


CR 2021/45 - Saracen Mineral Holdings Limited - tax-exempt share plan shares disposed under scheme of arrangement

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Class Ruling

Saracen Mineral Holdings Limited – tax-exempt share plan shares disposed under scheme of arrangement

📌 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 for shareholders of Saracen Mineral Holdings Limited (Saracen) who were granted ordinary shares under the Saracen Mineral Holdings Limited Tax Exempt Share Plan (Share Plan) which were subsequently disposed of pursuant to the scheme of arrangement announced on 6 October 2020 (Scheme of Arrangement).
2. Full details of the acquisition and disposal of these shares are set out in paragraphs 7 to 25 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:
 - were granted shares in Saracen under the Share Plan which you held at all times until 12 February 2021
 - were either
 - an employee of Saracen or a ‘subsidiary’ (as defined in the *Corporations Act 2001* (Corporations Act)) of Saracen (collectively referred to as the Saracen Group), or

- an individual who was treated as an employee of the Saracen Group for the purposes of Division 83A by the application of section 83A-325
- were employed at all times from the date you were granted your shares under the Share Plan until 12 February 2021
- were entitled to reduce the amount included in your assessable income in accordance with sections 83A-35 and 83A-45 when you were granted shares under the Share Plan, and
- are not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on your shares.

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

When this Ruling applies

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

Ruling

6. The Commissioner will allow the minimum holding period to end at the earlier time of 12 February 2021 for the shares you acquired under the Share Plan (paragraph 83A-45(5)(a)).

Scheme

7. 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.
8. The following information was also referred to:
- the Scheme Implementation Deed released on the Australian Securities Exchange (ASX) on 6 October 2020
 - the Scheme Booklet released on the ASX on 10 December 2020, and
 - the Saracen Mineral Holdings Limited Tax Exempt Share Plan Rules (Share Plan Rules).

Relevant entities

Saracen Mineral Holdings Limited

9. Saracen and its subsidiaries were residents of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936*. Saracen was a widely-held public company limited by shares listed on the ASX since 1989 until it was delisted as a result of the Scheme of Arrangement. It was a gold producer headquartered in Perth, Western Australia.

10. Saracen had a single-class share-capital structure consisting of ordinary shares. As at 30 November 2020, Saracen had 1,107,636,918 shares on issue.

Northern Star Resources Ltd

11. Northern Star Resources Ltd (Northern Star) is an Australian-incorporated public company limited by shares that is listed on the ASX. It is a gold producer headquartered in Subiaco, Western Australia.

Saracen Mineral Holdings Limited Tax Exempt Share Plan

12. Saracen established the Share Plan in 2018 as a broad-based employee share plan. The Share Plan operated in accordance with the Share Plan Rules.

13. A full-time or part-time employee of the Saracen Group (including an executive director) is eligible to receive grants of shares under the Share Plan. This also includes individuals employed or engaged by a member of the Saracen Group and who fall, or whose terms of employment, appointment or engagement fall, within the 'relationships similar to employment' categories under section 83A-325 (collectively referred to as Qualifying Employees).

14. On 14 May 2018, 13 May 2019 and 4 May 2020, Saracen made offers to Qualifying Employees to apply for a grant of Saracen shares up to \$1,000 in value. These offers to acquire shares were made to over 75% of the permanent Australian tax resident employees of Saracen who had completed more than three years of service, for no consideration.

15. At the time of the offers, the employees to whom the offers were made were employed by Saracen Metals Pty Limited or Saracen Gold Mines Pty Limited, both being wholly-owned subsidiaries of Saracen.

16. Under the Share Plan Rules:

- Saracen would use all reasonable endeavours to ensure the Share Plan and shares granted under the Share Plan satisfy the 'reduction conditions set out in section 83A-35'
- the Share Plan was operated on a non-discriminatory basis
- the shares were not subject to a real risk of forfeiture
- the shares were subject to a minimum holding period restriction (Holding Lock Period), whereby a participant employee was not permitted, unless otherwise permitted by the board of directors of Saracen (Saracen Board) by express written notice, to transfer, encumber or otherwise dispose of, or have a security interest granted over the shares, or take any action or permit another person to take any action to remove or circumvent the disposal restrictions over the shares, before the earlier of
 - the three-year anniversary of the date the shares were granted or such date as may be determined by the Saracen Board in its discretion so as to satisfy the conditions set out in section 83A-35, or
 - the day after the date on which the participant employee ceased to be employed by the Saracen Group
- following the expiry of the Holding Lock Period, no restrictions on dealing with shares applied under the Share Plan, and
- the Saracen Board could amend the Share Plan Rules with retrospective effect, but only if the amendment did not materially reduce the rights of any participant employees as they existed before the date of the amendment, subject to certain exceptions including the need to obtain agreement in writing by all participants.

17. Following the 14 May 2018 offer, 160,412 Saracen shares were granted on 8 June 2018 to 337 employees who participated in the Share Plan.
18. Following the 13 May 2019 offer, 142,125 Saracen shares were granted on 12 June 2019 to 379 employees who participated in the Share Plan.
19. Following the 4 May 2020 offer, 100,573 Saracen shares were granted on 8 June 2020 to 454 employees who participated in the Share Plan.

Scheme of Arrangement

20. On 6 October 2020, Saracen entered into a binding Merger Implementation Deed with Northern Star, under which Northern Star would acquire 100% of the issued share capital of Saracen via a court-approved scheme of arrangement pursuant to Part 5.1 of the Corporations Act.
21. On 12 February 2021, Northern Star acquired all Saracen shares including shares acquired by Qualifying Employees under the Share Plan. The Scheme of Arrangement was announced on the ASX on that date as a merger of Northern Star and Saracen.
22. Saracen shares were removed from official quotation on the ASX on 15 February 2021 and Saracen was renamed Northern Star (Saracen) Pty Ltd.
23. Pursuant to the Scheme of Arrangement, you received 0.3763 Northern Star shares for each Saracen share you held. You also received a fully franked special dividend of 3.8 cents for each Saracen share you held, conditional on the Scheme of Arrangement becoming effective.

Other matters

24. Saracen confirmed there were no discussions with Northern Star regarding the Scheme of Arrangement prior to June 2020. In particular, Saracen confirmed that:
 - on 12 June 2020, Saracen and Northern Star had an initial meeting where the idea of a potential merger was first discussed, and
 - on 18 June 2020, the Saracen Board met for the first time to discuss the merits of the proposed merger and agreed to progress to a mutual due diligence phase.
25. Other than the proposed merger with Northern Star, no other offer concerning a takeover or other acquisition of all Saracen shares was seriously contemplated by Saracen on or after 1 July 2017.

Appendix – Explanation

① *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.*

When the minimum holding period ends

26. This Ruling applies to you if you were entitled to reduce the amount included in your assessable income in accordance with sections 83A-35 and 83A-45 when you were granted shares under the Share Plan. As a result of the Commissioner allowing the minimum holding period to end at the earlier time of 12 February 2021, you will continue to be entitled to that reduction.

27. The minimum holding period requirements set out in subsection 83A-45(4) and (5) is the earlier of three years from when the shares were granted (8 June 2018, 12 June 2019 or 8 June 2020) or when the employee ceased employment with Saracen. However, the Commissioner can allow an earlier period if satisfied that:

- Saracen intended that the requirements as set out in subsection 83A-45(4) would apply to the shares acquired under the Share Plan during the three years after the acquisition of those shares (subparagraph 83A-45(5)(a)(i)), and
- at the earlier time that the Commissioner allows, all shares in Saracen were disposed of under a particular scheme (subparagraph 83A-45(5)(a)(ii)).

28. The terms of the Merger Implementation Deed required all Qualifying Employees who acquired shares under the Share Plan to dispose of those shares in the same manner as other shareholders of Saracen on the Scheme of Arrangement implementation date (12 February 2021). This resulted in you disposing of shares acquired under the Share Plan within three years.

29. The Commissioner is satisfied that the Share Plan Rules prevented Qualifying Employees from disposing of shares acquired until the earlier of the three-year anniversary of the date the shares were granted or the day after the date they ceased to be employed by the Saracen Group. Unless otherwise permitted by the Saracen Board, which it had not done, the Share Plan Rules did not provide for an exemption from or non-compliance with this rule.

30. Further, Saracen did not seriously contemplate any schemes under which all Saracen shares would be acquired by another entity between 1 July 2017 and 11 June 2020, inclusive.

31. Accordingly, the Commissioner is satisfied that the requirements of subparagraphs 83A-45(5)(a)(i) and (ii) are met and will allow a modified minimum holding period ending at the earlier time of 12 February 2021.

References*Previous draft:*

Not previously issued as a draft

- ITAA 1997 83A-45(5)
- ITAA 1997 83A-45(5)(a)
- ITAA 1997 83A-45(5)(a)(i)
- ITAA 1997 83A-45(5)(a)(ii)
- ITAA 1997 83A-325
- ITAA 1997 Div 230
- TAA 1953
- Corporations Act 2001 Pt 5.1

Legislative references:

- ITAA 1936 6(1)
- ITAA 1997 Div 83A
- ITAA 1997 83A-35
- ITAA 1997 83A-45
- ITAA 1997 83A-45(4)

ATO references

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