

CR 2025/23 - Latin Resources Limited - return of capital by in specie distribution of ESG Minerals Limited shares



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Status: **legally binding**

Class Ruling

Latin Resources Limited – return of capital by in specie distribution of ESG Minerals Limited shares

❗ 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 shareholders of Latin Resources Limited (Latin) who received a return of capital by way of an in specie distribution of shares in ESG Minerals Limited (ESG) on 30 January 2025 (Implementation Date).
2. Details of this scheme are set out in paragraphs 22 to 33 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:
 - are a resident of Australia as defined in section 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936) (and not a temporary resident as defined in subsection 995-1(1))
 - held Latin shares on 22 January 2025 (Record Date)
 - held your Latin 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
 - receive the in specie distribution of ESG shares under the scheme described in paragraphs 22 to 33 of this Ruling.

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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 22 to 33 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

Demerger relief is not available

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

CGT event G1

8. CGT event G1 happened when Latin made an in specie distribution of ESG shares to you in respect of the Latin shares you owned on the Record Date and continued to own on the Implementation Date (section 104-135).

9. You made a capital gain from CGT event G1 happening if the reduction of share capital for each Latin share was more than the cost base of the share (paragraph 104-135(1)(b) and subsection 104-135(3)). The capital gain is equal to the difference, and the cost base and reduced cost base of your Latin share is reduced to nil. You cannot make a capital loss from CGT event G1 (subsection 104-135(3)).

10. If you did not make a capital gain from CGT event G1, you reduce the cost base and reduced cost base of each Latin share by the reduction of share capital received for each Latin share (subsection 104-135(4)).

CGT event C2

11. CGT event C2 happened when Latin made an in specie distribution of ESG shares to you in respect of Latin shares you owned on the Record Date but ceased to own before the Implementation Date (section 104-25).

12. You received capital proceeds in satisfaction of the right to receive ESG shares (subsection 116-20(1)).

13. Your cost base of the right to receive an ESG share is nil to the extent that the cost base or reduced cost base of the Latin share you previously owned was wholly applied in working out a capital gain or capital loss on a CGT event that happened to those shares (Division 110, modified by Division 112).

14. CGT event C2 happened because, by ceasing to own a Latin share after the Record Date but before the Implementation Date, you retained the right to receive the reduction of share capital (which is a separate CGT asset from the share in Latin). When the reduction of share capital was paid by the transfer of shares in ESG to you, the right to receive the reduction of share capital (being an intangible CGT asset) ended by the right being discharged or satisfied (paragraph 104-25(1)(b)).

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15. You made a capital gain equal to the amount of the reduction of share capital (subsection 104-25(3)).

Discount capital gain

16. You can treat a capital gain made when CGT event G1 or C2 happened as a discount capital gain if you acquired your Latin shares at least 12 months before the Implementation Date (subsection 115-25(1)), provided the other conditions in Subdivision 115-A are satisfied.

Cost base and reduced cost base of your ESG Minerals Limited shares

17. The first element of the cost base and reduced cost base of each ESG share you acquired is the market value of that ESG share (subsections 110-25(2) and 110-55(2)).

Acquisition date of your ESG Minerals Limited shares

18. You are taken to have acquired the ESG shares you received by way of the in specie distribution on the Implementation Date (table event A1 (case 1) of subsection 109-5(2)).

Not an assessable dividend

19. No part of the value of an ESG share transferred to you on the Implementation Date will be included in your assessable income under subsection 44(1) of the ITAA 1936. This is because all the value of the ESG shares was debited to the share capital account of Latin, meaning that it is not a 'dividend' under subsection 6(1) of the ITAA 1936.

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

20. The Commissioner will not make a determination under subsection 45A(2) of the ITAA 1936 that section 45C of the ITAA 1936 applies in relation to the whole, or a part, of the capital benefits provided to you by the transfer of ESG shares on the Implementation Date.

21. The Commissioner will not make a determination under 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 by the transfer of ESG shares on the Implementation Date.

Scheme

22. 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.

Latin Resources Limited

23. Latin is a Perth-based minerals exploration company that was incorporated in Australia on 2 June 2008, and was listed on the Australian Securities Exchange (ASX) on 21 September 2010.

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24. Latin had one class of shares on issue, being ordinary fully paid shares (which traded under the ASX code LRS) and 2 classes of options (which traded under the ASX codes LRSAAF and LRSAY).

25. The main asset of Latin is an undeveloped hard rock lithium mining interest in Brazil (Salinas Project). Latin holds additional interests in projects in South America and Australia.

26. Prior to the capital reduction and distribution of ESG shares, ESG was a 100% subsidiary of Latin.

Capital reduction and distribution of ESG Minerals Limited shares

27. On 14 August 2024, Latin entered into a Scheme Implementation Agreement, under which Pilbara Minerals Limited, an unrelated ASX-listed mining resources company, would acquire all shares and options in Latin by way of member and creditor schemes of arrangement respectively under Part 5.1 of the *Corporations Act 2001* (Share Scheme and Option Scheme, collectively the Schemes of Arrangement).

28. As part of the Scheme Implementation Agreement, Pilbara Minerals Limited required that Latin dispose of certain non-core assets. Latin transferred these assets into a group headed by ESG and separated the ESG group from Latin by distributing the ESG shares to Latin shareholders as a capital reduction.

29. The capital reduction and return to Latin shareholders of shares in ESG was referred to as a demerger of ESG from Latin (Demerger) in communications with Latin shareholders, with the Latin board unanimously recommending members vote for the proposed demerger.

30. Under the terms of the Demerger, eligible Latin shareholders who held Latin shares received 1 ESG share for every 50 Latin shares held on the Record Date.

31. Latin shareholders who were deemed ineligible overseas shareholders had their shares issued to a nominee to be held on their behalf pending a future liquidity opportunity or event. Upon sale, the net proceeds will be issued to the respective shareholder.

32. Under the terms of the Demerger, Latin debited 100% of the market value of the ESG group to the share capital account of Latin.

33. On 16 January 2025, Latin shareholders approved the proposed capital reduction and distribution of ESG shares to Latin shareholders.

Commissioner of Taxation

26 March 2025

Status: **not legally binding**

References

Legislative references:

- | | |
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| <ul style="list-style-type: none"> - ITAA 1936 6(1) - ITAA 1936 44(1) - ITAA 1936 45A(2) - ITAA 1936 45B(3)(b) - ITAA 1936 45C - ITAA 1997 104-25 - ITAA 1997 104-25(1)(b) - ITAA 1997 104-25(3) - ITAA 1997 104-135 - ITAA 1997 104-135(1)(b) - ITAA 1997 104-135(3) - ITAA 1997 104-135(4) | <ul style="list-style-type: none"> - ITAA 1997 109-5(2) - ITAA 1997 Div 110 - ITAA 1997 110-25(2) - ITAA 1997 110-55(2) - ITAA 1997 Div 112 - ITAA 1997 Subdiv 115-A - ITAA 1997 115-25(1) - ITAA 1997 116-20(1) - ITAA 1997 Div 125 - ITAA 1997 125-70 - ITAA 1997 Div 230 - ITAA 1997 977-50 - ITAA 1997 995-1(1) - Corporations Act 2001 Pt 5.1 |
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NO: 1-15C3WCI9
 ISSN: 2205-5517
 BSL: PG
 ATOLaw topic: Capital gains tax ~~ CGT events ~~ C1 to C3 - end of a CGT asset
 Capital gains tax ~~ CGT events ~~ G1 to G3 – shares
 Income tax ~~ Capital management ~~ Reduction of share capital

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