

CR 2025/40 - De Grey Mining Ltd - scrip for scrip roll-over



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Status: **legally binding**

Class Ruling

De Grey Mining Ltd – 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 De Grey Mining Ltd (De Grey) who acquired ordinary shares in Northern Star Resources Ltd (NST) in exchange for their shares in De Grey.
2. Full details of the scheme are set out in paragraphs 27 to 55 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 De Grey share register as the holder of an ordinary share in De Grey at 5:00 pm Australian Western Standard Time (AWST) on 28 April 2025 (Scheme Record Date)
 - held your De Grey shares on capital account – that is, you did not hold your shares in De Grey as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1))
 - are not subject to the investment manager regime in Subdivision 842-I in relation to your De Grey shares
 - acquired your De Grey shares under an employee share scheme (as defined in section 83A-10) – and own De Grey shares which are fully vested.

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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 27 to 55 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 2024 to 30 June 2025.

Ruling

Disposal of shares in De Grey Mining Ltd

CGT event A1

7. CGT event A1 happened when you disposed of your De Grey shares to NST (section 104-10).

8. The time of CGT event A1 is on the Implementation Date of 5 May 2025 (paragraph 104-10(3)(b)).

9. The capital proceeds from CGT event A1 happening to each De Grey share is the market value of 0.119 of a share in NST you received in respect of the disposal of each De Grey share (subsection 116-20(1)). The market value of the NST shares is worked out as at the time of CGT event A1.

10. We accept that the market value of 0.119 of a share in NST as at the time of CGT event A1 was \$2.29.

11. You made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of your De Grey shares exceed their cost base (subsection 104-10(4)). The capital gain is the amount of the excess.

12. You made a capital loss from CGT event A1 happening if the capital proceeds are less than the reduced cost base of your De Grey shares (subsection 104-10(4)). The capital loss is the amount of the difference.

Foreign resident shareholders of De Grey Mining Ltd

13. You must disregard a capital gain or capital loss you made from CGT event A1 happening when you disposed of your De Grey shares (section 855-10) if:

- you were a foreign resident (that is, you were not a 'resident of Australia' as defined in subsection 6(1) of the *Income Tax Assessment Act 1936*), or the trustee of a foreign trust for CGT purposes, just before the Implementation Date, and
- your De Grey shares were not 'taxable Australian property' (as defined in section 855-15).

14. Your De Grey shares were taxable Australian property if they were either:

- used by you at any time in carrying on a business through a permanent establishment in Australia (table item 3 of section 855-15), or

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- a CGT asset that is 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).

Availability of scrip for scrip roll-over for the disposal of your shares in De Grey Mining Ltd

15. Subject to the qualification in paragraphs 16 and 17 of this Ruling, if you made a capital gain from the disposal of your De Grey shares and received NST shares, you may choose to obtain scrip for scrip roll-over for the capital gain (sections 124-780 and 124-785).

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

17. If you were a foreign resident just before the Implementation Date, you cannot choose scrip for scrip roll-over unless you received NST shares and they were taxable Australian property (as defined in section 855-15) just after the Implementation Date (subsection 124-795(1)).

Consequences if you choose scrip for scrip roll-over

Capital gain is disregarded

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

Acquisition date of your shares in Northern Star Resources Ltd for discount capital gain purposes

19. For the purposes of determining your eligibility to make a discount capital gain, the NST shares you acquired in exchange for your De Grey shares are taken to have been acquired on the date you acquired, for CGT purposes, the corresponding De Grey shares (table item 2 of subsection 115-30(1)).

Cost base and reduced cost base of your shares in Northern Star Resources Ltd

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

21. You can calculate the first element of the cost base and reduced cost base of each replacement NST share by dividing the total cost bases of your De Grey shares by the number of replacement NST shares you received.

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Consequences if you do not choose, or cannot choose, scrip for scrip roll-over

Capital gain is not disregarded

22. 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 De Grey 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).

23. If you make a capital gain 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, you must have acquired your De Grey shares at least 12 months before the date on which CGT event A1 happened (excluding the date of acquisition and the date on which CGT event A1 happened).

Cost base and reduced cost base of your shares in Northern Star Resources Ltd

24. 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 NST share that you received is equal to the market value of the De Grey shares you gave in respect of acquiring the NST share (subsections 110-25(2) and 110-55(2)).

25. The market value of the De Grey shares you gave is to be worked out as at the time when you acquired the NST shares.

Acquisition date of your shares in Northern Star Resources Ltd

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

Scheme

27. 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.

De Grey Mining Ltd

28. De Grey is a company that was incorporated in Australia on 21 August 2000.

29. De Grey was the head company of an income tax consolidated group under Part 3-90.

30. De Grey was listed on the Australian Securities Exchange (ASX) on 1 July 2002. The ordinary shares in De Grey traded under the ASX code DEG.

31. The business of De Grey consists of the exploration for gold and development of gold projects in Western Australia.

32. On the Implementation Date, De Grey had one class of shares on issue and no other securities (including any performance rights, options or share rights) on issue. On the Implementation Date, there were 2,404,497,200 De Grey ordinary shares on issue.

33. Just before the Scheme Implementation Deed was entered into, De Grey had more than 300 shareholders.

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Northern Star Resources Ltd

34. NST is a company incorporated in Australia
35. NST was listed on the ASX on 17 December 2003. The ordinary shares in NST trade under the ASX code NST.
36. Just before the Scheme Implementation Deed was entered into, NST had more than 300 shareholders.
37. The business of NST consists of the exploration for, and mining of, gold in Australia and the United States of America.

Acquisition of De Grey Mining Ltd by Northern Star Resources Ltd

38. On 1 December 2024, De Grey and NST entered into a Scheme Implementation Deed. Under the Deed, De Grey agreed to propose that De Grey and its shareholders enter into a scheme of arrangement under Part 5.1 of the *Corporations Act 2001* (Corporations Act) pursuant to which NST would acquire all of the ordinary shares in De Grey.
39. On 16 April 2025, a resolution in favour of the scheme of arrangement was passed by the shareholders of De Grey as required by subparagraph 411(4)(a)(ii) of the Corporations Act.
40. The scheme of arrangement was approved by the Federal Court of Australia under paragraph 411(4)(b) of the Corporations Act on 22 April 2025.
41. NST acquired all of the shares in De Grey on the Implementation Date (5 May 2025).
42. Under the scheme of arrangement, the shareholders of De Grey (other than ineligible foreign holders and non-electing small shareholders) received the Scheme Consideration on the Implementation Date, being 0.119 of a new NST ordinary share in exchange for each De Grey ordinary share they held on the Scheme Record Date.
43. The Scheme Consideration was provided to all shareholders of De Grey as at the Scheme Record Date (5:00 pm (AWST) on 28 April 2025), other than ineligible foreign holders and non-electing small shareholders.
44. An ineligible foreign holder was a shareholder whose address shown on the De Grey share register as at the Scheme Record Date was in a place outside Australia, Brazil, Hong Kong, Monaco, The Netherlands, New Zealand, Norway, Singapore, the United Kingdom and the United States or any other jurisdiction agreed in writing by De Grey and NST.
45. A non-electing small shareholder was a small shareholder (a De Grey shareholder (other than an ineligible foreign holder) who, based on their shareholding on the Scheme Record Date, would on implementation of the scheme of arrangement be entitled to receive less than a marketable parcel, as defined in the ASX Listing Rules, of NST shares as Scheme Consideration) who had not provided the De Grey share registry with an opt-in notice (a notice requesting to receive the Scheme Consideration as NST shares) by 5:00 pm (AWST) on the business day prior to the Scheme Record Date.
46. Any ineligible foreign holder or non-electing small shareholder did not receive the NST shares to which they would have otherwise been entitled for the disposal of their De Grey shares. Those NST shares were issued to a sale agent, who sold them on the ASX or off-market. NST paid the relevant amount of the net sale proceeds to each relevant shareholder.

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47. The shares in De Grey were suspended from trading on the ASX from the close of trading on 23 April 2025.

48. De Grey was removed from the official list of the ASX on 6 May 2025.

Other matters

49. On the Implementation Date, the sum of the market values of De Grey's assets that were taxable Australian real property (as defined in section 855-20) exceeded the sum of the market values of De Grey's assets that were not taxable Australian real property. However, at no time during the 24 months before the Implementation Date did any foreign resident (with its associates) own 10% or more of the shares in De Grey.

50. No De Grey shareholder was a 'significant stakeholder' or a 'common stakeholder', (within the meaning of those terms in section 124-783).

51. Paragraph 124-780(3)(f) is satisfied in respect of the disposal of De Grey shares to NST.

52. A De Grey shareholder, De Grey and NST were not all members of the same 'linked group' (within the meaning of that term in section 170-260) just before the Scheme Implementation Deed was entered into.

53. NST did not make a choice under subsection 124-795(4) that De Grey shareholders could not obtain a roll-over under Subdivision 124-M in relation to CGT event A1 happening in relation to the exchange of De Grey shares.

54. Subsections 124-810(3) and (5) did not apply to De Grey or NST just before they entered into the Scheme Implementation Deed.

55. The following table is a summary of the key dates for the scheme of arrangement:

Table 1: Key dates for the scheme of arrangement

Event	Date
Scheme Implementation Deed executed	1 December 2024
First court hearing	10 March 2025
Date of scheme booklet	11 March 2025
Shareholder meeting	16 April 2025
Second court hearing to approve the scheme of arrangement	22 April 2025
Effective date of the scheme of arrangement	23 April 2025
Scheme Record Date	5:00 pm (AWST) on 28 April 2025
Implementation Date	5 May 2025

Commissioner of Taxation

11 June 2025

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References

Legislative references:

- ITAA 1936 6(1)
 - ITAA 1997 83A-10
 - 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 104-165(3)
 - ITAA 1997 109-10
 - ITAA 1997 110-25(2)
 - ITAA 1997 110-55(2)
 - ITAA 1997 Subdiv 115-A
 - 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(1)
 - 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 Div 230
 - ITAA 1997 Pt 3-90
 - ITAA 1997 Subdiv 842-I
 - ITAA 1997 855-10
 - ITAA 1997 855-15
 - ITAA 1997 855-20
 - ITAA 1997 977-50
 - ITAA 1997 995-1(1)
 - Corporations Act 2001 Pt 5.1
 - Corporations Act 2001 411(4)(a)(ii)
 - Corporations Act 2001 411(4)(b)
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ATO references

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