



Class Ruling

Income tax: PayPal Holdings, Inc. – employee share schemes – separation from eBay

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❶ 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 provisions identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provisions

2. The relevant provisions dealt with in this ruling are:

- former Division 13A of the *Income Tax Assessment Act 1936* (ITAA 1936)
- former subsection 139B(3) of the ITAA 1936
- Subdivision DA of the ITAA 1936
- former section 139DQ of the ITAA 1936
- former section 139DR of the ITAA 1936
- former section 139E of the ITAA 1936
- former section 139GCC of the ITAA 1936
- Division 83A of the *Income Tax (Transitional Provisions) Act 1997* (IT(TP)A 1997)

- subsection 83A-5(2) of the IT(TP)A 1997
- Division 83A of the *Income Tax Assessment Act 1997* (ITAA 1997)
- Subdivision 83A-C of the ITAA 1997
- section 83A-10 of the ITAA 1997
- section 83A-110 of the ITAA 1997
- section 83A-120 of the ITAA 1997
- section 83A-130 of the ITAA 1997
- section 83A-340 of the ITAA 1997, and
- section 130-80 of the ITAA 1997.

All legislative references are to the ITAA1997 unless otherwise indicated.

Class of entities

3. The class of entities to which this Ruling applies is the employees of PayPal Holdings, Inc. and its wholly owned subsidiaries (PayPal Group) who:

- are residents of Australia within the meaning of subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936);
- are not temporary residents within the meaning of that expression in subsection 995-1(1);
- were employed by eBay Inc. and its wholly owned subsidiaries prior to the Separation described in paragraphs 11 to 16 of this Ruling and acquired:
 - (a) stock options under the eBay Inc. 2008 Equity Incentive Award Plan (eBay Incentive Plan) before, on or after 1 July 2009 (eBay stock options); and/or
 - (b) restricted stock units (RSUs) under the eBay Incentive Plan on or after 1 July 2009 (eBay RSUs); and/or
 - (c) ESPP options under the eBay Inc. Employee Stock Purchase Plan (eBay ESPP) (effective 1 November 2012) on or after 1 July 2009 (eBay ESPP options);
- at the time of the Separation held those eBay RSUs, eBay stock options and eBay ESPP options which:

- (a) if acquired before 1 July 2009 – were not covered by an election made under former section 139E of the ITAA 1936 and did not have a cessation time as mentioned in former subsection 139B(3) of the ITAA 1936 happen to them before the Separation; and/or
 - (b) if acquired on or after 1 July 2009 – Subdivision 83A-C applies to the rights and did not have an ESS deferred taxing point happen to them before the Separation;
 - as a result of the Separation, had each of their eBay stock options, eBay RSUs and eBay ESPP options converted into:
 - (a) a PayPal stock option issued under the PayPal Holdings, Inc. 2015 Equity Incentive Award Plan (PayPal Incentive Plan); and/or
 - (b) a PayPal RSU issued under the PayPal Incentive Plan; and/or
 - (c) a PayPal ESPP option issued under PayPal Holdings, Inc. Employee Stock Purchase Plan (PayPal ESPP);
 - at the time of the Separation, did not hold a beneficial interest in more than 5% of the shares in PayPal common stock and were not in a position to cast, or control the casting of, more than 5% of the maximum number of votes that might be cast at a PayPal general meeting; and
 - are not subject to the taxation of financial arrangement rules in Division 230.
- (Note – Division 230 will generally not apply to individuals, unless they have made an election for it to apply to them)

In this Ruling, a person belonging to this class of entities is referred to as a Participant.

Qualifications

4. The Commissioner makes this Ruling based on the precise scheme 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 8 to 27 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.

Date of effect

7. This Ruling applies from 1 July 2015 to 30 June 2016. The Ruling continues to apply after 30 June 2016 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. 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

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

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

9. eBay Inc. (eBay) is a company incorporated in 1996 and tax resident in the United States of America (US). The shares of eBay common stock are publicly traded on the National Association of Securities Dealers Automated Quotation (NASDAQ) in the US.

10. Prior to the Separation, the eBay group of companies was a global commerce platform and payments leader comprising of three business units: Marketplaces, Payments and Enterprises.

The Separation

11. On 30 September 2014, eBay announced its intention to separate its Payment business into an independent publicly traded company (the Separation).

12. To facilitate the Separation, eBay undertook certain pre-Separation transactions, including:

- eBay incorporated PayPal Holdings, Inc. (PayPal) in January 2015 as its new wholly owned subsidiary for the purpose of owning and operating eBay's Payment business after the Separation. PayPal ultimately became the head company of the PayPal Group.
- On 26 January 2015, eBay board of directors approved the Separation of PayPal.

- eBay and PayPal entered into multiple agreements to effect the Separation.
- eBay transferred all the assets and liabilities associated with eBay's Payment business to PayPal.

13. The Separation of PayPal was effected by way of a pro rata distribution of all of the shares of PayPal common stock to eBay stockholders (the Distribution)

14. The Separation was completed and Distribution made at 11:59pm, New York City time, on 17 July 2015 (Distribution Date).

15. Each eBay stockholder received one share of PayPal common stock for each share of eBay common stock held on 8 July 2015 (Record Date).

16. PayPal common stock began trading on the NASDAQ Stock Market on 20 July 2015.

Employee share schemes

17. Prior to the Separation, eBay operated the eBay Incentive Plan and eBay ESPP (the eBay Plans) under which Participants were granted eBay stock options, eBay RSUs and/or eBay ESPP options (collectively referred to as 'eBay Awards').

18. eBay stock options, eBay RSUs and eBay ESPP options are ESS interests for the purposes of Division 83A and Subdivision 83A-C applies to those eBay Awards.

19. A portion of eBay stock options held by Participants prior to the Separation were acquired before 1 July 2009 (Pre-1 July 2009 stock options).

20. eBay did not issue any stock options, RSUs or ESPP options between 1 July 2015 and the time of Separation.

21. The eBay Awards granted to Participants were governed by the rules of the eBay Plans and were subject to the Stock Option Agreement, Restricted Stock Unit Award Agreement or ESPP Subscription Agreement, as the case required.

22. The rules of the eBay plans provided that, in the event of any changes in the capital structure of eBay certain adjustments may be made to the number and kind of shares subject to outstanding eBay Awards to reflect the transaction and ensure the original rights of the Participants are not adversely affected.

The conversion and adjustment

23. Prior to the Separation, PayPal adopted the PayPal Incentive Plan and PayPal ESPP that contain terms and conditions substantially comparable to the eBay Plans.

24. In connection with the Separation, the eBay Awards held by Participants at the time of Separation were mandatorily converted through an adjustment:

- Each vested and unexercised eBay stock option was converted into a post Separation PayPal stock option;
- Each unvested eBay stock option was converted into a post Separation PayPal stock option;
- Each unvested eBay RSU was converted into a post Separation unvested PayPal RSU; and/or
- Each unexercised ESPP option was converted into a post Separation PayPal ESPP option.

(In this Ruling, post Separation PayPal stock option, PayPal RSU and PayPal ESPP option are collectively referred to as 'PayPal Awards')

25. At the time of the Separation, the number of eBay Awards (stock options, RSUs and ESPP options) and the exercise price of eBay stock options and eBay ESPP options were adjusted, in accordance with the rules of the eBay Plans, to retain the intrinsic value of the Participants' original eBay Awards prior to the Separation:

- For stock options and ESPP options
 - the number of PayPal shares of common stock (rounded down to the nearest whole share) subject to such PayPal option is equal to the number of eBay shares of common stock subject to the corresponding eBay option immediately prior to the Distribution Date multiplied by the PayPal Equity Award Conversion Ratio (being the closing eBay stock value prior to Separation divided by the opening PayPal stock value immediately after Separation, i.e. 66.29/41.46), and
 - the per share exercise price of such PayPal option (rounded up to the nearest cent) is equal to 41.46 (opening per share price of PayPal shares of common stock on the NASDAQ on first day of trading after Distribution Date) multiplied by the eBay Option Exercise Price Ratio of the corresponding eBay option (being the per share exercise price of such eBay option immediately prior to the Distribution Date divided by the closing eBay stock value immediately prior to the Separation i.e. 66.29).

- For RSUs, the number of PayPal shares subject to such PayPal RSU (rounded down to the nearest whole share) is equal to the number of eBay shares of common stock subject to the corresponding eBay RSU immediately prior to the Distribution Date multiplied by the PayPal Equity Award Conversion Ratio (i.e. 66.29/41.46).

26. The PayPal stock options, PayPal RSUs and PayPal ESPP options are subject to the same terms and conditions (including with respect to vesting and expiration) after the Separation as were applicable to the respective eBay Award prior to the Separation.

27. The PayPal RSUs, PayPal stock options and PayPal ESPP options are ESS interests for the purposes of Division 83A and Subdivision 83A-C applies to those PayPal Awards.

Ruling

No ESS deferred taxing point upon Separation

28. The Separation constituted a restructure within the meaning of both section 83A-130 and former section 139GCC of the ITAA 1936.

29. Where Participants held Pre-1 July 2009 stock options, the post Separation PayPal stock options issued to Participants are treated as a continuation of the Pre-1 July 2009 stock options for the purposes of Subdivision DA of former Division 13A of the ITAA 1936 and no cessation time, and consequently no ESS deferred taxing point, arises as a result of the Separation.

30. Where Participants held eBay Awards (RSUs, stock options and ESPP options) issued on or after 1 July 2009 that have not been subject to an ESS deferred taxing point, the post Separation PayPal Awards (PayPal RSUs, PayPal stock options and PayPal ESPP options) are treated as a continuation of those eBay Awards for the purposes of section 83A-130 and no ESS deferred taxing point arises as a result of the Separation.

Rights to adjustment

31. Section 83A-340 applies to the right to an adjustment of eBay Awards into post Separation PayPal Awards (PayPal RSUs, PayPal stock options and PayPal ESPP options) as a result of the Separation and Division 83A applies as if that right had always been a right to acquire a beneficial interest in the shares related to such PayPal Awards.

CGT consequences

32. Any capital gain or capital loss that results from the conversion through the adjustment of eBay Awards into PayPal

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Awards as a consequence of the Separation is disregarded under subsection 130-80(1).

Commissioner of Taxation

1 June 2016

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.*

No ESS deferred taxing point upon Separation

Stock options acquired before 1 July 2009

33. Division 83A applies to certain ESS interests acquired before 1 July 2009 pursuant to Subdivision 83A-A of the *Income Tax (Transitional Provisions) Act 1997* (IT(TP)A 1997).

34. By reason of subsection 83A-5(2) of the IT(TP)A 1997, Subdivision 83A-C (and the rest of Division 83A, to the extent that it relates to that Subdivision) applies in relation to the Pre-1 July 2009 stock options acquired by the Participant under the eBay Incentive Plan because:

- former subsection 139B(3) of ITAA 1936 applied in relation to the Pre-1 July 2009 stock options and the Participant did not make an election covering those rights under former section 139E of the ITAA 1936 (subparagraph 83A-5(2)(a)(i))
- the stock options were acquired (within the meaning of former Division 13A of the ITAA 1936) before 1 July 2009 (subparagraph 83A-5(2)(a)(ii)), and
- the cessation time, mentioned in former subsection 139B(3) of the ITAA 1936, for those Pre-1 July 2009 stock options did not occur before 1 July 2009 (subparagraph 83A-5(2)(a)(iii)).

35. Where Subdivision 83A-C applies to an ESS interest, an amount is included in the assessable income of the Participant under subsection 83A-110(1) for the income year in which the ESS deferred taxing point for the ESS interest occurs.

36. The ESS deferred taxing point for rights to acquire shares is usually worked out under section 83A-120. However, because Subdivision 83A-C will apply to the rights acquired before 1 July 2009 by virtue of subsection 83A-5(2) of the IT(TP)A 1997, subsection 83A-5(4) of the IT(TP)A 1997 applies.

37. Subparagraph 83A-5(4)(b)(i) of the IT(TP)A 1997 provides that the ESS deferred taxing point for a right acquired before 1 July 2009 will be the cessation time mentioned in former subsection 139B(3) of the ITAA 1936, subject to subsection 83A-120(3).

38. Therefore, whether an ESS deferred taxing point arises as a consequence of the Separation depends on whether the cessation time as mentioned in former subsection 139B(3) of the ITAA 1936 results from the Separation.

39. The cessation time for the Pre-1 July 2009 stock options under former subsection 139CB(1) of the ITAA 1936 is the earliest of the following:

- when the right is disposed of (paragraph 139CB(1)(a))
- when the Participant's employment in respect of which the right was acquired ceases (paragraph 139CB(1)(b))
- if the right is exercised and there is a restriction preventing the Participant from disposing of the share acquired as a result of the exercise of the right or a condition that could result in the Participant forfeiting ownership of the share, when such restriction or condition ceases to have effect (paragraph 139CB(1)(c))
- if the right is exercised and there is no such restriction or condition, when the right is exercised (paragraph 139CB(1)(d)), or
- the end of the 10 year period starting when the Participant acquired the right (paragraph 139CB(1)(e)).

40. Former Subdivision DA (Takeover and restructure) of ITAA 1936 can affect whether a Participant is treated as having disposed of a right or ceased employment. Provided that the conditions under former section 139DR of the ITAA 1936 are met, former subsection 139DQ(1) of the ITAA 1936 treats the post Separation PayPal Award that the Participant acquired as a result of the restructure as a continuation of the Pre-1 July 2009 stock options.

41. The Separation as described in the scheme description is a restructure for the purposes of subsection 139DQ(1) of the ITAA 1936, having satisfied former section 139GCC of the ITAA 1936.

42. A Participant who held Pre-1 July 2009 stock options meets the conditions under former section 139DR of the ITAA 1936 because:

- immediately before the Separation, the Participant held rights in eBay (the old company) i.e. Pre-1 July 2009 stock options issued under the eBay Plans
- the Participant is an employee of PayPal (new company) at the time the Participant acquired the post Separation PayPal Awards
- to the extent that the post Separation PayPal Awards are matching rights of the Pre-1 July 2009 stock options, they are rights to acquire shares of PayPal common stock, and

- at the time the Participant acquired the post Separation PayPal Awards in PayPal, the Participant did not hold a legal or beneficial interest in more than 5% of the shares of PayPal common stock and was not in the position to cast, or control the casting of, more than 5% of the maximum number of votes that may be cast at a general meeting of PayPal.

43. Accordingly, the post Separation PayPal Awards in PayPal is considered a continuation of the Pre-1 July 2009 stock options and therefore the Separation did not trigger a cessation time under former Division 13A of the ITAA 1936.

44. Consequently, there is no ESS deferred taxing point for the purposes of Subdivision 83A-C for the stock options that were acquired before 1 July 2009.

RSUs, stock options and ESPP options acquired on or after 1 July 2009

45. As Subdivision 83A-C applied to the eBay Awards granted under the eBay Plans prior to the Separation, section 83A-120 applied to determine the ESS deferred taxing point for the eBay Awards.

46. Subject to subsection 83A-120(3), the ESS deferred taxing point for the eBay RSUs, eBay stock options and eBay ESPP options acquired on or after 1 July 2009 is the earliest of the times specified in subsections 83A-120(4) to (7):

- where the right is not exercised and no real risk of forfeiture, if there is a restriction on disposing of the ESS interests, when such restriction ceases (subsections 83A-120(4))
- when the Participant's employment in respect of which the right was acquired ends (subsections 83A-120(5))
- the end of the seven year period starting when the Participant acquired the right (subsections 83A-120(6), or
- where the right is exercised and no real risk of forfeiture, if there is a restriction on disposing of the beneficial interests in the share, when such restriction ceases (subsection 83A-120(7)).

47. Subsection 83A-120(3) provides that if the Participant disposed of the eBay Award within 30 days of the time which would otherwise be the ESS deferred taxing point, the ESS deferred taxing point would instead be the time of the disposal.

48. Where the Participant's post Separation PayPal Awards are, for the purposes of section 83A-130, treated as a continuation of the eBay Awards held prior to the Separation, the Separation alone would not trigger an ESS deferred taxing point under section 83A-120.

49. The Separation as described in the scheme description constitutes a restructure for the purposes of section 83A-130 because:

- the eBay Awards acquired by the Participant under the eBay Plans can reasonably be regarded as having been replaced by the post Separation PayPal Awards as a result of the Separation (subparagraph 83A-130(1)(a)(ii)), and
- just before the Separation, the Participant held the eBay Awards acquired under the eBay Plans (paragraph 83A-130(1)(b)).

50. Accordingly, for the purposes of Division 83A, the post Separation PayPal Awards acquired in connection with the Separation are treated as a continuation of the eBay Awards under section 83A-130 because:

- the Participant stopped holding the eBay Awards as a result of the conversion of the eBay Awards into post Separation PayPal Awards
- the post Separation PayPal Awards can reasonably be regarded as matching the eBay Awards
- the PayPal Awards relate to shares of PayPal common stock
- the Participant's employment by PayPal or one of its subsidiaries is treated as a continuation of the Participant's employment in eBay, and
- at the time the Participant acquired the post Separation PayPal Awards, the Participant:
 - did not hold a beneficial interest in more than 5% of the shares of PayPal common stock, and
 - was not in a position to cast, or control the casting of, more than 5% of the maximum number of shares of PayPal common stock that might be cast at a general meeting of PayPal.

51. Consequently, the Separation did not give rise to an ESS deferred taxing point for the purposes of Subdivision 83A-C.

Right to adjustment

52. Section 83A-340 provides that where a Participant acquires a beneficial interest in a right that later becomes a right to acquire a beneficial interest in a share, Division 83A applies as if the right had always been a right to acquire the beneficial interest in the share.

53. In order for section 83A-340 to apply, the right must be capable of becoming a right to acquire a beneficial interest in a share and in fact becomes such a right.

54. Under the rules of the eBay Plans, the Participant was entitled to a right an adjustment of eBay Awards issued to the Participant prior to the Separation to ensure that the rights of the Participant was not adversely affected by the Separation.

55. Upon the Separation taking place, the right to an adjustment resulted in the allocation of additional PayPal RSUs, PayPal stock options and PayPal ESPP options to the Participant.

56. The adjustment was made to preserve the intrinsic value of the original eBay Awards acquired under the eBay Plans prior to the Separation.

57. The adjustment is regarded as a variation of the terms of original eBay Awards allowed for under the rules of the eBay Plans. The adjustment therefore does not result in a new contract or give rise to disposal of those rights.

58. Accordingly, the right to an adjustment is capable of becoming a right to acquire a beneficial interest in a share of PayPal common stock for the purposes of section 83A-340 (subsection 83A-340(1)).

59. Division 83A applies to the right (being the right to an adjustment to the number of eBay Awards and exercise price of eBay options as a result of the Separation) as if it had always been a right to acquire a beneficial interest in share of PayPal common stock (subsection 83A-340(2)).

60. Therefore, the additional PayPal RSUs, PayPal stock options and PayPal ESPP options allocated to the Participant as a result of the Separation are ESS interests acquired by the Participant under an employee share scheme in relation to their employment (subsections 83A-10(1) and (2)) and will continue to be subject to Subdivision 83A-C.

CGT consequences

61. Subsection 130-80(1) applies to disregard any capital gain or capital loss to the extent it results from a CGT event if:

- the CGT event happens in relation to the eBay Awards acquired under the eBay Plans (paragraph 130-80(1)(a))
- the CGT event is not CGT event E4, G1 or K8 (paragraph 130-80(1)(b))
- the CGT event happens on or before the ESS deferred taxing point for the eBay Award (subparagraph 130-80(1)(d)(ii)), and
- Subsection 130-80(2) does not apply.

62. The conversion of eBay Awards through the adjustment into PayPal Awards did not result in CGT event E4, G1 or K8 happening and subsection 130-80(2) did not apply to the eBay Awards.

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63. Accordingly, any capital gain or capital loss made from a CGT event happening to the conversion of eBay Awards into PayPal Awards as a consequence of the Separation is disregarded under subsection 130-80(1).

Appendix 2 – Detailed contents list

64. 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 2006/10

Legislative references:

- ITAA 1997 Div 83A
 - ITAA 1997 Subdiv 83A-A
 - ITAA 1997 83A-10
 - ITAA 1997 Subdiv 83A-C
 - ITAA 1997 83A-110
 - ITAA 1997 83A-120
 - ITAA 1997 83A-130
 - ITAA 1997 83A-340
 - ITAA 1936 6(1)
 - ITAA 1936 Pt III Div 13A
 - ITAA 1936 139B(3)
 - IT(A) 1997 130-80
 - ITAA 1936 Subdiv DA
 - IT(TP)A 1997 Div 83A
 - ITAA 1936 139E
 - IT(TP)A 1997 83A-5(2)
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ATO references

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