



Class Ruling

Income tax: Centuria Capital Limited - Executive Incentive Plan

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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:

- section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997)
- section 83A-110 of the ITAA 1997
- section 83A-120 of the ITAA 1997
- section 130-80 of the ITAA 1997, and
- subsection 995-1(1) of the ITAA 1997.

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

Class of entities

3. The class of entities to which this Ruling applies is employees of Centuria Capital Limited (Centuria) who:

- were residents of Australia within the meaning of that expression in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936) on 17 October 2016 (Implementation Date)
- were not temporary residents within the meaning of that expression in subsection 995-1(1) on the Implementation Date
- participated in the Centuria Capital Limited Executive Incentive Plan 2013 and were granted rights to acquire shares in Centuria (Rights):
 - in February 2015 (the FY 2015 Rights), and
 - in February 2016 (the FY 2016 Rights).
- held those Rights which had not had an Employee Share Scheme (ESS) deferred taxing point happen to them on the Implementation Date
- continue to be employees of Centuria or its subsidiaries after the Implementation Date
- do not hold a beneficial interest in more than 5% of the shares in Centuria (as a stapled company) (or 10% if Rights were granted on or after 1 July 2015)
- are 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 general meeting of Centuria (as a stapled company) (or 10% if Rights were granted on or after 1 July 2015), 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 24 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 2016 to 30 June 2019. The Ruling continues to apply after 30 June 2019 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: information that has been provided on a commercial-in-confidence basis will not be disclosed or released under Freedom of Information legislation.

9. Centuria Capital Limited (Centuria) is an Australian resident company for tax purposes. The ordinary shares of Centuria were listed on the Australian Securities Exchange (ASX) in 2002 under the code 'CNI'.

10. Prior to the Restructure described in paragraph 11, Centuria was a specialist investment manager with two key investment Divisions:

- Centuria Investment Bonds which delivered solutions to help clients meet their investment goals, and
- Centuria Property Funds Management which specialised in managing listed and unlisted property investments (Co-Investments).

The Restructure

11. To bring Centuria Group's structure into line with other listed fund managers, Centuria undertook a restructure to form a stapled security structure (Restructure).

12. The Restructure involved the following steps which were undertaken in sequence:

- Step 1: A unit trust was created and settled with Centuria as the sole unitholder (Centuria Capital Fund).
- Step 2: Centuria subscribed for new units in Centuria Capital Fund which equalled the number of shares on issue in Centuria immediately before the Restructure (no subscription amount was paid).
- Step 3: Centuria made a return of capital to existing shareholders which was satisfied by the provision to each shareholder of one unit in Centuria Capital Fund.
- Step 4: Shares in Centuria and units in Centuria Capital Fund were stapled on a 1:1 basis (Centuria Stapled Securities).
- Step 5: The Co-Investments were transferred from Centuria at market value consideration to Centuria Capital Fund. The consideration for the transfer was offset against the subscription amounts owing by Centuria for its unit subscription in Step 2.
- Step 6: The Centuria Stapled Securities were listed on the ASX under the code 'CNI'.

13. The Restructure was approved by Centuria shareholders at an extraordinary general meeting on 10 October 2016 and was implemented on 17 October 2016 (Implementation Date).

Impact of Restructure on Executive Incentive Plan

14. Prior to the Restructure, Centuria operated the Centuria Capital Limited Executive Incentive Plan (Plan) which was established as part of its executive remuneration strategy in 2013.

15. Under the Plan, a Participant could be granted a Right (for nil consideration) that upon vesting could be settled in a Centuria share or cash of equivalent value at the discretion of Centuria.

16. A number of Rights held by Participants prior to the Restructure were granted before 1 July 2015 (the FY 2015 Rights).

17. A number of Rights held by Participants prior to the Restructure were granted on or after 1 July 2015 (the FY 2016 Rights).

18. At the time of the Restructure, the FY 2015 Rights and FY 2016 Rights were outstanding.

19. Subject to relevant vesting conditions being satisfied, the FY 2015 Rights will vest in September 2017 and the FY 2016 Rights will vest in September 2018.

20. Each Right granted to a Participant was governed by the Plan rules.

21. As part of the Restructure, the Plan rules were revised to allow the grant of rights to acquire Centuria Stapled Securities to Participants (Centuria Capital Group Executive Incentive Plan Rules or the Amended Plan).

22. The key terms of the Amended Plan are not materially different to those in the Plan.

23. As a result of the Restructure, each Right granted under the Plan was replaced, on a 1:1 basis, with a Right under the Amended Plan (Replacement Right).

24. Each Replacement Right under the Amended Plan is subject to the same terms and conditions as the corresponding Right which it replaced under the Plan (including the relevant Vesting Conditions and Vesting Schedule).

Ruling

No ESS deferred taxing point

25. When a Right held by a Participant was replaced with a Replacement Right under the Restructure, the Replacement Right is treated as a continuation of the Right for the purposes of subsection 83A-130(2).

26. No ESS deferred taxing point will arise under section 83A-120 when a Right was replaced with a Replacement Right under the Restructure.

Replacement Right subsequent ESS deferred taxing point

27. If a Participant's Replacement Right subsequently vests, is settled with a Centuria Stapled Security and an ESS deferred taxing point occurs, the market value of that Replacement Right (as determined by reference to the Centuria Stapled Security) (less any cost base) will be included in the assessable income of the Participant at that time under section 83A-110.

Replacement Right settled with cash

28. If a Participant's Replacement Right vests and is settled with a cash payment, the cash payment will be included in the assessable income of the Participant in the year in which the cash payment is received under section 6-5.

CGT consequences

29. Any capital gain or capital loss that results from a Right being replaced with a Replacement Right is disregarded under subsection 130-80(1).

Commissioner of Taxation

23 November 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.*

Replacement Rights

30. Division 83A applies to shares, rights and stapled securities acquired under an employee share scheme on or after 1 July 2009.

31. Section 83A-335 provides that Division 83A applies to stapled securities in the same way as it applies to shares in a company if at least one of the ownership interests that are stapled together to form the stapled security is a share in the company. A right to acquire such a stapled security is treated as a right to acquire a share.

32. Under Division 83A, an ESS interest in a company is defined under subsection 83A-10(1) as either a beneficial interest in a share in the company or a beneficial interest in a right to acquire a beneficial interest in a share in the company.

33. If upon vesting Replacement Rights are settled in securities, the Replacement Rights will have been indeterminate rights as described in section 83A-340. The Replacement Rights will be treated as ESS interests for the purposes of Division 83A and Subdivision 83A-C will apply to those Replacement Rights.

No ESS deferred taxing point

34. Under section 83A-110, an amount will be included in the assessable income of a Participant in respect of their ESS interest in the income year in which the ESS deferred taxing point occurs.

35. The ESS deferred taxing point for a right is worked out under section 83A-120.

36. Section 83A-120 provides that the ESS deferred taxing point for a Right is the earliest of the time specified in subsection 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 (subsection 83A-120(4))
- where the Participant's employment in respect of which the right was acquired ends (subsection 83A-120(5))
- the end of seven year period (or 15 year period if acquired on or after 1 July 2015) starting when the Participant acquired the right (subsection 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)).

37. However, if the Participant disposes of the rights 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 (subsection 83A-120(3)).

38. Subject to section 83A-130, an ESS deferred taxing point would occur as a result the Restructure because there is a disposal of each Right when it is replaced with a Replacement Right.

39. Section 83A-130 relevantly provides that where as a result of a restructure (including the structure of ownership) of a company (the old company):

- an employee stops holding ESS interests in the old company that were acquired under an employee share scheme
- the employee acquires replacement ESS interests in a new company that can reasonably be regarded as matching the old ESS interests
- the replacement ESS interests relate to ordinary shares
- the employee is employed by the new company, or a subsidiary of the new company, or a holding company of the new company, or a subsidiary of a holding company of the new company at or about the time of the restructure, and
 - does not hold a beneficial interest in more than 5% of the shares in the new company (or 10% if acquired on or after 1 July 2015), or
 - is not in a position to cast or control the casting of more than 5% (or 10% if acquired on or after 1 July 2015) of the maximum number of votes that might be cast at a general meeting of the new company,

the replacement ESS interests will, for the purposes of Division 83A, be treated as a continuation of the employee's ESS interests in the old company and their employment with the new company will be regarded as a continuation of the employment that may otherwise have ceased under 83A-330.

40. The Commissioner accepts that the Restructure as described in the scheme description is a restructure for the purposes of section 83A-130 and that as a result of the Restructure:

- each Participant stopped holding ESS interests (each Right) in an old company that were acquired under an employee share scheme
- each Participant acquired replacement ESS interests (each Replacement Right) in a new company:
 - that can reasonably be regarded as matching their ESS interest (the Right), and
 - that relate to ordinary shares, and
- each Participant continued to be employed with Centuria after the Implementation Date.

41. Accordingly, as each Participant continued to be employed by Centuria after the Restructure and no Participant had a beneficial interest in more than 5% (or 10% if acquired on or after 1 July 2015) of the shares in the new company or was in a position to cast or control the casting of more than 5% (or 10% if acquired on or after 1 July 2015) of the maximum number of votes that might be cast at a general meeting of the new company:

- the Replacement Right received by a Participant was, for the purposes of Division 83A, treated as a continuation of the Right, and
- the employment of each Participant continued,

there was no ESS deferred taxing point under section 83A-120.

Replacement Right subsequent ESS deferred taxing point

42. If a subsequent ESS deferred taxing point occurs to a Participant's Replacement Right that subsequently vests and is settled with a Centuria Stapled Security, the market value of that Replacement Right (as determined by reference to the Centuria Stapled Security) (less any cost base) will be included in the assessable income of the Participant at that time under section 83A-110.

Replacement Right settled with cash

43. If a Participant's Replacement Right vests and is settled with a cash payment, Division 83A will have no application (section 83A-340) and the cash payment will be included in the assessable income of the Participant in the year in which the cash payment is received under section 6-5.

CGT consequences

44. Subsection 130-80(1) applied to disregard any capital gain or capital loss arising as a result of the Restructure as each of the requirements in the provision were satisfied. Specifically:

- only CGT events E4, G1 and K8 are excluded from the operation of section 130-80, but none of these events are relevant for present purposes, and
- any CGT event would happen before an ESS deferred taxing point occurs.

45. Therefore, no capital gain or capital loss will arise for a Participant as a result of the Restructure.

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 2006/10

Legislative references:

- ITAA 1997 83A-120(3)
 - ITAA 1997 83A-120(4)
 - ITAA 1997 83A-120(5)
 - ITAA 1997 83A-120(6)
 - ITAA 1997 83A-120(7)
 - ITAA 1997 83A-130
 - ITAA 1997 83A-130(2)
 - ITAA 1997 83A-335
 - ITAA 1997 83A-340
 - ITAA 1997 130-80
 - ITAA 1997 130-80(1)
 - ITAA 1997 Div 230
 - ITAA 1997 995-1(1)
 - TAA 1953
 - ITAA 1936 6(1)
 - ITAA 1997 6-5
 - ITAA 1997 Div 83A
 - ITAA 1997 Subdiv 83A-C
 - ITAA 1997 83A-10(1)
 - ITAA 1997 83A-110
 - ITAA 1997 83A-120
 - ITAA 1997 83A-120
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ATO references

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