



# ***CR 2022/107 - Bardoc Gold Limited - demerger and scrip for scrip roll-over***

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## Class Ruling

# Bardoc Gold Limited – demerger and scrip for scrip roll-over

### **❶ Relying on this Ruling**

This publication (excluding appendix) 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 of:
  - the demerger of Edge Minerals Limited (Edge) by Bardoc Gold Limited (Bardoc), which was implemented on 12 April 2022 (Demerger Date), and
  - the scheme of arrangement between Bardoc and St Barbara Limited (St Barbara), which was implemented on 13 April 2022 (Implementation Date).
2. Details of this scheme are set out in paragraphs 23 to 56 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:
  - were registered on the Bardoc share register at 5:00 pm AWST on 6 April 2022 (Scheme Record Date)
  - were registered on the Bardoc share register at 5:00 pm AWST on 8 April 2022 (Demerger Record Date)
  - held your Bardoc 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

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- are a resident of Australia (as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936)) or a foreign resident (as defined in subsection 995-1(1)) and do not hold your Bardoc shares through a permanent establishment in Australia.

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 23 to 56 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 2021 to 30 June 2022.

## **Ruling**

### **Demerger roll-over**

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

### **Not a dividend**

8. No part of the distribution you received under the demerger is a dividend as defined in subsection 6(1) of the ITAA 1936.

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

9. 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.

### **Distribution of shares in Edge Minerals Limited**

#### **CGT event G1**

10. CGT event G1 happened to you when Bardoc gave you Edge shares in respect of your Bardoc shares on the Demerger Date (subsections 104-135(1) and (2)).

11. You made a capital gain when CGT event G1 happened if the amount of the reduction of share capital for each Bardoc share (\$0.015) was more than the cost base of the share (paragraph 104-135(1)(b) and subsection 104-135(3)). You cannot make a capital loss from the CGT event G1 (note 1 to subsection 104-135(3)).

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12. If you made a capital gain, the cost base and reduced cost base of your Bardoc share is reduced to nil (subsection 104-135(3)). Otherwise, you reduce the cost base and reduced cost base of the share by \$0.015 (subsection 104-135(4)).

#### ***Cost base and reduced cost base of your Edge Minerals Limited shares***

13. The 'first element' of the cost base and reduced cost base of each Edge share you acquired is the amount of the reduction in share capital (\$0.015) multiplied by the number of Bardoc shares you held on the Demerger Record Date divided by the number of Edge shares you received (subsections 110-25(2) and 110-55(2)).

#### **Acquisition date of Edge Minerals Limited shares**

14. You are taken to have acquired your Edge shares on 12 April 2022 (section 109-5).

#### **Exchange of shares in Bardoc Gold Limited for shares in St Barbara Limited**

##### ***CGT event A1***

15. CGT event A1 happened when you disposed of your Bardoc shares on the Implementation Date in accordance with the scheme of arrangement (subsections 104-10(1) to (3)).

16. You made a capital gain when CGT event A1 happened if the capital proceeds were more than the cost base of your shares. You made a capital loss if the capital proceeds were less than the reduced cost base of your share (subsection 104-10(4)).

17. The capital proceeds for each Bardoc share you disposed of is the total market value of the St Barbara shares you received under the scheme of arrangement divided by the number of Bardoc shares you disposed of (subsection 116-20(1)). The Commissioner accepts that the market value of each St Barbara share was \$1.47. Therefore, the capital proceeds for each Bardoc share is \$0.53.

#### ***Scrip for scrip roll-over***

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

19. However, you cannot obtain the roll-over if any capital gain you might make from your St Barbara shares (replacement 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)).

#### ***Consequences of choosing scrip for scrip roll-over***

20. If you choose scrip for scrip roll-over:

- you disregard the capital gain you made from CGT event A1 happening because of the disposal of your Bardoc shares under the scheme of arrangement (subsection 124-785(1))
- you work out the first element of the cost base and reduced cost base of each St Barbara share you received under the scheme of arrangement by reasonably attributing to it the cost base (or the part of it) of the Bardoc

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shares for which it was exchanged, and for which you obtained the roll-over (subsections 124-785(2) and (4)), and

- the date of acquisition of these St Barbara shares is 13 April 2022; however, for the purpose of working out whether a capital gain from these shares is a discount capital gain in the future, the date of acquisition is the date you acquired your original Bardoc shares (table item 2 of subsection 115-30(1)).

### ***Consequences of not choosing scrip for scrip roll-over***

21. If you do not choose, or cannot choose the roll-over:

- you cannot disregard any capital gain or capital loss you made from the disposal of your Bardoc shares
- you work out the cost base and reduced cost base of each St Barbara share you received under the scheme of arrangement using the cost base rules in Division 110 as modified under Division 112, which requires reasonably apportioning the total market value of your Bardoc shares (worked out at the time the scheme of arrangement was implemented) across the St Barbara shares you received under the scheme of arrangement (subsections 110-25(2), 110-55(2) and 112-30(1)) – the Commissioner accepts that the market value of a Bardoc share at that time was \$0.53; you received 0.3604 St Barbara shares for each Bardoc share you held such that the cost base and reduced cost base of each St Barbara share you received is calculated as \$0.53 divided by 0.3604, which is \$1.47, and
- the date of acquisition of these St Barbara shares is 13 April 2022.

### **Foreign-resident Bardoc Gold Limited shareholders**

22. If you were a foreign resident just before the Implementation Date, you disregard any capital gain or capital loss from CGT events A1 and G1 happening unless the share was taxable Australian property (section 855-10).

## **Scheme**

23. 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.

### **Bardoc Gold Limited**

24. Bardoc is an Australian-resident company that was listed on the Australian Securities Exchange (ASX) until the Implementation Date.

25. Bardoc is a gold-focused mining and exploration company. Before the demerger transaction, it owned and operated 2 projects:

- the Bardoc Gold Project, which is located near Kalgoorlie in Western Australia (WA), and
- the South Woodie Woodie Manganese Project (the SWW Project), in the Pilbara region of WA.

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- 26. The market value of each Bardoc share just before the demerger was \$0.53.
- 27. Ownership interests in Bardoc were acquired after 20 September 1985.
- 28. At the time of the demerger, Bardoc had 296,298,945 ordinary shares on issue.
- 29. Bardoc shareholders include both Australian residents and foreign residents and are a mix of individuals, companies, trusts and superannuation funds.
- 30. No foreign residents held 10% or more of the issued shares in Bardoc on the Implementation Date.
- 31. Bardoc has never declared or paid dividends.
- 32. Bardoc shareholders approved the scheme of arrangement with St Barbara on 30 March 2022.

#### **Edge Minerals Limited**

- 33. Before the Demerger Date, Edge was a wholly-owned subsidiary of Bardoc.
- 34. Edge held the interests (either directly or indirectly) in the SWW Project tenements.
- 35. Just after the demerger, the market value of each Edge share was \$0.1975.
- 36. There are no immediate plans to list Edge on the ASX.

#### **St Barbara Limited**

- 37. St Barbara is an Australian-resident company listed on the ASX.
- 38. St Barbara is a gold-producer company with a globally diversified asset base, including the Gwalia underground mine at Leonora in the eastern Goldfields of WA, which it has owned since 2005.
- 39. Just after the scheme of arrangement was implemented, the market value of each St Barbara share was \$1.47.

#### **Demerger of Edge Minerals Limited**

- 40. On 20 December 2021, Bardoc announced it intended to demerge Edge subject to shareholder and other approvals.
- 41. The assets which were the subject of the demerger (Demerger Assets) were the SWW Project assets in WA, which were owned by Edge. The Bardoc board estimated the value of the Demerger Assets to be \$4.5 million.
- 42. On 30 March 2022, Bardoc shareholders voted at a General Meeting to approve the sale of the Demerger Assets by way of a demerger of Edge.
- 43. Bardoc shareholders who were recorded in the Bardoc share register as at the Demerger Record Date participated in the demerger.
- 44. On the Demerger Date, 22,790,317 Edge shares were distributed in specie to Eligible Shareholders on the basis that each Eligible Shareholder received one Edge share for every 13 Bardoc shares they held.
- 45. An 'Eligible Shareholder' is a person registered as the holder of Bardoc shares on the Demerger Record Date, other than an Ineligible Foreign Shareholder.

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46. An 'Ineligible Foreign Shareholder' is a shareholder who is (or is acting on behalf of) a citizen or resident of a jurisdiction other than residents of Australia and New Zealand and its external territories, and whose address is a place outside Australia and New Zealand and its external territories.

47. Ineligible Foreign Shareholders had their entitlement to Edge shares placed with a nominee to be held on their behalf pending a future sale opportunity.

48. Bardoc accounted for the demerger by debiting its share capital account by \$4.5 million, equal to the market value of the 22,790,317 Edge shares it distributed.

49. Edge shares were not listed for quotation on the ASX.

### **Reasons for the demerger**

50. Bardoc undertook the demerger for the following reasons:

- The demerger will give Bardoc shareholders the opportunity to retain their pro rata value in Edge (estimated to be \$4.5 million) in addition to receiving their proportional shareholding in St Barbara under the Scheme.
- Edge will be solely focused on driving its business and the SWW Project forward as the manganese project has outstanding potential to create more wealth for shareholders.
- The SWW Project currently competes for capital and resources with the Bardoc Gold Project and this is suppressing the projects potential and its full value is therefore not being recognised.

### **Scheme of arrangement between Bardoc Gold Limited and St Barbara Limited**

51. On 19 December 2021, Bardoc and St Barbara entered into a Scheme Implementation Deed pursuant to which St Barbara acquired all of the shares in the capital of Bardoc by way of a scheme of arrangement under Part 5.1 of the *Corporations Act 2001* (Corporations Act).

52. On 30 March 2022, the scheme of arrangement was approved by Bardoc shareholders at a General Meeting.

53. On 1 April 2022, the Supreme Court of WA made orders approving the scheme of arrangement.

54. Bardoc shareholders were entitled to receive consideration of 0.3604 ordinary St Barbara shares for each Bardoc share under the scheme of arrangement if they were registered as holders of Bardoc shares on the Scheme Record Date.

55. On the Implementation Date:

- St Barbara acquired all the issued capital of Bardoc and its wholly-owned subsidiaries, and
- Eligible Shareholders were issued 0.3604 St Barbara shares for each Bardoc share they held.

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56. Ineligible Foreign Shareholders received cash proceeds from the sale of their St Barbara shares after their proportional share of brokerage and other costs were deducted from the proceeds of the St Barbara shares sold under the Sale Facility.

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**Commissioner of Taxation**

30 November 2022

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## Appendix – Explanation

**❶** *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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### **Demerger roll-over**

57. For demerger relief 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.

58. 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)).

59. The demerger and scheme of arrangement is a single plan of restructuring for the purposes of the definition of a 'demerger' in subsection 125-70(1).

60. Bardoc and Edge were members of a demerger group with Bardoc as the head entity. The scheme of arrangement and demerger brought about a restructuring of the demerger group with Bardoc disposing of all of its shares in Edge to Bardoc shareholders. However, as Bardoc shareholders also received St Barbara shares under the restructuring, the 'nothing else' condition in paragraph 127-70(1)(c) was not satisfied. Therefore, demerger relief is not available.

### **Not a dividend**

61. A dividend, as defined in subsection 6(1) of the ITAA 1936, 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.

62. Since the distribution of Edge shares to Bardoc shareholders under the demerger was accounted for entirely by debiting Bardoc's share capital account, none of the distribution was a dividend as defined in subsection 6(1) of the ITAA 1936.

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

63. Section 45B of the ITAA 1936 is an anti-avoidance provision which applies where, having regard to the relevant circumstances of the scheme as set out in subsection 45B(8)

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of the ITAA 1936, a company provided certain capital payments to its shareholders for a more than incidental purpose of enabling a taxpayer to obtain a tax benefit.

64. Having regard to the relevant circumstances of the scheme, it cannot be concluded that it was entered into or carried out for a more than incidental purpose of enabling Bardoc shareholders to obtain a tax benefit. Accordingly, section 45B of the ITAA 1936 does not apply.

#### **Scrip for scrip roll-over**

65. 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.

66. 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:

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

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## References

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### *Legislative references:*

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  - ITAA 1936 45B
  - ITAA 1936 45B(3)(a)
  - ITAA 1936 45B(3)(b)
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### ATO references

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