


CR 2023/41 - Norwest Energy NL - scrip for scrip roll-over

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Status: **legally binding**

Class Ruling

Norwest Energy NL – 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 for holders of ordinary shares in Norwest Energy NL (Norwest) that were acquired by Mineral Resources Limited (MinRes).
2. Details of this scheme are set out in paragraphs 23 to 40 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 Norwest shares
 - received ordinary shares in MinRes in exchange for the disposal of your Norwest shares as part of the off-market takeover that is the subject of this Ruling
 - are a resident of Australia (within the meaning of subsection 6(1) of the *Income Tax Assessment Act 1936* and are not 'temporary residents' as defined in subsection 995-1(1)), and
 - held your Norwest shares on capital account, that is, the shares were neither held as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)).

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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 40 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.

Ruling

CGT event A1 happened on the disposal of your Norwest Energy NL shares

7. CGT event A1 happened when you disposed of each of your Norwest shares to MinRes (section 104-10).

8. If you accepted MinRes's offer to acquire your Norwest shares (Offer), CGT event A1 happened when you accepted the Offer (paragraph 104-10(3)(a)).

9. If your Norwest shares were compulsorily acquired, CGT event A1 happened when those shares were compulsorily acquired by MinRes (subsection 104-10(6)).

10. The capital proceeds from CGT event A1 happening to each Norwest share is the market value of the shares in MinRes you received in respect of your disposal of your Norwest share (subsection 116-20(1)). The market value of the MinRes shares is worked out as at the time of CGT event A1 happening.

11. You made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of your Norwest share were more than the cost base of that share (subsection 104-10(4)).

12. You made a capital loss from CGT event A1 happening if the capital proceeds from the disposal of your Norwest share were less than the reduced cost base of that share (subsection 104-10(4)).

Availability of scrip for scrip roll-over if a capital gain is made

13. If you have made a capital gain from the disposal of your Norwest shares, you may choose to obtain scrip for scrip roll-over (paragraph 124-780(3)(d)).

14. However, you cannot choose to obtain scrip for scrip roll-over if any capital gain that you might make from the disposal of your Norwest shares would be disregarded other than because of a roll-over (subsection 124-795(2)).

Consequences if you choose scrip for scrip roll-over for your Norwest Energy NL shares

15. Where scrip for scrip roll-over is available to you (see paragraphs 13 and 14 of this Ruling) and you choose to apply it, your capital gain from CGT event A1 happening in respect of the disposal of your Norwest shares to MinRes is disregarded (subsection 124-785(1)).

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16. The first element of the cost base and reduced cost base of the replacement MinRes share you received is worked out by reasonably attributing the cost base and reduced cost base (respectively) of your original Norwest shares for which it was exchanged (subsections 124-785(2) and (4)).

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

Consequences if you do not choose, or cannot choose, scrip for scrip roll-over for your Norwest Energy NL shares

18. 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 in respect of the disposal of your Norwest 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).

19. If you make a capital gain you can treat the capital gain as a discount capital gain provided that the conditions of Subdivision 115-A are met (section 115-25).

20. The first element of the cost base and reduced cost base of a replacement MinRes share that you received is equal to the market value of the Norwest shares you gave in respect of acquiring the MinRes share (subsections 110-25(2) and 110-55(2)).

21. The market value of the Norwest shares you gave is to be worked out as at the time you acquired the MinRes share.

22. Under table item 2 of section 109-10, if you acquired your shares in MinRes:

- by accepting the Offer, the date on which you acquired your shares in MinRes is the date on which you entered into the contract with MinRes (which is also the time at which CGT event A1 happens), or
- as a result of the compulsory acquisition of your Norwest shares, the date on which you acquired your shares in MinRes is when the MinRes shares were issued or allotted to you by MinRes.

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.

Norwest Energy NL

24. Norwest is an Australian public company that was incorporated on 23 April 1997 and was listed on the Australian Securities Exchange (ASX).

25. Norwest is a Perth Basin-focused gas and oil exploration company.

26. Norwest had approximately 6,949,863,019 ordinary shares on issue prior to 29 April 2023.

Status: **legally binding**

Mineral Resources Limited

27. MinRes is an Australian public company that was incorporated on 27 February 2006 and listed on the ASX.
28. MinRes is a diversified resources company, with operations in lithium, iron ore, energy and mining services across Western Australia.
29. On 16 December 2022 MinRes held approximately a 19.88% stake in Norwest.

The scheme

30. On 16 December 2022, MinRes announced an off-market takeover bid to acquire Norwest by exchanging 1 MinRes share for every 1,367 Norwest shares held.¹
31. On 3 January 2023 MinRes released a bidder statement for the takeover which outlined the details of the off-market takeover bid.
32. The Offer was originally scheduled to close on 6 February 2023 unless extended or withdrawn.
33. On 10 January 2023 a target statement was issued by Norwest Directors advising shareholders to reject the Offer.
34. A variation of the Offer was lodged with the Australian Securities & Investments Commission on 25 January 2023 to increase the Offer consideration to issue 1 MinRes share for every 1,300 Norwest shares. This increase also applied to shareholders who had already accepted the Offer.
35. The period for Norwest shareholders to accept the Offer was extended to 20 February 2023.
36. On 17 February 2023 MinRes announced that it had obtained a relative interest in 53.86% of the ordinary fully-paid shares in Norwest (which was sufficient to control the composition of the Norwest board).
37. The closing date of the Offer was further extended on several occasions, with the final extension being to 29 April 2023.
38. By 28 April 2023 MinRes had acquired over 93% of Norwest.
39. On 2 May 2023 MinRes lodged a *Notice of compulsory acquisition following takeover bid* form with the Australian Securities & Investments Commission and notified the ASX that it would be sending notification to the Norwest shareholders to compulsorily acquire all remaining shares in Norwest. The notification confirmed the compulsory acquisition was on the same terms as the Offer.

¹ Where the calculation of an entitlement would result in a fraction of a MinRes Share, the relevant number of MinRes Shares under the Offer is rounded.

Status: **legally binding**

Other matters

40. This Ruling is made on the basis that:
- the Offer was not carried out in contravention of paragraphs 612(a) to (g) of the *Corporations Act 2001*, for the purposes of subsection 124-780(2A)
 - paragraph 124-780(3)(f) is satisfied in respect of the sale of Norwest shares to MinRes
 - MinRes have not made a choice that scheme shareholders cannot obtain roll-over prior to the exchange
 - there was no 'significant stakeholder' or 'common stakeholder' in Norwest within the meaning of those terms in section 124-783, and
 - all parties that participated in the scheme dealt at arm's length for the purposes of subsection 124-780(4).

Commissioner of Taxation

26 July 2023

Status: **not legally binding**

Appendix – Explanation

ⓘ *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.*

Availability of scrip for scrip roll-over if a capital gain is made

41. The tax consequences that arise concerning the scheme are outlined in paragraphs 7 to 22 of this Ruling.

42. The main tax consequence that is the subject of this Ruling is the availability of scrip for scrip roll-over under Subdivision 124-M. The roll-over enables a shareholder to disregard a capital gain from a share that is disposed of if the shareholder receives a replacement share in exchange. It also provides special rules for calculating the cost base and reduced cost base of the replacement share.

43. Subdivision 124-M contains a number of conditions for, and exceptions to, a shareholder being eligible to choose scrip for scrip roll-over. The main requirements that are relevant to the scheme that is the subject of this Ruling are:

- an entity exchanges shares in a company for shares in another company
- the exchange is in consequence of a single arrangement
- conditions for the roll-over are satisfied
- further conditions, if applicable, are satisfied, and
- exceptions to obtaining scrip for scrip roll-over are not applicable.

44. The scheme that is the subject of this Ruling satisfies the requirements for a roll-over under Subdivision 124-M.

Status: **not legally binding**

References

Legislative references:

- ITAA 1936 6(1)
 - ITAA 1997 102-5
 - ITAA 1997 102-10
 - ITAA 1997 104-10
 - ITAA 1997 104-10(3)(a)
 - ITAA 1997 104-10(4)
 - ITAA 1997 104-10(6)
 - ITAA 1997 109-10
 - ITAA 1997 110-25(2)
 - ITAA 1997 110-55(2)
 - ITAA 1997 Subdiv 115-A
 - ITAA 1997 115-25
 - ITAA 1997 115-30(1)
 - ITAA 1997 116-20(1)
 - ITAA 1997 Subdiv 124-M
 - ITAA 1997 124-780(2A)
 - ITAA 1997 124-780(3)(d)
 - 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)
 - ITAA 1997 Div 230
 - ITAA 1997 977-50
 - ITAA 1997 995-1(1)
 - Corporations Act 2001 612(a)
 - Corporations Act 2001 612(b)
 - Corporations Act 2001 612(c)
 - Corporations Act 2001 612(d)
 - Corporations Act 2001 612(e)
 - Corporations Act 2001 612(f)
 - Corporations Act 2001 612(g)
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ATO references

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