



CR 2021/49 - Cassini Resources Limited - demerger and scrip for scrip roll-over

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Class Ruling

Cassini Resources Limited – demerger and scrip for scrip roll-over

📌 Relying on this Ruling

This publication (excluding appendixes) 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 Cassini Resources Limited (Cassini) of:
 - the return of capital by way of an in specie distribution of shares in a subsidiary of Cassini and cash (Demerger Scheme), and
 - the acquisition of their shares in Cassini by a subsidiary of OZ Minerals Limited (OZ) in exchange for shares in OZ (Acquisition Scheme).
2. Full details of the Demerger Scheme and Acquisition Scheme are set out in paragraphs 29 to 46 of this Ruling.
3. All legislative references in this Ruling are to provisions of the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997* (as detailed in the table in Appendix 2 of this Ruling) unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you were a holder of ordinary shares in Cassini who:
 - was registered on the Cassini share register at 5.00pm AWST on 28 September 2020 (Record Date)

- was a resident of Australia (as defined in subsection 6(1)), or a non-resident (other than a non-resident who carried on a business at or through a permanent establishment¹ in Australia), and
- held those shares on capital account, that is, you did not hold the shares as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)).

5. This Ruling does not apply to you if you are subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 29 to 46 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 2020 to 30 June 2021.

Ruling

Distribution under the Demerger Scheme is not a dividend

7. No part of the distribution under the Demerger Scheme is a dividend as defined in subsection 6(1).

Section 45A does not apply to distribution under the Demerger Scheme

8. The Commissioner will not make a determination under subsection 45A(2) that section 45C applies in relation to all or part of the distribution under the Demerger Scheme.

Section 45B applies to distribution under the Demerger Scheme

9. The Commissioner has made a determination under paragraph 45B(3)(b) that part of the distribution, amounting to 0.15288380 cents for each Cassini share you held at the Record Date, is taken under section 45C to be an unfranked dividend paid by Cassini to you out of Cassini's profits at the time the distribution was made (2 October 2020).

10. This amount is included in your assessable income under subsection 44(1) in the income year the distribution was made.

Non-residents subject to dividend withholding tax

11. If you are a non-resident, you will be subject to withholding tax under section 128B on the amount mentioned in paragraph 9 of this Ruling.

¹ The term 'permanent establishment' is as defined in the relevant international tax treaty, if there is one, or if not, as defined in subsection 6(1).

Demerger concessions do not apply to the Demerger Scheme

12. The demerger concessions in Division 125 and subsections 44(3), 44(4) and 128B(3D) do not apply to you in relation to the Demerger Scheme as one or more of the conditions in section 125-70 are not met.

Capital gains tax consequences of the Demerger Scheme***CGT event G1 happened on receipt of return of capital***

13. CGT event G1 happened to you at the time the Demerger Scheme was implemented, when Cassini paid you the return of capital as described in paragraph 35 of this Ruling (subsections 104-135(1) and (2)).

14. You made a capital gain when CGT event G1 happened if the non-assessable part of 1.75620711 cents per Cassini share² exceeded the cost base of the share (paragraph 104-135(1)(b) and subsection 104-135(3)). You cannot make a capital loss from the event (note 1 to subsection 104-135(3)).

15. If you made a capital gain, the cost base and reduced cost base of the share are reduced to nil (subsection 104-135(3)). Otherwise, the cost base and reduced cost base of the share are reduced by the non-assessable part (subsection 104-135(4)).

Foreign-resident shareholders – effect of CGT event G1

16. If you were a foreign resident or the trustee of a foreign trust for capital gains tax purposes just before the Demerger Scheme was implemented, you disregard a capital gain from CGT event G1 happening, unless your Cassini share was taxable Australian property (subsection 855-10(1)), that is:

- your Cassini share comprised an indirect Australian real property interest (table item 2 of section 855-15), having satisfied
 - the non-portfolio interest test in section 960-195 at the time the Demerger Scheme was implemented, or throughout a 12-month period that began no earlier than 24 months before that time and ended no later than that time (paragraph 855-25(1)(a)), and
 - the principal asset test in section 855-30 at the time the Demerger Scheme was implemented (paragraph 855-25(1)(b)), or
- you held your Cassini share as an individual and your share was covered by subsection 104-165(3) (table item 5 of section 855-15).

Capital gains tax consequences of the Acquisition Scheme***CGT event A1 happened when you disposed of your Cassini shares***

17. CGT event A1 happened on 5 October 2020 when you disposed of your Cassini shares in accordance with the Acquisition Scheme (subsections 104-10(1) to (3)).

18. You made a capital gain if the capital proceeds from the event were more than the share's cost base. You made a capital loss if the capital proceeds were less than the share's reduced cost base (subsection 104-10(4)).

² The non-assessable part is the capital return per share of 1.90909091 cents less the amount of 0.15288380 cents per share mentioned in paragraph 9 of this Ruling.

19. Your capital proceeds for each Cassini share you disposed of is the total market value of the OZ shares you received under the Acquisition Scheme divided by the number of Cassini shares you disposed of (subsection 116-20(1)). The Commissioner accepts that the market value of each OZ share was \$13.7778.

Foreign-resident shareholders – effect of CGT event A1

20. If you were a foreign resident or the trustee of a foreign trust for capital gains tax purposes just before the Acquisition Scheme was implemented, you disregard a capital gain or capital loss from CGT event A1 happening when you disposed of your Cassini share, unless the share was taxable Australian property (subsection 855-10(1)), that is:

- your Cassini shares comprised an indirect Australian real property interest (table item 2 of section 855-15), having satisfied
 - the non-portfolio interest test in section 960-195 at the time the Acquisition Scheme was implemented, or throughout a 12-month period that began no earlier than 24 months before that time and ended no later than that time, and
 - the principal asset test in section 855-30 at the time the Acquisition Scheme was implemented, or
- you held your Cassini share as an individual, and your share was covered by subsection 104-165(3) (table item 5 of section 855-15).

You may choose scrip for scrip roll-over if you made a capital gain

21. You may choose scrip for scrip roll-over (section 124-780) provided you made a capital gain on disposal of your Cassini shares (paragraph 124-780(3)(b)).

22. However, you cannot obtain the roll-over if any capital gain you might make from your OZ shares would be disregarded other than because of a roll-over (for example, if the shares were your trading stock) (paragraph 124-795(2)(a)).

Foreign residents – limited entitlement to roll-over

23. You cannot obtain the roll-over if you were a foreign resident just before you stopped owning your Cassini shares unless the OZ shares you acquired under the Acquisition Scheme were taxable Australian property just after you acquired them (subsection 124-795(1)).

24. Your OZ shares were taxable Australian property just after you acquired them if they comprised an indirect Australian real property interest (table item 2 of section 855-15), having satisfied:

- the non-portfolio interest test in section 960-195 just after the Acquisition Scheme was implemented, and
- the principal asset test in section 855-30 just after that time.

Consequences of choosing the roll-over

25. If you are entitled to choose, and do choose, the roll-over:
- you disregard the capital gain you made from CGT event A1 happening because of the disposal of your Cassini shares under the Acquisition Scheme (subsection 124-785(1))
 - you work out the first element of the cost base of each OZ share you received under the Acquisition Scheme by reasonably attributing to it the cost base (or the part of it) of the Cassini shares for which it was exchanged, and for which you obtained the roll-over (subsection 124-785(2)), and
 - you work out the first element of the reduced cost base similarly (subsection 124-785(4)).

Consequences of not choosing the roll-over

26. If you do not choose, or cannot choose, the roll-over:
- you cannot disregard any capital gain you made from the disposal of your Cassini shares under the Acquisition Scheme unless you can do so in the circumstances set out in paragraph 20 of this Ruling, and
 - you work out the cost base and reduced cost base of each OZ share you received under the Acquisition Scheme using the cost base rules in Division 110 as modified under Division 112. This requires reasonably apportioning the total market value of your Cassini shares (worked out at the time the Acquisition Scheme was implemented) across the OZ shares you received under the Acquisition Scheme (subsections 110-25(2), 110-55(2) and 112-30(1)). The Commissioner accepts that the market value of a Cassini share at that time was 21.52 cents.

Entitlement to discount capital gain from CGT event happening to your OZ Minerals Limited shares

27. If a CGT event (other than those listed in subsection 115-25(3)) happens to an OZ share you own at least 12 months after you acquired it, you are entitled to a discount capital gain in relation to any capital gain you make from the event, provided the other conditions in Subdivision 115-A are met (section 115-25).

28. If you can and do choose the scrip for scrip roll-over, you are taken for the purposes of the 12 month ownership rule mentioned in paragraph 27 of this Ruling to have acquired the OZ share when you acquired the corresponding Cassini shares (table item 2 of subsection 115-30(1) and table item 14A of section 112-115).

Scheme

29. The following description of the scheme is based on information provided by the applicant. If the scheme was not carried out as described, this Ruling cannot be relied upon.

Relevant entities

30. Cassini is an Australian-resident company and base and precious metals developer and explorer headquartered in Perth. It was incorporated on 10 March 2011 and listed on the Australian Securities Exchange (ASX) on 5 January 2012. Cassini's principal asset was the West Musgrave Project (WMP), a copper-nickel project located in the West Musgrave province of Western Australia. Cassini also held interests in other early exploration projects (non-WMP assets).

31. OZ, an Adelaide-based copper-focused mining company, entered into a joint-venture agreement with Cassini in 2016, whereby in 2019, under a farm-in agreement, it earned a 70% interest in the WMP by sole-funding WMP exploration and feasibility costs. Cassini retained a 30% interest in the WMP.

Announcement of Schemes of Arrangement

32. On 22 June 2020, Cassini and OZ announced the execution of a binding scheme implementation deed relating to the Acquisition Scheme, a scheme of arrangement under Part 5.1 of the *Corporations Act 2001* (Corporations Act) under which OZ would, subject to various conditions, acquire 100% of the shares in Cassini in exchange for shares in OZ.

33. In addition, it was announced that Cassini had entered into a separate scheme implementation deed with its new subsidiary Caspin Resources Limited (Caspin) (which was incorporated on 17 June 2020) relating to the Demerger Scheme, another scheme of arrangement under Part 5.1 of the Corporations Act, under which Cassini would, subject to various conditions, demerge its non-WMP assets.

34. The Acquisition Scheme and Demerger Scheme were to be inter-conditional and completed in conjunction with a capital reduction to effect the demerger.

Demerger Scheme

35. OZ did not want to acquire the non-WMP assets. Therefore, the Acquisition Scheme was to be closely preceded by the Demerger Scheme, under which Cassini would:

- transfer the non-WMP assets and cash to Caspin, and
- make a pro-rata distribution to its shareholders of all the shares in Caspin (one share, valued at 20 cents³, for every 22 Cassini shares held on the Record Date), and cash (one cent per Cassini share held on the Record Date).

36. The distribution was to be funded entirely by an equal reduction of share capital under section 256B of the Corporations Act.

³ Based on the initial public offering price for Caspin.

Acquisition Scheme

37. Under the Acquisition Scheme, all persons that were Cassini shareholders on the Record Date, other than Ineligible Shareholders or Non-Electing Small Shareholders⁴, would be issued one OZ share in exchange for every 68.5 Cassini shares they held at the Record Date (rounded to the nearest whole number, but not below one) and nothing else. OZ shares to which Ineligible Shareholders and Non-Electing Small Shareholders would otherwise have been entitled would be issued to a sale agent for sale through a sale facility, with the proceeds to be distributed on a pro-rata basis.

38. Ineligible Shareholders were Cassini shareholders at the Record Date whose address in the Cassini share register was in a jurisdiction outside Australia and its external territories, New Zealand, Hong Kong, Singapore, Malaysia and the People's Republic of China. Non-Electing Small Shareholders were Small Shareholders who did not elect to receive OZ shares. Small Shareholders were Cassini shareholders at the Record Date, other than Ineligible Shareholders, who would be entitled to receive less than a Marketable Parcel (as defined in the ASX Listing Rules) of OZ shares.

Approval and implementation of the schemes

39. Each scheme was dependent on a shareholder resolution being passed by the requisite majority as required under section 256C of the Corporations Act (obtained on 21 September 2020) and on approvals by the Supreme Court of Western Australia under paragraph 411(4)(b) of the Corporations Act (obtained on 23 September 2020). Cassini's shares ceased trading on the ASX on 24 September 2020 following the lodgment that day of copies of the court approvals with the Australian Securities & Investments Commission.

40. The Demerger Scheme, which included the distribution referred to in paragraph 35 of this Ruling, was implemented on 2 October 2020. The Acquisition Scheme, which included the acquisition by OZ of Cassini's shares referred to in paragraph 32 of this Ruling, was implemented on 5 October 2020. The Cassini shares were acquired by OZ's wholly-owned subsidiary, OZ Minerals Musgrave Holdings Pty Ltd (OZ Musgrave).

Other matters

41. Just before the Acquisition Scheme was implemented, Cassini had 441,581,152 ordinary shares on issue, including 2,751,757 arising from the vesting and conversion of performance rights following court approval of the Acquisition Scheme. At this point, neither OZ nor any of its subsidiaries held any Cassini shares.

42. Just before the Demerger Scheme was implemented, Cassini had no franking credits and its share capital account was not tainted.

43. No Cassini shareholder was a significant stakeholder or a common stakeholder for the Acquisition Scheme within the meaning of section 124-783.

44. No member of the wholly-owned group of which OZ was the ultimate holding company issued equity other than the shares issued by OZ in exchange for the acquisition by OZ Musgrave of all Cassini shares under the Acquisition Scheme, or owed new debt under the Acquisition Scheme in relation to the issuing of those OZ shares, to any entity that was not a member of the group.

⁴ See paragraph 38 of this Ruling.

45. All Cassini shareholders dealt with the acquiring entity, OZ Musgrave, at arm's length.

46. OZ did not make a choice under subsection 124-795(4) that Cassini shareholders could not obtain a roll-over.

Commissioner of Taxation

28 July 2021

Appendix 1 – 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.*

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Distribution under the Demerger Scheme is not a dividend

47. A dividend, as defined in subsection 6(1), includes any distribution made by a company to its shareholders, whether in money or other property. However, to the extent that the amount of money paid, or the amount of the value of the property, is debited against an amount standing to the credit of the share capital account of the company, the distribution is not a dividend.

48. Since the distribution of Caspin shares and cash Cassini made to its shareholders under the Demerger Scheme was accounted for entirely by debiting Cassini's share capital account, none of the distribution was a dividend as defined in subsection 6(1).

Section 45A does not apply to distribution under the Demerger Scheme

49. Section 45A applies where a company streams capital benefits to some shareholders who would benefit more from them than other shareholders and dividends to those other shareholders. No such streaming occurred under the Demerger Scheme.

Section 45B applies to distribution under the Demerger Scheme

50. Section 45B will apply to treat amounts as dividends where there is a scheme under which a capital benefit (including shares in a company or share capital) is provided to a person, a taxpayer (whether or not that person) obtains a tax benefit, and it would be concluded, having regard to the relevant circumstances of the scheme, that those who entered into or carried out the scheme (or part thereof) did so for a more than incidental purpose of enabling the taxpayer to obtain a tax benefit (subsections 45B(1) and (2)).

51. The distribution that Cassini made to its shareholders under the Demerger Scheme was a capital benefit, and was not a dividend (see paragraphs 47 to 48 of this Ruling). If not for section 45B, the distribution would not have been included in Cassini shareholders' assessable income, and therefore Cassini shareholders would have obtained a tax benefit. The Commissioner has concluded that the requisite purpose is present, having had regard to the relevant circumstances of the Demerger Scheme in the context of the Acquisition Scheme, and has therefore made the determination described in paragraph 9 of this Ruling.

Demerger concessions do not apply to the Demerger Scheme

52. For the demerger concessions to be available, the conditions in section 125-70 must be satisfied. That is, there must be a restructuring of a 'demerger group' under which members of the group stop owning at least 80% of the 'ownership interests' (for example, shares) in another member of the group and a similar percentage of the membership interests start being owned by owners of ownership interests in the head entity of the group (paragraphs 125-70(1)(a) and (b)), and certain other conditions must be satisfied.

53. One of those other conditions is that under the restructuring, owners of ownership interests acquire ownership interests in that other member of the group and nothing else (paragraph 125-70(1)(c)).

54. Cassini and Caspin were members of a demerger group with Cassini as the head entity, and the Demerger Scheme brought about a restructuring of the demerger group with Cassini disposing of all of its shares in Caspin to Cassini shareholders. However, as Cassini shareholders also received cash under the Demerger Scheme, the 'nothing else' condition was not satisfied. Therefore, the demerger concessions are not available.

Capital gains tax consequences of the Acquisition Scheme***Scrip for scrip roll-over***

55. Scrip for scrip roll-over under Subdivision 124-M enables a shareholder to disregard a capital gain from a share that is disposed of if they receive a replacement share in exchange. It also provides special rules for calculating the cost base and reduced cost base of the replacement share.

56. Subdivision 124-M contains a number of conditions for a shareholder being able to choose scrip for scrip roll-over and sets out certain exceptions. The requirements that are relevant to the scheme that is the subject of this Ruling were satisfied as:

- Cassini shareholders exchanged their shares in Cassini for shares in OZ (paragraph 124-780(1)(a) and subparagraph 124-780(3)(c)(ii))
- the exchange was a consequence of a single arrangement entered into by Cassini under Part 5.1 of the Corporations Act and approved by the court under paragraph 411(4)(b) of the Corporations Act, under which OZ Musgrave increased its ownership of Cassini to 80% or more of the voting shares (paragraph 124-780(2)(a) and subsection 124-780(2A))
- neither OZ nor any of its wholly-owned subsidiaries issued equity, apart from the OZ shares issued to Cassini shareholders in exchange for their Cassini shares, or owed new debt under the arrangement in relation to the issue of those OZ shares, to an entity that was not a member of the group (paragraph 124-780(3)(f))
- Cassini shareholders dealt with OZ Musgrave at arm's length (subsection 124-780(4)), and
- OZ did not make a choice under subsection 124-795(4) that Cassini shareholders could not obtain the roll-over.

Appendix 2 – Legislative provisions

57. This paragraph sets out the details of the provisions ruled upon or referenced in this Ruling.

<i>Income Tax Assessment Act 1936</i>	subsection 6(1)
<i>Income Tax Assessment Act 1936</i>	subsection 44(1)
<i>Income Tax Assessment Act 1936</i>	subsection 44(3)
<i>Income Tax Assessment Act 1936</i>	subsection 44(4)
<i>Income Tax Assessment Act 1936</i>	section 45A
<i>Income Tax Assessment Act 1936</i>	subsection 45A(2)
<i>Income Tax Assessment Act 1936</i>	section 45B
<i>Income Tax Assessment Act 1936</i>	subsection 45B(1)
<i>Income Tax Assessment Act 1936</i>	subsection 45B(2)
<i>Income Tax Assessment Act 1936</i>	paragraph 45B(3)(b)
<i>Income Tax Assessment Act 1936</i>	section 45C
<i>Income Tax Assessment Act 1936</i>	section 128B
<i>Income Tax Assessment Act 1936</i>	subsection 128B(3D)
<i>Income Tax Assessment Act 1997</i>	subsection 104-10(1)
<i>Income Tax Assessment Act 1997</i>	subsection 104-10(2)
<i>Income Tax Assessment Act 1997</i>	subsection 104-10(3)
<i>Income Tax Assessment Act 1997</i>	subsection 104-10(4)
<i>Income Tax Assessment Act 1997</i>	subsection 104-135(1)
<i>Income Tax Assessment Act 1997</i>	paragraph 104-135(1)(b)
<i>Income Tax Assessment Act 1997</i>	subsection 104-135(2)
<i>Income Tax Assessment Act 1997</i>	subsection 104-135(3)
<i>Income Tax Assessment Act 1997</i>	subsection 104-135(4)
<i>Income Tax Assessment Act 1997</i>	subsection 104-165(3)
<i>Income Tax Assessment Act 1997</i>	Division 110
<i>Income Tax Assessment Act 1997</i>	subsection 110-25(2)
<i>Income Tax Assessment Act 1997</i>	subsection 110-55(2)
<i>Income Tax Assessment Act 1997</i>	Division 112
<i>Income Tax Assessment Act 1997</i>	subsection 112-30(1)
<i>Income Tax Assessment Act 1997</i>	section 112-115
<i>Income Tax Assessment Act 1997</i>	Subdivision 115-A
<i>Income Tax Assessment Act 1997</i>	section 115-25
<i>Income Tax Assessment Act 1997</i>	subsection 115-25(3)
<i>Income Tax Assessment Act 1997</i>	subsection 115-30(1)
<i>Income Tax Assessment Act 1997</i>	subsection 116-20(1)

<i>Income Tax Assessment Act 1997</i>	section 124-780
<i>Income Tax Assessment Act 1997</i>	paragraph 124-780(1)(a)
<i>Income Tax Assessment Act 1997</i>	paragraph 124-780(2)(a)
<i>Income Tax Assessment Act 1997</i>	subsection 124-780(2A)
<i>Income Tax Assessment Act 1997</i>	paragraph 124-780(3)(b)
<i>Income Tax Assessment Act 1997</i>	subparagraph 124-780(3)(c)(ii)
<i>Income Tax Assessment Act 1997</i>	paragraph 124-780(3)(f)
<i>Income Tax Assessment Act 1997</i>	subsection 124-780(4)
<i>Income Tax Assessment Act 1997</i>	section 124-783
<i>Income Tax Assessment Act 1997</i>	subsection 124-785(1)
<i>Income Tax Assessment Act 1997</i>	subsection 124-785(2)
<i>Income Tax Assessment Act 1997</i>	subsection 124-785(4)
<i>Income Tax Assessment Act 1997</i>	subsection 124-795(1)
<i>Income Tax Assessment Act 1997</i>	paragraph 124-795(2)(a)
<i>Income Tax Assessment Act 1997</i>	subsection 124-795(4)
<i>Income Tax Assessment Act 1997</i>	Subdivision 124-M
<i>Income Tax Assessment Act 1997</i>	Division 125
<i>Income Tax Assessment Act 1997</i>	section 125-70
<i>Income Tax Assessment Act 1997</i>	paragraph 125-70(1)(a)
<i>Income Tax Assessment Act 1997</i>	paragraph 125-70(1)(b)
<i>Income Tax Assessment Act 1997</i>	paragraph 125-70(1)(c)
<i>Income Tax Assessment Act 1997</i>	Division 230
<i>Income Tax Assessment Act 1997</i>	subsection 855-10(1)
<i>Income Tax Assessment Act 1997</i>	section 855-15
<i>Income Tax Assessment Act 1997</i>	paragraph 855-25(1)(a)
<i>Income Tax Assessment Act 1997</i>	paragraph 855-25(1)(b)
<i>Income Tax Assessment Act 1997</i>	section 855-30
<i>Income Tax Assessment Act 1997</i>	section 960-195
<i>Income Tax Assessment Act 1997</i>	section 977-50
<i>Income Tax Assessment Act 1997</i>	subsection 995-1(1)

References

- Previous draft:*
- Corporations Act 2001 Pt 5.1
 - Corporations Act 2001 256B
 - Corporations Act 2001 256C
- Not previously issued as a draft
- Legislative references:*
- Corporations Act 2001 411(4)(b)
 - TAA 1953

ATO references

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