

Graham R Sellars-Jones
Level 29 / 101 Collins Street
Melbourne Vic 3000

GPO Box 4718
Melbourne Vic 3001

Phone (03) 9235-1687
Fax (03) 9235-1665

GRSJ:JHW
16 March 2007

Mr R F E Warburton AO
Chairman
Board of Taxation
Langton Crescent
PARKES ACT 2600

Dear Mr Warburton

Off-Market Share Buy-Backs

No doubt you would have read the Australian Financial Review article published on Monday 12 March on the subject of buybacks. In that article you are quoted as saying "tax leakage is not of concern" which I can only assume is a misquote or you have been quoted out of context. Now that the "leakage" from Consolidated Revenue would be in excess of \$1 billion, it must surely be of concern.

You are also reported as having indicated agreement that the critics constitute "just a small vocal group". I can assure you absolutely that this is wrong. My survey indicates that 97% of private investors disagree with their share of retained tax-paid profits with franking credit being distributed in this manner and would much prefer a franked dividend or capital return. I have spoken with a vast number of interested parties and, apart from those who stand to get the tax benefit, there is universal agreement with the views I have expressed.

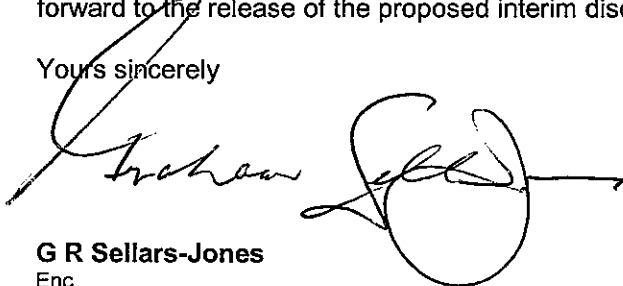
On Wednesday 14 March, the AFR published a letter of mine which again drew attention to the manner in which nil taxpayers reap a hand-out from the ATO, subsidised by non-participants. My letter was in fact edited down for size and I enclose a copy of the original.

As we are all aware, we have the absurdity whereby the ATO is obliged (apparently) to go along with the split between miniscule capital and major part dividend of the consideration for disposal of a capital item while, at the same time, the ASIC insists that the component is not a dividend at all.

I have expressed the view many times – including in personal discussion with the Deputy Chairman of ASIC, Jeremy Cooper, and in correspondence that directors are in breach of their duties in that shareholders are not treated equitably, quite apart from the absurd definition of the "dividend". I appreciate that your enquiry is focused particularly on the taxation aspect but, as I understand it, the parameters go further to embrace broader matters of relevance.

I gather that you are aware that I have had the opportunity to discuss this subject at some length with three members of your Board and I record my grateful thanks for this. I shall look forward to the release of the proposed interim discussion paper.

Yours sincerely



G R Sellars-Jones
Enc

Sent: Wednesday, 7 March 2007 10:56 AM
To: 'edletters@afrc.com.au'
Subject: From Graham Sellars-Jones



BHP Buyback - Tax Rort Cleanup

As a shareholder in BHP Billiton Limited, I have received the Off-market Buy-Back booklet and I have taken heed of the Chairman's encouragement that I "consider this document carefully". Having done so, I am left with the inescapable and unarguable conclusion that shareholders are not being dealt with equitably which, in all probability, puts the Directors at risk of being in breach of the Corporations Law.

Those shareholders on a nil tax rate who rushed to buy the shares in order to participate, notwithstanding a sale into the buyback at a substantial loss, will still stand to reap a gain of around 17.5% on the funds outlaid, or on an annualised basis of maybe 75% or more! This can happen only because the franked dividend component of the consideration is effectively subsidized by non-participants. The fact is that undistributed tax-paid profits with the attendant latent asset of their franking credits belong to all shareholders equitably and it works out that the dividend component of the buyback price (close to 90% of the total consideration) would have been sufficient to pay a special franked dividend to all shareholders of about \$0.80 - a benefit which non-participants can kiss goodbye forever.

By way of compensation, non-participants are asked to swallow the highly suspect "increase in earnings per share" argument. The booklet refers several times to the benefit which is supposed to derive as a consequence of fewer shares on issue, but nowhere is there an attempt to quantify it. My best guess is that the increase would be lucky to be 2.5%, which presumably is supposed to translate to an increase in the value of the shares of similar percentage. BHP shares often fluctuate by this over a day or two, but have a look at the picture over a few months and it pales into total insignificance.

Forget the graph on page 11 of the booklet - the share price scale is blank. In fact, since May last year, the price of BHP shares has fallen by 21%, risen by 17%, fallen by 18%, risen by 16%, fallen by 16%, risen by 24% and fallen by 8%. Just how relevant is the prospective gain which might follow a 2.5% increase in earnings per share in circumstances such as this? In any event, how is 2.5% justified compared with maybe 75% annualised return for the tax rorters?

BHP's earnings are currently running at about \$3 per share out of which the Company pays a miserly distribution of \$0.50. In circumstances where the Company has an embarrassment of riches, instead of dispensing largesse to the "Johnny-come-lately" nil taxpayers at the expense of shareholders generally, why do the Directors not pay a dividend of, say, a twice-covered \$1.50 to all the shareholders equitably? London to a brick the share price would advance as well, way beyond 2.5%.

Directors of these buyback companies keep talking about "return surplus capital to shareholders", the well-established meaning of which is that shareholders could expect a cash amount per share. Any shareholders who reach this reasonable conclusion would find themselves misled and deceived. The fact is that directors are not "returning funds to shareholders" at all, but instead are simply using shareholders' money to pay for shares bought back from the small minority of shareholders who wish to sell them. Again, let's see some "honesty in advertising".

GRAHAM SELLARS-JONES
29 / 101 Collins Street
Melbourne Vic 3000

Jane Henty-Wilson
Assistant to Graham Sellars-Jones
Bell Potter Securities Limited
Ph (613) 9235-1686
Fax (613) 9235-1665
jhenty-wilson@bellpotter.com.au
www.bellpotter.com.au

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