

CR 2022/76 - Firefinch Limited - demerger of Leo Lithium Limited



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Status: **legally binding**

Class Ruling

Firefinch Limited – demerger of Leo Lithium Limited

❶ 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.

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What this Ruling is about

1. This Ruling sets out the income tax consequences of the demerger of Leo Lithium Limited (Leo Lithium) by Firefinch Limited (Firefinch), which was implemented on 9 June 2022 (Implementation Date).
2. Details of this scheme are set out in paragraphs 21 to 33 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 held ordinary shares in Firefinch on 6 June 2022 (Record Date) and you:
 - did not hold your shares in Firefinch as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)) on the Record Date; that is, you held your shares on capital account, and
 - were a resident of Australia (as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936)) on the Implementation Date.
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 21 to 33 of this Ruling.

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

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When this Ruling applies

6. This Ruling applies from 1 July 2021 to 30 June 2022.

Ruling**A demerger happened**

7. A demerger, as defined in section 125-70, happened to the Firefinch demerger group (which included Firefinch and Leo Lithium).

Capital gains tax consequences***CGT event G1***

8. CGT event G1 happened when you were paid an amount by Firefinch in respect of your Firefinch shares by way of the transfer to you of Leo Lithium shares on the Implementation Date (section 104-135).

9. You made a capital gain from CGT event G1 happening if the amount of the reduction of share capital for each Firefinch share (1.911c) was more than the cost base of the Firefinch share. If so, the capital gain is equal to the amount of the excess.

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

Demerger roll-over

11. You can choose to obtain a demerger roll-over under subsection 125-55(1) for your Firefinch shares.

Choosing demerger roll-over

12. If you choose demerger roll-over for your Firefinch shares:

- any capital gain you made when CGT event G1 happened to your Firefinch shares under the demerger is disregarded (subsection 125-80(1)), and
- you must recalculate the first element of the cost base and reduced cost base of your Firefinch shares, and calculate the first element of the cost base and reduced cost base of the corresponding Leo Lithium shares you acquired under the demerger (subsection 125-80(2)).

Not choosing demerger roll-over

13. If you do not choose demerger roll-over for your Firefinch shares, you:

- cannot disregard any capital gain you made when CGT event G1 happened to your Firefinch shares under the demerger, and
- must recalculate the first element of the cost base and reduced cost base of your Firefinch shares, and calculate the first element of the cost base and reduced cost base of the corresponding Leo Lithium shares you acquired under the demerger (subsections 125-85(1) and (2)).

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Cost base and reduced cost base of your shares in Firefinch Limited and Leo Lithium Limited

14. The first element of the cost base and reduced cost base of each Firefinch share and corresponding Leo Lithium share is worked out by:

- taking the total of the cost bases of your Firefinch shares just before the demerger, and
- apportioning that total between your Firefinch shares and the Leo Lithium shares you acquired under the demerger.

15. The apportionment is done on a reasonable basis having regard to the market values of the Firefinch shares and Leo Lithium shares just after the demerger or an anticipated reasonable approximation of those market values (subsections 125-80(2) and (3)).

16. The Commissioner accepts that a reasonable apportionment is to attribute:

- 40.91% of the total of the cost bases of your Firefinch shares just before the demerger to the Firefinch shares, and
- 59.09% of the total of the cost bases of your Firefinch shares just before the demerger to the corresponding Leo Lithium shares you acquired under the demerger.

Acquisition date of your shares in Leo Lithium Limited for discount capital gain purposes

17. For the purposes of determining whether you can make a discount capital gain from a future capital gains tax event that happens to a Leo Lithium share you acquired under the demerger, you will be taken to have acquired the Leo Lithium share on the date you acquired, for capital gains tax purposes, the corresponding Firefinch share (table item 2 of subsection 115-30(1)). This will be the case whether or not you choose demerger roll-over.

Value of Leo Lithium Limited shares not included in your assessable income

18. No part of the value of a Leo Lithium share transferred to you under the demerger will be included in your assessable income under subsection 44(1) of the ITAA 1936. Although the part of the value of a Leo Lithium share that is not debited to the share capital account of Firefinch is a 'dividend' under subsection 6(1) of the ITAA 1936, it will be a 'demerger dividend' under subsections 44(3) to (5) of the ITAA 1936. A 'demerger dividend' is non-assessable non-exempt income for you.

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

19. 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 the capital benefits provided to you under the demerger.

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20. The 'purpose' condition in paragraph 45B(2)(c) of the ITAA 1936 is not satisfied, so the Commissioner will not make a determination under subsection 45B(3) of the ITAA 1936 that:

- section 45BA of the ITAA 1936 applies to the whole, or any part, of the demerger benefit provided to you under the demerger, or
- section 45C of the ITAA 1936 applies to the whole, or any part, of any capital benefit provided to you under the demerger.

Scheme

21. 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.

Firefinch Limited

22. Firefinch is an Australian-resident public listed company whose shares have traded on the Australian Securities Exchange (ASX) since December 2006 under ASX ticker code FFX. Firefinch is the head company of an income tax consolidated group.

23. Prior to the demerger, Firefinch was a gold miner and lithium developer, with assets at various levels of development that include both gold and lithium projects all located in Mali, West Africa. The two key assets held by Firefinch were the Morila gold project and the Goulamina Lithium Project held by subsidiary member Leo Lithium (formerly called Goulamina Holdings Pty Ltd).

24. The board of Firefinch arrived at the view that a new, separate lithium-focused company was the optimal way to realise the true value of the Goulamina Lithium Project. In order to achieve this, a decision was made to separate the lithium project from the gold project by demerging Leo Lithium.

25. Immediately before the Implementation Date, Firefinch had:

- \$326,393,600 credited to its share capital account
- 1,181,243,221 fully-paid ordinary shares on issue, and
- 11,043,600 unquoted performance rights on issue. The performance rights are not subject to this Ruling.

Leo Lithium Limited

26. Prior to the demerger, Leo Lithium was a subsidiary member of the Firefinch tax consolidated group with all of its 1,054,681,447 ordinary issued shares directly owned by Firefinch (the head company).

The demerger of Leo Lithium Limited

27. On the 29 April 2022, Firefinch announced its intention to demerge its lithium assets (to demerge Leo Lithium) by issuing a notice of general meeting and explanatory memorandum for the approval of an in-specie distribution of Leo Lithium shares and equal capital reduction.

Status: **legally binding**

28. At the general meeting on 31 May 2022, the shareholders of Firefinch voted to approve an ordinary resolution under section 256C of the *Corporations Act 2001* for the:

- in-specie distribution (disposal) of 80% of the Leo Lithium shares (by Firefinch) to its shareholders (with each shareholder to receive 1 Leo Lithium share for every 1.4 Firefinch shares held), and
- reduction in the share capital of Firefinch as an equal reduction without cancelling any Firefinch shares. The reduction in share capital equated to 1.911c per Firefinch share.

29. On 9 June 2022 (Implementation Date), Firefinch transferred 80% (or a total of 843,739,904) of the ordinary issued shares in Leo Lithium to its shareholders (each shareholder receiving 1 Leo Lithium share for every 1.4 Firefinch shares held). Firefinch retained 20% (or 210,941,543) of the shares in Leo Lithium.

30. Firefinch accounted for the demerger transaction by debiting:

- share capital account by \$22,569,919 (the capital reduction amount), and
- retained profits (or demerger reserve account) by \$428,758,647 (the demerger dividend).

31. The share capital account of Firefinch was not 'tainted' in accordance with the share capital tainting rules in Division 197, at the time of the demerger.

32. Firefinch did not elect under subsection 44(2) of the ITAA 1936 that subsections 44(3) and (4) of the ITAA 1936 would not apply to the demerger dividend for all Firefinch shareholders.

Post demerger

33. Leo Lithium applied to the ASX for its securities to be admitted to quotation on the official list of the ASX, and commenced trading on 23 June 2022.

Commissioner of Taxation

17 August 2022

Status: **not legally binding**

References

Legislative references:

- ITAA 1936 6(1)
- ITAA 1936 44(1)
- ITAA 1936 44(2)
- ITAA 1936 44(3)
- ITAA 1936 44(4)
- ITAA 1936 44(5)
- ITAA 1936 45A(2)
- ITAA 1936 45B(2)(c)
- ITAA 1936 45B(3)
- ITAA 1936 45BA
- ITAA 1936 45C
- ITAA 1997 104-135
- ITAA 1997 104-135(3)
- ITAA 1997 115-30(1)
- ITAA 1997 125-55(1)
- ITAA 1997 125-70
- ITAA 1997 125-80(1)
- ITAA 1997 125-80(2)
- ITAA 1997 125-80(3)
- ITAA 1997 125-85(1)
- ITAA 1997 125-85(2)
- ITAA 1997 Div 197
- ITAA 1997 Div 230
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- Corporations Act 2001 256C

ATO references

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