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## **The Senate Inquiry into Treasury Laws Amendment (2023 Measures No. 1) Bill 2023**

When being questioned at the Inquiry's public hearing last Tuesday, I sought to discuss the details of OZ Minerals' (OZL) special dividend, being paid that day, as an example of the lack of specificity inherent in Schedule 5 concerning established patterns of dividend payments and the timing of capital raises. In order to conserve time, I was asked to describe my concerns in a follow-up notice.

The details of OZ Minerals' recent dividend payments are:

<b>Dividend Type</b>	<b>Amount (\$)</b>	<b>Franked</b>	<b>Ex-Dividend Date</b>	<b>Pay Date</b>
Interim	1.750	100%	20/04/2023	02/05/2023
Interim	0.080	100%	31/08/2022	16/09/2022
Final	0.180	100%	24/02/2022	11/03/2022
Interim	0.160	100%	23/08/2021	07/09/2021

Oz Minerals was recently acquired by BHP Group Limited under a Scheme of Arrangement. On the day it paid its final dividend as a listed company it also paid shareholders the agreed price for their shares. While OZL has a record of paying dividends stretching back further than shown, it has, to my mind, never paid a special dividend and certainly not one of this magnitude. The Company also had a DRP in place from the dividend paid on 05/10/2020 to the interim paid on 16/09/2022.

This final special dividend is 100% franked and has been already banked by the selling shareholders. It clearly departs from OZL's historical dividend pattern and constitutes a considerable distribution of franking credits immediately before the Company was acquired by BHP.

### **Will the ATO allow this to stand as a franked distribution?**

Looking back, to my knowledge OZL has not had a capital raise in the last several years, except for the DRP: so there is no problem looking back. (I assume for the dividend paid on 16/09/2022 the declaration date is the relevant date to test against the 15/09/2022 date in the proposed legislation.) But what of BHP's record? According to the registry BHP has a DRP currently in place: of what relevance is it that the plan may have been fully- or partially-underwritten in the past or will be in the next x years? Other than the DRP, I don't recall BHP raising equity in the relevant past. I assume the *in specie* distribution of its Woodside interest is of no relevance.

Assuming OZ Minerals is organised as a 100%-owned subsidiary of BHP and BHP, having the financial strength to do so, provides additional equity—again over x years in the future. What then are the implications for the advised franking credits- - already claimed in potentially thousands of tax returns? Similarly, what if BHP raises equity—apart from or in addition to its DRP-- in the next x years?

Under the tests set out in Schedule 5 there seems a great deal of uncertainty as to whether OZ Minerals' shareholders will be allowed to benefit from the franking credits distributed and that the uncertainty will persist for possibly several years after they have lodged their 2022-2023 tax returns. Moreover, it is reasonable to assume that the value of those credits would have been seen by OZL's resident shareholders as increasing the value of BHP's offer price. Excluding the value of franking credits, some shareholders, who voted in favour of the offer, may have chosen to reject it, possibly resulting in a higher offer price or BHP walking away.

For these reasons, one prominent and highly respected financial journalist suggested BHP should be required —before the vote—to declare its plans for any equity raise(s) in the next x years.

I return to my original point: the lack of specificity as to timing (x is not defined in Schedule 5) and the extreme discretion vested in the ATO renders Schedule 5 unworkable. I cannot see how such an intrusion into the financial management of companies can be justified. The \$10 million per annum of revenue enhancement claimed is dwarfed by the cost to revenue the behavioural changes the legislation is likely to promote. Schedule 5 should be abandoned.

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