


CR 2008/38 - Income tax: scrip for scrip: acquisition of Dyno Nobel Limited by the Incitec Pivot Limited Group

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Class Ruling

Income tax: scrip for scrip: acquisition of Dyno Nobel Limited by the Incitec Pivot Limited Group

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① This publication provides you with the following level of protection:

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

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, we must apply the law to you in the way set out in the ruling (unless we are satisfied that the ruling is incorrect and disadvantages you, in which case we may apply the law in a way that is more favourable for you – provided we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provisions identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provision(s)

2. The relevant provision(s) dealt with in this Ruling are:

- section 104-10 of the *Income Tax Assessment Act 1997* (ITAA 1997); and
- Subdivision 124-M of the ITAA 1997.

All references to legislative provisions in this Ruling are to the ITAA 1997 unless otherwise stated.

Class of entities

3. The class of entities to which this Ruling applies consists of the ordinary shareholders of Dyno Nobel Limited (DNL) who:

- (a) dispose of their DNL shares under the scheme in relation to the acquisition of DNL by Incitec Pivot US Holdings Pty Ltd (IPL Bidco);
- (b) are residents of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936) on the Implementation Date of the scheme;
- (c) hold their DNL shares on capital account at that time; and
- (d) were not eligible to have any capital gain or loss made on any DNL shares (that were acquired under an employee share scheme) as a result of the scheme, disregarded under Subdivision 130-D.

In this Ruling, a person belonging to this class of entities is referred to as a 'DNL shareholder'.

Qualifications

4. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 12 to 21 of this Ruling.

5. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
- this Ruling may be withdrawn or modified.

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Date of effect

7. This Ruling applies from 22 May 2008 to 30 June 2009. However, the Ruling continues to apply after 30 June 2009 to all entities within the specified class who entered into the specified scheme during the term of the Ruling.

8. The Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the Gazette; or
- the relevant provisions are not amended.

9. If this Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

10. If this Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

11. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Scheme

12. The following description of the scheme is based on documents and information provided by PricewaterhouseCoopers (the applicant for this Ruling). The scheme that is the subject of this Ruling is based on the following documents. These documents, or the relevant parts of them, as the case may be, form part of and are to be read in conjunction with this description. Those documents include the following:

- Class Ruling application dated 7 April 2008; and
- Scheme Booklet dated 18 April 2008 for the Schemes of Arrangement in relation to the proposed acquisition of DNL by IPL Bidco (the Scheme Booklet).

Note: where certain information has been provided by the applicant on a commercial-in-confidence basis it will not be disclosed or released under the Freedom of Information legislation.

Overview of scheme

13. The scheme that is the subject of this Ruling is the acquisition of DNL by IPL Bidco, a wholly owned subsidiary of Incitec Pivot Limited (IPL). DNL and IPL are both public companies listed on the Australian Securities Exchange (ASX).

DNL

14. DNL has approximately 820 million ordinary shares on issue. These ordinary shares are the only shares on issue in DNL. All of the DNL shares were acquired by the DNL shareholders on or after 20 September 1985.

15. IPL owns approximately 13% of the ordinary shares in DNL.

The acquisition of DNL shares

16. Under a Scheme of Arrangement (the DNL Acquisition Scheme), IPL Bidco will acquire all of the ordinary shares in DNL except for those already owned by IPL. As consideration for the acquisition of those shares, DNL shareholders will choose one of the following three consideration options:

- (a) Standard Share Scheme Consideration;
- (b) Maximum Cash Election; or
- (c) Maximum Shares Election.

(these options are described in the Scheme Booklet).

17. The shares issued as consideration will be in IPL, which is the ultimate holding company of the wholly owned group of companies which includes as a member, IPL Bidco.

Ineligible foreign shareholders

18. An Ineligible Foreign Dyno Nobel Shareholder is defined in the Scheme Booklet as a person who is registered on the DNL Share Register as a holder of DNL ordinary shares whose address, as shown on the Dyno Nobel Share Register is outside Australia and its external territories, New Zealand, the United States of America, Hong Kong, Singapore or the United Kingdom unless IPL and DNL are each satisfied, acting reasonably, that:

- (a) it is lawful, under any one or more relevant jurisdiction, and not unduly onerous to issue an Ineligible Foreign Dyno Nobel Shareholder with shares in IPL when the DNL Acquisition Scheme becomes Effective; and

- (b) it is lawful, under any one or more relevant jurisdiction for that Ineligible Foreign Dyno Nobel Shareholder to participate in the DNL Acquisition Scheme.

19. A person who is an Ineligible Foreign Dyno Nobel Shareholder on the Scheme Record Date will not receive shares in IPL under the DNL Acquisition Scheme (as described in the Scheme Booklet). Instead, the shares in IPL that would otherwise have been issued to them under the DNL Acquisition Scheme will be issued to a nominee in accordance with the procedures outlined in the Scheme Booklet. The nominee will sell the shares on behalf of, and remit the net proceeds of sale to, the Ineligible Foreign Dyno Nobel Shareholders.

Other matters

20. Under this scheme, no DNL shareholder will be either a 'significant stakeholder' or 'common stakeholder' within the meaning of those terms in Subdivision 124-M.

21. As soon as practicable after the Implementation Date, DNL will apply for termination of the official quotation of DNL shares on the ASX and to have itself removed from the official list of the ASX.

Ruling

CGT event A1 happens on the disposal of DNL shares

22. CGT event A1 will happen when a DNL shareholder disposes of a DNL share on the Implementation Date (subsections 104-10(1) and (2) and paragraph 104-10(3)(b)).

Scrip for scrip roll-over

23. If a DNL shareholder makes a capital gain from the disposal of their DNL shares, scrip for scrip roll-over can be chosen to the extent that the capital gain is referable to the receipt of IPL shares, subject to the qualification in paragraph 24 of this Ruling (sections 124-780 and 124-790).

24. Scrip for scrip roll-over cannot be chosen if any capital gain the DNL shareholder might make from the IPL shares would be disregarded, except because of a roll-over (subsection 124-795(2)).

Commissioner of Taxation

21 May 2008

Appendix 1 – Explanation

❶ *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

CGT event A1 happens on the disposal of DNL shares

25. CGT event A1 will happen when a DNL shareholder disposes of a DNL share on the Implementation Date (subsections 104-10(1) and (2) and paragraph 104-10(3)(b)).

26. A DNL shareholder will make a capital gain from CGT event A1 happening if the capital proceeds from the disposal of a DNL share exceeds its cost base. The DNL shareholder will make a capital loss if those capital proceeds are less than the DNL share's reduced cost base (subsection 104-10(4)).

27. The capital proceeds for each DNL share will be the sum of:

- the cash received (if any); and
- the market value of the part of an IPL share received (if any);

in respect of its disposal (subsections 116-20(1) and 116-40(1)).

28. The market value of an IPL share is worked out at the time the DNL shareholder disposes of the DNL shares. This occurs on the Implementation Date.

If a capital loss is made

29. If a DNL shareholder makes a capital loss from the disposal of their DNL shares, the amount of the capital loss is taken into account in working out the shareholder's net capital gain or net capital loss for the income year in which the CGT event happens (sections 102-5 and 102-10).

If a capital gain is made

Scrip for scrip roll-over

30. Subdivision 124-M contains a number of conditions that go to whether scrip for scrip roll-over may be available under an arrangement. The Commissioner considers that the DNL Acquisition Scheme meets these conditions.

31. If a DNL shareholder makes a capital gain from the disposal of their DNL shares, scrip for scrip roll-over can be chosen to the extent that the capital gain is referable to the receipt of IPL shares, subject to the qualification in paragraph 32 of this Ruling (sections 124-780 and 124-790). Therefore, only the part of the capital gain that is referable to the receipt of IPL shares is eligible for scrip for scrip roll-over.

32. Scrip for scrip roll-over cannot be chosen if any capital gain the DNL shareholder might make from the IPL shares would be disregarded, except because of a roll-over (subsection 124-795(2)).

Discount capital gain

33. DNL shareholders who make capital gains that are not disregarded (that is, capital gains for which scrip for scrip roll-over is not, or cannot, be chosen) can treat the amount of those gains as 'discount capital gains' provided that the conditions in Subdivisions 115-A to 115-C are satisfied.

Cost base of IPL shares

34. The method for calculating a DNL shareholder's cost base and reduced cost base of the IPL shares received under the DNL Acquisition Scheme depends on whether the shareholder chooses scrip for scrip roll-over.

Scrip for scrip roll-over is not chosen

35. Where scrip for scrip roll-over is not chosen, the first element of the DNL shareholder's cost base and reduced cost base of each IPL share is equal to the market value of property (that is, the relevant part of the DNL shares) given in exchange for the IPL share (subsections 110-25(2) and 110-55(2)).

Scrip for scrip roll-over is chosen

36. Where scrip for scrip roll-over is chosen, the first element of the DNL shareholder's cost base and reduced cost base of each IPL share is the sum of parts of the cost base of the DNL shares that is reasonably attributable to the acquisition of the IPL shares (subsections 124-785(2) and 124-785(4)).

Acquisition date of IPL shares

37. The acquisition date for DNL shareholders of IPL shares acquired in exchange for their DNL shares is the date that the IPL shares are issued to the DNL shareholder (the Implementation Date) (section 109-10).

38. However, for the purposes of applying the CGT discount to any later disposal of their IPL shares, DNL shareholders who choose scrip for scrip roll-over are taken to have acquired their IPL shares when they acquired the original DNL shares (item 2 of the table in subsection 115-30(1)).

Appendix 2 – Detailed contents list

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References

Previous draft:

Not previously issued as a draft

Subject references:

- arrangement
- CGT capital proceeds
- CGT events
- CGT cost base
- CGT roll-over relief
- disposal of shares
- market value cost base
- ordinary share
- Schemes of arrangement
- scrip for scrip roll-over
- shareholders

Legislative references:

- ITAA 1936 6(1)
- ITAA 1997
- ITAA 1997 102-5
- ITAA 1997 102-10
- ITAA 1997 104-10
- ITAA 1997 104-10(1)

- ITAA 1997 104-10(2)
 - ITAA 1997 104-10(3)(b)
 - ITAA 1997 104-10(4)
 - ITAA 1997 109-10
 - ITAA 1997 110-25(2)
 - ITAA 1997 110-55(2)
 - ITAA 1997 Subdiv 115-A
 - ITAA 1997 Subdiv 115-B
 - ITAA 1997 Subdiv 115-C
 - ITAA 1997 115-30(1)
 - ITAA 1997 116-20(1)
 - ITAA 1997 116-40(1)
 - ITAA 1997 Subdiv 124-M
 - ITAA 1997 124-780
 - ITAA 1997 124-785(2)
 - ITAA 1997 124-785(4)
 - ITAA 1997 124-790
 - ITAA 1997 124-795(2)
 - ITAA 1997 Subdiv 130-D
 - TAA 1953
 - TAA 1953 Sch 1 357-75(1)
 - Copyright Act 1968
-

ATO references

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ATOlaw topic: Income Tax ~~ Capital Gains Tax ~~ CGT event A1 - disposal of a CGT asset
Income Tax ~~ Capital Gains Tax ~~ roll-overs - scrip for scrip