

CR 2024/43 - Technology Metals Australia Limited - scrip for scrip roll-over



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Class Ruling

Technology Metals Australia Limited – scrip for scrip roll-over

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.

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What this Ruling is about

1. This Ruling sets out the income tax consequences for the holders of ordinary shares in Technology Metals Australia Limited (TMT) who disposed of those shares to Australian Vanadium Limited (AVL) on 1 February 2024 (Implementation Date).
2. Details of this scheme are set out in paragraphs 22 to 40 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:
 - were registered on the TMT share register on 24 January 2024 (Record Date)
 - are a resident of Australia (as defined in subsection 6(1) of the *Income Tax Assessment Act 1936*), and
 - held your TMT ordinary shares on capital account – that is, you did not hold your shares as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)).
5. This Ruling does not apply to you if you:
 - acquired your TMT ordinary share under a TMT employee share plan that is an employee share scheme for the purposes of Division 83A and your deferred taxing point occurred on the Implementation Date, or

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- are subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 22 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

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

Ruling

CGT event A1 happened on the disposal of your Technology Metals Australia Limited shares

7. CGT event A1 happened when you disposed of your TMT ordinary shares (section 104-10).
8. The time of CGT event A1 was on the Implementation Date (paragraph 104-10(3)(b)).
9. The capital proceeds from CGT event A1 happening to each TMT ordinary share is the market value of the AVL shares you received in respect of your disposal of the TMT ordinary share (subsection 116-20(1)). The market value of the AVL shares is worked out as at the time of CGT event A1 happening.
10. You made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of your TMT ordinary share were more than the cost base of that share. You made a capital loss from CGT event A1 happening if the capital proceeds from the disposal of your TMT ordinary share were less than the reduced cost base of that share (subsection 104-10(4)).

Availability of scrip for scrip roll-over

11. Subject to the qualification in paragraph 12 of this Ruling, if you made a capital gain from the disposal of your TMT 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 AVL share would be disregarded, except because of a roll-over (paragraph 124-795(2)(a)).

Consequences if you choose scrip for scrip roll-over for your Technology Metals Australia Limited shares

Capital gain is disregarded

13. If you choose scrip for scrip roll-over, you disregard the capital gain you made from CGT event A1 happening on the disposal of your TMT ordinary shares (subsection 124-785(1)).

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Cost base and reduced cost base of shares in Australian Vanadium Limited

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

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

Acquisition date of shares in Australian Vanadium Limited

16. For the purposes of working out whether a future capital gain from your replacement AVL shares is a 'discount capital gain', the AVL shares you acquired in exchange for your TMT ordinary share are taken to have been acquired on the date you acquired, for CGT purposes, the corresponding TMT ordinary share 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 Technology Metals Australia 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 TMT 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 from CGT event A1 happening on the disposal of your TMT ordinary shares where scrip for scrip 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. In particular, the TMT shares you disposed of must have been acquired at least 12 months before the Implementation Date (section 115-25).

Cost base and reduced cost base of shares in Australian Vanadium 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 AVL share you received is equal to the market value of part of the TMT ordinary share you gave in respect of acquiring the AVL share (subsections 110-25(2) and 110-55(2)).

20. The market value of part of the TMT ordinary share you gave is worked out as at the time when you acquired the replacement AVL share on the Implementation Date.

Acquisition date of shares in Australian Vanadium Limited

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

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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.

Technology Metals Australia Limited

23. TMT is a company that was incorporated in Australia on 20 May 2016. It was the head company of an income tax consolidated group under Part 3-90.

24. TMT is a Perth-based resources company focused on the development of its vanadium assets. It was listed on the Australian Securities Exchange (ASX) on 21 December 2016.

25. TMT had 258,210,984 ordinary shares on issue just before the Implementation Date.

Australian Vanadium Limited

26. AVL is a company incorporated in Australia and listed on the ASX in 2007. AVL is developing the Australian Vanadium Project in Western Australia.

Scheme of arrangement

27. On 25 September 2023, TMT announced it had entered into a Scheme Implementation Deed with AVL under which AVL would acquire all of the issued shares in TMT in exchange for shares in AVL by way of a court-approved scheme of arrangement under Part 5.1 of the *Corporations Act 2001*.

28. On 12 December 2023, TMT and AVL announced that the total consideration offered to TMT shareholders under the scheme of arrangement increased from 12 AVL shares to 14 AVL shares for every 1 TMT ordinary share.

29. A resolution in favour of the scheme of arrangement was approved by shareholders of TMT on 16 January 2024 and the Supreme Court of Western Australia approved the scheme on 19 January 2024. The scheme became legally effective on 22 January 2024.

30. AVL acquired 100% of the TMT ordinary shares on issue on the Implementation Date.

31. In consideration for the disposal of their TMT ordinary shares, on the Implementation Date, the shareholders of TMT received 14 AVL shares for every 1 TMT ordinary share held on the Record Date.

32. The shares in TMT were suspended from trading on the ASX on 22 January 2024 and subsequently removed from the official list of the ASX on 2 February 2024.

33. The replacement AVL shares commenced trading on the ASX on 2 February 2024.

Sale facility for Ineligible Overseas Shareholders and Small Parcel Shareholders

34. Replacement AVL shares for Ineligible Overseas Shareholders and Small Parcel Shareholders were issued to the Sale Agent for sale through the Sale Facility. The net sale proceeds were then remitted to the relevant shareholders.

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Other matters

35. There was no 'significant stakeholder' or 'common stakeholder' for the arrangement within the meaning of those terms in section 124-783.

36. Just before the Scheme Implementation Deed was entered into, TMT had more than 300 shareholders.

37. No member of the AVL wholly owned group issued equity (other than the replacement AVL shares), or owed new debt, to an entity that is not a member of the group in relation to the issuing of the replacement AVL shares for the purposes of paragraph 124-780(3)(f).

38. Subsections 124-810(3) and (5) did not apply to TMT.

39. A TMT shareholder, TMT and AVL were not members of the same linked group (within the meaning of section 170-260) just before the Scheme Implementation Deed was entered into.

40. AVL did not make a choice under subsection 124-795(4) that TMT shareholders could not obtain roll-over under Subdivision 124-M for CGT event A1 happening in relation to the exchange of their TMT shares.

Commissioner of Taxation

10 July 2024

Status: **not legally binding**

References

Legislative references:

- ITAA 1936 6(1)
 - ITAA 1997 Div 83A
 - ITAA 1997 102-5
 - ITAA 1997 102-10
 - ITAA 1997 104-10
 - ITAA 1997 104-10(3)(b)
 - ITAA 1997 104-10(4)
 - ITAA 1997 109-10
 - ITAA 1997 110-25(2)
 - ITAA 1997 110-55(2)
 - ITAA 1997 Subdiv 115-A
 - ITAA 1997 115-25
 - ITAA 1997 115-30(1)
 - ITAA 1997 116-20(1)
 - ITAA 1997 Subdiv 124-M
 - ITAA 1997 124-780
 - ITAA 1997 124-780(3)(f)
 - ITAA 1997 124-783
 - ITAA 1997 124-785
 - ITAA 1997 124-785(1)
 - ITAA 1997 124-785(2)
 - ITAA 1997 124-785(4)
 - ITAA 1997 124-795(2)(a)
 - ITAA 1997 124-795(4)
 - ITAA 1997 124-810(3)
 - ITAA 1997 124-810(5)
 - ITAA 1997 170-260
 - ITAA 1997 Pt 3-90
 - ITAA 1997 Div 230
 - ITAA 1997 977-50
 - ITAA 1997 995-1(1)
 - Corporations Act 2001 Pt 5.1
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ATO references

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