

CR 2022/80 - Metals X Limited - return of capital by distribution of shares in NICO Resources Limited

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Status: **legally binding**

Class Ruling

Metals X Limited – return of capital by distribution of shares in NICO Resources Limited

📌 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 reduction of share capital by Metals X Limited (Metals X) which was satisfied by the transfer of shares in NICO Resources Limited (NICO) to the shareholders of Metals X on 13 January 2022 (Implementation Date).
2. Details of this scheme are set out in paragraphs 18 to 31 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997* (as detailed in the table in the Appendix to this Ruling), unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you:
 - were registered on the Metals X share register on 10 January 2022 (Record Date)
 - held your shares on capital account; that is, you did not hold your shares in Metals X as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)) on the Record Date.

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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 18 to 31 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

Capital gains tax consequences

Demerger relief is not available

7. A demerger, as defined in section 125-70, did not occur under the scheme. Therefore, demerger relief (being demerger roll-over under Division 125 and demerger dividend treatment under subsections 44(3) and (4) and 128B(3D)) is not available for the transfer of shares.

CGT event G1

8. CGT event G1 happened when Metals X gave you NICO shares in respect of your Metals X shares on the Implementation Date (section 104-135).

9. You made a capital gain from CGT event G1 happening in relation to your Metals X share if the amount of the reduction of share capital for each Metals X share (1.41479c) was more than the cost base of your Metals X share. If so, the capital gain is equal to the amount of the excess and the cost base and reduced cost base of your Metals X share are reduced to nil. No capital loss can be made from CGT event G1 (subsection 104-135(3)).

10. If you did not make a capital gain from CGT event G1 happening in relation to your Metals X share, you reduce the cost base and reduced cost base of your Metals X share by 1.41479c (subsection 104-135(4)).

Cost base and reduced cost base of your NICO Resources Limited shares

11. The first element of the cost base and reduced cost base of each NICO share you acquired is 51.3437c (subsections 110-25(2) and 110-55(2)).

Acquisition date of NICO Resources Limited shares

12. You acquired your NICO shares on the Implementation Date (table event number A1 (case 1) of subsection 109-5(2)).

Discount capital gain

13. If you subsequently disposed of the NICO shares you acquired on the Implementation Date and made a capital gain, you can treat it as a 'discount capital gain' under Subdivision 115-A, provided that you owned those NICO shares for at least 12

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months (excluding the Implementation Date and the date of disposal) and you satisfied the other conditions in Subdivision 115-A.

Foreign-resident shareholders of Metals X Limited

14. If you are a foreign resident, any capital gain you make from CGT event G1 is disregarded unless your Metals X share is taxable Australian property (section 855-10).

15. Your Metals X share is taxable Australian property if it:

- is an indirect Australian real property interest (table item 2 of section 855-15)
- was used by you (the foreign resident) at any time in carrying on a business through a permanent establishment in Australia (table item 3 of section 855-15), or
- is a CGT asset that is 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 of section 855-15)).

Not assessable dividend

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

Section 45B does not apply to deem an assessable dividend

17. The Commissioner will not make a determination under paragraph 45B(3)(b) that section 45C applies to the whole, or any part, of the capital benefit provided to you by the transfer of NICO shares on the Implementation Date. This is because the purpose condition in paragraph 45B(2)(c) was not satisfied. Therefore, you will not include any part of the amount of the capital benefit (the market value of the NICO shares) in your assessable income under subsection 44(1).

Scheme

18. 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.

Metals X Limited

19. Metals X is an Australian-resident company which was incorporated in Australia on 23 July 2004. Its shares were listed on the Australian Securities Exchange on 26 August 2004.

20. Metals X's activities are the exploration and development of mineral resources, with a primary focus on tin (through the company's interests in the Renison Tin Mine in Tasmania) and, until recently, nickel (through the Wingellina Nickel-Cobalt Project located in Western Australia and the Claude Hills Project located in South Australia).

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21. Metals X announced on 25 May 2021 that it had signed a binding terms sheet with NICO, a company incorporated in Australia on 29 April 2021, for the sale and spin-out of its nickel asset portfolio. The terms sheet and subsequent Share Sale Agreement provided for the sale of all the shares in Metals Exploration Pty Ltd (its wholly-owned subsidiary holding the nickel assets) in consideration for the issue of 25 million NICO Shares (Consideration Shares) to Metals X and the issue to Metals X of 25 million options to subscribe for shares in NICO. This was to be done in conjunction with NICO undertaking an initial public offering of its shares and applying for listing on the Australian Securities Exchange. The Consideration Shares were to be transferred to Metals X shareholders in conjunction with a return of capital.

22. Immediately before the Implementation Date, Metals X had 907,266,067 fully-paid ordinary shares and approximately \$332,406,000 credited to its share capital account.

Return of capital by distribution of NICO Resources Limited shares

23. The share transfer was undertaken by a reduction of share capital under section 256B of the *Corporations Act 2001*.

24. On 15 December 2021, shareholders of Metals X approved an ordinary resolution under section 256C of the *Corporations Act 2001* to reduce the share capital of Metals X as an equal reduction, by an amount equal to the market value of all Metals X's shares in NICO.

25. The date for determining the entitlement of the shareholders of Metals X to receive NICO shares was the Record Date.

26. On the Implementation Date, Metals X transferred 25 million of its shares in NICO to the shareholders of Metals X in satisfaction of the shareholders' entitlement to the return of capital.

27. Each Metals X shareholder received one NICO share for every 36.29 Metals X shares they held on the Record Date.

28. As a result of the return of capital, Metals X shareholders owned shares in both Metals X and NICO.

29. Metals X debited its share capital account by \$12,835,925.

30. The reduction of share capital equated to 1.41479c for each share in Metals X.

Other matters

31. Immediately before the Implementation Date, Metals X's share capital account (as defined in section 975-300) was not tainted (within the meaning of Division 197).

Commissioner of Taxation

7 September 2022

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Appendix – Legislative provisions

32. 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>	paragraph 45B(2)(c)
<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>	subsection 128B(3D)
<i>Income Tax Assessment Act 1997</i>	section 104-135
<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>	subsection 109-5(2)
<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>	Subdivision 115-A
<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>	Division 197
<i>Income Tax Assessment Act 1997</i>	Division 230
<i>Income Tax Assessment Act 1997</i>	section 855-10
<i>Income Tax Assessment Act 1997</i>	section 855-15
<i>Income Tax Assessment Act 1997</i>	section 975-300
<i>Income Tax Assessment Act 1997</i>	section 977-50
<i>Income Tax Assessment Act 1997</i>	subsection 995-1(1)

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References

Legislative references:

- Corporations Act 2001 256B

- Corporations Act 2001 256C

ATO references

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shares
Income tax ~~ Capital gains tax ~~ Cost base and reduced cost base
Income tax ~~ Capital management ~~ Anti avoidance rules ~~ Section 45B

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