


CR 2020/20 - Trans Pacific Energy Group Ltd - exchange of shares for New Generation Minerals Limited shares

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Class Ruling

Trans Pacific Energy Group Ltd – exchange of shares for New Generation Minerals Limited shares

❶ Relying on this Ruling

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

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

Further, if we think that this Ruling disadvantages you, we may apply the law in a way that is more favourable to you.

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What this Ruling is about

1. This Ruling sets out the income tax consequences for shareholders of Trans Pacific Energy Group Ltd (TPE) who had their TPE shares exchanged for New Generation Minerals Limited (NGM) shares.
2. Full details of the business reorganisation and share exchange are set out in paragraphs 22 to 37 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you:
 - participated in the exchange of your TPE shares for NGM shares, and
 - held your TPE shares on capital account; that is, you did not hold your TPE shares as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)).
5. This Ruling does not apply to anyone who is subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 22 to 37 of this Ruling.

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

When this Ruling applies

6. This Ruling applies from 1 July 2019 to 30 June 2020.

Ruling**Disposal of TPE shares – CGT Event A1**

7. CGT event A1 happened as a result of your disposal of your TPE shares in exchange for NGM shares (section 104–10).

8. CGT event A1 happened when your TPE shares were transferred to NGM (paragraph 104–10(3)(b)). If you accepted the scrip offer, your shares were transferred to NGM in tranche 1 on 21 December 2019 or in tranche 2 on 7 January 2020. If your shares were compulsorily acquired, your shares were transferred to NGM on 24 January 2020.

9. The capital proceeds in respect of CGT event A1 happening were the market value of the NGM share you received as consideration for each TPE share exchanged (subsection 116–20(1)). The market value of the NGM share you received was worked out at the time of CGT event A1 (paragraph 116–20(1)(b)).

10. You made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of a TPE share exceeded the cost base of that share. The capital gain is the amount of the difference (subsection 104–10(4)).

11. You made a capital loss from CGT event A1 happening if the capital proceeds from the disposal of a TPE share were less than the reduced cost base of that share. The capital loss is the amount of the difference (subsection 104–10(4)).

Availability of Division 615 roll-over

12. A disposal of shares to a company in exchange for shares in that company (and nothing else), as described in section 615-5, happened when shareholders disposed of TPE shares to NGM in exchange for a whole number of NGM shares.

Residents

13. You are eligible to choose the roll-over under Division 615 if you were an Australian resident at the time you transferred your TPE shares in exchange for NGM shares (paragraph 615–20(3)(a)).

Non-residents

14. You are eligible to choose the roll-over under Division 615, if at the time you transferred your TPE shares in exchange for NGM shares, you were a non-resident and your:

- TPE shares were ‘taxable Australian property’¹ immediately before they were transferred to NGM (subparagraph 615–20(3)(b)(i)), and

¹ Refer to paragraphs 41 to 50 of this Ruling for what constitutes ‘taxable Australian property’.

- NGM shares were taxable Australian property after the reorganisation completion time (section 615–15 and subparagraph 615–20(3)(b)(ii)).

Consequences if the roll-over is chosen

15. Where the roll-over under Division 615 is chosen, you will disregard any capital gain or capital loss made from the disposal of your TPE shares in exchange for NGM shares (sections 615–10 and 615–40, and subsection 124–15(2)).

16. The first element of the cost base and reduced cost base of each NGM share that you acquired under the reorganisation will equal the cost base of the corresponding TPE share that was disposed of (worked out at the time of the disposal) (section 615–40 and subsection 124–10(3)).

17. For the purposes of determining any discount capital gains under Division 115 on a future disposal of your NGM shares acquired under the reorganisation, you will be taken to have acquired those NGM shares on the same date you acquired your TPE shares.

Consequences if the roll-over is not chosen or cannot be chosen***Residents***

18. Where the roll-over under Division 615 is not chosen, or cannot be chosen, you must take into account any capital gain or capital loss from CGT event A1 happening on the disposal of your TPE shares in working out your net capital gain or net capital loss for the income year in which CGT event A1 happens (sections 102–5 and 102–10).

19. If you make a capital gain on disposal of your TPE shares and roll-over is not chosen, or cannot be chosen, you can treat the capital gain as a discount capital gain provided that the conditions of Subdivision 115–A are met. In particular, the TPE shares that were disposed of must have been acquired by you at least 12 months before their disposal (table item 2 of section 109–10).

Non-residents

20. You will be able to disregard a capital gain or a capital loss from CGT event A1 happening in respect of your TPE shares if you are a non-resident, or the trustee of a non-resident trust for CGT purposes, just before the CGT event happened and your TPE shares are not taxable Australian property (section 855–10).

21. If you cannot disregard a capital gain or capital loss from CGT event A1 happening on the disposal of your TPE shares because they are taxable Australian property, you must take that capital gain or capital loss into account in working out your net capital gain or net capital loss for the income year in which you disposed of the TPE shares (sections 102–5 and 102–10).

Scheme

22. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

TPE

23. TPE is an unlisted public company limited by shares incorporated in Australia in 2015 and is an Australian resident for tax purposes.
24. TPE had 308,774,579 ordinary shares on issue on 5 December 2019 (Register Date).
25. All of the TPE shares are ordinary shares and were acquired by their respective holders on or after 20 September 1985.
26. TPE was established to capitalise on the growing need for battery metals and other commodities required for high technology industries. TPE holds exploration assets in Western Australia and Argentina, and investments in lithium technology.
27. The TPE Board formed the view that the United Kingdom is a superior market in which to raise funding for the types of exploration assets held by TPE.

NGM

28. NGM was incorporated on 4 April 2018 as a private limited company, and changed its name from Crake Limited to NGM on 26 September 2019.
29. NGM, as at the date of its Bidder's Statement, did not hold any assets or liabilities or have any subsidiaries or investments in other companies.

The reorganisation

30. On 5 December 2019, NGM issued a Bidder's Statement according to Part 6.5 of the *Corporations Act 2001* to TPE shareholders with a scrip offer to acquire all TPE shares, exchanging one NGM share for every TPE share. The scrip offer was conditional upon acceptances of the scrip offer being received for 90% of the TPE shares on issue.
31. The reorganisation included the:
- incorporation of NGM for the purpose of acquiring the TPE shares and the transfer of 96.5% of TPE's issued shares from TPE shareholders to NGM in exchange for NGM shares under the scrip offer. The transfer and exchange was completed by two tranches, on 21 December 2019 and 7 January 2020, and
 - compulsory acquisition by NGM of the remaining 3.5% of TPE's shares on 24 January 2020 (reorganisation completion time), in accordance with Chapter 6A of the *Corporations Act 2001*. Each shareholder who had their TPE shares compulsorily acquired received an NGM share in exchange for each TPE share compulsorily acquired.
32. As a result of the reorganisation, shareholders who held TPE shares as at the Register Date exchanged all of their TPE shares for NGM shares. Ordinary TPE shares and ordinary NGM shares are comprised of equivalent rights.
33. Immediately after the reorganisation completion time, NGM:
- had 308,774,579 issued shares
 - owned all of the issued TPE shares, and
 - did not hold any assets or liabilities other than holding all the TPE shares.

34. Immediately after the reorganisation completion time, each TPE shareholder:
- held a whole number of NGM shares, and
 - continued to hold the NGM shares that they received in exchange for their TPE shares.

Other matters

35. Within two months after the reorganisation completion time, NGM made a choice under subsection 615–30(1).

36. Immediately prior to the reorganisation, the market value of TPE's taxable Australian real property assets exceeded the market value of its assets which are not taxable Australian real property.

37. Immediately after the completion of the reorganisation, the market value of NGM's taxable Australian property assets exceeded the market value of its assets which are not taxable Australian property.

Commissioner of Taxation1 April 2020

Appendix – Explanation

ⓘ *This Explanation 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.*

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Division 615 roll-over

38. Roll-over under Division 615 enables a member of a company or a trust to disregard a capital gain or capital loss from a share or a unit that is either disposed of, redeemed or cancelled, as part of a reorganisation of the affairs of the entity, where the member becomes the owner of new shares in another company in exchange.

39. Division 615 contains a number of conditions for eligibility to choose roll-over. The main conditions that are relevant to the exchange of TPE shares for NGM shares are:

- at least two entities must own all the shares or units in the 'original entity' (TPE) (paragraphs 615–5(1)(a) and (b))
- there must be a scheme for reorganising the original entity's affairs, and consideration for the disposal of the shares or units in the original entity must consist only of receiving shares in another company (the 'interposed company') (NGM) and nothing else (paragraph 615–5(1)(c))
- the interposed company must own all the shares or units in the original entity immediately after all the exchanging members have disposed of their shares or units in the original entity (the 'completion time') (section 615–15)
- immediately after the completion time, each exchanging member must own a whole number of shares in the interposed company (paragraph 615-20(1)(a))
- immediately after the completion time, each exchanging member must own a percentage of the shares in the interposed company that were issued to all the exchanging members of the original entity that is equal to the percentage of the shares or unit in the original entity that the exchanging member owned (paragraph 615-20(1)(b))
- immediately after the completion time, the exchanging members must own all the shares in the interposed company, or entities other than the exchanging members must own no more than five shares in the interposed company and the market value of those shares is such that it is reasonable to treat the exchanging members as owning all the shares (subsection 615-25(3))
- the shares issued in the interposed company must not be redeemable shares (subsection 615-25(1)), and
- the market value ratio tests in subsection 615-20(2) are satisfied.

40. Under the reorganisation, each TPE shareholder received ordinary NGM shares in exchange for all of their TPE shares and nothing else. At the completion time of the reorganisation, NGM owned all the shares in TPE and each TPE shareholder had the same percentage interest in and market value of shares in NGM immediately after the completion time of the reorganisation as they had in TPE before the reorganisation. All shareholders own a whole number of shares in NGM immediately after the completion time. All other relevant conditions under Division 615 are satisfied under the scheme.

Taxable Australian property

41. Under subsection 855–10(1), you disregard a capital gain or capital loss from a CGT event if you are a foreign resident, or the trustee of a foreign trust for CGT purposes, just before the CGT event happens and the CGT event happens in relation to a CGT asset that is not taxable Australian property.

42. The term ‘taxable Australian property’ is defined in the table in section 855–15. The table sets out five categories of CGT assets:

Item 1	taxable Australian real property
Item 2	an indirect Australian real property interest not covered by Item 5
Item 3	a CGT asset used at any time in carrying on a business through a permanent establishment in Australia and which is not covered by Items 1, 2 or 5
Item 4	an option or right to acquire a CGT asset covered by Items 1, 2 or 3
Item 5	a CGT asset that is covered by subsection 104–165(3) (choosing to disregard a gain or loss on ceasing to be an Australian resident).

43. Subsection 855–25(1) provides that your membership interest in another entity at a time is an indirect Australian real property interest at that time if the interest satisfies both the:

- non-portfolio test in section 960–195 at either time specified in subparagraphs 855–25(1)(a)(i) and 855–25(1)(a)(ii), and
- principal asset test in section 855–30 at that time.

44. Section 960–195 provides that an interest held by you in another entity passes the non-portfolio interest test at a time if the sum of the direct participation interests held by you and your associates in the test entity at that time is 10% or more.

45. The interest is an indirect Australian real property interest if the non-portfolio test is passed either at that time or if it is passed throughout a 12-month period that began no earlier than 24 months before that time and ended no later than that time under subparagraphs 855–25(1)(a)(i) or 855–25(1)(a)(ii).

46. Subsection 855–30(2) provides that your membership interest in the test entity passes the principal asset test if the sum of the market values of the test entity's assets that are taxable Australian real property assets exceeds the sum of the market values of its assets that are not taxable Australian real property assets.

TPE shares

47. Immediately before the reorganisation, the market value of TPE's taxable Australian real property assets exceeded the market value of its assets which are not taxable Australian real property. Therefore the principal asset test is satisfied in respect of TPE.

48. The TPE shares you disposed of in exchange for NGM shares you acquired under the reorganisation were taxable Australian property if your TPE shares were:

- an indirect Australian real property interest (table item 2 of section 855–15), having satisfied the non-portfolio test in section 960–195 immediately before you disposed of your TPE shares or throughout a 12-month period that began no earlier than 24 months before the disposal of your TPE shares and ended no later than that time
- used at any time by you in carrying on a business through a permanent establishment in Australia (table item 3 of section 855–15), or
- covered by subsection 104–165(3) (table item 5 of section 855–15).

NGM shares

49. Immediately after the reorganisation, the market value of NGM's taxable Australian property assets exceeded the market value of its assets which are not taxable Australian property. Therefore the principal asset test is satisfied in respect of NGM.

50. The NGM shares you acquired in exchange for the disposal of your TPE shares under the reorganisation are taxable Australian property if your NGM shares were:

- an indirect Australian real property interest (table item 2 of section 855–15), having satisfied the non-portfolio test in section 960–195 immediately after your acquisition of the NGM shares or throughout a 12-month period that began no earlier than 24 months before the acquisition of the NGM shares and ended no later than that time
- used at any time by you in carrying on a business through a permanent establishment in Australia (table item 3 of section 855–15), or
- covered by subsection 104–165(3) (table item 5 of section 855–15).

References*Previous draft*

Not previously issued as a draft

Related Rulings/Determinations:

TR 97/18

Legislative references:

- ITAA 1997 102-5
- ITAA 1997 102-10
- ITAA 1997 104-10
- ITAA 1997 104-10(3)(b)
- ITAA 1997 104-10(4)
- ITAA 1997 104-165(3)
- ITAA 1997 109-10
- ITAA 1997 Div 115
- ITAA 1997 Subdiv 115-A
- ITAA 1997 116-20(1)
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- ITAA 1997 Div 230
- ITAA 1997 Div 615
- ITAA 1997 615-5
- ITAA 1997 615-5(1)(a)
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- ITAA 1997 615-20(3)(a)
- ITAA 1997 615-20(3)(b)(i)
- ITAA 1997 615-20(3)(b)(ii)
- ITAA 1997 615-25(1)
- ITAA 1997 615-25(3)
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- ITAA 1997 615-40
- ITAA 1997 855-10
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- ITAA 1997 855-15
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- ITAA 1997 855-25(1)(a)(i)
- ITAA 1997 855-25(1)(a)(ii)
- ITAA 1997 855-30
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- ITAA 1997 960-195
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