



ASX Announcement
9 August 2023

Merger Class Ruling from ATO

Pantoro Limited (**ASX:PNR**) (**Pantoro**, or the **Company**) refers to the acquisition of Tulla Resources Plc (**Tulla**) by means of a United Kingdom Court-sanctioned scheme of arrangement under Part 26 of the *Companies Act 2006* (UK) which was implemented on 30 June 2023 (the **Merger**).

On 9 August 2023, the Australian Tax Office (**ATO**) published the attached final class ruling regarding the tax treatment of the Merger (the **Ruling**).

The Ruling sets out the income tax consequences for the shareholders of Tulla for the:

- demerger of Phoenix Industrial Minerals Pty Ltd (**Phoenix**) by Tulla which was implemented on 23 June 2023 (**Demerger Scheme**), and
- scheme of arrangement between Tulla and Pantoro, which was implemented on 30 June 2023 (**Merger Scheme**).

The Ruling includes guidance that the cost base of Tulla shareholders' pre-Demerger Scheme holdings should be apportioned between Phoenix and Tulla based on the following percentages:

Phoenix: 2.31%; Tulla: 97.69%.

The Ruling also contains guidance about the application of scrip for scrip roll-over to the Merger Scheme for Tulla shareholders.

A copy of the Ruling is attached to this announcement.

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This announcement was authorised for release by David Okeby, Company Secretary.

Disclaimer

This announcement is provided for information purposes only and does not constitute financial or taxation advice. Shareholders should consult their financial or taxation professional advisor to determine the appropriate treatment of their investment in the Company.

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Status: **legally binding**

Class Ruling

Tulla Resources Plc – demerger and scrip for scrip roll-over

❶ Relying on this Ruling

This publication (excluding appendixes) 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 shareholders of Tulla Resources Plc (Tulla) for the:
 - demerger of Phoenix Industrial Minerals Pty Ltd (Phoenix) by Tulla which was implemented on 23 June 2023 (Demerger Scheme), and
 - scheme of arrangement between Tulla and Pantoro Limited (Pantoro), which was implemented on 30 June 2023 (Merger Scheme).
2. Details of this scheme are set out in paragraphs 29 to 72 of this Ruling.
3. All legislative references in this Ruling are to the provisions of the *Income Tax Assessment Act 1936* or *Income Tax Assessment Act 1997* (as detailed in the table in Appendix 2 of this Ruling), unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you held Tulla shares or CHESS Depositary Interests (CDIs) representing shares in Tulla and you:
 - were registered on the Tulla share register on 21 June 2023 (Demerger Scheme Record Date)
 - were registered on the Tulla share register on 26 June 2023 (Merger Scheme Record Date)

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- are a resident of Australia as defined in subsection 6(1) or a non-resident (other than a non-resident who carried on a business at or through a permanent establishment in Australia), and
- held your Tulla shares or CDIs on capital account – that is, you did not hold them 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 29 to 72 of this Ruling.

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

6. In this Ruling, holders of Tulla shares and holders of CDIs are described as Tulla shareholders. Ordinary shares and CDIs are collectively referred to as Tulla shares. Tulla share registers and the CDI Register are collectively referred to as Tulla share registers.

When this Ruling applies

7. This Ruling applies from 1 July 2022 to 30 June 2023.

Ruling

Demerger Scheme

Demerger roll-over

8. Demerger relief (being demerger roll-over pursuant to Division 125) is not available as the scheme does not satisfy one or more of the conditions in section 125-70.

Convertible interest

9. The bonus share in Tulla you received under the Demerger Scheme (Demerger Bonus Share) is a 'convertible interest' (as defined in subsection 995-1(1) and table item 4 of subsection 974-75(1)).

Not a dividend

10. Neither the Demerger Bonus Share nor any part of the return of capital you received on the cancellation of the Demerger Bonus Share is a 'dividend' as defined in former subsection 6(1).

Not assessable as ordinary income

11. The Demerger Bonus Share is not assessable as ordinary income under section 6-5.

Status: **legally binding**

Anti-avoidance provisions will not apply to deem an assessable dividend

12. Section 45 will not apply to treat the issue of the Demerger Bonus Shares as an unfrankable dividend paid by Tulla.
13. The Commissioner will not make a determination under either subsection 45A(2) or paragraph 45B(3)(b) that section 45C applies to the whole, or any part, of the capital benefit provided to you with respect to the issue of the Demerger Bonus Shares or the return of capital on the cancellation of the Demerger Bonus Shares.

Capital gains tax consequences

14. CGT event G1 did not happen when you received the Demerger Bonus Share.
15. You calculate the first element of the cost base and reduced cost base of the Demerger Bonus Share you received by reasonably apportioning the cost base or reduced cost base of your original Tulla shares over both your original Tulla shares and the Demerger Bonus Shares (table item 1 of subsection 130-20(3)).
16. CGT event C2 happened on 22 June 2023 when your Demerger Bonus Shares were cancelled with the resulting return of capital you were entitled to being satisfied by application towards paying up the subscription price for the Phoenix shares you received (subsection 104-25(1)).
17. The first element of the cost base of the Phoenix share you received will be equal to the cost base of your Demerger Bonus Share on 23 June 2023 (table item 2 of subsection 130-60(1)).
18. You are taken to have acquired your Phoenix share on 23 June 2023 (subsection 130-60(2)).
19. Any capital gain or capital loss you make from CGT event C2 happening in relation to your Demerger Bonus Share is disregarded (subsection 130-60(3)).

Value shifting rules

20. There will be no value shifting consequences for Tulla shareholders under Division 725 as a result of participating in the Demerger Scheme.

Exchange of shares in Tulla Resources Plc for shares in Pantoro Limited

CGT event A1

21. CGT event A1 happened when you disposed of your Tulla shares on the Merger Scheme Implementation Date (30 June 2023) in accordance with the Merger Scheme (subsections 104-10(1) to (3)).
22. You made a capital gain when CGT event A1 happened if the capital proceeds were more than the cost base of your shares. You made a capital loss if the capital proceeds were less than the reduced cost base of your share (subsection 104-10(4)).
23. The capital proceeds for each Tulla share you disposed of is the total market value of the Pantoro shares you received under the Merger Scheme divided by the number of Tulla shares you disposed of (subsection 116-20(1)). The Commissioner accepts that the market value of each Pantoro share was \$0.0721.

Status: **legally binding**

Scrip for scrip roll-over

24. You may choose scrip for scrip roll-over (section 124-780) provided you made a capital gain on disposal of your Tulla shares (paragraph 124-780(3)(b)).

25. However, you cannot obtain roll-over if any capital gain you might make from your Pantoro shares (replacement shares) would be disregarded because of another roll-over (paragraph 124-795(2)(a)).

Consequences of choosing scrip for scrip roll-over

26. If you choose scrip for scrip roll-over:

- you disregard any capital gain you made from CGT event A1 happening because of the disposal of your Tulla shares under the Merger Scheme (subsection 124-785(1))
- you work out the first element of the cost base and reduced cost base of each Pantoro share you received under the Merger Scheme by reasonably attributing to it the cost base (or part of it) of the Tulla shares for which it was exchanged, and for which you obtained the roll-over (subsections 124-785(2) and (4)), and
- for the purpose of working out whether a capital gain from these shares is a discount capital gain in the future, the date of acquisition is the date you acquired your original Tulla shares (table item 2 of subsection 115-30(1)).

Consequences of not choosing scrip for scrip roll-over

27. If you do not choose, or cannot choose, the roll-over:

- you cannot disregard any capital gain or capital loss you made from the disposal of your Tulla shares
- you work out the cost base and reduced cost base of each Pantoro share you received under the Merger Scheme using the cost base rules in Division 110 as modified by Division 112, which requires reasonably apportioning the total market value of your Tulla shares (worked out at the time the Merger Scheme was implemented) across the Pantoro shares you received under the Merger Scheme (subsections 110-25(2), 110-55(2) and 112-30(1)) – the Commissioner accepts that the market value of a Tulla share at that time was \$0.3574, and
- the date of acquisition of these Pantoro shares is 30 June 2023.

Foreign-resident Tulla shareholders

28. If you were a foreign resident just before the Merger Scheme Implementation Date, you disregard any capital gain or capital loss from CGT event A1 happening unless the share was taxable Australian property (section 855-10).

Status: **legally binding**

Scheme

29. 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.

Background

Tulla Resources Plc

30. Tulla is a company incorporated in England and Wales and was listed on the Australian Securities Exchange (ASX) until its shares were suspended from trade on 22 June 2023, and subsequently delisted on 3 July 2023. Tulla traded on the ASX by way of CDIs, with each CDI representing one Tulla share.

31. Tulla is a gold development and mineral exploration company. Before the implementation of the Demerger Scheme and Merger Scheme, Tulla was the head company of an income tax consolidated group (Tulla TCG). The subsidiary members of the Tulla TCG were Norseman Gold Pty Ltd, Pangolin Resources Pty Ltd (Pangolin), Central Norseman Gold Corporation Pty Ltd (CNGC) and Phoenix.

32. Tulla's principal asset was its 50% interest, held through CNGC and Pangolin, in the Norseman Gold Project, located in the Eastern Goldfields of Western Australia. The Norseman Gold Project was carried on as an unincorporated joint venture with Pantoro South Pty Ltd (Pantoro South), a wholly-owned subsidiary of Pantoro.

33. Tulla, through CNGC and Pangolin, also held 100% of the rights to exploit the industrial minerals on the Norseman Gold Project tenements (Industrial Mineral Rights).

Phoenix Industrial Minerals Pty Ltd

34. Phoenix is a company incorporated in Australia on 13 April 2023.

35. Prior to the implementation of the Demerger Scheme, Phoenix's issued share capital consisted of one \$1 redeemable preference share which was owned by Tulla.

Pantoro Limited

36. Pantoro is an Australian-incorporated company that is listed on the ASX.

37. Pantoro is a high-grade gold producer operating in Western Australia.

38. Pantoro, through Pantoro South, holds a 50% interest in, and is the manager of, the Norseman Gold Project.

39. Just after the Merger Scheme was implemented, the market value of each Pantoro share was \$0.0721.

Merger Implementation Deed

40. On 13 February 2023, Tulla entered a Merger Implementation Deed with Pantoro in relation to a proposed takeover of Tulla by Pantoro under which Pantoro would acquire all of the issued shares in Tulla by way of a scheme of arrangement under the *Companies Act 2006* (UK) (UK Companies Act).

Status: **legally binding**

41. In addition, it was announced that Tulla and Pantoro had agreed that Tulla would demerge its Industrial Mineral Rights and associated assets (Demerger Assets) by a separate scheme of arrangement under the UK Companies Act prior to the implementation of the Merger Scheme. The Merger Scheme was conditional on the Demerger Scheme becoming effective.

Demerger Scheme

42. Tulla shareholders voted at a General Meeting on 29 May 2023 to approve the Demerger Scheme.

43. Tulla shareholders who were recorded in the Tulla share register as at the Demerger Scheme Record Date participated in the Demerger Scheme.

44. Part of the Demerger Scheme involved the creation of distributable reserves by capitalising part of Tulla's share premium account and then cancelling those new shares. Under the UK Companies Act, the share premium account cannot be directly distributed to shareholders. However, the share premium can be used to pay up bonus shares in full at par. The bonus shares created can then be cancelled pursuant to a reduction of capital and the amount paid up on the bonus shares could be returned to shareholders.

45. On 30 May 2023, Tulla capitalised £1.5 million (approx. \$2.86 million) of its share premium account and applied that amount in paying up in full and at par 1,013,682,606 new Tulla bonus shares (the Demerger Bonus Shares). Tulla shareholders received three Demerger Bonus Shares for each Tulla share held.

46. The terms of the Demerger Bonus Shares provided that on cancellation, Tulla shareholders would be due to receive a return of capital and Tulla's obligation to repay this capital amount would be satisfied by Tulla paying up the subscription price for new shares in Phoenix.

47. On 22 June 2023, pursuant to a sale and purchase agreement entered on 8 June 2023, CNGC and Pangolin transferred the Demerger Assets to Phoenix for £1.5 million (Purchase Price), being the market value of the Demerger Assets as determined by an independent valuation dated 29 May 2023. The Purchase Price remained as a debt owing from Phoenix to CNGC and Pangolin at the time of the transfer.

48. On 22 June 2023, the share capital of Tulla was reduced by £1.5 million by cancelling all the Demerger Bonus Shares and the £1.5 million capital reduction amount was applied to pay up the subscription price (£0.0015) for each Phoenix share on behalf of Tulla shareholders. Tulla shareholders received one Phoenix share for every Demerger Bonus Share they held. The Phoenix shares were issued on 23 June 2023.

49. Tulla satisfied its obligation to pay Phoenix the subscription price for the Phoenix shares by providing it with a promissory note with a face value of £1.5 million.

50. Phoenix assigned the promissory note to CNGC and Pangolin to settle the purchase price for the Demerger Assets.

51. Tulla accounted for the demerger by debiting its share capital account by £1.5 million.

52. The redeemable preference share held by Tulla was bought back and cancelled by Phoenix on 23 June 2023 for an amount of \$1.

53. Phoenix shares were not listed for quotation on the ASX.

Status: **legally binding**

Reasons for the demerger

54. Tulla undertook the demerger for the following reasons:

- The Industrial Mineral Rights were not seen by Pantoro as a primary focus within their gold development and exploration objectives of the Norseman Gold Project.
- The demerger would allow Tulla shareholders to retain 100% of the economic interest in the Industrial Mineral Rights.
- The separation of the gold from the Industrial Mineral Rights assets would provide Tulla shareholders with exposure to two companies, focused on different mineral sectors, each with a structure appropriate to the different stages of their commercial development and an operational strategy tailored to the exploration and development of their underlying commodities.

Scheme of Arrangement between Tulla and Pantoro

55. Under the terms of the Merger Scheme, each share in Tulla held by a Tulla shareholder would be transferred to Pantoro resulting in Tulla becoming a wholly-owned subsidiary of Pantoro.

56. Tulla shareholders were entitled to receive consideration of 4.9578 ordinary Pantoro shares for each Tulla share under the Merger Scheme if they were registered as holders of Tulla shares on the Merger Scheme Record Date.

57. On 29 May 2023, the Merger Scheme was approved by Tulla shareholders at a General Meeting.

58. On 23 June 2023, the High Court of Justice in England and Wales made orders approving the Merger Scheme.

59. On the Merger Scheme Implementation Date:

- Pantoro acquired all the issued capital of Tulla and its wholly-owned subsidiaries, and
- Tulla shareholders were issued 4.9578 Pantoro shares for each Tulla share they held, with any fractional entitlements rounded to the closest whole number of Pantoro shares.

Ineligible foreign shareholders

60. Ineligible foreign shareholders are Tulla shareholders in certain foreign jurisdictions where the issue of Phoenix shares under the Demerger Scheme, or Pantoro shares under the Merger Scheme, would be unlawful, unduly onerous or impractical due to a foreign law.

61. Ineligible foreign shareholders had all the shares they would have otherwise been entitled to under the Demerger Scheme or Merger Scheme issued to a sale agent who sold them under a sale facility and remitted the proceeds to those shareholders.

Other matters

62. Ownership interests in Tulla were acquired after 20 September 1985.

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63. As at 30 May 2023, Tulla had 337,894,202 fully paid ordinary shares on issue. The Tulla shares were issued with a par value of approximately £0.0230 and Tulla has no other class of shares on issue.

64. The market value of each Tulla share at the time the Merger Scheme was implemented was \$0.3574.

65. As at 30 June 2022, the balance of Tulla's share capital account was \$11,336,779 and the balance of Tulla's share premium account was \$293,515,693.

66. As at 30 June 2022, Tulla had accumulated losses of \$129,554,217 on a standalone basis.

67. Tulla shareholders consisted of approximately 98.67% Australian residents and 1.33% foreign residents.

68. Tulla has not declared or paid dividends in the last 10 years.

69. No Tulla shareholder was a significant stakeholder or a common stakeholder for the Merger Scheme within the meaning of section 124-783.

70. No member of the wholly-owned group of which Pantoro was the ultimate holding company issued equity other than the shares issued by Pantoro in exchange for the acquisition by Pantoro of all the Tulla shares under the Merger Scheme, or owed new debt under the Merger Scheme in relation to the issuing of those Pantoro shares, to any entity that was not a member of the group.

71. All Tulla shareholders and Pantoro dealt with each other at arm's length.

72. Pantoro did not make a choice under subsection 124-795(4) that Tulla shareholders could not obtain a roll-over.

Commissioner of Taxation

9 August 2023

Status: **not legally binding**

Appendix 1 – Explanation

❶ *This Explanation is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

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Demerger Scheme

Demerger roll-over

73. For demerger relief to be available, the conditions in section 125-70 must be satisfied. That is, there must be a restructuring of a 'demerger group' under which members of the group stop owning at least 80% of the 'ownership interests' (for example, shares) in another member of the group and a similar percentage of the membership interests start being owned by owners of ownership interests in the head entity of the group (paragraphs 125-70(1)(a) and (b)), and certain other conditions must be satisfied.

74. One of those other conditions is that under the restructuring, owners of the ownership interests acquire ownership interests in the other member of the group and nothing else (paragraph 125-70(1)(c)).

75. The Demerger Scheme and Merger Scheme is a single plan of restructuring for the purposes of the definition of 'demerger' in subsection 125-70(1).

76. Tulla and Phoenix were members of a demerger group with Tulla as the head entity. The Demerger Scheme and Merger Scheme brought about a restructuring of the demerger group which resulted in Tulla shareholders owning all the shares in Phoenix. However, as Tulla shareholders also received Pantoro shares under the restructuring, the 'nothing else' condition in paragraph 125-70(1)(c) was not satisfied. Therefore, demerger relief is not available.

Status: **not legally binding**

Distribution under Demerger Scheme not a dividend

77. Amendments to the *Corporations Act 2001* (Corporations Act) in 1997 abolished the concept of par value shares and associated concepts of share premium, share premium accounts and paid-up capital. As a result of these Corporations Act amendments, consequential amendments were made to the taxation laws by the *Taxation Laws Amendment (Company Law Review) Act 1998* (the Act). These amendments included repealing the definition of dividend in subsection 6(1) and amending subsection 6(4) (these provisions as enacted prior to the amendments contained in the Act will be referred to hereafter as the 'former provisions').

78. However, the amendments mentioned in paragraph 77 of this Ruling only have effect from 1 July 1998 for companies that do not have on issue par value shares. For those companies that continue to have par value shares on issue, the former provisions continue to apply.

79. Since Tulla is a company incorporated under the company laws of the United Kingdom, Tulla shares have a par value. Accordingly, the former provisions apply to Tulla.

80. The term 'dividend' in former subsection 6(1) includes any distribution made by a company to any of its shareholders. However, paragraph (d) of the definition of 'dividend' in former subsection 6(1) provides that money paid by a company to a shareholder which is debited against an amount standing to the credit of a share premium account is excluded from the definition of 'dividend' in former subsection 6(1), subject to former subsection 6(4).

81. In broad terms, former subsection 6(4) captures agreements or arrangements entered into for the purpose of exploiting the exclusion of distributions from share premium accounts from the definition of 'dividend'. Under such arrangements, shares are issued at a premium and the premiums are distributed as part of the arrangement to other persons.

82. There is no evidence that Tulla had an arrangement or agreement in place at the time the credits arose in its share premium account to subsequently distribute the premiums to another person. It is accepted that former subsection 6(4) does not apply as the amount debited to Tulla's share premium account for the issue of the Demerger Bonus Shares is not made under an arrangement or agreement. Accordingly, the Demerger Bonus Share is not a dividend as defined in former subsection 6(1).

83. As mentioned in paragraph 80 of this Ruling, the term 'dividend' in former subsection 6(1) includes any distribution made by a company to any of its shareholders. However, paragraph (e) of the definition of 'dividend' in former subsection 6(1) provides that a repayment by a company of moneys paid up on a share is excluded from the definition of 'dividend' in former subsection 6(1), subject to certain exceptions. The exception at subparagraph (e)(i) within the definition of former subsection 6(1), which applies when a share is cancelled, does not apply in this case as the repayment (the return of capital on the cancellation of the Demerger Bonus Shares) does not exceed the amount paid up immediately before the cancellation takes place.

84. As the amount debited against Tulla's share capital account upon the cancellation of the Demerger Bonus Shares represents the paid-up par value on the Demerger Bonus Shares, the return of capital debited against Tulla's share capital account is not a dividend for the purposes of former subsection 6(1).

Demerger Bonus Share is a convertible interest

85. Subsection 995-1(1) defines a 'convertible interest' in a company as an interest of the kind referred to in table item 4 of subsection 974-75(1). An interest issued by a

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company that will, or may, convert into an equity interest in the company or a connected entity of the company is an interest of the kind referred to in table items 4 and 4(b) of subsection 974-75(1)).

86. An interest (the first interest) is an interest that will or may convert into another interest (the second interest) if the first interest must be or may be redeemed, repaid or satisfied by the application in or towards paying up the balance unpaid on the second interest (subparagraph 974-165(b)(iii)).

87. The Demerger Bonus Share is a convertible interest because it will be redeemed, repaid or satisfied by the application in paying up the balance unpaid on the Phoenix shares and Phoenix is a connected entity of Tulla (section 975-500 and subsection 995-1(1)).

Anti-avoidance provisions will not apply to deem distribution under the Demerger Scheme to be an assessable dividend

88. Section 45 applies where a company streams the provision of bonus shares and the payment of minimally franked dividends to its shareholders in such a way that bonus shares are received by some shareholders and minimally franked dividends are received by other shareholders. As there is no distribution of dividends under the Demerger Scheme, section 45 does not apply.

89. Section 45A applies where a company streams capital benefits to some shareholders who would benefit more from them than other shareholders and dividends to those other shareholders. No such streaming occurred under the Demerger Scheme. Accordingly, section 45A does not apply to the issue of the Demerger Bonus Shares or the distribution received on the conversion of the Demerger Bonus Shares.

90. Section 45B is an anti-avoidance provision which applies where, having regard to the relevant circumstances of the scheme as set out in subsection 45B(8), a company provided certain capital payments to its shareholders for a more than incidental purpose of enabling a taxpayer to obtain a tax benefit.

91. Having regard to the relevant circumstances of the scheme, it cannot be concluded that it was entered into or carried out for a more than incidental purpose of enabling Tulla shareholders to obtain a tax benefit. Accordingly, section 45B does not apply.

Capital gains tax consequences

CGT event G1

92. CGT event G1 happens if:

- a company makes a payment to a shareholder in respect of a share that they own in the company
- some or all of the payment is not a dividend, or an amount that is taken to be a dividend under section 47, and
- the payment is not included in assessable income.

93. However, CGT event G1 does not apply to a bonus share issued out of a share capital account as Subdivision 130-A deals specifically with the treatment of bonus shares (Taxation Determination TD 2000/2 *Income tax: capital gains: does CGT event G1 in section 104-135 of the Income Tax Assessment Act 1997 (about capital payments for shares) apply to a bonus share issued out of a share capital account?*).

Status: **not legally binding**

94. The principles set out in TD 2000/2 are considered to also apply to bonus shares issued out of a share premium account.

95. Accordingly, CGT event G1 will not apply to the Demerger Bonus Shares.

96. The Demerger Bonus Shares are taken to be acquired when you acquired your original Tulla shares (table item 1 of subsection 130-20(3)).

97. The first element of the cost base and reduced cost base of the Demerger Bonus Share you received will be determined by apportioning the first element of the cost base or reduced cost base of your original Tulla shares in a reasonable way over both your original Tulla shares and the Demerger Bonus Shares (table item 1 of subsection 130-20(3) and former subsection 6BA(2)).

98. Having regard to the circumstances and terms relating to the issue of the Demerger Bonus Shares, the Commissioner accepts that it would be reasonable to apportion the first element of your cost base or reduced cost base of your original Tulla share as follows:

- 2.31% to the Demerger Bonus Shares (divided equally between the 3 Demerger Bonus Shares issued for each Tulla share, that is 0.77% to each Demerger Bonus Share), and
- 97.69% to the original Tulla share.

CGT event C2

99. As set out in paragraphs 85 to 87 of this Ruling, the Demerger Bonus Share is a convertible interest as defined under subsection 995-1(1).

100. CGT event C2 happened when the Demerger Bonus Share was cancelled and your return of capital satisfied by application towards paying up the subscription price for the Phoenix shares you received (paragraph 104-25(1)(f)).

101. The first element of the cost base of the Phoenix share you received on conversion of your Demerger Bonus Share will be equal to the cost base of your Demerger Bonus Share at the time of conversion (table item 2 of subsection 130-60(1)).

102. You are taken to have acquired your Phoenix share on the date of conversion of the Demerger Bonus Share, being 23 June 2023 (subsection 130-60(2)).

103. A capital gain or capital loss you make from the conversion of your Demerger Bonus Share is disregarded (subsection 130-60(3)).

Merger Scheme

Scrip for scrip roll-over

104. Scrip for scrip roll-over under Subdivision 124-M enables a shareholder to disregard a capital gain from a share that is disposed of if they receive a replacement share in exchange. It also provides special rules for calculating the cost base and reduced cost base of the replacement share.

105. Subdivision 124-M contains a number of conditions for a shareholder being able to choose scrip for scrip roll-over and sets out certain exceptions. The requirements that are relevant to the scheme that is the subject of this Ruling were satisfied as:

- Tulla shareholders exchanged their shares in Tulla for shares in Pantoro (paragraph 124-780(1)(a) and subparagraph 124-780(3)(c)(ii))

Status: **not legally binding**

- the exchange was a consequence of a single arrangement entered into by Tulla under which Pantoro increased its ownership of Tulla to 80% or more of the voting shares (paragraph 124-780(2)(a) and subsection 124-780(2A))
- neither Pantoro nor any of its wholly-owned subsidiaries issued equity, apart from the Pantoro shares issued to Tulla shareholders in exchange for their Tulla shares, or owed new debt under the arrangement in relation to the issue of those Pantoro shares, to an entity that was not a member of the group (paragraph 124-780(3)(f))
- Tulla shareholders dealt with Pantoro at arm's length (subsection 124-780(4)), and
- Pantoro did not make a choice under subsection 124-795(4) that Tulla shareholders could not obtain the roll-over.

Foreign-resident Tulla shareholders

106. You disregard a capital gain or capital loss you make from a CGT event if you are a foreign resident, or the trustee of a foreign trust for CGT purposes just before the CGT event happens and the CGT event happens in relation to a CGT asset that is not taxable Australian property (subsection 855-10(1)).

107. The term 'taxable Australian property' is defined in the table in section 855-15. Where you are a foreign resident or a trustee of a foreign trust for CGT purposes just before CGT event A1 happened to your Tulla shares under the Merger Scheme, you cannot disregard a capital gain or capital loss you made from CGT event A1 happening (under subsection 855-10(1)) if, relevantly, your Tulla shares were:

- an indirect Australian real property interest which is not covered by table item 5 of section 855-15 (table item 2 of section 855-15)
- used at any time in carrying on business through a permanent establishment in Australia (table item 3 of section 855-15), or
- covered by subsection 104-165(3), which is about choosing to disregard a gain or loss on ceasing to be an Australian resident (table item 5 of section 855-15).

Status: **not legally binding****Appendix 2 – Legislative provisions**

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

<i>Income Tax Assessment Act 1936</i>	former subsection 6(1)
<i>Income Tax Assessment Act 1936</i>	subsection 6(1)
<i>Income Tax Assessment Act 1936</i>	former paragraph 6(1)(d)
<i>Income Tax Assessment Act 1936</i>	former paragraph 6(1)(e)
<i>Income Tax Assessment Act 1936</i>	former subparagraph 6(1)(e)(i)
<i>Income Tax Assessment Act 1936</i>	former subsection 6(4)
<i>Income Tax Assessment Act 1936</i>	former subsection 6BA(2)
<i>Income Tax Assessment Act 1936</i>	section 45
<i>Income Tax Assessment Act 1936</i>	section 45A
<i>Income Tax Assessment Act 1936</i>	subsection 45A(2)
<i>Income Tax Assessment Act 1936</i>	section 45B
<i>Income Tax Assessment Act 1936</i>	subsection 45B(8)
<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>	section 47
<i>Income Tax Assessment Act 1997</i>	section 6-5
<i>Income Tax Assessment Act 1997</i>	subsection 104-10(1)
<i>Income Tax Assessment Act 1997</i>	subsection 104-10(2)
<i>Income Tax Assessment Act 1997</i>	subsection 104-10(3)
<i>Income Tax Assessment Act 1997</i>	subsection 104-10(4)
<i>Income Tax Assessment Act 1997</i>	paragraph 104-25(1)(f)
<i>Income Tax Assessment Act 1997</i>	section 104-135
<i>Income Tax Assessment Act 1997</i>	subsection 104-165(3)
<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>	subsection 112-30(1)
<i>Income Tax Assessment Act 1997</i>	subsection 115-30(1)
<i>Income Tax Assessment Act 1997</i>	subsection 116-20(1)
<i>Income Tax Assessment Act 1997</i>	Subdivision 124-M
<i>Income Tax Assessment Act 1997</i>	section 124-780
<i>Income Tax Assessment Act 1997</i>	paragraph 124-780(1)(a)

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<i>Income Tax Assessment Act 1997</i>	paragraph 124-780(2)(a)
<i>Income Tax Assessment Act 1997</i>	subsection 124-780(2A)
<i>Income Tax Assessment Act 1997</i>	paragraph 124-780(3)(b)
<i>Income Tax Assessment Act 1997</i>	paragraph 124-780(3)(f)
<i>Income Tax Assessment Act 1997</i>	subparagraph 124-780(3)(c)(ii)
<i>Income Tax Assessment Act 1997</i>	subsection 124-780(4)
<i>Income Tax Assessment Act 1997</i>	section 124-783
<i>Income Tax Assessment Act 1997</i>	subsection 124-785(1)
<i>Income Tax Assessment Act 1997</i>	subsection 124-785(2)
<i>Income Tax Assessment Act 1997</i>	subsection 124-785(4)
<i>Income Tax Assessment Act 1997</i>	subsection 124-795(4)
<i>Income Tax Assessment Act 1997</i>	paragraph 124-795(2)(a)
<i>Income Tax Assessment Act 1997</i>	Division 125
<i>Income Tax Assessment Act 1997</i>	section 125-70
<i>Income Tax Assessment Act 1997</i>	subsection 125-70(1)
<i>Income Tax Assessment Act 1997</i>	paragraph 125-70(1)(a)
<i>Income Tax Assessment Act 1997</i>	paragraph 125-70(1)(b)
<i>Income Tax Assessment Act 1997</i>	paragraph 125-70(1)(c)
<i>Income Tax Assessment Act 1997</i>	Subdivision 130-A
<i>Income Tax Assessment Act 1997</i>	subsection 130-20(3)
<i>Income Tax Assessment Act 1997</i>	subsection 130-60(1)
<i>Income Tax Assessment Act 1997</i>	subsection 130-60(2)
<i>Income Tax Assessment Act 1997</i>	subsection 130-60(3)
<i>Income Tax Assessment Act 1997</i>	Division 230
<i>Income Tax Assessment Act 1997</i>	Division 725
<i>Income Tax Assessment Act 1997</i>	section 855-10
<i>Income Tax Assessment Act 1997</i>	subsection 855-10(1)
<i>Income Tax Assessment Act 1997</i>	section 855-15
<i>Income Tax Assessment Act 1997</i>	subsection 974-75(1)
<i>Income Tax Assessment Act 1997</i>	subparagraph 974-165(b)(iii)
<i>Income Tax Assessment Act 1997</i>	section 975-500
<i>Income Tax Assessment Act 1997</i>	section 977-50
<i>Income Tax Assessment Act 1997</i>	subsection 995-1(1)

Status: **not legally binding**

References

Related Rulings/Determinations:

TD 2000/2

Legislative references:

- Taxation Laws Amendment (Company Law Review) Act 1998
- Corporations Act 2001
- Companies Act 2006 (UK)

ATO references

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