

# ***CR 2024/56 - Alumina Limited - scheme of arrangement***



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Status: **legally binding**

## Class Ruling

# Alumina Limited – scheme of arrangement

### **① 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 holders of ordinary shares in Alumina Limited (Alumina) who disposed of those shares to AAC Investments Australia 2 Pty Ltd (AAC2), a wholly owned subsidiary of Alcoa Corporation (Alcoa), on 1 August 2024 (Implementation Date).
2. Details of this scheme are set out in paragraphs 27 to 34 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 Alumina share register on 25 July 2024 (Record Date)
  - held Alumina Limited ordinary shares on capital account for Australian taxation purposes – that is, your Alumina shares were neither held as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1))
  - disposed of your Alumina shares under the scheme and received 0.02854 Alcoa CHES depositary interests (CDI) (New Alcoa CDI) in exchange for each Alumina share
  - were not subject to the investment manager regime in Subdivision 842-I in relation to your Alumina shares

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- did not acquire your Alumina shares under an employee share, option or rights plan, unless prior to the Implementation Date, your employee share, option or rights plan vested and, following such vesting, you received Alumina shares
- were not taken to have acquired your Alumina shares before 20 September 1985
- are not exempt from Australian tax
- were not an ineligible foreign shareholder under the terms of the Scheme Implementation Deed (SID), and
- were not subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 27 to 34 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**

5. This Ruling applies from 1 July 2024 to 30 June 2025.

## **Ruling**

#### **Disposal of your Alumina Limited shares**

6. CGT event A1 happened when you disposed of each of your Alumina shares to AAC2 (section 104-10).
7. CGT event A1 happened on the Implementation Date (paragraph 104-10(3)(b)).

#### **Capital proceeds**

8. The capital proceeds from CGT event A1 happening to each Alumina share is the market value of the New Alcoa CDI you received (subsection 116-20(1)).
9. The market value of the New Alcoa CDI is worked out at the time of CGT event A1 happening. We will accept a market value for each New Alcoa CDI at that time of \$47.96.

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

10. You made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of your Alumina share exceeded the cost base of that share (subsection 104-10(4)). The capital gain is the amount of the excess.
11. You made a capital loss from CGT event A1 happening if the capital proceeds from the disposal of your Alumina share was less than the reduced cost base of that share (subsection 104-10(4)). The capital loss is the difference.
12. If you made a capital gain on disposing of your Alumina shares, you can treat the capital gain as a 'discount capital gain' provided you acquired, or are taken to have acquired, your Alumina share on or before 31 July 2023 and the other conditions of Subdivision 115-A are met.

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### **Foreign-resident shareholders generally disregard a capital gain or capital loss**

13. If you were a foreign resident or the trustee of a foreign trust (for CGT purposes, as defined in subsection 995-1(1)), that held Alumina shares on the Implementation Date and those Alumina shares were not taxable Australian property for the purposes of subsection 855-10(1), you disregard a capital gain or capital loss you made from CGT event A1 happening when you disposed of your Alumina shares (section 855-10).

14. Your Alumina shares were taxable Australian property if they were either:

- an 'indirect Australian real property interest' (table item 2 of section 855-15 and subsection 855-25(1))
- used by you at any time in carrying on a business through a permanent establishment in Australia (table item 3 of section 855-15), or
- a CGT asset that is 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).

15. Your Alumina shares were an 'indirect Australian real property interest' if they passed:

- the non-portfolio interest test (section 960-195) – that is, you (and any of your associates as defined in section 318 of the *Income Tax Assessment Act 1936*) held 10% or more of the shares in Alumina
  - at the time of CGT event A1, or
  - throughout a 12-month period that began no earlier than 24 months before the time of CGT event A1 and ending no later than the time of CGT event A1, and
- the principal asset test (section 855-30) at the time of CGT event A1 if the sum of the market values of Alumina's assets that are taxable Australian real property (as defined in section 855-20) exceeds the sum of the market values of Alumina's assets that are not taxable Australian real property.

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

16. Subject to the qualification in paragraphs 17 and 18 of the Ruling, if you made a capital gain from the disposal of your Alumina shares, you may choose to obtain scrip for scrip roll-over for that gain (sections 124-780 and 124-785). Scrip for scrip roll-over is not available if you made a capital loss.

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

18. If you were a foreign resident just before the Implementation Date, you cannot choose scrip for scrip roll-over unless your replacement New Alcoa CDI were taxable Australian property (as defined in section 855-15) just after the Implementation Date (subsection 124-795(1)).

### **Consequences if scrip for scrip roll-over is chosen**

19. 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 Alumina shares (subsection 124-785(1)).

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

21. For the purposes of determining whether a future capital gain from New Alcoa CDIs is a discount capital gain, the date of acquisition of the replacement New Alcoa CDIs is taken to be the date you acquired your original shares in Alumina (table item 2 of subsection 115-30(1)).

### **Consequences if you do not choose scrip for scrip roll-over**

22. If you do not, or cannot, choose scrip for scrip roll-over, you must account for any capital gain or capital loss from the disposal of your Alumina 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).

23. If you make a capital gain where roll-over is not chosen, you can treat the capital gain as a discount capital gain if the conditions in Subdivision 115-A are met. In particular, the Alumina shares you disposed of must have been acquired at least 12 months before the Implementation Date (section 115-25).

24. If you do not, or cannot, choose scrip for scrip roll-over, the first element of the cost base and reduced cost base of your replacement New Alcoa CDIs is equal to the market value of the Alumina shares you exchanged in respect of acquiring New Alcoa CDIs (subsections 110-25(2) and 110-55(2)).

25. The market value of your Alumina shares is worked out at the time you acquired the replacement New Alcoa CDIs, which is on the Implementation Date (paragraph 110-25(2)(b) and subsection 110-55(2)). We will accept a market value for each Alumina share at that time of \$1.37.

26. If you do not, or cannot, choose scrip for scrip roll-over, you are taken to have acquired the New Alcoa CDIs on the Implementation Date (table item 2 of section 109-10 and paragraph 104-35(5)(c)).

## **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.

### **Alumina Limited**

28. Alumina (formerly WMC Limited) was an Australian-resident company incorporated on 28 April 1970 and first listed on the Australian Securities Exchange on 31 October 1961. Alumina was the head company of the Alumina income tax consolidated group.

29. At the time the scheme was entered into, Alumina's only material investment and asset was a 40% ownership stake in Alcoa World Alumina and Chemicals, an unincorporated global joint venture with Alcoa, which consists of affiliated entities that own, operate or have an interest in bauxite mines and alumina refineries in Australia and other

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countries. Alcoa held the remaining 60% ownership stake in Alcoa World Alumina and Chemicals.

30. At the Implementation Date Alumina only had one class of fully paid ordinary shares on issue.

#### **Scheme of arrangement**

31. Under the SID signed on 12 March 2024 by Alcoa, AAC2 and Alumina, it was agreed that Alcoa, through its indirectly wholly owned Australian subsidiary AAC2, would acquire all of the ordinary shares in Alumina by means of a scheme of arrangement under Part 5.1 of the *Corporations Act 2001*.

32. The scheme of arrangement was approved by Alumina shareholders at a shareholders' meeting on 18 July 2024 and the scheme became effective on 23 July 2024.

33. Under the SID, each Alumina shareholder who held their shares at the Scheme Record Date would be entitled to receive 0.02854 New Alcoa CDIs for each Alumina share held (Scheme Consideration).

34. In relation to ineligible foreign shareholders, Alcoa issued fully paid Alcoa shares equivalent to the Scheme Consideration that each ineligible foreign shareholder would otherwise have been entitled to receive, to USB Securities LLC. USB Securities LLC sold the Alcoa shares in the ordinary course of trading on the New York Stock Exchange and remitted the proceeds to the relevant ineligible foreign shareholder.

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**Commissioner of Taxation**

18 September 2024

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## **Appendix – Explanation**

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**❗** *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 if a capital gain is made**

35. Scrip for scrip roll-over under Subdivision 124-M 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.

36. 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:

- shares in one company are exchanged for shares (including beneficial interests in shares under certain circumstances) in another company paragraph 124-780(1)(a) and subsection 124-780(6)
- the exchange is in a consequence of a single arrangement that satisfies subsections 124-780(2) or (2A)
- the conditions for the roll-over under subsection 124-780(3) are satisfied
- further conditions in subsection 124-780(4), if applicable, are satisfied, and
- exceptions for the roll-over in section 124-795 are not applicable.

37. The scheme that is the subject of this Ruling satisfies the requirements for roll-over under Subdivision 124-M.

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## References

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### *Legislative references:*

- 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 104-35(5)(c)
- ITAA 1997 104-165(3)
- ITAA 1997 109-10
- ITAA 1997 110-25(2)
- ITAA 1997 110-25(2)(b)
- ITAA 1997 110-55(2)
- ITAA 1997 Subdiv 115-A
- ITAA 1997 115-25
- ITAA 1997 115-30(1)
- ITAA 1997 116-20(1)
- ITAA 1997 Subdiv 124-M
- ITAA 1997 124-780
- ITAA 1997 124-780(1)(a)
- ITAA 1997 124-780(2)
- ITAA 1997 124-780(2A)
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- ITAA 1997 124-785
- ITAA 1997 124-785(1)
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- ITAA 1997 124-785(4)
- ITAA 1997 124-795
- ITAA 1997 124-795(1)
- ITAA 1997 124-795(2)(a)
- ITAA 1997 Subdiv 842
- ITAA 1997 855-10
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- ITAA 1997 855-15
- ITAA 1997 855-20
- ITAA 1997 855-25
- ITAA 1997 855-25(1)
- ITAA 1997 855-30
- ITAA 1997 Div 230
- ITAA 1997 960-195
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- Corporations Act 2001 Pt 5.1

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### ATO references

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