

CR 2024/25 - VHM Limited - return of capital by in specie distribution of shares in VP Minerals Limited



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Class Ruling

VHM Limited – return of capital by in specie distribution of shares in VP Minerals Limited

① 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 sets out the income tax consequences for ordinary shareholders of VHM Limited (VHM) who received a return of capital from VHM by way of an in specie distribution of shares in VP Minerals Limited (VP Minerals) on 17 August 2022 (Implementation Date).
2. Details of this scheme are set out in paragraphs 22 to 47 of this Ruling.
3. 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

4. This Ruling applies to you if you held ordinary shares in VHM and you:
 - were listed as a holder of VHM shares on the share register of VHM on 16 June 2022 (Record Date)
 - held your VHM shares on capital account – that is, you did not hold your VHM shares as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1))
 - were a resident of Australia as defined in subsection 6(1) at all relevant times
 - did not acquire your VHM shares under an employee share scheme, and

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- received the in specie distribution of shares in VP Minerals from VHM on the Implementation 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 22 to 47 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 2023.

Ruling

Capital gains tax consequences

Demerger relief is not available

7. The in specie distribution of shares in VP Minerals by VHM to its shareholders 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) is not available for the transfer of shares. Specifically, the owners of original interests in VHM did not acquire the same proportion of ownership interest in VP Minerals as they held in VHM, therefore there was 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 VHM made an in specie distribution to you in respect of the VHM shares you owned on the Record Date and continued to own on the Implementation Date (section 104-135).

9. You will make a capital gain from CGT event G1 happening if the market value of the return of capital (1.004 cents) is more than the cost base of the VHM share. 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 VHM shares by 1.004 cents (subsection 104-135(4)).

CGT event C2

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

12. You received capital proceeds of 1.004 cents in satisfaction of your right to receive one VP Minerals share in respect of each VHM share you previously owned (subsection 116-20(1)).

13. Your cost base of the right to receive a VP Minerals share is nil to the extent that the cost base or reduced cost base of the VHM share you previously owned was wholly

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applied in working out a capital gain or capital loss on a CGT event that happened to those shares (Division 110, modified by Division 112).

14. You made a capital gain if the capital proceeds are more than the cost base of your right to receive the VP Minerals shares. The amount of the capital gain is equal to the difference (subsection 104-25(3)).

15. You made a capital loss if the capital proceeds are less than the reduced cost base of your right to receive the VP Minerals shares. The amount of the capital loss is equal to the difference (subsection 104-25(3)).

Discount capital gain

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

Cost base and reduced cost base of your VP Minerals Limited shares

17. The first element of the cost base and reduced cost base of each VP Minerals share you acquired is 1.004 cents (subsections 110-25(2) and 110-55(2)).

Acquisition date of your VP Minerals Limited shares

18. You are taken to have acquired your VP Minerals shares you received by way of the in specie distribution on the Implementation Date (table event number A1 (case 1) of subsection 109-5(2)).

Not an assessable dividend

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

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

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

21. The Commissioner will not make a determination under paragraph 45B(3)(b) that section 45C applies to the whole, or any part, of the capital benefit provided to you by the transfer of VP Minerals shares on the Implementation Date. This is because the purpose condition in paragraph 45B(2)(c) was not satisfied. Therefore, you will not include any part of the amount of the capital benefit in your assessable income under subsection 44(1).

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Scheme

22. 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.

VHM Limited

23. VHM was incorporated on 31 July 2014. The shares in VHM were not listed on the Australian Securities Exchange at the time of the Implementation Date.

24. Prior to the Implementation Date, VHM had 4 wholly owned subsidiaries, one of which was VP Minerals.

25. VHM operates as a rare earth and mineral sands zircon mine development company. The primary activity of VHM is the exploration and development of the Goschen Project located in the Loddon Mallee region in the rural northwest of Victoria. VHM also held interests in a number of exploration licences under the *Mineral Resources (Sustainable Development) Act 1990* (Vic), which were unrelated to the Gochen Project and which were intended to be used for gold exploration (the Gold Assets).

26. The board of VHM formed the opinion that it would be better to separate the Gold Assets into a stand-alone company with specific commodity and management focus, and to give VHM shareholders the opportunity to participate in the growth of the Gold Assets through a separate entity.

VP Minerals Limited

27. VP Minerals is an Australian company incorporated on 26 November 2021.

28. VP Minerals had 139,141,273 ordinary shares on issue. Prior to the Implementation Date, all ordinary shares on issue in VP Minerals were held by VHM.

29. VP Minerals was incorporated for the purpose of holding the Gold Assets. The Gold Assets were transferred to VP Minerals from VHM pursuant to an Asset Sale Agreement dated 9 March 2022 between VHM and VP Minerals.

30. As at the Implementation Date, VP Minerals did not have any other assets or liabilities and did not carry on any activities other than holding the Gold Assets.

In specie distribution of shares in VP Minerals Limited

31. At a General Meeting on 24 May 2022, shareholders of VHM approved, for the purposes of sections 256B and 256C of the *Corporations Act 2001*:

- the issued share capital of VHM be reduced by an amount equal to the market value of the VP Minerals Shares less a Demerger Dividend (if any), and
- the reduction of capital and the Demerger Dividend (if any) be satisfied by VHM making a pro rata in specie distribution of the VP Minerals Shares to all eligible shareholders of VHM at the Record Date, on the terms and conditions set out in the Explanatory Memorandum.

32. In the same meeting, shareholders of VHM approved the amendment of the VHM Constitution to enable VHM to make the in specie distribution of VP Minerals shares.

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33. The date for determining entitlement of VHM shareholders to the in specie distribution of shares in VP Minerals was 16 June 2022 (Record Date).
34. On the Implementation Date, VHM shareholders received one VP Minerals share for each VHM share that they held on the Record Date. Shareholders were not required to contribute any payment for the VP Minerals shares.
35. VHM transferred all of its shares in VP Minerals to eligible shareholders of VHM or to a nominee in respect of ineligible shareholders under the in specie distribution.
36. As a result of the capital reduction and in specie distribution of VP Minerals shares, VHM shareholders owned shares in both VHM and VP Minerals.
37. The market value of the return of capital to shareholders on the Implementation Date was 1.004 cents per VHM share. The return of capital was debited to VHM's share capital account.

Other matters

38. As at 30 June 2022, VHM had \$41,287,027 of issued capital and \$5,638,150 of share-based payment reserves.
39. As at 30 June 2022, VHM had accumulated losses of \$29,580,061.
40. Since incorporation, VHM has not generated any operating profit nor made any distributions to its shareholders.
41. Prior to the Implementation Date, VHM has never undertaken a reduction of share capital.
42. VHM's share capital account (as defined in section 975-300) is not tainted (within the meaning of Division 197).
43. The shareholders of VHM are largely Australian residents, with 3.65% of shares held by foreign residents. The largest shareholder in VHM held approximately 10% of the ownership interests in VHM.
44. None of the subsidiaries of VHM held ownership interests in VHM.
45. Immediately before the Implementation Date, VHM had 139,141,273 fully paid ordinary shares on issue. VHM also had on issue other types of interests being Employee Options issued pursuant to various employee incentive plans, Special Exertion Options, Advisory Options, and Convertible Notes issued by VHM in 2021 and 2022.
46. On the Implementation Date, VP Minerals issued options to holders of other types of security interests in VHM (being Employee Options, Special Exertion Options, Advisory Options and 2022 Convertible Notes). VP Minerals also issued options to holders of 2021 Convertible Notes who accepted the offer of options in VP Minerals. Not all holders of 2021 Convertible Notes were issued options in VP Minerals.
47. Just before the Implementation Date, the market value of VP Minerals was \$1,870,869.

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Appendix – Legislative provisions

48. This paragraph sets out the details of the provisions ruled upon or referenced in this Ruling.

Table 1: 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>	subsection 45A(1)
<i>Income Tax Assessment Act 1936</i>	subsection 45A(2)
<i>Income Tax Assessment Act 1936</i>	paragraph 45B(2)(c)
<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 1997</i>	section 104-25
<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 109-5(2)
<i>Income Tax Assessment Act 1997</i>	Division 110
<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>	Division 112
<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>	subsection 125-70(1)
<i>Income Tax Assessment Act 1997</i>	paragraph 125-70(1)(h)
<i>Income Tax Assessment Act 1997</i>	subsection 125-70(2)
<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 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

Legislative references:

- Corporations Act 2001 256B
- Corporations Act 2001 256C
- Mineral Resources (Sustainable Development) Act 1990 (Vic)

ATO references

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