


CR 2023/52 - Horizon Minerals Limited - distribution of shares in Richmond Vanadium Technology Limited

 This cover sheet is provided for information only. It does not form part of *CR 2023/52 - Horizon Minerals Limited - distribution of shares in Richmond Vanadium Technology Limited*



Status: **legally binding**

Class Ruling

Horizon Minerals Limited – distribution of shares in Richmond Vanadium Technology 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.

Table of Contents	Paragraph
What this Ruling is about	1
Who this Ruling applies to	4
When this Ruling applies	6
Ruling	7
Scheme	25
Appendix – Legislative provisions	42

What this Ruling is about

1. This Ruling sets out the income tax consequences for ordinary shareholders of Horizon Minerals Limited (Horizon) who received shares in Richmond Vanadium Technology Limited (RVT) from Horizon on 5 December 2022 (Implementation Date).
2. Details of this scheme are set out in paragraphs 25 to 41 of this Ruling.
3. All legislative references in this Ruling are to 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 held Horizon shares and you:
 - were registered on the Horizon share register on 2 December 2022 (Record Date)
 - held your Horizon shares on capital account – that is, your Horizon shares were neither held as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)) on the Record Date, and
 - were a resident of Australia as defined in subsection 6(1) or a foreign resident (other than a foreign resident who carried on a business at or through a permanent establishment in Australia) on the Implementation Date.

Status: **legally binding**

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 41 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 roll-over not available

7. Demerger relief (being demerger roll-over pursuant to Division 125) is not available as the scheme did not satisfy the requirements of a demerger under section 125-70.

8. Horizon disposed of 50.21% of its shares in RVT by way of transfer to Horizon shareholders on the Implementation Date. Therefore, Horizon did not satisfy the requirement to dispose of at least 80% of its shares in RVT (subparagraph 125-70(1)(b)(i)).

Not a dividend

9. The RVT shares you received from Horizon is not a dividend as defined in subsection 6(1). Therefore, it is not included in your assessable income under subsection 44(1).

Not ordinary income

10. The RVT shares you received from Horizon is not ordinary income and not included in your assessable income under section 6-5.

Specific anti-avoidance provisions do not apply

11. The Commissioner will not make a determination under either subsection 45A(2) or paragraph 45B(3)(b) that section 45C applies to the whole, or any part, of the capital benefit provided to you in the form of RVT shares.

Capital gains tax consequences for Horizon Minerals Limited shares

CGT event G1

12. CGT event G1 happened when Horizon made a payment to you in the form of RVT shares in respect of the Horizon shares that you owned on the Record Date and continued to own on the Implementation Date (section 104-135).

13. You made a capital gain from CGT event G1 happening in relation to your Horizon shares if the payment you received for each Horizon share (1.28c) was more than the cost base of your Horizon share (subsection 104-135(3)).

Status: **legally binding**

14. If you made a capital gain, the cost base and reduced cost base of your Horizon share is reduced to nil. Otherwise, the cost base and reduced cost base of your Horizon share is reduced by 1.28c (subsection 104-135(4)).

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

CGT event C2

16. CGT event C2 happened if you owned Horizon shares on the Record Date but ceased to own them prior to the Implementation Date (section 104-25).

17. CGT event C2 happened because, by ceasing to own a Horizon share after the Record Date but before the Implementation Date, you retained the right to receive the RVT share (RVT Right), which is a separate intangible CGT asset from the Horizon share. CGT event C2 happened when Horizon made the distribution of RVT shares to you in satisfaction of your RVT Right (paragraph 104-25(1)(b)).

18. You received capital proceeds in satisfaction of the RVT Right equal to 1.28c for each Horizon share (subsection 116-20(1)).

19. You made a capital gain when CGT event C2 happened equal to the amount of the capital proceeds as you did not pay, and were not required to pay, for the RVT Right (subsection 104-25(3)).

Discount capital gain

20. You can treat a capital gain made, when CGT events G1 or C2 happened, as a discount capital gain if you acquired your Horizon share at least 12 months before the Implementation Date (subsection 115-25(1)), provided the other conditions in Subdivision 115-A are satisfied.

Capital gains tax consequences for Richmond Vanadium Technology Limited shares

21. The first element of the cost base and reduced cost base of each RVT share you acquired is 40c (subsections 110-25(2) and 110-55(2)).

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

23. You can treat a capital gain made on the subsequent disposal of your RVT shares as a result of CGT event A1 happening, as a discount capital gain if you acquired your RVT shares on the Implementation Date and owned those RVT shares for at least 12 months, provided the other conditions in Subdivision 115-A are satisfied.

Status: **legally binding**

Foreign-resident shareholders

24. If you were a foreign resident or the trustee of a foreign trust for CGT purposes as defined in subsection 995-1(1) on the Implementation Date, you can disregard any capital gain made from CGT event G1 in relation to your Horizon shares, or any capital gain made from CGT event C2 in relation to your RVT Right, pursuant to section 855-10, unless:

- you have used your Horizon share, or RVT Right, at any time in carrying on a business through a permanent establishment in Australia (table item 3 of section 855-15), or
- you are an individual and your Horizon share, or RVT Right, was covered by subsection 104-165(3) (table item 5 of section 855-15).

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.

Background

Horizon Minerals Limited

26. Horizon is an Australian-resident public company incorporated on 24 May 1974 and listed on the Australian Securities Exchange.

27. Horizon is a gold and minerals exploration and production company with various exploration and development projects in Australia.

Richmond Vanadium Technology Limited

28. RVT is an Australian-resident minerals exploration company listed on the Australian Securities Exchange on 13 December 2022.

Richmond – Julia Creek Vanadium Project

29. In March 2017, Horizon entered into a joint venture with RVT covering Horizon's then 100% interest in the Richmond - Julia Creek Vanadium Project (Richmond Project) located in Queensland.

30. RVT subsequently satisfied certain expenditure commitments under the terms of the joint venture to earn 75% interest in the Richmond Project, with Horizon retaining a 25% interest.

31. The directors of Horizon formed the opinion that it would be better to separate the Richmond Project to unlock greater value for shareholders and focus on its Western Australian gold, silver and base metal development and exploration assets.

32. To achieve this separation, Horizon transferred its 25% interest in the Richmond Project into RVT in exchange for the issue of 25% of the shares in RVT, being 39,833,333 shares in RVT. This was completed as part of the Sale Purchase Agreement between Horizon and RVT, resulting in RVT owning 100% of the Richmond Project.

Status: **legally binding**

Reduction of share capital by Horizon Minerals Limited

33. On 24 November 2021, Horizon announced that it would transfer its shares in RVT to Horizon shareholders by a reduction of share capital under section 256B of the *Corporations Act 2001*.
34. On 17 November 2022, Horizon shareholders approved an ordinary resolution under section 256C of the *Corporations Act 2001* to reduce the share capital of Horizon as an equal reduction, by an amount equal to the pro rata market value of Horizon's shares in RVT.
35. Horizon shareholders' entitlement to receive RVT shares was determined on the Record Date.
36. Each Horizon shareholder received one RVT share for every 31.14 Horizon shares they held on the Record Date.
37. On the Implementation Date, Horizon debited its share capital account by \$8 million and transferred 20 million of its 39,833,333 (or 50.21%) shares in RVT to Horizon shareholders in satisfaction of the shareholders' entitlement to receive the reduction of share capital.
38. The reduction of share capital equated to 1.28c for each Horizon share.
39. As a result of the reduction of share capital, Horizon shareholders owned shares in both Horizon and RVT.

Other matters

40. Horizon has never paid a dividend to its shareholders.
41. Immediately before the Implementation Date:
- No shares in Horizon held by a foreign resident was an 'indirect Australian real property interest' as defined in section 855-25.
 - Horizon had accumulated accounting losses of \$35,506,627 and no profits (realised or unrealised). All the companies in which Horizon held a majority voting interest (within the meaning of section 318) also had accumulated accounting losses and no profits (realised or unrealised).
 - Horizon's share capital account (as defined in section 975-300) was not tainted (within the meaning of Division 197).
 - Horizon has never undertaken a reduction of share capital.

Commissioner of Taxation

27 September 2023

 Status: **not legally binding**

Appendix – Legislative provisions

42. This paragraph sets out the details of the provisions 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>	subsection 45A(2)
<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 1936</i>	section 318
<i>Income Tax Assessment Act 1997</i>	section 6-5
<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>	subsection 104-25(3)
<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>	subsection 104-165(3)
<i>Income Tax Assessment Act 1997</i>	subsection 109-5(2)
<i>Income Tax Assessment Act 1997</i>	subsection 110-25(2)
<i>Income Tax Assessment Act 1997</i>	subsection 110-55(2)
<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>	section 125-70
<i>Income Tax Assessment Act 1997</i>	subparagraph 125-70(1)(b)(i)
<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 855-10
<i>Income Tax Assessment Act 1997</i>	section 855-15
<i>Income Tax Assessment Act 1997</i>	section 855-25
<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)

Status: **not legally binding**

References

Legislative references: - Corporations Act 2001 256C
- Corporations Act 2001 256B

ATO references

NO: 1-X3T91SS
ISSN: 2205-5517
BSL: PG
ATOlaw topic: Income tax ~~ Assessable income ~~ Dividend income
Income tax ~~ Capital management ~~ Scheme of arrangement
Capital gains tax ~~ CGT events ~~ C1 to C3 - end of a CGT asset
Capital gains tax ~~ CGT events ~~ G1 to G3 - shares

© AUSTRALIAN TAXATION OFFICE FOR THE COMMONWEALTH OF AUSTRALIA

You are free to copy, adapt, modify, transmit and distribute this material as you wish (but not in any way that suggests the ATO or the Commonwealth endorses you or any of your services or products).