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

Find out about the Pivot merger with Incitec and CGT on the sale of pre-CGT shares.

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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 2007.

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 × 50%) net capital gain on her tax return for the year ended 30 June 2007.

Recording the capital gain in the tax return

If she has no other capital gains and no capital losses for the 2006-07 year, Jane completes **item 17** on her 2007 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:

- Because 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* - 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* - 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* - 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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