


CR 2022/88 - Firefly Resources Limited - demerger and scrip for scrip roll-over

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Class Ruling

Firefly Resources Limited – demerger and scrip for scrip roll-over

📌 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:
 - scheme of arrangement between Firefly Resources Limited (Firefly) and Gascoyne Resources Limited (Gascoyne) which was implemented on 10 November 2021 (Implementation Date), and
 - demerger of Firetail Resources Limited (Firetail) by Firefly which was implemented on the Implementation Date.
2. Details of this scheme are set out in paragraphs 23 to 59 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 Firefly shares and you:
 - were registered on the Firefly share register at 7:00 pm AWST on 3 November 2021 (Scheme Record Date)
 - were registered on the Firefly share register at 7:00 pm AWST on 9 November 2021 (Demerger Record Date)
 - held your Firefly shares on capital account; that is, you did not hold your shares as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)), and

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- are a resident of Australia (as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936)) or a foreign resident and do not hold your Firefly shares 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 59 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

Demerger roll-over

7. Demerger relief (being demerger roll-over pursuant to Division 125) is not available as the scheme does not satisfy one or more of the conditions in section 125-70.

Not a dividend

8. No part of the distribution you received under the demerger is a dividend as defined in subsection 6(1) of the ITAA 1936.

Anti-avoidance provisions will not apply to deem an assessable dividend

9. The Commissioner will not make a determination under subsection 45A(2) of the ITAA 1936 that section 45C of the ITAA 1936 applies to the whole, or any part, of the capital benefits provided to you under the demerger. This is because there was no streaming of capital benefits to some shareholders and dividends to other shareholders.

10. The Commissioner will not make a determination under either:

- paragraph 45B(3)(a) 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
- 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 demerger.

Distribution of shares in Firetail Resources Limited

CGT event G1

11. CGT event G1 happened to you at the time the demerger was implemented, when Firefly paid you the return of capital as described in paragraph 43 of this Ruling (subsections 104-135(1) and (2)).

12. You made a capital gain when CGT event G1 happened if the amount of the reduction of share capital for each Firefly share was more than the cost base of the share

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(paragraph 104-135(1)(b) and subsection 104-135(3)). You cannot make a capital loss from the event (note 1 to subsection 104-135(3)).

13. If you made a capital gain, the cost base and reduced cost base of the share are reduced to nil (subsection 104-135(3)). Otherwise, the cost base and reduced cost base of the share are reduced by the non-assessable part (subsection 104-135(4)).

Acquisition date of Firetail Resources Limited shares

14. You are taken to have acquired your Firetail shares on 10 November 2021 (section 109-5).

Exchange of shares in Firefly Resources Limited for shares in Gascoyne Resources Limited

CGT event A1

15. CGT event A1 happened on 10 November 2021 when you disposed of your Firefly shares in accordance with the scheme of arrangement (subsections 104-10(1) to (3)).

16. You made a capital gain if the capital proceeds from the event were more than the cost base of your shares. You made a capital loss if the capital proceeds were less than the reduced cost base of your share (subsection 104-10(4)).

17. The capital proceeds for each Firefly share you disposed of is the total market value of the Gascoyne shares you received under the scheme of arrangement divided by the number of Firefly shares you disposed of (subsection 116-20(1)). The Commissioner accepts that the market value of each Gascoyne Share was 38.07c.

Scrip for scrip roll-over

18. You may choose scrip for scrip roll-over (section 124-780) provided you made a capital gain on disposal of your Firefly shares (paragraph 124-780(3)(b)).

19. However, you cannot obtain the roll-over if any capital gain you might make from your Gascoyne shares (replacement shares) would be disregarded other than because of a roll-over (for example, if the shares were your trading stock) (paragraph 124-795(2)(a)).

Consequences of choosing scrip for scrip roll-over

20. If you choose scrip for scrip roll-over:

- you disregard the capital gain you made from CGT event A1 happening because of the disposal of your Firefly shares under the scheme of arrangement (subsection 124-785(1))
- you work out the first element of the cost base and reduced cost base of each Gascoyne share you received under the scheme of arrangement by reasonably attributing to it the cost base (or the part of it) of the Firefly shares for which it was exchanged, and for which you obtained the roll-over (subsection 124-785(2) and (4)), and
- the date of acquisition of these Gascoyne shares is 10 November 2021. However, for the purpose of working out whether a capital gain from these shares is a discount capital gain in the future, the date of acquisition is the

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date you acquired your original Firefly shares (table item 2 of subsection 115-30(1)).

Consequences of not choosing scrip for scrip roll-over

21. If you do not choose, or cannot choose, the roll-over:
- you cannot disregard any capital gain or capital loss you made from the disposal of your Firefly shares.
 - you work out the cost base and reduced cost base of each Gascoyne share you received under the scheme of arrangement using the cost base rules in Division 110 as modified under Division 112. This requires reasonably apportioning the total market value of your Firefly shares (worked out at the time the scheme of arrangement was implemented) across the Gascoyne shares you received under the scheme of arrangement (subsections 110-25(2), 110-55(2) and 112-30(1)). The Commissioner accepts that the market value of a Firefly share at that time was 12.94c. You received one Gascoyne share for every 2.94 Firefly shares you held such that the cost base and reduced cost base of each Gascoyne share you received is calculated as 12.94c multiplied by 2.94.
 - the date of acquisition of these Gascoyne shares is 10 November 2021.

Foreign-resident Firefly Resources Limited shareholders

22. If you were a foreign resident just before the Implementation Date, you disregard any capital gain or capital loss from CGT events A1 and G1 happening unless the share was taxable Australian property (section 855-10).

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.

Firefly Resources Limited

24. Firefly is an Australian-resident company that was listed on the Australian Securities Exchange (ASX).
25. Firefly is a gold-focused exploration company with a portfolio of emerging projects located in Western Australia (WA) and has an overriding focus on identifying geological opportunities and exploring for gold in WA.
26. Just before the demerger, the market value of each Firefly share was 12.94c.
27. Ownership interests in Firefly were acquired after 20 September 1985.
28. Firefly shareholders include both Australian residents and foreign residents and are a mix of individuals, companies, trusts and superannuation funds.
29. No foreign-resident Firefly shareholders held a non-portfolio interest (within the meaning of section 960-195) in Firefly throughout a 12-month period in the 24 months immediately before and on the Implementation Date.

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30. Firefly has never paid a dividend.

Firetail Resources Limited

31. Firetail is an Australian-resident company that was incorporated on 16 June 2021 and is listed on the ASX.

32. Firetail is in the business of exploration and development of certain copper-gold and lithium assets in WA and Queensland.

33. Just after the demerger the market value of each Firetail share was 20c.

Gascoyne Resources Limited

34. Gascoyne is an Australian-resident company listed on the ASX.

35. Gascoyne is a gold mining and exploration company that holds assets and exploration tenements in the Gascoyne and Murchison regions of WA.

36. Just after the scheme of arrangement was implemented, the market value of each Gascoyne share was 38.07c.

Demerger of Firetail Resources Limited

37. On 16 July 2021, Firefly announced it intended to demerge Firetail, subject to shareholder and other approvals.

38. Firefly shareholders recorded in the Firefly share register as at the Demerger Record Date were entitled to participate in the demerger.

39. The assets and lithium rights which were the subject of the demerger (Firefly Demerger Assets) were:

- the tenements of the Paterson Copper-Gold Project, owned partially by Firefly and partially through its wholly-owned subsidiary Firefly Operations Pty Ltd
- either the tenements of the Forrestania Gold Project or the rights to consideration from the sale of the tenements of the Forrestania Gold Project, owned by Firefly's wholly-owned subsidiary Firehawk Gold Pty Ltd
- M59/358 mining lease (excluding gold rights) of the Yalgoo Gold Project, owned by Firefly
- the lithium rights to certain tenements of the Yalgoo Gold Project, owned partially by Firefly and partially through its wholly-owned subsidiary Yalgoo Exploration Pty Ltd, and
- the lithium rights to certain tenements of the Yalgoo Gold Project, owned by Firefly's wholly-owned subsidiary Lightning Bug Resources Pty Ltd.

40. The lithium rights to certain wholly-owned tenements in the Dalgaranga Gold Project held by Gascoyne (Dalgaranga Lithium Rights) were transferred to Firetail.

41. The Firefly Demerger Assets and the Dalgaranga Lithium Rights collectively are referred to as the Demerger Assets.

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42. On 27 October 2021, Firefly shareholders voted at a General Meeting to approve sale of the Demerger Assets (Demerger Meeting), the capital reduction and in specie distribution for the purposes of sections 256B and 256C of the *Corporations Act 2001* (Corporations Act).

43. On the Implementation Date:

- Firefly, Firefly's subsidiaries and Gascoyne transferred the Demerger Assets to Firetail
- in consideration for the transfer of the Firefly Demerger Assets to Firetail, Firetail issued 29,282,500 Firetail shares to Firefly
- 29,282,500 Firetail shares were distributed in specie to Eligible Shareholders on the basis that each Eligible Shareholder received one Firetail share for every 11.91 Firefly shares they held, and
- Firetail issued 3,217,500 Firetail shares to Gascoyne as consideration for the transfer of the Dalgaranga Lithium Rights.

44. 'Eligible Shareholder' means a Firefly shareholder recorded in Firefly's register of members as at the Demerger Record Date as having a registered address in Australia or New Zealand or any Firefly shareholder that Firefly and Firetail have determined is eligible to participate in the in specie Distribution. 'Ineligible Foreign Shareholder' means a Firefly shareholder recorded in Firefly's register of members as at the Record Date who was not an Eligible Shareholder.

45. Ineligible Foreign Shareholders received sale proceeds of the Firetail shares they would otherwise have been entitled to less any applicable brokerage, stamp duty and other taxes.

46. Firefly accounted for the demerger by debiting its share capital account by \$5,856,500 (Capital Reduction Amount), equal to the market value of 29,282,500 Firetail shares.

47. After the demerger, Firefly held no shares in Firetail. Firefly shareholders held 90.1% of the issued share capital in Firetail and Gascoyne held the remaining 9.9%.

48. Firetail shares were listed for quotation on the ASX and they commenced trading on a deferred settlement basis on 13 April 2021.

Reasons for the demerger

49. The Firefly Board believed a separate entity focused on the copper-gold and lithium projects presented a better prospect of delivering greater value to Firefly shareholders and considered that a dedicated fully-funded vehicle would assist the market in valuing these assets.

50. If the scheme was implemented, the demerger would allow the Combined Group of Firefly and Gascoyne to focus on the development of Gascoyne's Dalgaranga Gold Project and Firefly's Yalgoo Gold Project, which is within close haulage distance of Gascoyne's Dalgaranga processing plant.

Scheme of arrangement

51. On 15 June 2021, Gascoyne and Firefly entered into a Scheme Implementation Deed pursuant to which Gascoyne acquired all of the Firefly Shares by way of a scheme of arrangement under Part 5.1 of the Corporations Act.

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52. Firefly shareholders (other than Excluded Shareholders) recorded on the Firefly share register on the Scheme Record Date were entitled to participate in the Scheme (Scheme Shareholders).

53. An 'Excluded Shareholder' is any Firefly shareholder who is (or becomes under clause 5.3(m) of the Scheme Implementation Deed), a member of the Gascoyne Group or any Firefly shareholder who holds any Firefly shares on behalf of, or for the benefit of, any member of the Gascoyne Group and does not hold Firefly shares on behalf of, or for the benefit of, any other person.

54. On 27 October 2021, the scheme of arrangement was approved by Firefly shareholders at a General Meeting.

55. On 1 November 2021, the Supreme Court of Western Australia made orders approving the scheme of arrangement.

56. Firefly shareholders were entitled to receive the Scheme Consideration under the scheme of arrangement if they were registered as holders of Firefly shares on the Scheme Record Date.

57. On the Implementation Date:

- Gascoyne acquired all the issued capital of Firefly and its wholly-owned subsidiaries, and
- Scheme Shareholders (other than Ineligible Foreign Shareholders) were issued 0.34 Gascoyne shares for each Firefly share they held.

58. 'Ineligible Foreign Shareholder' means a Scheme Shareholder whose address shown in the Firefly share register on the Scheme Record Date was a place outside Australia and its external territories, and New Zealand, unless Gascoyne determined that it was lawful and not unduly onerous or impracticable to issue that Scheme Shareholder with Gascoyne shares when the Scheme became effective.

59. Ineligible Foreign Shareholders received cash proceeds from the sale of the Gascoyne shares they would have otherwise received had they not been an Ineligible Foreign Shareholder, after their proportional share of brokerage and other costs were deducted from the proceeds of Gascoyne shares sold under the Sale Facility.

Commissioner of Taxation

28 September 2022

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Appendix – Explanation

❶ *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.*

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Demerger roll-over

60. For demerger relief to be available, the conditions in section 125-70 must be satisfied. That is, there must be a restructuring of a ‘demerger group’ under which members of the group stop owning at least 80% of the ‘ownership interests’ (for example, shares) in another member of the group and a similar percentage of the membership interests start being owned by owners of ownership interests in the head entity of the group (paragraphs 125-70(1)(a) and (b)), and certain other conditions must be satisfied.

61. One of those other conditions is that under the restructuring, owners of ownership interests acquire ownership interests in that other member of the group and nothing else (paragraph 125-70(1)(c)).

62. The demerger and scheme of arrangement is a single restructuring for the purposes of the definition of a ‘demerger’ in subsection 125-70(1).

63. Firefly and Firetail were members of a demerger group with Firefly as the head entity. The scheme of arrangement and demerger brought about a restructuring of the demerger group with Firefly disposing of all of its shares in Firetail to Firefly shareholders. However, as Firefly shareholders also received Gascoyne shares under the restructuring, the ‘nothing else’ condition was not satisfied. Therefore, demerger relief is not available.

Not a dividend

64. A dividend, as defined in subsection 6(1) of the ITAA 1936, includes any distribution made by a company to its shareholders, whether in money or other property. However, to the extent that the amount of money paid, or the amount of the value of the property, is debited against an amount standing to the credit of the share capital account of the company, the distribution is not a dividend.

65. Since the distribution of Firetail shares to Firefly shareholders under the demerger was accounted for entirely by debiting Firefly’s share capital account, none of the distribution was a dividend as defined in subsection 6(1) of the ITAA 1936.

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Anti-avoidance provisions will not apply to deem an assessable dividend

66. Section 45A of the ITAA 1936 applies where a company streams capital benefits to some shareholders who would benefit more from them than other shareholders and dividends to those other shareholders. No such streaming occurred under the demerger.

67. Section 45B of the ITAA 1936 is an anti-avoidance provision which applies where, having regard to the relevant circumstances of the scheme as set out in subsection 45B(8) of the ITAA 1936, a company provided certain capital payments to its shareholders for a more than incidental purpose of enabling a taxpayer to obtain a tax benefit.

68. Having regard to the relevant circumstances of the scheme, it cannot be concluded that it was entered into or carried out for a more than incidental purpose of enabling Firefly shareholders to obtain a tax benefit. Accordingly, section 45B of the ITAA 1936 does not apply.

Scrip for scrip roll-over

69. Scrip for scrip roll-over under Subdivision 124-M enables a shareholder to disregard a capital gain from a share that is disposed of if they receive a replacement share in exchange. It also provides special rules for calculating the cost base and reduced cost base of the replacement share.

70. Subdivision 124-M contains a number of conditions for a shareholder being able to choose scrip for scrip roll-over and sets out certain exceptions. The requirements that are relevant to the scheme that is the subject of this Ruling were satisfied as:

- Firefly shareholders exchanged their shares in Firefly for shares in Gascoyne (paragraph 124-780(1)(a) and subparagraph 124-780(3)(c)(ii))
- the exchange was a consequence of a single arrangement entered into by Firefly under Part 5.1 of the Corporations Act and approved by the Court under paragraph 411(4)(b) of the Corporations Act, under which Gascoyne increased its ownership of Firefly to 80% or more of the voting shares (paragraph 124-780(2)(a) and subsection 124-780(2A))
- neither Gascoyne nor any of its wholly-owned subsidiaries issued equity, apart from the Gascoyne shares issued to Firefly shareholders in exchange for their Firefly shares, or owed new debt under the arrangement in relation to the issue of those Gascoyne shares, to an entity that was not a member of the group (paragraph 124-780(3)(f))
- Firefly shareholders dealt with Gascoyne at arm's length (subsection 124-780(4)), and
- Gascoyne did not make a choice under subsection 124-795(4) that Firefly shareholders could not obtain the roll-over.

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References

Legislative references:

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- ITAA 1936 45B
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- ITAA 1936 45B(3)(b)
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- ITAA 1997 104-10(1)
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- ITAA 1997 124-780(3)(b)
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