

CR 2025/24 - Latin Resources Limited - scrip for scrip roll-over

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Class Ruling

Latin Resources Limited – scrip for scrip roll-over

📌 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 Latin Resources Limited (Latin) and holders of options to acquire Latin shares (Latin Options) who disposed of these holdings in exchange for shares in Pilbara Minerals Limited (Pilbara) on 4 February 2025 (Implementation Date).
2. Details of this scheme are set out in paragraphs 32 to 49 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 Latin shares or Latin Options as of 28 January 2025 (Record Date) and exchanged these for Pilbara shares
 - are either:
 - a resident of Australia as defined in section 6(1) of the *Income Tax Assessment Act 1936* (and not a temporary resident as defined in subsection 995-1(1)), or
 - a non-resident of Australia (other than a non-resident who carries on, or has carried on, a business at or through a permanent establishment in Australia)
 - held your Latin shares or Latin Options on capital account – that is, you did not hold your shares or options as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1))

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- did not acquire your Latin shares or Latin Options before 20 September 1985 for capital gains tax purposes, and
- were not an 'Ineligible Foreign Holder' or 'Electing Scheme Participant' within the meaning of the Scheme Implementation Agreement.

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 32 to 49 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

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

7. CGT event A1 happened when you disposed of your Latin shares to Pilbara (section 104-10).

8. The time of CGT event A1 was on the Implementation Date (paragraph 104-10(3)(b)).

Capital proceeds from disposal of Latin Resources Limited shares

9. Your capital proceeds from CGT event A1 happening is the market value of the Pilbara share you received for each Latin share you disposed of (paragraph 116-20(1)(b)). The market value of the Pilbara shares is worked out at the time of CGT event A1 happening.

Capital gain or capital loss on Latin Resources Limited shares

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

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

12. If you were a non-resident of Australia just before the Implementation Date you disregard a capital gain or capital loss derived from CGT event A1 happening when you disposed of your Latin shares to Pilbara (section 855-10) unless your Latin shares were 'taxable Australian property' (as defined in section 855-15).

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Scrip for scrip roll-over for Latin Resources Limited shares

13. If you are a resident of Australia, you may choose to obtain scrip for scrip roll-over relief to disregard your capital gain from the disposal of your Latin shares (section 124-780). Scrip for scrip roll-over is not available if you made a capital loss.

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

Consequences of choosing scrip for scrip roll-over for Latin Resources Limited shares***Capital gain is disregarded***

15. If you choose scrip for scrip roll-over, the capital gain you made from CGT event A1 happening on the disposal of your Latin shares is disregarded (subsection 124-785(1)).

Cost base and reduced cost base of Pilbara Minerals Limited shares

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

Acquisition date of Pilbara Minerals Limited shares

17. For the purposes of determining whether a future capital gain made from Pilbara shares is a discount capital gain, the date of acquisition of the replacement Pilbara shares is taken to be the date you acquired your original shares in Latin (table item 2 of subsection 115-30(1)).

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

18. If you do not, 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 Latin 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 made a capital gain where roll-over is not chosen, you can treat the capital gain as a discount capital gain provided that you held your Latin share for at least 12 months (excluding the day on which you acquired your Latin share and the Implementation Date) before the Implementation Date (subsection 115-25(1)) and the other conditions of Subdivision 115-A are met.

Cost base and reduced cost base of Pilbara Minerals Limited shares

20. If you do not, or cannot, choose scrip for scrip roll-over, the first element of the cost base and reduced cost base of your replacement Pilbara shares you received is equal to

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the market value of your Latin shares (worked out as at the Implementation Date) you exchanged in respect of acquiring Pilbara shares (subsections 110-25(2) and 110-55(2)).

Acquisition date of Pilbara Minerals Limited shares

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

CGT event A1 happened on the disposal of your Latin Options

22. CGT event A1 happened when you disposed of your Latin Options to Pilbara (section 104-10).

23. The time of CGT event A1 was the Implementation Date (paragraph 104-10(3)(b)).

Capital proceeds from disposal of options to acquire Latin Resource Limited shares

24. Your capital proceeds from CGT event A1 happening is the market value of the Pilbara share you received for each Latin Option you disposed of (paragraph 116-20(1)(b)). The market value of the Pilbara shares is worked out at the time of CGT event A1 happening.

Capital gain or capital loss on options to acquire Latin Resource Limited shares

25. You made a gain from CGT event A1 happening if the capital proceeds from the disposal of your Latin Option were more than the cost base of that option (subsection 104-10(4)). The capital gain is the amount of the excess.

26. You made a capital loss from CGT event A1 happening if the capital proceeds from the disposal of your Latin Option were less than the reduced cost base of that option (subsection 104-10(4)). The capital loss is the amount of the difference.

27. If you were a non-resident of Australia you disregard any capital gain derived from CGT event A1 that happens when you dispose of your Latin Options to Pilbara (section 855-10) unless your Latin Options were 'taxable Australian property' (as defined in section 855-15).

28. Otherwise, you must take into account any capital gain or capital loss from CGT event A1 happening on the disposal of your Latin Options 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) (noting that scrip for scrip roll-over relief is not available (subparagraph 124-780(1)(a)(ii))).

29. You can treat the capital gain as a discount capital gain provided that you held your Latin Options for at least 12 months (excluding the day on which you acquired your Latin Option and the Implementation Date) before the Implementation Date (subsection 115-25(1)) and the other conditions of Subdivision 115-A are met.

Cost base and reduced cost base of Pilbara Minerals Limited shares

30. The first element of the cost base and reduced cost base of your replacement Pilbara shares you received is equal to the market value of your Latin Options (worked out

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as at the Implementation Date) you exchanged in respect of acquiring Pilbara shares (subsections 110-25(2) and 110-55(2)).

Acquisition date of Pilbara Minerals Limited shares

31. The acquisition date of the Pilbara shares is the date on which those shares were issued to you, being the Implementation Date (table item 2 of section 109-10).

Scheme

32. 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

33. 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.

34. As at the Implementation Date, 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).

35. The main asset of Latin is an undeveloped hard rock lithium mining interest located in Brazil (Salinas Project).

Pilbara Minerals Limited

36. Pilbara is an ASX listed company, that owns, among other investments, significant hard rock lithium operations in Western Australia.

37. Pilbara sought to purchase Latin in order to acquire the Salinas Project, to add to its existing lithium portfolio and potentially open new market opportunities.

Scheme Implementation Agreement

38. On 14 August 2024, Latin and Pilbara entered into a Scheme Implementation Agreement, under which Pilbara acquired all the issued Latin shares and Latin Options.

39. Under the Scheme Implementation Agreement, Pilbara and Latin agreed that Pilbara will acquire:

- all of the Latin shares by means of a members' scheme of arrangement under Part 5.1 of the *Corporations Act 2001* (Share Scheme), and
- all of the Latin Options by means of a creditors' scheme of arrangement under Part 5.1 of the *Corporations Act 2001* (Option Scheme).

40. The schemes applied to holders of Latin shares and Latin Options as at the Record Date (Scheme Participants).

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Schemes of arrangement

41. Under the Share Scheme, each Latin shareholder was entitled to receive scheme consideration of 0.07 Pilbara shares for each Latin share held as at the Record Date, except for Ineligible Foreign Holders and Electing Scheme Participants, who were entitled to receive their pro rata share of the net cash proceeds from the sale of the new Pilbara shares under a sale facility.

42. Under the Option Scheme, each Latin Option holder was entitled to receive scheme consideration provided by Pilbara for the transfer of their Latin Options, with that consideration being a specified number of Pilbara shares based on the type of Latin Option held as at the Record Date. Specifically, they received:

- 0.0020 Pilbara shares for each LRSAAF option
- 0.0250 Pilbara shares for each LRSAY option

43. Scheme Participants other than Ineligible Foreign Holders who would receive less than a marketable parcel of Pilbara shares on the Implementation Date could elect, by written notice to Latin, to be treated as an 'Electing Scheme Participant'. Latin Option holders could also elect, by written notice to Latin, to be treated as an 'Electing Scheme Participant'.

44. Ineligible Foreign Holders (being Latin shareholders and Latin Option holders with residence outside Australia, Canada, Hong Kong, the United Kingdom, the United States of America, New Zealand, Brazil and Switzerland unless Pilbara determined participation would be lawful and not unduly onerous or impractical for the holder to participate), and Electing Scheme Participants received their pro rata share of the net cash proceeds from the sale of the new Pilbara shares under a sale facility.

45. As a condition to the Share Scheme, Latin was required to obtain shareholder approval for the disposal of certain non-core assets, conduct the corporate restructure to transfer the non-core assets to ESG Minerals Limited and have the in specie effective date occur prior to the second court hearing for the Share Scheme and Option Scheme under a non-core asset disposal program. The non-core assets disposal program was achieved by the transfer of non-core assets into a group headed by ESG Minerals Limited, which was returned as an in specie distribution of ESG shares to Latin shareholders (Demerger).

46. Meetings for the Demerger, the Share Scheme and Option Scheme were held on 16 January 2025. The Demerger was approved by Latin shareholders, and following that, the Share Scheme and Option Scheme were approved by the requisite majorities of Latin shareholders and Latin option holders respectively.

47. The Supreme Court of Western Australia made orders approving the acquisition by way of the Share Scheme and Option Scheme on 21 January 2025.

Other relevant facts

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

49. Latin and Pilbara dealt with each other at arm's length in relation to the disposal and acquisition of the Latin shares (subsection 124-780(4)).

Commissioner of Taxation

26 March 2025

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)(b)
 - ITAA 1997 104-10(4)
 - ITAA 1997 109-10
 - ITAA 1997 110-25(2)
 - ITAA 1997 110-55(2)
 - ITAA 1997 Subdiv 115-A
 - ITAA 1997 115-25(1)
 - ITAA 1997 115-30(1)
 - ITAA 1997 116-20(1)(b)
 - ITAA 1997 Subdiv 124-M
 - ITAA 1997 124-780
 - ITAA 1997 124-780(1)(a)(ii)
 - ITAA 1997 124-780(4)
 - ITAA 1997 124-785(1)
 - ITAA 1997 124-785(2)
 - ITAA 1997 124-785(4)
 - ITAA 1997 124-795(2)(a)
 - ITAA 1997 124-795(4)
 - ITAA 1997 Div 230
 - ITAA 1997 855-10
 - ITAA 1997 855-15
 - ITAA 1997 977-50
 - ITAA 1997 995-1(1)
 - Corporations Act 2001 Pt 5.1
-

ATO references

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