Status: **legally binding**

Class Ruling

Incitec Pivot Limited – reduction of share capital

Relying on this Ruling

This publication is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

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What this Ruling is about

1. This Ruling sets out the income tax consequences for holders of ordinary shares in Incitec Pivot Limited (IPL) who received a reduction of share capital of $0.1557 per share paid by IPL on 8 February 2024 (the Payment Date).

2. Details of this scheme are set out in paragraphs 19 to 35 of this Ruling.

Who this Ruling applies to

3. This Ruling applies to you if you held ordinary shares in IPL and you:

- were registered on the IPL share register on 1 February 2024 (the Record Date), and
- held your IPL shares on capital account on the Record Date – that is, your IPL shares were neither held as revenue assets (as defined in section 977-50 of the ITAA 1997) nor as trading stock (as defined in subsection 995-1(1) of the ITAA 1997).

4. This Ruling does not apply to anyone who is subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 19 to 35 of this Ruling.

Note: Division 230 of the ITAA 1997 will not apply to individuals unless they have made an election for it to apply.

When this Ruling applies

5. This Ruling applies from 1 July 2023 to 30 June 2024.

Status: **legally binding**

Ruling

Reduction of share capital

Reduction of share capital is not an assessable dividend

6. No part of the reduction of share capital will be included in your assessable income under subsection 44(1) of the ITAA 1936. This is because the entire amount of the reduction of share capital was debited to the share capital account of IPL, meaning that it is not a 'dividend' under subsection 6(1) of the ITAA 1936.

Capital gains tax consequences

CGT event G1

7. CGT event G1 happened when you were paid a reduction of share capital by IPL in respect of your IPL shares on the Payment Date (section 104-135 of the ITAA 1997).

8. You made a capital gain from CGT event G1 happening if the amount of the reduction of share capital for each IPL share (that is, $0.1557 per share) was more than the cost base of the IPL share. If so, the capital gain is equal to the amount of the excess.

9. If you do not make a capital gain from CGT event G1, you reduce the cost base and reduced cost base of each of your IPL ordinary shares by $0.1557 (subsection 104-135(4) of the ITAA 1997). No capital loss can be made from CGT event G1 (subsection 104-135(3) of the ITAA 1997).

CGT event C2

10. CGT event C2 happened when IPL paid the reduction of share capital to you in respect of the IPL shares you owned on the Record Date but ceased to own before the Payment Date (section 104-25 of the ITAA 1997).

11. CGT event C2 happened because, by ceasing to own an IPL share after the Record Date but before the Payment Date, you retained the right to receive the reduction of share capital (which is a separate CGT asset from the share in IPL). When the reduction of share capital was paid to you, the right to receive the reduction of share capital (being an intangible CGT asset) ended by the right being discharged or satisfied.

12. You made a capital gain equal to the amount of the reduction of share capital (that is, $0.1557 per share).

Foreign-resident shareholders

13. If you are a foreign resident, any capital gain you make from CGT event G1 is disregarded unless your IPL share is taxable Australian property (section 855-10 of the ITAA 1997).

14. If you are a foreign resident, the capital gain you make from CGT event C2 is disregarded unless your right to receive the reduction of share capital is taxable Australian property (section 855-10 of the ITAA 1997).

15. Your IPL share or right to receive the reduction of share capital is taxable Australian property if it:

- was used by you (the foreign resident) at any time in carrying on a business through a permanent establishment in Australia (table item 3 in section 855-15 of the ITAA 1997), or
- is a CGT asset that is covered by subsection 104-165(3) of the ITAA 1997 (choosing to disregard a capital gain or capital loss on ceasing to be an Australian resident) (table item 5 in section 855-15 of the ITAA 1997).

Specific anti-avoidance provisions will not apply to deem an assessable dividend

16. Section 45 of the ITAA 1936 will not apply to the reduction of share capital. This is because IPL did not stream the provision of shares and the payment of minimally franked dividends to its shareholders. Therefore, you will not include any part of the reduction of share capital in your assessable income under subsection 44(1) of the ITAA 1936.

17. The Commissioner will not make a determination under subsection 45A(2) of the ITAA 1936 that section 45C of the ITAA 1936 applies in relation to the whole, or a part, of the capital benefits provided to you under the reduction of share capital. This is because IPL did not stream the provision of capital benefits and the payment of dividends to its shareholders as required by subsection 45A(1) of the ITAA 1936. Therefore, you will not include any part of the amount of the capital benefit (the amount of share capital distributed to you by IPL) in your assessable income under subsection 44(1) of the ITAA 1936.

18. The Commissioner will not make a determination under paragraph 45B(3)(b) of the ITAA 1936 that section 45C of the ITAA 1936 applies to the whole, or any part, of the capital benefit provided to you under the reduction of share capital. This is because the purpose condition in paragraph 45B(2)(c) of the ITAA 1936 was not satisfied. Therefore, you will not include any part of the amount of the capital benefit (the amount of share capital distributed to you by IPL) in your assessable income under subsection 44(1) of the ITAA 1936.

Scheme

19. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

Incitec Pivot Limited

20. IPL is a company incorporated in Australia. IPL has been listed on the Australian Securities Exchange since 28 July 2003.

21. IPL is the head company of an income tax consolidated group under Part 3-90 of the ITAA 1997.

22. IPL manufactures, markets and distributes a range of industrial chemicals, fertilisers and explosives.

23. Since 2008, IPL has paid 2 dividends in each calendar year (except in 2020) to its shareholders.

24. IPL (on an accounting consolidated basis) had retained profits of $2.4759 billion as at 30 September 2023.

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25. IPL has never undertaken a reduction of share capital. IPL has undertaken several on-market share buy-back programs since 2017. The only amounts recognised in the share capital account of IPL since its incorporation are amounts subscribed for the issue of share capital.

26. Immediately before the Payment Date, IPL had 1,942,225,029 fully paid ordinary shares and $3.8062 billion credited to its share capital account.

The reduction of share capital

27. On 20 March 2023, IPL announced that it had signed an agreement for the sale of its ammonia manufacturing plant in Waggaman, Louisiana in the United States of America. The sale was completed on 1 December 2023.

28. IPL made an approximate accounting profit of $108.5 million on the sale of its Waggaman ammonia manufacturing plant.

29. The directors of IPL decided to pay part of the sale proceeds to the shareholders of IPL. This was undertaken by a combination of a special dividend and a reduction of share capital under section 256B of the *Corporations Act 2001*.

30. The special dividend is not the subject of this Ruling.

31. On 20 December 2023, the shareholders of IPL approved an ordinary resolution under section 256C of the *Corporations Act 2001* to reduce the share capital of IPL. The amount of the reduction of share capital was $302.5 million (equating to $0.1557 in respect of each IPL ordinary share).

32. The date for determining the entitlement of the shareholders of IPL to receive the reduction of share capital was 1 February 2024 (the Record Date).

33. On 8 February 2024 (the Payment Date), IPL paid the reduction of share capital to the shareholders who were registered on the IPL share register on the Record Date.

34. IPL debited its share capital account by $302.5 million.

35. Immediately before the Payment Date, IPL's share capital account (as defined in section 975-300 of the ITAA 1997) was not tainted (within the meaning of Division 197 of the ITAA 1997).

Commissioner of Taxation
21 February 2024

Status: **not legally binding**

References

Legislative references:

- ITAA 1936 6(1)
- ITAA 1936 44(1)
- ITAA 1936 45
- ITAA 1936 45A(1)
- ITAA 1936 45A(2)
- ITAA 1936 45B(2)(c)
- ITAA 1936 45B(3)(b)
- ITAA 1936 45C
- ITAA 1997 104-25
- ITAA 1997 104-135
- ITAA 1997 104-135(3)
- ITAA 1997 104-135(4)
- ITAA 1997 104-165(3)
- ITAA 1997 Div 197
- ITAA 1997 Div 230
- ITAA 1997 Part 3-90
- ITAA 1997 855-10
- ITAA 1997 855-15
- ITAA 1997 975-300
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- Corporations Act 2001 256C

ATO references

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