


# ***CR 2024/4 - Allkem Limited - scrip for scrip roll-over***

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Status: **legally binding**

## Class Ruling

### Allkem Limited – scrip for scrip roll-over

#### **① 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 Allkem Limited (Allkem) who disposed of those shares to Arcadium Lithium plc (NewCo) on 4 January 2024 (Implementation Date).
2. Details of this scheme are set out in paragraphs 27 to 50 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 Allkem share register on 27 December 2023 (Record Date)
  - are either a
    - resident of Australia (as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936)), or
    - foreign resident (as defined in subsection 995-1(1)) who is not a temporary resident of Australia (as defined in subsection 995-1(1)) and you did not hold your Allkem ordinary shares through a permanent establishment in Australia, and
  - held your Allkem ordinary shares on capital account – that is, you did not hold your shares as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)).

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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 50 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 2023 to 30 June 2024.

## **Ruling**

### **CGT event A1 happened on the disposal of your Allkem Limited shares**

7. CGT event A1 happened when you disposed of your Allkem ordinary shares (section 104-10).

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

9. The capital proceeds from CGT event A1 happening to each Allkem ordinary share is the market value of the NewCo share, or the CHESS Depositary Interest (CDI) in relation to a NewCo share, you received in respect of your disposal of the Allkem ordinary share (subsection 116-20(1)). The market value of the NewCo shares or CDIs is worked out as at the time of CGT event A1 happening.

10. You made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of your Allkem ordinary share were more than the cost base of that share. You made a capital loss from CGT event A1 happening if the capital proceeds from the disposal of your Allkem 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**

11. 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 Allkem ordinary shares, you may choose to obtain scrip for scrip roll-over for the capital gain (sections 124-780 and 124-785).

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

### **Consequences if you choose scrip for scrip roll-over for your Allkem Limited shares**

#### ***Capital gain is disregarded***

13. 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 Allkem ordinary shares (subsection 124-785(1)).

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***Cost base and reduced cost base of shares in Arcadium Lithium plc or CHESS Depository Interests***

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

15. The Commissioner accepts that a reasonable method of attribution would be to calculate the first element of the cost base and reduced cost base of each replacement NewCo share or CDI by dividing the total cost bases of your Allkem ordinary shares by the number of replacement NewCo shares or CDIs you received.

***Acquisition date of shares in Arcadium Lithium plc or CHESS Depository Interests***

16. For the purposes of working out whether a future capital gain from the NewCo shares or CDIs is a discount capital gain, the NewCo shares or CDIs you acquired in exchange for your Allkem shares are taken to have been acquired on the date you acquired, for CGT purposes, the corresponding Allkem ordinary shares 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 Allkem Limited shares***

***Capital gain is not disregarded***

17. 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 Allkem 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).

18. If you made a capital gain from CGT event A1 happening on the disposal of your Allkem ordinary shares 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.

***Cost base and reduced cost base of shares in Arcadium Lithium plc or CHESS Depository Interests***

19. 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 NewCo share or CDI you received is equal to the market value of the Allkem ordinary share you gave in respect of acquiring the NewCo share or CDI (subsections 110-25(2) and 110-55(2)).

20. The market value of the Allkem ordinary shares you gave is worked out as at the time when you acquired the NewCo shares or CDIs on the Implementation Date.

21. The Commissioner accepts that you can apportion the total market value of your Allkem ordinary shares (worked out as at the Implementation Date) across the total number of NewCo shares or CDIs you acquired on the Implementation Date (subsection 112-30(1)).

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**Acquisition date of shares in Arcadium Lithium plc or CDIs**

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

**Foreign-resident shareholders**

23. If you were a foreign resident just before the Implementation Date, you cannot choose scrip for scrip roll-over unless your NewCo shares or CDIs were taxable Australian property (as defined in section 855-15) just after the Implementation Date (subsection 124-795(1)).

24. Your Allkem shares were taxable Australian property if they were a CGT asset covered by subsection 104-165(3) (choosing to disregard a capital gain or capital loss on ceasing to be an Australian resident).

25. If you were a foreign resident just before the Implementation Date, you disregard any capital gain or capital loss you made from CGT event A1 happening on the disposal of your Allkem ordinary shares unless your Allkem ordinary shares were taxable Australian property (section 855-10).

26. The acquisition date of the NewCo shares or CDIs is the date on which those shares or CDIs 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.

**Allkem Limited**

28. Allkem is a company that was incorporated in Australia on 20 January 2005.

29. Allkem was listed on both the Australian Securities Exchange (ASX) and the Toronto Stock Exchange (TSX).

30. Allkem is the head company of an income tax consolidated group under Part 3-90, and carries on a business of lithium chemical production.

31. Allkem had 641,337,840 ordinary shares on issue just before the Implementation Date.

32. No shareholder of Allkem (together with their associates as defined in section 318 of the ITAA 1936) beneficially held 10% or more of the Allkem ordinary shares on issue on the Implementation Date or at any time in the 24 months before the implementation Date.

**Arcadium Lithium plc**

33. NewCo is a company that was incorporated in Jersey on 5 May 2023 under the laws of the Bailiwick of Jersey.

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### **Scheme of arrangement**

34. On 10 May 2023, Allkem, NewCo and Livent Corporation announced that they had entered into a Transaction Agreement. Under the Transaction Agreement, Allkem agreed to propose to the shareholders of Allkem that Allkem and the shareholders enter into a scheme of arrangement under Part 5.1 of the *Corporations Act 2001* pursuant to which NewCo would acquire all the ordinary shares in Allkem in exchange for shares or CDIs in NewCo.

35. A resolution in favour of the scheme of arrangement was passed by shareholders of Allkem as required by subparagraph 411(4)(a)(ii) of the *Corporations Act 2001* on 19 December 2023.

36. The scheme of arrangement was approved by the Court under paragraph 411(4)(b) of the *Corporations Act 2001* on 20 December 2023.

37. NewCo acquired 100% of the ordinary shares in Allkem on the Implementation Date.

38. In consideration for the disposal of their Allkem ordinary shares, on the Implementation Date, the shareholders of Allkem received either:

- if they elected to receive shares in NewCo that can be traded on the New York Stock Exchange – one NewCo share for each Allkem ordinary share, or
- if they elected to receive CDIs listed on the ASX in relation to shares of NewCo – one CDI for each Allkem ordinary share.

(Each CDI represents a beneficial interest in, but not legal title to, one share in NewCo.)

39. Shareholders of Allkem whose registered address was in Australia as at the Record Date would receive one NewCo CDI or at their option, one NewCo share for each Allkem ordinary share held.

40. The ordinary shares in Allkem were suspended from trading on the ASX and the TSX from the close of trading on 21 December 2023. Allkem was removed from the official list of the ASX and the TSX on 5 January 2024.

41. The NewCo shares are listed on the New York Stock Exchange and the NewCo CDIs are listed on the ASX.

### **Sale facility for Ineligible Shareholders**

42. An Ineligible Shareholder was a holder of Allkem ordinary shares whose address on the Allkem share register was in a place where it was unlawful or unduly impracticable or onerous for NewCo to issue NewCo shares or CDIs to that Allkem shareholder.

43. The Allkem ordinary shares held by Ineligible Shareholders were sold to a nominee after the Record Date and before the Implementation Date. The nominee subsequently disposed the NewCo CDIs to which the Ineligible Shareholders were entitled, and remitted the net sale proceeds to the relevant shareholders.

### **Other matters**

44. Just before the Transaction Agreement was entered into, and just before the Implementation Date, Allkem had more than 300 shareholders.

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

46. The CDIs in relation to the shares of NewCo are a 'Chess Unit of Foreign Security' under subsection 124-780(6).

47. An Allkem ordinary shareholder, Allkem and NewCo were not all members of the same linked group (within the meaning given by section 170-260) just before the Transaction Agreement was entered into.

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

49. Subsections 124-810(3) and (5) did not apply to Allkem just before the Transaction Agreement was entered into.

50. For the purposes of section 855-30, the sum of the market values of the assets of Allkem that were 'taxable Australian real property' (as defined in section 855-20) did not exceed the sum of the market values of the assets of Allkem that were not taxable Australian real property on the Implementation Date.

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**Commissioner of Taxation**

31 January 2024

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Status: **not legally binding**


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## References

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### *Legislative references:*

- ITAA 1936 6(1)
- ITAA 1936 318
- 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
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- ITAA 1997 110-55(2)
- ITAA 1997 112-30(1)
- 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(6)
- ITAA 1997 124-783
- ITAA 1997 124-785
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- ITAA 1997 124-795(4)
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- ITAA 1997 170-260
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- ITAA 1997 855-10
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- ITAA 1997 855-20
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- ITAA 1997 Div 230
- 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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