

CR 2022/85 - ATI Global Limited - demerger of Commercial Credit Holdings Limited



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Class Ruling

ATI Global Limited – demerger of Commercial Credit Holdings 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.

Table of Contents	Paragraph
What this Ruling is about	1
Who this Ruling applies to	4
When this Ruling applies	6
Ruling	7
Scheme	27

What this Ruling is about

1. This Ruling sets out the income tax consequences of the demerger of Commercial Credit Holdings Limited (Commercial Credit) by ATI Global Limited (ATI) which was implemented on 1 September 2022 (Implementation Date).
2. Details of this scheme are set out in paragraphs 27 to 50 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 ATI and you:
 - were registered on the ATI share register on 29 August 2022 (Record Date)
 - did not hold your shares in ATI as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)); that is, you held your shares on capital account
 - were either
 - a resident of Australia (as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936)) on the Implementation Date, or
 - a non-resident of Australia (as defined in subsection 6(1) of the ITAA 1936) on the Implementation Date, whose shares in ATI did not constitute taxable Australian property (as defined in section 855-15), and

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- did not acquire your shares in ATI under an employee share scheme.

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 27 to 50 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 2022 to 30 June 2023.

Ruling

Demerger happened

7. A demerger, as defined in section 125-70, happened to the ATI demerger group (which included ATI, Australian Technology Innovators Pty Limited (AT IPL) and Commercial Credit) under the scheme described in paragraphs 27 to 50 of this Ruling.

Capital gains tax consequences – Australian-resident shareholders

CGT event G1

8. CGT event G1 happened when you were paid an amount by ATI in respect of your ATI shares by way of the transfer to you of Commercial Credit 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 ATI share (\$22.17) is more than the cost base of the ATI 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)).

Choosing demerger roll-over

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

11. If you choose demerger roll-over for your ATI shares:

- any capital gain you made when CGT event G1 happened to your ATI shares under the demerger is disregarded (subsection 125-80(1)), and
- you must recalculate the first element of the cost base and reduced cost base of your ATI shares, and calculate the first element of the cost base and reduced cost base of the corresponding Commercial Credit shares you acquired under the demerger (subsection 125-80(2) – see paragraphs 13 to 15 of this Ruling for more details).

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Not choosing demerger roll-over

12. If you do not choose demerger roll-over for your ATI shares, you:
- cannot disregard any capital gain you made when CGT event G1 happened to your ATI shares under the demerger, and
 - must recalculate the first element of the cost base and reduced cost base of your ATI shares, and calculate the first element of the cost base and reduced cost base of the corresponding Commercial Credit shares you acquired under the demerger (subsections 125-85(1) and (2) – see paragraphs 13 to 15 of this Ruling).

Cost base and reduced cost base of your ATI Global Limited and Commercial Credit Holdings Limited shares

13. The first element of the cost base and reduced cost base of each ATI share and corresponding Commercial Credit share is worked out by:
- taking the total of the cost bases of your ATI shares just before the demerger, and
 - apportioning that total between your ATI shares and the Commercial Credit shares you acquired under the demerger.
14. The apportionment is done on a reasonable basis having regard to the market value (just after the demerger) of the ATI shares and Commercial Credit shares, or an anticipated reasonable approximation of those market values (subsections 125-80(2) and (3)).
15. The Commissioner accepts that a reasonable apportionment is to attribute:
- 95.40% of the total of the cost bases of your ATI shares just before the demerger to the ATI shares, and
 - 4.60% of the total of the cost bases of your ATI shares just before the demerger to the corresponding Commercial Credit shares.

Acquisition date of the Commercial Credit Holdings Limited shares for discount capital gain purposes

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

Capital gains tax consequences – foreign-resident shareholders

CGT event G1

17. CGT event G1 happened when you were paid an amount by ATI in respect of your ATI shares by way of the transfer to you of Commercial Credit shares on the Implementation Date (section 104-135).
18. You will make a capital gain from CGT event G1 happening if the amount of the reduction of share capital for each ATI share (\$22.17) is more than the cost base of the

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ATI 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)).

19. However, any capital gain you make from CGT event G1 is disregarded unless the ATI share is taxable Australian property (section 855-10). An ATI share is taxable Australian property if it:

- was used by you (the foreign-resident shareholder) at any time in carrying on a business through a permanent establishment in Australia (table item 3 in 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 in section 855-15).

Limited availability of demerger roll-over

20. If you are a foreign resident, you cannot choose to obtain demerger roll-over under subsection 125-55(1) for your ATI shares unless the Commercial Credit shares you acquired under the demerger are taxable Australian property just after you acquired them (subsection 125-55(2)).

Cost base and reduced cost base of your ATI Global Limited and Commercial Credit Holdings Limited shares

21. Whether or not you choose demerger roll-over, or demerger roll-over is available to you, you must work out the first element of the cost base and reduced cost base of each ATI share and corresponding Commercial Credit share in the same way as described in paragraphs 13 to 15 of this Ruling (subsections 125-80(2) and (3), and 125-85(1) and (2)).

Acquisition date of the Commercial Credit Holdings Limited shares for discount capital gain purposes

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

Not an assessable dividend

23. No part of the value of a Commercial Credit share transferred to you under the demerger will be included in your assessable income under subsection 44(1) of the ITAA 1936. Although the part of the value of a Commercial Credit share that is not debited to the share capital account of ATI is a 'dividend' under subsection 6(1) of the ITAA 1936, it will be a 'demerger dividend' under subsections 44(3), (4) and (5) of the ITAA 1936. A demerger dividend is non-assessable non-exempt income for you.

No dividend withholding tax for non-resident shareholders

24. If you are not a resident of Australia (as defined in subsection 6(1) of the ITAA 1936), no part of the value of a Commercial Credit share transferred to you under the

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demerger will be subject to dividend withholding tax (subsection 128B(3D) of the ITAA 1936).

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

25. 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 under the demerger. This is because there was no streaming of capital benefits and dividends to the ATI shareholders under the demerger (subsection 45A(1) of the ITAA 1936).

26. As the purpose condition in paragraph 45B(2)(c) of the ITAA 1936 is not satisfied, the Commissioner will not make a determination under 45B(3) 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
- section 45C of the ITAA 1936 applies to the whole, or any part, of the capital benefit provided to you under the demerger.

Scheme

27. 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.

ATI Global Limited

28. ATI is a public company which was incorporated in Australia on 17 June 2019. ATI is not listed on any securities exchange.

29. ATI is a holding company for a group of entities that specialise principally in providing information broking and search solutions. The group is organised across 3 separate divisions, being Legal Search, Legal Practice Management and Commercial Credit.

30. ATI is the head company of an income tax consolidated group under Part 3-90, which includes AT IPL and Commercial Credit as subsidiary members.

31. Immediately before the Implementation Date, ATI had:

- 4,633,574 ordinary shares on issue
- \$2,233,262,911 credited to its share capital account
- \$2,143,386,982 debited to its reserves (foreign currency translation reserve and other reserves), and
- \$162,901,955 of accumulated accounting losses.

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

Commercial Credit Holdings Limited

33. Commercial Credit is a company which was incorporated in Australia on 13 October 2021.

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34. Immediately before the Implementation Date, Commercial Credit had 4,633,574 ordinary shares on issue (all of which were held by ATIPL, which is a wholly-owned subsidiary of ATI).

The demerger of Commercial Credit Holdings Limited

35. The demerger of Commercial Credit (which was announced on 9 August 2022) was effected by a reduction of share capital under section 256B of the *Corporations Act 2001* and the declaration of a dividend.

36. The shareholders of ATI voted at a meeting on 31 August 2022 to approve an ordinary resolution under section 256C of the *Corporations Act 2001* to reduce the share capital of ATI as an equal reduction. The reduction of share capital equated to \$22.17 per ATI share.

37. The date for determining the entitlement of ATI shareholders to receive Commercial Credit shares was the Record Date (29 August 2022).

38. On the Implementation Date (1 September 2022), ATI satisfied the reduction of share capital and declaration of a dividend by directing ATIPL to transfer all of its ordinary shares in Commercial Credit to the shareholders of ATI. The dividend was equal to \$6.04 per ATI share.

39. ATI shareholders received one Commercial Credit share for each ATI share they held on the Record Date, and nothing else.

40. After the demerger, ATI will not own any shares in Commercial Credit.

41. As a result of the demerger, ATI shareholders owned shares in both ATI and Commercial Credit.

Accounting treatment

42. ATI accounted for the demerger by debiting its:

- share capital account by \$102,734,442 (the capital reduction amount), and
- demerger reserve account by \$27,973,558 (the demerger dividend).

43. The demerger dividend was calculated as the difference between the market value of the Commercial Credit shares that were transferred and the capital reduction amount.

Reasons for the demerger

44. The directors of ATI formed the view that the demerger would:

- enable Commercial Credit, with new directors and a new management team, to pursue its own strategic priorities, divorced from historical considerations that favoured investments predominantly in the legal search and practice management sectors
- ensure that the new directors of Commercial Credit become directly accountable to the ATI shareholders, who will have significantly increased awareness of the operations and performance of the Commercial Credit business following the demerger
- permit the directors and management of Commercial Credit to secure separate funding for the Commercial Credit business, allowing Commercial

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Credit to adopt its own capital and debt structure as well as financial policies appropriate to support its growth objectives

- improve transparency in relation to the valuation of Commercial Credit and its performance metrics, which are currently subsumed within its parent's financial statements, thereby providing a platform for future investment and capital raising
- ensure shareholders have flexibility to invest across the ATI group's core and non-core businesses, and
- enhance brand visibility for Commercial Credit and the 'CreditorWatch' brand.

Other matters

45. Just before the Implementation Date, approximately 1.83% of the shares in ATI were held by foreign residents.

46. Just before the Implementation Date, an Australian-resident shareholder directly held approximately 60.76% of the shares in ATI, with each of the other shareholders owning less than 9% of the shares in ATI.

47. Immediately before the Implementation Date, ATI's share capital account was not tainted (within the meaning of Division 197).

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

49. Just after the demerger, CGT assets owned by Commercial Credit 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).

50. For the purposes of the cost base and reduced cost base apportionment under subsections 125-80(2) and (3), a reasonable approximation of the market values of an ATI share and a Commercial Credit share (determined through an independent valuation) just after the demerger has been calculated as:

- \$585.00 for each ATI share, and
- \$28.21 for each Commercial Credit share.

Commissioner of Taxation

21 September 2022

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References

Legislative references:

- ITAA 1936 6(1)
- ITAA 1936 44(1)
- ITAA 1936 44(2)
- ITAA 1936 44(3)
- ITAA 1936 44(4)
- ITAA 1936 44(5)
- ITAA 1936 45A(1)
- ITAA 1936 45A(2)
- ITAA 1936 45B(2)(c)
- ITAA 1936 45B(3)
- ITAA 1936 45BA
- ITAA 1936 45C
- ITAA 1936 128B(3D)
- ITAA 1997 104-135
- 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 125-85(1)
- ITAA 1997 125-85(2)
- ITAA 1997 Div 197
- ITAA 1997 Div 230
- ITAA 1997 855-10
- ITAA 1997 855-15
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- Corporations Act 2001 256B
- Corporations Act 2001 256C

ATO references

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