


CR 2024/40 - Silver Lake Resources Limited - scrip for scrip roll-over

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Class Ruling

Silver Lake Resources Limited – scrip for scrip roll-over

❗ 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 for holders of ordinary shares in Silver Lake Resources Limited (SLR) who disposed of those shares to Red 5 Limited (Red 5) on 19 June 2024 (Implementation Date).
2. Details of this scheme are set out in paragraphs 23 to 44 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

Note: By issuing this Ruling, the ATO is not endorsing this scheme. Potential participants must form their own view about the scheme.

Who this Ruling applies to

4. This Ruling applies to you if you:
 - were registered on the SLR share register as a holder of an ordinary share in SLR on 12 June 2024 (Record Date)
 - are a resident of Australia (as defined in subsection 6(1) of the *Income Tax Assessment Act 1936*) (and not a ‘temporary resident’ as defined in subsection 995-1(1))
 - held your SLR ordinary shares on capital account – that is, your SLR ordinary shares were neither held as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1))
 - had not acquired your SLR ordinary shares under an employee share scheme (as defined in section 83A-10) and the ESS deferred taxing point

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(as defined in sections 83A-115 and 83A-120) occurred on the Implementation Date

- were not subjected to the investment manager regime in Subdivision 842-I in relation to your SLR ordinary shares, and
- are not exempted from Australian income tax.

5. This Ruling does not apply to anyone who is subjected to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 23 to 44 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 2023 to 30 June 2024.

Ruling

CGT event A1 happened on the disposal of your shares in Silver Lake Resources Limited

7. CGT event A1 happened when you disposed of your SLR ordinary shares to Red 5 (section 104-10).

8. The time of CGT event A1 is on the Implementation Date (subsection 104-10(3)).

9. The capital proceeds from CGT event A1 happening to each SLR ordinary share is the market value of the Red 5 shares you received in respect of the disposal of the SLR ordinary share (subsection 116-20(1)). The market value of the Red 5 shares is worked out as at the time of CGT event A1.

10. You made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of your SLR ordinary share exceeded the cost base of that share (subsection 104-10(4)). You made a capital loss from CGT event A1 happening if the capital proceeds from the disposal of your SLR ordinary share were less than the reduced cost base of that share (subsection 104-10(4)).

Availability of scrip for scrip roll-over for your shares in Silver Lake Resources Limited

11. Subject to the qualification in paragraph 12 of this Ruling, if you made a capital gain from the disposal of your SLR ordinary shares, you may choose to obtain scrip for scrip roll-over for the capital gain (sections 124-780 and 124-785).

12. Scrip for scrip roll-over cannot be chosen if any capital gain you might make from a replacement Red 5 share would be disregarded, except because of a roll-over (paragraph 124-795(2)(a)).

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Consequences if you choose scrip for scrip roll-over for your Silver Lake Resources Limited shares

Capital gain is disregarded

13. If you choose scrip for scrip roll-over, your capital gain is disregarded (subsection 124-785(1)).

Cost base and reduced cost base of shares in Red 5 Limited

14. If you choose scrip for scrip roll-over, the first element of the cost base and reduced cost base of a replacement Red 5 share you received is worked out by reasonably attributing to it the cost base and reduced cost base (respectively) of the SLR ordinary shares for which it was exchanged and for which the roll-over was obtained (subsections 124-785(2) and (4)).

15. The Commissioner accepts a reasonable method of attribution would be to calculate the first element of the cost base and reduced cost base of each replacement Red 5 share by dividing the total cost bases of your SLR ordinary shares by the number of replacement Red 5 shares you received.

Acquisition date of shares in Red 5 Limited for discount capital gain purposes

16. For the purposes of working out whether a future capital gain from the Red 5 shares is a discount capital gain, the Red 5 shares you acquired in exchange for your SLR ordinary shares are taken to have been acquired on the date you acquired, for CGT purposes, the corresponding SLR ordinary shares involved in the roll-over (table item 2 of subsection 115-30(1)).

Consequences if you do not choose, or cannot choose, scrip for scrip roll-over for your Silver Lake Resources Limited shares

Capital gain is not disregarded

17. If you do not choose, or cannot choose, scrip for scrip roll-over, you must take into account any capital gain or capital loss from CGT event A1 happening on the disposal of your SLR ordinary shares in working out your net capital gain or net capital loss for the income year in which CGT event A1 happened (sections 102-5 and 102-10).

18. If you made a capital gain where roll-over is not chosen, or cannot be chosen, you can treat the capital gain as a discount capital gain provided that the conditions of Subdivision 115-A are met.

Cost base and reduced cost base of shares in Red 5 Limited

19. If you do not choose, or cannot choose, scrip for scrip roll-over, the first element of the cost base and reduced cost base of a replacement Red 5 share that you received is equal to the market value of the SLR ordinary shares you gave in respect of acquiring the Red 5 share (subsections 110-25(2) and 110-55(2)).

20. The market value of the SLR ordinary shares you gave is to be worked out as at the time when you acquired the Red 5 shares on the Implementation Date.

21. As a reasonable method of determining the cost base and reduced cost base of your Red 5 shares, the Commissioner accepts that you can apportion the total market

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value of your SLR ordinary shares (worked out as at the Implementation Date) across the total number of Red 5 shares you acquired in respect of the disposal of the SLR ordinary shares on the Implementation Date (subsection 112-30(1)).

Acquisition date of shares in Red 5 Limited

22. If you do not choose, or cannot choose, scrip for scrip roll-over, the acquisition date of your Red 5 shares is the date on which those shares were issued to you, being the Implementation Date (table item 2 of section 109-10).

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.

Silver Lake Resources Limited

24. SLR is a company that was incorporated in Australia on 20 April 2004. It is the head company of an income tax consolidated group under Part 3-90.

25. SLR was listed on the Australian Securities Exchange (ASX) on 14 November 2007.

26. The business of SLR consists of exploration, mine development, mine operations and the sale of gold, and gold and copper concentrate, in Australia and Canada.

27. SLR has one class of shares on issue (ordinary shares). As at 27 March 2024, SLR had 16,099 shareholders.

28. On the Implementation Date, SLR had 956,529,669 ordinary shares on issue.

Red 5 Limited

29. Red 5 is a company that was incorporated in Australia on 20 March 1995. It is the head company of an income tax consolidated group under Part 3-90.

30. Red 5 was listed on the ASX on 16 October 1996.

31. The business of Red 5 consists of gold mining and mineral exploration.

32. As at 28 March 2024, Red 5 had 10,647 shareholders.

Scheme of arrangement

33. On 4 February 2024, SLR entered into a Scheme Implementation Deed (SID) with Red 5. Under the SID, SLR agreed to propose that SLR and its shareholders will enter into a scheme of arrangement under Part 5.1 of the *Corporations Act 2001*, pursuant to which Red 5 will acquire all of the SLR ordinary shares in exchange for shares in Red 5.

34. On 31 May 2024, a resolution in favour of the scheme of arrangement was passed by the shareholders of SLR as required by subparagraph 411(4)(a)(ii) of the *Corporations Act 2001*.

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35. The scheme of arrangement was approved by the Supreme Court of New South Wales under paragraph 411(4)(b) of the *Corporations Act 2001* on 6 June 2024, and became effective on 7 June 2024 (Scheme Effective Date).

36. The shares in SLR were suspended from trading on the ASX on the close of trading on the Scheme Effective Date.

37. On the Implementation Date, Red 5 acquired all of the SLR ordinary shares. As consideration, shareholders of SLR received 3.434 shares in Red 5 for each SLR ordinary share they held on the Record Date.

38. SLR was removed from the official list of the ASX on 20 June 2024.

39. SLR's interest in Red 5 of approximately 11.9% will be monetised or cancelled within 12 months of Implementation Date in accordance with section 259D of the *Corporations Act 2001*.

Other matters

40. Just before the Implementation Date, SLR had more than 300 shareholders.

41. There was no 'significant stakeholder' or 'common stakeholder' in SLR or Red 5 within the meaning of those terms in section 124-783.

42. Paragraph 124-780(3)(f) is satisfied in respect of the disposal of SLR ordinary shares to Red 5.

43. A SLR shareholder, SLR and Red 5 were not members of the same linked group (within the meaning given by section 170-260) just before the SID was entered into.

44. Red 5 did not make a choice under subsection 124-795(4) that SLR shareholders could not obtain the roll-over in Subdivision 124-M for CGT event A1 happening in relation to the exchange of SLR ordinary shares.

Commissioner of Taxation

10 July 2024

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References

Legislative references:

- | | |
|--------------------------|---------------------------------------|
| - ITAA 1936 6(1) | - ITAA 1997 124-780(3)(f) |
| - ITAA 1997 83A-10 | - ITAA 1997 124-783 |
| - ITAA 1997 83A-115 | - ITAA 1997 124-785 |
| - ITAA 1997 83A-120 | - ITAA 1997 124-785(1) |
| - ITAA 1997 102-5 | - ITAA 1997 124-785(2) |
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| - ITAA 1997 104-10 | - ITAA 1997 124-795(2)(a) |
| - ITAA 1997 104-10(3) | - ITAA 1997 124-795(4) |
| - ITAA 1997 104-10(4) | - ITAA 1997 170-260 |
| - ITAA 1997 109-10 | - ITAA 1997 Div 230 |
| - ITAA 1997 110-25(2) | - ITAA 1997 Pt 3-90 |
| - ITAA 1997 110-55(2) | - ITAA 1997 Subdiv 842-I |
| - ITAA 1997 112-30(1) | - ITAA 1997 977-50 |
| - ITAA 1997 Subdiv 115-A | - ITAA 1997 995-1(1) |
| - ITAA 1997 115-30(1) | - Corporations Act 2001 259D |
| - ITAA 1997 116-20(1) | - Corporations Act 2001 Pt 5.1 |
| - ITAA 1997 Subdiv 124-M | - Corporations Act 2001 411(4)(a)(ii) |
| - ITAA 1997 124-780 | - Corporations Act 2001 411(4)(b) |
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ATO references

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