Status: **legally binding**

Class Ruling

Anteris Technologies Ltd – employee share scheme – treatment of options under scheme of arrangement

Relying on this Ruling

This publication 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 Anteris Technologies Ltd (Anteris) who had their options in Anteris which they acquired under an employee share scheme replaced with options in Anteris Technologies Global Corp (Anteris US) on 16 December 2024 (Implementation Date) pursuant to a scheme of arrangement (Restructure).

2. Details of this scheme are set out in paragraphs 16 to 35 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:

- immediately prior to the Implementation Date, you
  - were employed by Anteris or one of its subsidiaries (as defined in section 995-1),
  - held Anteris options under the Anteris Technologies Ltd 2017 Employee Long Term Incentive Plan Rules or the 2020, 2022 or 2023 Anteris Director Options Terms and Conditions (Anteris Options), and
  - did not have an ESS deferred taxing point under Subdivision 83A-C occur in relation to your Anteris Options, and

- on the Implementation Date
  - your Anteris Options were replaced with options in Anteris US
  - you were employed by Anteris US or one of its subsidiaries
  - you did not hold a beneficial interest in more than 10% of the Anteris US shares and you were 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 general meeting of Anteris US, and
  - you were a 'resident of Australia' as defined in subsection 6(1) of the *Income Tax Assessment Act 1936*.

5. This Ruling does not apply to anyone who is subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 16 to 35 of this Ruling.

Note: Division 230 will not apply to individuals unless they have made an election for it to apply.

When this Ruling applies

6. This Ruling applies from 1 July 2024 to 30 June 2025.

Ruling

ESS interest under an employee share scheme

7. Your Anteris Options were ESS interests acquired under an employee share scheme (subsection 83A-10(1) and (2)).

8. The Restructure satisfied the conditions under subsection 83A-130(1).

Application of Subdivision 83A-C

9. Subdivision 83A-C applied to your Anteris Options (subsection 83A-105(1)).

10. The taxation of your Anteris Options was deferred to the ESS deferred taxing point (section 83A-110).

New ESS interests are a continuation of old ESS interests

11. The Anteris US options that you received in place of your Anteris options are treated as a continuation of your Anteris Options for the purposes of Division 83A (subsection 83A-130(2)).

No ESS deferred taxing point on Restructure

12. The replacement of your Anteris Options for Anteris US options under the Restructure did not trigger an ESS deferred taxing point under Subdivision 83A-C (section 83A-130).

Status: **legally binding**

Continuation of employment

13. Your employment with Anteris US, or one its subsidiaries, after the Implementation Date is treated as a continuation of your employment in respect of which you acquired your Anteris Options for the purposes of Division 83A (subsection 83A-130(6)).

Cost base of new ESS interests

14. The cost base of the Anteris Options you held just prior to the Implementation Date will be allocated to the matching Anteris US options you held just after the Implementation Date in accordance with subsection 83A-130(7).

Capital gains and losses

15. You disregard any capital gains or capital losses that arise as a result of the replacement of your Anteris Options by Anteris US options under the Restructure (section 130-80).

Scheme

16. 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.

Anteris Technologies Ltd

17. Anteris is a company that was incorporated in Australia on 23 June 1999.

18. Anteris was listed on the Australian Securities Exchange on 24 March 2004.

19. Anteris is the head company of an income tax consolidated group under Part 3-90.

20. The business of Anteris consists of designing, developing and commercialising innovative medical devices.

Anteris Technologies Ltd employee share schemes

21. Anteris operated the Anteris 2017 Employee Long Term Incentive Plan Rules (2017 Plan) and the Director Option Terms and Conditions under which rights to acquire ordinary shares in Anteris were provided to its employees and directors in relation to their employment.

Anteris Technologies Ltd 2017 Employee Long Term Incentive Plan Rules

22. Anteris Options were issued to employees of Anteris and its subsidiaries who participated in the 2017 Plan.

23. Key features of the Anteris Options issued under the 2017 Plan included:

- each Anteris Option represented a right to acquire one ordinary share in Anteris and was not cash settleable
- each Anteris Option was issued for nil consideration

- vesting of each Anteris Option was conditional on the satisfaction of specified time-based service conditions
- prior to vesting, each Anteris Option was subject to forfeiture in the event an employee ceased to be an employee of Anteris or its subsidiary (as relevant) due to resignation or termination for cause
- settlement of a vested Anteris Option was conditional on the payment by the holder of a predetermined exercise price (which may be nil), and
- an Anteris Option carried no dividend, voting or any other shareholder rights.

Anteris director options terms and conditions

24. Anteris Options were issued to directors of Anteris and its subsidiaries under terms and conditions separate to the 2017 Plan.

25. The key features of Anteris Options issued to participating directors under the 2022 Director Options Terms and Conditions and the 2023 Director Options Terms and Conditions were materially the same as Anteris Options issued under the 2017 Plan.

26. The key features of Anteris Options issued under the 2020 Director Options Terms and Conditions were materially the same as those issued under the 2017 Plan, with the additional requirement that the vesting of these options was subject to a share price performance hurdle condition.

Anteris Technologies Global Corp.

27. Anteris US was incorporated in Delaware, United States of America on 29 January 2024.

Option and share schemes of arrangement

28. On 13 August 2024, Anteris announced that it had entered into a scheme implementation deed, under which Anteris agreed to propose to its:

- shareholders that Anteris and the shareholders enter into a share scheme of arrangement under Part 5.1 of the *Corporations Act 2001* pursuant to which Anteris US would acquire all the ordinary shares in Anteris in exchange for shares or CHESS Depositary Instruments (CDIs) in Anteris US, and
- option holders that Anteris and the option holders enter into an option scheme of arrangement under Part 5.1 of the *Corporations Act 2001* pursuant to which Anteris options would be cancelled and replaced by options in Anteris US.

29. A resolution in favour of each scheme of arrangement was passed by the shareholders and option holders of Anteris (respectively) as required by subparagraph 411(4)(a)(ii) of the *Corporations Act 2001* on 3 December 2024.

30. Each scheme of arrangement was approved by the Supreme Court of Queensland under paragraph 411(4)(b) of the *Corporations Act 2001* on 4 December 2024.

31. Anteris US acquired 100% of the ordinary shares in Anteris on the Implementation Date.

Status: **legally binding**

32. In consideration for the disposal of their ordinary shares in Anteris on the Implementation Date, the shareholders of Anteris received either one Anteris US share or an equivalent CDI for each Anteris ordinary share they held.

33. In consideration for the cancellation of their options in Anteris on the Implementation Date, the Anteris option holders (including holders of Anteris Options) received one Anteris US option for each Anteris option they held.

34. The Anteris US shares were listed on the Nasdaq Stock Market and the Anteris US CDIs were listed on the Australian Securities Exchange.

35. A replacement Anteris US option has materially the same terms and conditions as the respective Anteris Option for which it was exchanged.

Commissioner of Taxation
12 February 2025

Status: **not legally binding**

References

Legislative references:

- ITAA 1936 6(1)
- ITAA 1997 Div 83A
- ITAA 1997 Subdiv 83A-C
- ITAA 1997 83A-10(1)
- ITAA 1997 83A-10(2)
- ITAA 1997 83A-105(1)
- ITAA 1997 83A-110
- ITAA 1997 83A-130
- ITAA 1997 83A-130(1)
- ITAA 1997 83A-130(2)
- ITAA 1997 83A-130(6)
- ITAA 1997 83A-130(7)
- ITAA 1997 130-80
- ITAA 1997 Div 230
- ITAA 1997 Pt 3-90
- ITAA 1997 995-1
- Corporations Act 2001 Pt 5.1
- Corporations Act 2001 411(4)(a)(ii)
- Corporations Act 2001 411(4)(b)

ATO references

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