


# ***CR 2011/21 - Income tax: QR National Limited Loyalty Bonus Share Scheme***

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## Class Ruling

### Income tax: QR National Limited Loyalty Bonus Share Scheme

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#### **ⓘ This publication provides you with the following level of protection:**

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

## What this Ruling is about

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1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

#### **Relevant provision(s)**

2. The relevant provisions dealt with in this Ruling are:

- section 104-10 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 104-25 of the ITAA 1997;
- section 109-5 of the ITAA 1997;
- section 112-30 of the ITAA 1997;
- Subdivision 115-A of the ITAA 1997;
- section 116-30 of the ITAA 1997;
- section 130-40 of the ITAA 1997; and
- section 130-45(2) of the ITAA 1997;

All subsequent legislative references are to the ITAA 1997 unless otherwise indicated.

## Class of entities

3. The class of entities to which this Ruling applies are the retail investors in QR National who:

- acquired their QR National Limited shares under the Retail Offer (other than under the Employee Gift Offer);
- are a 'resident of Australia' within the meaning of that term in subsection 6(1) of the *Income Tax Assessment Act 1936*; and
- hold their QR National shares on capital account.

The class of entities to which this Ruling applies does not include:

- retail investors who hold their shares on revenue account;
- entities who acquired their shares under the Institutional Offer; or
- entities who are subject to the taxation of financial arrangement rules in Division 230 of the ITAA 1997 in relation to gains and losses on their QR National shares.

(Note: Division 230 of the ITAA 1997 will generally not apply to individuals, unless they have made an election for it to apply to them.)

## Qualifications

4. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 8 to 30 of this Ruling.

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

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme 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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7. This Ruling applies from 1 July 2010 to 30 June 2013. The Ruling continues to apply after 30 June 2013 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, this Ruling will 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 this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

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## Scheme

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8. The following description of the scheme is based on information provided by the applicant. The following documents, or relevant parts of them form part of and are to be read with the description:

- application for a Class Ruling from KPMG dated 24 November 2010;
- additional facts as provided by KPMG dated 24 November 2010; and
- QR National Share Offer Document dated 8 October 2010

### QR National

9. QR National Limited (QR National) and its wholly owned subsidiaries were previously wholly owned by the State of Queensland (the State).

10. QR National carries on a freight haulage business in Australia. It operates and manages the Central Queensland Coal Network under lease arrangements with the State and provides a range of specialist rail engineering, construction and maintenance services.

### The Sale of shares

11. On 8 December 2009, the Queensland Government announced that QR National would be sold by way of an initial public offering (the Share Offer) and listed on the Australian Securities Exchange (ASX).

12. The Share Offer was considered to provide:

- an opportunity for the State to reduce its shareholding in QR National; and
- QR National with commercial independence and access to capital markets and the additional financial flexibility to fund growth opportunities.

13. Following completion of the Share Offer, the State has retained an interest of 33.67 percent of the shares in QR National.

14. The Share Offer comprised a Retail Offer and an Institutional Offer.

15. Pursuant to QR National's Share Offer Document dated 8 October 2010 (the Offer Document), an application for shares by an Australian resident retail investor (retail investor) using the prescribed Application Form represented an offer to acquire shares in QR National from the State on the terms and conditions in the Offer Document.

16. The minimum application size for retail investors was \$2,000 and multiples of \$100 thereafter.

17. Pursuant to the Retail Offer, retail investors who pre-registered were guaranteed an allocation of shares. The Offer Document provided for a scale back in the event that the Share Offer was oversubscribed. Queensland residents would receive a priority allocation of shares in the event of any scale back.

18. As part of the terms of the Retail Offer (section 2.2 of the Offer Document), in addition to acquiring shares in QR National at the Retail Price, retail investors would also acquire rights (Loyalty Rights) to receive additional QR National shares for no consideration (Loyalty Bonus Shares) upon satisfying certain conditions.

19. No applicant, whether acting alone or with its associates, was permitted to acquire more than 15% of the shares on offer.

20. The Share Offer was completed and QR National was listed on the ASX on 22 November 2010.

## **Loyalty Bonus Shares**

21. A retail investor will be eligible to receive Loyalty Bonus Shares if they satisfy the following conditions (the holding conditions):

- the retail investor acquired their QR National shares under the Retail Offer (other than under the Employee Gift Offer) at the Retail Price; and
- the retail investor holds those shares continuously in the same registered name from 22 November 2010 until 7 December 2011.

22. The Loyalty Rights are exercised automatically, and the Loyalty Bonus Shares are issued, when the holding conditions are satisfied.

23. Once the holding conditions are satisfied, the State will transfer Loyalty Bonus Shares to the retail investor from its retained holding of shares. The Loyalty Bonus Shares to be issued to retail investors are ordinary shares owned by the State at the time of the Share Offer.

24. If the holding conditions are not satisfied, the retail investor's Loyalty Rights will lapse immediately.

25. Satisfaction of the holding conditions and the transfer of the Loyalty Bonus Shares comprise the arrangement under which a retail investor acquires Loyalty Bonus Shares.

26. If a retail investor was a Queensland resident at the time of application for QR National shares under the Retail Offer, upon satisfaction of the holding conditions the retail investor may be eligible to receive one Loyalty Bonus Share for every 15 shares acquired under the Retail Offer up to a maximum of 675 Loyalty Bonus Shares.

27. If a retail investor was not a Queensland resident at the time of application, upon satisfaction of the holding conditions the investor may be eligible to receive one Loyalty Bonus Share for every 20 shares acquired under the Retail Offer up to a maximum of 500 Loyalty Bonus Shares.

28. Shares allocated under the Employee Gift Offer do not carry any entitlement to Loyalty Bonus Shares under the Retail Offer.

29. The number of Loyalty Bonus Shares a retail investor may be eligible to receive will be calculated based on the lowest number of shares held continuously by the investor at any time between the date the Shares are allocated under the Retail Offer and 7 December 2011, with any fractional entitlements to Loyalty Bonus Shares to be rounded down to the nearest whole number.

30. The Offer Document provides that where there is a legal impediment to delivery of the Loyalty Bonus Shares, the shares will be issued to a nominee who will sell those shares on the retail investor's behalf.

## **Ruling**

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### **Acquisition of shares and Loyalty Rights**

31. A retail investor acquired their QR National shares and Loyalty Rights when their application for shares under the Retail Offer was accepted by the State on 22 November 2010 (section 109-5).

### **Cost base of shares and Loyalty Rights**

32. The first element of the cost base and reduced cost base of each share acquired by a retail investor is the total of the amount paid or required to be paid to acquire the share. However, the total of the amount paid or required to be paid to acquire the share is reduced by the part that is reasonably attributable to the acquisition of the Loyalty Right (subsection 112-30(1)).

33. The Commissioner accepts that it would be reasonable to calculate the cost base and reduced cost base of each of the shares and Loyalty Rights by dividing the total amount paid to acquire the shares and Loyalty Rights by the total number of shares and Loyalty Rights acquired.

## **Sale of shares**

34. When a retail investor sells shares acquired under the Retail Offer, CGT event A1 happens (section 104-10). A capital gain or loss made from the sale is calculated in accordance with subsection 104-10(4).

## **Loyalty Rights**

35. A capital gain or capital loss which arises as a result of a retail investor acquiring Loyalty Bonus Shares in satisfaction of Loyalty Rights, is disregarded (subsection 130-40(7)).

36. If a retail investor disposes of shares before satisfying the holding conditions, in addition to CGT event A1 happening in respect of the shares, CGT event C2 happens in relation to the lapsed Loyalty Rights.

37. If a Loyalty Right lapses because the holding conditions are not satisfied, CGT event C2 happens when the right ends (section 104-25). A capital loss made from CGT event C2 is calculated in accordance with subsection 104-25(3). The market value substitution rule in subsection 116-30(1) does not apply because the lapse of a Loyalty Right constitutes the expiry of the Right for the purposes of subsection 116-30(3).

## **Acquisition of Loyalty Bonus Shares**

38. A retail investor will be taken to have acquired Loyalty Bonus Shares when the retail investor satisfies the holding conditions. Satisfaction of the holding conditions results in the exercise of the Loyalty Rights to receive the Loyalty Bonus Shares (subsection 130-45(2)).

39. The first element of the cost base and reduced cost base of each Loyalty Bonus Share acquired will be equal to the cost base and reduced cost base of the corresponding Loyalty Right at the time the retail investor satisfies the holding conditions (item 2 in the table in section 130-40).

40. A capital gain made on a future disposal of the Loyalty Bonus Shares will be a discount capital gain if the disposal happens at least 12 months after the acquisition date of 7 December 2011 and the other requirements of subdivision 115-A are met.

41. If Loyalty Bonus Shares are issued to a nominee who sells those shares on the investor's behalf, CGT event A1 happens in relation to the sale of the Loyalty Bonus shares (section 104-10).

## **Appendix 1 – Explanation**

**❶** *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

### **Acquisition of QR National shares and Loyalty Rights**

42. An application for QR National shares by a retail investor using the prescribed Application Form represented an offer to acquire shares from the State on the terms and conditions in the Offer Document. In submitting an Application Form, an investor was also applying for Loyalty Bonus Shares to which they may become entitled under the terms of the Retail Offer. A retail investor acquired shares and Loyalty Rights under the Retail Offer. A share is a CGT asset and a Loyalty Right is a contractual right that is a CGT asset (section 108-5).

43. A CGT asset that is acquired under a contract is acquired when the contract is entered into (subsection 109-5(2)).

44. Under the Retail Offer, a contract was entered into when the State accepted the retail investor's application. Accordingly, the date of acquisition of shares and Loyalty Rights by retail investors was 22 November 2010 (the date the State accepted the retail investors' application).

### **Cost base of shares and Loyalty Rights**

45. The cost base and the reduced cost base of a CGT asset consists of five elements (subsections 110-25(1) and 110-55(1)).

46. The first element of the cost base and the reduced cost base of a CGT asset is the total of any money paid, or required to be paid, and the market value of any other property given or required to be given in respect of acquiring the asset (subsections 110-25(2) and 110-55(2)).

### **Apportionment**

47. If you acquire a CGT asset because of a transaction and only part of the expenditure you incurred under the transaction relates to the acquisition of the asset, the first element of your cost base and reduced cost base of the asset is that part of the expenditure that is reasonably attributable to the acquisition of the asset (section 112-30).

48. As an application for shares under the Retail Offer resulted in the acquisition of both shares and Loyalty Rights, the first element of the cost base and reduced cost base of each share and Loyalty Right is determined by apportioning the total amount expended between shares and Loyalty Rights on a reasonable basis.



49. The Commissioner accepts that it is reasonable to apportion the amount paid by the retail investor on an equal basis between the shares and the Loyalty Rights acquired. This means that the cost base and reduced cost base of each share and each Loyalty Right is calculated by dividing the total amount paid to acquire the shares and Loyalty Rights by the total number of shares and Loyalty Rights acquired.

***Examples – Queensland resident retail investor***

50. If a retail investor was a Queensland resident at the time of application, the retail investor may be eligible to receive one Loyalty Bonus Share for every 15 shares acquired under the Retail Offer where the shares are held continuously until 7 December 2011, up to a maximum of 675 Loyalty Bonus Shares.

***Example 1***

51. A Queensland resident retail investor acquires 1,500 shares under the Retail Offer at a Retail Price of \$2.45 per share. As a consequence, the investor also acquires 100 Loyalty Rights (1,500 divided by 15). The total amount paid by the Queensland resident retail investor is \$3,675. The first element of the cost base and reduced cost base of each share and each Loyalty Right is \$2.29688 (\$3,675 divided by 1,600). Accordingly, the total of the first element of the cost bases and reduced cost bases of the 1,500 shares is \$3,445 and the total of the first element of the cost bases and reduced cost bases of the 100 Loyalty Rights is \$230 (figures are adjusted for rounding).

***Example 2***

52. A Queensland resident retail investor acquires 20,000 shares under the Retail Offer at a Retail Price of \$2.45 per share. As a consequence, the investor also acquires 675 Loyalty Rights (reflecting the maximum number of Loyalty Bonus Shares available). The total amount paid by the Queensland resident retail investor is \$49,000. The first element of the cost base and reduced cost base of each share and each Loyalty Right is \$2.37001 (\$49,000 divided by 20,675). Accordingly, the total of the first element of the cost bases and reduced cost bases of the 20,000 shares is \$47,400 and the total of the first element of the cost bases and reduced cost bases of the 675 Loyalty Rights is \$1,600 (figures are adjusted for rounding).

***Examples – Non Queensland resident retail investor***

53. If a retail investor was not a Queensland resident at the time of application, the retail investor may be eligible to receive one Loyalty Bonus Share for every 20 shares acquired under the Retail Offer where the shares are held continuously until 7 December 2011, up to a maximum of 500 Loyalty Bonus Shares.

*Example 3*

54. A non-Queensland resident retail investor acquires 2,000 shares under the Retail Offer at a Retail Price of \$2.45 per share. As a consequence, the investor also acquires 100 Loyalty Rights (2,000 divided by 20). The total amount paid by the investor is \$4,900. The first element of the cost base and reduced cost base of each share and each Loyalty Right is \$2.33333 (\$4,900 divided by 2,100). Accordingly, the total of the first element of the cost bases and reduced cost bases of the 2,000 shares is \$4,666 and the total of the first element of the cost bases and reduced cost bases of the 100 Loyalty Rights is \$234 (figures are adjusted for rounding).

*Example 4*

55. A non-Queensland resident retail investor acquires 20,000 shares under the Retail Offer at a Retail Price of \$2.45 per share. As a consequence, the investor also acquires 500 Loyalty Rights (reflecting the maximum number of Loyalty Bonus Shares available). The total amount paid by the investor is \$49,000. The first element of the cost base and reduced cost base of each share and each Loyalty Right is \$2.39024 (\$49,000 divided by 20,500). Accordingly, the total of the first element of the cost bases and reduced cost bases of the 20,000 shares is \$47,805 and the total of the first element of the cost bases and reduced cost bases of the 500 Loyalty Rights is \$1,195 (figures are adjusted for rounding).

**Loyalty Rights*****Exercise of Loyalty Rights***

56. At the time a retail investor satisfies the holding conditions, Loyalty Rights are exercised automatically and the investor acquires Loyalty Bonus Shares in satisfaction of the Loyalty Rights.

57. Section 130-40 applies to rights to acquire shares if:

- the rights were issued to an existing shareholder who did not pay for the rights; or
- the rights were acquired from an entity that already owned shares in the company.

58. As retail investors acquired Loyalty Rights from the State which already owned the shares in QR National, section 130-40 applies to the rights.

59. A capital gain or capital loss you make from the exercise of the Loyalty Rights is disregarded (subsection 130-40(7)).

## ***Lapse of Loyalty Rights***

60. CGT event C2 happens when an intangible CGT asset such as a right ends in one of the ways listed in subsection 104-25(1).

61. CGT event C2 will happen if a retail investor's Loyalty Rights lapse because the shares they acquired under the Retail Offer are not held for the requisite time period required to satisfy the holding conditions.

62. As there are no capital proceeds from CGT event C2 happening when the Loyalty Rights lapse, the market value substitution rule in subsection 116-30(1) may apply. However, it is accepted that the lapse of Loyalty Rights constitutes an expiry of the Loyalty Right (subsection 116-30(3)). Therefore the market value substitution rule does not apply. A capital loss you make from the lapse of Loyalty Rights is calculated in accordance with subsection 104-25(3).

## ***Example 5***

63. Further to the example at paragraph 51 of this Ruling, the retail investor disposes of all their shares acquired under the Retail Offer for \$5 per share on 31 March 2011. The Loyalty Rights lapse as the investor has not satisfied the holding conditions. The retail investor does not acquire any Loyalty Bonus Shares. CGT event C2 happens on the lapse of the Loyalty Rights. The reduced cost base of the Loyalty Rights is \$230. The retail investor does not receive any capital proceeds for the expiry of the Loyalty Rights and the market value substitution rule does not apply. Accordingly the capital proceeds are nil and the investor makes a capital loss of \$230.

64. CGT event A1 happens on the disposal of the shares that the retail investor acquired under the Retail Offer. Any capital gain that arises is not eligible to be a discount capital gain because the shares were not held for at least 12 months (subsection 115-25(1)).

## **Allocation of cost base and reduced cost base to Loyalty Bonus Shares**

65. Section 130-40 contains modifications to the rules about the cost base and reduced cost base of shares if you exercise rights to acquire shares in a company.

66. The first element of the cost base of shares acquired on the exercise of rights acquired from another entity includes the cost base of the rights at the time of exercise (item 2 of the table in section 130-40). The first element of the reduced cost base of the shares is worked out similarly.

67. The first element of the cost base and the reduced cost base of each Loyalty Bonus Share will be equal to the cost base or reduced cost base of a Loyalty Right at the time the right is exercised; that is, when the retail investor satisfies the holding conditions having the effect of exercising the Loyalty Right.

### **Acquisition of Loyalty Bonus Shares**

68. Shares acquired as a result of the exercise of rights are taken to have been acquired when the rights are exercised (subsection 130-45(2)).

69. A retail investor is taken to have acquired Loyalty Bonus Shares at the time the holding conditions are satisfied, that is on 7 December 2011. This has the effect of an automatic exercise of the rights to receive the Loyalty Bonus Shares. This is the relevant date for working out whether any capital gain made on disposal of the Loyalty Bonus Shares is a discount capital gain under Subdivision 115-A. One of the requirements to be eligible for a discount capital gain is that the capital gain must result from a CGT event happening to a CGT asset that was acquired at least 12 months before the CGT event (subsection 115-25(1)).

### *Example 6*

70. A retail investor who acquired 1,500 shares under the Retail Offer satisfies the holding conditions and acquires 100 Loyalty Bonus Shares on 7 December 2011. The investor holds all their shares until 1 June 2012. The investor sells all of their shares (including 100 Loyalty Bonus Shares acquired on 7 December 2011) for \$7 per share on 1 June 2012.

71. The investor may be eligible for a discount capital gain on the disposal of shares acquired on 22 November 2010 (that is, the 1,500 shares acquired under the Retail Offer) as those shares were acquired more than 12 months before their sale.

72. The capital gain made on the disposal of the Loyalty Bonus Shares is not eligible for a discount capital gain as those shares were not acquired at least 12 months before their sale.

## Appendix 2 – Detailed contents list

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## References

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### *Previous draft:*

Not previously issued as a draft

### *Related Rulings/Determinations:*

TR 2006/10

### *Subject references:*

- acquisition dates
- acquisition of CGT assets
- acquisition of shares
- bonus shares
- capital gains
- CGT cost base
- CGT discount
- CGT reduced cost base
- time of supply/acquisition

### *Legislative references:*

- ITAA 1936 6(1)
- ITAA 1997
- ITAA 1997 104-10
- ITAA 1997 104-10(4)
- ITAA 1997 104-25
- ITAA 1997 104-25(1)

- ITAA 1997 104-25(3)
  - ITAA 1997 108-5
  - ITAA 1997 109-5
  - ITAA 1997 109-5(2)
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  - ITAA 1997 110-55
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  - ITAA 1997 112-30
  - ITAA 1997 112-30(1)
  - ITAA 1997 Subdiv 115-A
  - ITAA 1997 115-25
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  - ITAA 1997 116-30
  - ITAA 1997 116-30(1)
  - ITAA 1997 116-30(3)
  - ITAA 1997 130-40
  - ITAA 1997 130-40(7)
  - ITAA 1997 130-45(2)
  - ITAA 1997 Div 230
  - TAA 1953
  - Copyright Act 1968
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### ATO references

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