


CR 2014/43 - Income tax: Goodman Group: Tax Exempt Employee Share Plan

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Class Ruling

Income tax: Goodman Group: Tax Exempt Employee Share Plan

Contents Para

LEGALLY BINDING SECTION:

What this Ruling is about 1

Date of effect 7

Scheme 8

Ruling 23

NOT LEGALLY BINDING SECTION:

Appendix 1:

Explanation 28

Appendix 2:

Detailed contents list 49



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 ruling are:

- Subdivision 83A-B of the *Income Tax Assessment Act 1997* (ITAA 1997)
- section 83A-10 of the ITAA 1997
- section 83A-20 of the ITAA 1997
- section 83A-25 of the ITAA 1997, and
- section 83A-35 of the ITAA 1997.

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

Class of entities

3. The class of entities to which this ruling applies is employees of Goodman Property Services (Aust) Pty Ltd and Moorabin Airport Corporation Pty Ltd (together, the Employers and each an Employer) which are subsidiaries of Goodman Limited (Goodman), who:

- are granted securities in the Goodman Group (Securities) under the Goodman Group Tax Exempt Plan (TEP)
- are, at all times residents of Australia within the meaning of the expression in section 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936)
- are not temporary residents of Australia within the meaning of that expression in subsection 995-1(1), and
- are not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on their Securities.

(Note: Division 230 will generally not apply to individuals, unless they make an election for it to apply to them).

In this application, a person belonging to this class of entities is referred to as a Participant.

Qualifications

4. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.

5. 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 22 of this Ruling.

6. 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.

Date of effect

7. This Ruling applies from 1 July 2012. 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 3 December 2013.
- Goodman Group Tax Exempt Plan Rules amended as at 3 August 2012 (TEP Rules).

9. The Goodman Group is listed on the Australian Securities Exchange (ASX).

10. The listed Securities are stapled securities with each Security comprised of:

- (a) a fully paid ordinary share in Goodman
- (b) a fully paid ordinary unit in the capital of the Goodman Industrial Trust (the Trust), and
- (c) a Chess Depository Instrument over a share in Goodman Logistics (HK) Limited (Goodman HK).

11. Goodman HK is a company incorporated in Hong Kong and the Trust was established under a constitution dated 11 November 2001 as amended.

The TEP

12. The TEP is operated under the TEP Rules which apply to awards made under the TEP for the income year commencing 1 July 2012.

13. Participants are invited by the Board of the Goodman Group (the Board) to accept \$1,000 worth of Securities for a particular year of income for nil consideration.

14. The number of Securities issued to a Participant for a particular income year will be calculated by taking the amount of \$1,000 and dividing it by the 5 day trading volume weighted average price (VWAP) of the Securities immediately prior to the date of acquisition, rounded down to the nearest whole number of Securities. This may result in a Participant acquiring Securities with an aggregate market value of less than \$1,000.

15. The Board has the discretion to acquire the Securities, whether on or off market or procure the issue of new Securities for the purpose of providing Securities to Participants under the TEP Rules.

16. Participants will have the Securities registered in their name and will hold legal title to the Securities from the Acquisition Date.

17. In accordance with the TEP Rules, the TEP will be operated on a nondiscriminatory basis such that invitations under the TEP will be made by the Board to at least 75% of the permanent employees of the Employers who have completed at least 3 years of service (whether continuous or non-continuous) and who are Australian residents.

18. No Participant will be employed by more than one entity at any one time.

19. Under the TEP Rules, the Securities issued, transferred or allocated rank equally in all respects with all existing Securities from the date of allotment, including in relation to voting rights and participation in distributions and dividends and any future rights and bonus issues.

20. The TEP Rules do not provide for the forfeiture of the Securities.

21. The TEP Rules impose a 'disposal restriction' on Participants that they must not sell, transfer, grant a mortgage over or otherwise dispose of Securities acquired by the Participants under the TEP until the earlier of three years from Acquisition Date or when the Participant ceases employment with the relevant employer.

22. Furthermore, the TEP rules state that a Participant cannot hold a beneficial interest in more than 5% of the Securities in the Goodman Group as set out in ASIC Class Order 03/184.

Ruling

23. The Securities acquired by the Participants under the TEP are ESS interests as defined in subsection 83A-10(1).

24. The TEP is an employee share scheme as defined in subsection 83A-10(2).

25. Subdivision 83A-B applies to the ESS interest pursuant to section 83A-20 as the Participants acquire the Securities at a discount.

26. The discount received by the Participants on the ESS interest is included in their assessable income for the financial year in which they acquire the interest under subsection 83A-25(1).

27. Section 83A-35 reduces the amount included in Participants' assessable income under subsection 83A-25(1), but up to a maximum of \$1,000, where Participants' adjusted taxable income for the income year does not exceed \$180,000 (as required under subsection 83A-35(2)) and the ESS interest is one in which subsections 83A-35(3) to (9) apply.

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.*

28. Division 83A applies to shares, rights and stapled securities acquired under an employee share scheme on or after 1 July 2009.

29. An employee share scheme is defined in subsection 83A-10(2) as a scheme under which ESS interests in a company are provided to employees, or associates of employees, of the company, or a subsidiary of the company, in relation to the employee's employment.

30. An ESS interest in a company is defined in subsection 83A-10(1) as a beneficial interest in:

- (a) a share in the company, or
- (b) a right to acquire a beneficial interest in a share in the company.

31. The TEP is an employee share scheme as it is a scheme under which the Securities in Goodman Group are provided to the Participants in relation to their employment.

32. Securities acquired by Participants are stapled securities with each Security comprised of:

- (a) a fully paid ordinary share in Goodman
- (b) a fully paid ordinary unit in the capital of the Trust, and
- (c) a Chess Depository Instrument over a share in Goodman HK.

33. A stapled security is treated in the same way as a share for the purposes of Division 83A under section 83A-335, provided that at least one of the elements in the stapled security is a share in a company. Rights to acquire such stapled securities are treated as rights to acquire shares.

34. This brings stapled securities, and rights to acquire stapled securities, within the employee share scheme regime, on equivalent terms to shares and rights to acquire shares.

35. Therefore, Securities acquired by Participants are ESS interests.

36. Section 83A-20 provides that Subdivision 83A-B applies to an ESS interest if an employee acquires the interest under an ESS at a discount.

37. The Participants are not required to pay any consideration for the Securities. Therefore, they acquire the Securities at a discount equal to their market value on the date of acquisition.

38. Pursuant to subsection 83A-25(1), the Participants must include the discount in their assessable income in the income year in which the Securities are acquired.

39. Section 83A-35 reduces the amount included in Participants' assessable income under subsection 83A-25(1) by that amount, but up to a maximum of \$1,000, where the Participants' adjusted taxable income for the income year does not exceed \$180,000 (as required under subsection 83A-35(2)) and the ESS interest is one in which subsections 83A-35(3) to (9) apply.
40. Subsection 83A-35(3) applies to an ESS interest in a company if, at the time the interest is acquired, the person who acquires the interest is employed by the company, or a subsidiary of the company. As the Participants are employees of the Goodman Group, this condition is satisfied.
41. Subsection 83A-35(4) applies if, at the time of acquisition, all ESS interests available for acquisition under the ESS relate to ordinary shares. Subsection 83A-335(2) provides that Division 83A applies in relation to a stapled security in the same way as it applies in relation to an ordinary share in a company, provided that at least one component of a stapled security comprises an ordinary share in a company. As one of the components of the Securities is a fully paid ordinary share in Goodman, this condition is satisfied.
42. Subsection 83A-35(5) is satisfied on the basis that the predominant business of the Goodman Group is not the acquisition, sale or holding of shares, securities or other investments; Participants are employed by the Goodman Group; and no Participant will be employed by more than one entity at any one time.
43. Subsection 83A-35(6) is satisfied as the TEP is operated on a non-discriminatory basis as participation in the TEP is made available by the Board to at least 75% of the permanent employees of the Goodman Group who have completed at least 3 years of service with the employer (whether continuous or non-continuous) and who are Australian residents.
44. Subsection 83A-35(7) is satisfied as under the TEP Rules, the Participants have no risk of forfeiture of the Securities other than by disposing of them.
45. Subsection 83A-35(8) is satisfied as Securities under the TEP are subject to the Disposal Restriction under the TEP Rules for a period of three years from the Acquisition Date, subject to the Participant ceasing employment with their Employer. From the time all Participants acquire the Securities to the time that ends the earlier of 3 years later or on cessation of employment, all Participants are not permitted to dispose of the Securities.
46. Section 83A-35(9) is satisfied as no Participant will hold a beneficial interest in more than 5% of the Securities or be able to cast (or to control) more than 5% of the maximum number of votes at a general meeting of Goodman at any time.

47. On the basis that the requirements of section 83A-35(1) are satisfied, where the Adjusted Taxable Income of the Participant for the income year in which the Securities are acquired under the TEP does not exceed \$180,000, the assessable income of the Participant would be reduced by the amount of not greater than \$1,000 (subsection 83A-35(2)).

48. Participants who have Adjusted Taxable Income in excess of \$180,000 for that period will be required to include the market value of the Securities in their assessable income for that income year.

Appendix 2 – Detailed contents list

49. The following is a detailed contents list for this Ruling:

	Paragraph
What this Ruling is about	1
Relevant provision(s)	2
Class of entities	3
Qualifications	4
Date of effect	7
Scheme	8
The TEP	12
Ruling	23
Appendix 1 – Explanation	28
Appendix 2 – Detailed contents list	49

References

<i>Previous draft:</i>	- ITAA 1997 83A-20
Not previously issued as a draft	- ITAA 1997 83A-25
	- ITAA 1997 83A-25(1)
<i>Related Rulings/Determinations:</i>	- ITAA 1997 83A-35
TR 2006/10	- ITAA 1997 83A-35(2)
	- ITAA 1997 83A-35(3)
<i>Subject references:</i>	- ITAA 1997 83A-35(4)
- employee share schemes	- ITAA 1997 83A-35(5)
	- ITAA 1997 83A-35(6)
	- ITAA 1997 83A-35(7)
<i>Legislative references:</i>	- ITAA 1997 83A-35(8)
- ITAA 1936	- ITAA 1997 83A-35(9)
- ITAA 1936 6(1)	- ITAA 1997 83A-335
- ITAA 1997	- ITAA 1997 83A-335(2)
- ITAA 1997 Div 83A	- ITAA 1997 Div 230
- ITAA 1997 83A-10	- ITAA 1997 995-1(1)
- ITAA 1997 83A-10(1)	- TAA 1953
- ITAA 1997 83A-10(2)	- Copyright Act 1968
- ITAA 1997 Subdiv 83A-B	

ATO references

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