


CR 2012/49 - Income tax: Royal Bank of Scotland Group plc adjustment to employee share schemes due to sub division and consolidation of ordinary share capital

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Class Ruling

Income tax: Royal Bank of Scotland Group plc adjustment to employee share schemes due to sub-division and consolidation of ordinary share capital

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❶ 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

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 Class Ruling are;
- section 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936);
 - subsection 139B(3) of the ITAA 1936;
 - section 139CB of the ITAA 1936;
 - section 83A-5 of the *Income Tax (Transitional Provisions) Act 1997* (IT(TP)A 1997);
 - subsection 83A-5(4) of the IT(TP)A 1997;
 - subsection 83A-10(1) of the *Income Tax Assessment Act 1997* (ITAA 1997);

- Subdivision 83A-C of the ITAA 1997;
- section 83A-110 of the ITAA 1997;
- section 83A-120 of the ITAA 1997;
- subsection 104-10(1) of the ITAA 1997;
- subsection 104-25(1) of the ITAA 1997;
- subsection 104-155(1) of the ITAA 1997;
- subsection 104-155(2) of the ITAA 1997;
- subsection 104-155(3) of the ITAA 1997;
- subsection 116-20(2) of the ITAA 1997;
- section 116-25 of the ITAA 1997; and
- section 995-1 of the ITAA 1997.

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

Class of entities

3. The class of entities to which this Ruling applies is all persons who are employees of The Royal Bank of Scotland Group plc (RBSG) who have acquired conditional awards to acquire ordinary shares in RBSG (Conditional Awards) or options to acquire ordinary shares in RBSG (Options) under one of the employee share plans referred to in paragraph 11 of this Ruling or who have acquired a conditional right to a cash payment under The Royal Bank of Scotland Group plc 2010 Deferral Plan (Deferred Award). They are persons who, immediately prior to the share subdivision and consolidation of share capital described in paragraph 14 of this Ruling:

- are residents of Australia within the meaning of section 6(1) of the ITAA 1936; and
- were employed by either RBS Australia (Services) Limited or The Royal Bank of Scotland plc (RBS plc) or their subsidiaries and will not cease their employment as a result of the Scheme described in paragraphs 8 to 17 of this Ruling; and
 - in respect of Conditional Awards or Options acquired on or after 1 July 2009 have not had an ESS deferred taxing point within the meaning of section 83A-120 occur in relation to the Conditional Awards or Options prior to the proposed share subdivision and consolidation; or
 - in respect of Options acquired before 1 July 2009:

- have not made an election under former section 139E of the ITAA 1936;
 - did not have a 'cessation time' under former section 139CB of the ITAA 1936 occur before 1 July 2009;
 - will not have exercised their Options prior to the share sub-division and consolidation; or
- in respect of The Royal Bank of Scotland Group Plc 2010 Deferral Plan hold Deferred Awards that have not yet vested.

(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)

In this Ruling, a person belonging to this class of entities is referred to as a participant.

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 17 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

7. This Ruling applies from 1 July 2011 to 30 June 2014. The Ruling continues to apply after 30 June 2014 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).

Scheme

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:

- Class ruling application dated 22 May 2012 from RBS Services (Australia) Limited and RBS plc;
- The Royal Bank of Scotland Group plc 2007 Executive Share Option Plan;
- The Royal Bank of Scotland Group plc 2010 Long Term Incentive Plan;
- The Royal Bank of Scotland Group plc 2010 Company Share Option Plan; and
- The Royal Bank of Scotland Group Plc 2010 Deferral Plan (Deferral Plan).

Note: certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under Freedom of Information legislation.

The Royal Bank of Scotland Group plc

9. RBSG is a public limited company incorporated in Scotland and resident in the United Kingdom. The shares in RBSG have a primary listing on the London Stock Exchange and secondary listings on the New York Stock Exchange and Euronext.

10. RBSG is the ultimate holding company of the Royal Bank of Scotland Group group of international companies (RBS Group) which engage in international banking and financial services and provide a wide range of products and services to personal, commercial and large corporate and institutional customers. RBS Australia (Services) Limited and RBS plc are subsidiaries of RBSG.

Employee share schemes

11. Australian employees of RBS Australia (Services) Limited and RBS plc are from time to time invited to participate in the following employee share schemes:

- The Royal Bank of Scotland Group plc 2007 Executive Share Option Plan;
- The Royal Bank of Scotland Group plc 2010 Long Term Incentive Plan; and
- The Royal Bank of Scotland Group plc 2010 Company Share Option Plan.

These plans are collectively referred to as the 'Rights Plans'.

12. Under the Rights Plans participants have been granted Conditional Awards or Options which confer on them rights to acquire ordinary shares in RBSG. The applicant has advised that these awards satisfy the definition of 'ESS interests' for the purposes of subsection 83A-10(1) and are subject to Subdivision 83A-C.

13. Australian employees have also been invited to participate in and have been granted Deferred Awards under the Deferral Plan. Deferred Awards do not at anytime provide a participant with any right or interest of any kind in RBSG shares. The applicant has therefore advised that neither former Division 13A of the ITAA 1936 nor Division 83A will apply to a grant of Deferred Awards made under the Deferral Plan.

Subdivision and consolidation of share capital

14. The RBS Group has undertaken a subdivision and consolidation of its ordinary share capital, which involved:

- Each existing ordinary share valued at 25 pence being divided into;
 - One ordinary share of 10 pence in the capital of RBSG (Intermediate Ordinary Share); and
 - One deferred share of 15 pence in the capital of RBSG (Deferred Share).
- Each Intermediate Ordinary Share being consolidated such that, for every 10 existing Intermediate Ordinary Shares held by ordinary share holders, they were consolidated into one new ordinary share of 100 pence (New Ordinary Share);
- Each ordinary shareholder's proportionate interest in the issued ordinary share capital of RBSG remained unchanged as a result of the share-sub-division and consolidation;

- New Ordinary Shares are identical in all material respects to existing ordinary shares held by existing shareholders prior to the share subdivision and consolidation, including in relation to dividend, voting and other rights. The share consolidation and subdivision did not affect the net assets of either RBSG or the RBS Group: and
- Each Deferred Share was surrendered to the company for no value and cancelled after completion of the share sub-division and consolidation.

Adjustments

15. As a result of the variation in share capital of RBSG due to the subdivision and consolidation of the ordinary share capital, adjustments have been made to Conditional Awards, Options and Deferred Awards.

16. Pursuant to the respective plan rules for each of the Rights Plans and Deferral Plan, the Remuneration Committee has adjusted the overall number of shares in respect of which each Conditional Award and Option is granted and, in the case of Deferred Awards, the notional number of RBSG shares used to determine the final cash bonus paid. In the case of Options, the Remuneration Committee has adjusted their exercise price.

17. The adjustments have been made to preserve the intrinsic value of the Conditional Awards, Options and Deferred Awards such that that value will be equivalent both immediately prior to, and after, the share subdivision and consolidation. The adjustments ensure that participants are not in a different financial position as a result of the share subdivision and consolidation and that they are not disadvantaged as compared to ordinary shareholders of RBSG.

Ruling

Assessability of Conditional Awards and Options under Subdivision 83A-C

18. The adjustment made to Conditional Awards or Options issued under the Rights Plans will not give rise to an ESS deferred taxing point for the purposes of section 83A-120.

19. The adjustment made to Conditional Awards or Options issued under the Rights Plans will not result in an amount being included in the participant's assessable income under section 83A-110.

Capital gains tax – Conditional Awards, Options and Deferred Awards***CGT event A1***

20. The adjustment made to Conditional Awards, Options and Deferred Awards will not result in the disposal of a CGT asset. Accordingly, the adjustment will not result in CGT event A1 happening to Conditional Awards, Options or Deferred awards (subsection 104-10(1)).

CGT event C2

21. The adjustment will not cause the ownership of an intangible CGT asset to end. Accordingly, the adjustment will not result in CGT event C2 happening to Conditional Awards, Options or Deferred Awards (subsection 104-25(1)).

CGT event H2

22. CGT event H2 will happen as the adjustment is an act, transaction or event which occurs in relation to the Conditional Awards, Options and Deferred Awards but does not result in an adjustment to their cost base or reduced cost base (subsections 104-155(1) and (2)).

23. No capital gain will be made in respect of Conditional Awards, Options or Deferred Awards from CGT event H2 as there are no capital proceeds from the adjustment (subsection 104-155(3) and subsection 116-20(2), event H2) and the market value substitution rule does not apply (section 116-25).

Commissioner of Taxation11 July 2012

Appendix 1 – Explanation

① *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.*

Assessability of Conditional Awards and Options under Subdivision 83A-C

ESS deferred taxing point

24. The Commissioner accepts that the Conditional Awards and Options issued under the Rights Plans are ESS interests within the meaning of subsection 83A-10(1). They are rights to acquire a beneficial interest in ordinary shares in RBSG.

25. The Commissioner further accepts that for the purposes of Subdivision 83A-C, the Conditional Awards and Options are at real risk of forfeiture.

26. When Subdivision 83A-C applies to an ESS interest, an amount is included in the assessable income of an employee in accordance with section 83A-110 at the ESS deferred taxing point. The amount includes the market value of the interest at the ESS deferred taxing point reduced by the cost base of the interest.

27. The ESS deferred taxing point for Conditional Awards and Options issued after 1 July 2009 is determined under section 83A-120 as they are ESS interests that are rights to acquire shares.

28. Under section 83A-120, the ESS deferred taxing point for a right to acquire a share will be the earliest of the following times:

- seven years after a participant acquired the right;
- when the participant ceases the employment in respect of which they acquired the right;
- when there is no real risk of forfeiting the right and the scheme no longer genuinely restricts disposal of the right;
- when there is no real risk of forfeiting the right or underlying share, and the scheme no longer genuinely restricts exercise of the right or disposal of the resulting share; or
- if the right (or the share acquired on exercise of the right) is disposed of within 30 days after the deferred taxing point, the date of that disposal.

29. For Options issued before 1 July 2009 the ESS deferred taxing point determined pursuant to section 83A-120 is modified, that is, as Subdivision 83A-C applies to rights (options) acquired before 1 July 2009 by virtue of subparagraph 83A-5(2)(a) of the IT(TP)A 1997, subsection 83A-5(4) of the IT(TP)A 1997 applies.

30. By virtue of the applications of subparagraphs 83A-5(4)(b)(i) and 83A-5(2)(a)(iii) of the IT(TP)A 1997 and former subsection 139B(3) of the ITAA 1936, the ESS deferred taxing point for a right (an option) acquired before 1 July 2009, subject to subsection 83A-120(3), will be the cessation time specified in former section 139CB of the ITAA 1936.

Adjustments

31. Following the subdivision and consolidation of the ordinary share capital of RBSG and the subsequent adjustments to Conditional Awards and Options issued under the Rights Plans, the interests (Conditional Awards and Options):

- retain their intrinsic value; and
- continue to be subject to a real risk of forfeiture and disposal restrictions.

32. Consequently, an ESS deferred taxing point for Conditional Awards and Options issued after 1 July 2009 and Options issued before 1 July 2009 does not arise because of the adjustments to these interests as a result of the subdivision and consolidation of the ordinary share capital of RBSG and no amount will be included in the assessable income of participants under section 83A-110.

33. The Conditional Awards and Options issued under the Rights Plans both before and after 1 July 2009 and held by ESS participants after the subdivision and consolidation of the ordinary share capital of RBSG will continue to be subject to Subdivision 83A-C of the ITAA 1997.

Capital gains tax– Conditional Awards, Options and Deferred Awards

34. The Commissioner accepts that the adjustments made to the Conditional Awards, Options and Deferred Awards as a consequence of the share sub-division and consolidation represent only a variation of their terms. The adjustments do not amount to either a disposal or rescission of the Conditional Awards, Options or Deferred Awards.

CGT event A1

35. The adjustments to the Conditional Awards, Options and Deferred Awards as a result of the subdivision and consolidation of the ordinary share capital of RBSG will not result in disposal of a CGT asset. Accordingly, the adjustments will not result in CGT event A1 happening (subsection 104-10(1)).

CGT event C2

36. The adjustments to the Conditional Awards, Options and Deferred Awards as a result of the subdivision and consolidation of the ordinary share capital of RBSG will not cause the ownership of an intangible CGT asset to end. Accordingly, the adjustments will not result in CGT event C2 happening (subsection 104-25(1)).

CGT event H2

37. CGT event H2 will happen as the adjustments to the Conditional Awards, Options and Deferred Awards is an act, transaction or event which occurs in relation to the Conditional Awards, Options and Deferred Awards but does not result in an adjustment to their cost base or reduced cost base (subsections 104-155(1) and (2)).

38. No capital gain will be made by participants from CGT event H2 as there are no capital proceeds from the adjustments made to the Conditional Awards, Options and Deferred Awards (subsection 104-155(3) and subsection 116-20(2), CGT event H2) and the market value substitution rule does not apply (section 116-25).

Appendix 2 – Detailed contents list

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Subject references:

- Capital Gains Tax
- CGT event A1-disposal of a CGT asset
- CGT events C1-C3 – end of a CGT asset
- CGT events H1-H2 – special capital receipts
- employee share schemes
- ESS deferred taxing point

Legislative references:

- ITAA 1936 6(1)
- ITAA 1936 139B(3)
- ITAA 1936 139CB
- ITAA 1997 83A-10(1)
- ITAA 1997 83A-C
- ITAA 1997 83A-110

- ITAA 1997 83A-120
- ITAA 1997 Pt 3-1
- ITAA 1997 104-10(1)
- ITAA 1997 104-25(1)
- ITAA 1997 104-155(1)
- ITAA 1997 104-155(2)
- ITAA 1997 104-155(3)
- ITAA 1997 116-20(2)
- ITAA 1997 116-25
- ITAA 1997 995-1
- IT(TP)A 1997 83A-5
- IT(TP)A 1997 83A-5(2)(a)
- IT(TP)A 1997 83A-5(4)
- IT(TP)A 1997 83A-5(4)(b)(i)
- IT(TP)A 1997 83A-5(4)(b)(iii)

Other references:

- Exposure Draft: Income Tax (TFN Withholding Tax (ESS) Bill 2009)
- Exposure Draft: Tax Laws Amendment (2009 Budget Measures No. 2) Bill 2009

ATO references

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