


# ***CR 2023/65 - Venus Metals Corporation Limited - in specie distribution of Rox Resources Limited shares***

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Status: **legally binding**

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## **Class Ruling**

# Venus Metals Corporation Limited – in specie distribution of Rox Resources Limited shares

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### **📌 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 is about the in specie distribution of shares in Rox Resources Limited (Rox) to shareholders of Venus Metals Corporation Limited (Venus) on 12 July 2023 (Implementation Date).
2. This Ruling sets out the income tax consequences of the return of capital and dividend amounts which formed the in specie distribution.
3. Details of this scheme are set out in paragraphs 23 to 40 of this Ruling.
4. 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**

5. This Ruling applies to you if you:
  - held shares in Venus on 10 July 2023 (Record Date), and
  - held your shares on capital account – that is, you did not hold your Venus shares as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1) on the Record Date).

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6. 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 40 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**

7. This Ruling applies from 1 July 2023 to 30 June 2024.

## **Ruling**

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### **Return of capital not a dividend**

8. The return of capital amount of \$0.0114 per Venus share you received as part of the in specie distribution of shares in Rox is not a dividend as defined in subsection 6(1) and is not included in your assessable income under subsection 44(1).

### **Sections 45B and 45C do not apply**

9. 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 as part of the in specie distribution of Rox shares.

### **Dividend is assessable**

10. The amount of \$0.0611 per Venus share, being the difference between the market value of the in specie distribution and the amount debited to the share capital account of Venus on a per share basis, is a 'dividend' as defined in subsection 6(1) that is paid out of Venus's profits. The dividend is unfranked. If you are a 'resident' as defined in subsection 6(1), this amount is included in your assessable income, pursuant to subsection 44(1).

### **CGT event G1**

11. CGT event G1 happened to you when Venus made the in specie distribution in respect of Venus shares that you owned at the Record Date and continued to own at the time of the in specie distribution (section 104-135), but only to the extent of that part of the in specie distribution that was not a dividend.

12. The non-assessable part of the in specie distribution, to which CGT event G1 applies, is \$0.0114 per Venus share (subsection 104-135(1)).

13. You will make a capital gain if the non-assessable part of the in specie distribution is more than the cost base of your Venus share. The amount of the capital gain is equal to that excess (subsection 104-135(3)). If the non-assessable part is not more than the cost base of your Venus share, the cost base or reduced cost base of the share are reduced by the amount of the non-assessable part (subsection 104-135(4)).

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Status: **legally binding**

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**CGT event C2**

14. CGT event C2 happened to you when Venus made the in specie distribution in respect of Venus shares that you owned at the Record Date but had ceased to own at the time of the in specie distribution (section 104-25). The capital gain will be equal to the market value of the Rox shares you received (section 116-20), being \$0.0725 per Venus share.

15. Under section 118-20, any capital gain made as a result of CGT event C2 happening is reduced by \$0.0611 per Venus share, being that part of the in specie distribution that is included in your assessable income as a dividend, as defined in subsection 6(1).

**Discount capital gain**

16. 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 Venus share at least 12 months before the Implementation Date (subsection 115-25(1)), provided the other conditions in Subdivision 115-A are satisfied.

17. If you dispose of the Rox 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 own those Rox shares for at least 12 months (excluding the Implementation Date and the date of disposal) and you satisfy the other conditions in Subdivision 115-A.

**Cost base and reduced cost base of Rox Resources Limited shares**

18. The first element of the cost base and reduced cost base of each Rox share you received is \$0.25, which the Commissioner accepts as being the market value of each Rox share (subsections 110-25(2) and 110-55(2)).

**Acquisition date of Rox Resources Limited shares**

19. You are taken to have acquired the Rox share on the Implementation Date (table event number A1 (case 1) of subsection 109-5(2)).

**Foreign resident shareholders**

20. If you are a foreign resident as defined in subsection 995-1(1), and you received the in specie distribution, you may disregard a capital gain or capital loss from a CGT event where it happens in relation to a CGT asset that is not 'taxable Australian property' (section 855-10).

21. If you are a foreign resident, you will be subject to withholding tax on the amount of the total unfranked dividend of \$0.0611 per Venus share.

22. The withholding tax rate is 30% (subsection 128B(4) and also paragraph 7(a) of the *Income Tax (Dividends, Interest and Royalties Withholding Tax) Act 1974*), unless reduced by an applicable tax treaty (section 4 and subsection 17A(1) of the *International Tax Agreements Act 1953*). You do not include the amount of the total unfranked dividend of \$0.0611 per Venus share in your Australian assessable income (section 128D).

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Status: **legally binding**

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## **Scheme**

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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.

### **Venus Metals Corporation Limited**

24. Venus is an Australian-resident company which was listed on the Australian Securities Exchange in June 2007. Venus was incorporated on 22 December 2006.

25. Venus is the head company of a consolidated group for tax purposes.

26. Venus is a Western Australian-based company focusing on gold, lithium, rare earth, vanadium and base metals exploration.

27. The Directors of Venus determined that it would be better to separate Venus's gold projects from its other projects.

### **The Transaction and in specie distribution**

28. On 31 March 2023, Venus and Rox announced an Asset Purchase and Sale Agreement (APSA), pursuant to which Rox would acquire Venus's gold interests in each of the tenements which comprise the Youanmi Gold Project, including the share in Venus's wholly owned subsidiary, Oz Youanmi Gold Pty. Ltd. (the Transaction).

29. As consideration for the Transaction, Rox issued Venus 110,000,000 Rox shares at a deemed issue price of \$0.25 each.

30. The consideration represented a total value of Venus's disposed interests in the Youanmi Gold Project of \$27,500,000. This value includes adjustment for extinguishment of a non-recourse interest free loan provided by Rox to Venus under the Youanmi Gold Project.

31. Under the APSA, the Rox shares were to be dealt with as follows:

- Venus was to distribute 55,000,000 Rox shares to eligible shareholders on a pro rata basis by way of an in specie distribution, and
- Venus was to hold the remaining Rox shares legally and beneficially, which will be subject to voluntary escrow for a period of 12 months from the date of issue.

32. On 12 July 2023, Venus distributed 54,999,228 of the Rox shares it received under the APSA to its shareholders on a pro rata basis. At a value of \$0.25 per Rox share, the total value of the distribution was \$13,749,807.

33. Venus shareholders received 1 Rox share for every 3.4496124 Venus shares they owned.

34. Venus debited a return of capital component of \$2,153,559.77 (\$0.0114 per Venus share) against Venus's share capital account, with the remaining value of \$11,596,247.23 (\$0.0611 per Venus share) being an unfranked dividend paid to Venus shareholders.

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Status: **legally binding**

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35. The key events for the Transaction and in specie distribution were as follows:

*Table 1: Key dates and events for the Transaction and in specie distribution*

<b>Date</b>	<b>Event</b>
23 June 2023	Shareholder meeting to approve the Transaction and distribution
5 July 2023	Effective date
7 July 2023	Completion of Transaction
7 July 2023	Issue of Rox shares to Venus pursuant to the Transaction
10 July 2023	Record date for the in specie distribution
12 July 2023	Completion of in specie distribution

### **Ineligible shareholders**

36. All Venus shareholders located outside Australia or New Zealand, and those who would receive an unmarketable parcel (value of less than \$500) of Rox shares, were ineligible to participate in the distribution.

37. The Rox shares which ineligible shareholders were otherwise entitled to were transferred to a Nominee on the Record Date and sold on their behalf. The net proceeds were then paid to the ineligible shareholders.

### **Capital structure of Venus Metals Corporation Limited**

38. Immediately before the Implementation Date, Venus had 189,728,683 fully paid ordinary shares and \$38,483,183 credited to its share capital account.

39. Venus's share capital account (as defined in section 975-300) was not tainted for the purpose of section 197-50.

### **Other matters**

40. At the time of the in specie distribution, over 99% of Venus's issued shares were held by Australian residents.

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**Commissioner of Taxation**

29 November 2023

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Status: **not legally binding**


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## Appendix – Legislative provisions

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

*Table 2: Provisions of the Income Tax Assessment Act 1936 and Income Tax Assessment Act 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 45B
<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>	subsection 128B(4)
<i>Income Tax Assessment Act 1936</i>	section 128D
<i>Income Tax Assessment Act 1997</i>	section 104-25
<i>Income Tax Assessment Act 1997</i>	section 104-135
<i>Income Tax Assessment Act 1997</i>	subsection 104-135(1)
<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 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>	section 116-20
<i>Income Tax Assessment Act 1997</i>	section 118-20
<i>Income Tax Assessment Act 1997</i>	section 197-50
<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 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

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- Legislative references:*
- Income Tax (Dividends, Interest and Royalties Withholding Tax) Act 1974 7(a)
  - International Tax Agreements Act 1953 4
  - International Tax Agreements Act 1953 17A(1)
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### ATO references

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