

CR 2021/81 - Liontown Resources Limited - demerger of Minerals 260 Limited



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Class Ruling

Liontown Resources Limited – demerger of Minerals 260 Limited

❶ 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.

Table of Contents	Paragraph
What this Ruling is about	1
Who this Ruling applies to	4
When this Ruling applies	6
Ruling	7
Scheme	30

What this Ruling is about

1. This Ruling sets out the income tax consequences of the demerger of Minerals 260 Limited (Minerals 260) by Liontown Resources Limited (LTR) which was implemented on 4 October 2021 (Implementation Date).
2. Full details of this scheme are set out in paragraphs 30 to 57 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 ordinary shares in LTR and you:
 - were registered on the LTR share register on 28 September 2021 (Record Date), and
 - did not hold your shares in LTR as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)) on the Record Date – that is, you held your shares in LTR on capital account.
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 57 of this Ruling.

Note: Division 230 will not apply to individuals, unless they have made an election for it to apply.

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When this Ruling applies

6. This Ruling applies from 1 July 2021 to 30 June 2022.

Ruling**Demerger happened**

7. A demerger, as defined in section 125-70, happened to the LTR demerger group (which included LTR and Minerals 260) under the scheme described in paragraphs 30 to 57 of this Ruling.

Capital gains tax consequences***CGT event G1***

8. CGT event G1 happened when you were paid an amount by LTR in respect of your LTR shares by way of the transfer to you of Minerals 260 shares on the Implementation Date (section 104-135).

9. You will make a capital gain from CGT event G1 happening if the amount of the reduction of share capital for each LTR share (0.21 cents) was more than the cost base of your LTR share. If so, the capital gain is equal to the amount of the excess (subsection 104-135(3)).

10. No capital loss can be made from CGT event G1 (Note to subsection 104-135(3)).

Australian-resident shareholders***Choosing demerger roll-over***

11. If you are an Australian resident, you can choose to obtain demerger roll-over for your LTR shares (subsection 125-55(1)).

12. If you choose demerger roll-over for your LTR shares:

- any capital gain you made when CGT event G1 happened to your LTR shares under the demerger is disregarded (subsection 125-80(1)), and
- you must recalculate the first element of the cost base and reduced cost base of your LTR shares, and calculate the first element of the cost base and reduced cost base of the corresponding Minerals 260 shares you acquired under the demerger (subsection 125-80(2)) (see paragraphs 14 to 16 of this Ruling for more details).

Not choosing demerger roll-over

13. If you do not choose demerger roll-over for your LTR shares, you:

- cannot disregard any capital gain you made when CGT event G1 happened to your LTR shares under the demerger, and
- must recalculate the first element of the cost base and reduced cost base of your LTR shares, and calculate the first element of the cost base and reduced cost base of the corresponding Minerals 260 shares you acquired

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under the demerger (subsections 125-85(1) and (2)) (see paragraphs 14 to 16 of this Ruling).

Cost base and reduced cost base of your Liontown Resources Limited and Minerals 260 Limited shares

14. The first element of the cost base and reduced cost base of each LTR share and corresponding Minerals 260 share is worked out by:

- taking the total of the cost bases of your LTR shares just before the demerger, and
- apportioning that total between your LTR shares and the Minerals 260 shares you acquired under the demerger.

15. The apportionment is done on a reasonable basis having regard to the market values (just after the demerger) of the LTR shares and Minerals 260 shares, or an anticipated reasonable approximation of those market values (subsections 125-80(2) and (3)).

16. The Commissioner accepts that a reasonable apportionment is to attribute:

- 96.99% of the total of the cost bases of your LTR shares just before the demerger to the LTR shares, and
- 3.01% of the total of the cost bases of your LTR shares just before the demerger to the corresponding Minerals 260 shares.

Example – cost base apportionment of Liontown Resources Limited and Minerals 260 Limited shares

17. *David held 5,000 LTR shares that had a total cost base of \$5,000 just before the demerger. He received 418 Minerals 260 shares under the demerger (one Minerals 260 share for every 11.94486 LTR shares).*

18. *David works out the first element of the cost bases of his LTR shares and Minerals 260 shares just after the demerger as follows:*

Step 1: David calculates the total cost base of his LTR shares just before the demerger as \$5,000.

Step 2: David attributes $96.99\% \times \$5,000 = \$4,849.50$ to his LTR shares.

Step 3: David attributes $3.01\% \times \$5,000 = \150.50 to his Minerals 260 shares.

Step 4: The first element of the cost base and reduced cost base of each of David's LTR shares just after the demerger is $\$4,849.50 \div 5,000 = 96.99$ cents.

Step 5: The first element of the cost base and reduced cost base of each of David's Minerals 260 shares just after the demerger is $\$150.50 \div 418 = 36$ cents.

Acquisition date of the Minerals 260 Limited shares for discount capital gain purposes

19. For the purpose of determining whether you can make a discount capital gain from a future CGT event that happens to a Minerals 260 share you acquired under the demerger, you will be taken to have acquired the Minerals 260 share on the date you

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acquired, for CGT purposes, the corresponding LTR share (table item 2 of subsection 115-30(1)). This will be the case whether or not you choose demerger roll-over.

Foreign-resident shareholders

20. If you are a foreign resident (that is, you are not a resident of Australia, as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936)), any capital gain you make from CGT event G1 in relation to your LTR shares is disregarded unless your LTR shares were taxable Australian property (section 855-10). Your LTR shares were taxable Australian property if they were:

- used by you in carrying on a business through a permanent establishment in Australia (table item 3 in section 855-15), or
- a CGT asset 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 in section 855-15).

Limited availability of demerger roll-over

21. If you are a foreign resident, you can choose to obtain demerger roll-over for your LTR shares if the Minerals 260 shares you acquired under the demerger were also taxable Australian property just after you acquired them (subsections 125-55(1) and (2)).

Cost base and reduced cost base of your Lontown Resources Limited and Minerals 260 Limited shares

22. Whether or not you choose demerger roll-over, or demerger roll-over is available to you, you must work out the first element of the cost base and reduced cost base of each LTR share and corresponding Minerals 260 share in the same way as described in paragraphs 14 to 16 of this Ruling (subsections 125-80(2) and (3), and 125-85(1) and (2)).

Acquisition date of the Minerals 260 Limited shares for discount capital gain purposes

23. For the purpose of determining whether you can make a discount capital gain from a future CGT event that happens to a Minerals 260 share you acquired under the demerger, you will be taken to have acquired the Minerals 260 share on the date you acquired, for CGT purposes, the corresponding LTR share (table item 2 of subsection 115-30(1)). This will be the case whether or not you choose demerger roll-over.

Sale of Minerals 260 Limited shares under the Sale Facility

24. If you are an Ineligible Foreign Shareholder whose Minerals 260 shares were sold through the Sale Facility, CGT event A1 happened to you on the Implementation Date in relation to the Minerals 260 shares that were transferred to the Sale Facility nominee (section 104-10).

25. The capital proceeds from the disposal of each Minerals 260 share were the net sale proceeds for the share received by you from the Sale Facility nominee.

Page status: **legally binding**

Not an assessable dividend

26. No part of the value of a Minerals 260 shares transferred to you under the demerger will be included in your assessable income under subsection 44(1) of the ITAA 1936. Although any part of the value of a Minerals 260 share that exceeds the amount debited to the share capital account of LTR is a 'dividend' under subsection 6(1) of the ITAA 1936, it will be a 'demerger dividend' under subsections 44(3) to (5) of the ITAA 1936. A demerger dividend is non-assessable non-exempt income for you.

No dividend withholding tax for non-resident Liontown Resources Limited shareholders

27. If you are not a resident of Australia (as defined in subsection 6(1) of the ITAA 1936), no part of the value of a Minerals 260 share transferred to you under the demerger will be subject to dividend withholding tax (subsection 128B(3D) of the ITAA 1936).

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

28. 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 any part, of the distribution of share capital. This is because all shareholders of LTR participated in the distribution of share capital based on the number of LTR shares they held on the Record Date, so that there was no streaming of capital benefits.

29. As the purpose condition in paragraph 45B(2)(c) of the ITAA 1936 is not satisfied, the Commissioner will not make a determination under either:

- paragraph 45B(3)(a) of the ITAA 1936 that section 45BA of the ITAA 1936 applies to the whole, or any part, of the demerger benefit provided to you under the demerger, or
- 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 under the demerger.

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.

Liontown Resources Limited

31. LTR is a company that was incorporated in Australia on 2 February 2006 and whose shares were listed on the Australian Securities Exchange (ASX) on 27 December 2006.

32. LTR is primarily an explorer and developer of battery materials at its Kathleen Valley Lithium-Tantalum Project in Western Australia.

33. Immediately before the Implementation Date, LTR had on issue:

- 1,911,178,382 fully-paid ordinary shares

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- a number of performance rights and unlisted options, representing less than 3% of the total number of ownership interests (as defined in subsection 125-60(1)).
34. There were no other ownership interests (as defined in subsection 125-60(1)) in LTR.
35. Immediately before the Implementation Date, LTR had \$136,388,981 credited to its share capital account.
36. Immediately before the Implementation Date, LTR shareholders were mainly Australian residents and less than 10% of LTR shares were held by foreign residents.
37. LTR has not paid any dividends to its shareholders since its listing on the ASX.

Minerals 260 Limited

38. Minerals 260 is a company incorporated in Australia.
39. Minerals 260 has mining interests in Western Australia (including the Moora and Koojan Joint Venture assets, consisting of gold-nickel-copper projects) held by its wholly-owned subsidiary ERL (Aust) Pty Ltd.
40. Immediately before the demerger, Minerals 260 had 160 million ordinary shares on issue, which were all owned by LTR.

The demerger of Minerals 260 Limited

41. The demerger of Minerals 260 was undertaken by a reduction of share capital under section 256B of the *Corporations Act 2001*.
42. The shareholders of LTR voted at a meeting on 22 September 2021 to approve an ordinary resolution under section 256C of the *Corporations Act 2001* to reduce the share capital of LTR by an amount (the capital reduction amount) equal to the market value of the shares in Minerals 260 that will be transferred to the shareholders of LTR less a demerger dividend. The capital reduction amount equated to 0.21 cents per LTR share.
43. The date for determining the entitlement of LTR shareholders to receive Minerals 260 shares was the Record Date (28 September 2021).
44. On the Implementation Date (4 October 2021), shares in Minerals 260 were transferred by LTR to LTR shareholders. Each LTR shareholder received one Minerals 260 share for every 11.94486 LTR shares they held on the Record Date, and nothing else.
45. After the demerger, LTR will not own any shares in Minerals 260.
46. Shares in Minerals 260 were listed for quotation on the ASX on 11 October 2021.

Accounting treatment

47. LTR accounted for the demerger by debiting its:
- share capital account by \$4,099,582.27 (the capital reduction amount), and
 - demerger reserve account by \$86,860,417.73 (the demerger dividend).
48. The demerger dividend was calculated as the difference between the market value of the Minerals 260 shares distributed and the capital reduction amount.

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Sale Facility

49. Ineligible Foreign Shareholders had the LTR shares to which they were entitled sold by LTR through a nominee on the ASX (Sale Facility) who remitted the net sale proceeds to the relevant shareholders. The shares of the ineligible foreign shareholders were transferred to the nominee on the Implementation Date.

50. Ineligible Foreign Shareholders were shareholders who were not Eligible Shareholders on the Record Date. Eligible Shareholders were shareholders recorded in LTR's register of members as at the Record Date as having a registered address in Australia or New Zealand.

Reasons for demerger

51. The directors of LTR formed the view that the demerger would allow:

- LTR to focus its efforts on the Kathleen Valley Lithium-Tantalum Project
- more discrete management and investor attention to the Moora and Koojan Joint Venture assets
- LTR shareholders to participate in the growth of the Moora and Koojan Joint Venture assets through a separate entity that will have sufficient resources to further develop the assets and optimise their potential value
- greater flexibility for the directors and management of LTR and Minerals 260 to develop their own corporate strategies and implement capital structures and financial policies appropriate to their respective businesses and projects, and
- greater flexibility for investors to choose their level of investment in LTR and Minerals 260.

Other matters

52. There are no LTR shares held by a foreign-resident LTR shareholder that passed the non-portfolio interest test (within the meaning of section 960-195) throughout a 12-month period in the 24 months immediately before and ending on the Implementation Date.

53. Immediately before the Implementation Date, LTR's share capital account was not tainted (within the meaning of Division 197).

54. The performance rights and unlisted options in LTR are either employee share scheme interests that satisfy the conditions in subsection 125-75(2) or they are adjusting instruments as defined in subsection 125-75(5).

55. LTR did not elect under subsection 44(2) of the ITAA 1936 that subsections 44(3) and (4) of the ITAA 1936 will not apply to the demerger dividend for all LTR shareholders.

56. Just after the demerger, CGT assets owned by Minerals 260 and its demerger subsidiaries representing at least 50% by market value of all the CGT assets owned by those entities were used in carrying on a business by those entities (subsection 44(5) of the ITAA 1936).

Page status: **legally binding**

57. For the purposes of the cost base and reduced cost base apportionment under subsections 125-80(2) and (3), a reasonable approximation of the market values of an LTR share and a Minerals 260 share just after the demerger has been calculated as:

- \$1.5358 for each LTR share, being the volume-weighted average price of LTR shares as traded on the ASX over the first five trading days from (and including) 11 October 2021.
- 56.85 cents for each Minerals 260 share, being the volume-weighted average price of Minerals 260 shares as traded on the ASX over the first five trading days from (and including) 11 October 2021.

Commissioner of Taxation

24 November 2021

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References

Previous draft:

Not previously issued as a draft

Legislative references:

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ATO references

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 Income tax ~~ Capital management ~~ Anti avoidance rules ~~ Section 45B
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