


CR 2024/18 - Newcrest Mining Limited - scrip for scrip roll-over, final ordinary dividend and special dividend

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Status: **legally binding**

Class Ruling

Newcrest Mining Limited – scrip for scrip roll-over, final ordinary dividend and special dividend

📌 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 Newcrest Mining Limited (Newcrest) in relation to the:
 - payment of the final ordinary dividend by Newcrest on 18 September 2023 (Final Ordinary Dividend)
 - payment of the special dividend by Newcrest on 27 October 2023 (Special Dividend), and
 - acquisition of the ordinary shares in Newcrest by Newmont Overseas Holdings Pty Ltd (Newmont Acquirer) which was implemented on 6 November 2023 (Implementation Date).
2. Details of this scheme are set out in paragraphs 61 to 102 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. Paragraphs 39 to 60 of this Ruling apply to you if you:
 - were registered on the Newcrest share register as a holder of an ordinary share in Newcrest at 7:00 pm (Melbourne time) on 30 October 2023 (Scheme Record Date)
 - are either a
 - ‘resident of Australia’ (as that term is defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936)), or

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- ‘non-resident’ (as that term is defined in subsection 6(1) of the ITAA 1936)
 - acquired your shares in Newcrest on or after 20 September 1985
 - held your Newcrest shares on capital account – that is, your Newcrest 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. Paragraphs 8 to 38 of this Ruling also apply to you (whether or not you were registered on the Newcrest share register as a holder of an ordinary share in Newcrest on the Scheme Record Date) if you received either or both the:
- Final Ordinary Dividend from Newcrest on 18 September 2023
 - Special Dividend from Newcrest on 27 October 2023.
6. This Ruling does not apply to you if you:
- acquired your Newcrest shares under an employee share scheme (as defined in section 83A-10), and
 - Subdivision 83A-C (about ESS interests subject to deferred taxation) applied to the shares, and
 - an ESS deferred taxing point (as defined in section 83A-115) for the shares had not occurred before the Implementation Date
 - are subject to the investment manager regime in Subdivision 842-I in relation to your Newcrest shares
 - are exempt from Australian income tax, or
 - are subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 61 to 102 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

7. This Ruling applies from 1 July 2023 to 30 June 2024.

Ruling

Final ordinary dividend paid by Newcrest Mining Limited included in the assessable income of Australian resident shareholders

8. The Final Ordinary Dividend is:
- a ‘dividend’ as defined in subsection 6(1) of the ITAA 1936, and
 - a ‘frankable distribution’ as defined in section 202-40.
9. If you are a resident of Australia and received the Final Ordinary Dividend (of US\$0.20) in Australian dollars, your assessable income includes A\$0.3125 in respect of each Newcrest share you held (subparagraph 44(1)(a)(i) of the ITAA 1936).
10. If you are a resident of Australia and received the Final Ordinary Dividend in US dollars, Papua New Guinea kina (PGK) or New Zealand dollars, your assessable

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income includes US\$0.20, PGK0.7194 or NZ\$0.3383 (as applicable) in respect of each Newcrest share you held (subparagraph 44(1)(a)(i) of the ITAA 1936). This amount must be translated to Australian dollars at the exchange rate applicable at the time of receipt on 18 September 2023 (table item 6 of subsection 960-50(6)).

11. If you are a 'qualified person' in relation to the Final Ordinary Dividend (see paragraphs 18 to 32 of this Ruling), you:

- also include the franking credit on the Final Ordinary Dividend in your assessable income (subsection 207-20(1)), and
- are entitled to a tax offset equal to that franking credit (subsection 207-20(2)).

12. Your entitlement to the franking credit tax offset under Division 207 in relation to the Final Ordinary Dividend is subject to the refundable tax offset rules in Division 67, provided you are not excluded by the operation of section 67-25.

Special dividend paid by Newcrest Mining Limited included in the assessable income of Australian resident shareholders

13. The Special Dividend is:

- a dividend as defined in subsection 6(1) of the ITAA 1936, and
- a frankable distribution as defined in section 202-40.

14. If you are a resident of Australia and received the Special Dividend (of US\$1.10) in Australian dollars, your assessable income includes A\$1.7244 in respect of each Newcrest share you held (subparagraph 44(1)(a)(i) of the ITAA 1936).

15. If you are a resident of Australia and received the Special Dividend in US dollars, Papua New Guinea kina or New Zealand dollars, your assessable income includes US\$1.10, PGK4.0590 or NZ\$1.8625 (as applicable) in respect of each Newcrest share you held (subparagraph 44(1)(a)(i) of the ITAA 1936). This amount must be translated to Australian dollars at the exchange rate applicable at the time of receipt on 27 October 2023 (table item 6 of subsection 960-50(6)).

16. If you are a qualified person in relation to the Special Dividend (see paragraphs 18 to 32), you:

- also include the franking credit on the Special Dividend in your assessable income (subsection 207-20(1)), and
- are entitled to a tax offset equal to that franking credit (subsection 207-20(2)).

17. Your entitlement to the franking credit tax offset under Division 207 in relation to the Special Dividend is subject to the refundable tax offset rules in Division 67, provided you are not excluded by the operation of section 67-25.

Qualified person

18. Paragraph 207-145(1)(a) refers to Division 1A of former Part IIIAA of the ITAA 1936, which contains the conditions you must satisfy to be a qualified person in relation to a franked distribution you have received.

19. The main way in which you can be a qualified person is by satisfying the holding period rule.

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20. Under the terms of the scheme of arrangement, the Final Ordinary Dividend and the Special Dividend do not constitute a 'related payment' for the purposes of former section 160APHN of the ITAA 1936.

21. Therefore, under the terms of the scheme of arrangement, you are not taken to have made a related payment in respect of the Final Ordinary Dividend and the Special Dividend.

22. As a result, you will satisfy the holding period rule in relation to the Final Ordinary Dividend and the Special Dividend (respectively) only if you held your Newcrest shares for a continuous period of at least 45 days during the 'primary qualification period' for the Final Ordinary Dividend and the Special Dividend respectively (former paragraphs 160APHO(1)(a) and 160APHO(2)(a) of the ITAA 1936).

23. In calculating the number of days for which you continuously held your Newcrest shares, you exclude any days on which you had 'materially diminished risks of loss or opportunities for gain' (as defined in former section 160APHM of the ITAA 1936) in respect of the shares. The exclusion of those days is not taken to break the continuity of the period for which you held the shares (former subsection 160APHO(3) of the ITAA 1936).

24. In calculating the number of days for which you continuously held your Newcrest shares, you do not count the day on which you acquired your Newcrest shares or the day on which you disposed of your Newcrest shares (former paragraph 160APHO(2)(a) of the ITAA 1936).

25. The primary qualification period begins on the day after the day on which you acquired the Newcrest shares, and ends on the 45th day after the day on which the shares became ex dividend (former section 160APHD of the ITAA 1936).

26. A share in respect of which a dividend is to be paid becomes ex dividend on the day after the last day on which the acquisition by a person of the share will entitle the person to receive the dividend (former subsection 160APHE(1) of the ITAA 1936).

27. In relation to the Final Ordinary Dividend, your Newcrest shares became ex dividend on 22 August 2023. Therefore, the primary qualification period in relation to the Final Ordinary Dividend began on the day after the day on which you acquired your Newcrest shares and ended on 6 October 2023 (inclusive). You must satisfy the holding period rule in relation to the Final Ordinary Dividend during this period.

28. In relation to the Special Dividend, your Newcrest shares became ex dividend on 20 October 2023.

29. For the purpose of working out whether you satisfy the holding period rule in relation to the Special Dividend, you do not count the days during which you held your Newcrest shares on and after 30 October 2023. This is because you had materially diminished risks of loss or opportunities for gain in respect of your Newcrest shares on and after 30 October 2023 (the Scheme Record Date) when you became committed to disposing of your shares in Newcrest in exchange for the Scheme Consideration.

30. This means that you must satisfy the holding period rule in relation to the Special Dividend during the period beginning on the day after the day on which you acquired your Newcrest shares and ending on 29 October 2023 (inclusive).

31. Another way in which you can be a qualified person in relation to the Final Ordinary Dividend and the Special Dividend is under the small shareholder exception in former section 160APHT of the ITAA 1936. This will only apply to you if you are an individual, and the total amount of your franking credit tax offsets for the income year (from Newcrest and any other company, trust or partnership) does not exceed \$5,000.

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32. The small shareholder exception in former section 160APHT of the ITAA 1936 only applies to the Final Ordinary Dividend and the Special Dividend if you did not make a related payment in respect of those dividends (former subsection 160APHT(2)) either under the terms of the scheme of arrangement or under a separate arrangement.

Exempting entity

33. Newcrest was not an exempting entity (section 208-20), or a former exempting entity (section 208-50), at the time when it paid the Final Ordinary Dividend and the Special Dividend to you.

34. Therefore, section 208-195 will not apply to prevent the inclusion in your assessable income of the amount of the franking credit on the Final Ordinary Dividend and the Special Dividend you received, nor to deny the franking credit tax offset to which you are otherwise entitled under Division 207.

Integrity rules in relation to franking credits

35. The Commissioner will not make a determination under paragraph 177EA(5)(b) of the ITAA 1936 to deny the whole, or any part, of the imputation benefits you received in relation to the Final Ordinary Dividend and the Special Dividend. This is because it cannot be concluded that Newcrest or the shareholders of Newcrest entered into or carried out the scheme for a more than incidental purpose of enabling the shareholders of Newcrest to obtain an imputation benefit, and accordingly the purpose requirement in paragraph 177EA(3)(e) of the ITAA 1936 is not satisfied.

36. As there is no streaming of distributions, the Commissioner will not make a determination under subsection 204-30(3) to deny the whole, or any part, of the imputation benefits you received in relation to the Final Ordinary Dividend and the Special Dividend.

37. Section 207-145 will not apply to the whole, or any part, of the Final Ordinary Dividend and the Special Dividend.

Final ordinary dividend and special dividend paid by Newcrest Mining Limited – consequences for non-resident shareholders where dividends are not attributable to a permanent establishment

38. If you are a non-resident and you received the Final Ordinary Dividend or the Special Dividend or both, and the dividend is not attributable to a permanent establishment in Australia, no part of the Final Ordinary Dividend or the Special Dividend will be included in your assessable income. This is because:

- the Final Ordinary Dividend and the Special Dividend are non-assessable non-exempt income (section 128D of the ITAA 1936)
- you are not liable for dividend withholding tax on the Final Ordinary Dividend and the Special Dividend (subparagraph 128B(3)(ga)(i) of the ITAA 1936)
- you do not include the franking credit on the Final Ordinary Dividend and the Special Dividend in your assessable income and you are not entitled to a tax offset for the franking credit on the Final Ordinary Dividend and the Special Dividend (sections 207-20 and 207-70).

Status: **legally binding**

Capital gains tax consequences

CGT event A1 happened on disposal of shares in Newcrest Mining Limited

39. CGT event A1 happened when you disposed of your Newcrest shares to Newmont Acquirer (section 104-10).

40. The time of CGT event A1 is on the Implementation Date (6 November 2023) (paragraph 104-10(3)(b)).

41. The capital proceeds from CGT event A1 happening to each Newcrest share is the market value of the part of the share in Newmont Corporation (Newmont), or the part of the CHES Depositary Interest (CDI) or PETS Depositary Interest (PDI) in relation to shares in Newmont (whichever is applicable), you received in respect of your disposal of the Newcrest share (subsection 116-20(1)). The market value of the Newmont shares, CDIs or PDIs is worked out as at the time of CGT event A1.

42. The Commissioner accepts that the market value of 0.4 of a Newmont share, CDI or PDI (whichever is applicable) you received in respect of your disposal of each Newcrest share was as follows:

Table 1: Market value of shares

| Type of asset | Market value |
|------------------------|---------------------|
| 0.4 of a Newmont share | A\$22.54 |
| 0.4 of a Newmont CDI | A\$23.29 |
| 0.4 of a Newmont PDI | A\$24.01 |

43. The capital proceeds do not include the Final Ordinary Dividend and the Special Dividend as they were not paid in respect of CGT event A1 happening to your Newcrest shares.

44. You will make a capital gain from CGT event A1 happening if the capital proceeds from the disposal of your Newcrest 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 Newcrest share were less than the reduced cost base of that share (subsection 104-10(4)).

Foreign-resident shareholders of Newcrest Mining Limited

45. You must disregard a capital gain or capital loss you made from CGT event A1 happening when you disposed of your Newcrest shares to Newmont Acquirer (section 855-10) 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 ITAA 1936), and
- your Newcrest shares were not 'taxable Australian property' (as defined in section 855-15).

46. Your Newcrest shares were taxable Australian property if they were either:

- an 'indirect Australian real property interest' (table item 2 of section 855-15 and subsection 855-25(1))

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- used by you at any time in carrying on a business through a permanent establishment in Australia (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).

47. Your Newcrest shares were an 'indirect Australian real property interest' if they passed:

- the non-portfolio interest test (section 960-195) – that is, you (and any of your associates as defined in section 318 of the ITAA 1936) held 10% or more of the shares in Newcrest
 - at the time of CGT event A1, or
 - throughout a 12-month period that began no earlier than 24 months before the time of CGT event A1 and ended no later than the time of CGT event A1, and
- the principal asset test (section 855-30) at the time of CGT event A1 if the sum of the market values of Newcrest's assets that are taxable Australian real property (as defined in section 855-20) exceeds the sum of the market values of Newcrest's assets that are not taxable Australian real property.

Availability of scrip for scrip roll-over for your shares in Newcrest Mining Limited

48. Subject to the qualifications in paragraphs 49 to 51 of this Ruling, if you make a capital gain from the disposal of your Newcrest shares, you may choose to obtain scrip for scrip roll-over for the capital gain (sections 124-780 and 124-785).

49. If you received PDIs in relation to shares of common stock of Newmont, you cannot choose scrip for scrip roll-over unless you were absolutely entitled to those shares of common stock of Newmont (for the purposes of section 106-50).

50. If any capital gain you might make from a replacement Newmont share, CDI or PDI would be disregarded, otherwise than because of a roll-over, you cannot choose scrip for scrip roll-over (paragraph 124-795(2)(a)).

51. If you were a foreign resident just before the Implementation Date, you cannot choose scrip for scrip roll-over unless you received Newmont shares, CDIs or PDIs and they were taxable Australian property (as defined in section 855-15) just after the Implementation Date (subsection 124-795(1)).

Consequences if you choose scrip for scrip roll-over for your shares in Newcrest Mining Limited

Capital gain is disregarded

52. If you choose scrip for scrip roll-over, your capital gain is disregarded (subsection 124-785(1)).

53. For the purposes of determining your eligibility to make a discount capital gain from a subsequent CGT event happening to your Newmont shares, CDIs or PDIs, the Newmont shares, CDIs or PDIs you acquired in exchange for your Newcrest shares are taken to have been acquired on the date you acquired, for CGT purposes, the corresponding Newcrest shares (table item 2 of subsection 115-30(1)).

Status: **legally binding**

***Cost base and reduced cost base of shares in Newmont Corporation or CHES
Depository Interests or PETS Depository Interests***

54. If you choose scrip for scrip roll-over, the first element of the cost base and reduced cost base of a replacement Newmont share, CDI or PDI that you received is worked out by reasonably attributing to it the cost base and reduced cost base (respectively) of the Newcrest shares for which it was exchanged and for which the roll-over was obtained (subsections 124-785(2) and (4)).

55. The Commissioner accepts a reasonable method of attribution would be to calculate the first element of the cost base and reduced cost of each replacement Newmont share, CDI or PDI by dividing the total cost bases of your Newcrest shares by the number of replacement Newmont shares, CDIs or PDIs you received.

***Consequences if you do not choose, or cannot choose, scrip for scrip roll-over for
your shares in Newcrest Mining Limited***

Capital gain is not disregarded

56. 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 Newcrest 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).

57. 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. In particular, you must have acquired your Newcrest shares that were disposed of at least 12 months before the Implementation Date (excluding the date of acquisition and the Implementation Date).

***Cost base and reduced cost base of shares in Newmont Corporation or CHES
Depository Interests or PETS Depository Interests***

58. 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 Newmont share, CDI or PDI that you received is equal to the market value of the Newcrest shares you gave in respect of acquiring the Newmont share, CDI or PDI (subsections 110-25(2) and 110-55(2)).

59. The market value of the Newcrest shares you gave is to be worked out as at the time when you acquired the Newmont shares, CDIs or PDIs. The Commissioner accepts that the market value of each Newcrest share you gave was A\$23.33.

***Acquisition date of shares in Newmont Corporation or CHES Depository Interests
or PETS Depository Interests***

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

Scheme

61. 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**

Newcrest Mining Limited

62. Newcrest is a company that was incorporated in Australia on 20 June 1980.
63. Newcrest is the head company of an income tax consolidated group under Part 3-90.
64. Newcrest was listed on the Australian Securities Exchange (ASX) on 4 June 1987. The ordinary shares in Newcrest traded under the ASX code 'NCM'.
65. Newcrest was also listed on the Toronto Stock Exchange (TSX) and the Papua New Guinea PNGX market. The shares in Newcrest also traded on the New York Stock Exchange (NYSE) in the form of American depositary receipts.
66. The business of Newcrest consists of the exploration and mining of gold and copper in Australia, Papua New Guinea, Canada and South America.
67. Newcrest has one class of shares on issue (ordinary shares). On the Implementation Date, there were 894,230,732 Newcrest ordinary shares on issue.
68. Just before the Scheme Implementation Deed was entered into, and just before the Implementation Date, Newcrest had more than 300 shareholders.

Final ordinary dividend

69. On 11 August 2023, the directors of Newcrest announced the Final Ordinary Dividend to be paid to shareholders who held Newcrest shares as at 21 August 2023 (Final Ordinary Dividend Record Date).
70. The Final Ordinary Dividend consisted of a fully franked amount of US\$0.20 in respect of each Newcrest share.
71. The Final Ordinary Dividend was paid on 18 September 2023.

Special dividend

72. On 5 October 2023, the directors of Newcrest announced the Special Dividend to be paid to shareholders who held Newcrest shares as at 19 October 2023 (Special Dividend Record Date).
73. The Special Dividend consisted of a fully franked amount of US\$1.10 in respect of each Newcrest share.
74. The Special Dividend was paid on 27 October 2023.

Newmont Corporation and Newmont Overseas Holdings Pty Ltd

75. Newmont is a corporation that was incorporated in Delaware in the United States of America in 1921.
76. The common stock of Newmont has been listed on the NYSE since 1940 and trades under the NYSE code 'NEM'.
77. Newmont is also listed on the TSX.
78. The business of Newmont consists of the exploration and mining of gold, copper, silver, zinc and lead in North America, South America, Australia and Africa.
79. Newmont has more than 300 shareholders.
80. Newmont Acquirer is a company incorporated in Australia.

Status: **legally binding**

81. Newmont owns all the shares in a company incorporated in Australia, and the latter company owns all the shares in Newmont Acquirer.

Acquisition of Newcrest Mining Limited shares by Newmont Overseas Holdings Pty Ltd

82. On 15 May 2023, Newcrest, Newmont and Newmont Acquirer announced that they had entered into a Scheme Implementation Deed. Under the Scheme Implementation Deed, Newcrest agreed to propose that Newcrest and its shareholders enter into a scheme of arrangement under Part 5.1 of the *Corporations Act 2001* pursuant to which Newmont Acquirer would acquire all of the ordinary shares in Newcrest.

83. On 13 October 2023, a resolution in favour of the scheme of arrangement was passed by the shareholders of Newcrest as required by subparagraph 411(4)(a)(ii) of the *Corporations Act 2001*.

84. The scheme of arrangement was approved by the Federal Court of Australia under paragraph 411(4)(b) of the *Corporations Act 2001* on 17 October 2023.

85. Newmont Acquirer acquired all of the shares in Newcrest on the Implementation Date (6 November 2023).

86. Under the scheme of arrangement, the shareholders of Newcrest received the Scheme Consideration on the Implementation Date, consisting of:

- if a shareholder held their Newcrest shares on the part of the Newcrest share register maintained in Canada – 0.4 of a share of common stock of Newmont for each Newcrest share
- if a shareholder held their Newcrest shares on the part of the Newcrest share register maintained in Australia – 0.4 of a CDI in relation to a share of common stock of Newmont for each Newcrest share
- if a shareholder held their Newcrest shares on the part of the Newcrest share register maintained in Papua New Guinea – 0.4 of a PDI in relation to a share of common stock of Newmont for each Newcrest share.

87. Each CDI and PDI represents a beneficial interest in, but not legal title to, one share of common stock of Newmont.

88. The Scheme Consideration was not reduced by the amount of the Final Ordinary Dividend or the Special Dividend.

89. The Scheme Consideration was provided to all shareholders of Newcrest as at the Scheme Record Date (30 October 2023), other than Ineligible Foreign Shareholders.

90. An Ineligible Foreign Shareholder is a Newcrest shareholder whose address shown in the Newcrest share register on the Scheme Record Date is a place outside Australia and its external territories, Canada, New Zealand, Papua New Guinea, the United Kingdom, the United States, the European Union (excluding Austria), Guernsey, Hong Kong, Japan, Norway, Singapore, South Korea, Switzerland, the United Arab Emirates, the Isle of Man and Bermuda.

91. An Ineligible Foreign Shareholder did not receive the Newmont shares to which they would otherwise be entitled for the disposal of their Newcrest shares. Those Newmont shares were issued to a sale agent, who sold them on the NYSE. The relevant amount of the net sale proceeds was paid by Newmont Acquirer to each Ineligible Foreign Shareholder.

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92. The shares in Newcrest were suspended from trading on the ASX, the TSX and the PNGX (and trading in the form of American depository receipts on the NYSE) from the close of trading on 26 October 2023.

93. Newcrest was removed from the official list of the ASX, the TSX and the PNGX on 7 November 2023 (Australian Eastern Daylight Time).

Other matters

94. The Final Ordinary Dividend and the Special Dividend were each paid at the discretion of the directors of Newcrest. Neither Newmont nor Newmont Acquirer nor any of their associates had any influence or control over the payment of the Final Ordinary Dividend and the Special Dividend.

95. Neither Newmont nor Newmont Acquirer nor any of their associates funded, or were in any way connected to the funding of, the Final Ordinary Dividend and the Special Dividend.

96. Paragraph 124-780(3)(f) is satisfied in respect of the disposal of Newcrest shares to Newmont Acquirer.

97. The CDIs in relation to shares of common stock of Newmont are each a 'Chess Unit of Foreign Security' for the purposes of subsection 124-780(6).

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

99. A Newcrest shareholder, Newcrest and Newmont (or Newmont Acquirer) 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.

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

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

102. The following table is a summary of the key dates for the Final Ordinary Dividend, the Special Dividend and the scheme of arrangement:

Table 2: Summary of key dates

| Date | Event |
|-------------------|--|
| 15 May 2023 | Scheme Implementation Deed executed |
| 7 September 2023 | First court hearing |
| 7 September 2023 | Date of scheme booklet |
| 21 August 2023 | Final Ordinary Dividend Record Date |
| 18 September 2023 | Final Ordinary Dividend payment date |
| 17 October 2023 | Second court hearing to approve the scheme |
| 18 October 2023 | Effective date of the scheme |
| 19 October 2023 | Special Dividend Record Date |

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|-----------------|-------------------------------|
| 27 October 2023 | Special Dividend payment date |
| 30 October 2023 | Scheme Record Date |
| 6 November 2023 | Implementation Date |

Commissioner of Taxation
20 March 2024

Status: **not legally binding**

References

Related Rulings/Determinations:

TD 2002/4; TD 2002/10; TR 2006/10;
TR 2010/4

Legislative references:

- ITAA 1936 6(1)
- ITAA 1936 44(1)(a)(i)
- ITAA 1936 128B(3)(ga)(i)
- ITAA 1936 128D
- ITAA 1936 former Pt IIIAA Div 1A
- ITAA 1936 former 160APHD
- ITAA 1936 former 160APHE(1)
- ITAA 1936 former 160APHM
- ITAA 1936 former 160APHN
- ITAA 1936 former 160APHO(1)(a)
- ITAA 1936 former 160APHO(2)(a)
- ITAA 1936 former 160APHO(3)
- ITAA 1936 former 160APHT
- ITAA 1936 former 160APHT(2)
- ITAA 1936 177EA(3)(e)
- ITAA 1936 177EA(5)(b)
- ITAA 1936 318
- ITAA 1997 Div 67
- ITAA 1997 67-25
- ITAA 1997 Subdiv 83A-C
- ITAA 1997 83A-10
- ITAA 1997 83A-115
- 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 104-165(3)
- ITAA 1997 106-50
- 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)
- ITAA 1997 Subdiv 124-M
- ITAA 1997 124-780
- ITAA 1997 124-780(3)(f)
- ITAA 1997 124-780(6)
- ITAA 1997 124-783
- ITAA 1997 124-785
- ITAA 1997 124-785(1)
- ITAA 1997 124-785(2)
- ITAA 1997 124-785(4)
- ITAA 1997 124-795(1)
- ITAA 1997 124-795(2)(a)
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