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Castile Demerger – Australian Taxation Office Ruling

Westgold Resources Limited (**Westgold**) wishes to advise shareholders that the Australian Taxation Office has issued a Class Ruling 2020/6 (**ATO Ruling**) with respect to the tax implications of the Castile Resources Pty Ltd (**Castile**) demerger.

The ATO Ruling applies to shareholders who held ordinary shares in Westgold and received an in-specie distribution of Castile shares, and:

- were registered on the Westgold share register on 28 November 2019 (**Record Date**);
- held Westgold shares on capital account on the Record Date (as opposed to being held as revenue assets or as trading stock), and
- were an Australian resident as at the date of the demerger (3 December 2019).

Relevantly, the ATO Ruling provides:

- that a capital gains tax event occurred on the transfer of Castile shares to Westgold shareholders;
- the reasonable apportionments derived by the Commissioner of Taxation is proportioned to 97.25% per Westgold Share and 2.75% per Castile Share.
- shareholders may elect to roll-over the capital gain pursuant to Subdivision 125-B of the *Income Tax Assessment Act 1997* (Cth).

The following is an illustrative example of how to calculate your cost bases for the purposes of the ATO Ruling:

> Mary held 10,000 Westgold shares that she bought for $2.00 per share with an aggregate cost base of $20,000, before the demerger. Mary's Castile share entitlement was on 1:4 basis, meaning that she received 2,500 Castile shares. The cost basis of Mary's shareholdings is calculated as follows:

Westgold Shares = 10,000	**Castile Shares = 2,500**
$20,000 x 97.25% = $19,450	$20,000 x 2.75% = $550
$19,450 / 10,000 = $1.945 *per share*	$550 / 2,500 = $0.22 *per share*

Detail about the ATO ruling is provided in the Notice of Meeting dated 18th October 2019 and it is recommended that all Westgold shareholders rely on their own accountant's advice for their individual situation.

A copy of the ATO Ruling is attached to this announcement. Shareholders are encouraged to review the ATO Ruling and to seek independent advice regarding the income tax implications and options available for managing any liabilities arising thereunder.

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Class Ruling

Westgold Resources Limited – demerger of Castile Resources Pty Ltd

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

Further, if we think that this Ruling disadvantages you, we may apply the law in a way that is more favourable to you.

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What this Ruling is about

1. This Ruling sets out the income tax consequences of the demerger of Castile Resources Pty Ltd (Castile) by Westgold Resources Limited (Westgold), which was implemented on 3 December 2019 (Implementation Date).

2. Full details of the demerger are set out in paragraphs 19 to 44 of this Ruling.

Who this Ruling applies to

3. This Ruling applies to you if you held ordinary shares in Westgold and you:

- were registered on the Westgold share register on 28 November 2019 (Record Date)
- held your Westgold shares on capital account on the Record Date, that is, you did not hold your shares in Westgold as revenue assets (as defined in section 977-50 of the *Income Tax Assessment Act 1997* (ITAA 1997)) or as trading stock (as defined in subsection 995-1(1) of the ITAA 1997) on the Record Date, and
- are a resident of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936) on the Implementation Date.

4. This Ruling does not apply to anyone who is subject to the taxation of financial arrangements rules in Division 230 of the ITAA 1997 in relation to the scheme outlined in paragraphs 19 to 44 of this Ruling.

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

When this Ruling applies

5. This Ruling applies from 1 July 2019 to 30 June 2020.

Ruling

Demerger relief is available on the separation of Castile

6. A demerger, as defined in section 125-70 of the ITAA 1997, happened to the Westgold demerger group (which included Westgold and Castile) under the scheme described in paragraphs 19 to 44 of this Ruling. This has income tax consequences for you as set out in paragraphs 7 to 18 of this Ruling.

CGT consequences – Australian resident Westgold shareholders

CGT event G1

7. CGT event G1 happened when you were paid an amount by Westgold in respect of your Westgold shares by way of the transfer to you of Castile shares.[1]

8. You will make a capital gain from CGT event G1 happening if the amount of the reduction of share capital for each Westgold share (2.2 cents) is more than the cost base of your share. The capital gain is equal to the amount of the excess. No capital loss can be made from CGT event G1.[2]

Choosing demerger rollover

9. You can choose to obtain demerger rollover under subsection 125-55(1) of the ITAA 1997 for your Westgold shares.

10. If you choose demerger rollover for your Westgold shares:

- any capital gain you made when CGT event G1 happened to your Westgold shares under the demerger is disregarded[3]
- you must recalculate the first element of the cost base and reduced cost base of your Westgold shares, and calculate the first element of the cost base and reduced cost base of the corresponding Castile shares you acquired under the demerger[4] – see paragraphs 12 to 14 of this Ruling for more details, and
- you are taken to have acquired Castile shares on the Implementation Date (except for the purpose of determining whether you are entitled to make a discount capital gain in relation to a subsequent CGT event that happens to the Castile shares you received under the demerger – see paragraph 15 of this Ruling).[5]

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[1] Section 104-135 of the ITAA 1997.
[2] Subsection 104-135(3) of the ITAA 1997.
[3] Subsection 125-80(1) of the ITAA 1997.
[4] Subsection 125-80(2) of the ITAA 1997.
[5] Section 109-5 of the ITAA 1997.

Not choosing demerger rollover

11. If you do not choose demerger rollover for your Westgold shares:

- you cannot disregard any capital gain you made when CGT event G1 happened to your Westgold shares under the demerger, and
- you must recalculate the first element of the cost base and reduced cost base of your Westgold shares, and calculate the first element of the cost base and reduced cost base of the corresponding Castile shares you acquired under the demerger[6] – see paragraphs 12 to 14 of this Ruling.

New cost base and reduced cost base of your Westgold and Castile shares

12. The first element of the cost base and reduced cost base of each Westgold share and corresponding Castile share is worked out by:

- taking the total of the cost bases of your Westgold shares just before the demerger, and
- apportioning that total between your Westgold shares and your Castile shares acquired under the demerger.

13. The apportionment is done on a reasonable basis having regard to the market values (just after the demerger) of the Westgold shares and Castile shares, or an anticipated reasonable approximation of those market values.[7]

14. The Commissioner accepts that a reasonable apportionment is to:

- attribute 97.25% of the total of the cost bases of your Westgold shares just before the demerger to the Westgold shares, and
- attribute 2.75% of the total of the cost bases of your Westgold shares just before the demerger to the corresponding Castile shares.

Acquisition date of the Castile shares for the purpose of making a discount capital gain

15. For the purpose of determining whether you can make a discount capital gain from a future CGT event that happens to a Castile share you acquired under the demerger, you will be taken to have acquired the Castile share on the date you acquired, for CGT purposes, the corresponding Westgold share (table item 2 of subsection 115-30(1) of the ITAA 1997). This will be the case whether or not you choose demerger rollover.

Not a dividend

16. No part of the value of a Castile share transferred to you under the demerger will be included in your assessable income under subsection 44(1) of the ITAA 1936. Although the part of the value of a Castile share that is not debited to the share capital account of Westgold is a 'dividend' under subsection 6(1) of the ITAA 1936, it will be a 'demerger dividend' under subsections 44(3), 44(4) and 44(5) of the ITAA 1936. A 'demerger dividend' is non-assessable non-exempt income for you.

[6] Subsections 125-85(1) and (2) of the ITAA 1997.
[7] Subsections 125-80(2) and (3) of the ITAA 1997.

The anti-avoidance provisions in sections 45B, 45BA and 45C of the ITAA 1936 will not apply to deem an assessable dividend

17. The Commissioner will not make a determination under paragraph 45B(3)(a) of the ITAA 1936 that section 45BA of the ITAA 1936 applies to the whole, or any part, of the demerger benefit provided to you under the demerger. This is because the purpose test in paragraph 45B(2)(c) of the ITAA 1936 is not satisfied. Therefore, you will not include any part of the amount of the demerger benefit (the market value of the Castile shares) in your assessable income under subsection 44(1) of the ITAA 1936.

18. The Commissioner will not make a determination under paragraph 45B(3)(b) of the ITAA 1936 that section 45C of the ITAA 1936 applies to the whole, or any part, of the capital benefit provided to you under the demerger. This is because the purpose test in paragraph 45B(2)(c) of the ITAA 1936 is not satisfied. Therefore, you will not include any part of the amount of the capital benefit (the market value of the Castile shares to the extent that it is not a demerger dividend you receive) in your assessable income under subsection 44(1) of the ITAA 1936.

Scheme

19. 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.

Westgold

20. Westgold is an Australian resident company that was incorporated on 27 July 1987 and whose shares became listed on the Australian Securities Exchange (ASX) on 6 December 2016.

21. Westgold is the head company of an Australian income tax consolidated group which includes Castile.

22. Westgold is a gold producer in the Central Murchison region of Western Australia which produces gold from three main gold operating projects.

23. Immediately before the demerger, Westgold had on issue:

- 399,469,957 fully paid ordinary shares, and
- 6,249,600 unlisted options issued under the Westgold Employee Share and Option Plan representing not more than 3% of the total number of ownership interests (as defined in subsection 125-60(1) of the ITAA 1997) in Westgold.

24. There were no other ownership interests (as defined in subsection 125-60(1) of the ITAA 1997) in Westgold.

25. Immediately before the demerger, Westgold had:

- $320,334,368 credited to its share capital account
- accumulated losses of $49,965,158, and
- equity reserves of $195,776,039.

26. Westgold shareholders include both Australian residents and foreign residents and are a mix of individuals, companies, trusts and superannuation funds.

27. Westgold has never paid any dividends.

Castile

28. Castile is an Australian resident company that was incorporated on 8 March 2007.

29. Castile holds the polymetallic gold assets of the Westgold group. These are located in the Northern Territory and isolated from the group's other gold operations in Western Australia.

30. Immediately before the demerger, Westgold held 100% of the ordinary shares in Castile.

The demerger of Castile

31. On 5 August 2019, Westgold announced to the ASX the proposed demerger of Castile.

32. On 25 November 2019, Westgold shareholders voted at the Annual General Meeting to approve a resolution to reduce the share capital of Westgold by $8,803,840 under sections 256B and 256C of the *Corporations Act 2001*. The date for determining the entitlement of Westgold shareholders to receive Castile shares was 28 November 2019 (Record Date).

33. On 3 December 2019 (Implementation Date), Westgold satisfied the capital reduction by transferring of all of the ordinary shares in Castile to Westgold shareholders in proportion to their shareholdings in Westgold.

34. On the Implementation Date, the Westgold shareholders received one Castile ordinary share for every four Westgold ordinary shares they held at the Record Date for the demerger.

35. After the demerger Westgold no longer held any shares in Castile. All Castile shares were distributed to Westgold shareholders (subject to the sale facility).

36. As a result of the demerger, Westgold shareholders owned shares in both Westgold and Castile.

Accounting treatment

37. Westgold accounted for the demerger by:

- debiting its share capital account by $8,803,840 (the capital reduction amount), and
- debiting its retained earnings account by $13,051,549 (the demerger dividend).

38. The demerger dividend was calculated as the difference between the market value of the Castile shares and the capital reduction amount.

Reasons for the demerger

39. Westgold's intention is to remain a pure-play gold producer. The directors of Westgold formed the view that:

- Castile's base metal focus detracted from Westgold's pure gold focus and distracted management away from its core Western Australian operations
- the base metal assets of Castile have outstanding potential, and a dedicated and independent focus and budget for the development of the Castile assets could create more wealth for shareholders, and
- Castile's assets were competing for capital from a pool dominated by Westgold's existing gold operations and this suppressed their potential and that their fair value was not fully recognised as a consequence.

40. Following the demerger, Westgold's core focus will remain on the enhancement and expansion of its Central Murchison projects.

Sale facility for some foreign shareholders

41. Under a sale facility for 'ineligible overseas shareholders' of Westgold, the Castile shares they would have otherwise received were sold on market by a nominee and the net sale proceeds were remitted to those 'ineligible overseas shareholders'.

Other matters

42. Immediately before the Implementation Date, Westgold's share capital account was not tainted (within the meaning of Division 197 of the ITAA 1997).

43. Westgold did not elect under subsection 44(2) of the ITAA 1936 that subsections 44(3) and (4) of the ITAA 1936 will not apply to the demerger dividend for all Westgold shareholders.

44. Just after the demerger, CGT assets owned by Castile and its demerger subsidiaries representing at least 50% by market value of all the CGT assets owned by those entities were used in carrying on a business by those entities (subsection 44(5) of the ITAA 1936).

Commissioner of Taxation
15 January 2020

References

Previous draft:

Not previously issued as a draft

Legislative references:

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- ITAA 1936 44(3)
- ITAA 1936 44(4)
- ITAA 1936 44(5)
- ITAA 1936 45B
- ITAA 1936 45B(2)(c)
- ITAA 1936 45B(3)(a)
- ITAA 1936 45B(3)(b)
- ITAA 1936 45BA
- ITAA 1936 45C
- ITAA 1997 104-135
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- ITAA 1997 109-5
- ITAA 1997 115-30
- ITAA 1997 115-30(1)
- ITAA 1997 Div 125
- ITAA 1997 125-55(1)
- ITAA 1997 125-60(1)
- ITAA 1997 125-70
- ITAA 1997 125-80(1)
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- ITAA 1997 125-85(1)
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ATO references

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