

# ***CR 2023/62 - Argo Global Listed Infrastructure Limited - dividend substitution share plan***



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Status: **legally binding**

## Class Ruling

# Argo Global Listed Infrastructure Limited – dividend substitution share plan

### **❶ Relying on this Ruling**

This publication (excluding appendix) 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 shareholders of Argo Global Listed Infrastructure Limited (Argo Infrastructure) who elect to receive shares in lieu of dividends under the Argo Global Listed Infrastructure Limited Dividend Substitution Share Plan (DSSP).
2. Full details of this scheme are set out in paragraphs 15 to 26 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1936*, unless otherwise indicated.

**Note:** By issuing this Ruling, the ATO is not endorsing this scheme. Potential participants must form their own view about the scheme.

### **Who this Ruling applies to**

4. This Ruling applies to you if you:
  - are an Australian resident as defined in subsection 6(1)
  - receive fully-paid ordinary shares in Argo Infrastructure in lieu of dividends under the DSSP (Bonus Shares), and
  - hold your shares in Argo Infrastructure on capital account, meaning your Argo Infrastructure shares are neither held as revenue assets (as defined in section 977-50 of the *Income Tax Assessment Act 1997* (ITAA 1997)) nor as trading stock (as defined in subsection 995-1(1) of the ITAA 1997).

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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 of the ITAA 1997 in relation to the scheme outlined in paragraphs 15 to 26 of this Ruling.

**Note:** Division 230 of the ITAA 1997 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 2028.

## **Ruling**

### **Bonus shares received are not a dividend**

7. The value of the Bonus Shares issued to you under the DSSP is not a dividend as defined in subsection 6(1) and will not be taken to be a dividend under subsection 6BA(5).

### **Anti-avoidance provisions do not apply**

8. The value of the Bonus Shares issued to you under the DSSP will not be taken to be a dividend under subsection 45(2).

9. The Commissioner will not make a determination under subsections 45A(2) or 45B(3) that section 45C applies in relation to the whole, or a part, of the Bonus Shares issued to you, and the Bonus Shares will not be taken to be a dividend under subsection 45C(1).

### **Bonus shares not assessable under section 44**

10. The value of the Bonus Shares will not be included in your assessable income under section 44 as the Bonus Shares are not a dividend and will not be taken to be a dividend.

### **Acquisition date of bonus shares**

11. The Bonus Shares you receive in respect of the Argo Infrastructure shares that participate in the DSSP (Original Shares) are taken to have been acquired when you acquired the Original Shares (table items 1 and 3 of subsection 130-20(3) of the ITAA 1997).

### **Cost base of bonus shares**

12. The first element of the cost base and reduced cost base of the Bonus Shares issued in respect of those Original Shares will be determined by apportioning the first element of the cost base and reduced cost base of the Original Shares over both the Original Shares and the Bonus Shares (subsection 6BA(3) and table item 1 of subsection 130-20(3) of the ITAA 1997).

13. The Commissioner considers it reasonable to apportion the first element of the cost base and reduced cost base of each parcel of the Original Shares on a pro rata basis over

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both the parcel of Original Shares and the Bonus Shares issued in respect of them. The result of this apportionment will be the first element of the cost base and reduced cost base of each of those Argo Infrastructure shares.

#### **No deduction for listed investment company capital gain**

14. You will not be entitled to a deduction under section 115-280 of the ITAA 1997 for the Bonus Shares issued to you.

### **Scheme**

15. 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.

#### **Argo Global Listed Infrastructure Limited**

16. Argo Infrastructure is a public company listed on the Australian Securities Exchange. It is a 'listed public company' as defined in subsection 995-1(1), and a 'listed investment company' as defined in section 115-290 of the ITAA 1997.

17. No Argo Infrastructure shares were acquired or are taken to have been acquired by Argo Infrastructure shareholders before 20 September 1985.

18. Since 2018, Argo Infrastructure has paid franked dividends in respect of its shares to its shareholders. Argo Infrastructure intends to continue this practice.

#### **Dividend substitution share plan**

19. All shareholders who have a registered address in Australia or New Zealand are given an opportunity to participate in the DSSP.

20. Under the DSSP, shareholders are able to choose to have some or all of their Argo Infrastructure shares participate in the DSSP (subject to any minimum and maximum levels determined from time to time by the Board) (Participating Shares).

21. Participation in the DSSP is voluntary, and may be varied or terminated at any time, subject to notice requirements set out in the DSSP rules.

22. If a shareholder chooses to participate in the DSSP, they will not receive a dividend in respect of the Participating Shares – rather, they will be issued with fully-paid ordinary shares in Argo Infrastructure equivalent to the value of the dividend foregone.

23. The number of Bonus Shares to be received will be determined by dividing the amount of the dividend foregone (less any applicable withholding tax) by the relevant market price for that dividend, rounded up or down to the nearest whole number of shares.

24. No consideration is provided by the shareholder for issue of the Bonus Shares.

25. Argo Infrastructure will only offer the option of Bonus Shares where it will pay a dividend franked to a minimum of 10%.

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26. Argo Infrastructure will not credit its share capital account in connection with the issue of the Bonus Shares.

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**Commissioner of Taxation**

22 November 2023

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## Appendix – Explanation

**❗** *This Explanation is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

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### **Bonus shares not a dividend**

27. Subsection 6(1) defines a 'dividend' to include any distribution made by a company and any amount credited by a company to any of its shareholders. As no amount will be credited by Argo Infrastructure to any of its shareholders when it issues the Bonus Shares, the Bonus Shares will not be a dividend as defined in subsection 6(1).

28. Section 6BA provides the taxation treatment where a company issues other shares to a shareholder in respect of shares they hold in the company (subsection 6BA(1)).

29. If subsection 6BA(5) applies, other shares issued by a company (bonus shares) will be treated as the payment of a dividend where a shareholder, who has a choice to receive a dividend or to be issued with shares, chooses to be issued with shares. The Argo Infrastructure DSSP Rules provide that choice to Argo Infrastructure shareholders.

30. Subsection 6BA(6), however, states that subsection 6BA(5) will not apply if paragraphs 6BA(6)(a) and (b) apply. Paragraph 6BA(6)(a) will apply because Argo Infrastructure is a 'listed public company' as defined in subsection 995-1(1) of the ITAA 1997. Paragraph 6BA(6)(b) will apply because Argo Infrastructure will not credit its share capital account in connection with the issue of Bonus Shares under the DSSP.

31. As the requirements of subsection 6BA(6) will be satisfied, the Bonus Shares will not be taken to be a dividend under subsection 6BA(5), and therefore subsection 6BA(3) will apply (per Note to subsection 6BA(6)).

### **Anti-avoidance provisions do not apply**

#### ***Section 45***

32. Section 45 applies where a company provides some of its shareholders with bonus shares while paying minimally franked dividends (as defined in subsection 45(3)) to some of its other shareholders (subsection 45(1)).

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33. Section 45 will not apply as the shareholders who do not participate in the DSSP will not receive minimally franked dividends.

34. Therefore the value of the Bonus Shares issued to you will not be taken to be a dividend under subsection 45(2).

#### **Section 45A**

35. Section 45A applies in circumstances where capital benefits are streamed to certain shareholders who would derive a greater benefit from the receipt of capital and it is reasonable to assume that other shareholders have received or will receive a dividend (subsection 45A(1)). Section 45A will not apply where those other shareholders receive a fully franked dividend (subsection 45A(5)).

36. Based on the relevant facts, the Commissioner will not make a determination under subsection 45A(2) that section 45C applies in relation to the whole or a part of the Bonus Shares under the DSSP, and the Bonus Shares will not be taken to be a dividend under subsection 45C(1).

#### **Section 45B**

37. Section 45B applies where certain capital payments or benefits are made or provided to shareholders in substitution for dividends. In broad terms section 45B applies where:

- there is a scheme under which a person is provided with a capital benefit (as defined in subsection 45B(5)) by the company
- under the scheme, a taxpayer (relevant taxpayer), who may or may not be the person provided with the capital benefit, obtains a tax benefit (as defined in subsection 45B(9)), and
- having regard to the relevant circumstances of the scheme (including those set out at subsection 45B(8)), it would be concluded that the person, or one of the persons, who entered into or carried out the scheme or any part of the scheme did so for a purpose (whether or not the dominant purpose but not including an incidental purpose) of enabling a relevant taxpayer to obtain a tax benefit.

38. The issuing of Bonus Shares (in lieu of dividends) under the DSSP satisfies the first 2 conditions listed in paragraph 37 of this Ruling. However, having regard to the relevant circumstances of the DSSP, it cannot be concluded that the DSSP was entered into or carried out for a more than an incidental purpose of enabling the Argo Infrastructure shareholders (who have chosen to have some or all of their shares participate in the DSSP) to obtain a tax benefit.

39. Therefore, the Commissioner will not make a determination under subsection 45B(3) that section 45C applies in relation to the whole, or a part, of the Bonus Shares issued under the DSSP, and the Bonus Shares will not be taken to be a dividend under subsection 45C(1).

#### **Bonus shares not assessable under section 44**

40. Section 44 includes amounts received as a dividend paid out of profits in the assessable income of a shareholder.

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41. As the Bonus Shares are not a dividend under subsection 6(1) and will not be taken to be a dividend under subsections 6BA(5), 45(2) or 45C(1), the value of the Bonus Shares will not be included in your assessable income under section 44.

#### **Acquisition date of bonus shares**

42. The Bonus Shares you receive in respect of Original Shares are taken to have been acquired when you acquired the Original Shares (table items 1 and 3 of subsection 130-20(3) of the ITAA 1997).

43. If your Original Shares consist of shares you acquired, or are taken to have been acquired, at different times, you must allocate the Bonus Shares you receive under the DSSP on a pro rata basis across those parcels of Original Shares. That is, you will have to work out how many of your Bonus Shares are taken to have been acquired at each of those times.

#### **Cost base of bonus shares**

44. The first element of the cost base and reduced cost base of the Bonus Shares issued in respect of them will be determined by apportioning the first element of the cost base and reduced cost base of the Original Shares in a reasonable way over both the Original Shares and the Bonus Shares (subsection 6BA(3) and table item 1 of subsection 130-20(3) of the ITAA 1997).

#### **No deduction for listed investment company capital gain**

45. A deduction is allowable for an amount of dividend paid to you if all or some part of the dividend is reasonably attributable to an 'LIC capital gain' made by a listed investment company (section 115-280 of the ITAA 1997).

46. As the Bonus Shares are not and will not be taken to be a dividend, you will not be entitled to claim a deduction under section 115-280 of the ITAA 1997.



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## References

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### *Legislative references:*

- |                       |                       |
|-----------------------|-----------------------|
| - ITAA 1936 6(1)      | - ITAA 1936 45A(1)    |
| - ITAA 1936 6BA       | - ITAA 1936 45A(2)    |
| - ITAA 1936 6BA(1)    | - ITAA 1936 45A(5)    |
| - ITAA 1936 6BA(3)    | - ITAA 1936 45B       |
| - ITAA 1936 6BA(5)    | - ITAA 1936 45B(3)    |
| - ITAA 1936 6BA(6)    | - ITAA 1936 45B(5)    |
| - ITAA 1936 6BA(6)(a) | - ITAA 1936 45B(8)    |
| - ITAA 1936 6BA(6)(b) | - ITAA 1936 45B(9)    |
| - ITAA 1936 44        | - ITAA 1936 45C       |
| - ITAA 1936 45        | - ITAA 1936 45C(1)    |
| - ITAA 1936 45(1)     | - ITAA 1997 115-280   |
| - ITAA 1936 45(2)     | - ITAA 1997 115-290   |
| - ITAA 1936 45(3)     | - ITAA 1997 130-20(3) |
| - ITAA 1936 45A       | - ITAA 1997 Div 230   |
|                       | - ITAA 1997 977-50    |
|                       | - ITAA 1997 995-1(1)  |
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### ATO references

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