

CR 2025/53 - 92 Energy Limited - scrip for scrip roll-over for shareholders

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Status: **legally binding**

Class Ruling

92 Energy Limited – scrip for scrip roll-over for shareholders

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.

Table of Contents	Paragraph
What this Ruling is about	1
Who this Ruling applies to	5
When this Ruling applies	7
Ruling	8
Scheme	25

What this Ruling is about

1. This Ruling sets out the income tax consequences for the holders of ordinary shares in 92 Energy Limited who disposed of those shares to ATHA Energy Corp. (ATHA) on 11 April 2024 (Implementation Date) by way of scheme of arrangement (Scheme).
2. Details of this scheme are set out in paragraphs 25 to 52 of this Ruling.
3. From 7 June 2024, 92 Energy Limited was registered as 92 Energy Pty Ltd. Both forms of the company are referred to in this Ruling as 92 Energy.
4. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

Who this Ruling applies to

5. This Ruling applies to you if you were a holder of ordinary shares in 92 Energy (92 Energy Shares) and you:
 - were registered on the 92 Energy share register as a holder of an ordinary share in 92 Energy at 4:00 pm Australian Western Standard Time on 4 April 2024 (Record Date)
 - disposed of your 92 Energy Shares under the Scheme and received new shares in ATHA as the Scheme Consideration
 - held your 92 Energy Shares on capital account – that is, your 92 Energy ordinary shares were neither held as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1))

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- are a resident of Australia (as defined in subsection 6(1) of the *Income Assessment Act 1936*) and not a 'temporary resident' as defined in subsection 995-1(1)
- did not acquire your 92 Energy Shares under a 92 Energy employee share plan with a deferred taxing point that would occur on the implementation date, and
- were not subject to the taxation of financial arrangement rules in Division 230 in relation to gains and losses on their 92 Energy Shares.

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

6. This class of entities are referred to as '92 Energy Shareholders' or 'Scheme Participants'.

When this Ruling applies

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

Ruling

CGT event A1 happened on the disposal of your 92 Energy Limited ordinary shares

8. CGT event A1 happened when you disposed of your 92 Energy ordinary shares (section 104-10).

9. The time of CGT event A1 was on the Implementation Date (paragraph 104-10(3)(b)).

10. The capital proceeds from CGT event A1 happening to each 92 Energy ordinary share is the market value of the ATHA share you received in respect of your disposal of the 92 Energy ordinary share (subsection 116-20(1)). The market value of the ATHA share is worked out as at the time of CGT event A1 happening.

11. You made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of your 92 Energy ordinary share were more than the cost base of that share.

12. You made a capital loss from CGT event A1 happening if the capital proceeds from the disposal of your 92 Energy ordinary share were less than the reduced cost base of that share (subsection 104-10(4)).

Availability of scrip for scrip roll-over for Australian-resident shareholders

13. Subject to the qualification in paragraph 12 of this Ruling, if you are a resident of Australia and you made a capital gain from the disposal of your 92 Energy ordinary shares, you may choose to obtain scrip for scrip roll-over for the capital gain (sections 124-780 and 124-785).

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

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Consequences if you choose scrip for scrip roll-over for your 92 Energy Limited shares

Capital gain is disregarded

15. 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 92 Energy ordinary shares (subsection 124-785(1)).

Cost base and reduced cost base of shares in ATHA Energy Corp.

16. If you choose scrip for scrip roll-over, the first element of the cost base and reduced cost base of a replacement ATHA share you received is worked out by reasonably attributing to it the cost base and reduced cost base (respectively) of the 92 Energy ordinary share for which it was exchanged and for which you obtained the roll-over (subsections 124-785(2) and (4)).

17. We accept that one reasonable method of attribution would be to calculate the first element of the cost base and reduced cost base of each replacement ATHA share by dividing the total cost bases of your 92 Energy ordinary shares by the number of replacement ATHA shares you received.

Acquisition date of shares in ATHA Energy Corp.

18. If you choose scrip for scrip roll-over, for the purposes of working out whether a future capital gain from the replacement ATHA share is a discount capital gain, the ATHA share you acquired in exchange for your 92 Energy ordinary share is taken to have been acquired on the date you acquired, for capital gains tax purposes, the corresponding 92 Energy 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 ATHA Energy Corp. shares

Capital gain is not disregarded

19. 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 92 Energy 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).

20. If you do not choose, or cannot choose, scrip for scrip roll-over and you made a capital gain on the disposal of your 92 Energy ordinary shares, you can treat the capital gain as a discount capital gain provided that the conditions of Subdivision 115-A are met. In particular, the 92 Energy 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 ATHA Energy Corp.

21. 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 ATHA share you received is equal to the market value of the 92 Energy ordinary share you gave in respect of acquiring the ATHA share.

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22. The market value of the 92 Energy ordinary shares you gave is worked out as at the time when you acquired the replacement ATHA shares on the Implementation Date (paragraph 110-25(2)(b) and subsection 110-55(2)).

23. We accept that you can apportion the total market value of your 92 Energy ordinary shares (worked out as at the Implementation Date) across the total number of ATHA shares you acquired on the Implementation Date (subsection 112-30(1)).

Acquisition date of shares in ATHA Energy Corp.

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

Scheme

25. 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.

92 Energy

26. 92 Energy is an Australian public company that was incorporated on 19 February 2020.

27. 92 Energy is a uranium exploration company targeting high-grade unconformity associated uranium in the Athabasca Basin, Saskatchewan, Canada.

28. 92 Energy was listed on the Australian Securities Exchange on 15 April 2021.

92 Energy's share capital and capital structure

29. 92 Energy has one class of ordinary shares on issue. On the Implementation Date, there were 109,433,436 ordinary shares on issue.

30. Prior to the Scheme, 92 Energy had a number of employee equity incentives on issue including performance rights and options.

31. Immediately before the start of the Scheme and through to Implementation Date, 92 Energy had over 300 shareholders.

ATHA Energy Corp.

32. ATHA is a Canadian-incorporated uranium exploration company headquartered in Vancouver, Canada. ATHA holds mineral exploration licences in the Canadian region of Athabasca Basin, Saskatchewan and Sudbury, Ontario.

33. ATHA was incorporated on 14 January 2021 and listed its ATHA shares for trading on the Canadian Securities Exchange on 11 April 2023.

34. ATHA is currently listed on the Toronto Stock Exchange Venture Exchange.

35. Prior to implementation of the Scheme, ATHA did not hold any of the shares in 92 Energy.

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36. ATHA has more than 300 shareholders.

Scheme of arrangement

37. On 8 December 2023, 92 Energy announced that it had entered into a Scheme Implementation Deed under which ATHA would acquire 100% of the fully paid ordinary shares in 92 Energy by way of scheme of arrangement.

38. An amended and restated Scheme Implementation Deed was entered into on 25 January 2024.

39. The Scheme was approved by 92 Energy Shareholders at the shareholders meeting on 25 March 2024.

40. ATHA acquired all the shares in 92 Energy on the Implementation Date.

41. Upon implementation of the Scheme, 92 Energy will be a wholly owned subsidiary of ATHA and each of the subsidiaries of 92 Energy will form part of a merged group.

Scheme consideration

42. Under the Scheme, 92 Energy Shareholders (other than Ineligible Foreign Shareholders or Selling Scheme Participants, described in paragraphs 45 and 46) received 0.5834 of an ordinary share in ATHA (replacement ATHA share) for each 92 Energy Share held on the Scheme Record Date (Scheme Consideration).

43. There was no cash component to the Scheme Consideration.

44. If a Scheme Participant were entitled to a fraction of a replacement ATHA share, the Scheme Participant's fractional entitlement was rounded down to the nearest whole number of replacement ATHA shares.

Sale facility

45. 92 Energy Shareholders whose entitlement to the Scheme Consideration would be 100,000 replacement ATHA shares or less (that is, 92 Energy Shareholders who held 171,409 92 Energy Shares or less on the Implementation Date) could elect to have their replacement ATHA shares sold by a Sale Agent on their behalf and receive cash (Selling Scheme Participant). Shareholders must have made this election by 5:00 pm Australian Western Standard Time on 2 April 2024.

46. An Ineligible Foreign Holder is defined in the Scheme Implementation Deed as any Scheme Participant whose address shown on the 92 Energy Share Register as at the Record Date is a place outside Australia, Canada (British Columbia, Ontario, Quebec, Saskatchewan and Alberta provinces only), Hong Kong, New Zealand, Singapore, the United Kingdom and the United States and such other jurisdictions as agreed in writing between the parties, unless, no less than 3 business days prior to the scheme meeting, the parties agree in writing that it is lawful and not unduly onerous or unduly impracticable to issue that 92 Energy Shareholder with the Scheme Consideration when the Scheme becomes effective.

47. Ineligible Foreign Shareholders and Selling Scheme Participants who held 92 Energy Shares on the Record Date did not receive any replacement ATHA shares, being Scheme Consideration. Their Scheme Consideration was issued to the Sale Agent and sold through a sale facility. The Sale Agent sold those replacement ATHA shares and remitted the sale proceeds to ATHA. ATHA subsequently remitted in Australian dollars the

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proportion of the sale proceeds from the sale of the Scheme Consideration sold through the sale facility to the shareholder.

Other matters

48. All parties that participated in the Scheme dealt at arm's length for the purposes of subsection 124-780(4).

49. Immediately before the start of the Scheme and through to the Implementation Date, there will not be 20 or fewer individuals (together with their associates) that will hold at least 75% of the ordinary shares issued by 92 Energy (with 92 Energy not having concentrated ownership (subsection 124-810(3))).

50. There was no 'significant stakeholder' or 'common stakeholder' in 92 Energy within the meaning of those terms in section 124-783.

51. Paragraph 124-780(3)(f) is satisfied in respect of the disposal of 92 Energy shares to ATHA.

52. ATHA did not make a choice under subsection 124-795(4) that 92 Energy shareholders could not obtain the roll-over in Subdivision 124-M for CGT event A1 happening in relation to the exchange of 92 Energy shares.

Commissioner of Taxation

6 August 2025

Status: **not legally binding**

References

Legislative references:

- | | |
|--------------------------|---------------------------|
| - ITAA 1936 6(1) | - ITAA 1997 Subdiv 124-M |
| - ITAA 1997 102-5 | - ITAA 1997 124-780 |
| - ITAA 1997 102-10 | - ITAA 1997 124-780(3)(f) |
| - ITAA 1997 104-10 | - ITAA 1997 124-780(4) |
| - ITAA 1997 104-10(3)(b) | - ITAA 1997 124-783 |
| - ITAA 1997 104-10(4) | - ITAA 1997 124-785 |
| - ITAA 1997 109-10 | - ITAA 1997 124-785(1) |
| - ITAA 1997 110-25(2)(b) | - ITAA 1997 124-785(2) |
| - ITAA 1997 110-55(2) | - ITAA 1997 124-785(4) |
| - ITAA 1997 112-30(1) | - ITAA 1997 124-795(2)(a) |
| - ITAA 1997 Subdiv 115-A | - ITAA 1997 124-795(4) |
| - ITAA 1997 115-25 | - ITAA 1997 124-810(3) |
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| - ITAA 1997 116-20(1) | - ITAA 1997 977-50 |
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ATO references

NO: 1-17CLDXF8
 ISSN: 2205-5517
 BSL: PG
 ATOLaw topic: Capital gains tax ~~ CGT events ~~ A1 – disposal of a GGT asset
 Capital gains tax ~~ Rollovers ~~ Scrip for scrip

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