

# ***CR 2023/27 - OZ Minerals Limited - scheme of arrangement and special dividend***

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## Class Ruling

# OZ Minerals Limited – scheme of arrangement and special dividend

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### **📌 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 OZ Minerals Limited (OZ Minerals) in relation to the:
  - payment of a fully franked special dividend by OZ Minerals (Special Dividend), and
  - disposal of the ordinary shares in OZ Minerals to BHP Lonsdale Investments Pty Ltd (BHP Lonsdale) on 2 May 2023 (Implementation Date).
2. Details of the scheme are set out in paragraphs 31 to 49 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:
  - received the Special Dividend from OZ Minerals
  - held an ordinary share in OZ Minerals on 24 April 2023 (Scheme Record Date)
  - held your OZ Minerals shares on capital account – that is, your OZ Minerals shares were neither held as revenue assets (as defined in section 977-50) nor as ‘trading stock’ (as defined in subsection 995-1(1))
  - were a ‘resident of Australia’ or a ‘non-resident’ (other than a non-resident who used their OZ Mineral shares at any time in carrying on a business at or through a ‘permanent establishment’ in Australia), as the terms are

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defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936), and

- did not acquire your OZ Mineral Shares under an employee share or option scheme.

5. This Ruling does not apply to you if you are subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 31 to 49 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 2022 to 30 June 2023.

## **Ruling**

### **Special Dividend paid by OZ Minerals**

7. The Special Dividend is a 'dividend' as defined in subsection 6(1) of the ITAA 1936.
8. The Special Dividend is a frankable distribution under section 202-40.

### **Assessability of the Special Dividend, franking credits and tax offsets**

#### ***Resident shareholders***

9. If you are a 'resident of Australia' as defined in subsection 6(1) of the ITAA 1936, you include the Special Dividend in your assessable income (subparagraph 44(1)(a)(i) of the ITAA 1936).
10. If you satisfy the residency requirement in section 207-75, you include the franking credits in your assessable income, and you are entitled to a tax offset equal to the amount of those franking credits (section 207-20), provided you are a 'qualified person' (as defined in Division 1A of former Part IIIA of the ITAA 1936).
11. If you received the Special Dividend as a trustee of a trust (not being a complying superannuation entity) or as a partnership, and you are not a corporate tax entity, the franking credits on the Special Dividend are included in your assessable income, provided you are a 'qualified person' (subsection 207-35(1)).
12. If you are a partner in a partnership or a beneficiary of a trust, and the Special Dividend flows indirectly through the partnership or trust to you, you include your share of the Special Dividend in your assessable income and you are entitled to a tax offset equal to your share of the franking credits on the Special Dividend, provided both you and the partnership or trust (as relevant) are each a 'qualified person' (section 207-45 and former subsection 160APHU(1) of the ITAA 1936).
13. The franking credit tax offset is refundable, subject to the refundable tax offset rules in Division 67 and provided you are not excluded by the operation of section 67-25.

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14. You are specifically excluded from the operation of the refundable tax offset rules pursuant to section 67-25 if you are a:

- non-complying superannuation fund or non-complying approval deposit fund (subsection 67-25(1A))
- trustee of a trust who is liable to be assessed under sections 98 or 99A of the ITAA 1936 (subsection 67-25(1B))
- corporate tax entity, unless the entity is an exempt institution that is eligible for a refund, or a life insurance company that has received distributions or membership interests which are not held by the company on behalf of its shareholders (subsections 67-25(1C) and (1D)), or
- non-resident that carries on business in Australia at or through a permanent establishment of the entity in Australia (subsection 67-25(1DA)).

15. Division 63 sets out the rules on how, and in what order, tax offsets are applied against an income tax liability. Where a tax offset that is subject to the refundable tax offset rules in Division 67 exceeds your income tax liability, you are entitled to a refund of the difference (table item 40 of section 63-10).

#### ***Non-resident shareholders***

16. If you are a non-resident, the Special Dividend is not included in your assessable income (paragraph 44(1)(b) and section 128D of the ITAA 1936), and you are not liable to withholding tax in respect of the Special Dividend (paragraph 128B(3)(ga) of the ITAA 1936).

17. You do not include the amount of the franking credits on the Special Dividend in your assessable income and you are not entitled to a tax offset for those franking credits (sections 207-20 and 207-70).

#### ***Qualified person***

18. You will be a 'qualified person' in relation to the Special Dividend if, during the period from 8 March 2023 to 23 April 2023 (inclusive), you held your OZ Minerals shares for a continuous period of at least 45 days during which you did not have 'materially diminished risks of loss or opportunities for gain' (as defined in former section 160APHM of the ITAA 1936) in respect of the shares. This is because:

- The Special Dividend you received constitutes a 'related payment' for the purposes of former section 160APHN of the ITAA 1936 and therefore the secondary qualification period applies.
- The secondary qualification period is the period beginning 45 days before, and ending 45 days after, the day on which a share became ex dividend (former section 160APHD of the ITAA 1936).
- The shares became ex dividend on 22 April 2023, being the day after 21 April 2023 which was the last day on which acquisition by a person would entitle them to receive the Special Dividend (former subsection 160APHE(1) of the ITAA 1936).
- Any days you had a materially diminished risk of loss or opportunities for gain in respect of the shares are excluded (former subsection 160APHO(3))

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of the ITAA 1936). Under the Scheme of Arrangement, you no longer held your OZ Minerals shares at risk on the Scheme Record Date, being 24 April 2023 (when you became committed to dispose of your OZ Minerals shares to BHP Lonsdale under the Scheme of Arrangement).

19. You will need to determine whether you satisfy the holding period rule having regard to your circumstances. This will require taking into account any positions entered into that have 'materially diminished risks of loss or opportunities for gain' (as defined under former section 160APHM of the ITAA 1936) in respect of your OZ Minerals shares.

#### ***Exempting entity and former exempting entity***

20. OZ Minerals was not an exempting entity (section 208-20), or a former exempting entity (section 208-50), at the time when it paid the Special Dividend to you.

21. Therefore, section 208-195 will not apply to deny the inclusion of the amount of the franking credit on the Special Dividend you received in your assessable income, nor to deny the franking credit tax offset to which you are otherwise entitled, under Division 207.

#### **Capital gains tax consequences**

##### ***CGT event A1***

22. CGT event A1 happened to you on 2 May 2023 when you disposed of each of your OZ Minerals shares to BHP Lonsdale (section 104-10).

##### ***Capital proceeds***

23. The capital proceeds you received from CGT event A1 happening to your OZ Minerals share is \$26.50 (subsection 116-20(1)).

24. The capital proceeds do not include the Special Dividend.

##### ***Capital gain or capital loss***

25. You made a capital gain if the capital proceeds from the disposal of your OZ Minerals share exceeds its cost base (subsection 104-10(4)). The capital gain is the difference.

26. You made a capital loss if the capital proceeds from the disposal of your OZ Minerals share are less than its reduced cost base (subsection 104-10(4)). The capital loss is the difference.

##### ***Discount capital gain***

27. If you made a capital gain from the disposal of your OZ Minerals share, you are entitled to treat the capital gain as a 'discount capital gain' provided you acquired, or are taken to have acquired, your OZ Minerals share on or before 1 May 2022 and the conditions in Division 115 are satisfied (subsection 115-25(1)).

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### ***Non-resident shareholders***

28. If you were a non-resident or the trustee of a foreign trust for CGT purposes as defined in subsection 995-1(1) just before CGT event A1 happened to your OZ Minerals share on 2 May 2023, you disregard any capital gain or capital loss you made as a result of CGT event A1 happening (section 855-10) unless:

- you, either alone or together with your associates, had an interest of 10% or more in OZ Minerals throughout a 12-month period in the 24 months immediately before and ending on the Implementation Date
- you have used your OZ Minerals shares at any time in carrying on a business through a permanent establishment in Australia (table item 3 of section 855-15), or
- you are an individual and your OZ Minerals shares were 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).

### **Anti-avoidance provisions**

#### ***Section 177EA of the ITAA 1936***

29. Having regard to the relevant circumstances, it would not be concluded that the scheme was entered into for a more than incidental purpose of enabling shareholders to obtain an imputation benefit. Therefore, the Commissioner will not make a determination under paragraph 177EA(5)(b) of the ITAA 1936 to deny the whole, or part, of the imputation benefits received by you in relation to the Special Dividend.

#### ***Section 204-30***

30. Based on the scheme, there is no evidence of streaming and the conditions in subsection 204-30(1) were not met. Therefore, the Commissioner will not make a determination under paragraph 204-30(3)(c) to deny the whole, or any part, of the imputation benefits received by you in relation to the Special Dividend.

## **Scheme**

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31. 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.

32. Other information referred to is the Scheme Implementation Deed released on the Australian Securities Exchange (ASX) on 22 December 2022 and the Scheme Booklet released on the ASX on 3 March 2023.

### **Relevant entities**

#### ***OZ Minerals***

33. OZ Minerals is a public company incorporated in Australia and listed on the ASX.

34. OZ Minerals is headquartered in South Australia with a mining business of operating, development and exploration stage projects located primarily across Australia and Brazil.

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35. As at the Implementation Date, OZ Minerals had 337,314,920 ordinary shares on issue.

### **BHP Lonsdale**

36. BHP Lonsdale is a proprietary company incorporated in Australia. It is a direct, wholly-owned subsidiary of BHP Group Ltd (BHP), an Australian ASX-listed company.

### **Scheme of Arrangement**

37. On 22 December 2022, OZ Minerals announced it had entered into a Scheme Implementation Deed with BHP Lonsdale.

38. Under the Scheme Implementation Deed, the Board of OZ Minerals agreed to propose to the shareholders of OZ Minerals that OZ Minerals and its shareholders enter into the Scheme of Arrangement under Part 5.1 of the *Corporations Act 2001* pursuant to which BHP Lonsdale would acquire all of the ordinary shares in OZ Minerals for \$28.25 per share (Scheme Consideration). This amount would be reduced by a special dividend of up to \$1.75 per share which OZ Minerals would declare and pay on or before the Implementation Date.

39. On 13 April 2023, a resolution in favour of the Scheme of Arrangement was passed by the shareholders of OZ Minerals as required by subparagraph 411(4)(a)(ii) of the *Corporations Act 2001*.

40. On 17 April 2023, the Scheme of Arrangement was approved by the Federal Court of Australia under paragraph 411(4)(b) of the *Corporations Act 2001*.

41. On the Implementation Date, BHP Lonsdale acquired all of the shares in OZ Minerals and OZ Minerals shareholders received \$26.50 for each OZ Minerals share they disposed of to BHP Lonsdale.

### **Special Dividend**

42. On 13 April 2023, the directors of OZ Minerals declared the Special Dividend to be paid to OZ Minerals shareholders who held their OZ Minerals shares on 21 April 2023 (Special Dividend Record Date).

43. The Special Dividend consisted of a fully franked amount of \$1.75 in respect of each OZ Minerals share.

44. The Special Dividend was paid by OZ Minerals on 2 May 2023.

45. The Special Dividend was:

- sourced entirely from retained earnings of the OZ Minerals group
- entirely debited to OZ Minerals' retained earnings account
- funded from money borrowed by OZ Minerals under existing debt facilities, and
- subject to the scheme becoming effective.

46. The declaration and payment of the Special Dividend was at OZ Minerals' absolute discretion.

47. The Scheme of Arrangement was not conditional on the Special Dividend.

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48. The Special Dividend was not conditional on BHP, BHP Lonsdale or related parties financing or facilitating the payment of the Special Dividend, or any of them being obliged to bring about the result that the Special Dividend will be received by OZ Minerals shareholders.

### Key dates

49. The following table is a summary of the key dates of the Scheme of Arrangement:

**Table 1: Summary of key dates of the Scheme of Arrangement**

<b>Date</b>	<b>Event</b>
22 December 2022	Scheme Implementation Deed executed
2 March 2023	First Court Date (lodged Scheme Booklet with the court)
3 March 2023	Scheme Booklet provided to OZ Minerals shareholders
13 April 2023	Scheme Meeting
13 April 2023	Special Dividend declared and announced
17 April 2023	Second Court Date
18 April 2023	Effective Date
21 April 2023	Special Dividend Record Date
24 April 2023	Scheme Record Date
2 May 2023	Implementation Date and Dividend Payment Date

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**Commissioner of Taxation**

17 May 2023

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## References

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### *Legislative references:*

- ITAA 1997 Div 63
  - ITAA 1997 63-10
  - ITAA 1997 Div 67
  - ITAA 1997 67-25
  - ITAA 1997 67-25(1A)
  - ITAA 1997 67-25(1B)
  - ITAA 1997 67-25(1C)
  - ITAA 1997 67-25(1D)
  - ITAA 1997 67-25(1DA)
  - ITAA 1997 104-10
  - ITAA 1997 104-10(4)
  - ITAA 1997 104-165(3)
  - ITAA 1997 Div 115
  - ITAA 1997 115-25(1)
  - ITAA 1997 116-20(1)
  - ITAA 1997 202-40
  - ITAA 1997 204-30
  - ITAA 1997 204-30(1)
  - ITAA 1997 204-30(3)(c)
  - ITAA 1997 Div 207
  - ITAA 1997 207-20
  - ITAA 1997 207-35(1)
  - ITAA 1997 207-45
  - ITAA 1997 207-70
  - ITAA 1997 207-75
  - ITAA 1997 208-20
  - ITAA 1997 208-50
  - ITAA 1997 208-195
  - ITAA 1997 Div 230
  - ITAA 1997 855-10
  - ITAA 1997 855-15
  - ITAA 1997 995-1(1)
  - ITAA 1997 977-50
  - ITAA 1936 Div 1A of former Pt IIIAA
  - ITAA 1936 6(1)
  - ITAA 1936 44(1)(a)(i)
  - ITAA 1936 44(1)(b)
  - ITAA 1936 98
  - ITAA 1936 99A
  - ITAA 1936 128B(3)(ga)
  - ITAA 1936 128D
  - ITAA 1936 former 160APHU(1)
  - ITAA 1936 former 160APHM
  - ITAA 1936 former 160APHN
  - ITAA 1936 former 160APHD
  - ITAA 1936 former 160APHE(1)
  - ITAA 1936 former 160APHO(3)
  - ITAA 1936 177EA
  - ITAA 1936 177EA(5)(b)
  - Corporations Act 2001 Pt 5.1
  - Corporations Act 2001 411(4)(a)(ii)
  - Corporations Act 2001 411(4)(b)
- 

### ATO references

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