

CR 2022/90 - Oklo Resources Limited - scrip for scrip roll-over



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Status: **legally binding**

Class Ruling

Oklo Resources Limited – 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.

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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 Oklo Resources Limited (Oklo) in relation to the acquisition of those shares by B2Gold Oklo Resources Pty Limited (B2Gold Acquirer) on 20 September 2022 (Implementation Date).
2. Details of this scheme are set out in paragraphs 26 to 47 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 Oklo ordinary shares who participated in the scheme that is the subject of this Ruling, and
 - did not hold your Oklo shares as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)); that is, your Oklo shares were held on capital account for tax purposes.
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 26 to 47 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 2022 to 30 June 2023.

Status: **legally binding**

Ruling

CGT event A1 happened on the disposal of your shares in Oklo Resources Limited

7. CGT event A1 happened when you disposed of your Oklo shares to B2Gold Acquirer (section 104-10).
8. The time of CGT event A1 is the Implementation Date (20 September 2022) (paragraph 104-10(3)(b)).
9. The capital proceeds from CGT event A1 happening to each Oklo share is the total of the money and the market value of the part of the B2Gold Corp. (B2Gold) share you received in respect of your disposal of the Oklo share (subsection 116-20(1)). The market value of the part of the B2Gold share is worked out as at the time of CGT event A1 happening.
10. You will make a capital gain from CGT event A1 happening if the capital proceeds from the disposal of your Oklo share exceeded the cost base of that share (subsection 104-10(4)). You will make a capital loss from CGT event A1 happening if the capital proceeds from the disposal of your Oklo share were less than the reduced cost base of that share (subsection 104-10(4)).

Foreign-resident shareholders of Oklo Resources Limited

11. If you were a foreign resident just before the Implementation Date (that is, you were not a resident of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936*) and your Oklo shares were not 'taxable Australian property', any capital gain or capital loss you make from CGT event A1 happening when you disposed of your Oklo shares to B2Gold Acquirer is disregarded (subsection 855-10(1)).
12. Your Oklo shares were taxable Australian property if they were:
- used by you at any time in carrying on a business through a permanent establishment in Australia in the circumstances specified in table item 3 of section 855-15, or
 - 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).

Availability of scrip for scrip roll-over for your shares in Oklo Resources Limited

13. Subject to the qualifications in paragraphs 14 and 15 of this Ruling, if you make a capital gain from the disposal of your Oklo shares, you may choose to obtain scrip for scrip roll-over for that part of the capital gain that is attributable to the receipt of B2Gold shares (sections 124-780, 124-785 and 124-790).
14. Scrip for scrip roll-over cannot be chosen if any capital gain you might make from the replacement B2Gold shares would be disregarded, except because of a roll-over (paragraph 124-795(2)(a)).
15. If you were a foreign resident just before the Implementation Date, you cannot choose scrip for scrip roll-over unless your B2Gold shares were taxable Australian property (as defined in section 855-15) just after the Implementation Date (subsection 124-795(1)).

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Consequences if you choose scrip for scrip roll-over for your shares in Oklo Resources Limited
Capital gain is disregarded

16. If you choose scrip for scrip roll-over, the part of the capital gain that is attributable to the receipt of B2Gold shares is disregarded (subsections 124-785(1) and 124-790(1)). Any part of the capital gain that is attributable to the receipt of money is not disregarded because it is 'ineligible proceeds' for which roll-over is not available (subsection 124-790(1)).

17. For the purposes of determining your eligibility to make a discount capital gain, the B2Gold shares acquired in exchange for your Oklo shares are taken to have been acquired on the date you acquired, for capital gains tax purposes, the corresponding Oklo shares (table item 2 of subsection 115-30(1)).

Cost base and reduced cost base of shares in B2Gold Corp.

18. If you choose scrip for scrip roll-over, the first element of the cost base and reduced cost base of each replacement B2Gold share you received is worked out by reasonably attributing to it the cost base and reduced cost base (respectively) of the Oklo shares for which it was exchanged and for which the roll-over was obtained (subsections 124-785(2) and (4)).

19. You will have to reduce the cost base and reduced cost base of your Oklo shares by so much of it that is attributable to the money component of the capital proceeds you received (subsection 124-785(3)).

20. You can calculate the first element of the cost base and reduced cost base of each replacement B2Gold share by dividing the aggregate cost bases of your Oklo shares (as reduced under subsection 124-785(3) for the money component) by the number of replacement B2Gold shares you received (subsections 124-785(2) and (4)).

Consequences if you do not choose, or cannot choose, scrip for scrip roll-over for your shares in Oklo Resources Limited
Capital gain is not disregarded

21. 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 your Oklo 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).

22. 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 B2Gold Corp. shares

23. 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 B2Gold share that you received is equal to the market value of the Oklo shares given in respect of acquiring the B2Gold share (subsections 110-25(2) and 110-55(2)), reduced by the proportion of the market value of the Oklo shares that is reasonably attributable to the money component of the capital proceeds you received (subsection 112-30(1)).

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24. The market value of the Oklo shares you gave is to be worked out as at the time when you acquired the B2Gold shares.

Acquisition date of B2Gold Corp. shares

25. If you do not choose, or cannot choose, scrip for scrip roll-over, the acquisition date of the B2Gold shares is the date on which those shares were issued to you (table item 2 of section 109-10).

Scheme

26. 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.

Oklo Resources Limited

27. Oklo is a gold exploration company that was incorporated in Australia on 5 September 2006.

28. The shares in Oklo were listed on the Australian Securities Exchange (ASX) on 16 May 2007 under the ASX code 'OKU'. Oklo has one class of shares on issue.

29. Just before the Scheme Implementation Deed was entered into, and just before the Implementation Date, Oklo had more than 300 shareholders.

30. Oklo had 504,496,479 ordinary shares on issue just before the Implementation Date.

B2Gold Corp.

31. B2Gold is a company that was incorporated in British Columbia, Canada in November 2006.

32. The ordinary shares of B2Gold are listed on the Toronto Stock Exchange (TSX) under the TSX code 'BTO', on the New York Stock Exchange (NYSE) under the NYSE code 'BTG' and on the Namibian Stock Exchange (NSX) under the NSX code 'B2G'.

33. B2Gold has more than 300 shareholders.

34. B2Gold Acquirer is a company that was incorporated in Australia on 8 July 2022 for the purposes of acquiring Oklo. It is a wholly-owned subsidiary of B2Gold.

Scheme of arrangement

35. On 26 May 2022, Oklo and B2Gold announced that they had entered into a Scheme Implementation Deed. Under the Deed, Oklo agreed to propose to its shareholders that Oklo and the shareholders enter into a scheme of arrangement under Part 5.1 of the *Corporations Act 2001* (Corporations Act), pursuant to which B2Gold Acquirer would acquire all of the ordinary shares in Oklo in exchange for B2Gold shares and money.

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36. On 1 September 2022, a resolution in favour of the scheme of arrangement was passed by the shareholders of Oklo as required by subparagraph 411(4)(a)(ii) of the Corporations Act.

37. On 7 September 2022, the scheme of arrangement was approved by the Supreme Court of Western Australia, under paragraph 411(4)(b) of the Corporations Act.

38. B2Gold Acquirer acquired 100% of the shares in Oklo on the Implementation Date (20 September 2022).

39. In consideration for the disposal of each Oklo share, an Oklo shareholder received:

- 0.0206 of an ordinary share of B2Gold, and
- A\$0.0525 in money.

40. An Ineligible Foreign Shareholder is an Oklo shareholder whose address on the share register was in a jurisdiction other than Australia, New Zealand, Canada and the United States of America. An Ineligible Foreign Shareholder did not receive the B2Gold shares to which they would otherwise be entitled for the disposal of their Oklo shares. Instead, those B2Gold shares were issued to a sale agent, who sold them on the TSX and paid the net sale proceeds to each Ineligible Foreign Shareholder.

41. The shares in Oklo were suspended from trading on the ASX from the close of trading on 8 September 2022. Oklo was removed from the official list of the ASX on 20 September 2022.

Other matters

42. There was no 'significant stakeholder' or 'common stakeholder' in Oklo within the meaning of those terms in section 124-783.

43. Paragraph 124-780(3)(f) is satisfied in respect of the disposal of Oklo shares to B2Gold Acquirer.

44. The Oklo shareholders, Oklo and B2Gold were not all members of the same linked group (within the meaning given by section 170-260) just before the Scheme Implementation Deed was entered into.

45. B2Gold did not make a choice under subsection 124-795(4) that Oklo shareholders could not obtain the roll-over in Subdivision 124-M for CGT event A1 happening in relation to the exchange of Oklo shares.

46. Subsections 124-810(3) and (5) did not apply to Oklo just before the Scheme Implementation Deed was entered into.

47. For the purposes of section 855-30, the sum of the market values of the assets of Oklo that were taxable Australian real property (as defined in section 855-20) on the Implementation Date did not exceed the sum of the market values of the assets of Oklo that were not taxable Australian real property on the Implementation Date.

Commissioner of Taxation

12 October 2022

Status: **not legally binding**

References

Legislative references:

- | | |
|---------------------------|---------------------------------------|
| - ITAA 1936 6(1) | - ITAA 1997 124-785(3) |
| - ITAA 1997 102-5 | - ITAA 1997 124-785(4) |
| - ITAA 1997 102-10 | - ITAA 1997 124-790 |
| - ITAA 1997 104-10 | - ITAA 1997 124-790(1) |
| - ITAA 1997 104-10(3)(b) | - ITAA 1997 124-795(1) |
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| - ITAA 1997 104-165(3) | - ITAA 1997 124-795(4) |
| - ITAA 1997 109-10 | - ITAA 1997 124-810(3) |
| - ITAA 1997 110-25(2) | - ITAA 1997 124-810(5) |
| - ITAA 1997 110-55(2) | - ITAA 1997 170-260 |
| - ITAA 1997 112-30(1) | - ITAA 1997 Div 230 |
| - ITAA 1997 Subdiv 115-A | - ITAA 1997 855-10 |
| - ITAA 1997 115-30(1) | - ITAA 1997 855-10(1) |
| - ITAA 1997 116-20(1) | - ITAA 1997 855-15 |
| - ITAA 1997 Subdiv 124-M | - ITAA 1997 855-20 |
| - ITAA 1997 124-780 | - ITAA 1997 855-30 |
| - ITAA 1997 124-780(3)(f) | - ITAA 1997 977-50 |
| - ITAA 1997 124-783 | - ITAA 1997 995-1(1) |
| - ITAA 1997 124-785 | - Corporations Act 2001 Pt 5.1 |
| - ITAA 1997 124-785(1) | - Corporations Act 2001 411(4)(a)(ii) |
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