



# ***CR 2004/96 - Income tax: Lend Lease Corporation Limited: Employee Share Scheme: Cessation Time***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *1 July 2004*



## **Class Ruling**

### **Income tax: Lend Lease Corporation Limited: Employee Share Scheme: Cessation Time**

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#### ***Preamble***

*The number, subject heading, **What this Class Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Withdrawal**, **Arrangement** and **Ruling** parts of this document are a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**. CR 2001/1 explains Class Rulings and Taxation Rulings TR 92/1 and TR 97/16 together explain when a Ruling is a 'public ruling' and how it is binding on the Commissioner.*

#### **What this Class Ruling is about**

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1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax law(s)' identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates.

#### **Tax law(s)**

2. The tax law(s) dealt with in this Ruling are sections:
- 139B of the *Income Tax Assessment Act 1936* (ITAA 1936);
  - 139CA of the ITAA 1936;
  - 139CC of the ITAA 1936;
  - 139CD of the ITAA 1936; and
  - 139E of the ITAA 1936.

#### **Class of persons**

3. The class of persons to which this Ruling applies is all Australian resident current and former employees (Participating Employees) of the Lend Lease Corporation Group listed in paragraph 4, who during the withdrawal period had a beneficial interest in shares acquired under the Lend Lease Corporation Limited Employee Share Acquisition Plan (the Plan), in respect of which no section 139E election had been made.

4. The Lend Lease Corporation Group companies involved in the Plan include:

- Bovis Lend Lease Pty Limited;
- Bovis Lend Lease (New Zealand) Pty Limited;
- Bovis McLachlan Pty Limited;
- Delfin Realty Pty Limited;
- GPT Management Limited;
- Lend Lease Corporation Limited;
- Lend Lease Development Pty Limited;
- Lend Lease Management Services Limited;
- Lend Lease Property Management (Australia) Pty Limited; and
- Lend Lease Real Estate Investments Limited.

## Qualifications

5. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.

6. The class of persons defined in this Ruling may rely on its contents provided the arrangement actually carried out is carried out in accordance with the arrangement described in paragraphs 11 to 24.

7. If the arrangement actually carried out is materially different from the arrangement that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the arrangement entered into is not the arrangement on which the Commissioner has ruled; and
- this Ruling may be withdrawn or modified.

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## Date of effect

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9. This ruling applies to the 2004/2005 year of income. However, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the Gazette;
- it is not taken to be withdrawn by an inconsistent later Public Ruling; or
- the relevant taxation laws are not amended.

## Withdrawal

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10. This ruling is withdrawn and ceases to have effect after 30 June 2005. The Ruling continues to apply, in respect of the tax laws ruled upon to all persons within the specified class whether or not they enter into the specified arrangement during the term of the Ruling. Thus the Ruling continues to apply to persons, even following its withdrawal, for an arrangement entered into prior to the withdrawal of the Ruling. This is subject to there being no change in the arrangement or in the persons' involvement in the arrangement.

## Arrangement

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**Note:** All legislative references following are to the *Income Tax Assessment Act 1936*.

11. The arrangement that is the subject of this Ruling is described below. This description is based on the following documents. These documents, or relevant parts of them, as the case may be, form part of and are to be read with this description. The relevant documents or parts of documents incorporated into this description of the arrangement are:

- Class Ruling Application, dated 11 September 2003;
- Letter from applicant dated 19 February 2004; and
- Lend Lease Corporation Limited Employee Share Acquisition Plan Trust Deed consolidated as at 11 December 2000.

**Note:** certain information received from Lend Lease Corporation has been provided on a commercial-in-confidence basis and will not be disclosed or released under the Freedom of Information Legislation.

12. The Plan commenced in November 1988 and has operated since that time.

13. The Plan is operated as a trust pursuant to the terms of the Lend Lease Corporation Limited Employee Share Acquisition Plan Trust Deed ('Trust Deed') with the trustees nominated by Lend Lease Corporation Limited ('LLC') and its employees.

14. Under the terms of the Trust Deed, all full-time and permanent part-time Australian employees of the Lend Lease Corporation Group ('LLC Group') are invited to become members of the Plan.

15. Where a Participating Employee commits any fraud, dishonesty or defalcation in relation to LLC or an associated company the Participating Employee will forfeit entitlement to any shares held by the trustees.

16. The Commissioner has been advised by the applicant that all of the LLC shares held within the Plan are qualifying shares for the purposes of section 139CD.

17. The applicant has advised the Commissioner that while the holders of all LLC shares, regardless of whether or not they have made a section 139E election in respect of their shares, may participate in the withdrawal arrangement, it is anticipated that the vast majority are holders of LLC shares in respect of which a section 139E election has not been made.

## **Allocation of Subscriptions**

18. Under the Plan LLC Group companies pay amounts to the Plan trustees and these amounts are used by the trustees to acquire shares in LLC. From time to time LLC directs the trustees to allocate these shares amongst the Participating Employees. The allocated shares are beneficially owned by Participating Employees and are designated as either matured shares or non-matured shares.

## **Non-Matured Shares**

19. At the time of allocation of non-matured shares, LLC notifies the trustees in writing of the terms and conditions applicable to those non-matured shares. The notice also specifies the terms and conditions under which the non-matured shares become matured shares.

## **Withdrawal Arrangement**

20. In terms of the proposed withdrawal arrangement, LLC proposes to invite Participating Employees with an interest in shares held by the trustees of the Plan to apply for a once-only opportunity to withdraw up to 80% of their matured shares during a specified period in the income year ending 30 June 2005.

21. Currently, a Participating Employee may apply to the trustees in writing to withdraw all or any portion of the matured shares held in the Plan for that employee's benefit. Where an application is made, LLC is required to approve the withdrawal of at least 5% of matured shares held in the Plan for the benefit of the Participating Employee each 12 months, or such greater percentage as may be notified in writing by LLC to the trustees from time to time. The Trust Deed provides that a Participating Employee cannot withdraw non-matured shares.

22. In terms of the withdrawal arrangement, LLC will direct the trustees of the Plan to accede to requests for withdrawal.

23. Where a Participating Employee decides to accept the invitation to participate in the withdrawal arrangement, the trustees will, in due course, transfer the specified number of LLC shares to the employee. A share transfer form will be executed by the trustees in order to give effect to the withdrawal.

24. The only option available to Participating Employees who elect to participate in the withdrawal arrangement is to accept shares in LLC.

## **Ruling**

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25. For the purposes of section 139CA, the cessation time will not arise where an eligible Participating Employee declines to participate in the withdrawal arrangement and therefore does not take up the invitation to withdraw up to 80% of the allocated matured shares from the Plan.

26. Where an eligible Participating Employee accepts the invitation to participate in the withdrawal arrangement and withdraws up to 80% of the allocated matured shares from the Plan, the cessation time will occur in respect of those shares when the trustees of the Plan execute the share transfer form that reflects the withdrawal.

## **Explanation**

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27. In the case of shares which are qualifying shares as defined in section 139CD, where an employee does not make a section 139E election in respect of those shares, the discount received on the qualifying shares, calculated in accordance with subsections 139CC(3) or (4), is, pursuant to subsections 139B(1) and (3), included in that employee's assessable income in the year of income in which the cessation time occurs.

28. As the shares acquired under the Plan are subject to restrictions and forfeiture conditions, the cessation time will be determined under subsection 139CA(2).

29. Pursuant to subsection 139CA(2) the cessation time is the earliest of:

- (a) the time when the taxpayer disposes of the share;
- (b) the later of:
  - (i) the time when any restriction preventing the taxpayer from disposing of the share ceases to have effect; and
  - (ii) the time when any condition that could result in the taxpayer forfeiting ownership of shares ceases to have effect;
- (c) the time when the employment in respect of which the share was acquired ceases; and
- (d) the end of the 10 year period starting when the taxpayer acquired the share.

30. In respect of Participating Employees who decline the invitation to participate in the withdrawal arrangement, paragraphs 139CA(2)(a), (c) and (d) will not trigger the cessation time . Similarly, paragraph 139CA(2)(b) will not trigger the cessation time as it is clear that the forfeiture provisions referred to in the Arrangement will continue to have effect.

31. For the purposes of subparagraphs 139CA(2)(b)(i) and 139CA(2)(b)(ii), the risk of forfeiture for the Participating Employees who elect to withdraw shares will only cease to have effect when the trustees have executed the share transfer forms and the shares become the property of the employees.

## Detailed contents list

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32. Below is a detailed contents list for this Class Ruling:

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**Commissioner of Taxation**

8 September 2004

<i>Previous draft:</i>	- ITAA 1936 139CA
Not previously issued as a draft	- ITAA 1936 139CA(2)
	- ITAA 1936 139CA(2)(a)
<i>Related Rulings/Determinations:</i>	- ITAA 1936 139CA(2)(b)
CR 2001/1; TR 92/1; TR 97/16	- ITAA 1936 139CA(2)(b)(i)
	- ITAA 1936 139CA(2)(b)(ii)
<i>Subject references:</i>	- ITAA 1936 139CA(2)(c)
- cessation time	- ITAA 1936 139CA(2)(d)
- discount	- ITAA 1936 139CC
- election	- ITAA 1936 139CC(3)
- employee share scheme	- ITAA 1936 139CC(4)
- no election	- ITAA 1936 139CD
	- ITAA 1936 139E
<i>Legislative references:</i>	- Copyright Act 1968
- ITAA 1936 139B	- TAA 1953 Pt IVAAA
- ITAA 1936 139B(1)	
- ITAA 1936 139B(3)	

## ATO references

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