


CR 2022/15 - BHP Group Limited - unification of the BHP Group dual listed company structure

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Class Ruling

BHP Group Limited – unification of the BHP Group dual listed company structure

📌 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 that there are no income tax consequences for shareholders of BHP Group Limited (Limited) as a result of the unification of Limited and BHP Group Plc's (Plc) (collectively BHP Group) dual listed company (DLC) structure (Unification).
2. Full details of this scheme are set out in paragraphs 11 to 38 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:
 - held fully-paid ordinary shares in Limited (Limited shares)
 - were registered on the Limited share register on 28 January 2022 GMT (Plc Scheme Record Time)
 - held your Limited shares on capital account; that is, you did not hold your Limited shares as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)), and

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- do not hold your Limited shares in conjunction with a BHP Group employee share scheme.

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 11 to 38 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 2021 to 30 June 2022, or any substituted accounting period which includes 31 January 2022 AEDT (Implementation Date) within the period.

Ruling

No ordinary income

7. You did not derive ordinary income under section 6-5 of the *Income Tax Assessment Act 1936* (ITAA 1936) as you did not receive any cash or other consideration.

No dividend received

8. You did not receive a dividend as defined in subsection 6(1) of the ITAA 1936 that would be required to be included in your assessable income under subsection 44(1) of the ITAA 1936 as you do not receive any distribution or have any amount credited to you by Limited.

No capital gain or capital loss

9. You will not make a capital gain or capital loss as no CGT event happened in relation to your Limited shares (subsection 100-20(1)).

No consequences under the value shifting rules

10. There will be no consequences for you under the direct value shifting rules (Division 725) or indirect value shifting rules (Division 727).

Scheme

11. 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.

BHP Group dual listed company structure

12. In 2001, Limited and Plc agreed to establish a DLC structure for the purposes of the future conduct of their combined businesses.

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13. The BHP Group conducts mining and petroleum operations.
14. Pursuant to the DLC structure, Limited and Plc agreed to operate as if they were a single economic enterprise, while retaining their separate legal identities, tax residencies and stock exchange listings.
15. The DLC structure was underpinned by an agreement titled the DLC Structure Sharing Agreement (DLC Sharing Agreement), whereby Limited and Plc agreed to pursue the DLC Structure Principles (a term defined in the DLC Sharing Agreement), which governed the manner in which each of Limited and Plc conducted the businesses of Plc and Limited, including implementation, management and operation of businesses.
16. The combined effect of these arrangements gave shareholders of Limited and Plc the same economic exposure to the assets of both companies as they would have if the companies had actually merged. It also enabled shareholders of Limited and Plc to vote as if they all held shares in a single company.
17. Clause 9 of the DLC Sharing Agreement set out the limited circumstances in which the agreement could be terminated. These circumstances included termination by either party by notice, at any time after either party becomes a wholly-owned subsidiary of the other party.

BHP Group Limited

18. Limited is an Australian incorporated public company and an Australian resident for tax purposes. The ordinary shares of Limited are listed on the Australian Securities Exchange (ASX). Limited also has a listing on the New York Stock Exchange (NYSE) relating to its American Depository Receipts (ADR) program.
19. Prior to the Unification, being before 31 January 2022 AEDT, Limited held the majority of the BHP Group's operating assets which were located both in Australia and outside Australia.
20. Limited is the head company of the Limited income tax consolidated group.
21. As at 30 June 2021, Limited had on issue:
- 2,945,851,394 fully-paid ordinary shares (Limited shares)
 - one dividend distribution share held by BHP (AUS) DDS Pty Limited, a wholly-owned Australian subsidiary of Plc (the Limited DDS), and
 - one fully-paid special voting share of no par value held by BHP SVC Pty Ltd, a special purpose company owned by The Law Debenture Trust Corporation Plc (the Limited SVS).
22. The holders of the Limited shares and Limited SVS have voting rights. The Limited SVS was the mechanism by which Plc shareholders effectively exercised voting rights in Limited under the DLC structure. The Limited DDS facilitated the payment of dividends across the DLC structure from Limited to Plc in accordance with the DLC Structure Principles. The Limited DDS did not entitle the holder to a right to vote.

BHP Group Plc

23. Plc is an English incorporated public company and a resident of the United Kingdom (UK) for tax purposes. Plc had a primary listing on the London Stock Exchange, a

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secondary listing on the Johannesburg Stock Exchange and a listing on the NYSE relating to its ADR program.

24. Plc indirectly holds BHP Group's interest in the NSW energy coal assets (located in Australia) and a number of other assets globally.

25. As at 30 June 2021, Plc had on issue:

- 2,112,071,796 fully-paid ordinary shares (Plc shares)
- 50,000 fully-paid preference shares of £1 each (the Plc Prefs); these shares were transferred to Plc for nil consideration on 3 September 2021, and
- one fully-paid special voting share of US 50 cents par value held by Billiton SVC Ltd, a special purpose company owned by The Law Debenture Trust Corporation plc (the Plc SVS).

26. The holders of the Plc shares and Plc SVS had voting rights. The Plc SVS was the mechanism by which Limited shareholders effectively exercised voting rights in Plc under the DLC structure. The Plc Prefs did not carry voting rights except in certain limited circumstances.

Unification of the dual listed company structure

27. On 17 August 2021, the BHP Group announced that it intended to unify the BHP Group's DLC structure into a single primary listing on the ASX and on 2 December 2021, the BHP Group announced a final Board decision to proceed with the transaction, subject to shareholder approval.

28. The Unification was implemented through a UK scheme of arrangement, which involved Limited acquiring all the Plc shares. In exchange for the Plc shares, Limited issued new ordinary shares in itself (new Limited shares) to Plc shareholders in a one-for-one exchange.

29. Plc shareholders approved the Unification at the Plc Scheme Meeting and the Plc General Meeting, held on 20 January 2022 GMT. The Court sanctioned the scheme of arrangement at the court sanction hearing on 25 January 2022 GMT.

30. Limited shareholders also approved the requisite resolutions in respect of the Unification at the Limited General Meeting on 20 January 2022 AEDT.

31. On 25 January 2022 GMT, Plc bought back the Plc SVS for an amount equal to the subscription price (US 50 cents). The Plc SVS was subsequently cancelled on 28 January 2022 GMT.

32. At the Plc Scheme Effective Time (being 28 January 2022 GMT), Plc shares were transferred from Plc shareholders to Limited. As a result, Plc became a wholly-owned subsidiary of Limited and Plc shares were delisted.

33. The new Limited shares were issued on the Implementation Date. As a result, Limited's number of fully-paid ordinary shares on issue increased by 2,112,071,796.

34. A share sale facility was set up to facilitate the sale of new Limited shares on behalf of Plc shareholders who validly elected to have their new Limited shares sold pursuant to the share sale facility and for restricted shareholders, being Plc shareholders with a registered address outside Australia, the UK, South Africa or the United States of America and in respect of whom there was a legal impediment in receiving Limited shares under the Plc Scheme. Restricted shareholders did not receive new Limited shares under the scheme. Instead, the new Limited shares to which they were entitled were sold pursuant to

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the share sale facility and the proceeds remitted to them without being charged brokerage costs.

35. On 31 January 2022 AEDT, Limited gave notice to Plc pursuant to clause 9 of the DLC Sharing Agreement to unilaterally terminate the agreement.

36. On 31 January 2022 AEDT, Limited bought back the Limited DDS for A\$2.

37. On 31 January 2022 AEDT, Limited bought back the Limited SVS for an amount equal to its subscription price.

Other matters

38. Limited has more than 300 members and there are no individuals or up to 20 individuals who own between them Limited shares that are entitled to 75% of Limited's income, capital or voting rights.

Commissioner of Taxation

23 February 2022

Appendix – Explanation

❶ *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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Value shifting

39. There may be capital gains tax and income tax consequences where there is a direct value shift as defined in section 725-145 or an indirect value shift as defined in section 727-150. However, the value shifting rules only have consequences for interests held by ‘affected owners’ (paragraph 725-50(d) and subsection 727-15(5)).

Direct value shifting rules

40. Under the direct value shifting rules in Division 725, an entity may be an ‘affected owner’ if it is (section 725-80 and section 725-85):

- the controller of the target entity
- an entity that was an associate of the controller at or after the time when the scheme was entered into, or
- an active participant in the scheme.

41. A controller is an entity that controls (for value shifting purposes) the target entity at some time during a scheme period (section 725-55).

42. An entity is an active participant in the scheme if, and only if, at some time during the scheme period the target entity has fewer than 300 members, the first entity has actively participated in, or directly facilitated, the entering into or carrying out of the scheme, and the first entity owns a down interest or an up interest (subsection 725-65(2)).

43. Limited shareholders are not affected owners under Division 725 as no Limited shareholder is a controller, or an associate of a controller, of Limited or an active participant in the scheme. Accordingly, there are no consequences for Limited shareholders of any direct value shift.

Indirect value shifting rules

44. Under the indirect value shifting rules in Division 727, the consequences of an indirect value shift only apply to interests that ‘affected owners’ hold in the losing or gaining entity immediately before the indirect value shifting time (subsection 727-15(5) and section 727-530).

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45. For entities that are not closely held, affected owners are generally:
- ultimate controllers of the losing and gaining entity
 - entities that control the losing or gaining entity, and are controlled by an ultimate controller
 - the losing entity and the gaining entity, and
 - associates of these entities.
46. An entity is the ultimate controller of another entity if it controls (for value shifting purposes) the other entity and there is no other entity that controls both the entities (section 727-350).
47. Limited shareholders are not affected owners under Division 727. Accordingly, any indirect value shift would not have any consequences for Limited shareholders.

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References

Previous draft:

Not previously issued as a draft

Legislative references:

- ITAA 1936 6(1)
- ITAA 1936 6-5
- ITAA 1936 44(1)
- ITAA 1997 100-20(1)
- ITAA 1997 Div 230
- ITAA 1997 Div 725
- ITAA 1997 725-50(d)
- ITAA 1997 725-55
- ITAA 1997 725-65(2)
- ITAA 1997 725-80
- ITAA 1997 725-85
- ITAA 1997 725-145
- ITAA 1997 Div 727
- ITAA 1997 727-15(5)
- ITAA 1997 727-150
- ITAA 1997 727-350
- ITAA 1997 727-530
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- TAA 1953

ATO references

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 Tax integrity measures ~~ General value shifting regime

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