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Status: **legally binding**

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## Class Ruling

# Afterpay Limited – employee share scheme – acquisition by Block, Inc. under scheme of arrangement

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### **❶ Relying on this Ruling**

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

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### **What this Ruling is about**

1. This Ruling sets out the income tax consequences for employees of Afterpay Limited (Afterpay) who participated in employee share schemes to acquire ordinary shares in Afterpay which were replaced by rights to acquire ordinary shares in Block, Inc. (Block) pursuant to a scheme of arrangement on 1 February 2022 (Implementation Date).
2. Details of this scheme are set out in paragraphs 9 to 30 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

### **Who this Ruling applies to**

4. This Ruling applies to you if:
  - you were employed by Afterpay or a subsidiary (as defined in the *Corporations Act 2001*) of Afterpay (collectively referred to as the Afterpay Group) prior to the Implementation Date
  - you held immediately prior to the Implementation Date
    - unvested Restricted Stock Units (Afterpay RSUs) over shares in Afterpay under the Afterpay Limited Equity Incentive Plan 2019 (2019 Plan)

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- unvested Stock Options (Afterpay Stock Options) over shares in Afterpay under the 2019 Plan, and/or
- unvested Afterpay Stock Options over shares in Afterpay under the Afterpay Touch Group Limited Employee Incentive Plan 2017 (2017 Plan), and
- you did not have an ESS deferred taxing point under Subdivision 83A-C occur in relation to your unvested Afterpay RSUs and Afterpay Stock Options prior to the Implementation Date
- as a result of the scheme of arrangement, your unvested Afterpay RSUs were forfeited and unvested Afterpay Stock Options were cancelled and respectively replaced with
  - Restricted Stock Units over Block Shares (Block RSUs), and/or
  - Stock Options over Block Shares (Block Stock Options), and
- you continue to be employed by the Afterpay Group following the Implementation Date, and
- you are a resident of Australia within the meaning of that term in subsection 6(1) of the *Income Tax Assessment Act 1936*.

#### **When this Ruling applies**

5. This Ruling applies from 1 July 2021 to 30 June 2022.

## **Ruling**

#### **No ESS deferred taxing point upon takeover**

6. The replacement of your unvested Afterpay RSUs and Afterpay Stock Options for Block RSUs and Block Stock Options did not result in an ESS deferred taxing point under section 83A-120.

#### **New ESS interests are a continuation of old interests**

7. The Block RSUs and Block Stock Options that you received are treated as a continuation of your unvested Afterpay RSUs and Afterpay Stock Options for the purposes of Division 83A (subsection 83A-130(2)).

#### **Continuation of your employment**

8. Your employment with the Afterpay Group after the Implementation Date is treated as a continuation of your employment in respect of which you acquired your unvested Afterpay RSUs and Afterpay Stock Options for the purposes of Division 83A (subsection 83A-130(6)). That is, your employment with the Afterpay Group had not ceased within the meaning of section 83A-330.

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## **Scheme**

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9. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

### **Afterpay Limited**

10. Afterpay is a financial services company that was incorporated in Australia on 30 March 2017.
11. Shares in Afterpay were listed on the Australian Securities Exchange (ASX) on 6 July 2017 under the ASX code 'APT'. Afterpay has one class of shares on issue.

### **Block, Inc. and Lanai (AU) 2 Pty Ltd**

12. Block is a financial services and digital payments company that was incorporated in Delaware in the United States of America in June 2009.
13. The Class A common stock of Block is listed on the New York Stock Exchange. Block commenced its operations in Australia in 2016.
14. Lanai (AU) 2 Pty Ltd (Block Acquirer) is a company that was incorporated in Australia on 28 July 2021. It is an indirect wholly-owned subsidiary of Block.

### **Scheme of arrangement**

15. On 2 August 2021, Afterpay, Block and Block Acquirer announced they had entered into a Scheme Implementation Deed. Under that deed, Afterpay agreed to propose to shareholders the scheme of arrangement under Part 5.1 of the *Corporations Act 2001*, pursuant to which Block Acquirer would acquire all of the ordinary shares in Afterpay in exchange for Block Shares or CHESS Depository Interests.
16. A resolution in favour of the scheme of arrangement was passed by Afterpay shareholders on 14 December 2021. The scheme of arrangement was approved by the Supreme Court of New South Wales on 17 December 2021.
17. Block Acquirer acquired 100% of the shares in Afterpay on the Implementation Date.
18. Afterpay had a total of 1,378,120 unvested Afterpay RSUs (of which 273,262 are awards of Australian participants) and a total of 490,247 Afterpay Stock Options (of which 298,605 were attributable to Australian participants) just before the Implementation Date.
19. The shares in Afterpay were suspended from trading on the ASX from the close of trading on 19 January 2022. Afterpay was removed from the official list of the ASX on 2 February 2022.

### **Afterpay employee share schemes**

20. Afterpay operated the 2019 Plan and the 2017 Plan under which rights to acquire ordinary shares in Afterpay were provided to its employees in relation to their employment.

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***Afterpay Equity Incentive Plan 2019***

21. The 2019 Plan awarded both Afterpay RSUs and Afterpay Stock Options.
22. The key features of Afterpay RSUs awarded under the 2019 Plan were:
- they represented a right to ordinary shares in Afterpay
  - they converted to ordinary Afterpay shares on the date of settlement
  - vesting and settlement was conditional on a time-based condition only, and
  - prior to settlement, Afterpay RSUs were subject to forfeiture in the event you ceased employment for cause, retired or voluntarily resigned.
23. The key features of Afterpay Stock Options awarded under the 2019 Plan were:
- they represented a right to ordinary shares in Afterpay upon the payment of the respective exercise price following vesting
  - vesting is conditional on a time-based service condition, and
  - prior to vesting, the Stock Options were subject to forfeiture where you cease employment prior to vesting.

***Afterpay Touch Group Limited Employee Incentive Plan 2017***

24. The key features of Afterpay Stock Options awarded under the 2017 Plan were:
- they represented a right to ordinary shares in Afterpay upon the payment of the respective exercise price following vesting
  - vesting was conditional on a time-based service condition, and
  - prior to vesting, the Afterpay Stock Options were subject to forfeiture where you ceased employment prior to vesting.

***Takeover by Block, Inc.***

25. At the time of the takeover, your unvested awards of Afterpay RSUs were forfeited and replaced by Block RSUs and your unvested Afterpay Stock Options were cancelled and converted into Block Stock Options.

26. For unvested Afterpay RSUs, the number of Block RSUs you received was determined by multiplying the number of Afterpay Shares covered by your Afterpay RSUs by the exchange ratio of 0.375.

27. For unvested Afterpay Stock Option awards, the number of Block Stock Options you received was determined by multiplying the number of Afterpay Shares covered by your Afterpay Stock Options by the exchange ratio of 0.375.

28. The exercise price of a replacement Block Stock Option was determined by the following formula:

Per share exercise price of the cancelled Afterpay Stock Option divided by the Exchange Ratio of 0.375.

29. The replacement Block RSUs and Stock Options are otherwise identical to the Afterpay RSUs and Stock Options with no changes made to the vesting conditions.

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30. As a result of the replacement of your unvested Afterpay RSUs and Afterpay Stock Options for Block RSUs and Block Stock Options, you did not hold a beneficial interest of more than 10% of the shares in Block and are not in a position to cast, or control the casting of, more than 10% of the maximum number of votes that might be cast at a Block general meeting.

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**Commissioner of Taxation**

19 October 2022

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## Appendix – Explanation

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**❶** *This Explanation 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 takeover

31. An amount will be included in your assessable income for the income year in which the ESS deferred taxing point occurs in respect of your ESS interest (section 83A-110).

32. An ESS deferred taxing point may occur at the time you dispose of an ESS interest (paragraph 83A-120(3)(a)).

33. However, while a disposal of an ESS interest occurs under a takeover, it will not be treated as a disposal but a continuation of that interest if it can be reasonably regarded as having been replaced by another ESS interest in the new company (section 83A-130).

34. The takeover by Block satisfies the requirements of section 83A-130 because:

- the acquisition is a takeover as it resulted in Afterpay becoming a 100% subsidiary of Block (subparagraph 83A-130(1)(a)(i))
- just before the takeover, you held ESS interests in the form of unvested Afterpay RSUs and Afterpay Stock Options (the 'old interests') that you acquired under an employee share scheme (paragraph 83A-130(1)(b))
- as a result of the takeover, you stopped holding the unvested Afterpay RSUs and Afterpay Stock Options (paragraph 83A-130(2)(a))
- you acquired ESS interests in the form of Block RSUs and Block Stock Options (the 'new interests') in connection with the takeover (subsection 83A-130(2))
- the Block RSUs and Block Stock Options were acquired on economically--equivalent terms and can reasonably be regarded as matching the unvested Afterpay RSUs and Afterpay Stock Options (paragraph 83A-130(2)(b))
- the Block RSUs and Block Stock Options relate to ordinary shares in Block (subsection 83A-130(4))
- you were employed by Block or a subsidiary of Block at the time you acquired the Block RSUs and Block Stock Options (paragraph 83A-130(9)(a)), and
- at the time of acquiring the Block RSUs and Block Stock Options, you did not hold a legal or beneficial interest in more than 10% of Block shares or were in a position to cast, or control the casting of, more than 10% of the maximum number of votes that might be cast at a Block general meeting (paragraph 83A-130(9)(b)).

35. Accordingly, for the purposes of Division 83A, the Block RSUs and Block Stock Options you acquired in connection with the takeover are treated as a continuation of your unvested Afterpay RSUs and Afterpay Stock Options you previously held.

36. Your employment with Block, or a subsidiary of Block, will be regarded as a continuation of your employment with Afterpay or one of its subsidiaries in accordance with subsection 83A-130(6). That is, you have not ceased your employment within the meaning of section 83A-330.

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37. Therefore, there will not be an ESS deferred taxing point under section 83A-120 when your unvested Afterpay RSUs and Afterpay Stock Options were replaced with Block RSUs and Block Stock Options.

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## References

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### *Legislative references:*

- ITAA 1936 6(1)
- ITAA 1997 Div 83A
- ITAA 1997 Subdiv 83A-C
- ITAA 1997 83A-110
- ITAA 1997 83A-120
- ITAA 1997 83A-120(3)(a)
- ITAA 1997 83A-130
- ITAA 1997 83A-130(1)(a)(i)
- ITAA 1997 83A-130(1)(b)
- ITAA 1997 83A-130(2)
- ITAA 1997 83A-130(2)(a)
- ITAA 1997 83A-130(2)(b)
- ITAA 1997 83A-130(4)
- ITAA 1997 83A-130(6)
- ITAA 1997 83A-130(9)(a)
- ITAA 1997 83A-130(9)(b)
- ITAA 1997 83A-330
- Corporations Act 2001 Pt 5.1

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### ATO references

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