



Class Ruling

Income tax: Vermilion Australia Limited Partnership – changes to awards under the Australian Award Incentive Plan

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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, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is 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 provision(s) 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 provisions dealt with in this Ruling are:

- Former Division 13A of the *Income Tax Assessment Act 1936* (ITAA 1936);
- section 83A-15 of the *Income Tax (Transitional Provisions) Act 1997* (ITTPA 1997);
- Division 83A of the *Income Tax Assessment Act 1997* (ITAA 1997);
- subsection 83A-10(1) of the ITAA 1997;
- section 83A-340 of the ITAA 1997;
- subsection 104-25(1) of the ITAA 1997;
- subsection 104-155(1) of the ITAA 1997;

- subsection 104-155(2) of the ITAA 1997;
- subsection 104-155(3) of the ITAA 1997;
- subsection 116-20(2) of the ITAA 1997; and
- section 116-25 of the ITAA 1997.

All subsequent legislative references in this Ruling are to the ITAA 1997 unless otherwise indicated.

Class of entities

3. The class of entities to which this Ruling applies is to all Australian resident employees of Vermilion Australia Limited Partnership (VALP) who:

- were provided with an award of phantom units under the Australian Award Incentive Plan (AAIP and AAIP award) prior to 2 September 2010; and
- On or around 2 September 2010, signed the Acknowledgement that they agreed to have their AAIP award changed so that that award no longer incorporated certain terms of the Trust Unit Award Incentive Plan (TAP) and instead incorporated certain terms of the Vermilion Incentive Plan (VIP).

In this Ruling, an employee belonging to this class of entities is referred to as a participant.

Qualifications

4. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.

5. 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 9 to 22 of this Ruling.

6. 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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3-5 National Circuit
Barton ACT 2600

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Date of effect

8. This Ruling applies from 2 September 2010 to 30 June 2011. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Scheme

9. The following description of the scheme is based on information provided by the applicant:

- the original application for a class ruling received on 29 June 2011;
- the amended application for a class ruling received on 10 November 2011; and
- responses to subsequent requests for information.

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

10. Prior to 1 September 2010 the Vermilion Energy Trust (VET) was a listed unit trust on the Toronto Stock Exchange, Vermilion Resources Limited (VRL) was the trustee of VET and VALP was a subsidiary of VET.

11. On 1 September 2010 the VET incorporated and listed on the Toronto Stock Exchange to become Vermilion Energy Inc. (VEI). VRL and VALP became wholly owned subsidiaries of VEI.

12. The Board of Directors of VRL (the Board of VRL) previously established the TAP for VET which governed the issuance of Restricted Units in VET to directors, officers, employees and consultants of VET and its affiliates.

The original AAIP awards

13. The Board of VRL determined that the TAP would have no application to the directors, officers, employees and consultants of its Australian affiliate or to directors, officers, employees and consultants of VET that are Australian residents, and that such Australian personnel may only be eligible (at the Board of VRL's sole discretion) to participate in the AAIP.
14. Entitlement to participate in the AAIP is a term and condition of the employment contract between the participant and VALP.
15. Under the AAIP, participants are awarded phantom units which, subject to specified vesting and performance conditions, entitle them to receive a future cash payment based on the Fair Market Value of a unit in VET.
16. The AAIP is voluntary. AAIP awards were not able to be assigned and participants did not pay any amount for the awards.

The changes to the AAIP awards

17. On 10 August 2010, the Managing Director of Vermilion Oil & Gas Australia Pty Ltd (a 100% subsidiary of VALP) provided a briefing to VALP employees on the conversion of VET to VEI. Australian employees were advised that outstanding AAIP awards (2008, 2009 and 2010 grants vesting in 2011, 2012 and 2014 respectively) will be governed by the terms and conditions of VIP. The AAIP award holders were advised that they would be required to sign a written consent of acceptance of VIP terms and conditions to be applicable to their AAIP awards.
18. Under the VIP terms and conditions, the changed AAIP awards provide participants with the opportunity to receive a common share in VEI or cash (at the discretion of the Board) after performance hurdles and vesting conditions have been met.
19. On 1 September 2010, TAP ceased to exist as it was no longer possible to provide units under TAP. The AAIP continued for any existing grants made prior to the incorporation.
20. On or around 2 September 2010, due to TAP ceasing, all participants signed the Acknowledgement agreeing that their AAIP awards, which prior to 1 September 2010 had included certain terms of the TAP, would from that date no longer include any terms from the TAP and would instead include certain terms of the VIP.
21. Participants received no consideration for agreeing to the changes in their AAIP awards.
22. Benefits to be provided pursuant to AAIP awards no longer had to be provided as a cash payment, but could, at the option of VALP, be provided either as shares in VEI or a cash payment. Further, the formula for the calculation of the performance of the Vermilion group was changed.

Ruling

Capital gains tax (CGT) consequences

CGT event C2

23. The change to an AAIP award did not cause the ending of the ownership of an intangible CGT asset. Accordingly, CGT event C2 did not happen when the AAIP award was changed (subsection 104-25(1)).

CGT event H2

24. The change to an AAIP award was an act, transaction or event which occurred in relation to the AAIP award but did not result in an adjustment to the award's cost base or reduced cost base. Accordingly, CGT event H2 happened when the AAIP award was changed (subsections 104-155(1) and (2)).

25. No capital gain will be made from CGT event H2 as there are no capital proceeds from the change to an AAIP award (subsection 104-155(3) and subsection 116-20(2), event H2) and the market value substitution rule does not apply (section 116-25).

Employee share schemes

26. An original AAIP award held by a participant prior to the incorporation and listing of VEI on the Toronto Stock Exchange is not an ESS interest for the purposes of Division 83A nor a share or right to which former Division 13A of the ITAA 1936 applies.

27. Further, an original AAIP award is not an indeterminate right to which section 83A-15 of the ITTPA 1997 applies.

28. Where a participant's AAIP award is changed following the Acknowledgement, until such time as the Board exercises its discretion and determines to satisfy the award by the provision of common shares in VEI, no participant has an ESS interest to which subsection 83A-10(1) applies, nor a beneficial interest to which section 83A-340 applies.

29. Where participants' AAIP awards are changed following the Acknowledgement and the Board exercises its discretion and determines to satisfy the awards by the provision of common shares in VEI, section 83A-340 applies to the newly acquired awards (that is, to the new rights acquired by participants when the AAIP awards are changed).

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 consequences

CGT event C2

30. The change to an AAIP award did not cause the ending of the ownership of an intangible CGT asset. Accordingly, CGT event C2 did not happen when the AAIP award was changed (subsection 104-25(1)).

CGT event H2

31. The change to an AAIP award was an act, transaction or event which occurred in relation to the AAIP award but did not result in an adjustment to the award's cost base or reduced cost base. Accordingly, CGT event H2 happened when the AAIP award was changed (subsections 104-155(1) and (2)).

32. No capital gain will be made from CGT event H2 as there are no capital proceeds from the change to an AAIP award (subsection 104-155(3) and subsection 116-20(2), event H2) and the market value substitution rule does not apply (section 116-25).

33. No other CGT event happened as a result of the change to an AAIP award (Division 104).

Employee share schemes

Original AAIP awards

34. An ESS interest in a company is a beneficial interest in either a share in the company, or a right to acquire a beneficial interest in a share in the company (subsection 83A-10(1)).

35. Former Division 13A of the ITAA 1936 applied to a share, or a right to acquire a share in a company, acquired under an employee share scheme (former subsection 139B(1) of the ITAA 1936).

36. As an original AAIP award entitled a participant, subject to specified vesting and performance conditions, to receive a future cash payment based on the Fair Market Value of a unit in VET, it is not an ESS interest for the purposes of Division 83A nor a share or right to which former Division 13A of the ITAA 1936 applies.

37. Section 83A-15 of the ITTPA 1997 provides that where you acquire a beneficial interest in a right that later becomes a right to acquire a beneficial interest in a share, former Division 13A of the ITAA 1936 will apply as if the right had always been a right to acquire the beneficial interest in the share.

38. Being an entitlement to receive conditional cash payments only, an original AAIP award is discrete and fully determined at the time it is granted, and is not a right capable of becoming a right to acquire a beneficial interest in a share.

39. Accordingly, section 83A-15 of the ITTPA 1997 does not apply.

Changed AAIP awards

40. Upon signing the Acknowledgement, participants' AAIP awards are changed such that the changed AAIP awards constitute new awards for the purposes of Division 83A.

41. A changed AAIP award entitles a participant to acquire either a beneficial interest in a share in a company or cash at the discretion of the Board.

42. Section 83A-340 provides that where you acquire a beneficial interest in a right that later becomes a right to acquire a beneficial interest in a share, Division 83A will apply as if the right had always been a right to acquire the beneficial interest in the share.

43. Being an entitlement to either receive cash or acquire a beneficial interest in a share in a company, a changed AAIP award is capable of being a right to which section 83A-340 may apply.

44. However, as a changed AAIP award is indeterminate until such time as the Board exercises its discretion, it is not a right to which section 83A-340 applies until the Board determines to satisfy the award with the provision of a share.

45. Once the Board exercises its discretion to satisfy the changed AAIP award by the provision of a share, section 83A-340 applies and the rest of Division 83A is taken to have always applied to the award (ie to the new right acquired by a participant when the AAIP awards is changed).

Appendix 2 – Detailed contents list

46. The following is a detailed contents list for this Ruling:

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 95/3; TR 2006/10

Subject references:

- Capital Gains Tax
- CGT assets
- CGT events C1 – C3 – -end of a CGT asset
- CGT events H1 – H2 – special capital receipts
- employee share scheme
- indeterminate rights
- variation of rights

Legislative references:

- ITAA 1936
- ITAA 1936 139B(1)
- ITAA 1997
- ITAA 1997 Div 83A
- ITAA 1997 83A-10
- ITAA 1997 83A-10(1)
- ITAA 1997 83A-20(1)
- ITAA 1997 Div 104
- ITAA 1997 104-25
- ITAA 1997 104-155
- ITAA 1997 Div 109
- ITAA 1997 109-5
- ITAA 1997 116-20(2)
- IT(TP)A 1997 83A-15
- TAA 1953
- Copyright Act 1968

ATO references

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