

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination does 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 the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Taxation Determination

Income tax: employee share acquisition scheme: does the exclusion of company directors from a scheme to avoid the requirements of paragraph 3E(8)(a)(d) of the Australian Stock Exchange Listing Rules affect the operation of the reduction in discount provisions of section 26AAC of the *Income Tax Assessment Act 1936*?

1. Yes. Reductions in discounts are available to recipients of shares under an employee share acquisition scheme pursuant to subsection 26AAC(4F) of the *Income Tax Assessment Act 1936* (ITAA), provided that certain conditions are satisfied. One of these conditions is that the scheme must be operated on a non-discriminatory basis (subparagraph 26AAC(4A)(d)(i) of the ITAA).
2. To be non-discriminatory, the scheme must be open to all permanent employees of the company (paragraph 26AAC(4B)(a) of the ITAA). Subsection 26AAC(18C) of the ITAA defines an employee to include a director of the company.
3. When directors of a company participate in an employee share acquisition scheme the allotment of shares must be done in accordance with conditions set out in the Australian Stock Exchange Listing Rules. Paragraph 3E(8)(a)(d) of the Listing Rules requires that directors' participation in the scheme be approved by shareholders of the company at a general meeting. To avoid having to solicit the approval of a general meeting the company may wish to exclude directors from participating in the scheme.
4. If the company takes this approach, every person who acquires shares under the scheme fails to qualify for a reduction in discount otherwise available under subsection 26AAC(4F) of the ITAA.

Commissioner of Taxation
28/1/93

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Related Rulings: IT 2516

Subject Ref: ASX Listing Rules; directors; employee share acquisition scheme; non-discriminatory provisions; reduction in discount

Legislative Ref: ITAA 26AAC(4A)(d)(i); ITAA 26AAC(4B)(a); ITAA 26AAC(4C); ITAA 26AAC(4F); ITAA 26AAC(18C)

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