

CR 2022/61 - Minotaur Exploration Ltd - reduction of share capital and scrip for scrip roll-over

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Class Ruling

Minotaur Exploration Ltd – reduction of share capital and scrip for scrip roll-over

1 Relying on this Ruling

This publication 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.

[Note: This is a consolidated version of this document. Refer to the Legal Database (www.ato.gov.au/Law) to check its currency and to view the details of all changes.]

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What this Ruling is about

1. This Ruling sets out the income tax consequences for the holders of ordinary shares in Minotaur Exploration Ltd (Minotaur) who received:
 - a reduction of share capital from Minotaur by way of a transfer of shares in Demetallica Limited (Demetallica) on 3 February 2022 (Implementation Date), and/or
 - shares in Andromeda Metals Limited (Andromeda) in exchange for their shares in Minotaur.

2. Full details of the scheme are set out in paragraphs 43 to 74 of this Ruling.

3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

Note: By issuing this Ruling, the ATO is not endorsing this scheme. Participants must form their own view about the scheme.

Who this Ruling applies to

4. This Ruling applies to you if you:
 - either
 - held shares in Minotaur at 5:00 pm Australian Central Standard Time on 27 January 2022 (the Record Date for the reduction of share capital), and/or

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- acquired Andromeda shares as consideration for the disposal of your Minotaur shares to Andromeda,
- were either
 - a resident of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936), or
 - a non-resident (other than a non-resident who carried on a business at or through a permanent establishment in Australia), and
- held your shares on capital account – that is, you did not hold your shares in Minotaur as revenue assets (as defined in section 977-50) or 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 43 to 74 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 2021 to 30 June 2022.

Ruling

Reduction of share capital by Minotaur Exploration Ltd

Demerger relief is not available

7. Demerger relief (being demerger roll-over pursuant to Division 125 and demerger dividend treatment under subsections 44(3) and (4) of the ITAA 1936) is not available as the scheme does not satisfy the requirements of a 'demerger' as defined in section 125-70. This is because the restructuring of the demerger group (of which Minotaur was the head entity) included both the reduction of share capital by Minotaur (under which you acquired shares in Demetallica) and the acquisition of Minotaur shares by Andromeda (under which you acquired shares in Andromeda). This resulted in the failure of the 'nothing else' condition in paragraph 125-70(1)(c).

Reduction of share capital is not a dividend

8. The reduction of share capital you received (which was satisfied by the transfer of shares in Demetallica to you) is not a dividend as defined in subsection 6(1) of the ITAA 1936.

9. The reduction of share capital you received (which was satisfied by the transfer of shares in Demetallica to you) is not included in your assessable income as ordinary income under section 6-5.

Specific anti-avoidance provisions do not apply to deem an assessable dividend

10. The Commissioner will not make a determination under subsection 45A(2) of the ITAA 1936 that section 45C of the ITAA 1936 applies in relation to the whole, or a part, of

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the capital benefits provided to you under the reduction of share capital. This is because there was no streaming of the provision of capital benefits and the payment of dividends to the shareholders of Minotaur (subsection 45A(1) of the ITAA 1936).

11. 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 you under the reduction of share capital. This is because the purpose condition in paragraph 45B(2)(c) of the ITAA 1936 was not satisfied.

CGT event G1

12. CGT event G1 happened when you were paid an amount by Minotaur in respect of each Minotaur share you owned on the Record Date and continued to own on the Implementation Date, by way of the transfer to you of Demetallica shares (section 104-135).

13. You made a capital gain from CGT event G1 happening if the amount of the reduction of share capital for a Minotaur share (2.06 cents) is more than the cost base of the Minotaur share. If so, the capital gain is equal to the excess, and the cost base and reduced cost base of your Minotaur shares will be reduced to zero (subsection 104-135(3)).

14. You cannot make a capital loss from CGT event G1 happening (Note 1 to subsection 104-135(3)).

15. If the amount of the reduction of share capital for a Minotaur share (2.06 cents) is not more than the cost base of the Minotaur share, the cost base and reduced cost base of the Minotaur share is reduced by the amount of the reduction of share capital (but not below nil) (subsection 104-135(4)).

CGT event C2

16. CGT event C2 happened if you owned Minotaur shares on the Record Date but ceased to own them prior to the Implementation Date (section 104-25).

17. CGT event C2 happened because, by ceasing to own a Minotaur share after the Record Date but before the Implementation Date, you retained the right to receive the reduction of share capital (which is a separate CGT asset from the share in Minotaur). When the reduction of share capital was satisfied by the transfer of shares in Demetallica to you, the right to receive the reduction of share capital (being an intangible CGT asset) ended by the right being discharged or satisfied (paragraph 104-25(1)(b)).

18. You received capital proceeds of 2.06 cents for each Minotaur share under CGT event C2 (paragraph 116-20(1)(a)).

19. You made a capital gain when CGT event C2 happened equal to the amount of the capital proceeds as you did not pay, and were not required to pay, for the right to receive the reduction of share capital (subsection 104-25(3)).

Discount capital gain

20. You can treat a capital gain made when CGT event G1 or CGT event C2 happened as a discount capital gain if you acquired your Minotaur share at least 12 months before the Implementation Date (subsection 115-25(1)), provided the other conditions in Subdivision 115-A are satisfied.

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Cost base and reduced cost base of your Demetallica Limited shares

21. The first element of the cost base and reduced cost base of each Demetallica share you acquired is the amount of the reduction of share capital (2.06 cents) which was applied on your behalf by Minotaur for you to acquire the Demetallica share (subsections 110-25(2) and 110-55(2)).

Foreign-resident shareholders

22. If you were a foreign resident or the trustee of a foreign trust for CGT purposes as defined in subsection 995-1(1) on the Implementation Date, you can disregard any capital gain made from CGT event G1 in relation to your Minotaur shares, or any capital gain made from CGT event C2 in relation to your right to receive the reduction of share capital, pursuant to section 855-10, unless:

- you have used your Minotaur share, or right to receive the reduction of share capital, at any time in carrying on a business through a permanent establishment in Australia (table item 3 of section 855-15), or
- you are an individual and your Minotaur share, or right to receive the reduction of share capital, was covered by subsection 104-165(3) (table item 5 of section 855-15).

Disposal of Minotaur Exploration Ltd shares

CGT event A1

23. CGT event A1 happened when you disposed of your Minotaur shares to Andromeda (section 104-10).

24. If you accepted Andromeda's offer to acquire all of your Minotaur shares (the Offer) before the Offer became unconditional, CGT event A1 happened when the Offer became unconditional on 7 February 2022 (paragraph 104-10(3)(a)).

25. If you accepted the Offer on or after the date when the Offer became unconditional, CGT event A1 happened when you accepted the Offer (paragraph 104-10(3)(a)).

26. If your Minotaur shares were compulsorily acquired, CGT event A1 happened when those shares were compulsorily acquired by Andromeda (subsection 104-10(6)).

27. The time of CGT event A1 is relevant in determining your capital proceeds for each Minotaur share. The capital proceeds from a CGT event are the total of the money, and the market value of any property, you received or are entitled to receive. The market value of property is worked out as at the time the CGT event happens (subsection 116-20(1)).

28. You must determine the market value of an Andromeda share at the time CGT event A1 happened to you.

29. The Commissioner will accept as the market value of an Andromeda share the closing price of an Andromeda share on the Australian Securities Exchange (ASX) on the day that you accepted the Offer (as long as it is on or after 7 February 2022, when the Offer became unconditional) or the day on which your shares in Minotaur were compulsorily acquired by Andromeda.

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30. You made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of your Minotaur shares exceed their cost base (subsection 104-10(4)). The capital gain is the amount of the excess.

31. You made a capital loss from CGT event A1 happening if the capital proceeds are less than the reduced cost base of your Minotaur shares (subsection 104-10(4)). The capital loss is the amount of the difference.

Availability of scrip for scrip roll-over for your Minotaur Exploration Ltd shares

32. Subject to the qualification in paragraph 33 of this Ruling, if you made a capital gain from the disposal of your Minotaur shares, you may choose to obtain scrip for scrip roll-over for the capital gain (sections 124-780 and 124-785).

33. Scrip for scrip roll-over cannot be chosen if any capital gain you might make from the replacement Andromeda shares would be disregarded, except because of a roll-over (paragraph 124-795(2)(a)).

Consequences if you choose scrip for scrip roll-over***Capital gain is disregarded***

34. If you choose scrip for scrip roll-over, your capital gain is disregarded (subsection 124-785(1)).

35. For the purposes of determining your eligibility to make a discount capital gain, the Andromeda shares you acquired in exchange for your Minotaur shares are taken to have been acquired on the date you acquired, for CGT purposes, the corresponding Minotaur shares (table item 2 of subsection 115-30(1)).

Cost base and reduced cost base of your Andromeda Metals Limited shares

36. If you choose scrip for scrip roll-over, the first element of the cost base and reduced cost base of a replacement Andromeda share you received is worked out by:

- firstly adjusting the cost base and reduced cost base of your Minotaur shares in accordance with paragraphs 13 or 15 of this Ruling (whichever is applicable), and
- reasonably attributing to it the remaining cost base and reduced cost base (respectively) of the Minotaur shares for which the Andromeda shares were exchanged and for which the roll-over was obtained (subsections 124-785(2) and (4)).

37. You can calculate the first element of the cost base and reduced cost base of each replacement Andromeda share by dividing the total cost bases of your Minotaur shares (after the adjustment in accordance with paragraphs 13 or 15 of this Ruling) by the number of replacement Andromeda shares you received.

Consequences if you do not choose, or cannot choose, scrip for scrip roll-over***Capital gain is not disregarded***

38. If you do not choose, or cannot choose, scrip for scrip roll-over, you must take into account any capital gain or capital loss from CGT event A1 happening on the disposal of

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your Minotaur shares in working out your net capital gain or net capital loss for the income year in which CGT event A1 happened (sections 102-5 and 102-10).

39. If you make a capital gain where scrip for scrip 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.

Cost base and reduced cost base of your Andromeda Metals Limited shares

40. If you do not choose, or cannot choose, scrip for scrip roll-over, the first element of the cost base and reduced cost base of a replacement Andromeda share that you received is equal to the market value of the part of the Minotaur share you gave in respect of acquiring the Andromeda share (subsections 110-25(2) and 110-55(2)).

41. The market value of the Minotaur shares you gave is to be worked out as at the time when you acquired the Andromeda shares.

Acquisition date of Andromeda Metals Limited shares

42. Under table item 2 of section 109-10, if you acquired your shares in Andromeda:

- by accepting the Offer, the date on which you acquired your shares in Andromeda is the date on which you entered into the contract with Andromeda (which is also the time at which CGT event A1 happens), or
- as a result of the compulsory acquisition of your Minotaur shares, the date on which you acquired your shares in Andromeda is when the Andromeda shares were issued or allotted to you by Andromeda.

Scheme

43. 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.

Minotaur Exploration Ltd

44. Minotaur is a company that was incorporated in Australia on 1 January 2005 and listed on the ASX on 24 February 2005.

45. Minotaur carries on a business of the exploration and development of industrial minerals, base and precious metals.

46. Demetallica was (until the Implementation Date) a wholly-owned subsidiary of Minotaur which holds interests in copper and gold assets (Polymetallic Assets) through subsidiaries.

Andromeda Metals Limited

47. Andromeda is a company incorporated in Australia with a focus on industrial minerals.

48. Andromeda is listed on the ASX under the code 'ADN'.

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Acquisition of Minotaur Exploration Ltd by Andromeda Metals Limited

49. In 2018, Minotaur entered into the Great White Kaolin Joint Venture (GWK JV) with Andromeda. In 2019, Minotaur and Andromeda separately formed the Intellectual Property 'Natural Nanotech' Joint Venture (IPNN JV).

50. On 10 November 2021, Minotaur and Andromeda announced the execution of a Bid Implementation Agreement under which Andromeda offered to acquire all the issued ordinary shares of Minotaur through an off-market takeover bid (the Offer) under Chapter 6 of the *Corporations Act 2001* (Corporations Act). Through the Offer, Andromeda sought full ownership of the GWK JV and IPNN JV.

51. However, as Andromeda did not want to acquire Minotaur's Polymetallic Assets (held by Demetallica), the Offer was conditional (among other things) on the completion of the transfer of shares in Demetallica to the shareholders of Minotaur prior to the acquisition of shares by Andromeda under the Offer.

Reduction of share capital by transferring shares in Demetallica Limited

52. The transfer of shares in Demetallica was undertaken by a reduction of share capital under section 256B of the Corporations Act.

53. The shareholders of Minotaur voted at a meeting on 20 January 2022 to approve an ordinary resolution under section 256C of the Corporations Act to reduce the share capital of Minotaur as an equal reduction.

54. The reduction of share capital equated to 2.06 cents for each Minotaur share.

55. The date for determining the entitlement of Minotaur shareholders to receive the reduction of share capital was the Record Date (27 January 2022).

56. On the Implementation Date (3 February 2022), Minotaur satisfied the reduction of share capital by transferring all of the 27,829,457 ordinary shares in Demetallica on issue to the shareholders of Minotaur.

57. Minotaur shareholders received one Demetallica share for every 19.3723 Minotaur shares they held on the Record Date (rounded down to the nearest whole number).

58. Minotaur shareholders who held less than 20 Minotaur shares on the Record Date did not receive any Demetallica shares under the reduction of share capital.

59. Minotaur accounted for the reduction of share capital by debiting its share capital account by \$11,121,705.

60. Immediately before the reduction of share capital was implemented, Minotaur had:

- 539,119,364 ordinary shares on issue
- \$61,520,620 credited to its share capital account
- reserves of \$5,000, and
- accumulated accounting losses of \$43,391,346.

61. Immediately before the reduction of share capital was implemented, Minotaur had (on an accounting consolidated basis) accumulated accounting losses of \$47,949,734.

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The offer to acquire all the shares in Minotaur Exploration Ltd

62. Under the Offer, the shareholders of Minotaur were issued 1.15 Andromeda shares in exchange for each Minotaur share they held (rounded to the nearest whole number, but not below one).

63. Minotaur shareholders who on the Record Date had an address on the Minotaur share register outside Australia and New Zealand were ineligible to participate in the Offer. The Andromeda shares which each ineligible shareholder was otherwise entitled to receive were issued to an agent for sale through a sale facility, with the net proceeds (after deducting applicable brokerage costs, taxes and charges) paid to the ineligible shareholder.

64. The Offer was subject to several defeating conditions, but was declared unconditional on 7 February 2022.

65. On 25 February 2022, Andromeda's interest in Minotaur exceeded 90% and Andromeda commenced the compulsory acquisition of the remaining shares in Minotaur under section 661A of the Corporations Act. The compulsory acquisition was completed on 29 March 2022.

66. The Offer resulted in Andromeda acquiring 100% of the ordinary shares in Minotaur.

67. Minotaur was then removed from the official list of the ASX.

Other matters

68. No Minotaur shareholder was a 'significant stakeholder' or 'common stakeholder' (within the meaning of those terms in section 124-783).

69. Minotaur had approximately 3,000 shareholders prior to the Offer, with the largest shareholder holding approximately 5.27% of the shares in Minotaur.

70. Non-resident shareholders owned less than 5% of the shares in Minotaur.

71. Minotaur has not made a profit and has not paid a dividend.

72. Immediately before the reduction of share capital was implemented, Minotaur had no franking credits and its share capital account was not tainted (within the meaning of Division 197).

73. Minotaur has not undertaken any previous reduction of share capital.

74. Andromeda did not make a choice under subsection 124-795(4) that Minotaur shareholders could not obtain a roll-over under Subdivision 124-M in relation to CGT event A1 happening in relation to the exchange of Minotaur shares.

Commissioner of Taxation

6 July 2022

Status: **not legally binding**

References

Legislative references:

- ITAA 1936 6(1)
- ITAA 1936 44(3)
- ITAA 1936 44(4)
- ITAA 1936 45A(1)
- ITAA 1936 45A(2)
- ITAA 1936 45B(2)(c)
- ITAA 1936 45B(3)(b)
- ITAA 1936 45C
- ITAA 1997 6-5
- ITAA 1997 102-5
- ITAA 1997 102-10
- ITAA 1997 104-10
- ITAA 1997 104-10(3)(a)
- ITAA 1997 104-10(4)
- ITAA 1997 104-10(6)
- ITAA 1997 104-25
- ITAA 1997 104-25(1)(b)
- ITAA 1997 104-25(3)
- ITAA 1997 104-135
- ITAA 1997 104-135(3)
- ITAA 1997 104-135(4)
- ITAA 1997 104-165(3)
- ITAA 1997 109-10
- ITAA 1997 110-25(2)
- ITAA 1997 110-55(2)
- ITAA 1997 Subdiv 115-A
- ITAA 1997 115-25(1)
- ITAA 1997 115-30(1)
- ITAA 1997 116-20(1)
- ITAA 1997 116-20(1)(a)
- ITAA 1997 Subdiv 124-M
- ITAA 1997 124-780
- ITAA 1997 124-783
- ITAA 1997 124-785
- ITAA 1997 124-785(1)
- ITAA 1997 124-785(2)
- ITAA 1997 124-785(4)
- ITAA 1997 124-795(2)(a)
- ITAA 1997 124-795(4)
- ITAA 1997 Div 125
- ITAA 1997 125-70
- ITAA 1997 125-70(1)(c)
- ITAA 1997 Div 197
- ITAA 1997 Div 230
- ITAA 1997 855-10
- ITAA 1997 855-15
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- Corporations Act 2001 256B
- Corporations Act 2001 256C
- Corporations Act 2001 Ch 6
- Corporations Act 2001 661A

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