



Status: **legally binding**

Class Ruling

Washington H. Soul Pattinson and Company Limited – combination with Brickworks Ltd – replacement of employee share scheme awards

❗ 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 Washington H. Soul Pattinson and Company Limited (now registered as WHSP Holdings Ltd) (WHSP) (or its subsidiaries) of exchanging shares or rights in WHSP that they received, pursuant to WHSP's Limited Rights Plan for shares or rights in First Services Company Ltd (Topco) as part of the combination of WHSP and Brickworks Ltd (Combination Transaction) on 23 September 2025.
2. Details of this scheme are set out in paragraphs 16 to 26 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 an employee of WHSP (Participant), or one of its subsidiaries, who:
 - was granted an ESS interest under one of the following offers (collectively referred to as the Awards) made pursuant to WHSP's Limited Rights Plan
 - long-term incentive offers made in the financial years 2018 through 2025 (collectively, LTI Awards)
 - Milton Integration Bonus offer (Milton Awards)
 - the deferred short-term incentive offer made in financial year 2024 (STI Awards), or

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- the Sign On Rights offer (Sign On Awards)
- was employed by one entity in the WHSP group when the Awards were granted
- prior to the Combination Transaction, held Awards that had not been subject to a deferred taxing point under Division 83A
- had your Awards exchanged for replacement ESS interests pursuant to the Combination Transaction
- is a 'resident of Australia' for tax purposes, as defined in subsection 6(1) of the *Income Tax Assessment Act 1936*
- along with your associates, immediately after the acquisition of ESS interests under the various offers (listed in the first dot point of this paragraph) did not hold a beneficial interest in more than 10% of the shares of WHSP, and was not in a position to cast, or to control the casting of, more than 10% of the maximum number of votes that might be cast at a general meeting of WHSP
- along with your associates, immediately after the acquisition of ESS interests in Topco following an exchange of your WHSP ESS interests for replacement ESS interests in Topco, in connection with the Combination Transaction, will not hold a beneficial interest in more than 10% of the shares of Topco, and will not be in a position to cast, or to control the casting of, more than 10% of the maximum number of votes that might be cast at a general meeting of Topco, and
- is an employee of Topco (or one of its subsidiaries) immediately following completion of the Combination Transaction.

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 26 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 2025 to 30 June 2026.

Ruling

ESS interest under an employee share scheme

7. Your LTI Awards, Milton Awards and Sign On Awards that had vested into shares prior to the Combination Transaction were ESS interests acquired under an employee share scheme (subsections 83A-10(1) and (2)) pursuant to 83A-340.

8. Your STI Awards were ESS interests acquired under an employee share scheme (subsections 83A-10(1) and (2)).

9. The Combination Transaction satisfied the conditions under subsection 83A-130(1).

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Application of Subdivision 83A-C

10. Subdivision 83A-C applied to your Awards (subsection 83A-105(1)).
11. The taxation of your Awards was deferred to the ESS deferred taxing point (section 83A-110).

New ESS interests are a continuation of old ESS interests

12. The restricted shares in Topco that you received in place of the restricted shares that had vested under the LTI Awards, Milton Awards and Sign On Awards are treated as a continuation of your Awards for the purposes of Division 83A (subsection 83A-130(2)).
13. The new STI Awards that you received in place of your original STI Awards are treated as a continuation of your Awards for the purposes of Division 83A (subsection 83A-130(2)).

No ESS deferred taxing point

14. The replacement of your Awards under the Combination Transaction did not trigger an ESS deferred taxing point under Subdivision 83A-C (section 83A-130).

Continuation of employment

15. Your employment with Topco, or one of its subsidiaries, is treated as a continuation of your employment in respect of which you acquired your Awards for the purposes of Division 83A (subsection 83A-130(6)).

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.
17. WHSP is a company incorporated in, and tax resident of, Australia. WHSP was listed on the Australian Securities Exchange.
18. WHSP's investment strategy is centred upon holding a diversified portfolio of largely uncorrelated investments across listed equities, private equity, property and credit. It generates returns by making long-term investment decisions and taking a value-focused approach to investing through market cycles.
19. WHSP had one class of shares on issue, being ordinary shares.
20. The Combination Transaction created a new company Topco, that became the ultimate holding company for 100% of WHSP shares and 100% of Brickworks Ltd shares, and WHSP shareholders received an ordinary share in Topco on a one-for-one basis.

Employee share schemes

21. This Ruling concerns the Awards that have been provided to Participants from the 2018 to 2025 financial years referred to as LTI Awards, Milton Awards, STI Awards and Sign On Awards. The broad common characteristics of these Awards are as follows:
 - The Awards were provided for nil consideration.

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- Each award was to acquire one WHSP Share (or, in the case of the LTI Awards, Milton Awards or Sign On Awards Participants could receive a cash equivalent payment at the discretion of the board of directors of WHSP).
- The Awards had governing rules that expressly stated that Subdivision 83A-C applied to them.
- The Awards did not allow the Participant to transfer, assign or otherwise deal with these Awards at grant.

22. The following further outlines the broad characteristics for each type of Award that is the subject of this Ruling:

- LTI Awards
 - The LTI Awards were subject to performance measures and a service condition (for select Participants) to vest.
 - When vested, the shares allocated were subject to specified disposal restrictions for a period of 15 years from the grant date for the LTI Awards provided in the 2018 to 2024 financial years and from 3 to 9 years from the start of the measurement period for the LTI Awards provided in the 2025 financial year.
- Milton Awards
 - The Milton Awards were subject to a service condition such that, to vest, the Participant needed to remain employed with WHSP (or a subsidiary) until 31 July 2025.
 - When vested, the shares received were subject to specified disposal restrictions of a period from 1 to 9 years from the start of the measurement period.
- Sign On Awards
 - The Sign On Awards were subject to a service condition such that, to vest, the Participant needed to remain employed with WHSP (or a subsidiary).
 - When vested, the shares were subject to specified disposal restrictions of a period of 15 years from the grant date of the Sign On Awards.
- STI Awards
 - The STI Awards were subject to a service condition such that, to vest, the Participant needed to remain employed with WHSP (or a subsidiary) for 5 years from the start of the measurement period.
 - When vested, the shares would be subject to specified disposal restrictions of a period from 5.5 to 9 years from the start of the measurement period.

23. Prior to the Combination Transaction, the LTI Awards, Milton Awards and Sign On Awards had vested and had been settled in WHSP shares that had disposal restrictions of 1 to 15 years (original Restricted Shares).¹

¹ Note: rights that were settled in cash or unrestricted shares are not the subject of this Ruling.

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24. These original Restricted Shares were replaced on a one-for-one basis such that for each WHSP share the Participant held, they received one Topco share equal in value to the WHSP share immediately before the exchange of shares.

25. The Topco shares the Participant received had disposal restrictions (new Restricted Share) that maintained the original Restricted Shares disposal restriction period – such that the date the original Restricted Share was due to have its disposal restrictions end was the same as the date the new Restricted Share restrictions would end.

26. The STI Awards had not vested prior to the Combination Transaction. As part of the Combination Transaction the original STI Awards were cancelled and replaced with new performance rights (new STI Awards) of equivalent value to the STI Awards immediately before the exchange and granted on substantially the same terms. Specifically, the new STI Awards had the same service conditions and disposal restrictions as the original STI Awards. The new STI Awards were provided on a one-for-one basis to the original STI Awards and each new STI Awards provided was for a right to one Topco share (rather than one WHSP share).

Commissioner of Taxation**8 October 2025**

Status: **not legally binding**

References

Legislative references:

- | | |
|--------------------------|------------------------|
| - ITAA 1936 6(1) | - ITAA 1997 83A-110 |
| - ITAA 1997 Div 83A | - ITAA 1997 83A-130 |
| - ITAA 1997 83A-10(1) | - ITAA 1997 83A-130(1) |
| - ITAA 1997 83A-10(2) | - ITAA 1997 83A-130(2) |
| - ITAA 1997 Subdiv 83A-C | - ITAA 1997 83A-130(6) |
| - ITAA 1997 83A-105(1) | - ITAA 1997 83A-340 |
| | - ITAA 1997 Div 230 |
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ATO references

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