

DISPOSAL OF SHARES IN PIVOT LIMITED

(1) Acquired Before 20 September 1985

The taxation implications report included in the Explanatory Statement issued in respect of the merger between Pivot Limited and Incitec Fertilizers Limited advised that the Merger Proposal did not have any immediate tax consequences for either the Pivot Ordinary Shareholders or the Pivot Investor Shareholders as the merger did not require these shareholders to dispose of any of their shares.

However, the taxation implications report discussed the potential tax liability that could arise for shareholders holding shares acquired **before** 20 September 1985 (“affected shareholders”) who disposed of any of those shares within five years of the ASX listing.

KPMG advised in a letter dated 14 March 2003 which accompanied the Explanatory Statement “that any such capital gain immediately after listing should not be material”.

Incitec Pivot Limited is aware that some affected shareholders have sold their shares since the ASX listing and seek clarification regarding any income tax obligations that may have arisen in respect of their divestment. There are also other affected shareholders who will sell their shares on or before 28 July 2008, being the date five years after the ASX listing.

The practical application of the Capital Gains Tax (CGT) provisions which may apply in these circumstances is a very complex matter and, therefore, Incitec Pivot has held discussions with the Australian Tax Office (ATO) to resolve how these provisions could practically be applied in respect of affected shareholders.

As a consequence of these discussions the ATO has accepted that, subject to the comments below regarding the 50% CGT discount and disposals made on or after 29 July 2008, affected shareholders will be required to include in their assessable income 70% of the difference between proceeds received upon disposal of the shares and \$15.08 (being the average closing price for the shares in the first five days of trading).

By way of example, if a shareholder were to dispose of shares at closing price on 29 April 2004, being \$18.11, the capital gain to be included in that taxpayer’s assessable income would be \$2.12, i.e. 70% of (\$18.11 - \$15.08) per share.

Please note that it is not possible to make a capital loss under these provisions if, for example, you were to sell, or have sold, your shares for less than \$15.08.

Where an affected shareholder is an individual or trust, the sale of the shares in the company will qualify for the 50% CGT discount.

Finally, you should note that the relevant CGT provisions will cease to apply in respect of disposals made on or after 29 July 2008 (being the fifth anniversary of the ASX listing). Affected shareholders disposing of their shares on or after this date will be exempt from CGT in respect of any gain realised on the disposal.

(2) Shares Acquired After 19 September 1985

The taxation treatment outlined above will not apply to the disposal of any shares which were acquired as capital assets by shareholders **after** 19 September 1985. The disposal of such shares will simply require a capital gain/loss to be calculated by deducting the cost of acquisition of the shares from the net sale proceeds.

Where a taxable capital gain arises on any disposal and the shareholder is an individual or trust, the sale of the shares in the company which have been held for at least 12 months will qualify for the 50% CGT discount.

It should be noted that the taxation consequences for a particular taxpayer may differ depending upon the taxpayer's tax profile. Accordingly, while Incitec Pivot has provided the above guidance, the particular tax consequences of a disposal should be confirmed with the shareholder's taxation adviser.



Pivot merger with Incitec - CGT on sale of pre-CGT shares

This page contains information about the capital gains tax (CGT) consequences for Incitec-Pivot Limited shares that were acquired before 20 September 1985 (pre-CGT), following that company's merger with Incitec Fertilizers Limited.

This information applies to you if:

- you are an Australian resident for tax purposes
- you held pre-CGT shares in Incitec-Pivot Limited at the time of the merger with Incitec Fertilizers Limited (1 June 2003), and
- any gain or loss you made on the shares is a capital gain or capital loss - this means that you held your shares as an investment asset, not as trading stock.

Background

Pivot Limited was established as an unlisted public company in June 1919 to operate under cooperative principles.

In April 2003 Pivot Limited changed its name to Incitec-Pivot Limited (Pivot).

Pivot merged with Incitec Fertilizers Limited (IFL) on 1 June 2003. The merger was accomplished by Pivot acquiring the shares in IFL. Existing shareholders in Pivot retained their shares under the merger.

Prior to the merger, approximately 23,000 Pivot shareholders owned pre-CGT shares.

Following the merger, more than 75% of the net value of Pivot was made up of property acquired after 19 September 1985 (post-CGT), other than trading stock.

Pivot listed on the Australian Stock Exchange (ASX) on 28 July 2003. The volume weighted average price of Pivot shares in the five days after listing was \$15.08.

When does capital gains tax affect my pre-CGT Pivot shares following the merger of Pivot and IFL?

Although pre-CGT assets are not generally subject to capital gains tax, special rules apply to pre-CGT shares in a company if 75% or more of the company's net value is made up of post-CGT property. In these circumstances, a capital gain (but not a capital loss) may arise at the time a CGT event happens to your pre-CGT shares because of the special rules in CGT event K6.

In the case of Pivot, more than 75% of the company's net value consisted of post-CGT property following the Pivot-IFL merger. The special rules in CGT event K6 may therefore have application.

There is an exemption from the special rules if some of the company's shares have been continuously listed on an official stock exchange for the five years preceding the time at which the event happens to your pre-CGT shares. Because Pivot's shares were first listed on the ASX on 28 July 2003, the five year stock exchange listing exemption will not apply to pre-CGT Pivot shareholders until 29 July 2008.

You may therefore make a capital gain because of the special rules in CGT event K6 (but not a capital loss) if one of the following CGT events happens to your pre-CGT Pivot shares following the merger with IFL.

Event description

- You dispose of the shares (by sale or gift).
- Your shares are cancelled or surrendered.
- You create a trust over the shares.
- You transfer the shares to a trust.
- The trust holding the shares is converted to a unit trust and you were a beneficiary absolutely entitled to the shares.
- A beneficiary of the trust, on which the shares are held, becomes absolutely entitled to the shares as against you in your capacity as trustee.
- You are a trustee of a trust and you dispose of the shares to a beneficiary in satisfaction of all, or part of, their right to trust income.
- You are a trustee of a trust and you dispose of the shares to a beneficiary in satisfaction of all, or part of, their right to trust capital.
- You acquired the shares under an intra-group rollover and stop being a member of a wholly owned group.

- A tax advantaged beneficiary (tax exempt entity, complying superannuation fund, or a non-resident) inherits your shares.

However, if any of these CGT events happen:

- after the Pivot-IFL merger but before 28 July 2003, or
- on or after 29 July 2008

there will be no capital gains tax consequences.

Note: For Pivot shares that you acquired after 19 September 1985, you work out whether you have made a capital gain or capital loss as a result of a CGT event happening to the shares in the usual way – that is, by comparing the shares' cost base with the capital proceeds that you received from the event.

How do I work out my capital gain?

At the time one of the events in the list above happens, the special rules in CGT event K6 provide that the capital gain is that part of the capital proceeds from each post-CGT share that is reasonably attributable to the amount by which the market value of the company's post-CGT property is more than the sum of the cost bases of that property. For more information on CGT event K6 generally, see Taxation Ruling TR 2004/18.

It is impractical for Pivot to provide a valuation of its post-CGT property each time a shareholder disposes of a pre-CGT Pivot share or another of the events listed in the list above happens in respect of such shares. Because of the particular facts in this case, the Tax Office and Pivot agree that a proportion of the increase in Pivot's share price following listing will be a reasonable reflection of the amount by which the market value of Pivot's post-CGT property exceeds the sum of the cost bases of that property.

As only some of Pivot's post-CGT property would have market values in excess of their cost bases, then only 70% of any increase in the share price above the weighted average listing price of \$15.08 will be treated as a capital gain.

The following table will help you to work out what capital gain (if any) you make from a CGT event happening to your pre-CGT Pivot shares between 28 July 2003 and 28 July 2008:

| For each Pivot share: | you make: | equal to: |
|--|------------------------------------|--|
| With capital proceeds of more than \$15.08 | a capital gain | 70% of the amount remaining after \$15.08 is subtracted from the capital proceeds: (Capital Proceeds - \$15.08) x 0.7 |
| With capital proceeds of less than or equal to \$15.08 | no capital gain no capital loss | Not applicable |

Note: The approach adopted in this fact sheet is limited to the circumstances currently existing in relation to Pivot's structure and property. Should any event occur that will have a substantial or a material effect on the financial position of Pivot, for example if it were to acquire shares in another entity, this position may change. This fact sheet will be reviewed, and updated accordingly, upon Pivot advising of the changed circumstances.

How do I treat the capital gain?

If you make a capital gain on your pre-CGT Pivot shares between 28 July 2003 and 28 July 2008, you must include it in your calculations when completing the capital gains tax item on your tax return (supplementary section) for the year that the capital gain was made.

If you are eligible for the CGT discount, you use the discount method (after offsetting any capital losses for the current year or unapplied net capital losses from earlier years) to work out the amount to include in your capital gains tax item.

You cannot apply indexation in this case.

For information on how to work out your capital gain using the discount method, see the *Guide to capital gains tax*.

Example 1: Capital gain

Jane held 400 Pivot shares at the time of the merger. She had acquired all of these shares before 20 September 1985. Jane sells 200 shares for \$16.68 in June 2004.

Calculating the capital gain:

Jane made capital gains from the sale of the 200 shares as follows:

| | | |
|---|-------|---------------|
| Capital proceeds per share | | \$16.68 |
| (less) weighted average listing price per share | | - \$15.08 |
| Excess | | \$1.60 |
| Reduced to 70% of the excess | X 0.7 | |
| Capital gain per pre-CGT share | | \$1.12 |
| X total pre-CGT shares sold | X 200 | |
| Taxable capital gain | | \$224 |

Jane applies the CGT discount to her capital gain (if she had capital losses, she would offset them against her capital gain before applying the discount). Assuming Jane has no losses to offset, she will apply the discount to include a \$112 (\$224 x 50%) net capital gain on her tax return for the year ended 30 June 2004.

Recording the capital gain in the tax return

If she has no other capital gains and no capital losses for the 2003-04 year, Jane completes **item 17** on her 2004 tax return (supplementary section) showing:

| | |
|---|-------|
| Did you have a capital gains tax event during the year? | Yes |
| Net capital gain: | \$112 |
| Total current year capital gains: | \$224 |

Note: If Jane sells the remainder of her shares after 28 July 2008 for the same price, she does not include anything in her tax return because any capital gain or loss that she makes on the sale after that date is disregarded.

Example 2: No capital gain

Tom held 100 Pivot shares at the time of the merger. Tom had acquired all of these shares before 20 September 1985.

Tom sells all of his shares for \$14.90 each in June 2004.

Capital gains tax consequences:

There are no capital gains tax consequences from this sale.

- Tom receives less than \$15.08 per share, so he makes no capital gain.
- A capital loss cannot be made on this transaction.

Therefore, Tom does not need to include anything in his tax return as a result of this sale.

What to read/do next

For more information on CGT event K6, see Taxation Ruling 2004/18.

For more information about capital gains tax and shares generally, see one of the following publications:

- *You and your shares* (NAT 2632-6.2004) – this publication offers guidance on the taxation of dividends from investments, allowable deductions from dividend income and record keeping requirements for investors.
- *Guide to capital gains tax* (NAT 4151-6.2004) – this publication explains how capital gains tax works and will help you to calculate your net capital gain or net capital loss.
- *Personal investors guide to capital gains tax* (NAT 4152-6.2004) – shorter than the *Guide to capital gains tax*, this publication covers the sale, gift or other disposal of shares or units, distribution of capital gains from managed funds and non-assessable payments from companies or managed funds. It does not cover CGT consequences for bonus shares, shares acquired under an employee share scheme, bonus units, rights and options, and shares and units where a takeover or demerger has occurred – for these you will need to refer to the *Guide to capital gains tax*.

For help applying this information to your own situation, phone us on 13 28 61.

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The Directors
Pivot Limited
70 Southbank Boulevard
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14 March 2003

Dear Directors

**Pivot Limited ("Pivot")
Taxation Implications Report**

1 Background

The following is an overview of the Australian income tax and Capital Gains Tax ("CGT") consequences for Pivot Shareholders in the event that the Merger Proposal proceeds and Pivot acquires 100% of the issued ordinary shares in Incitec Fertilizers Limited ("IFL"). This overview applies only to Australian resident Pivot Shareholders who are individuals and who hold their Pivot shares as capital assets.

The following summary is based upon the law as at the date of this Explanatory Statement, and is not intended to be an authoritative or complete statement of the law relevant to the circumstances of each Pivot Shareholder. Pivot Shareholders should seek independent professional advice in relation to their own particular circumstances.

Unless otherwise stated, the comments in the following sections relate to both Pivot Ordinary Shareholders and Pivot Investor Shareholders.

Certain terms in this report have defined meanings, which are set out in Section 9 of the Explanatory Statement.



2 Implementation of the Merger Proposal

CGT consequences

If you are a Pivot Ordinary Shareholder, the Merger Proposal does not require you to dispose of your shares. Accordingly, there are no immediate consequences for you resulting from the Merger Proposal.

If you are a Pivot Investor Shareholder, there are also no immediate consequences for you resulting from the Merger Proposal. The changes to the rights attached to your Pivot Investor Shares to give them the same rights as Pivot Ordinary Shares do not amount to a disposal for CGT purposes.

Income tax consequences

As part of the Merger Proposal, Pivot is to pay the Pivot Dividend. The Pivot Dividend will be assessable to Pivot Shareholders. However, as the Pivot Dividend will be "fully-franked", an imputation credit will be available as an offset against tax payable on the dividend.

To the extent that the credit attached to the dividend exceeds your overall tax liability, you will receive a cash refund of the excess credit balance. However, this does not apply to corporate shareholders.

Consequences of public listing

No immediate tax consequences will arise from Pivot (to be known as Incitec Pivot Limited) obtaining listing on the ASX. The listing process will not involve a disposal of your shares for CGT purposes.

3 Subsequent disposal of shares

Pivot Shares acquired after 19 September 1985

If your Pivot Shares were acquired or deemed to be acquired after 19 September 1985, disposal of your shares after ASX listing will constitute a CGT event for CGT purposes.

You will make a capital gain where the amount received when you dispose of your shares is greater than their cost base (see below). You will make a capital loss where the amount received on disposal is less than the cost base.

Cost base calculation

The cost base of your shares is generally what you paid for them.

Indexation

If your shares were acquired before 11.45am on 21 September 1999, you will be able to elect to adjust the cost base of your shares to include indexation by reference to changes in the Consumer Price Index ("CPI") during the period from when you acquired the shares up to the quarter ended 30 September 1999.

Indexation adjustments are taken into account only for the purposes of calculating any capital gain. They are ignored when calculating the amount of any capital loss.

Discount capital gains

As an alternative to including indexation in the cost base of your shares, you may instead choose to use the unindexed cost base when calculating the capital gain on disposing of your shares, and reduce the gain by 50%, provided that you have held your shares for more than 12 months before disposing of them.

Net capital gains

Capital gains and capital losses are aggregated each year to determine whether there is a net capital gain for that particular year. Any net capital gain is included in assessable income and is subject to income tax. Capital losses can only be carried forward to offset against future capital gains. The 50% CGT discount is applied to any net capital gain for a particular year.

Pivot Shares acquired before 20 September 1985

If you acquired your Pivot Shares before 20 September 1985 (i.e. pre-CGT), the disposal of your shares will not give rise to any tax liability, subject to the comments below.

In particular, if you dispose of your shares within five years of the listing on ASX, specific CGT provisions may deem you to make a capital gain on disposal, notwithstanding the pre-CGT status of your shares. This is because these specific provisions are dependant on the market value of Pivot's post-CGT assets rather than the date of acquisition of your Pivot shares.

A previous analysis of the implications of these provisions for the Pivot Group alone indicated that you should not make a capital gain on disposal of your shares. However, the merger will increase the post-CGT assets held by Incitec Pivot Limited. Initial discussions with Incitec in relation to IFL's assets suggest that any such capital gain immediately after listing should not be



material. In addition, the availability of the 50% CGT discount, as discussed above, will further reduce any gain.

No capital gain will arise under these specific CGT provisions where Incitec Pivot Limited obtains (and maintains) ASX listing and you dispose of your shares at least 5 years after listing.

4 GST

No GST is payable in connection with the Merger Proposal.

Yours sincerely

Ian Dinnison
Tax Partner