If an Alterra Shareholder chooses demerger roll-over, they must also recalculate the cost base and reduced cost base of their Alterra shares and calculate the cost base and reduced cost base of their new Carbon Conscious Investments shares acquired under the demerger (subsection 125-80(2)).

43. The first element of the cost base and reduced cost base of each Alterra share and Carbon Conscious Investments share is worked out by:

- taking the total of the cost bases of the Alterra shares just before the demerger

- apportioning that total between the Alterra shares and the Carbon Conscious Investments shares acquired under the demerger.

44. The apportionment of this total is done on a reasonable basis having regard to the market values (just after the demerger of the Alterra shares and Carbon Conscious Investments shares, or a reasonable approximation of those market values (subsections 125-80(2) and 125-80(3)).

45. Based on the Independent Valuation Report of the respective businesses just before the demerger, a reasonable apportionment is to attribute:

- 46% of the total cost bases of the Alterra shares just before the demerger to the Carbon Conscious Investments shares
- 54% of the total cost bases of the Alterra shares just before the demerger to the Alterra shares.

CGT consequences of not choosing demerger roll-over

46. Alterra Shareholders who do not choose demerger roll-over:

- cannot disregard any capital gain made when CGT event G1 happened under the demerger to their Alterra shares
- must recalculate the first element of the cost base and reduced cost base of their Alterra shares and calculate the first element of the cost base and reduced cost base of the Carbon Conscious Investments shares they acquired under the demerger, in the manner described in paragraphs 43 to 45 of this Ruling (subsections 125-85(1) and 125-85(2)).

Acquisition date of the Carbon Conscious Investments shares

47. For the purpose of determining eligibility to make a future discount capital gain from a Carbon Conscious Investments share, a Carbon Conscious Investments share acquired by an Alterra Shareholder under the demerger will be taken to have been acquired on the date the shareholder acquired, for CGT purposes, the corresponding Alterra share (item 2 in the table in subsection 115-30(1)). This will be the case whether or not the shareholder chooses demerger roll-over.

48. For all other CGT purposes, the acquisition date should be the date on which each respective Carbon Conscious Investments share was acquired by an Alterra shareholder under the demerger, that is, the Demerger Date (subsection 109-5(2)).

Dividend consequences

49. No part of the *in specie* distribution of Carbon Conscious Investments shares to Alterra Shareholders is a 'dividend' as defined in subsection 6(1) of the ITAA 1936.

50. No part of the value of a Carbon Conscious Investments share distributed to an Alterra Shareholder will be assessable income of an Alterra Shareholder under subsection 44(1) of the ITAA 1936.

Application of sections 45B, 45BA and 45C of the ITAA 1936

51. 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 an Alterra Shareholder under the demerger.

52. 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 an Alterra Shareholder under the demerger.

Commissioner of Taxation6 February 2019

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.*

Capital gains tax

CGT event G1

53. CGT event G1 (section 104-135) happens when:

- a company makes a payment (which may include providing property) to a shareholder in respect of a share they own in the company
- some or all of the payment (the non-assessable part) is not a dividend nor an amount that is taken to be a dividend under section 47 of the ITAA 1936, and
- the payment is not included in the shareholder's assessable income.

54. Under the demerger, Alterra made a payment to its shareholders in the form of an *in specie* distribution of 147,599,988 Carbon Conscious Investments shares held by Alterra. The full value of the *in specie* distribution was debited to Alterra's share capital account (that is, \$5,814,855 is not a dividend and is not included in the assessable income of Alterra Shareholders).

55. Accordingly, CGT event G1 happened in relation to each Alterra share owned by an Alterra Shareholder on the Demerger Date when Alterra made the payment of the capital reduction amount which was satisfied by the *in specie* distribution of Carbon Conscious Investments shares.

Capital gain

56. An Alterra Shareholder will have made a capital gain when CGT event G1 happened if their capital reduction amount per Alterra share exceeded the cost base of that share. The capital gain is equal to the amount of the excess. The cost base and reduced cost base of the Alterra share are reduced to nil (subsection 104-135(3)). No capital loss can be made when CGT event G1 happens.

Demerger roll-over

57. Alterra shareholders may obtain demerger roll-over where the requirements of section 125-70 and subsection 125-55(1) are satisfied.

58. A shareholder in a company may at the time of a demerger choose to obtain a demerger roll-over if:

- the shareholder owns a share in the company (the original interest)
- the company is the head entity of a demerger group
- a demerger happens to the demerger group, and
- under the demerger, a CGT event happens to the original interest and the shareholder acquires a new or replacement interest (the new interest) in the demerged entity (subsection 125-55(1)).

59. Under the scheme, the conditions for choosing demerger roll-over under Division 125 were satisfied.

60. If an Alterra Shareholder chooses demerger roll-over, they may disregard any capital gain made when CGT event G1 happened to their Alterra shares under the demerger (subsection 125-80(1)).

61. Whether or not an Alterra Shareholder chooses the demerger roll-over, they must recalculate the cost base and reduced cost base of their new Carbon Conscious Investments Shares in the same way (subsection 125-80(2), 125-80(3) and 125-85(2)).

62. The first element of the cost base and reduced cost base of each Alterra share and the corresponding Carbon Conscious Investments share received under the demerger is worked out as follows:

- calculating the sum of the cost bases of each Alterra share just before the demerger, and
- apportioning that sum between the Alterra shares and the Carbon Conscious Investments shares acquired under the demerger.

63. The Commissioner accepts the market value of Alterra based on the Independent Valuation Report dated 19 October 2018 was \$12,600,918 at the Record Date.

64. The Directors of Alterra determined through the Independent Valuation Report that the market value of the assets that exited the Alterra group when Carbon Conscious Investments demerged was \$5,814,855.

65. This means that the market value of Alterra just after the demerger was \$6,786,033. Therefore the proportional 'split' in value between an Alterra share and a Carbon Conscious Investments share to existing Alterra shareholders was 54% to each Alterra share and 46% to each Carbon Conscious Investments share.

66. Based on the proportional split in value mentioned in paragraph 65 of this Ruling, 46% of the shareholder's original cost base and reduced cost base for the Alterra shares becomes the first element of the cost base and reduced cost base of Carbon Conscious Investments shares, and 54% becomes the first element of the cost base and reduced cost base of the Alterra shares (section 125-85 and subsections 125-80(2) and (3)).

Dividend consequences

67. Subsection 44(1) of the ITAA 1936 includes in a shareholder's assessable income any dividends, as defined in subsection 6(1) of the ITAA 1936, paid to the shareholder out of profits derived by the company from any source (if the shareholder is an Australian resident) or out of profits derived by the company from sources in Australia (if the shareholder is a non-resident).

68. The term 'dividend' is defined in subsection 6(1) of the ITAA 1936 and includes any distribution made by a company to any of its shareholders whether in money or property. However, paragraph (d) of the definition of 'dividend' excludes a distribution that is debited against an amount standing to the credit of the share capital account of the company.

69. The term 'share capital account' is defined in section 975-300 as an account which the company keeps of its share capital, or any other account created on or after 1 July 1998 where the first amount credited to the account was an amount of share capital.

70. An account is not a share capital account if it is tainted (subsection 975-300(3)). Alterra confirmed that its share capital account was not tainted immediately before the demerger.

71. The demerger of Carbon Conscious Investments was implemented by way of Alterra making an *in specie* distribution of Carbon Conscious Investments shares to Alterra Shareholders. The full amount of the total market value of Carbon Conscious Investments shares distributed to Alterra Shareholders was debited against an amount standing to the credit of Alterra's share capital account which was not tainted within the meaning of Division 197.

72. Therefore, the amount debited against the share capital account of Alterra will not be a dividend as defined in subsection 6(1) of the ITAA 1936. Accordingly, it will not be included in the assessable income of an Alterra Shareholder under subsection 44(1) of the ITAA 1936.

The application of sections 45B, 45BA and 45C of the ITAA 1936

73. Section 45B of the ITAA 1936 applies where certain payments, allocations and distributions are made to shareholders in substitution for dividends. In the event of demergers, section 45B also applies where the components of a demerger allocation as between capital and profit do not reflect the circumstances of the demerger.

74. In broad terms, there needs to be a scheme in which, having regard to the relevant circumstances of the scheme, it would be concluded that the person, or one of the persons, who entered into or carried out the scheme or any part of the scheme did so for a purpose, other than an incidental purpose, of enabling the relevant taxpayer to obtain a tax benefit.

75. The *in specie* distribution of Carbon Conscious Investments shares to Alterra Shareholders under the demerger constituted the provision of a demerger benefit and, to the extent the value of the Carbon Conscious Investments shares was debited to Alterra's share capital account, also represented the provision of a capital benefit (paragraphs 45B(2)(a), 45B(4)(a) and 45B(5)(a), and subsection 45B(6) of the ITAA 1936).

76. As the provision of Carbon Conscious Investments shares would generally result in a lesser amount of tax payable by Alterra Shareholders than the amount that would be payable if the provision of those shares was instead an assessable dividend, Alterra Shareholders would obtain a tax benefit (paragraph 45B(2)(b) and subsection 45B(9) of the ITAA 1936).

77. The relevant circumstances of the scheme which the Commissioner is required to have regard to in determining whether or not the requisite purpose exists are set out in subsection 45B(8) of the ITAA 1936.

78. Having regard to the relevant circumstances, the Commissioner considers that the requisite purpose of enabling one or more Alterra Shareholders or other taxpayers to obtain a tax benefit did not exist.

79. Accordingly, section 45B of the ITAA 1936 will not apply to the demerger and 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 the demerger benefit provided to Alterra Shareholders under the demerger, or
- 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 Alterra Shareholders under the demerger.

Appendix 2 – Detailed contents list

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

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References

<i>Previous draft:</i>	- ITAA 1997 104-135
Not previously issued as a draft	- ITAA 1997 104-135(3)
	- ITAA 1997 109-5
<i>Related Rulings/Determinations:</i>	- ITAA 1997 109-5(2)
TR 2003/8; TR 2006/10	- ITAA 1997 115-30
	- ITAA 1997 115-30(1)
	- ITAA 1997 Div 125
<i>Legislative references:</i>	- ITAA 1997 125-55(1)
- ITAA 1936	- ITAA 1997 125-60(1)
- ITAA 1936 6(1)	- ITAA 1997 125-70
- ITAA 1936 44(1)	- ITAA 1997 125-80(1)
- ITAA 1936 45B	- ITAA 1997 125-80(2)
- ITAA 1936 45B(2)(a)	- ITAA 1997 125-80(3)
- ITAA 1936 45B(2)(b)	- ITAA 1997 125-85
- ITAA 1936 45B(3)(a)	- ITAA 1997 125-85(1)
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- ITAA 1936 45B(4)(a)	- ITAA 1997 Div 197
- ITAA 1936 45B(5)(a)	- ITAA 1997 Div 230
- ITAA 1936 45B(6)	- ITAA 1997 975-300
- ITAA 1936 45B(8)	- ITAA 1997 975-300(3)
- ITAA 1936 45B(9)	- ITAA 1997 977-50
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- ITAA 1936 45C	- TAA 1953
- ITAA 1936 47	
- ITAA 1997	

ATO references

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