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## **BHPB bid for Rio - Rio BHP tax bill hangs on High Court hearing**

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The Australian reported that a High Court case this week could ultimately affect the tax treatment of BHP Billiton and Rio Tinto's USD 116 billion Pilbara iron ore alliance.

A dispute over whether options to renew mineral leases are considered land and as a result attract stamp duty will be heard by the High Court sitting in Brisbane with Rio Tinto hoping to overturn an earlier decision that found its Alcan Alumina arm liable to pay tens of millions of dollars.

The case is worth at least USD 47.5 million because a lower court has already ruled in favour of the Commissioner of Territory Revenue. It could affect Rio's proposed JV with BHP and other resource deals that might involve mineral leases.

The case dates back to Alcan Alumina's 2001 acquisition of Gove Aluminium which has operations in the Northern Territory. The USD 740 million deals were structured so that Alcan bought 70% of Gove's shares while Gove bought back 30% of its own shares. Rio Tinto acquired Alcan in 2007.

The Commissioner of Territory Revenue investigated the deal and decided that the mineral leases and options to renew those leases were land for the purposes of the Taxation Act. Alcan was ordered to pay USD 47.5 million which included stamp duties and penalties.

Alcan objected to this assessment but the tax office disallowed the objection. The parties went to court, where Alcan won the first round but the tax office was successful on appeal.

The judges said that although the tax act definition of land included leases, the definition of leases excluded an option to renew a lease. The judges said this might have been the literal reading of the act but such an interpretation defeated the primary purpose of the legislation, according to a recent High Court statement regarding the appeal.

A BHP spokeswoman would not comment on whether options for leases would form part of the joint venture that Rio and BHP recently announced, as that level of detail was not available.

Mr Colin Barnett premier of West Australian Premier was last week outspoken about his belief that the state government was entitled to stamp duty on the deal in general. The 2 companies are merging their Pilbara iron ore operations and the USD 116 billion deal is set to save the companies more than USD 10 billion in costs.

Mr Barnett said that as much as USD 1 billion in stamp duty could be payable to the state and that the deal would have attracted stamp duty if BHP had taken over Rio Tinto's operations. I'm not sure there is a loophole, but it seems to me that the way that this is structured as a production JV could well be in part to avoid the paying of stamp duty."

After a meeting with Mr Marius Kloppers CEO of BHP on last Wednesday, Mr Barnett said the state would demand increased royalty payments as well as the stamp duty. The Premier reiterated that the state believed the merger involved a change of ownership, so it was liable for stamp duty worth hundreds of millions of dollars.

He said that "Not surprisingly, because we're talking about very large amounts of money, Mr Marius Kloppers heard what I said, he took it in, he understood it. But he conceded Mr Kloppers had not indicated any agreement yet."

(Sourced from the Australian)

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