


# ***CR 2025/49 - James Hardie Industries plc - New York Stock Exchange full listing and change in depository arrangement***

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## Class Ruling

# James Hardie Industries plc – New York Stock Exchange full listing and change in depository arrangement

### **📌 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 of James Hardie Industries plc (JHIplc) directly listing its ordinary shares on the New York Stock Exchange (NYSE Full Listing) and the change in depository of the JHIplc ordinary shares (JHIplc Shares) from CHESSE Depository Nominees Pty Limited (CDN) to The Depository Trust Company (DTC).
2. Details of this scheme are set out in paragraphs 10 to 31 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997* (ITAA 1997), unless otherwise indicated.

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

4. This Ruling applies to you if you:
  - are a 'resident' of Australia (as defined in subsection 6(1) of the *Income Tax Assessment Act 1936*) at all relevant times
  - hold CHESSE Units of Foreign Securities (CUFS) which represent JHIplc Shares (JHIplc CUFS), and
  - hold your JHIplc CUFS on capital account – that is, your JHIplc CUFS are neither held as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)).
5. This Ruling does not apply to you if you:
  - hold your JHIplc CUFS jointly

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- are subject to the investment manager regime in Subdivision 842-I
- are a 'temporary resident' as defined in subsection 995-1(1)
- are subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 10 to 31 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 2025 to 30 June 2026.

## **Ruling**

### **Capital gains tax consequences**

7. CGT events A1 (section 104-10), C2 (section 104-25), E1 (section 104-55), E2 (section 104-60), E5 (section 104-75), E7 (section 104-85) and E8 (section 104-90) did not happen to you when the JHIplc Shares that were represented by your JHIplc CUFS were deposited with DTC, because you were absolutely entitled to those shares at all relevant times.

8. As a result, the acquisition date, cost base and reduced cost base of your JHIplc Shares do not change at the time they were deposited with DTC.

9. As you did not receive or were entitled to receive any capital proceeds in respect of the deposit with DTC and you did not incur any incidental costs as a result of the deposit with DTC, you will not make a capital gain or a capital loss from CGT event H2 happening (section 104-155).

## **Scheme**

10. 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.

### **Background**

11. JHIplc is a company registered in Ireland.

12. As at 20 March 2025, JHIplc had 429,813,084 ordinary shares on issue. Of these:

- 419,854,581 shares were represented by CUFS listed on the Australian Securities Exchange (ASX) (held by JHIplc CUFS Holders)
- 9,958,497 shares were represented by CUFS represented by American depositary shares evidenced by American depositary receipts (ADRs) listed on the New York Stock Exchange (NYSE) and held by JHIplc ADR Holders, and
- 6 shares were represented by certificates (Certificated Shares) (held by Certificated Holders)

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13. CUFS are a form of Clearing House Electronic Subregister System (CHES) Depository Interests that are issued in respect of foreign equity securities.

#### **Before the New York Stock Exchange Full Listing**

14. Prior to the NYSE Full Listing, JHIplc appointed CDN as its depository nominee.

15. CDN held legal title in the JHIplc Shares (other than the Certificated Shares) as trustee for each beneficial owner of those JHIplc Shares.

16. CDN issued CUFS representing those JHIplc Shares to the JHIplc CUFS Holders.

17. The JHIplc CUFS Holders could trade their JHIplc CUFS on the ASX and such trades were settled via CHES.

18. The beneficial owners of the JHIplc Shares are the JHIplc CUFS Holders.

19. The JHIplc CUFS Holders can obtain legal title to the corresponding number of JHIplc Shares represented by their JHIplc CUFS at any time.

20. To allow interests in JHIplc Shares to be traded on the NYSE, JHIplc participated in an ADR program.

#### **New York Stock Exchange Full Listing**

21. On 30 April 2025, JHIplc commenced steps to have JHIplc Shares listed for trading directly on the NYSE, rather than through ADRs.

22. For the JHIplc Shares to be listed for trading on the NYSE, the JHIplc Shares were required to be placed on deposit with DTC. That is, legal ownership of the JHIplc Shares needed to be transferred to Cede & Co., the partnership nominee of DTC. This allowed DTC to provide electronic settlement services for JHIplc Shares traded on the NYSE.

23. To facilitate the future efficient transfer of JHIplc Shares between Australia (where CUFS trade on ASX, through CHES) and the United States of America (where JHIplc Shares, post-NYSE Full Listing, trade on NYSE through DTC), all JHIplc Shares (other than those retained by Certificated Holders and those underlying ADRs held by registered holders on the books of the transfer agent for the ADRs) were placed on deposit with DTC (DTC Deposit) on 1 July 2025.

24. No action was taken by JHIplc CUFS Holders in relation to the deposit with DTC. JHIplc CUFS Holders did not vote to approve the deposit with DTC.

25. The DTC Deposit did not result in any change in the beneficial ownership of the JHIplc Shares for JHIplc CUFS Holders. The beneficial ownership of the JHIplc Shares remained with the JHIplc CUFS Holders before, during and after the DTC Deposit.

26. There were no changes in the relationship between CDN and the JHIplc CUFS Holders as a result of DTC Deposit and no change in the rights of the JHIplc CUFS Holders.

27. The DTC Deposit did not change the ability of the JHIplc CUFS Holders to withdraw their JHIplc Shares from the depository arrangements at any point in time to obtain legal title in their JHIplc Shares (that is, transmute their JHIplc CUFS into JHIplc Shares).

28. For the purposes of section 106-50, the JHIplc CUFS Holders were absolutely entitled to the JHIplc Shares they beneficially owned before, during and after all relevant steps which gave effect to the DTC Deposit.

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29. Following the DTC Deposit, JHIplc retained its listing on the ASX and JHIplc CUFS continued to be tradable on the ASX in the same manner with these trades settled via CHES.

30. The JHIplc CUFS Holders did not receive, nor were they entitled to receive, any capital proceeds in relation to the DTC Deposit, including no change in their rights relating to the JHIplc Shares.

31. The JHIplc CUFS Holders did not incur any incidental costs in relation to the DTC Deposit.

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**Commissioner of Taxation**

16 July 2025

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## References

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*Legislative references:*

- ITAA 1936 6(1)
  - ITAA 1997 104-10
  - ITAA 1997 104-25
  - ITAA 1997 104-55
  - ITAA 1997 104-60
  - ITAA 1997 104-75
  - ITAA 1997 104-85
  - ITAA 1997 104-90
  - ITAA 1997 104-155
  - ITAA 1997 106-50
  - ITAA 1997 Div 230
  - ITAA 1997 Subdiv 842-I
  - ITAA 1997 977-50
  - ITAA 1997 995-1(1)
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ATO references

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ATOlaw topic: Capital gains tax ~~ CGT events ~~ A1 – disposal of a CGT asset  
Capital gains tax ~~ CGT events ~~ C1 to C3 – end of a CGT asset  
Capital gains tax ~~ CGT events ~~ E1 to E10 – trusts  
Capital gains tax ~~ CGT events ~~ H1 to H2 – special capital receipts

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