

CR 2022/78 - Vimy Resources Limited - scrip for scrip roll-over



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Status: **legally binding**

Class Ruling

Vimy Resources Limited – scrip for scrip roll-over

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 for Australian-resident holders of fully-paid ordinary shares in Vimy Resources Limited (Vimy) who exchanged their shares in Vimy for shares in Deep Yellow Limited (Deep Yellow) on 4 August 2022 (Implementation Date) under the scheme to which this Ruling relates.
2. Details of this scheme 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:
 - were a holder of Vimy fully-paid ordinary shares (Vimy shares) on 29 July 2022 (Record Date) who participated in the scheme that is the subject of this Ruling
 - were a resident of Australia (as defined in subsection 6(1) of the *Income Tax Assessment Act 1936*), and
 - held your Vimy shares on capital account; that is, your Vimy shares were neither held 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 you if you:
 - acquired your Vimy shares under a Vimy employee share plan that is an employee share scheme for the purposes of Division 83A and your deferred taxing point occurred on the Implementation Date, or
 - are 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.

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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 2022 to 30 June 2023.

Ruling

CGT event A1

7. CGT event A1 happened when you disposed of each of your Vimy shares to Deep Yellow (section 104-10).
8. The time of CGT event A1 is when the change in ownership occurred, being the Implementation Date (4 August 2022) (paragraph 104-10(3)(b)).
9. You made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of your Vimy share were more than the cost base of that share. You made a capital loss from CGT event A1 happening if the capital proceeds from the disposal of your Vimy share were less than the reduced cost base of that share (subsection 104-10(4)).
10. The capital proceeds from CGT event A1 happening to each Vimy share is the market value of the part of the Deep Yellow share you received under the scheme in respect of the disposal of that Vimy share, worked out as at the Implementation Date (subsection 116-20(1)(b)).

Availability of scrip for scrip roll-over

11. Subject to the qualification in paragraph 12 of this Ruling, if you made a capital gain from the disposal of a Vimy share under the scheme you may choose to obtain scrip for scrip roll-over for that capital gain (section 124-780).
12. Scrip for scrip roll-over cannot be chosen if any capital gain you might make from your replacement Deep Yellow share 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

13. If you choose scrip for scrip roll-over, the capital gain you made from the disposal of your Vimy share under the scheme is disregarded (subsection 124-785(1)).

Cost base and reduced cost base of Deep Yellow Limited shares

14. If you choose scrip for scrip roll-over, the first element of the cost base and reduced cost base of each replacement Deep Yellow share is worked out by reasonably attributing to it the cost base and reduced cost base (respectively) of the Vimy shares for which it was exchanged and for which you obtained roll-over (subsections 124-785(2) and (4)).

Status: **legally binding**

15. You can calculate the first element of the cost base and reduced cost base of each replacement Deep Yellow share by dividing the total cost bases and reduced cost bases (as relevant) of your Vimy shares by the number of replacement Deep Yellow shares you received.

Acquisition date of Deep Yellow Limited shares

16. If you choose scrip for scrip roll-over, the acquisition date of your replacement Deep Yellow share for 'discount capital gain' purposes is the date you acquired your original Vimy share that was exchanged for the replacement Deep Yellow share (table item 2(a) of section 115-30(1)).

Consequences if you do not choose scrip for scrip roll-over

Capital gain or capital loss is not disregarded

17. If you do not, or cannot, choose scrip for scrip roll-over in respect of the disposal of a Vimy share, you must take any capital gain (or capital loss) from CGT event A1 happening on the disposal of that share into account 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).

18. If you made a capital gain and do not, or cannot, choose scrip for scrip roll-over, you can treat the capital gain from the disposal of your Vimy share as a discount capital gain provided that you acquired that Vimy share at least 12 months before the Implementation Date and the other conditions in Subdivision 115-A are met.

Cost base and reduced cost base of replacement Deep Yellow Limited shares

19. If you do not, or cannot, choose scrip for scrip roll-over in respect of the disposal of your Vimy share, the first element of the cost base and reduced cost base of the replacement Deep Yellow shares you received is equal to the market value of the Vimy share you gave in respect of acquiring the replacement Deep Yellow shares (subsections 110-25(2) and 110-55(2)).

20. The market value of Vimy shares you gave is worked out as at the time you acquired the replacement Deep Yellow shares (table item 2 of section 109-10).

Acquisition date of Deep Yellow Limited shares

21. If you do not, or cannot, choose scrip for scrip roll-over in respect of the disposal of your Vimy share, the acquisition date of the replacement Deep Yellow shares is the date on which those replacement Deep Yellow shares were issued to you; that is, the Implementation Date (table item 2 of section 109-10).

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.

Status: **legally binding**

Vimy Resources Limited

23. Vimy is a resource development company, incorporated in Australia on 14 June 2006. Vimy has been listed on the Australian Securities Exchange (ASX) since 23 May 2008.
24. Vimy had 1,171,235,654 fully-paid ordinary shares on issue, being voting shares and the only class of shares on issue just before the Record Date.
25. Unlisted options and performance rights are not voting shares and are not Vimy Shares for the purpose of the scheme.

Deep Yellow Limited

26. Deep Yellow is a uranium exploration company, incorporated in Australia, and has been listed on the ASX since 19 December 1985.

The merger

27. On 31 March 2022, Vimy announced that it had entered into a Scheme Implementation Deed with Deep Yellow under which Deep Yellow would acquire all of the Vimy shares on issue by way of a scheme of arrangement under Part 5.1 of the *Corporations Act 2001*.
28. On 20 July 2022, the requisite majority of Vimy shareholders at the scheme meeting approved the merger.
29. The scheme of arrangement was approved by the Supreme Court of Western Australia under paragraph 411(4)(b) of the *Corporations Act 2001* on 26 July 2022.
30. Deep Yellow acquired 100% of the Vimy shares on issue on the Implementation Date.
31. On the Implementation Date, Vimy shareholders (other than ineligible foreign shareholders and relevant small shareholders) received 0.294 new fully-paid ordinary shares in Deep Yellow (Deep Yellow shares) in consideration for the disposal of each Vimy share they held on the Record Date.
32. The number of Deep Yellow shares issued to shareholders of Vimy shares was rounded down to the nearest whole number where the fractional entitlement was less than 0.5 and was rounded up to the nearest whole number where the fractional entitlement was 0.5 or greater.
33. Trading in Vimy shares on the ASX was suspended from the close of trading on 27 July 2022 and Vimy was removed from the official list of the ASX from the close of trading on 5 August 2022.

Other matters

34. There was no 'significant stakeholder' or 'common stakeholder' in Vimy within the meaning of those terms in section 124-783.
35. Neither Deep Yellow nor any members of its wholly-owned group issued equity, apart from the replacement Deep Yellow shares issued under the scheme, or owed new debt, to an entity that was not a member of the group for the purposes of paragraph 124-780(3)(f).

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36. All parties that participated in the scheme dealt at arm's length for the purposes of subsection 124-780(4).

37. Deep Yellow did not make a choice under subsection 124-795(4) that the shareholders of Vimy could not obtain roll-over pursuant to Subdivision 124-M for CGT event A1 happening in relation to the exchange of their Vimy shares under the scheme.

Commissioner of Taxation

31 August 2022

Status: **not legally binding**

References

Legislative references:

- ITAA 1936 6(1)
 - ITAA 1997 Div 83A
 - 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 109-10
 - ITAA 1997 110-25(2)
 - ITAA 1997 110-55(2)
 - ITAA 1997 Subdiv 115-A
 - ITAA 1997 115-30(1)
 - ITAA 1997 116-20(1)(b)
 - ITAA 1997 Subdiv 124-M
 - ITAA 1997 124-780
 - ITAA 1997 124-780(3)(f)
 - ITAA 1997 124-780(4)
 - ITAA 1997 124-783
 - 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 230
 - ITAA 1997 977-50
 - ITAA 1997 995-1(1)
 - Corporations Act 2001 Pt 5.1
 - Corporations Act 2001 411(4)(b)
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ATO references

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 Income tax ~~ Capital gains tax ~~ Discount capital gains
 Income tax ~~ Capital gains tax ~~ Rollovers ~~ Scrip for scrip - Subdivision 124-M

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