

23 February 2024

ATO Decision Regarding Outback Goldfields Transaction

Petratherm Limited (ASX: PTR) (**PTR** or the **Company**) informs shareholders that it has been advised by the Australian Taxation Office (**ATO**) that the in-specie distribution of shares in Outback Goldfields Corp. (**Outback Goldfields** or **OZ** (formerly Skarb Exploration)) to PTR shareholders in April 2021, is an unfranked dividend for taxation purposes.

The Company advises shareholders of the following:

- On 21 April 2021, PTR distributed in-specie all of its shares in OZ to PTR shareholders who held shares on 13 April 2021 (**Record Date**). The in-specie distribution was made on the basis of 1 OZ share for every 6 PTR shares held on the Record Date.
- The ATO has determined that the in-specie distribution described above is an unfranked dividend in the hands of each holder of PTR shares on the Record Date (Relevant Shareholders) and will result in a deemed unfranked dividend of \$0.0853 per PTR share held on the Record Date.
- Each Relevant Shareholder will be required to amend their 2021 income tax return to include the deemed unfranked dividend they received as assessable income in respect of the 2021 income year.
- During March 2023 PTR received written advice from one of Australia's most eminent tax counsels that the in-specie distribution was a return of capital and not a deemed unfranked dividend under the provisions applied by the ATO.
- Notwithstanding representations made by PTR's tax counsel to the ATO, an appearance before and submissions made to the ATO's General Anti Avoidance Review Panel (**GAARP**) in August 2023 to the effect that the deeming provisions in section 45B of the Income Tax Assessment Act 1997 (**ITAA**) are not applicable, the ATO has advised PTR of the above decision.
- As advised in the Explanatory Memorandum (**EM**) distributed to shareholders and made available on the ASX on 9 November 2020 in respect of the proposed transactions with OZ and the proposed in-specie distribution, Relevant Shareholders should obtain their own professional advice as to the taxation consequences of the in-specie distribution and the decision now made by the ATO in respect of their own specific circumstances (refer paragraph 3.6(3) of the EM). The EM is contained within the Notice of Meeting for PTR's 2020 Annual General Meeting.

The tax advice received by PTR in respect of the proposed in-specie distribution is set out in paragraph 3.16 of the EM. The advice was that the in-specie distribution was a return of capital and that de-merger relief would apply.

Subsequent to the implementation of the transaction in March 2022, PTR's tax advisers applied to the ATO for a Class Ruling for de-merger relief under Division 125 of the ITAA and in respect of the application of sections 45A and 45B of the ITAA (the deeming provisions in respect of unfranked dividends).

On 24 January 2023 the ATO advised PTR's tax advisers that de-merger relief was not applicable in the circumstances and that it would apply section 45B to treat the in-specie distribution as a deemed unfranked dividend.

PTR then engaged Mr Terry Murphy KC, an eminent tax counsel practising at the bar in Melbourne, to provide it with advice in respect of the ATO's proposed ruling. In March 2023 Mr Murphy KC provided written advice to the effect that although de-merger relief was not available, section 45B should not be applicable to the in-specie distribution to deem it an unfranked dividend.

PTR then engaged Mr Murphy to negotiate with the ATO. As a result of those negotiations resulting in an unsuccessful outcome, Mr Murphy KC recommended that PTR take the matter to the GAARP.

On 31 August 2023 Mr Murphy KC and a PTR representative appeared before the GAARP in Sydney and made submissions to the effect that section 45B was not applicable. On 3 November 2023 the GAARP advised PTR that its conclusion was that section 45B was applicable but that "the ATO team may want to consider whether it would be feasible for PTR to pay a sum on behalf of its shareholders by way of compromise given that the gain to the shareholders had subsequently been lost". Since the GAARP hearing PTR has been attempting to negotiate a settlement with the ATO on this basis.

Recently, the ATO advised that it was not willing to settle the matter on this basis notwithstanding the recommendation of the GAARP.

As the Decision will affect each Relevant Shareholder personally, they should obtain their own advice as to the manner in which they amend their 2021 Income Tax Return.

The ATO's decision does not result in PTR incurring any additional tax liability. The profit received by PTR from the transaction with OZ was offset by carried forward losses.

The Company is awaiting an official Tax Determination from the ATO and intends to reapply for a Class Ruling which will provide binding advice to Relevant Shareholders regarding their taxation obligations. PTR will correspond with Relevant Shareholders in due course.

ENDS

This announcement has been authorised for release on the ASX by the Directors of Petratherm Limited.

For further information:

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