


CR 2024/70 - Kalamazoo Resources Limited - return of capital by in specie distribution of shares in Kali Metals Limited

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Class Ruling

Kalamazoo Resources Limited – return of capital by in specie distribution of shares in Kali Metals 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 for shareholders of Kalamazoo Resources Limited (Kalamazoo), who received from Kalamazoo a pro rata in specie distribution (Distribution) of 25% of ordinary shares in Kali Metals Limited (Kali Metals) on 3 January 2024 (Implementation Date).
2. Details of the scheme, of which the Distribution is part, are set out in paragraphs 22 to 44 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 the Appendix of this Ruling), unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you:
 - were registered as a holder of ordinary shares in Kalamazoo at 2:00 pm Australian Western Standard Time on 22 December 2023 (Record Date)
 - were a resident of Australia as defined in subsection 6(1)
 - held your Kalamazoo shares on capital account – that is, your Kalamazoo shares were neither held as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)), and

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- did not acquire your Kalamazoo shares under an employee share scheme (as defined in section 83A-10).

5. This Ruling does not apply to anyone who is subject to the taxation of financial arrangements rules in Division 230.

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

Return of capital is not a dividend

7. The return of capital you received in the form of an in specie distribution of shares in Kali Metals is not a dividend as defined in subsection 6(1). Therefore, it is not included in assessable income under subsection 44(1).

8. The return of capital you received in the form of an in specie distribution of shares in Kali Metals is not assessable as ordinary income under section 6-5.

Sections 45A, 45B and 45C do not apply

9. The Commissioner will not make a determination under subsection 45A(2) that section 45C applies to the whole, or any part, of the return of capital you received in the form of an in specie distribution of shares in Kali Metals. This is because there is no streaming of capital benefits and dividends by Kalamazoo to its shareholders.

10. The Commissioner will not make a determination under paragraph 45B(3)(b) that section 45C applies to the whole, or any part, of the return of capital you received in the form of an in specie distribution of shares in Kali Metals. This is because, having regard to the relevant circumstances of the scheme outlined in this Ruling, there is no more than an incidental purpose of enabling a taxpayer to obtain a tax benefit (as defined in subsection 45B(9)).

Capital gains tax consequences

Demerger roll-over relief is not available

11. Demerger relief (being demerger roll-over pursuant to Division 125) is not available as the requirements under subsection 125-70(1) were not satisfied. This is because the conditions in paragraphs 125-70(1)(b), (d) and (h) were not satisfied.

CGT event G1

12. CGT event G1 happened to you on the Implementation Date when you received the return of capital in the form of in specie distribution of shares in Kali Metals in respect of each Kalamazoo share you owned on the Record Date and continued to own on the Implementation Date (section 104-135).

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13. To work out the return of capital amount for each Kalamazoo share you owned for the purposes of CGT event G1, you multiply the number of Kali Metals shares you received on the Implementation Date by \$0.4233 and divide the result by the number of Kalamazoo shares you owned on the Record Date.

14. You made a capital gain from CGT event G1 happening if the return of capital was more than the cost base of your Kalamazoo share. The amount of the capital gain is equal to the excess. If you made a capital gain, the cost base and reduced cost base of the Kalamazoo share is reduced to nil (subsection 104-135(3)).

15. You cannot make a capital loss when CGT event G1 happens (Note 1 to subsection 104-135(3)).

16. If you did not make a capital gain, the cost base and reduced cost base of the Kalamazoo share is reduced by the amount of the return of capital (subsection 104-135(4)).

CGT event C2

17. CGT event C2 happened to you on the Implementation Date when you received an amount in the form of an in specie distribution of shares in Kali Metals in respect of each Kalamazoo share you owned on the Record Date but ceased to own before the Implementation Date (section 104-25).

18. That is, CGT event C2 happened in respect of the right you acquired to receive the corresponding Kali Metals shares as a result of your ownership of those Kalamazoo shares on the Record Date. This is because the right ended by being discharged or satisfied when you received those Kali Metals shares (paragraph 104-25(1)(b)).

19. The capital proceeds from the ending of the right were the market value of the Kali Metals shares you received on the Implementation Date, worked out on that date, that is, \$0.4233 per Kali Metals share (subsection 116-20(1)).

20. Therefore, you made a capital gain when CGT event C2 happened equal to the amount mentioned in paragraph 19 of this Ruling as the cost base is nil because you did not pay, or were not required to pay, for the right to receive a Kali Metals share. The cost base of the right does not include the cost base or reduced cost base of the Kalamazoo shares previously owned by you.

Discount capital gain

21. You can treat a capital gain made when CGT event G1 or CGT event C2 happened in respect of the return of capital as a discount capital gain if you acquired your Kalamazoo share on or before 2 January 2023, which was at least 12 months before the Implementation Date (subsection 115-25(1)), provided the other conditions in Subdivision 115-A are satisfied.

Scheme

22. 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.

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Kalamazoo Resources Limited

23. Kalamazoo is an Australian-resident public company limited by shares and listed on the Australian Securities Exchange (ASX) and the Frankfurt Stock Exchange. It was incorporated in March 2011 as an Australian proprietary company, and subsequently became a public company and listed on the ASX on 16 January 2017. It undertook gold and lithium exploration on various projects located in Western Australia, New South Wales and Victoria.

Kali Metals Limited

24. Kali Metals was incorporated on 31 August 2021 with 100 shares and was a wholly owned subsidiary of Kalamazoo.

Announcement to spin out Kalamazoo Resources Limited's Australian lithium projects

25. On 8 May 2023, Kalamazoo announced that it would 'spin out' its Australian lithium projects (being the Marble Bar Project, the DOM's Hill Project and the Pear Creek Project; collectively the 'Spin-Out Projects') into a new exploration company via a demerger and concurrent Initial Public Offering (IPO) of Kali Metals, which was to be listed on the ASX.

26. Under the IPO, Kalamazoo shareholders would have a 'priority entitlement' to subscribe for shares in Kali Metals. In addition, Kalamazoo would distribute 25% of its shares in Kali Metals to Kalamazoo's shareholders.

27. Kalamazoo also announced that it had entered into an agreement with Karora Resources Inc. (Karora), a Canadian gold mining company listed on the Toronto Stock Exchange, whereby shortly before the IPO, the Karora Group (consisting of Karora and each of Avoca Mining Pty Ltd, Avoca Resources Pty Ltd, Polar Metals Pty Ltd and Corona Minerals Pty Ltd) would dispose of its Higginsville Lithium Project to Kali Metals in return for a substantial shareholding.

Pre-Initial Public Offering agreements

28. To raise funds for the IPO, Kali Metals entered into unsecured loan arrangements with both Kalamazoo and the Karora Group; and into arrangements with Kalamazoo, the Karora Group and sophisticated and professional investors to provide seed capital in return for shares. It also entered into the necessary tenement sale agreements and share sale agreements under which the Spin-Out Projects and the Higginsville Lithium Project would be transferred from Kalamazoo and the Karora Group (respectively) to Kali Metals in exchange for shares.

Initial Public Offering

29. On 3 November 2023, Kali Metals lodged a prospectus in connection with its IPO for between 48 million and 60 million shares at \$0.25 per share. The IPO opened on 13 November 2023 and comprised a retail offer and an institutional offer.

30. No general public offer of shares was made under the IPO. Members of the public could only apply for shares through a broker.

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Implementation of the asset transfer to Kali Metals Limited, return of capital by in specie distribution of shares

31. On 18 December 2023, a General Meeting was held where Kalamazoo shareholders approved the following resolutions:

- the disposal of the Spin-Out Projects to Kali Metals
- a pro rata distribution to all eligible holders of Kalamazoo shares at the Record Date (being 2:00 pm Australian Western Standard Time on 22 December 2023)
- a corresponding equal reduction in the issued share capital of Kalamazoo by the market value of the Distribution (less any dividend component) under sections 256B and 256C of the *Corporations Act 2001*, and
- certain changes to Kalamazoo's Constitution to provide for, among other things, a reduction in capital to be provided to ineligible shareholders in the form of cash.

32. The effective date for the Distribution was 19 December 2023, and the last day for Kalamazoo shares trading cum the Distribution was 20 December 2023.

33. On 21 December 2023, the transfer of the Spin-Out Projects to Kali Metals was completed. On 22 December 2023, Kali Metals issued shares to Kalamazoo, the Karora Group and professional and sophisticated investors under the arrangements and agreements described in paragraph 28 of this Ruling. On 29 December 2023, Kali Metals completed its acquisition of the Higginsville Lithium Project.

34. On 2 January 2024, Kali Metals issued 60 million shares to investors under the IPO.

35. On 3 January 2024, Kalamazoo disposed of 9,715,750 of its holding of 38,863,000 Kali Metals shares to its shareholders under the Distribution.

36. As a result, eligible shareholders received 1 Kali Metals share for approximately every 17.64 Kalamazoo shares. Any fractions of entitlement were rounded down to the next whole number with any residual Kali Metals shares issued to each eligible shareholder starting with the smallest Kalamazoo shareholding as at the Record Date, until there are no longer residual Kali Metals Shares held by Kalamazoo.

37. Ineligible shareholders received the net proceeds of the sale by a Sale Agent of the Kali Metals shares they were entitled to.

38. On 4 January 2024, Kali Metals was listed on the ASX and the shares in Kali Metals began trading on 8 January 2024.

Other matters

39. On the Implementation Date, Kalamazoo's share capital account (as defined in section 975-300) was not tainted (within the meaning of Division 197), and its franking account balance was nil.

40. On the Implementation Date, Kalamazoo had 171,369,472 ordinary shares on issue. The closing price of Kalamazoo shares on this date was \$0.125.

41. On 30 June 2023, Kalamazoo's top 20 shareholders held 60.14% of Kalamazoo's quoted ordinary shares between them. Four shareholdings exceeded 5% of which one exceeded 10%. Approximately 0.71% were held by foreign residents in January 2024.

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42. On 31 December 2023, Kalamazoo had issued capital of \$31,184,600. On the Implementation Date, Kalamazoo debited its share capital account by \$0.4233 per Kali Metals share it disposed of under the Distribution. We accept that the market value for each Kali Metals share on the Implementation Date was \$0.4233.

43. Prior to the Distribution, Kalamazoo had never paid any dividends nor undertaken any share buy-backs. Current year profits, where present, have been appropriated against accumulated losses.

44. Following the IPO and Distribution, Kali Metals had 144,146,345 ordinary shares on issue, of which Kalamazoo held approximately 20.22% and Karora Resources Pty Ltd held approximately 22.10%.

Commissioner of Taxation

30 October 2024

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Appendix – Legislative provisions

45. This paragraph sets out the details of the provisions of the Income Tax Assessment Acts ruled upon or referenced in this Ruling.

Table 1: Provisions of the *Income Tax Assessment Act 1936 and the Income Tax Assessment 1997* 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>	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>	section 45B(9)
<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 1997</i>	section 6-5
<i>Income Tax Assessment Act 1997</i>	section 83A-10
<i>Income Tax Assessment Act 1997</i>	section 104-25
<i>Income Tax Assessment Act 1997</i>	paragraph 104-25(1)(b)
<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>	Subdivision 115-A
<i>Income Tax Assessment Act 1997</i>	subsection 115-25(1)
<i>Income Tax Assessment Act 1997</i>	subsection 116-20(1)
<i>Income Tax Assessment Act 1997</i>	Division 125
<i>Income Tax Assessment Act 1997</i>	subsection 125-70(1)
<i>Income Tax Assessment Act 1997</i>	paragraph 125-70(1)(b)
<i>Income Tax Assessment Act 1997</i>	paragraph 125-70(1)(d)
<i>Income Tax Assessment Act 1997</i>	paragraph 125-70(1)(h)
<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 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 256C
- Corporations Act 2001 256B

ATO references

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