

This edited version of the Compendium of Comments is not intended to be relied upon. It provides no protection from primary tax, penalties, interest or sanctions for non-compliance with the law.

Page status: **not legally binding**

Page 1 of 1

Public advice and guidance compendium – TD 2016/17

This is a compendium of responses to the issues raised by external parties to draft Taxation Determination TD 2016/D3 *Income tax: in what circumstances does a contractual right, which is subject to the satisfaction of a condition, become a right to acquire a beneficial interest in a share for the purposes of subsection 83A 340(1) of the Income Tax Assessment Act 1997?*

This compendium of comments has been edited to maintain the anonymity of entities that have commented.

Summary of issues raised and responses

Issue No.	Issue raised	ATO Response/Action taken
1	Remove references to the concept of a 'direct' vs. 'distant' causal connection when considering whether an indeterminate right arises for purposes of subsection 83A-340 of the <i>Income Tax Assessment Act 1997</i> (ITAA 1997), because they are not concepts used in the legislation and represent a new requirement for taxpayers to consider when determining the application of this Subdivision.	No change. It is agreed that the phrases direct or distant causal connection are not used in the legislation. However, it is not intended to introduce an additional test into the requirements of subsection 83A-340(1) of the ITAA 1997. Rather, the concepts are intended to elaborate, by way of further explanation, the kind of condition and right to which subsection 83A-340(1) may apply (that is, a right which becomes a right to acquire a beneficial interest in a share) as distinct from a right or condition which is of no consequence for the purposes of subsection 83A-340(1).
2	Given the complexity in assessing the application of Subdivision 83A-340 of the ITAA 1997, commentary on more typical and commercial examples are required to assist employers. For example, where an agreement is made between a company and an existing director regarding Employee Share Schemes (ESS) interests to be granted on the obtaining of shareholder approval at some future date.	Agreed. Additional commentary, including in relation to an agreement on ESS interests prior to shareholder approval, has been included in the final Determination. Further examples have also been published on ato.gov.au