


CR 2022/79 - New World Resources Limited - return of capital by distribution of shares in Koba Resources Limited

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Class Ruling

New World Resources Limited – return of capital by distribution of shares in Koba Resources 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 income tax consequences of the reduction of share capital by New World Resources Limited (New World) which was satisfied by the transfer of shares in Koba Resources Limited (Koba) to the shareholders of New World on 26 April 2022 (Implementation Date).
2. Details of this scheme are set out in paragraphs 23 to 38 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* (as detailed in the table in the Appendix to this Ruling), unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you held ordinary shares in New World and you:
 - were registered on the New World share register on 22 April 2022 (Record Date)
 - did not hold your New World shares as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)) on the Record Date; that is, you held your shares on capital account, and

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- were a resident of Australia as defined in subsection 6(1) or a non-resident (other than a non-resident who carried on a business at or 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 23 to 38 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

Capital gains tax consequences

Demerger relief is not available

7. A demerger, as defined in section 125-70, did not occur under the scheme. Therefore, demerger relief (being demerger roll-over under Division 125 and demerger dividend treatment under subsections 44(3) and (4), and 128B(3D)) is not available for the transfer of shares.

CGT event G1

8. CGT event G1 happened to you when New World gave you Koba shares in respect of your New World shares on the Implementation Date (section 104-135).

9. You made a capital gain from CGT event G1 happening in relation to your New World share if the amount of the reduction of share capital for each New World share (0.14716c) was more than the cost base of your New World share. If so, the capital gain is equal to the amount of the excess and the cost base and reduced cost base of your New World share are reduced to nil. No capital loss can be made from CGT event G1 (subsection 104-135(3)).

10. If you did not make a capital gain from CGT event G1 happening in relation to your New World share, you reduce the cost base and reduced cost base of each of your New World share by 0.14716c (subsection 104-135(4)).

CGT event C2

11. CGT event C2 happened when New World transferred Koba shares to you in respect of New World shares you owned on the Record Date but ceased to own before the Implementation Date (section 104-25).

12. CGT event C2 happened because, by ceasing to own a New World 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 New World). When the reduction of share capital was paid by the transfer of shares in Koba 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)).

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13. You made a capital gain equal to the amount of the reduction of share capital (0.14716c per share) (subsection 104-25(3)).

Cost base and reduced cost base of your Koba Resources Limited shares

14. The first element of the cost base and reduced cost base of each Koba share you acquired is 11.75c (subsections 110-25(2) and 110-55(2)).

Acquisition date of Koba Resources Limited shares

15. You acquired your Koba shares on the Implementation Date (table event number A1 (case 1) of subsection 109-5(2)).

Discount capital gain

16. If you subsequently disposed of the Koba shares you acquired on the Implementation Date and made a capital gain, you can treat it as a 'discount capital gain' under Subdivision 115-A, provided that you owned those Koba shares for at least 12 months (excluding the Implementation Date and the date of disposal) and you satisfied the other conditions in Subdivision 115-A.

Foreign-resident shareholders of New World Resources Limited

17. If you are a foreign resident, any capital gain you make from CGT event G1 is disregarded unless your New World share is taxable Australian property (section 855-10).

18. If you are a foreign resident, the capital gain you make from CGT event C2 is disregarded unless your right to receive the reduction of share capital is taxable Australian property (section 855-10).

19. Your New World share or right to receive the reduction of share capital is taxable Australian property if it:

- was used by you (foreign resident) at any time in carrying on a business through a permanent establishment in Australia (table item 3 of section 855-15), or
- is a CGT asset that is covered by subsection 104-165(3) (choosing to disregard a capital gain or capital loss on ceasing to be an Australian resident) (table item 5 of section 855-15)).

Not assessable dividend

20. No part of the value of a Koba share transferred to you on the Implementation Date will be included in your assessable income under subsection 44(1). This is because all the value of the Koba shares was debited to the share capital account of New World, meaning that it is not a dividend under subsection 6(1).

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

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

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you by the transfer of Koba shares on the Implementation Date. This is because New World did not stream the provision of capital benefits and the payment of dividends to its shareholders as required by subsection 45A(1). Therefore, you will not include any part of the amount of the capital benefit (the amount of share capital distributed to you by New World) in your assessable income under subsection 44(1).

22. The Commissioner will not make a determination under paragraph 45B(3)(b) that section 45C applies to the whole, or any part, of the capital benefit provided to you by the transfer of Koba shares on the Implementation Date. This is because the purpose condition in paragraph 45B(2)(c) was not satisfied. Therefore, you will not include any part of the amount of the capital benefit (the market value of the Koba shares) in your assessable income under subsection 44(1).

Scheme

23. 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.

New World Resources Limited

24. New World is an Australian-resident company which was incorporated in Australia on 22 March 2004, with its shares listed on the Australian Securities Exchange on 19 September 2005.

25. New World's principal focus is the exploration and development of mineral resource projects in North America.

26. On 13 April 2021, New World announced its future exploration focus would be on its existing Antler Copper Project and the Tererro Copper-Gold Zinc VMS Project. As a consequence, it would pursue a demerger whereby it would spin out its portfolio of Cobalt Assets.

27. To achieve this separation, New World incorporated Koba (registered on 14 May 2021) as a wholly-owned Australian subsidiary of New World, for the sole purpose of spinning out the Cobalt Assets.

28. In conjunction with the share transfer and capital reduction, Koba undertook an initial public offering (via a priority offer to existing New World shareholders and remaining shares to new investors) and listed its shares on the Australian Securities Exchange.

29. Immediately before the Implementation Date, New World had 1,596,903,280 fully-paid ordinary shares on issue.

Return of capital by distribution of Koba Resources Limited shares

30. The reduction of share capital was undertaken by way of a share transfer under section 256B of the *Corporations Act 2001*.

31. On 14 April 2022, shareholders of New World approved an ordinary resolution under section 256C of the *Corporations Act 2001* to reduce the share capital of New World as an equal reduction, by an amount equal to the market value of all New World's shares in Koba.

32. The date for determining the entitlement of the shareholders of New World to receive Koba shares was the Record Date.

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33. On the Implementation Date, New World transferred 100% of its 20 million shares in Koba to the shareholders of New World in satisfaction of the shareholders' entitlement to the return of capital.

34. Each New World shareholder received one Koba share for every 79.845164 New World shares they held on the Record Date.

35. As a result of the return of capital, New World shareholders owned shares in both New World and Koba.

36. New World debited its share capital account by \$2,350,000.

37. The reduction of share capital equated to 0.14716c for each share in New World.

Other matters

38. Immediately before the Implementation Date:

- New World's share capital account (as defined in section 975-300) was not tainted (within the meaning of Division 197).
- A New World share was not an 'indirect Australian real property interest' (as defined in section 855-25).
- New World did not have current year profits and had accumulated losses at the time of making the return of capital.
- New World's franking account balance was nil at 30 June 2021.

Commissioner of Taxation

31 August 2022

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Appendix – Legislative provisions

39. 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 44(3)
<i>Income Tax Assessment Act 1936</i>	subsection 44(4)
<i>Income Tax Assessment Act 1936</i>	subsection 45A(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)(b)
<i>Income Tax Assessment Act 1936</i>	section 45C
<i>Income Tax Assessment Act 1936</i>	subsection 128B(3D)
<i>Income Tax Assessment Act 1997</i>	section 104-25
<i>Income Tax Assessment Act 1997</i>	paragraph 104-25(1)(b)
<i>Income Tax Assessment Act 1997</i>	subsection 104-25(3)
<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>	subsection 104-135(4)
<i>Income Tax Assessment Act 1997</i>	subsection 104-165(3)
<i>Income Tax Assessment Act 1997</i>	subsection 109-5(2)
<i>Income Tax Assessment Act 1997</i>	subsection 110-25(2)
<i>Income Tax Assessment Act 1997</i>	subsection 110-55(2)
<i>Income Tax Assessment Act 1997</i>	Subdivision 115-A
<i>Income Tax Assessment Act 1997</i>	Division 125
<i>Income Tax Assessment Act 1997</i>	section 125-70
<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 855-15
<i>Income Tax Assessment Act 1997</i>	section 855-25
<i>Income Tax Assessment Act 1997</i>	section 975-300
<i>Income Tax Assessment Act 1997</i>	section 977-50
<i>Income Tax Assessment Act 1997</i>	subsection 995-1(1)

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References

Legislative references:

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

ATO references

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Income tax ~~ Capital management ~~ Anti avoidance rules ~~ Section 45C

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