

CR 2012/56A1 - Addendum - Income tax: CSR Limited - CSR Employee Share Acquisition Plan - return of capital

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Addendum

Class Ruling

Income tax: CSR Limited - CSR Employee Share Acquisition Plan - return of capital

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Class Ruling CR 2012/56 to explain the CGT consequences of the return of capital in relation to the time of acquisition of a CSR share for the purposes of the CGT discount.

CR 2012/56 is amended as follows:

1. Paragraph 72

Omit the paragraph; substitute:

72. For CGT discount purposes, the time of acquisition of a CSR Share to which paragraph 71 of this ruling applies is, pursuant to subparagraph 83A-5(4)(f)(i) of the IT(TP)A 1997:

- at any time after the participating employee became actually absolutely entitled as against the Plan Trustee to the CSR Share, the time the participating employee became actually absolutely entitled, which is the time at which a Notice of Withdrawal relating to the CSR Share was approved; and
- at any time before the participating employee became actually absolutely entitled as against the Plan Trustee to the CSR Share, the time at which the employee acquired the beneficial interest in the CSR Share, which is the time at which the CSR Share was allocated by the Plan Trustee to the participating employee.

72A. The time referred to in the first bullet point of paragraph 72 is the time of becoming actually absolutely entitled, rather than the time of becoming taken to be absolutely entitled pursuant to subsection 130-85(2), because subsection 130-85(2) does not apply for the purposes of the IT(TP)A 1997.

2. Paragraph 141

Omit the paragraph; substitute:

141. For CGT discount purposes, the time of acquisition of a CSR Share to which paragraph 140 of this explanation applies is, pursuant to subparagraph 83A-5(4)(f)(i) of the IT(TP)A 1997:

- at any time after the participating employee became actually absolutely entitled (that is, not merely treated as absolutely entitled pursuant to subsection 130-85(2)) as against the Plan Trustee to the CSR Share, the time the participating employee became actually absolutely entitled, which is the time at which a Notice of Withdrawal relating to the CSR Share was approved; and
- at any time before the participating employee became actually absolutely entitled as against the Plan Trustee to the CSR Share, the time at which the employee acquired the beneficial interest in the CSR Share, which is the time at which the share was allocated by the Plan Trustee to the participating employee.

141A. The time referred to in the first bullet point of paragraph 141 is the time of becoming actually absolutely entitled, rather than the time of becoming taken to be absolutely entitled pursuant to subsection 130-85(2), because subsection 130-85(2) does not apply for the purposes of the IT(TP)A 1997.

3. Paragraph 155

Omit the paragraph; substitute:

155. A capital gain made when CGT event G1 happened is eligible to be treated as a discount capital gain under Subdivision 115-A provided that the CSR Share was acquired at least 12 months before the payment of the return of capital (subsection 115-25(1)) and the other conditions of that Subdivision are satisfied. For CGT discount purposes:

- if the payment of the return of capital happened before the ESS deferred taxing point, the time of acquisition of the CSR Share is the time at which the share was allocated by the Plan Trustee to the participating employee, at which time the participating employee is taken to be absolutely entitled as against the Plan Trustee to the share (Event Number E5 of subsection 109-5(2) and subsection 130-85(2)); and

- if the payment of the return of capital happened after the ESS deferred taxing point, the time of acquisition of the CSR Share is immediately after the ESS deferred taxing point (section 83A-125).

4. Paragraph 162

Omit the paragraph; substitute:

162. As the right to receive the payment of the return of capital was inherent in the CSR Share during the time it was owned, the right is considered to have been acquired at the time when the corresponding share was acquired, which was:

- if the disposal of the CSR share happened at the ESS deferred taxing point (with the result that section 83A-125 had no application), the share, and so also the right, was acquired at the time at which it was allocated by the Plan Trustee to the participating employee, at which time the participating employee is taken to become absolutely entitled as against the Plan Trustee to it (Event Number E5 of subsection 109-5(2) and subsection 130-85(2)); and
- if the disposal of the CSR Share happened after the ESS deferred taxing point, the share, and so also the right, was acquired immediately after the ESS deferred taxing point (section 83A-125).

162A. Accordingly, if:

- the disposal of the CSR Share happened at the ESS deferred taxing point, and the share was acquired at least 12 months before the payment of the return of capital; or
- the disposal of the CSR Share happened after the ESS deferred taxing point, and the ESS deferred taxing point happened at least 12 months before the payment of the return of capital;

a capital gain made from the ending of the corresponding right satisfies the requirements of section 115-25. Such a capital gain is eligible to be treated as a discount capital gain under Subdivision 115-A provided the other conditions of that Subdivision are satisfied.

Commissioner of Taxation

15 January 2014

ATO references

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