



# Chapter VI.

## Taxation Implications for Boral Shareholders

### 1 GENERAL

The following summary is expressed in general terms and is not intended to represent taxation advice. The taxation position of individual Boral Shareholders will depend on their own particular circumstances. The summary is not applicable to all categories of Boral Shareholders, and in particular, does not apply to i) Boral Shareholders who do not hold their Boral Shares as capital assets ii) Boral Shareholders who are not residents of Australia for taxation purposes ("Non-Resident Boral Shareholders") who own (or are deemed to own) 10% or more of the issued shares of Boral and iii) Boral Shareholders who are not the beneficial owner of their Boral Shares.

Boral Shareholders should seek their own taxation advice in order to understand how the Demerger applies to their own particular circumstances.

### 2 AUSTRALIAN TAXATION CONSEQUENCES OF SCHEME OF ARRANGEMENT

Throughout this Chapter, the following terms have the meaning ascribed to them below:

- **Original Boral Shares** – Boral Shares prior to the Boral Share Consolidation;
- **Post Consolidation Boral Shares** – Boral Shares immediately after the Boral Share Consolidation pursuant to which every two Boral Shares will be converted into one Boral Share but before the transfer of New Boral Shares to Boral Shareholders;
- **Origin Energy Shares** – fully paid ordinary shares issued in the capital of Origin Energy which Boral Shareholders will hold in the event the Demerger is implemented;
- **New Boral Shares** – fully paid ordinary shares issued in the capital of New Boral which will be transferred to Boral Shareholders as a result of implementation of the Demerger.

#### 2.1 Boral Share Consolidation

##### *(i) Resident Boral Shareholders*

Boral Shareholders who are residents of Australia for taxation purposes ("Resident Boral Shareholders") will be entitled to claim capital gains tax ("CGT") rollover relief with respect to the Boral Share Consolidation. If Boral Shareholders elect to avail themselves of CGT rollover relief, capital gains or losses which would otherwise arise as a result of the Boral Share Consolidation will be disregarded. The rollover election is held to be made by the Boral Shareholder when no capital gain is included when the shareholder's income tax return is prepared for the year of income in which the Boral Share Consolidation occurs.

The cost base of each Post Consolidation Boral Share will be the Boral Shareholder's cost base in their Original Boral Shares (including any appropriate indexation) multiplied by two. To the extent Original Boral Shares were acquired prior to 20 September 1985, the Post Consolidation Boral Shares will continue to be treated as having been acquired prior to that date.

##### *(ii) Non-Resident Boral Shareholders*

No CGT event should arise for Non-Resident Boral Shareholders as a result of the Boral Share Consolidation, provided they (with all their associates) have not held 10% or more of Boral's share capital within the last five years.

## 2.2 Amount of Capital Return through the Demerger

Following correspondence with the Australian Taxation Office ("ATO"), the Boral Directors have proposed that Boral's share capital be reduced by \$1.58 per Original Boral Share which, following the Boral Share Consolidation, will be equivalent to \$3.16 per Post Consolidation Boral Share.

## 2.3 Implications of the Transfer of New Boral Shares to Boral Shareholders

### (i) Resident Boral Shareholders

The transfer by Boral of New Boral Shares to Resident Boral Shareholders will not be treated (in whole or in part) as a dividend for Australian tax purposes. This has been confirmed in a non binding interpretative advice from the ATO relating specifically to the demerger. Although the advice is not legally binding, it is the ATO's stated policy that it will stand by such advice unless the law changes, a court or tribunal decision shows the advice to be incorrect or the facts upon which the advice is given change.

For those Resident Boral Shareholders who acquired their Original Boral Shares before 20 September 1985, the transfer of New Boral Shares will not give rise to an Australian CGT liability, although it will have consequences for the CGT status of the New Boral Shares received (which is explained in the Section below regarding the Cost Base of New Boral Shares).

For those Resident Boral Shareholders who acquired their Original Boral Shares on or after 20 September 1985, a CGT liability will only arise if the cost base, including any appropriate indexation, of their Original Boral Shares is less than \$1.58 (equivalent to \$3.16 per Post Consolidation Boral Share). Where this is the case, the Boral Shareholder will realise a capital gain equal to the excess of \$1.58 over the cost base, including any appropriate indexation, of their Original Boral Shares or, in other words, the excess of \$3.16 over the cost base, including any appropriate indexation, of their Post Consolidation Boral Shares.

### (ii) Non-Resident Boral Shareholders

The transfer by Boral of New Boral Shares to Non Resident Boral Shareholders will not be treated (in whole or in part) as a dividend for Australian taxation purposes.

For those Non-Resident Boral Shareholders who acquired their Original Boral Shares before 20 September 1985, the distribution by Boral of New Boral Shares will have no consequences for Australian CGT purposes. For those Non-Resident Boral Shareholders who acquired their Original Boral Shares on or after 20 September 1985, provided such shareholders and their associates have held less than 10% of the issued shares of Boral for at least the last five years, the transfer by Boral of New Boral Shares will have no consequences for Australian CGT purposes.

## 2.4 Cost Base of Origin Energy Shares

For those Boral Shareholders who acquired their Original Boral Shares on or after 20 September 1985, the Boral Directors consider that it is reasonable for Boral Shareholders to regard \$1.58 as the amount by which the cost base of each Original Boral Share will be reduced (excluding the impact of the Boral Share Consolidation). Following the Boral Share Consolidation and Demerger, Original Boral Shares will become Origin Energy Shares. The Boral Directors consider that it is reasonable for Origin Energy Shareholders to regard the cost base of their Origin Energy Shares as equal to the cost base of their Original Boral Shares (including any appropriate indexation) multiplied by two (to take account of the Boral Share Consolidation) less \$3.16 (being the amount of the Capital Reduction per Boral Share following the Boral Share Consolidation determined following correspondence with the ATO).

In the event that a Boral Shareholder is treated as realising a capital gain as a result of the distribution of New Boral Shares, then the cost base of their Origin Energy Shares for Australian CGT purposes will be nil.

For example, if a Boral Shareholder has Original Boral Shares (all acquired on or after 20 September 1985) with an indexed cost base for CGT purposes of \$2.50, the indexed cost base of the Post Consolidation Boral Shares would become \$5.00 per share (being the indexed cost base of the Original Boral Shares multiplied by two). The Boral Shareholder would not realise any gain or loss for CGT purposes by virtue of receiving the New Boral Shares as the amount of the capital returned as a result of the transfer of the New Boral Shares of \$3.16 would be less than the indexed cost base in the Post Consolidation Boral Shares.

The cost base of his or her Origin Energy Shares will be \$1.84 being the cost base of the Post Consolidation Boral Shares of \$5.00 less the amount of the capital returned as a result of the distribution of the New Boral Shares of \$3.16 per share.

The table below sets out the calculation of the indexed cost base in the Origin Energy Shares and compares this with the calculation that would otherwise have been required in relation to Original Boral Shares.

#### Calculation of CGT Cost Base – Example

	Actual Indexed Cost Base – Origin Energy Share	Effective Indexed Cost Base in Original Boral Share
Indexed Cost Base*	\$5.00	\$2.50
Less:		
Capital Returned	\$3.16	\$1.58
New Indexed Cost Base in Origin Energy Share	\$1.84	\$0.92

\* CGT indexation will be affected by recent tax reform changes.

For those Boral Shareholders who acquired their Original Boral Shares before 20 September 1985, their Origin Energy Shares will continue to be treated as having been acquired prior to that date.

### 2.5 Cost Base of New Boral Shares

The Boral Directors' views on the appropriate cost base of New Boral Shares have been arrived at following correspondence with the ATO. If the Demerger did not involve the Boral Share Consolidation, the Boral Directors would consider it reasonable for Boral Shareholders to regard \$1.58 as the cost base of New Boral Shares received. As the Boral Share Consolidation will precede the Demerger, the Directors consider it reasonable for Boral Shareholders to regard \$3.16 (i.e. \$1.58 multiplied by two) as the cost base of their New Boral Shares.

These New Boral Shares will be deemed to be post CGT assets even if the Original Boral Shares were purchased prior to 20 September 1985. As these shares will be deemed to have been acquired following introduction of reforms envisaged in the Ralph Report, indexation of these shares for the purposes of determining CGT liabilities will not be available.

## 3 TAX CONSEQUENCES OF SCHEME OF ARRANGEMENT IN JURISDICTIONS OTHER THAN AUSTRALIA

Boral shareholders who are not resident in Australia for tax purposes should seek their own advice in relation to the taxation consequences of the Scheme under the taxation laws applicable to them.

## 4 STAMP DUTY

Boral will meet any stamp duty that would otherwise be payable by shareholders as a result of the transfer of New Boral Shares.