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GRSJ:JHW
8 May 2007

Received
11 MAY 2007
Board of Taxation

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

Dear Mr Warburton

Off-Market Share Buy-Backs

Further to my letter of 16 March, I now provide you with details of a survey which I have conducted among typical private investors holding shares in BHP.

I enclose a copy of my 27 March letter to such clients with which was attached a series of questions inviting shareholders to "tick the box".

I have just written to the same group of shareholders summarising the result so far and a copy of this letter of 7 May is also enclosed for your information.

You will see that, of 160 shareholders surveyed, we have so far received a remarkably-high response from 94 (or 59%) and you will note further that, of these 94, 90 (or 96%) have noted that they are not happy with the buy-back and variously would prefer their share of tax-paid retained earnings to be distributed equitably by way of increased franked dividend and/or special franked dividend and/or capital return.

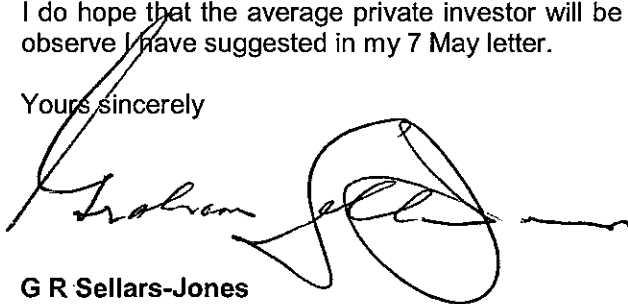
Incidentally, the nature of my survey has the approval in terms of questions and answers of a leading market research polling organisation which has offered its view that the results disclose an overwhelming preference as indicated and disapproval of the structure of these off-market buy-backs.

This evidence flies in the face of the way in which the ASIC has sought to justify its lack of action citing the result of a vote put to shareholders. Without analysing what percentage of the register has voted in terms of number of shares and number of holders, a conclusion that shareholders were heavily in favour can be grossly misleading. There is no doubt in my mind that this is the case.

It has been my experience over many years that the typical private investor is like a "lamb to the slaughter" in this type of thing because it is felt that there is little or no point in protesting. That is why, on many occasions, I have gone into bat where an injustice is being perpetrated.

I do hope that the average private investor will be in touch with your commission as you will observe I have suggested in my 7 May letter.

Yours sincerely



G R Sellars-Jones
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GRSJ:JHW
27 March 2007

Bell Potter

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Dear Client

BHP Billiton Limited - Off-market Buy-Back

First of all, let me apologise for not addressing this letter personally but I am writing to a large number of clients and wish to avoid delay!

Our records indicate that you are a BHP shareholder in which event you would have received the Off-market Buy-Back booklet and you would have made a decision as to whether to participate or not. The booklet set out what Directors considered to be the advantages but had nothing to say about any disadvantages!

The fact is that the Buy-Back involved a very large component of the consideration as a "franked dividend" which enabled nil or low taxpayers to reap a cash benefit by way of refund by the Australian Tax Office.

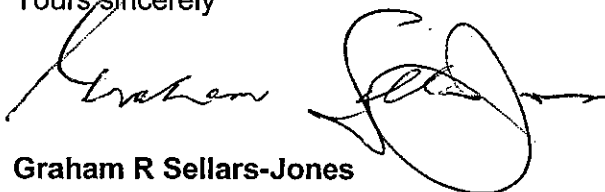
This dividend component would have been enough to pay a fully-franked dividend to all shareholders of approximately \$0.90 per share but non-participants in the Buy-Back who were obliged to forego such a distribution are said to benefit from the expected increase in earnings per share.

On the reverse herewith, you will find the unedited copy of a letter of mine published in the Australian Financial Review on 14 March which addresses these issues.

In line with a survey which I conducted some two years or so ago, I am again seeking to get a good understanding of how private investors feel about buy-backs of this nature. **In this regard, you will find enclosed a form which I would be most grateful if you would complete and return in the envelope provided.**

I shall let you know the result!

Kind regards,
Yours sincerely



Graham R Sellars-Jones

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Adelaide • Brisbane • Hobart • Melbourne • Perth • Sydney

Sent: Wednesday, 7 March 2007 10:56 AM
To: 'edletters@afr.com.au' AUSTRALIAN FINANCIAL REVIEW
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

27/03/2007

BHP Billiton Limited
Off-Market Buy-Back - March 2007
What do you think?

PLEASE TICK THE BOX

	YES	NO
? Are you a shareholder in BHP ?	<input type="checkbox"/>	<input type="checkbox"/>
? Did you participate in the Buy-Back ?	<input type="checkbox"/>	<input type="checkbox"/>
? If so, are your shares held in a Super Fund ?	<input type="checkbox"/>	<input type="checkbox"/>
? Are you happy in general with "tax-driven" off-market buy-back schemes which are largely funded from retained profits by way of "deemed" dividends ?	<input type="checkbox"/>	<input type="checkbox"/>
Would you prefer instead that your share of retained profits be distributed by way of :		
? Increased Franked Dividend ?	<input type="checkbox"/>	<input type="checkbox"/>
? &/or Special Franked Dividend ?	<input type="checkbox"/>	<input type="checkbox"/>
? &/or Capital Return ?	<input type="checkbox"/>	<input type="checkbox"/>
? Is your marginal tax rate higher than the 30% company tax rate ?	<input type="checkbox"/>	<input type="checkbox"/>
? Any other comment ? _____		

Thank you very much for taking the trouble to complete and return in the envelope provided. This will assist my assessing shareholder attitude generally.

Name (optional): _____

Please be assured that your name (if provided) will be held in confidence and will not be passed on or provided to anyone else.

GRSJ:JHW
7 May 2007

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Dear Client

BHP Billiton Limited - Off-market Buy-Back

Our records indicate that we included you as a BHP shareholder in a survey to test the reaction among private investors to the off-market buy-back. I promised to let you know the result. It may be summarised as follows:

BHP shareholders surveyed	:	160	
Responses so far	:	94	(or 59%)
Not happy with the buy-back	:	90	(96% of those who responded)

Reactions, including comments where made, are shown in the summary on the reverse of this letter (with names, where provided, removed).

The enquiry by the Board of Taxation put in place by the Federal Government to delve into various aspects of these buy-backs is due to release a discussion paper during this month when those who wish will be able to express their views. If you are among those who feel disadvantaged, could I suggest that it would be a good idea to write to the Chairman expressing your concerns:

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

After all, companies are in business to make a profit on behalf of the owners, being the shareholders, and the Law dictates that dividends paid out of those profits be distributed equitably, ie, the same amount per share to all shareholders. In my view, it is simply unacceptable that such tax-paid profits with their attendant franking credits are concentrated in the hands of the few who participate in an off-market buy-back (those nil and low taxpayers who reap a cash handout from the Australian Tax Office) to the disadvantage of the vast majority of shareholders who, for good reason, don't participate.

Strangely, the Australian Securities & Investments Commission – which is supposed to look after the interests of all shareholders – “can't see any reason to intervene”, notwithstanding the Law which requires company directors to deal with shareholders equitably. The ATO says the dividend component of the buy-back price is in fact a “dividend” while that other Government agency, the ASIC, says it is not! How can they both be right?

Kind regards.
Yours sincerely


Graham R Sellars-Jones

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**BHP Billiton Limited - Off-Market Buy-Back - March 2007
Results of Survey**

Survey Sent to 160 holders owning 1,000,465 BHP shares

Holders who Participated in Buy-Back	5
Super Fund	3
Happy with "tax-driven" off-market buy-backs or NOT Happy with "tax-driven" off-market buy-backs	2 90
Prefer :	
Increased Franked Div	81
&/or Special Franked Div	68
&/or Capital Return	45
Marginal tax higher than 30%	52
Total Respondents so far up to 2 May 2007	94 (response continues daily)

Comments:

I agree with your letter. Keep up the fight for us "non-participants".
In light of circumstances it would appear these buy-backs are totally inequitable & should be stopped.
Co is involved in family trust. Totally distributes. Taxes paid by beneficiaries.
Good letter to the paper. Should make some board members sit up and take notice.
Excellent letter Graham. Agree fully.
Could not agree more with your letter of 7 March.
Uncertainty of allotment due to scaleback provision. Unjustified expenditure on buyback booklet & follow-up admin costs.
System seems to penalise long-term shareholders, in particular shares acquired pre CGT are disadvantaged. Couldn't shareholders be given choice of either buyback or cap return?
My shares are pre Sep'85 so not subject to CGT so I assume I'd be better to sell at market price.
Buyback opposes my long-term aim to increase capital & overcome inflation.
In our position, never needed to take any tax loss re super fund.
Agree with your thoughts 100%.
Graham's letter is enlightening. How does a co. get away with benefiting one group of shareholders at the expense of another?
I did participate in a previous BHP buyback (I think) but only because I needed some extra funds at the time and it suited me.
We are appalled that a company of BHP's stature continues to discriminate in favour of one class of shareholder. The practise must cease.

A little gift to pensioners' super funds. Don't care what others think.
Buyback overcomes capital gains tax problem.