


CR 2022/33 - Magmatic Resources Limited - return of capital by distribution of shares in Australian Gold and Copper Ltd

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Status: **legally binding**

Class Ruling

Magmatic Resources Limited – return of capital by distribution of shares in Australian Gold and Copper Ltd

📌 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 reduction of share capital by Magmatic Resources Limited (Magmatic) which was satisfied by the transfer of shares in Australian Gold and Copper Ltd (AGC) to the shareholders of Magmatic on 31 December 2020 (the Implementation Date).
2. Full details of this scheme are set out in paragraphs 23 to 46 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 Magmatic and you:
 - were registered on the Magmatic share register on 29 December 2020 (the Record Date), and
 - did not hold your shares in Magmatic as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)) on the Record Date; that is, you held your shares on capital account.
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 46 of this Ruling.

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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 2020 to 30 June 2021.

Ruling

Capital gains tax consequences

Demerger relief is not available

7. Magmatic's transfer of shares in AGC to the shareholders of Magmatic does not qualify as a 'demerger' as defined in subsection 125-70(1). This means that demerger relief (being demerger roll-over under Division 125 and demerger dividend treatment under subsections 44(3) and (4) of the *Income Tax Assessment Act 1936* (ITAA 1936) is not available for the transfer of shares. Specifically, the call options issued by Magmatic did not satisfy any of the exceptions in section 125-75, causing a failure of the proportionality requirements in paragraph 125-70(1)(h) and subsection 125-70(2).

CGT event G1

8. CGT event G1 happened when you were paid an amount by Magmatic in respect of your Magmatic shares by way of the transfer to you of AGC shares on the Implementation Date (section 104-135).

9. You will make a capital gain from CGT event G1 happening if the amount of the reduction of share capital for each Magmatic share (2.78 cents) is more than the cost base of the Magmatic share. If so, the capital gain is equal to the amount of the excess. No capital loss can be made from CGT event G1 (subsection 104-135(3)).

10. If you do not make a capital gain from CGT event G1, you reduce the cost base and reduced cost base of each of your Magmatic shares by 2.78 cents (subsection 104-135(4)).

CGT event C2

11. CGT event C2 happened when Magmatic transferred AGC shares to you in respect of Magmatic shares you owned on the Record Date but ceased to own before the Implementation Date (section 104-25).

12. CGT event C2 happened because, by ceasing to own a Magmatic share after the Record Date but before the Implementation Date, you retained the right to receive the reduction of share capital (which is a separate CGT asset from the share in Magmatic). When the reduction of share capital was paid by the transfer of shares in AGC to you, the right to receive the reduction of share capital (being an intangible CGT asset) ended by the right being discharged or satisfied.

13. You will make a capital gain equal to the amount of the reduction of share capital (2.78 cents per share).

Status: **legally binding**

Cost base and reduced cost base of your Australian Gold and Copper Ltd shares

14. The first element of the cost base and reduced cost base of each AGC share you acquired is 20.016 cents (subsections 110-25(2) and 110-55(2)).

Acquisition date of Australian Gold and Copper Ltd shares

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

16. If you subsequently dispose of the AGC shares you acquired on the Implementation Date and make a capital gain, you can treat it as a 'discount capital gain' under Subdivision 115-A, provided that you owned those AGC shares for at least 12 months (excluding the Implementation Date and the date of disposal) and you satisfied the other conditions in Subdivision 115-A.

Foreign-resident shareholders of Magmatic Resources Limited

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

18. If you are a foreign resident, the capital gain you make from CGT event C2 is disregarded unless your right to receive the reduction of share capital is taxable Australian property (section 855-10).

19. Your Magmatic share or right to receive the reduction of share capital is taxable Australian property if it:

- 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 an assessable dividend

20. No part of the value of an AGC share transferred to you on the Implementation Date will be included in your assessable income under subsection 44(1) of the ITAA 1936. This is because all the value of the AGC shares was debited to the share capital account of Magmatic, meaning that it is not a 'dividend' under subsection 6(1) of the ITAA 1936.

Specific anti-avoidance provisions do not apply to deem an assessable dividend

21. The Commissioner will not make a determination under subsection 45A(2) of the ITAA 1936 that section 45C of the ITAA 1936 applies in relation to the whole, or a part, of the capital benefits provided to you by the transfer of AGC shares on the Implementation Date. This is because Magmatic did not stream the provision of capital benefits and the payment of dividends to its shareholders as required by subsection 45A(1) of the ITAA 1936. Therefore, you will not include any part of the amount of the capital benefit (the amount of share capital distributed to you by Magmatic) in your assessable income under subsection 44(1) of the ITAA 1936.

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22. The Commissioner will not make a determination under 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 by the transfer of AGC shares on the Implementation Date. This is because the purpose condition in paragraph 45B(2)(c) of the ITAA 1936 was not satisfied. Therefore, you will not include any part of the amount of the capital benefit (the market value of the AGC shares) in your assessable income under subsection 44(1) of the ITAA 1936.

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.

Magmatic Resources Limited

24. Magmatic is a company that was incorporated in Australia on 28 October 2016. Magmatic has been listed on the Australian Securities Exchange since 19 May 2017.

25. Magmatic is the head company of an income tax consolidated group under Part 3-90.

26. Magmatic is an exploration company whose primary focus is on gold and gold-copper porphyry projects located in the East Lachlan region of New South Wales in Australia.

27. Immediately before the Implementation Date, Magmatic had 175,409,217 fully-paid ordinary shares and \$15,326,379 credited to its share capital account. Magmatic also had issued 73,741,789 call options.

28. The directors of Magmatic formed the opinion that it would be better to separate the gold projects that had open pit potential and an enhanced prospect of exploration success, which were located in the Central Lachlan region of New South Wales.

29. To achieve this separation, Magmatic transferred mining assets to AGC (a company incorporated in Australia and a wholly-owned subsidiary of Magmatic) in exchange for the issue of new shares in AGC. An unrelated company also transferred mining assets to AGC in exchange for the issue of new shares in AGC.

Implementing the separation

30. On 18 September 2020, Magmatic announced that it would transfer shares in AGC to the shareholders of Magmatic.

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

32. On 18 December 2020, the shareholders of Magmatic approved an ordinary resolution under section 256C of the *Corporations Act 2001* to reduce the share capital of Magmatic as an equal reduction, by an amount equal to the market value of all Magmatic's shares in AGC, less a demerger dividend (if any).

33. The date for determining the entitlement of the shareholders of Magmatic to receive AGC shares was 29 December 2020 (the Record Date).

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34. On the Implementation Date (31 December 2020), Magmatic transferred 24,043,791 of its 30 million shares in AGC to the shareholders of Magmatic in satisfaction of the shareholders' entitlement to receive the reduction of share capital.
35. Each shareholder of Magmatic received five AGC shares for every 36 Magmatic shares they held on the Record Date.
36. The holders of call options in Magmatic did not receive any interests in AGC in respect of their call options.
37. As a result of the reduction of share capital, Magmatic shareholders owned shares in both Magmatic and AGC.
38. Shares in AGC were listed for quotation on the Australian Securities Exchange on 20 January 2021. AGC raised additional share capital by way of an initial public offering, including a priority offer to existing Magmatic shareholders.
39. Magmatic debited its share capital account by \$4,872,482.
40. The reduction of share capital equated to 2.78 cents for each share in Magmatic.

Other matters

41. There were no shares in Magmatic held by a foreign resident and their associates that passed the non-portfolio interest test (within the meaning of section 960-195) throughout a 12-month period in the 24 months immediately before and ending on the Implementation Date.
42. More than 50% of the market values of Magmatic's assets were taxable Australian real property (as defined in section 855-20).
43. Immediately before the Implementation Date, Magmatic's share capital account was not tainted (within the meaning of Division 197).
44. Magmatic has never paid a dividend to its shareholders.
45. Immediately before the Implementation Date, Magmatic had accumulated accounting losses of \$13,012,374. All the companies in which Magmatic held a majority voting interest (within the meaning of section 318 of the ITAA 1936) also had accumulated accounting losses immediately before the Implementation Date.
46. Before the Implementation Date, Magmatic had never undertaken a reduction of share capital.

Commissioner of Taxation

30 March 2022

Status: **not legally binding**

References

Previous draft:

Not previously issued as a draft

Legislative references:

- ITAA 1936 6(1)
 - ITAA 1936 44(1)
 - ITAA 1936 44(3)
 - ITAA 1936 44(4)
 - ITAA 1936 45A(1)
 - ITAA 1936 45A(2)
 - ITAA 1936 45B(2)(c)
 - ITAA 1936 45B(3)(b)
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 - ITAA 1936 318
 - ITAA 1997 Pt 3-90
 - ITAA 1997 104-25
 - ITAA 1997 104-135
 - ITAA 1997 104-135(3)
 - ITAA 1997 104-135(4)
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 - ITAA 1997 109-5(2)
 - ITAA 1997 110-25(2)
 - ITAA 1997 110-55(2)
 - ITAA 1997 Subdiv 115-A
 - ITAA 1997 Div 125
 - ITAA 1997 125-70(1)
 - ITAA 1997 125-70(1)(h)
 - ITAA 1997 125-70(2)
 - ITAA 1997 125-75
 - ITAA 1997 Div 197
 - ITAA 1997 Div 230
 - ITAA 1997 855-10
 - ITAA 1997 855-15
 - ITAA 1997 855-20
 - ITAA 1997 960-195
 - ITAA 1997 977-50
 - ITAA 1997 995-1(1)
 - TAA 1953
 - Corporations Act 2001 256B
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ATO references

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ATOlaw topic: Income tax ~~ Assessable income ~~ Dividend income ~~ Dividend income
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 management ~~ Anti avoidance rules ~~ Section 45B
Income tax ~~ Capital management ~~ Anti avoidance rules ~~ Section 45C

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