

E. Taxation

The taxation discussion set forth below describes the material Australian income tax, UK tax and US federal income tax consequences of a US holder (as hereinafter defined) owning BHP Billiton Limited ordinary shares or ADSs or BHP Billiton Plc ordinary shares or ADSs. The discussion is based on the Australian, UK and US tax laws currently in effect, as well as on the double taxation convention between Australia and the United States (the Australian Treaty), the double tax convention between the UK and the United States (the UK Treaty) and the estate tax conventions between the UK and the United States (the UK Estate Tax Treaty). For purposes of this discussion, a "US holder" is a beneficial owner of ordinary shares or ADSs that is, for US Federal income tax purposes, a citizen or individual resident of the United States, a domestic corporation, an estate whose income is subject to US federal income tax regardless of its source, or a trust if a US court can exercise primary supervision over the trust's administration and one or more US persons are authorised to control all substantial decisions of the trust.

The Australian Treaty was amended by a protocol that became effective on 1 July 2003 in respect of taxes withheld at the source. The discussion below reflects the changes made by the protocol.

The UK and the United States entered into a new double tax convention (the New UK Treaty) on 31 March 2003. The previous UK Treaty is hereinafter defined as the "Old UK Treaty".

We recommend that holders of ordinary shares or ADSs consult their own tax advisors regarding the Australian, UK and US federal, state and local tax and other tax consequences of owning and disposing of ordinary shares and ADSs in their particular circumstances.

Shareholdings in BHP Billiton Limited

Australia Taxation

Dividends

Under the Australian Treaty, dividends paid by BHP Billiton Limited to a US holder of BHP Billiton Limited shares or ADSs who or which is eligible for treaty benefits and whose holding is not effectively connected with a permanent establishment in Australia or, in the case of a shareholder who performs independent personal services from a 'fixed base' situated therein, is not connected with that 'fixed base', may be subject to Australian withholding tax at a rate not exceeding 15% of such gross dividend.

Dividends paid to non-residents of Australia are exempt from withholding tax to the extent to which such dividends are 'franked' under Australia's dividend imputation system or paid out of a foreign dividend account (FDA). Dividends are considered to be 'franked' to the extent that they are paid out of post 1986-87 income on which Australian income tax has been levied. The FDA is an accumulation of dividends remitted to Australia by foreign subsidiaries. Any part of a dividend paid to a US holder, which is not 'franked' and is not paid out of an FDA, will generally be subject to Australian withholding tax unless a specific exemption applies.

Sale of ordinary shares and ADSs

A US citizen who is a resident of Australia, or a US corporation that is a resident of Australia (by reason of carrying on business in Australia, and either being managed and controlled in Australia, or having its voting power controlled by shareholders who are residents of Australia) may be liable for income tax on any profit on disposal of ordinary shares or ADSs, or Australian capital gains tax on the disposal of ordinary shares or ADSs acquired after 19 September 1985.

Under Australian law as currently in effect, no income or other tax is payable on any profit on disposal of ordinary shares or ADSs held by persons not resident in Australia except if the profit is of an income nature and sourced in Australia, or the sale is subject to Australian capital gains tax.

The source of any profit on the disposal of ordinary shares or ADSs will depend on the factual circumstances of the actual disposal. Where the ordinary shares or ADSs are acquired and disposed of pursuant to contractual arrangements entered into and concluded outside Australia, and the seller and the purchaser are non-residents of Australia and do not have permanent establishments in Australia, the profit should not have an Australian source. If the profit is sourced in Australia, it will not be taxable in Australia if it represents business profits of an enterprise carried on by a US holder entitled to treaty benefits and the enterprise does not carry on business in Australia through a permanent establishment situated in Australia.

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Any gain upon disposal of ordinary shares or ADSs, if held by a person not resident in Australia, may be subject to capital gains tax if the non-resident (together with associates, if any) beneficially owns or owned at any time during so much of the period of five years preceding the disposal, 10% or more by value of the issued share capital of BHP Billiton Limited (excluding share capital carrying no right to participate beyond a specified amount in a distribution of profits or capital), or where the ordinary shares or ADSs have been used by the non-resident in carrying on a trade or business through a permanent establishment in Australia.

Australian capital gains tax is generally payable upon the net capital gain arising from the sale of assets acquired after 19 September 1985. For non-resident individuals, only 50% of the capital gain (calculated with no indexation of the cost base and after offsetting capital losses, if any) arising from the sale of assets acquired on or after 11.45am Australian Eastern Standard Time 21 September 1999, is subject to capital gains tax (provided the asset is held for at least 12 months). For assets acquired between 20 September 1985 and 21 September 1999 but sold after 21 September 1999 non-resident individuals have the choice of calculating the capital gain as either 50% of the capital gain (calculated with no indexation of the cost base and after offsetting capital losses, if any), or the disposal proceeds less the cost indexed for inflation up to 30 September 1999. If an asset is held for less than 12 months, 100% of the net capital gain (calculated with no indexation of the cost base) is subject to capital gains tax. Capital losses are calculated with no indexation of the cost base and can only be offset against capital gains.

US Taxation

This section describes the material US federal income tax consequences to a US holder of owning ordinary shares or ADSs. It applies only to ordinary shares or ADSs that are held as capital assets for tax purposes. This section does not apply to a holder of ordinary shares or ADSs that is a member of a special class of holders subject to special rules, including a dealer in securities, a trader in securities that elects to use a mark-to-market method of accounting for its securities holdings, a tax-exempt organisation, a life insurance company, a person liable for alternative minimum tax, a person that actually or constructively owns 10% or more of the voting stock of BHP Billiton Limited, a person that holds ordinary shares or ADSs as part of a straddle or a hedging or conversion transaction, or a US holder whose functional currency is not the US dollar.

This section is based in part upon the representations of the Depositary and the assumption that each obligation in the deposit agreement and any related agreement will be performed in accordance with its terms.

In general, and taking into account the earlier assumptions, for US federal income tax purposes, a holder of ADSs evidencing ADSs will be treated as the owner of the ordinary shares represented by those ADSs. Exchanges of ordinary shares for ADSs, and ADSs for ordinary shares, generally will not be subject to US federal income tax.

Dividends

Under the US federal income tax laws, a US holder must include in its gross income the gross amount of any dividend paid by BHP Billiton Limited out of its current or accumulated earnings and profits (as determined for US federal income tax purposes). The holder must include any Australian tax withheld from the dividend payment in this gross amount even though the holder does not in fact receive it. The dividend is taxable to the holder when the holder, in the case of ordinary shares, or the Depositary, in the case of ADSs, receives the dividend, actually or constructively.

If you are a non-corporate US holder, dividends paid to you on ADSs in taxable years before 1 January 2009 will be taxable to you at the rate applicable to long-term capital gains (generally at a maximum rate of 15%) provided that the ADSs remain readily tradeable on an established securities market in the US and you hold the ADSs for more than 60 days during the 121-day period beginning 60 days before the ex-dividend date and meet other holding period requirements. In the case of a corporate US holder, dividends on shares and ADSs are taxed as ordinary income and will not be eligible for the dividends-received deduction generally allowed to US corporations in respect of dividends received from other US corporations.

Distributions in excess of current and accumulated earnings and profits, as determined for US federal income tax purposes, will be treated as a non-taxable return of capital to the extent of the holder's basis in the ordinary shares or ADSs and thereafter as a capital gain.

Subject to certain limitations, Australian tax withheld in accordance with the Australian Treaty and paid over to Australia will be creditable against your US federal income tax liability. Special rules apply in determining the foreign tax credit limitation with respect to dividends that are taxed at the capital gains rate. To the extent a refund of the tax withheld is available to a US holder under Australian law or under the Australian Treaty, the amount of tax withheld that is refundable will not be eligible for credit against the holder's US federal income tax liability.

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Dividends will be income from sources outside the US, but generally will be, for taxable years beginning before January 1, 2007, "passive income" or "financial services income" or, for taxable years beginning after 31 December 2006, "passive" or "general" income, which is in either case treated separately from other types of income for purposes of computing the foreign tax credit allowable to a US holder.

Sale of Ordinary Shares and ADSs

A US holder that sells or otherwise disposes of ordinary shares or ADSs will recognise a capital gain or loss for US federal income tax purposes equal to the difference between the US dollar value of the amount realised and its tax basis, determined in US dollars, in those ordinary shares or ADSs. The capital gain of a non-corporate US holder that is recognised before 1 January 2009 is generally taxed at a maximum rate of 15% where the holder has a holding period greater than 12 months. The gain or loss will generally be income or loss from sources within the US for foreign tax credit limitation purposes.

Shareholdings in BHP Billiton Plc

The UK and the United States entered into a new double tax convention (the New UK Treaty) on 31 March 2003. The New UK Treaty will generally be effective, in respect of taxes withheld at source, for amounts paid or credited on or after 1 May 2003; there are different effective dates for other provisions of the New UK Treaty. However, a US holder who or which is entitled to treaty benefits under the Old UK Treaty is entitled to elect to have the Old UK Treaty apply in its entirety for an additional 12 month period beyond the date the New UK Treaty would otherwise apply. In the case of withholding taxes, the election would result in the Old UK Treaty applying to any amounts paid or credited on or before 31 March 2004.

UK Taxation

Dividends

Under the UK law, no UK tax is required to be withheld at source from dividends paid on ordinary shares or ADSs.

If the US holder makes the election (described above) to have the Old UK Treaty apply for an additional 12 month period, the following provision of the Old UK Treaty would apply to dividends paid or credited on or before 31 March 2004. Under the Old UK Treaty (but not under the New UK Treaty) dividends to US holders eligible for treaty benefits under that treaty carry a tax credit amount equal to 10 % of the aggregate of the dividend plus a notional credit amount. The notional credit amount is one-ninth of the dividend. Under the Old UK Treaty, a US holder eligible for treaty benefits is entitled to receive a repayment of the tax credit amount, less a UK withholding tax amount of 15% of the aggregate of the dividend and the notional credit amount. Since the withholding tax amount will exceed the tax credit amount, no repayment of the tax credit amount will be made to a US holder. See the discussion below, under "Shareholdings in BHP Billiton Plc-US Taxation-Dividends", regarding the US federal income tax consequences to an eligible US holder that elects to be treated as having received the tax credit amount and as having paid the withholding tax amount.

A US holder is generally eligible for benefits under the Old UK Treaty if the holder (i) is a resident of the US for the purposes of the Old UK Treaty, (ii) does not maintain a permanent establishment or fixed base in the UK to which Ordinary Shares or ADSs are attributable and through which the US holder carries on or has carried on business (or, in the case of an individual, performs or has performed independent personal services), and (iii) is otherwise eligible for benefits under the Old UK Treaty with respect to income and gain from ordinary shares. Eligibility for benefits under the New UK Treaty are generally the same, subject to complying with the new limitation on benefits article.

Sale of Ordinary Shares and ADSs

US holders will not be liable for UK tax on capital gains realised on disposal of ordinary shares or ADSs unless:

- they are resident or ordinarily resident in the UK; or
- carry on a trade, profession or vocation in the UK through a branch or agency for years in which the disposal occurs and the shares or ADSs have been used, held or acquired for the purposes of such trade (or profession or vocation), branch or agency. In the case of a trade, the term 'branch' includes a permanent establishment.

Individuals resident in the UK for tax purposes on or after 17 March 1998 and who become US holders while so resident, may become subject to UK tax on capital gains if they dispose of shares or ADSs whilst resident for tax purposes in the US but resume UK tax residence within five complete UK tax years of the disposition. Under the current double taxation convention US holders are entitled to claim US tax paid on such a disposition as a credit against any corresponding UK tax payable.

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For US holders, the position under the New UK Treaty should be the same as that under the Old UK Treaty. To obtain benefits under the New UK Treaty, a US holder must comply with the limitations of benefits article of the New UK Treaty.

UK Inheritance Tax

An individual who, under the UK Estate Tax Treaty, is a US holder and is domiciled in the US and not domiciled in the UK will not be subject to UK inheritance tax on the disposal of the ordinary shares or ADSs by way of gift or upon the individual's death. The exception to this is where the ordinary shares or ADSs are part of the business property of a UK permanent establishment of the individual US holder, or pertain to a UK fixed base of an individual who performs independent personal services.

Special rules apply to ADSs held in trust.

In all other cases, UK inheritance tax may apply to the gift of the ordinary shares or ADSs or the individual's death. The UK Estate Tax Treaty provides a credit mechanism where an individual is subject both to UK inheritance tax and to US federal estate or gift tax.

UK stamp duty and stamp duty reserve tax

Stamp duty reserve tax is generally payable on the transfer of ordinary shares to the Depository or its nominee, where those shares are for inclusion in the ADSs. The current rate of stamp duty reserve tax is 1.5% on the purchase price or market value of the transferred shares.

Transfer of the ADSs will not give rise to stamp duty if the instrument of transfer is not executed in the UK and remains outside the UK.

Transfers of ordinary shares to persons other than the Depository or its nominee will give rise to stamp duty or stamp duty reserve tax at the time of transfer. The relevant rate is currently 0.5% of the amount payable for the shares. The purchaser normally pays the stamp duty or stamp duty reserve tax.

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This section is based in part upon the representations of the Depository and the assumption that each obligation in the deposit agreement and any related agreement will be performed in accordance with its terms.

In general, and taking into account the earlier assumptions, for US federal income tax purposes, a holder of ADSs evidencing ADSs will be treated as the owner of the ordinary shares represented by those ADSs. Exchanges of ordinary shares for ADSs, and ADSs for ordinary shares, generally will not be subject to US federal income tax.

Dividends

Under the US federal income tax laws, a US holder must include in its gross income the gross amount of any dividend paid by BHP Billiton Plc out of its current or accumulated earnings and profits (as determined for US federal income tax purposes). In addition, an eligible US holder that elected to apply the Old UK Treaty for an additional 12 month period following the date when the New UK Treaty would have otherwise applied, and that elected on Internal Revenue Service Form 8833 (Treaty-Based Return Position Disclosure) to be treated, with respect to the receipt of any dividend paid or credited on or before 31 March 2004, as having received the tax credit amount and as having paid the withholding tax amount (an "electing US holder"), would include the tax credit amount (not reduced by the withholding tax amount) in this gross amount even though the holder did not in fact receive it. For calculation of the applicable tax credit amount and withholding tax amount, refer to "Shareholdings in BHP Billiton Plc – UK Taxation – Dividends" above. US holders should consult their own tax advisors regarding the tax consequences in their particular circumstances of having made such an election. The election to be treated as having received the tax credit amount and as having paid the withholding tax is not available under the New UK Treaty.