

CR 2024/66 - Base Resources Limited - scrip for scrip roll-over and special dividend



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Class Ruling

Base Resources Limited – scrip for scrip roll-over 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 holders of ordinary shares in Base Resources Limited (Base Resources) in relation to the payment of a special dividend of 6.5c on 1 October 2024 (Special Dividend) and the acquisition of all the ordinary shares in Base Resources by EFR Australia Pty Ltd (EFR) on 2 October 2024 (Implementation Date).
2. Details of this scheme are set out in paragraphs 30 to 55 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:
 - received the Special Dividend from Base Resources
 - were a holder of an ordinary share in Base Resources at 5:00 pm Australian Western Standard Time on 20 September 2024 (Scheme Record Date)
 - disposed of your shares in Base Resources in exchange for shares in Energy Fuels Inc. (Energy Fuels)
 - held your Base Resources shares on capital account – that is, your Base Resources shares were neither held as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1))
 - did not acquire your Base Resources shares under an employee share scheme (as defined in section 83A-10), and

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- are not subject to the investment manager regime in Subdivision 842-I in relation to your Base Resources shares.

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 30 to 55 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 2024 to 30 June 2025.

Ruling

Special Dividend

7. The Special Dividend is a 'dividend' as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936).

8. The Special Dividend is a frankable distribution under section 202-40.

Assessability of the Special Dividend

Resident shareholders

9. If you are a resident of Australia (as defined in subsection 6(1) of the ITAA 1936), you include the Special Dividend in your assessable income (subparagraph 44(1)(a)(i) of the ITAA 1936).

Non-resident shareholders

10. If you are a non-resident, the Special Dividend is not included in your assessable income and you are not liable to withholding tax in respect of the Special Dividend because the whole of the Special Dividend was declared by Base Resources in its distribution statement to be conduit foreign income (subsections 802-15(1) and 128B(1) of the ITAA 1936).

Capital gains tax consequences

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

11. CGT event A1 happened when you disposed of your Base Resources shares to EFR on the Implementation Date (section 104-10).

12. The capital proceeds from CGT event A1 happening to each Base Resources share is the market value of 0.026 of an Energy Fuels share you received in respect of the disposal (subsection 116-20(1)). The market value of Energy Fuels shares is worked out as at the time of CGT event A1.

13. The capital proceeds do not include the Special Dividend as it was not paid in respect of CGT event A1 happening to your Base Resources shares.

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14. You made a capital gain from the disposal of a Base Resources share if the capital proceeds exceeded its cost base (subsection 104-10(4)). The capital gain is the amount of the excess.

15. You made a capital loss from the disposal of a Base Resources share if the capital proceeds were less than its reduced cost base (subsection 104-10(4)). The capital loss is the difference.

16. If you made a capital gain from CGT event A1 happening, you can treat it as a discount capital gain provided that the conditions of Subdivision 115-A are met.

Foreign resident shareholders

17. You must disregard a capital gain or capital loss you made from CGT event A1 happening when you disposed of your Base Resources shares to EFR (section 855-10) if:

- you were a foreign resident, or the trustee of a foreign trust for CGT purposes (as defined in subsection 995-1(1)), just before the Implementation Date, and
- your Base Resources shares were not 'taxable Australian property' (as defined in section 855-15).

18. Your Base Resources shares were taxable Australian property if they were either:

- 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
- covered by subsection 104-165(3) about individuals 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

19. Subject to the qualification in paragraph 20 of this Ruling, if you are a resident of Australia and you made a capital gain from the disposal of your Base Resources shares, you may choose to obtain scrip for scrip roll-over for the capital gain (sections 124-780 and 124-785).

20. You cannot choose scrip for scrip roll-over if any capital gain you might make from a replacement Energy Fuels share would be disregarded, except because of a roll-over (paragraph 124-795(2)(a)).

21. If you were a foreign resident just before the Implementation Date, you cannot choose scrip for scrip roll-over unless the Energy Fuels shares you received 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 Base Resources Limited shares

Capital gain is disregarded

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

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Cost base and reduced cost base of Energy Fuels Inc. shares

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

24. We accept a reasonable method of attribution would be to calculate the first element of the cost base and reduced cost base of each replacement Energy Fuels share by dividing the total cost bases of your Base Resources shares by the number of replacement Energy Fuels shares you received.

Acquisition date of Energy Fuels Inc. shares for discount capital gains purposes

25. If you choose scrip for scrip roll-over, the acquisition date of the Energy Fuels shares is the date on which you acquired, for CGT purposes, the corresponding Base Resources shares involved in the roll-over (table item 2 of subsection 115-30(1)).

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

26. 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 Base Resources 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).

Cost base and reduced cost base of Energy Fuels Inc. shares

27. 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 Energy Fuels share you received is equal to the market value of the Base Resources shares you gave in respect of acquiring the Energy Fuels share (subsections 110-25(2) and 110-55(2)).

28. The market value of the Base Resources shares you gave is to be worked out as at the time when you acquired the Energy Fuels shares.

Acquisition date of Energy Fuels Inc. shares

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

Scheme

30. 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.

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Base Resources Limited

31. Base Resources is a company incorporated in Australia on 23 May 2007. It is an Australian-based African focused mineral sands producer and developer headquartered in Perth, Western Australia.
32. Base Resources was listed on the Australian Securities Exchange (ASX) on 2 October 2008.
33. Depositary interests in respect of Base Resources shares were also listed on the Alternative Investment Market (AIM) operated by the London Stock Exchange.
34. Base Resources has one class of shares on issue. As at 13 September 2024, Base Resources had 1,227,757,577 ordinary shares on issue.

EFR Australia Pty Ltd

35. EFR is a company incorporated in Australia on 18 April 2024 and a wholly owned subsidiary of Energy Fuels.

Energy Fuels Inc.

36. Energy Fuels is a company incorporated in Canada on 24 June 1987 and dual-listed on the New York Stock Exchange and the Toronto Stock Exchange.
37. Energy Fuels is a US-based uranium and critical minerals producer.

Acquisition of Base Resources Limited shares by EFR Australia Pty Ltd

38. On 21 April 2024, Base Resources entered into the Scheme Implementation Deed (SID) with Energy Fuels and EFR. Under the SID, Base Resources agreed to propose that it and its shareholders enter into a scheme of arrangement under Part 5.1 of the *Corporations Act 2001* (Corporations Act) pursuant to which Energy Fuels, through EFR, would acquire all of the ordinary shares in Base Resources.
39. On 5 September 2024, a resolution in favour of the scheme of arrangement was passed by Base Resources shareholders as required by subparagraph 411(4)(a)(ii) of the Corporations Act.
40. On 12 September 2024, the scheme of arrangement was approved by the Federal Court of Australia under paragraph 411(4)(b) of the Corporations Act.
41. On 13 September 2024:
 - Base Resources shares were suspended from close of trading on the ASX, and
 - depositary interests in respect of Base Resources shares were suspended from commencement of trading on the AIM.
42. EFR acquired all the shares in Base Resources on the Implementation Date (2 October 2024). Base Resources shareholders received 0.026 of an ordinary share in Energy Fuels for each share in Base Resources that was disposed of to EFR.
43. Base Resources was removed from the official list of the ASX on 3 October 2024. Admission to trading of depositary interests in respect of Base Resources shares on the AIM was cancelled on 3 October 2024.

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Special Dividend

44. On 26 August 2024, the directors of Base Resources declared the Special Dividend (of 6.5c per Base Resources share) to be paid to Base Resources shareholders who held their shares on 18 September 2024 (Special Dividend Record Date).
45. The Special Dividend was wholly unfranked and the entire amount was declared by Base Resources in its distribution statement to be conduit foreign income under Subdivision 802-A.
46. Base Resources paid the Special Dividend on 1 October 2024.
47. The Special Dividend was funded from the existing cash reserves of Base Resources. The Special Dividend was entirely debited against Base Resources' profit reserve account.
48. Neither Energy Fuels nor any of its associates funded, or were in any way connected to the funding of, the Special Dividend.
49. The Special Dividend was declared and paid by Base Resources in its absolute discretion. Neither Energy Fuels nor any of its associates had any influence or control over the declaration and payment of the Special Dividend.

Other information

50. On the Implementation Date, the sum of the market values of the assets of Base Resources that were taxable Australian real property (as defined in section 855-20) did not exceed the sum of the market values of the assets of Base Resources that were not taxable Australian real property.
51. There was no 'significant stakeholder' or 'common stakeholder' in Base Resources within the meaning of those terms in section 124-783.
52. Paragraph 124-780(3)(f) is satisfied in respect of the disposal of Base Resources shares to EFR.
53. Just before the Implementation Date, Base Resources had more than 300 shareholders and subsections 124-810(3) and (5) did not apply to Base Resources just before the SID was entered into.
54. A Base Resources shareholder, Base Resources and EFR were not members of the same linked group (within the meaning given by section 170-260) just before the SID was entered into.
55. Energy Fuels did not make a choice under subsection 124-795(4) that Base Resources shareholders could not obtain the roll-over in Subdivision 124-M for CGT event A1 happening in relation to the exchange of Base Resources shares.

Commissioner of Taxation

23 October 2024

Status: **not legally binding**

References

Legislative references:

- ITAA 1936 6(1)
 - ITAA 1936 44(1)(a)(i)
 - ITAA 1936 128B(1)
 - ITAA 1997 83A-10
 - ITAA 1997 102-5
 - ITAA 1997 102-10
 - ITAA 1997 104-10
 - ITAA 1997 104-10(4)
 - ITAA 1997 104-165(3)
 - 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 124-783
 - 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)
 - ITAA 1997 124-795(4)
 - ITAA 1997 124-810(3)
 - ITAA 1997 124-810(5)
 - ITAA 1997 170-260
 - ITAA 1997 202-40
 - ITAA 1997 Div 230
 - ITAA 1997 Subdiv 802-A
 - ITAA 1997 802-15(1)
 - ITAA 1997 Subdiv 842-I
 - ITAA 1997 855-10
 - ITAA 1997 855-15
 - ITAA 1997 855-20
 - ITAA 1997 977-50
 - ITAA 1997 995-1(1)
 - Corporations Act 2001 Pt 5.1
 - Corporations Act 2001 411(4)(a)(ii)
 - Corporations Act 2001 411(4)(b)
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ATO references

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