



infigen

# Taxation Statement Guide

August 2009

Infigen Energy comprises the following:  
Infigen Energy Limited (ABN 39 105 051 616)  
Infigen Energy (Bermuda) Limited (ARBN 116 360 715)  
Infigen Energy Trust (ARSN 116 244 118),  
whose Responsible Entity is Infigen Energy RE Limited  
(ABN 61 113 813 997) (AFSL 290 710)

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## Important Information

Infigen Energy comprises Infigen Energy Limited (**IEL**), Infigen Energy (Bermuda) Limited (**IEBL**) and Infigen Energy Trust (**IET**). Infigen Energy RE Limited is the Responsible Entity for IET. An investment in Infigen Energy is an investment in a Stapled Security comprising a share in IEL, a share in IEBL and a unit in IET.

The purpose of this Taxation Statement Guide (the **Guide**) is to provide you, as a Securityholder in Infigen Energy, with general information regarding the tax implications arising from the receipt of your 2009 interim and final distributions from IET.

The 2009 interim and final distributions represent 'tax deferred' amounts. As such, for the majority of Securityholders, the information on your 2009 interim and final distribution statements should not need to be disclosed in your 2009 income tax return. However, this information will be relevant if and when you dispose of any of your Infigen Energy securities.

This Guide has been prepared on the basis of taxation laws prevailing at the date of this Guide.

This Guide is intended to assist Securityholders in meeting their Australian income tax compliance obligations. Securityholders are not entitled to rely on this information in relation to managing their specific tax affairs. Securityholders should obtain their own tax advice in relation to the taxation implications associated with their investment in Infigen Energy.

This Guide uses technical tax terms in describing both the character of Securityholders and the nature of their investment in Infigen Energy that are important in determining the taxation consequences of receiving distributions from Infigen Energy and the taxation consequences of disposing of their investment in Infigen Energy. Where these terms are not described in the body of this Guide, a brief explanation as to their meaning is set out in Appendix 1. In some instances it may be difficult to determine how these terms apply to you and your investment. If this is the case, you should seek professional advice from your accountant or taxation adviser.

## Infigen Energy Stapled Securities acquired through the 2007 Alinta Share Scheme

If you acquired Infigen Energy Stapled Securities through participating in the 2007 Scheme of Arrangement under which the Consortium consisting of Babcock & Brown Infrastructure, Babcock & Brown Power, Infigen Energy and Singapore Power International Pte Limited acquired the issued share capital of Alinta Limited, please refer to the Infigen Energy website for relevant information.

## **1.0 2009 Distributions**

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The 2009 interim and final distributions are distributions from IET (ie. they are trust distributions, not company dividends). Neither IEL nor IEBL has declared or paid a dividend in respect of the year ended 30 June 2009.

Both the 2009 interim and final distributions from IET are 'tax deferred' distributions.

### **1.1 Tax Deferred Distributions**

The 2009 interim and final distributions both represent tax deferred distributions, being the return of capital of IET. IET has mainly received the funds for the 2009 interim and final distributions from principal repayments on loans previously advanced by IET to IEL.

## **2.0 Implications of Receiving a Tax Deferred Distribution**

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The taxation implications associated with receipt of a tax deferred distribution from IET will vary depending on whether you are an Australian Tax Resident or a Non-Tax Resident and whether you hold your investment on Revenue or Capital account. Appendix 1 contains a brief description of factors that may assist you in determining whether you are an Australian Tax Resident and whether you hold your investment on Revenue or Capital account.

### **2.1 Australian Tax Resident Securityholders**

#### **2.1.1 Capital Account**

The receipt of tax deferred distributions will reduce the capital gains tax (CGT) cost base, or CGT reduced cost base, of your units in IET, by the amount of the tax deferred distribution. Any such reduction is generally triggered at the end of the income year in which the distribution is received.

For example, for Securityholders that acquired their investment through the IPO (October 2005), the CGT cost base of a unit in IET, excluding the impact of any distributions received, is calculated based upon the initial investment in Infigen Energy of \$1.40, allocated between the three securities on the basis of \$1.38 to IET, \$0.01 to IEL and \$0.01 to IEBL.

This allocation gives rise to a cost base in the Securityholder's IET units of at least \$1.38 per unit, a cost base in the Securityholder's shares in IEL of at least \$0.01 per share and a cost base in the Securityholder's shares in IEBL of at least \$0.01 per share. The combined cost bases of one unit in IET, one share in IEL and one share in IEBL would have equated to, at least, the initial subscription price for one Infigen Energy security (ie. \$1.40). Please note that there may be other costs incurred by a Securityholder which also form part of the cost base of their securities.

Taking into account the 2009 interim and final distributions, the tax deferred distributions paid in respect of stapled securities issued in the IPO are as follows:

		<b>Record Date</b>	<b>Payment Date</b>
2006 Interim Distribution	\$0.051 per unit	31 December 2005	23 March 2006
2006 Final Distribution	\$0.051 per unit	30 June 2006	29 September 2006
2007 Interim Distribution	\$0.0625 per unit	29 December 2006	9 March 2007
2007 Final Distribution	\$0.0625 per unit	29 June 2007	14 September 2007
2008 Interim Distribution	\$0.0725 per unit	31 December 2007	18 March 2008
2008 Final Distribution	\$0.0725 per unit	30 June 2008	18 September 2008
2009 Interim Distribution	\$0.045 per unit	31 December 2008	18 March 2009
2009 Final Distribution	\$0.045 per unit	30 June 2009	17 September 2009
<b>Total Distributions</b>	<b>\$0.4620 per unit</b>		

Therefore, given the tax deferred nature of the distributions to date, a Securityholder who has held their investment in Infigen Energy since the IPO would reduce their original CGT cost base by \$0.4620 per unit held in IET, being the aggregate amount of distributions received to date.

Accordingly, for these IPO Securityholders, upon receipt of the 2009 final distribution, the CGT cost base of their units in IET will be at least \$0.918 per unit (i.e. \$1.38 less \$0.462).

As there have been no capital returns by IEL or by IEBL since the IPO, the CGT cost base for these IPO Securityholders in the shares in IEL and the shares in IEBL should each remain at \$0.01 per share (at least).

For Securityholders who did not acquire their investment through the IPO, additional information regarding the determination of the relative cost bases of shares in IEL, shares in IEBL and units in IET is provided on the Infigen Energy website [www.infigenenergy.com](http://www.infigenenergy.com).

Where the quantum of any given tax deferred distribution received by a Securityholder exceeds the Securityholder's CGT cost base of the units in IET at the time of the distribution, a capital gain will arise to the extent that the sum of the tax deferred distributions received by the Securityholder exceeds the Securityholder's CGT cost base in the units in IET at that time.

The CGT implications for Securityholders, and how the capital gain or capital loss arising from an investment in Infigen Energy may be calculated, are set out further below. However, if you are an individual, a complying superannuation fund, or the trustee of a trust that holds Infigen Energy securities and you have held your investment in Infigen Energy for more than 12 months, you may be eligible for the CGT discount. This reduces any capital gain (after offsetting any capital losses) that is subject to tax by 50% (for individuals either directly or through a trust) or 33.33% (for superannuation funds).

### **2.1.2 Revenue Account**

Securityholders that hold their investment in Infigen Energy on Revenue account should consult their tax adviser in relation to the implications associated with their investment, including those associated with the receipt of tax deferred distributions.

Whether or not you hold your investment on Revenue account, you will need to undertake the above noted CGT calculations (with the exception of Securityholders whose Infigen Energy securities are trading stock when the distribution is received).

## 2.2 Non-Tax Resident Securityholders

### 2.2.1 Capital Account

Capital gains or losses of Non-Tax Residents are disregarded for Australian CGT purposes unless, broadly, the relevant CGT asset is taxable Australian real property, an 'indirect Australian real property interest', or an asset used by the Non-Tax Resident in carrying on business through a permanent establishment in Australia.

An indirect Australian real property interest exists at a time when a Non-Tax Resident, together with its associates, holds 10% or more of the membership interests in an entity (eg. units in a trust) at that time or throughout a 12 month period in the two years before that time and more than 50% of the underlying market value of the entity's assets is attributable to taxable Australian real property.

In the context of the 2009 interim and final distributions, the relevant membership interests held by Non-Tax Residents are the units in IET. The units themselves are not taxable Australian real property. Furthermore, holding units in IET should not of itself constitute carrying on business in Australia through a permanent establishment. On this basis, Non-Tax Resident Securityholders who, together with their associates, do not hold (and have not held) 10% or more of the units in IET and whose cost base in IET units has been fully eroded should not be subject to Australian CGT upon the receipt of the tax deferred 2009 interim and final distributions.

Infigen Energy has not determined whether the units in IET constitute indirect Australian real property interests. Accordingly, Infigen Energy is not in a position to indicate whether Non-Tax Resident Securityholders who, together with their associates, hold (or have held) 10% or more of the units in IET and whose cost base in IET has been fully eroded may be subject to Australian CGT upon the receipt of the tax deferred 2009 interim and final distributions. If you are a Non-Tax Resident and you, together with your associates, hold (or have held) 10% or more of the units in IET, you should consult your tax adviser in relation to this matter.

## **2.2.2 Revenue Account**

Securityholders that are Non-Tax Residents of Australia and hold their investment in Infigen Energy on Revenue account should consult their tax adviser in relation to the implications associated with their investment, including those associated with the receipt of tax deferred distributions.

## **2.3 Infigen Energy Distribution Reinvestment Plan**

The Distribution Reinvestment Plan was in suspension for the 2009 interim and final distributions.

## **2.4 Withholding Tax**

### **2.4.1 Failure to Quote Tax File Number**

While Securityholders are not obliged to quote a Tax File Number (TFN) to Infigen Energy or its security registry, if you are an Australian Tax Resident and have not quoted a TFN or declared a permitted exemption from quoting a TFN, the Responsible Entity may be obliged to withhold 46.5% of so much of any distribution that represents assessable income and to forward the tax withheld to the Australian Taxation Office.

Distributions of 'tax deferred' amounts to Australian Tax Residents should not be subject to any withholding tax due to a failure to quote a TFN or declare a permitted exemption.

### **2.4.2 Withholding Tax for Certain Non-Tax Resident Securityholders**

For the majority of Non-Tax Residents, a fully tax deferred distribution will not be subject to any Australian withholding tax while IET has no 'net income' as defined in the relevant taxation law (ie. IET is in a nil taxable income or net tax loss position) for the relevant income year (as IET currently is).

However, even where IET makes a fully tax deferred distribution and is in a nil taxable income or net tax loss position for the relevant income year, an amount of Australian withholding tax will be withheld by the Responsible Entity from the distribution to certain Non-Tax Resident Securityholders if IET has Distributable Income for the relevant period in accordance with IET's Constitution.

Those Non-Tax Residents to which Australian withholding tax may apply are tax residents of countries with which Australia has no Tax Treaty or tax residents of countries with which Australia has a Tax Treaty, but the terms of the Tax Treaty do not provide protection from the relevant Australian withholding tax.

IET did not have Distributable Income for the year ended 30 June 2009. Accordingly, Australian withholding tax does not apply to IET's 2009 interim and final distributions for any Non-Tax Resident Securityholders.

## 2.5 Information for Custodians and Nominees

### 2.5.1 Components of the 2009 interim and final distributions

For the purposes of Subdivision 12-H of Schedule 1 of the Taxation Administration Act 1953 (Cth), the 2009 interim and final distributions include 'fund payment' amounts of **nil** cents per ordinary unit in respect of the income year ending 30 June 2009.

The 2009 interim and final distributions do not include any amount of discount capital gain.

The components of the 2009 interim and final distributions are provided solely for the purposes of subdivision 12-H of the Taxation Administration Act 1953 (Cth), and should not be used for any other purpose.

Components	Cents per ordinary unit	Cents per ordinary unit
	2009 Interim Distribution	2009 Final Distribution
Other Australian Taxable Income	Nil	Nil
Gross Capital Gain	Nil	Nil
Fund Payment	Nil	Nil
Australian Interest Income	Nil	Nil
Australian Dividend Income	Nil	Nil
Foreign Source Income	Nil	Nil
Tax Deferred Amount	4.5	4.5

A copy of the notice provided for by Subdivision 12-H of the Taxation Administration Act 1953 (Cth) is provided on the Infigen Energy website [www.infigenenergy.com](http://www.infigenenergy.com).

### **3.0 Dividends Received from IEL or IEBL**

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No interim or final dividend has been declared or paid by IEL or IEBL in the year ended 30 June 2009.

### **4.0 Implications of Disposal of Your Investment in Infigen Energy**

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#### **4.1 Nature of Stapled Securities**

For Australian CGT purposes, each Infigen Energy Stapled Security is considered to comprise three separate assets, being a share in IEL, a share in IEBL and a unit in IET. If you dispose of any part of your investment in Infigen Energy you will need to do a separate CGT calculation for each of your respective investments in IEL, IEBL and IET.

This means that technically you will need to split your acquisition cost and your sales proceeds between the shares in IEL, the shares in IEBL and the units in IET. However, in most cases the aggregate of the three separate calculations will produce the same net result as if the disposal were treated as the disposal of a single security.

#### **4.2 Australian Tax Resident Securityholders**

##### **4.2.1 Capital Account**

If you dispose of any part of your investment in Infigen Energy, a CGT calculation needs to be performed. One of the components of that CGT calculation is the cost base of your investment. In addition to your acquisition cost, you should include other items of expenditure in your cost base. For example, it is possible to increase the cost base of your investment by including such things as stamp duty and brokerage fees. It should also be noted that your cost base in IET will be reduced by any tax deferred distributions that you have received (as discussed above).

A capital gain will arise where your sale proceeds exceed your cost base. A capital loss will arise where your sale proceeds are less than your reduced cost base.

Your reduced cost base is the same as your cost base with the exception of interest payments for which you have not claimed deductions (which will be a rare event for most Securityholders).

If you are an individual, a complying superannuation fund, or a trustee of a trust that holds Infigen Energy securities and you have held your investment in Infigen Energy for at least 12 months, any capital gain (after offsetting any capital losses) that you make may be reduced by 50% (for individuals either directly or through a trust) or 33.33% (for superannuation funds). You should seek professional advice to determine your eligibility for this reduction.

#### **4.2.2 Revenue Account**

If your investment in Infigen Energy is held on Revenue account and you dispose of any part of that investment, you will need to undertake an income tax calculation.

Securityholders that hold their investment on Revenue account should consult their tax adviser in relation to the implications associated with their investment, including those associated with the disposal of their investment.

Whether or not you hold your investment on Revenue account, you will need to undertake the above noted CGT calculation (with the exception of Securityholders whose Infigen Energy securities are trading stock at the time of the disposal).

### **4.3 Non-Tax Resident Securityholders**

#### **4.3.1 Capital Account**

As discussed above, capital gains or losses of Non-Tax Residents are disregarded for Australian CGT purposes unless, broadly, the relevant CGT asset is taxable Australian real property, an 'indirect Australian real property interest', or an asset used by the Non-Tax Resident in carrying on business through a permanent establishment in Australia.

An indirect Australian real property interest exists at a time when a Non-Tax Resident, together with its associates, holds 10% or more of the membership interests in an entity (eg. shares in a company or units in a trust) at that time or throughout a 12 month period in the two years before that time and more than 50% of the underlying

market value of the entity's assets is attributable to taxable Australian real property.

The relevant membership interests held by Non-Tax Residents are the shares in IEL, the shares in IEBL and the units in IET. The membership interests themselves are not taxable Australian real property. Furthermore, holding shares in IEL, shares in IEBL, and units in IET, should not of itself constitute carrying on business in Australia through a permanent establishment. On this basis, Non-Tax Resident Securityholders who, together with their associates, do not hold (and have not held) 10% or more of the shares in IEL, the shares in IEBL and the units in IET should generally not be subject to Australian CGT upon disposal of shares in IEL, shares in IEBL, and units in IET.

While it is clear that the shares in IEBL should not constitute indirect Australian real property interests, Infigen Energy has not determined whether the shares in IEL and the units in IET constitute indirect Australian real property interests. Accordingly, Infigen Energy is not in a position to indicate whether Non-Tax Resident Securityholders who, together with their associates, hold (or have held) 10% or more of the shares in IEL, the shares in IEBL, and the units in IET, may be subject to Australian CGT upon the disposal of shares in IEL and units in IET. If you are a Non-Tax Resident and you, together with your associates, hold (or have held) 10% or more of the shares in IEL, the shares in IEBL and the units in IET, you should consult your tax adviser in relation to this matter.

#### **4.3.2 Revenue Account**

If your investment in Infigen Energy is held on Revenue account and you dispose of that investment, you will need to undertake an income tax calculation.

Securityholders that hold their investment on Revenue account should consult their tax adviser in relation to the implications associated with their investment, including those associated with the disposal of their investment.

# Appendix 1

## Key Technical Tax Terms

### **Australian Tax Resident and Non Tax Resident**

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#### **'Australian Tax Resident'**

If you are an **individual** you will be considered to be an Australian Tax Resident if you satisfy any one of the following tests:

- you reside in Australia under ordinary concepts. This will include a general examination of your facts to consider whether you can be considered to dwell permanently or at least for a considerable period of time in Australia;
- you are an Australian citizen and have no permanent place of abode outside Australia;
- you have been in Australia for more than half of the income year (i.e. greater than 183 days in the period 1 July to 30 June) and your usual abode is not outside Australia; or
- you are a member of a Commonwealth Superannuation Scheme (broadly, if you work for the Australian public service).

A **corporate entity** will be considered to be an Australian Tax Resident if any of the following tests are satisfied:

- it is incorporated in Australia;
- it carries on business in Australia and its central management and control is in Australia; or
- it carries on business in Australia and has its voting power controlled by Australian resident shareholders.

A **trust or superannuation** fund will be considered an Australian Tax Resident if its trustee is a resident of Australia according to the above tests.

#### **'Non Tax Resident' of Australia**

You will be considered a non resident of Australia for Australian tax purposes if you do not fall within one of the tax residency tests referred to above.

You should note that Tax Treaties between Australia and other countries may alter your residency status and in some circumstances you may be considered a dual tax

resident. You should seek professional advice to determine your tax residence if you consider that a relevant Tax Treaty entered into between Australia and your country of residence may apply to you.

You should also note that your tax residency status can change and is tested each financial year.

## **Capital Account and Revenue Account**

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### **'Capital'**

Broadly, an investment will be held on 'capital account' where the intention is to hold the investment so as to benefit from both distributions from the investment and the capital growth of the investment. An intention to hold an investment for an extended period of time is generally indicative of an investment held on capital account.

It is expected that the majority of Securityholders will hold their investments in Infigen Energy on capital account.

### **'Revenue'**

Generally, an investment is held on 'revenue account' if it was acquired with the intention of making a profit on resale, or if the investment forms part of or is incidental to a business carried on by the Securityholder. An intention **not** to hold the investment for a long period of time would be indicative of an investment held on revenue account. Share traders usually hold their investments on revenue account.

This is a highly complex area of taxation law. If you are not able to accurately determine whether you hold your investment on capital or revenue account, we recommend that you seek professional assistance in determining the taxation implications associated with your investment in Infigen Energy.

