

***CR 2015/25 - Income tax: Calliden Group Limited  
Scheme of Arrangement - Special Dividend -  
Participants of the Calliden Group Limited Incentive  
Rights Plan***

 This cover sheet is provided for information only. It does not form part of *CR 2015/25 - Income tax: Calliden Group Limited Scheme of Arrangement - Special Dividend - Participants of the Calliden Group Limited Incentive Rights Plan*



## Class Ruling

### Income tax: Calliden Group Limited Scheme of Arrangement – Special Dividend – Participants of the Calliden Group Limited Incentive Rights Plan

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**1 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 provisions 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:

- Division 1A of former Part IIIAA of the *Income Tax Assessment Act 1936* (ITAA 1936)
- subsection 6(1) of the ITAA 1936
- subsection 44(1) of the ITAA 1936
- former section 160APHD of the ITAA 1936
- former section 160APHE of the ITAA 1936
- former section 160APHN of the ITAA 1936
- former paragraph 160APHO of the ITAA 1936

- Division 83A of the *Income Tax Assessment Act 1997* (ITAA 1997)
- subdivision 83A-B of the ITAA 1997
- subdivision 83A-C of the ITAA 1997
- section 83A-10 of the ITAA 1997
- section 83A-20 of the ITAA 1997
- section 83A-35 of the ITAA 1997
- section 83A-105 of the ITAA 1997
- section 83A-110 of the ITAA 1997
- section 83A-120 of the ITAA 1997
- section 83A-315 of the ITAA 1997
- paragraph 207-145(1)(a) of the ITAA 1997, and
- subregulation 83A-315.01(2) of the *Income Tax Assessment Regulations 1997* (ITAR).

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 are all employees of Calliden or its wholly owned subsidiaries, who:

- (a) were participants in the 'Calliden Group Limited Incentive Rights Plan' (LTI Plan)
- (b) received on 12 December 2014 from CPU Shares Plans Pty Limited ACN 081 600 875 in its capacity as trustee for the 'Calliden Group Limited Long Term Incentive Plan Trust' (LTI Plan Trustee), at least one Calliden share out of the 12,318,452 Calliden shares that the LTI Plan Trustee held in its capacity as trustee for the LTI Plan
- (c) participated in the scheme as described in paragraphs 25 to 38 of this Ruling (the Scheme) under which Steadfast Group Ltd (Steadfast) acquired all of the issued shares in Calliden pursuant to a members' scheme of arrangement under Part 5.1 of the *Corporations Act 2001*
- (d) are residents of Australia as that term is defined in subsection 6(1)
- (e) are not temporary residents of Australia within the meaning of subsection 995-1(1)

- (f) held their shares in Calliden neither as revenue assets (as defined in section 977-50), nor as trading stock (as defined in subsection 995-1(1)) – that is, they broadly held their shares in Calliden on capital account, and
- (g) are not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on their Calliden shares.

(Note – Division 230 will generally not apply to individuals unless they have made an election for it to apply to them.)

This class of entities will hereinafter be referred to in this document as the 'LTI Plan Participants'.

### **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 33 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**

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7. This Ruling applies from 1 July 2014 to 30 June 2015. The Ruling continues to apply after 30 June 2015 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

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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:

- Class Ruling application dated 22 October 2014
- Scheme Booklet lodged with the Australian Securities and Investments Commission (ASIC) on 31 October 2014 (Scheme Booklet)
- a copy of the trust deed for the LTI Plan Trust
- a copy of the document titled 'Rules of the Calliden Group Limited Incentive Rights Plan' (LTI Plan Rules)
- Other correspondence provided by the applicant between 22 October 2014 and 8 January 2015 inclusive.

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

### Relevant entities

#### ***Calliden***

9. Calliden is an Australian resident company that was listed on the Australian Securities Exchange (ASX).

10. Calliden is the head company of the Calliden income tax consolidated group.

11. Calliden is an authorised non-operating holding company of an insurance company that has been operating in the Australian market since 2005.

#### ***Steadfast***

12. Steadfast is an Australian resident company listed on the ASX.

### The LTI Plan

13. The LTI Plan is an employee incentive share scheme open to all full-time and permanent part-time employees of Calliden and its subsidiary companies.

14. The LTI Plan is governed by the rules contained in the LTI Plan Rules.

15. Under the LTI Plan, two types of incentive rights (Incentive Rights) may be offered to LTI Plan Participants being:
- Retention Rights which vest based on completion of a period of service, and
  - Performance Rights which vest based on achievement of specified performance objectives.
16. The Incentive Rights under the LTI Plan are equity settled. Each tranche of Incentive Rights entitles the LTI Plan Participants to a number of Calliden shares, calculated in accordance with the LTI Plan Rules.
17. The Incentive Rights are unlisted rights that must be exercised within ten years of acquisition.
18. As at the date of the Scheme Booklet, there were 15,431,520 unvested Incentive Rights.

### **Scheme of Arrangement**

19. On 27 August 2014, Calliden and Steadfast entered into the Scheme Implementation Deed under which Calliden agreed to propose the Scheme to Calliden shareholders.
20. The Scheme was approved by a majority of eligible Calliden shareholders at the Scheme meeting held on 8 December 2014.
21. The Scheme was approved by the court at the second court hearing held on 11 December 2014. The Scheme became effective on 12 December 2014 when Calliden lodged the court orders and Scheme documents with the ASIC.
22. Calliden shares were suspended from trading at the close of trading on the ASX on 12 December 2014.
23. Under the Scheme, all Calliden shareholders (including the LTI Plan Participants) received a total cash payment of \$0.465 (comprising Scheme Consideration of \$0.415 paid in cash by Steadfast and the Special Dividend of \$0.05 paid by Calliden out of its existing cash reserves), for each Calliden share transferred by them to Steadfast.
24. On 12 December 2014 when the Scheme became effective, the vesting of most of the unvested Incentive Rights was accelerated and 12,318,452 Incentive Rights vested. The remaining 3,113,068 unvested Incentive Rights were not subject to accelerated vesting and lapsed.
25. The Scheme Consideration of \$0.415 per Calliden share was used as the offer price to determine the LTI Plan Participants' entitlements to Calliden shares upon vesting of their unvested Incentive Rights.

26. 12,318,452 Calliden shares were allocated to relevant LTI Plan Participants on 12 December 2014 and the LTI Plan Trustee transferred the allocated Calliden shares to the relevant LTI Plan Participants in accordance with the LTI Plan Trust Deed and the LTI Plan Rules.

27. On transfer, these 12,318,452 Calliden shares became legally and beneficially held by the LTI Plan Participants.

28. LTI Plan Participants did not pay any consideration or exercise price for Incentive Rights granted under the LTI Plan.

29. The eligibility for the Special Dividend was determined on the Special Dividend Record Date of 17 December 2014. This was the last day on which acquisition by a person of a Calliden share entitled the person to receive the Special Dividend.

30. LTI Plan Participants who held Calliden shares:

- on the Special Dividend Record Date (17 December 2014), were paid the Special Dividend on the Special Dividend Payment Date (19 December 2014), and
- on the Scheme Record Date (19 December 2014), were paid the Scheme Consideration on the Implementation Date (23 December 2014).

31. The Special Dividend was not debited against Calliden's share capital account.

32. Implementation of the Scheme was completed on 23 December 2014 (the Implementation Date) whereby all of the Calliden shares including those held by the LTI Plan Participants were transferred to Steadfast.

33. All the Calliden shares acquired by the LTI Plan Participants on 12 December 2014 under the LTI Plan were disposed of under the Scheme to Steadfast on 23 December 2014 (within 30 days from the date of acquisition).

## Ruling

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### The Special Dividend

34. The Special Dividend of \$0.05 per Calliden share paid to the LTI Plan Participants constitutes a 'dividend' as defined in subsection 6(1) of the ITAA 1936.

### Assessability of the Special Dividend

35. An LTI Plan Participant who receives the fully franked Special Dividend and is a resident of Australia as defined in subsection 6(1) of the ITAA 1936, is required to include the Special Dividend as assessable income under subparagraph 44(1)(a)(i) of the ITAA 1936.

**Gross up and tax offset**

36. An LTI Plan Participant who receives the fully franked Special Dividend directly and satisfies the residency requirements in section 207-75:

- must include the amount of the franking credit attached to the Special Dividend in their assessable income, and
- will be entitled to a tax offset equal to the amount of the franking credit,

under section 207-20, subject to being a 'qualified person' in relation to the Special Dividend.

**Qualified person**

37. In order to be a 'qualified person' in relation to the Special Dividend for the purposes of former Division 1A of Part IIIAA of the ITAA 1936 (former Division 1A), each LTI Plan Participant will need to have held their Calliden shares 'at risk' for a continuous period of at least 45 days in the primary qualification period or the secondary qualification period. An LTI Plan Participant must exclude any days on which they have materially diminished risks of loss or opportunities for gain in respect of their Calliden shares.

38. The LTI Plan Participants received legal and beneficial title of their Calliden shares on 12 December 2014 on the vesting of the unvested Incentive Rights.

39. An LTI Plan Participant is considered to no longer hold their Calliden shares 'at risk' for the purposes of former Division 1A as from the Scheme Record Date of 19 December 2014.

40. Accordingly, an LTI Plan Participant would have held the Calliden shares 'at risk' only during the period from 13 December 2014 to 18 December 2014.

41. As the LTI Plan Participants will not have held their Calliden shares 'at risk' for a continuous period of 45 days in the relevant qualification period, an LTI Plan Participant is not a 'qualified person' under former Division 1A in relation to the Special Dividend.

**ESS Deferred taxing point**

42. Incentive Rights acquired under the LTI Plan by the LTI Plan Participant are ESS interests acquired under an employee share scheme and Division 83A will apply to the interests.

43. Incentive Rights acquired by LTI Plan Participants under the LTI Plan are at real risk of forfeiture (subsection 83A-105(3)) and where this is the case Subdivision 83A-C will apply.

44. No amount will be included in the LTI Plan Participant's assessable income in relation to Incentive Rights until the ESS deferred taxing point for the Incentive Rights occur.

45. The discount in relation to the Incentive Rights will be assessable in the income year in which the earliest ESS deferred taxing point occurs as determined under section 83A-120.

46. The ESS deferred taxing point for the LTI Plan Participant is the time of the disposal that is, 23 December 2014.

### **Amount to be included in assessable income**

47. The amount to be included in assessable income of the LTI Plan Participant will be the market value of the Calliden shares at the ESS deferred taxing point (subsection 83A-110(1) and Regulation 83A-315.03 of the ITAR) reduced by the cost base of the interest.

## **Appendix 1 – Explanation**

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**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.*

### **Special Dividend**

48. The term 'dividend' is defined in subsection 6(1) of the ITAA 1936 to include any distribution made by a company to any of its shareholders, whether in money or other property.

49. The payment of the Special Dividend is a distribution in money made by Calliden to the LTI Plan Participants.

50. However, paragraph (d) of the definition of 'dividend' in subsection 6(1) of the ITAA 1936 excludes from the definition of 'dividend' any:

moneys paid or credited by a company to a shareholder or any other property distributed by a company to shareholders (not being moneys or other property to which this paragraph, by reason of subsection (4), does not apply or moneys paid or credited, or property distributed for the redemption or cancellation of a redeemable preference share), where the amount of the moneys paid or credited, or the amount of the value of the property, is debited against an amount standing to the credit of the share capital account of the company...

51. The Special Dividend was sourced from Calliden's existing cash reserves. Calliden did not debit the Special Dividend to its share capital account. Therefore, the exclusion in paragraph (d) does not apply and the Special Dividend will constitute a 'dividend' for the purposes of subsection 6(1) of the ITAA 1936.

### **Assessability of the Special Dividend**

52. Subparagraph 44(1)(a)(i) of the ITAA 1936 includes in the assessable income of an Australian resident shareholder in a company:

dividends (other than non-share dividends) that are paid to the shareholder by the company out of profits derived by it from any source...

53. As the Special Dividend was paid out of profits derived by Calliden, LTI Plan Participants who are residents of Australia as defined in subsection 6(1) of the ITAA 1936 are required to include the Special Dividend in their assessable income under subparagraph 44(1)(a)(i) of the ITAA 1936.

## Gross up and tax offset

54. Subsection 207-20 provides:

- (1) If an entity makes a \*franked distribution to another entity, the assessable income of the receiving entity, for the income year in which the distribution is made, includes the amount of the \*franking credit on the distribution. This is in addition to any other amount included in the receiving entity's assessable income in relation to the distribution under any other provision of this Act.
- (2) The receiving entity is entitled to a \*tax offset for the income year in which the distribution is made. The tax offset is equal to the \*franking credit on the distribution.

55. Therefore, subject to being a qualified person in relation to the Special Dividend for the purposes of former Division 1A, if the fully franked Special Dividend was received directly by an LTI Plan Participant and the LTI Plan Participant satisfies the residency requirement in section 207-75, the LTI Plan Participant:

- is required to include the amount of the franking credit on the Special Dividend in their assessable income, and
- is entitled to a tax offset equal to the amount of the franking credit.

## Qualified person

56. Pursuant to paragraph 207-145(1)(a), an entity must be a 'qualified person' in relation to a dividend in order to be entitled to a tax offset in respect of the franking credit on a dividend.

57. Former Division 1A provides the statutory tests that must be satisfied for a taxpayer to be a 'qualified person' in relation to a franked distribution they have received and thus be entitled to a tax offset for the franking credit on the distribution. Former Division 1A has effect via the express terms of section 207-145.

58. The test of what constitutes a 'qualified person' is provided in former subsection 160APHO(1) of the ITAA 1936 as follows:

A taxpayer who has held shares or an interest in shares on which a dividend has been paid is a **qualified person** in relation to the dividend if:

- (a) where neither the taxpayer nor an associate of the taxpayer has made, is under an obligation to make, or is likely to make, a related payment in respect of the dividend – the taxpayer has satisfied subsection (2) in relation to the primary qualification period in relation to the dividend; or
- (b) where the taxpayer or an associate of a taxpayer has made, is under an obligation to make, or is likely to make, a related payment in respect of the dividend – the taxpayer has satisfied subsection (2) in relation to the secondary qualification period in relation to the dividend.

59. Broadly, if an LTI Plan Participant is not under an obligation to make a related payment in relation to a dividend or distribution, the LTI Plan Participant will have to satisfy the holding period requirement within the primary qualification period. If an LTI Plan Participant is under an obligation to make a related payment in relation to a dividend or distribution, the LTI Plan Participant will have to satisfy the holding period requirement within the secondary qualification period.

60. Former paragraph 160APHO(2)(a) of the ITAA 1936 provides that:

A taxpayer who has held shares or an interest in shares on which a dividend has been paid satisfies this subsection in relation to a qualification period in relation to the shares or interest if, during the period:

- (a) where the taxpayer held the shares – the taxpayer held the shares for a continuous period (not counting the day on which the taxpayer acquired the shares or, if the taxpayer has disposed of the share, the day on which the disposal occurred) of not less than:
  - (i) if the shares are not preference shares – 45 days; or
  - (ii) if the shares are preference shares – 90 days; or.....

61. As the Calliden shares are not preference shares, the LTI Plan Participants are required to hold their Calliden shares for at least 45 days during the relevant qualification period.

62. An LTI Plan Participant who held their Calliden shares 'at risk' for a continuous period of not less than 45 days during the relevant holding period would be a 'qualified person' for the purposes of former Division 1A. Further, pursuant to former paragraph 160APHO(2)(a) of the ITAA 1936, the dates of acquisition and disposal are not included in the relevant 45 day period.

63. The LTI Plan Participants received legal and beneficial title of their Calliden shares on 12 December 2014 on the vesting of the unvested Incentive Rights. The LTI Plan Participants are considered to no longer hold their shares 'at risk' for the purposes of former Division 1A as from the Scheme Record Date of 19 December 2014. Therefore, an LTI Plan Participant would have held the Calliden shares 'at risk' only during the period from 13 December 2014 to 18 December 2014.

64. Accordingly, an LTI Plan Participant is not a 'qualified person' under former Division 1A in relation to the Special Dividend.

65. As the LTI Plan Participant is not a 'qualified person' in relation to the special dividend, the gross up and tax offset rules under section 207-20 will not apply. Accordingly, LTI Plan Participants will neither be required to include the amount of the franking credit on the Special Dividend in their assessable income nor will they be entitled to a tax offset equal to the amount of the franking credit.

## **ESS deferred taxing point**

### ***Application of Division 83A***

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

67. 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 subsidiaries of the company, in relation to the employee's employment.

68. 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.

69. The LTI Plan is an employee share scheme as it provides Incentive Rights to Calliden shares to the LTI Plan Participants in relation to their employment with Calliden or any of its wholly-owned subsidiaries (Calliden Group).

70. As an LTI Plan Participant acquires their Incentive Rights for no consideration, the Incentive Rights are acquired at a discount and Subdivision 83A-B will apply to the Incentive Rights pursuant to subsection 83A-20(1).

71. Under subsection 83A-25(1) of Subdivision 83A-B, an LTI Plan Participant is required to include the discount in relation to the ESS interest in their assessable income for the income year in which the ESS interest is acquired. However, Subdivision 83A-B will not apply if Subdivision 83A-C applies.

### ***Subdivision 83A-C***

72. Subdivision 83A-C allows for the deferral of tax on the amount assessable in respect of an ESS interest if certain conditions are satisfied. Subdivision 83A-C will apply to the Incentive Rights if the following conditions in section 83A-105 are satisfied:

- (1) subdivision 83A-B would, apart from section 83A-105, apply to the Incentive Rights
- (2) subsections 83A-35(3), (4), (5) and (9) apply to the Incentive Rights, and
- (3) there is a real risk that an LTI Plan Participant will forfeit or lose the interest (other than by disposing of it, exercising the right or letting it lapse) pursuant to subsection 83A-105(3).

73. In relation to the first condition, section 83A-20 provides that Subdivision 83A-B would apply to an ESS interest which is acquired under an employee share scheme at a discount. Subdivision 83A-B will apart from subsection 83A-105(1), apply to the Incentive Right because the Incentive Right:

- is an ESS interest acquired under an employee share scheme, and
- is provided for nil consideration (that is, at a discount).

74. In relation to the second condition, subsections 83A-35(3), (4), (5) and (9) apply to each Incentive Right granted to an LTI Plan Participant because:

- when the Incentive Right is acquired, the LTI Plan Participant is employed by a company in the Calliden Group (subsection 83A-35(3))
- subsection 83A-35(4) applies to an ESS interest acquired under an employee share scheme if all of the ESS interests available for acquisition under the LTI Plan relate to ordinary shares
- the requirement in subsection 83A-35(5) is satisfied as the predominant business of the Calliden Group is not the acquisition, sale or holding of shares, securities or other investments, directly or indirectly, and
- the requirement in subsection 83A-35(9) is satisfied as after the acquisition of the Incentive Rights, an LTI Plan Participant will not hold a beneficial interest in more than five per cent of the shares in Calliden nor be in a position to cast, or control the casting of, more than five per cent of the maximum number of votes that might be cast at a general meeting of the Calliden Group.

### ***Real risk of forfeiture***

75. In relation to the third condition, Subdivision 83A-C applies to a right if, under the conditions of the LTI Plan when the right is granted, there is a real risk that an LTI Plan Participant will forfeit or lose the right (other than by disposing of it, exercising the right or letting it lapse).

76. Real risk of forfeiture in a scheme may include conditions where retention of the ESS interests is subject to performance conditions or a minimum term of employment. In cases where an employee share scheme has both employment and performance conditions to be met, and one of these conditions satisfies the 'real risk of forfeiture' test, it is not necessary to consider whether the other condition also satisfies the test.

77. Under the LTI Plan, vesting of Incentive Rights is subject to an LTI Plan Participant meeting a minimum employment condition and performance conditions.

78. As the Incentive Rights acquired by an LTI Plan Participant are subject to forfeiture if the LTI Plan Participant ceases employment (other than in special circumstances) before the vesting time, it is accepted that the real risk of forfeiture test is met.

79. Therefore the Commissioner accepts that the Incentive Rights granted are at the time of acquisition subject to a real risk of forfeiture or loss for the purposes of paragraphs 83A-105(1)(d) and 83A-105(3)(b).

80. As a result, Subdivision 83A-C applies to the Incentive Rights, and Subdivision 83A-B does not apply. The taxation of the Incentive Rights received under the LTI Plan will therefore be deferred until an ESS deferred taxing point occurs.

### ***ESS deferred taxing point***

81. As Subdivision 83A-C applies to the Rights acquired under the Plan, section 83A-120 will apply in determining the ESS deferred taxing point.

82. The ESS deferred taxing point for an Incentive Right is worked out under section 83A-120. It will be at the earlier of the following times:

- before exercise of the Incentive Right, the time when there is no longer a real risk of forfeiting or losing the Incentive Right (other than by disposing of it, exercising it or letting it lapse) and there is also no genuine restriction on disposal of the Incentive Right
- the time when there is no longer a real risk of forfeiting or losing the Incentive Right (other than by disposing of it, exercising it or letting it lapse); and there is also no genuine restriction on exercising the Incentive Right; and there is no real risk that if the Incentive Right is exercised, the share will be forfeited or lost (other than by disposing of it) and there is also no genuine restriction on disposal of the share
- the time when an LTI Plan Participant ceases the employment in respect of which they acquired the right, within the meaning of section 83A-330, or
- seven years after the LTI Plan Participant was granted the right.

83. When the Scheme became effective on 12 December 2014, on the vesting of the unvested Incentive Rights, Calliden shares were allocated to the relevant LTI Plan Participants. From this date there was no risk of forfeiture as the Incentive Rights had already vested. There was also no genuine restriction on the disposal of the shares allocated to the LTI Plan Participant. Under subsection 83A-120(2), this date (12 December 2014) would ordinarily be the ESS deferred taxing point, being the earliest of the times mentioned in the previous paragraph.

84. However, where an LTI Plan Participant disposes of the Calliden shares acquired within 30 days of the earlier of the above times, the ESS deferred taxing point will be the date of disposal (subsection 83-120(3)).

85. Under the Scheme, all LTI Plan Participants disposed of their Calliden shares to Steadfast on 23 December 2014, which was the Implementation Date of the Scheme.

86. As the date of disposal of 23 December 2014 is within 30 days 12 December 2014, the ESS deferred taxing point, under subsection 83A-120(3), will be 23 December 2014.

### **Amount to be included in assessable income**

87. In accordance with section 83A-110, the amount to be included in assessable income at the ESS deferred taxing point will be the market value of the ESS interest reduced by the cost base of the interest.

88. As the Incentive Rights were granted to the LTI Plan Participants under the LTI Plan for nil consideration and no exercise price was payable on exercise of the rights, the cost base of the interest will be nil.

### ***Determining the market value***

89. The term 'market value' is not defined for the purposes of Division 83A and therefore the ordinary meaning of market value is used for determining the value of ESS interests.

90. However, subsection 83A-315(1) provides that when determining 'market value' for the purposes of Division 83A, an amount specified as market value in the regulations is to be used, if the regulations specify such an amount.

91. Subregulation 83A-315.01(2) of the ITAR states that:

... [I]f the ESS deferred taxing point for an ESS interest is:

- (a) the day when the individual disposes of the interest (other than by exercising the right); or
- (b) if the individual exercises the right – the day when the individual disposes of the beneficial interest in the share;

the amount is the market value of the right or share.

The ESS deferred taxing point occurred on the day the LTI Plan Participant disposed of that share (per subsection 83A-120(3)). Accordingly, an LTI Plan Participant must use the market value of the Calliden share acquired on exercise of the Incentive Right.

92. If the disposal is at arm's length then the Commissioner will accept the amount received as being the market value.

93. When the Scheme became effective on 12 December 2014, Calliden shares were allocated to the relevant LTI Plan Participants. The Scheme Consideration of \$0.415 per Calliden share was used as the offer price to determine the LTI Plan Participants' entitlements.

94. Under the Scheme, Calliden shares were suspended from trading at the close of trading on the ASX on 12 December 2014. Steadfast acquired all the shares in Calliden (including those held by the LTI Plan Participants) on the Implementation Date (that is, 23 December 2014) at the Scheme Consideration of \$0.415 per Calliden share.

95. The market value of the ESS interest at the ESS deferred taxing point for the LTI Plan Participant will therefore be the Scheme Consideration of \$0.415.

96. As the cost base of the shares allocated to the LTI Plan Participants is zero, the amount that should be included in the assessable income of the LTI Plan Participant for the income year in which the ESS deferred taxing point occurs in relation to the Incentive Rights pursuant to subsection 83A-110(1), will be \$0.415 per Calliden share.

## **Appendix 2 – Detailed contents list**

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

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## References

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- Previous draft:*
- ITAA 1997 83A-10(1)
- Not previously issued as a draft
- ITAA 1997 83A-10(2)
  - ITAA 1997 83A-105(1)
- Related Rulings/Determinations:*
- ITAA 1997 83A-20
- TR 2006/10
- ITAA 1997 83A-35(3)
  - ITAA 1997 83A-35(4)
  - ITAA 1997 83A-35(5)
- Subject references:*
- Employee share schemes
  - qualified person
  - related payment rule
  - scheme of arrangement
- ITAA 1997 83A-35(9)
  - ITAA 1997 83A-105(1)
  - ITAA 1997 83A-105(1)(c)
  - ITAA 1997 83A-105(1)(d)
  - ITAA 1997 83A-105(2)
  - ITAA 1997 83A-105(3)
  - ITAA 1997 83A-105(3)(b)(i)
- Legislative references:*
- ITAA 1936
  - ITAA 1936 Pt IIIAA Div 1A
  - ITAA 1936 6(1)
  - ITAA 1936 44A
  - ITAA 1936 160APHD
  - ITAA 1936 160APHE
  - ITAA 1936 160APHE(1)
  - ITAA 1936 160APHN
  - ITAA 1936 160APHN(2)
  - ITAA 1936 160APHN(3)
  - ITAA 1936 160APHN(4)
  - ITAA 1936 160APHO(1)(b)
  - ITAA 1936 160APHO(2)
  - ITAA 1936 160APHO(2)(a)
  - ITAA 1936 160APHO(3)
  - ITAA 1997
  - ITAA 1997 Div 83A
  - ITAA 1997 Subdiv 83A-B
  - ITAA 1997 Subdiv 83A-C
- ITAA 1997 83A-105(4)
  - ITAA 1997 83A-110
  - ITAA 1997 83A-110(1)
  - ITAA 1997 83A-120
  - ITAA 1997 83A-120(1)
  - ITAA 1997 83A-120(2)
  - ITAA 1997 83A-120(3)
  - ITAA 1997 207-145(1)(a)
  - ITAA 1997 Div 230
  - ITAA 1997 977-50
  - ITAA 1997 995-1(1)
  - ITAR 1997
  - ITAR 1997 83A-315.01(1)
  - ITAR 1997 83A-315.02
  - ITAR 1997 83A-315.03
  - ITAR 1997 83A-315.05
  - ITAR 1997 83A-315.09
  - Corporations Act 2001
  - TAA 1953

---

### ATO references

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