


CR 2021/34 - Australian Mines Limited - demerger of Norwest Minerals Limited

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Class Ruling

Australian Mines Limited – demerger of Norwest Minerals Limited

📌 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.

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What this Ruling is about

1. This Ruling sets out the tax consequences of the demerger of Norwest Minerals Limited (NWM) by Australian Mines Limited (AUZ) which was implemented on 31 March 2021 (Implementation Date).
2. Full details of this demerger are set out in paragraphs 20 to 36 of this Ruling.
3. All legislative references in this Ruling are to provisions of the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997*, unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you held shares in AUZ and you:
 - were registered on the AUZ share register on 30 March 2021 (Record Date) and you continued to hold your shares on the Implementation Date
 - held your AUZ shares on capital account (that is, you did not hold your shares in AUZ as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)), and
 - are a resident of Australia or a foreign resident and do not hold your AUZ shares through a permanent establishment in Australia.

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 20 to 36 of this Ruling.

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

When this Ruling applies

6. This Ruling applies from 1 July 2020 to 30 June 2021.

Ruling

Demerger

7. A demerger, as defined in section 125-70, happened to the AUZ demerger group, which included AUZ and NWM.

CGT event G1

8. CGT event G1 happens when you received, or were taken to have received, the NWM shares (section 104-135).

9. You make a capital gain from CGT event G1 happening if the cost base of your AUZ share is less than 0.047 cents. If so, the capital gain is equal to the amount of the difference (subsection 104-135(3)).

10. No capital loss can be made from CGT event G1 (note to subsection 104-135(3)).

Australian resident shareholders

Demerger roll-over

11. If you are an Australian resident, you can choose to obtain demerger roll-over for your AUZ shares (subsection 125-55(1)).

Choosing demerger roll-over

12. If you chose demerger roll-over for your AUZ shares:

- you disregard any capital gain you made under CGT event G1 on your AUZ shares (subsection 125-80(1))
- you apportion the total of the cost bases of your AUZ shares just before the demerger among those shares and the corresponding NWM shares you received under the demerger (subsection 125-80(2)), and
- your NWM shares were acquired on the Implementation Date (section 109-5). However, for the purpose of determining your entitlement to a discount capital gain in relation to a subsequent CGT event that happens to the NWM shares, they will be taken to have been acquired when you acquired the AUZ shares (section 115-25 and table item 2 of subsection 115-30(1)).

Not choosing demerger roll-over

13. If you did not choose demerger roll-over for your AUZ shares:
- you cannot disregard a capital gain you made under CGT event G1 in relation to your AUZ shares
 - you apportion the total of the cost bases of your AUZ shares among those shares and the corresponding NWM shares you received under the demerger (section 125-85), and
 - your NWM shares were acquired on the Implementation Date (section 109-5). However, for the purpose of determining your entitlement to discount the capital gain you made under CGT event G1 or in relation to another subsequent CGT event that happens to the NWM shares, they will be taken to have been acquired when you acquired the AUZ shares (section 115-25 and table item 2 of subsection 115-30(1)).

Apportioning the cost base of your Australian Mines Limited and Norwest Minerals Limited shares

14. The apportionment of the total of the cost bases of your AUZ shares among those shares, and the corresponding AUZ shares you received under the demerger, must be done on a reasonable basis, having regard to the market values of your AUZ shares and NWM shares just after the demerger, or an anticipated reasonable approximation of those market values (subsections 125-80(2) and (3)).

15. The Commissioner accepts that a reasonable apportionment is to attribute:
- 98.05% of the total of the cost bases of your AUZ shares just before the demerger to the AUZ shares, and
 - 1.95% of the total of the cost bases of your AUZ shares just before the demerger to the corresponding NWM shares.

Norwest Minerals Limited shares not included in assessable income

16. The value of the NWM shares you received, or were taken to have received, under the demerger is not included in your assessable income under subsection 44(1).

Foreign resident shareholders

17. If you are not a resident of Australia (as defined in subsection 6(1)), any capital gain or capital loss from CGT event G1 happening to your AUZ shares in relation to the in specie distribution is disregarded (section 855-10).

Anti-avoidance provisions do not apply

18. The Commissioner will not make a determination under subsection 45A(2) that section 45C applies. This is because the circumstances of the demerger do not indicate that there was a streaming of capital benefits to some shareholders and dividends to other shareholders.

19. As paragraph 45B(2)(c) is not satisfied, the Commissioner will not make a determination under either:

- paragraph 45B(3)(a) that section 45BA applies to the whole, or any part, of the demerger benefit provided to you under the demerger, or
- paragraph 45B(3)(b) that section 45C applies to the whole, or any part, of the demerger benefit provided to you under the demerger.

Scheme

20. 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.

Australian Mines Limited

21. AUZ is an Australian-resident public company listed on the Australian Securities Exchange (ASX). It is an explorer and developer of battery materials.

22. As at 30 June 2020, AUZ had:

- \$88,106,976 contributed equity
- \$4,051,000 reserves, and
- \$55,113,000 accumulated losses.

23. As at 19 February 2021, AUZ had 3,961,453,850 shares on issue.

24. Approximately 5.41% of AUZ shares are held by foreign-resident shareholders.

25. No foreign-resident shareholder held a non-portfolio interest (within the meaning of section 960-195) in AUZ throughout a 12-month period in the 24 months immediately before the Implementation Date.

26. AUZ's share capital account is not tainted within the meaning of Division 197.

27. AUZ has not paid any dividends to its shareholders since its inception.

Norwest Minerals Limited

28. NWM was incorporated on 21 November 2017. It is a gold and base metals exploration company.

29. Prior to the Implementation Date, AUZ held 20.04% of the NWM shares (or 21,000,000 NWM shares) on issue. The remaining NWM shares (79.96%) were widely owned with no shareholders holding greater than 10% ownership interest in NWM.

The in specie distribution

30. On 23 March 2021, shareholders of AUZ approved a reduction of AUZ's share capital under sections 256B and 256C of the *Corporations Act 2001*. The share capital reduction was effected by way of an in specie distribution of the NWM shares to the AUZ shareholders.

31. AUZ shares which were acquired after 26 March 2021 were not entitled to participate in the in specie distribution.

32. On the Implementation Date, each AUZ shareholder received one NWM share for every 189 AUZ shares held on the Record Date.
33. AUZ accounted for the demerger by debiting its:
- share capital account by \$1,764,015, and
 - accumulated losses by \$1,197,456.

Reasons for demerger

34. The directors of AUZ formed the view that the demerger would allow:
- AUZ to devote its resources exclusively to developing its battery material projects in Queensland and New South Wales, and
 - greater flexibility for the boards and management of AUZ and NWM to develop their own corporate strategies and implement capital structures and financial policies appropriate to their businesses.

Other matters

35. All shares in AUZ and NWM were issued after 20 September 1985.
36. For the purposes of the cost base and reduced cost base apportionment under subsections 125-80(2) and (3), a reasonable approximation of the market values of an AUZ share and an NWM share just after the demerger was calculated as follows:
- 2.1 cents for each AUZ share, being the volume weighted average price of AUZ shares as traded on the ASX over the first five trading days from (and including) 1 April 2021.
 - 7.9 cents for each NWM share, being the volume weighted average price for NWM shares as traded on the ASX over the five trading days from (and including) 1 April 2021.

Commissioner of Taxation12 May 2021

Appendix – Legislative provisions

37. This paragraph sets out the details of the provisions ruled upon or referenced in this Ruling.

<i>Income Tax Assessment Act 1936</i>	subsection 6(1)
<i>Income Tax Assessment Act 1936</i>	subsection 44(1)
<i>Income Tax Assessment Act 1936</i>	subsection 45A(2)
<i>Income Tax Assessment Act 1936</i>	paragraph 45B(2)(c)
<i>Income Tax Assessment Act 1936</i>	paragraph 45B(3)(a)
<i>Income Tax Assessment Act 1936</i>	paragraph 45B(3)(b)
<i>Income Tax Assessment Act 1936</i>	section 45BA
<i>Income Tax Assessment Act 1936</i>	section 45C
<i>Income Tax Assessment Act 1997</i>	section 104-135
<i>Income Tax Assessment Act 1997</i>	subsection 104-135(3)
<i>Income Tax Assessment Act 1997</i>	section 109-5
<i>Income Tax Assessment Act 1997</i>	section 115-25
<i>Income Tax Assessment Act 1997</i>	subsection 115-30(1)
<i>Income Tax Assessment Act 1997</i>	subsection 125-55(1)
<i>Income Tax Assessment Act 1997</i>	section 125-70
<i>Income Tax Assessment Act 1997</i>	subsection 125-80(1)
<i>Income Tax Assessment Act 1997</i>	subsection 125-80(2)
<i>Income Tax Assessment Act 1997</i>	subsection 125-80(3)
<i>Income Tax Assessment Act 1997</i>	section 125-85
<i>Income Tax Assessment Act 1997</i>	Division 197
<i>Income Tax Assessment Act 1997</i>	Division 230
<i>Income Tax Assessment Act 1997</i>	section 855-10
<i>Income Tax Assessment Act 1997</i>	section 960-195
<i>Income Tax Assessment Act 1997</i>	section 977-50
<i>Income Tax Assessment Act 1997</i>	subsection 995-1(1)

References

Previous draft:
 Not previously issued as a draft

- Corporations Act 2001 256B
- Corporations Act 2001 256C

Legislative references:

- TAA 1953

ATO references

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 Subdivision 125-C
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 Income tax ~~ Capital management ~~ Anti avoidance rules ~~ Section 45C

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