


CR 2025/17 - Leo Lithium Limited - return of capital and special dividend

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Status: **legally binding**

Class Ruling

Leo Lithium Limited – return of capital and special dividend

📌 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 of the distribution of \$0.172 per share (Distribution) to Leo Lithium Limited (Leo Lithium) shareholders on 31 January 2025, which comprised a special dividend of \$0.1577 per share (Dividend) and a return of capital of \$0.0143 per share (ROC).
2. Details of this scheme are set out in paragraphs 23 to 45 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:
 - held Leo Lithium shares on 23 January 2025 (Distribution Record Date) and received the Distribution on 31 January 2025 (Distribution Payment Date), and
 - held your Leo Lithium shares on capital account – that is, you did not hold your Leo Lithium 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 anyone who is subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 23 to 45 of this Ruling.

Note: Division 230 will not apply to individuals unless they have made an election for it to apply.

Status: **legally binding**

When this Ruling applies

6. This Ruling applies from 1 July 2024 to 30 June 2025.

Ruling

Dividend

7. The Dividend is a 'dividend' as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936).

8. If you are a 'resident of Australia' (as defined in subsection 6(1) of the ITAA 1936), you include the Dividend in your assessable income (paragraph 44(1)(a) of the ITAA 1936).

9. If you are a non-resident, the Dividend is non-assessable non-exempt income and not included in your assessable income (paragraph 802-15(1)(a)). You are also not liable to pay withholding tax in respect of the Dividend (paragraph 802-15(1)(b)).

Return of capital is not assessable income

10. The ROC that you received from Leo Lithium on the Distribution Payment Date is not a dividend as defined in subsection 6(1) of the ITAA 1936.

11. As the ROC is not a dividend, it is not required to be included in your assessable income under subsection 44(1) of the ITAA 1936.

No determination will be made under section 45B of the ITAA 1936

12. We will not make a determination under subsection 45B(3) of the ITAA 1936 that section 45C of that Act applies to any part of the ROC. Accordingly, no part of the ROC will be taken to be an unfranked dividend.

Capital gains tax consequences

CGT event G1

13. CGT event G1 happened on the Distribution Payment Date when you received the ROC for each Leo Lithium share you owned at the Distribution Record Date and continued to own at the Distribution Payment Date (section 104-135).

14. You made a capital gain from CGT event G1 happening if the amount of the ROC per Leo Lithium share was more than the share's cost base (subsection 104-135(3)). The capital gain is the difference and you reduce both the cost base and reduced cost base of your Leo Lithium share to nil.

15. If the amount of the ROC per Leo Lithium share was not more than the share's cost base, you reduce the cost base and reduced cost base of the share (but not below nil) by the amount of the ROC (subsection 104-135(4)).

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

Status: **legally binding**

CGT event C2

17. CGT event C2 happened on the Distribution Payment Date when you received the ROC for each Leo Lithium share you owned at the Distribution Record Date but ceased to own before the Distribution Payment Date (section 104-25). This is because the right to receive the ROC is a separate CGT asset from the Leo Lithium share you disposed of.

18. You made a capital gain from CGT event C2 if the capital proceeds from the ending of your right to receive the ROC were more than the cost base of the right, and you made a capital loss if the capital proceeds were less than the asset's reduced cost base (subsection 104-25(3)).

19. In working out the capital gain or capital loss, the capital proceeds are equal to the amount of the ROC (\$0.0143 per Leo Lithium share) (subsection 116-20(1)).

20. The cost base of your right to receive the ROC does not include the cost base or reduced cost base of the Leo Lithium share that you disposed of, to the extent that it was applied in working out your capital gain or capital loss when you disposed of the share (Division 110, as modified by Division 112). If the cost base or reduced cost base of your share had been fully applied in working out the capital gain or capital loss on its disposal, your right will have a nil cost base and you will have made a capital gain of \$0.0143 per Leo Lithium share that you owned on the Distribution Record Date but disposed of before the Distribution Payment Date.

Discount capital gain

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

Foreign resident shareholders

22. If you are a foreign resident or the trustee of a foreign trust for CGT purposes (as defined in subsection 995-1(1)) immediately before the Distribution Payment Date, you disregard any capital gain or capital loss made from CGT event G1 or CGT event C2 happening under subsection 855-10(1), provided:

- you did not use your Leo Lithium shares (or, if CGT event C2 happened, your right to receive the ROC) at any time in carrying on a business through a permanent establishment in Australia (table item 3 of section 855-15), or
- your Leo Lithium shares or right to receive the ROC were not covered by subsection 104-165(3) (choosing to disregard a capital gain or capital loss on ceasing to be an Australian resident) (table item 5 of section 855-15).

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.

Status: **legally binding**

Background

24. Leo Lithium is a company that was incorporated in Australia in 2019 and is an Australian resident for tax purposes.
25. Leo Lithium's ordinary shares are listed on the Australian Securities Exchange (ASX).
26. Prior to its listing on the ASX, Leo Lithium was a wholly owned subsidiary of Firefinch Limited (Firefinch). Firefinch retained a significant shareholding in Leo Lithium after Leo Lithium was demerged from the Firefinch group in 2022.
27. Leo Lithium and an unrelated company, GFL International Co., Ltd (Ganfeng), were in a joint venture to develop and operate the Goulamina Lithium Project (Goulamina), an undeveloped deposit of lithium resources located in Mali.
28. The joint venture was conducted through a company incorporated in the Netherlands called Mali Lithium BV (MLBV) with Leo Lithium and Ganfeng each having a 50% shareholding initially (Leo Lithium's shareholding was later diluted to 45% in January 2024 when MLBV issued additional shares to Ganfeng to fund Goulamina's expected capital costs – Goulamina was solely funded by Ganfeng from that point onwards).
29. MLBV owns a company incorporated in Mali called Lithium du Mali S.A (LMSA) which owns Goulamina. LMSA runs the operations in constructing and developing the mine and holds the title to the mining tenement for the project (Exploitation Permit).
30. The Exploitation Permit had been transferred to LMSA from a Firefinch subsidiary prior to Leo Lithium's demerger from the Firefinch group in 2022.

Dispute with the government of Mali and sale of Goulamina

31. On 15 September 2023, Leo Lithium entered into a trading halt and subsequently a voluntary suspension with its shares suspended from trading on the ASX due to a dispute with the government of Mali over a number of matters relating to Firefinch and Leo Lithium, including the validity of Firefinch's transfer of the Exploitation Permit to LMSA.
32. On 6 May 2024, Leo Lithium, Ganfeng, Firefinch and the government of Mali signed a memorandum of understanding to settle the dispute. As part of the settlement, Leo Lithium agreed to pay US\$60 million (Settlement Amount) to the government of Mali to resolve all outstanding issues.
33. On 7 May 2024, Leo Lithium entered into the following agreements:
- a Deed of Covenant and Release with Firefinch and Ganfeng, whereby Ganfeng agreed to pay the Settlement Amount to the government of Mali on Leo Lithium's behalf and Firefinch agreed to pay A\$11.5 million (Firefinch Payment) to Leo Lithium subject to Firefinch shareholder approval as Firefinch's contribution to the Settlement Amount
 - a Deed of Amendment and Restatement with Ganfeng to sell a 5% interest in MLBV for US\$65 million, of which US\$60 million would be used by Ganfeng to pay the Settlement Amount, and
 - a binding share sale agreement with Ganfeng to sell its remaining 40% interest in MLBV for a total consideration of US\$342.7 million.

Status: **legally binding**

34. The consideration from the binding share sale agreement with GanFeng is receivable in 3 instalments:

- US\$10.5 million non-refundable deposit, which was received on 17 May 2024
- US\$161 million instalment, of which US\$116.3 million (after the deduction of taxes) was received on 26 November 2024 (Tranche 1 Consideration), and
- US\$171.2 million instalment, which is receivable by 30 June 2025 (Tranche 2 Consideration).

Distribution

35. On 4 December 2024, the board of Leo Lithium announced the Distribution.

36. The Distribution, as confirmed on 21 January 2025, comprises the Dividend of A\$0.1577 per share and the ROC of A\$0.0143 per share and is funded by the US\$10.5 million non-refundable deposit, the net proceeds from the Tranche 1 Consideration and the Firefinch Payment.

37. The Distribution was paid on the Distribution Payment Date.

38. The Dividend is unfranked and was declared by Leo Lithium in the distribution statement issued to be 'conduit foreign income' (as defined in Subdivision 802-A).

39. The total amount of the Dividend of A\$189,931,788 was debited against Leo Lithium's retained earnings account which is not a 'share capital account' (as defined in section 975-300).

40. The ROC was debited against Leo Lithium's Contributed equity account which is a 'share capital account' (as defined in section 975-300). The total amount of the ROC was A\$17,222,730.

Capital structure and policy

41. On and immediately before the Distribution Payment Date:

- Leo Lithium had 1,204,386,735 ordinary shares on issue (the only class of shares on issue)
- approximately 2.69% of Leo Lithium's issued shares were held by foreign residents
- Leo Lithium's contributed equity account had a balance of A\$105,923,424, and
- Leo Lithium's contributed equity account was not 'tainted' (within the meaning of Division 197).

42. Leo Lithium had never paid a dividend or returned any of its share capital to its shareholders prior to the Distribution Payment Date.

43. Leo Lithium last raised share capital during its initial public offering in 2022 when it raised A\$96.7 million (after issue costs), of which A\$33.7 million was spent on Goulamina. Any funds that had not been spent in relation to Goulamina have been retained by Leo Lithium to fund future investments (the Dividend was not funded by any of the money raised from the initial public offering).

Status: **legally binding**

44. After the Distribution is paid, Leo Lithium will not raise share capital in order to replenish the money expended in paying the Dividend.

Other matters

45. On and immediately before the Distribution Payment Date, the sum of the market values of Leo Lithium's assets that were 'taxable Australian real property' (as defined in section 855-20) did not exceed the sum of the market values of its other assets for the purposes of section 855-30.

Commissioner of Taxation

19 February 2025

Status: **not legally binding**

References

Legislative references:

- ITAA 1936 6(1)
 - ITAA 1936 44(1)
 - ITAA 1936 44(1)(a)
 - ITAA 1936 45B
 - ITAA 1936 45B(3)
 - ITAA 1936 45C
 - ITAA 1997 104-25
 - ITAA 1997 104-25(3)
 - ITAA 1997 104-135
 - ITAA 1997 104-135(3)
 - ITAA 1997 104-135(4)
 - ITAA 1997 104-165(3)
 - ITAA 1997 Div 110
 - ITAA 1997 Div 112
 - ITAA 1997 Subdiv 115-A
 - ITAA 1997 115-25(1)
 - ITAA 1997 116-20(1)
 - ITAA 1997 Div 197
 - ITAA 1997 Div 230
 - ITAA 1997 Subdiv 802-A
 - ITAA 1997 802-15(1)(a)
 - ITAA 1997 802-15(1)(b)
 - ITAA 1997 855-10(1)
 - ITAA 1997 855-15
 - ITAA 1997 855-20
 - ITAA 1997 855-30
 - ITAA 1997 975-300
 - ITAA 1997 977-50
 - ITAA 1997 995-1(1)
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ATO references

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