

CR 2021/72 - Neometals Ltd - demerger of Widgie Nickel Limited



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Class Ruling

Neometals Ltd – demerger of Widgie Nickel 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.

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What this Ruling is about

1. This Ruling sets out the income tax consequences of the demerger of Widgie Nickel Limited (Widgie) by Neometals Ltd (NMT), which was implemented on 26 August 2021 (Implementation Date).
2. Full details of the demerger are set out in paragraphs 25 to 49 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 NMT and you:
 - were registered on the NMT share register on 24 August 2021 (Record Date)
 - held your NMT shares on capital account on the Record Date; that is, you did not hold your shares in NMT as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)) on the Record 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 25 to 49 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**

7. A demerger, as defined in section 125-70, happened to the NMT demerger group (which included NMT and Widgie) under the scheme described in paragraphs 25 to 49 of this Ruling.

Capital gains tax consequences**CGT event G1**

8. CGT event G1 happened at the time you received, or were taken to have received, Widgie shares as payment of a capital reduction amount on your NMT shares (section 104-135).
9. You will make a capital gain from CGT event G1 happening if the capital reduction amount for each NMT share of 1.79 cents was more than the cost base of your NMT share. The capital gain is equal to the amount of the excess.
10. No capital loss can be made from CGT event G1 (Note 1 to subsection 104-135(3)).

Australian-resident shareholders*Demerger roll-over is available*

11. You can choose to obtain demerger roll-over under subsection 125-55(1) for your NMT shares.

Consequences of choosing demerger roll-over

12. If you choose demerger roll-over for your NMT shares:
- any capital gain you made when CGT event G1 happened to your NMT shares under the demerger is disregarded (subsection 125-80(1))
 - you must recalculate the first element of the cost base and reduced cost base of your NMT shares, and calculate the first element of the cost base and reduced cost base of the corresponding Widgie shares you acquired under the demerger (subsection 125-80(2)) – see paragraphs 14 to 16 of this Ruling.

Consequences of not choosing demerger rollover

13. If you do not choose demerger rollover for your NMT shares, you cannot disregard any capital gain you made when CGT event G1 happened to your NMT shares under the demerger and you must:
- recalculate the first element of the cost base and reduced cost base of your NMT shares, and

- calculate the first element of the cost base and reduced cost base of the corresponding Widgie shares you acquired under the demerger – see paragraphs 14 to 16 of this Ruling.

New cost base and reduced cost base of your Neometals Ltd and Widgie Nickel Limited shares

14. The first element of the cost base and reduced cost base of each NMT share and corresponding Widgie share is worked out by:

- taking the total of the cost bases of your NMT shares just before the demerger, and
- apportioning that total between your NMT shares and your Widgie shares 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 NMT shares and the Widgie 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:

- 93.69% of the total of the cost bases of the NMT shares just before the demerger to the NMT shares, and
- 6.31% of the total of the cost bases of the NMT shares just before the demerger to the corresponding Widgie shares.

Acquisition date of the Widgie Nickel Limited shares for the purpose of making a discount capital gain

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

Foreign-resident shareholders

18. If you are not a resident of Australia (under subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936)), any capital gain from CGT event G1 happening to your NMT share is disregarded unless the NMT share was taxable Australian property (section 855-10).

19. Your NMT share would have been taxable Australian property if it was:

- used by you in carrying on a business through a permanent establishment in Australia (table item 3 of section 855-15), or
- a CGT asset covered by subsection 104-165(3) (choosing to disregard a gain or loss on ceasing to be an Australian resident (table item 5 of section 855-15)).

20. If your NMT share was taxable Australian property, you may be able to choose to obtain demerger roll-over in respect of any capital gain made under CGT event G1 if the Widgie share you acquired under the demerger was also taxable Australian property just after you acquired it (subsection 125-55(2)).

Widgie Nickel Limited shares not included in assessable income

21. No part of the value of a Widgie share transferred to you under the demerger will be included in your assessable income under section 44 of the ITAA 1936. Although the part of the value of a Widgie share that is not debited to the share capital account of NMT 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 foreign-resident shareholders

22. No part of the value of a Widgie share transferred to you under the demerger will be subject to dividend withholding tax (subsection 128B(3D) of the ITAA 1936).

The anti-avoidance provisions in sections 45B, 45BA and 45C of the ITAA 1936 will not apply to deem an assessable dividend

23. The Commissioner will not make a determination under subsection 45A(2) of the ITAA 1936 that section 45C of the ITAA 1936 applies to the whole, or any part, of the capital benefits provided to you under the demerger. This is because the circumstances of the demerger do not indicate that there was streaming of capital benefits to some shareholders and dividends to other shareholders.

24. As the purpose test 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

25. 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.

Neometals Ltd

26. NMT is an Australian-resident company incorporated on 20 December 2001 and whose shares were listed on the Australian Securities Exchange (ASX) on 10 July 2002.

27. Immediately before the demerger, NMT had on issue:

- 548,376,396 fully paid ordinary shares, and
- 12,991,005 Performance Rights Share Options (which represented less than 2.37% by number of the total ownership interests in NMT).

28. There were no other ownership interests (as defined in subsection 125-60(1)) in NMT.

29. Immediately before the demerger, NMT's share capital account had a credit balance of \$155,367,514.

30. As at 30 June 2021, NMT had accumulated losses of \$16,908,128.
31. NMT shareholders consist of Australian residents and foreign residents (2.24% as at 30 June 2021).
32. No foreign resident NMT shareholders held a non-portfolio interest (within the meaning of section 960-195) in NMT throughout a 12-month period in the 24 months immediately before and on the Implementation Date.
33. NMT does not have a dividend policy, but since incorporation NMT has paid dividends in the income years ended 30 June 2016 to 30 June 2020.

Widgie Nickel Limited

34. Widgie is an Australian-resident company that was incorporated on 15 March 2021.
35. Widgie holds a number of leases and mineral rights to mine nickel at Mt Edwards in Western Australia.

The demerger of Widgie Nickel Limited

36. On 20 July 2021, NMT announced to the ASX the proposed demerger of Widgie.
37. On 18 August 2021, NMT shareholders voted at the Extraordinary General Meeting to approve a resolution to reduce the share capital of NMT under sections 256B and 256C of the *Corporations Act 2001*. The date for determining the entitlement of NMT shareholders to receive Widgie shares was the Record Date.
38. On the Implementation Date, NMT satisfied the capital reduction by transferring all the ordinary shares in Widgie to NMT shareholders in proportion to their shareholdings in NMT. NMT shareholders received one Widgie ordinary share for approximately every 4.218 NMT ordinary shares they held at the Record Date for the demerger, and nothing else.
39. After the demerger NMT no longer held any shares in Widgie. All Widgie shares were distributed to NMT shareholders (subject to the sale facility).
40. As a result of the demerger, NMT shareholders owned shares in both NMT and Widgie.

Accounting treatment

41. NMT accounted for the demerger by:
- debiting its share capital account by \$9,803,228 (the capital reduction amount), and
 - debiting its reserves account by \$23,567,772 (the demerger dividend).
42. The demerger dividend was calculated as the difference between the market value of the Widgie shares and the capital reduction amount.

Reasons for the demerger

43. The reasons for the demerger were to:
- remove the time spent by NMT management managing the Lithium and Nickel Assets and enable the appointment of directors and executives with experience in the lithium and nickel sector

- enable NMT management to focus efforts on its core business assets
- achieve a corporate structure that allows greater opportunity for the true value of the Lithium and Nickel Assets to be realised
- provide NMT shareholders with greater flexibility to deal with their NMT and Widgie shares.

Sale facility for some foreign shareholders

44. Under a sale facility for shares held by certain ineligible overseas shareholders of NMT, the Widgie shares they would have otherwise received were sold on-market by a nominee with the sale proceeds remitted to those shareholders.

Other matters

45. NMT's share capital account was not tainted (within the meaning of Division 197).

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

47. Just after the demerger, CGT assets owned by Widgie 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).

48. NMT Performance Rights Share Options were issued in accordance with Division 83A and are interests to which Subdivision 83A-C applies.

49. Widgie was listed on the ASX on 22 September 2021 and raised share capital of \$24 million (before costs) through a fully underwritten non-renounceable pro-rata entitlement offer of 120 million Widgie shares at an issue price of \$0.20 per Widgie share.

References*Previous draft:*

Not previously issued as a draft

Legislative references:

- ITAA 1997 104-135(3)
- ITAA 1997 104-165(3)
- ITAA 1997 115-30(1)
- ITAA 1997 125-55(1)
- ITAA 1997 125-55(2)
- ITAA 1997 125-60(1)
- ITAA 1997 125-70
- ITAA 1997 125-80(1)
- ITAA 1997 125-80(2)
- ITAA 1997 125-80(3)
- ITAA 1997 Div 230
- ITAA 1997 855-10
- ITAA 1997 855-15
- ITAA 1997 960-195
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- Corporations Act 2001 256B
- Corporations Act 2001 256C
- TAA 1953
- ITAA 1936 6(1)
- ITAA 1936 44
- ITAA 1936 44(2)
- ITAA 1936 44(3)
- ITAA 1936 44(4)
- ITAA 1936 44(5)
- ITAA 1936 45A(2)
- ITAA 1936 45B
- ITAA 1936 45B(2)(c)
- ITAA 1936 45B(3)(a)
- ITAA 1936 45B(3)(b)
- ITAA 1936 45BA
- ITAA 1936 45C
- ITAA 1936 128B(3D)
- ITAA 1997 Div 83A
- ITAA 1997 Subdiv 83A-C
- ITAA 1997 104-135

ATO references

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Income tax ~~ Capital gains tax ~~ CGT events ~~ CGT events G1 to G3 – shares

Income tax ~~ Capital gains tax ~~ Cost base and reduced cost base

Income tax ~~ Capital gains tax ~~ Discount capital gains

Income tax ~~ Capital gains tax ~~ Exemptions ~~ Other

Income tax ~~ Capital gains tax ~~ Rollovers ~~ Demergers – Division 125-C

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

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

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