


CR 2023/69 - Newcrest Mining Limited - employee share scheme - shares disposed of under scheme of arrangement

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Status: **legally binding**

Class Ruling

Newcrest Mining Limited – employee share scheme – shares disposed of under scheme of arrangement

📌 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 for employees of Newcrest Mining Limited (Newcrest) and its subsidiaries who participated in the Employee Share Acquisition Plan (ESAP) to acquire ordinary shares in Newcrest (ESAP Shares) which were subsequently acquired by Newmont Overseas Holdings Pty. Limited (Newmont Overseas) under a Scheme of Arrangement on 6 November 2023 (the Scheme Implementation Date).
2. Details of this scheme are set out in paragraphs 8 to 18 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:
 - acquired ESAP Shares on 23 November 2020, 22 November 2021 or 22 November 2022, which you held at all times until the Scheme Implementation Date
 - were entitled to reduce the amount included in your assessable income in accordance with section 83A-35 (with the exception of the condition in subsection 83A-45(4) – minimum holding period) when you acquired the shares, and

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- were employed by Newcrest or a 'subsidiary' (as defined in the *Corporations Act 2001*) of Newcrest (collectively referred to as the Newcrest Group) at all times from the date you acquired the shares until the Scheme Implementation Date.

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 8 to 18 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 2023 to 30 June 2024.

Ruling

7. The Commissioner will allow the minimum holding period to end at the earlier time of 6 November 2023 for the ESAP Shares you acquired on 23 November 2020, 22 November 2021 or 22 November 2022 (subsection 83A-45(5)).

Scheme

8. 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.

Newcrest Mining Limited

9. Newcrest is a gold mining company that is incorporated in Australia. It has one class of shares, being ordinary shares, that before the Scheme Implementation Date were listed on the Australian Securities Exchange, PNGX Markets Limited (PNGX) and the Toronto Stock Exchange. It has operating mines in Australia, Canada and Papua New Guinea (PNG).

Newmont Corporation and Newmont Overseas

10. Newmont Corporation (Newmont) is a US-incorporated gold company and a producer of copper, silver, zinc and lead. Newmont's shares have traded on the New York Stock Exchange since 1925. It has a portfolio of assets in North America, South America, Australia and Africa.

11. Newmont Overseas is a company that is incorporated in Australia. It is directly wholly owned by Newmont International Holdings Pty Ltd, which is directly wholly owned by Newmont.

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Scheme implementation deed

12. On 15 May 2023, Newmont, Newmont Overseas and Newcrest entered into a scheme implementation deed (SID) under which they agreed Newmont Overseas would acquire all of the ordinary shares in Newcrest by means of a Scheme of Arrangement under Part 5.1 of the *Corporations Act 2001* between Newcrest and the Scheme Shareholders (being those who were Newcrest shareholders at 7:00 pm Melbourne time on 30 October 2023 (the Scheme Record Date)).

13. On 4 September 2023, the parties varied the SID by entering into a Letter Deed. The Newcrest share register was partitioned into 3, comprising the Canadian Register, the Australian Register and the PNG Register. Under clause 4.2 of the SID, each Scheme Shareholder was entitled to receive the Scheme Consideration (as varied by the Letter Deed) on the Scheme Implementation Date in respect of each Newcrest share held at the Scheme Record Date, such that Scheme Shareholders who held Newcrest shares on the:

- Canadian Register received 0.400 Newmont shares
- Australian Register received 0.400 Newmont CDIs, and
- PNG Register received 0.400 Newmont PDIs.

14. A Newmont CDI is a unit of beneficial ownership in a Newmont share registered in the name of CHESSE Depository Nominees Pty Limited. Newmont CDIs are listed on the Australian Securities Exchange. A Newmont PDI is a unit of beneficial ownership in a Newmont share that is held on trust by PNGCSD Nominees Limited, the depository nominee appointed under the PNGX Business Rules. Newmont PDIs are listed on the PNGX.

Employee share acquisition plan

15. The ESAP is a broad-based employee share scheme governed by the Equity Incentive Plan Rules (Plan Rules). Newcrest made annual offers to employees whereby they could elect to receive up to \$1,000 of ESAP Shares. These offers were made for no consideration and on a non-discriminatory basis to over 75% of the permanent and Australian resident employees of Newcrest who had completed more than 3 years of service.

16. The number of ESAP Shares allocated under each offer to each employee (Participant) was calculated as \$1,000 divided by the 'allocation price', rounded down to the nearest whole number.

17. Rule 4.3 of the Plan Rules provided:

- Subdivision 83A-B applied to offers made to Participants to acquire ESAP Shares.
- ESAP Shares allocated to a Participant would be subject to a restriction period from the date that the shares were allocated until the earlier of:
 - the date that is 3 years from the date of allocation (or such other period that may be required under Subdivision 83A-B, including such earlier time as the Commissioner of Taxation allows in accordance with subsection 83A-45(5)), and
 - the date on which the Participant ceases to be employed by the Newcrest group.
- ESAP Shares allocated to a Participant could not be forfeited.

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18. Shares acquired under the ESAP were held by the trustee of the Newcrest Employee Share Trust for the benefit of the Participants. The Participants were entitled to receive income deriving from dividends or other distributions or entitlements made in respect of the shares held by the trustee for their benefit under the ESAP, and could direct the trustee with respect to the exercise of any voting rights attaching to the shares.

Commissioner of Taxation

13 December 2023

Status: **not legally binding**

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.*

When the minimum holding period ends

19. One of the conditions which allowed you to reduce the amount included in your assessable income when you acquired the ESAP Shares was that rule 4.3 of the Plan Rules restricted the shares being disposed of within the minimum holding period of 3 years or until you ceased employment with the Newcrest Group (sections 83A-35 and 83A-45).

20. However, the Commissioner can allow the minimum holding period of 3 years to end earlier if the Commissioner is satisfied that:

- Newcrest intended that the requirements as set out in subsection 83A-45(4) would apply to the ESAP Shares during the 3 years after acquisition of those shares (subparagraph 83A-45(5)(a)(i)), and
- at the earlier time that the Commissioner allows, all Newcrest shares were disposed of under a particular scheme (subparagraph 83A-45(5)(a)(ii)).

21. The Commissioner is satisfied that Newcrest intended that during the 3 years after the acquisition of the ESAP Shares, no Participants would be permitted to dispose of their ESAP Shares during their minimum holding period.

22. On the Scheme Implementation Date, all Newcrest shares were disposed of, including the ESAP Shares acquired under the ESAP.

23. Therefore, the Commissioner is satisfied that the requirements of subparagraphs 83A-45(5)(a)(i) and (ii) are met and will allow the minimum holding period to end at the earlier time of 6 November 2023.

24. Consequently, you remain entitled to reduce the amount included in your assessable income in accordance with section 83A-35.

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References

Legislative references:

- ITAA 1997 Subdiv 83A-B
- ITAA 1997 83A-35
- ITAA 1997 83A-45
- ITAA 1997 83A-45(4)
- ITAA 1997 83A-45(5)
- ITAA 1997 83A-45(5)(a)(i)
- ITAA 1997 83A-45(5)(a)(ii)
- ITAA 1997 Div 230
- Corporations Act 2001 Pt 5.1

ATO references

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