


# ***CR 2022/16 - BHP Group Plc - exchange of BHP Group Plc shares for BHP Group Limited shares***

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## Class Ruling

# BHP Group Plc – exchange of BHP Group Plc shares for BHP Group Limited shares

### **📌 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 BHP Group Plc (Plc) that disposed of their ordinary Plc shares in exchange for ordinary shares in BHP Group Limited (Limited) as a result of the unification of the Limited and Plc (collectively BHP Group) dual listed company (DLC) structure (Unification).
2. Full details of this scheme are set out in paragraphs 21 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:
  - held fully-paid ordinary shares in Plc (Plc shares)
  - were registered on the Plc share register on 28 January 2022 GMT (Plc Scheme Record Time) for participation in the scheme that is the subject of this Ruling

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- disposed of your Plc shares on 28 January 2022 GMT (Plc Scheme Effective Time) in exchange for new ordinary shares in Limited (new Limited shares)
- held your Plc shares on capital account; that is, your Plc shares were not held as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)), and
- do not hold your Plc 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 21 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 2021 to 30 June 2022, or any substituted accounting period which includes 31 January 2022 AEDT (Implementation Date) within the period.

## **Ruling**

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

7. CGT event A1 happened when you disposed of each of your Plc shares on the Plc Scheme Effective Time, being 28 January 2022 GMT (section 104-10).

8. The capital proceeds from CGT event A1 happening to a Plc share will be the market value of the new Limited share you received in exchange for your Plc share, worked out at the Plc Scheme Effective Time (subsection 116-20(1)).

9. You made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of a Plc share exceeded the cost base of that Plc share (subsection 104-10(4)).

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

### **Availability of scrip for scrip roll-over relief**

11. If you make a capital gain from the disposal of your Plc shares, you may choose to obtain scrip for scrip roll-over (subsection 124-780(1)).

12. Scrip for scrip roll-over cannot be chosen if:

- you were a foreign resident just before the disposal of your Plc shares unless, just after you acquired the new Limited shares, the new Limited shares are taxable Australian property (subsection 124-795(1)), or
- any capital gain you might make from the new Limited shares 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 Plc shares**

13. If you choose scrip for scrip roll-over, you disregard any capital gain arising from CGT event A1 happening in respect of the exchange of your Plc shares for new Limited shares (subsection 124-785(1)).

14. The first element of the cost base or reduced cost base of each new Limited share received is calculated by reasonably attributing to it the cost base and reduced cost base of the Plc shares for which it was exchanged (subsections 124-785(2) and (4)).

15. The date of acquisition of your new Limited shares for 'discount capital gain' purposes is the date you acquired your original Plc shares (table item 2(a) of subsection 115-30(1)).

### **Consequences if scrip for scrip roll-over is not chosen, or cannot be chosen**

16. If you do not, or cannot, choose scrip for scrip roll-over, you must account for any capital gain or capital loss from CGT event A1 happening on the disposal of your Plc shares in working out your net capital gain or net capital loss for the income year in which CGT event A1 happens (sections 102-5 and 102-10).

17. The capital proceeds you receive for the disposal of your Plc shares to Limited will be the market value of the new Limited shares you receive under the scheme, worked out at the time of CGT event A1, being the Plc Scheme Effective Time (subsection 116-20(1)).

18. The first element of the cost base and reduced cost base of each new Limited share received is equal to the market value of each Plc share given in respect of acquiring each new Limited share, worked out as at the time of their acquisition (subsections 110-25(2) and 110-55(2)).

19. The date of acquisition of your new Limited shares is the date you were issued these shares, that is, the Implementation Date, being 31 January 2022 AEDT (table item 2 of section 109-10).

### **Foreign-resident Plc shareholders**

20. If you are a foreign-resident Plc shareholder, any capital gain otherwise arising on the disposal of your Plc shares will be disregarded pursuant to Division 855, unless:

- you used your Plc shares in carrying on a business at or through a permanent establishment in Australia (table item 3 of section 855-15), or
- your Plc shares are covered by subsection 104-165(3) (choosing to disregard a gain or loss on ceasing to be an Australian resident) (table item 5 of section 855-15).

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## **Scheme**

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21. 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**

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

23. The BHP Group conducts mining and petroleum operations.

24. 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.

25. 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 the businesses.

26. 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.

27. 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 Plc**

28. 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 secondary listing on the Johannesburg Stock Exchange and a listing on the New York Stock Exchange (NYSE) relating to its American Depository Receipts (ADR) program.

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

30. 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).

31. 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.

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### **BHP Group Limited**

32. 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 NYSE in respect of its ADR program.

33. 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.

34. Limited is the head company of the Limited income tax consolidated group.

35. 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).

36. 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.

### **Unification of the dual listed company structure**

37. 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.

38. 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 Limited (new Limited shares) to Plc shareholders in a one-for-one exchange.

39. 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.

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

41. 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.

42. 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.

43. 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.

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

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

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

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

#### **Other matters**

48. The market value of Plc's taxable Australian real property assets does not exceed the market value of its non-taxable Australian real property assets.

49. Just before the Unification commenced, Plc and Limited each had more than 300 members and there were no individuals, or up to 20 individuals, who own between them shares which were entitled to 75% of Plc or Limited's income, capital or voting rights.

50. Limited did not make a choice to deny the roll-over to Plc shareholders under subsection 124-795(4).

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**Commissioner of Taxation**

23 February 2022

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## **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.*

### **Availability of scrip for scrip roll-over under Subdivision 124-M if a capital gain is made**

51. The income tax consequences that arise from the scheme that is the subject of this Ruling, are outlined in paragraphs 7 to 20 of this Ruling.

52. One of the income tax consequences for holders of Plc shares identified in this Ruling is the availability of scrip for scrip roll-over under Subdivision 124-M. The roll-over enables a shareholder to disregard a capital gain from the disposal of a share if the shareholder receives a replacement share in exchange. It also provides special rules for calculating the cost base and reduced cost base of the replacement share.

53. Subdivision 124-M contains a number of conditions for, and exceptions to, a shareholder being able to choose scrip for scrip roll-over. The main requirements that are relevant to the scheme that is the subject of this Ruling are:

- an entity exchanges shares in a company for shares in another company (subparagraph 124-780(1)(a)(i))
- the exchange is in consequence of a single arrangement that satisfies subsections 124-780(2) or (2A)
- the conditions for roll-over in subsection 124-780(3) are satisfied
- further conditions in subsection 124-780(4), if applicable, are satisfied, and
- any exceptions to obtaining scrip for scrip roll-over are not applicable.

54. It is the Commissioner's view that the scheme satisfies the requirements for roll-over under Subdivision 124-M.

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## References

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*Previous draft:*

Not previously issued as draft

*Legislative references:*

- ITAA 1997 102-5
- ITAA 1997 102-10
- ITAA 1997 104-10
- ITAA 1997 104-10(4)
- ITAA 1997 104-165(3)
- ITAA 1997 109-10
- ITAA 1997 110-25(2)
- ITAA 1997 110-55(2)
- ITAA 1997 115-30(1)
- ITAA 1997 116-20(1)
- ITAA 1997 Subdiv 124-M
- ITAA 1997 124-780(1)
- ITAA 1997 124-780(1)(a)(i)
- ITAA 1997 124-780(2)
- ITAA 1997 124-780(2A)
- ITAA 1997 124-780(3)
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- ITAA 1997 Div 230
- ITAA 1997 Div 855
- ITAA 1997 855-15
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
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ATO references

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 Income tax ~ Capital gains tax ~ Discount capital gains  
 Income tax ~ Capital gains tax ~ Rollovers ~ Scrip for scrip - Subdivision 124-M

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