



Income Tax Assessment Amendment Regulations 2010 (No. 1)

Select Legislative Instrument 2010 No. 8

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Income Tax Assessment Act 1997*.

Dated 10 February 2010

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

NICK SHERRY
Assistant Treasurer

1 Name of Regulations

These Regulations are the *Income Tax Assessment Amendment Regulations 2010 (No. 1)*.

2 Commencement

These Regulations are taken to have commenced on 1 July 2009.

Note See item 87 of Schedule 1 to the *Tax Laws Amendment (2009 Budget Measures No. 2) Act 2009*.

3 Amendment of *Income Tax Assessment Regulations 1997*

Schedule 1 amends the *Income Tax Assessment Regulations 1997*.

Schedule 1 Amendments

(regulation 3)

[1] After Division 70

insert

Division 83A Employee share schemes

83A-5.01 Object of Division 83A

For Division 83A of the Act, this Division preserves rules under the former Division 13A of Part III of the *Income Tax Assessment Act 1936* about valuing unlisted rights to acquire shares under an employee share scheme.

83A-315.01 Determining the value of a right

- (1) For subsection 83A-315 of the Act, the amount, in relation to an unlisted right that must be exercised within 10 years after the day when the beneficial interest in the right was acquired is, at the choice of the individual:
 - (a) the market value of the right; or
 - (b) the amount determined by the application of regulations 83A-315.02 to 83A-315.09.
- (2) However, if the ESS deferred taxing point for an ESS interest is:
 - (a) the day when the individual disposes of the interest (other than by exercising the right); or
 - (b) if the individual exercises the right — the day when the individual disposes of the beneficial interest in the share;the amount is the market value of the right or share.

83A-315.02 Valuing unlisted rights

- (1) If a right is not quoted on an approved stock exchange on a particular day, the value of the right is the greater of:
 - (a) the market value, on the day, of the share that may be acquired by exercising the right, less the lowest amount that must be paid to exercise the right to acquire the beneficial interest in the share; and
 - (b) subject to regulation 83A-315.03, the value determined in accordance with regulations 83A-315.05 to 83A-315.09.
- (2) In determining the value of a right, anything that would prevent or restrict conversion of the right to money is to be disregarded.

83A-315.03 Exercise price of right nil or can not be determined

If the lowest amount that must be paid to exercise a right to acquire a beneficial interest in a share is nil or can not be determined, the value of the right on a particular day is the same as the market value of the share on that day.

83A-315.04 Value of beneficial interests

To avoid doubt, if an individual acquires the beneficial interest in a share or right, the value that is applicable for the purposes of this Division is the value of the share or right, not the value of the interest in the share or right.

83A-315.05 Outline of remainder of Division

The remainder of this Division sets out the method of calculating, for the purposes of paragraph 83A-315.02 (1) (b) the value, on a particular day, of a right to acquire the beneficial interest in a share.

83A-315.06 Step 1 — calculate the calculation percentage

Apply the following formula. The result is the *calculation percentage*.

$$\frac{\text{Market value, on the particular day, of the share that is the subject of the right}}{\text{Amount, or lowest amount, that must be paid to exercise the right}} \times 100\%$$

83A-315.07 Step 2 — how to use calculation percentage

- (1) If the calculation percentage is less than 50%, the *value of the right* is nil.
- (2) If the calculation percentage is equal to, or greater than, 50% but less than 110%, go to the instructions for using Table 1 in regulation 83A-315.08 that are set out below that Table.
- (3) If the calculation percentage is equal to, or greater than, 110%, go to the instructions for using Table 2 in regulation 83A-315.09 that are set out below that Table.

83A-315.08 Table 1 and instructions

(1) The following is Table 1:

Calculation percentage								
Exercise period (months)	50% to 60%	60% to 70%	70% to 75%	75% to 80%	80% to 85%	85% to 90%	90% to 92.5%	92.5% to 95%
108 to 120	0.6%	2.1%	4.8%	6.7%	8.9%	11.4%	14.1%	15.5%
96 to 108	0.4%	1.5%	4.0%	5.8%	7.9%	10.3%	13.0%	14.5%
84 to 96	0.2%	1.1%	3.2%	4.8%	6.8%	9.2%	11.8%	13.3%
72 to 84	0.1%	0.7%	2.4%	3.8%	5.6%	7.9%	10.5%	11.9%
60 to 72	0.0%	0.4%	1.6%	2.8%	4.4%	6.5%	9.0%	10.4%
48 to 60	0.0%	0.1%	0.9%	1.8%	3.1%	4.9%	7.3%	8.6%
36 to 48	0.0%	0.0%	0.4%	0.9%	1.9%	3.3%	5.4%	6.6%
24 to 36	0.0%	0.0%	0.1%	0.3%	0.8%	1.8%	3.4%	4.4%
18 to 24	0.0%	0.0%	0.0%	0.1%	0.4%	1.0%	2.3%	3.2%
12 to 18	0.0%	0.0%	0.0%	0.0%	0.1%	0.4%	1.3%	2.0%
9 to 12	0.0%	0.0%	0.0%	0.0%	0.0%	0.2%	0.8%	1.3%
6 to 9	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.3%	0.7%
3 to 6	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.2%
0 to 3	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%

Calculation percentage						
Exercise period (months)	95% to 97.5%	97.5% to 100%	100% to 102.5%	102.5% to 105%	105% to 107.5%	107.5% to 110%
108 to 120	16.9%	18.4%	20.0%	21.5%	23.1%	24.7%
96 to 108	15.9%	17.5%	19.0%	20.6%	22.2%	23.9%
84 to 96	14.8%	16.3%	17.9%	19.5%	21.2%	22.9%
72 to 84	13.4%	15.0%	16.6%	18.2%	19.9%	21.7%
60 to 72	11.8%	13.4%	15.0%	16.7%	18.5%	20.3%
48 to 60	10.1%	11.6%	13.2%	14.9%	16.7%	18.6%

Calculation percentage						
Exercise period (months)	95% to 97.5%	97.5% to 100%	100% to 102.5%	102.5% to 105%	105% to 107.5%	107.5% to 110%
36 to 48	8.0%	9.5%	11.1%	12.9%	14.7%	16.5%
24 to 36	5.7%	7.1%	8.7%	10.4%	12.2%	14.1%
18 to 24	4.4%	5.7%	7.2%	8.9%	10.8%	12.7%
12 to 18	2.9%	4.1%	5.6%	7.3%	9.1%	11.2%
9 to 12	2.2%	3.3%	4.7%	6.3%	8.2%	10.3%
6 to 9	1.4%	2.3%	3.6%	5.3%	7.2%	9.4%
3 to 6	0.5%	1.2%	2.4%	4.1%	6.1%	8.4%
0 to 3	0.1%	0.4%	1.3%	3.0%	5.3%	7.8%

- (2) From Table 1, select the percentage (the *Table 1 percentage*) that corresponds to:
- (a) the period, in months, from the particular day until the last day on which the right may be exercised (the *exercise period*); and
 - (b) the calculation percentage;
- and then multiply the amount, or lowest amount, that must be paid to exercise the right by the Table 1 percentage. The result is the *value of the right*.

83A-315.09 Table 2 and instructions

- (1) The following is Table 2:

Exercise period (months)	Column 1	Column 2
108 to 120	24.7%	0.6%
96 to 108	23.9%	0.6%
84 to 96	22.9%	0.7%
72 to 84	21.7%	0.7%
60 to 72	20.3%	0.7%
48 to 60	18.6%	0.7%
36 to 48	16.5%	0.8%

Exercise period (months)	Column 1	Column 2
24 to 36	14.1%	0.8%
18 to 24	12.7%	0.8%
12 to 18	11.2%	0.9%
9 to 12	10.3%	0.9%
6 to 9	9.4%	0.9%
3 to 6	8.4%	0.9%
0 to 3	7.8%	1.0%

- (2) From column 1 of Table 2, select the percentage that corresponds to the period, in months, from the particular day until the last day on which the right may be exercised (the *exercise period*). This percentage is called the *base percentage*.
- (3) From column 2 of Table 2, select the percentage that corresponds to the exercise period. This percentage is called the *additional percentage*.
- (4) Work out the result of the following formula. Disregard any fraction. The result is called the *excess*.

$$100 \times \left[\begin{array}{c} \text{Calculation} \\ \text{percentage} \end{array} - 110\% \right]$$

- (5) The value of the right is the amount worked out using the following formula:

$$\begin{array}{c} \text{Amount or lowest} \\ \text{amount that must be} \\ \text{paid to exercise the right} \end{array} \times \left[\begin{array}{c} \text{Base} \\ \text{percentage} \end{array} + \left(\text{Excess} \times \begin{array}{c} \text{Additional} \\ \text{percentage} \end{array} \right) \right]$$

- (6) If:
- (a) the exercise period; or
 - (b) the calculation percentage in relation to a particular right; is the top of one range in Table 1 or 2 and is also the bottom of another range in that Table, it is taken to be in the lower range and not in the higher range.

