


CR 2017/83 - Income tax: Pfizer Inc. - Employee Share Scheme

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Class Ruling

Income tax: Pfizer Inc. – Employee Share Scheme

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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.

Summary – what this ruling is about

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 provisions

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

- subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936)
- Division 83A of the *Income Tax Assessment Act 1997* (ITAA 1997)
- section 83A-330 of the ITAA 1997
- section 83A-340 of the ITAA 1997
- subsection 995-1(1) 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 Pfizer (Perth) Pty Limited, Pfizer Australia Pty Limited, Hospira Australia Pty Limited and Pfizer PFE Australia Pty Limited who:

- are granted Total Shareholder Return Units (TSRUs) or Portfolio Performance Shares (PPSs), including if they choose to convert their vested TSRUs into Profit Units (PTUs)
- are not:
 - members of the Company's (that is, Pfizer Inc., its affiliates and successors) Executive Leadership Team or any successor thereto
 - executives subject to the Company's stock-trading pre-clearance and quarterly blackouts, and
 - members of the Company's Board of Directors.
- are residents of Australia within the meaning of that expression in section 6(1) of the ITAA 1936
- are not 'temporary residents' 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 Ruling, 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 38 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 2014 to 30 June 2024. The Ruling continues to apply after 30 June 2024 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.

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

9. Pfizer Inc. (Pfizer) is listed on the New York Stock Exchange and is not an Australian resident for income tax purposes. Pfizer (Perth) Pty Limited, Pfizer Australia Pty Limited, Hospira Australia Pty Limited and Pfizer PFE Australia Pty Limited are all wholly owned subsidiaries of Pfizer.

Pfizer 2014 Stock Plan (the Plan)

10. The Plan is an employee incentive plan. The purpose of the Plan is to provide incentives to employees of Pfizer and its affiliates by making available the benefits of an increased common stock ownership through stock options and other incentive awards.

11. Pfizer has offered, and proposes to further offer (for no consideration and at a discount to their market value which is greater than nil), awards including TSRUs and PPSs under the Plan to various employees around the world. Included in the list of employees are eligible Australian resident employees of Pfizer (Perth) Pty Limited, Pfizer Australia Pty Limited, Hospira Australia Pty Limited; and Pfizer PFE Australia Pty Limited. Upon acceptance of an offer, the eligible employees become Participants in the Plan.

12. Immediately after acquiring the TSRUs and PPSs, and assuming full vesting of all awards held, a Participant (together with their associates) will not, at any time:

- hold a beneficial interest in more than 5% (or 10% for ESS interests issued on or after 1 July 2015) of the shares in Pfizer, or
- be in a position to cast, or control the casting of, more than 5% (or 10% for ESS interests issued on or after

1 July 2015) of the maximum number of votes that might be cast at a general meeting of Pfizer.

Total Shareholder Return Units

13. A TSRU is a right granted to a Participant to receive the excess of:

- (a) the fair market value of a share in Pfizer on the date of the settlement of the right, pursuant to the terms of the grant (the Settlement Date), over
- (b) the grant price of the right on the date the right was granted (Grant Date).

14. A TSRU may or may not accumulate dividend equivalent units, at the discretion of the Compensation Committee of the Board of Directors of Pfizer (the Committee).

15. Under the Plan, any payment by Pfizer in respect of TSRUs may be made in cash or shares of common stock of Pfizer (Shares) as the Committee, in its sole discretion, shall determine. Specific Award Agreements under the Plan may specify how the TSRUs under that particular agreement will be settled (for example, it may refer solely to settlement by delivering Shares to the Participant). Pfizer will settle all TSRUs granted in Australia in Shares only.

16. TSRUs vest 3 years after the Grant Date but are not settled until the Settlement Date. The Settlement Date is five years from the date of grant.

17. On the Settlement Date, a Participant will receive a number of Shares calculated as follows:

$$\frac{(\text{Number of TSRUs granted} \times [\text{Settlement Price} - \text{Grant Price} + \text{dividend equivalents}^*])}{\text{Settlement Price}}$$

* where the Committee has determined that dividend equivalents are payable on the particular TSRUs granted.

18. The Settlement Price is the 20-day average of the closing prices of Shares ending on the Settlement Date, and Grant Price is the closing price of Shares on the grant date.

19. If dividend equivalents are payable on particular TSRUs, they will be accumulated during the Settlement Period and included as part of the formula outlined in paragraph 17 above in calculating the actual number of shares payable at the Settlement Date.

20. TSRUs are non-transferable and cannot be sold. Once Shares are issued on the Settlement Date, the Participant is able to dispose of the Shares, subject to Pfizer's insider trading policy (see paragraphs 35 to 38 below).

Portfolio Performance Shares

21. PPSs are rights valued by reference to a designated number of Shares. They are contingent upon the achievement of pre-set

goals over a five-year performance period. At the end of the five-year performance period, the aggregate performance over the period (based on the numerical rating assigned to each performance year) will be reviewed in settling an implied payout range (0% to 200% of the initial award). At the end of the performance period the Committee, in its sole discretion, may adjust the actual award within the payout range.

22. A PPS may or may not accumulate dividend equivalent units, at the discretion of the Committee. If dividend equivalents are payable in respect of particular PPSs, they will be accumulated during the performance period. After determining the actual number of Shares at the end of the five-year performance period, dividend equivalents that would have been earned over the five-year performance period on that number of Shares will be calculated and paid as additional Shares.

23. Under the Plan, the value of a PPS may be paid to the Participant by delivery of such property as the Committee shall determine, including, without limitation, cash, Shares, other property, or a combination thereof. Specific Award Agreements under the Plan may specify how the PPSs under that particular agreement will be settled (for example, it may refer solely to settlement by delivering Shares to the Participant). Pfizer will pay out the value of all PPSs granted in Australia by delivering Shares only.

24. PPSs will vest three years from the grant date and will be paid to Participants shortly following the end of the five-year performance period when the number of Shares earned under the PPS has been determined (but in no event past 15 March of the year following the end of the performance period) (the Payment Date).

25. PPSs are non-transferable and cannot be sold. Once Shares are issued on the Payment Date, the Participant is able to dispose of the Shares, subject to Pfizer's insider trading policy (see paragraphs 35 to 38 below).

Effect of ceasing employment with the Company

26. The effect of ceasing employment with the Company on a Participant's TSRUs and PPSs will depend on the reason the employment ceases, as well as whether the Participant is 'Retirement Eligible' at the date of separation. A Participant will be Retirement Eligible if they are at least 55 years of age with a minimum of 10 years of service with the Company.

Voluntary cessation

27. If a Participant voluntarily ceases employment with the Company (for reasons other than death, total and permanent disability, restructuring, involuntary separation without cause within 24 months following a change in control, termination for cause) and is not Retirement Eligible at the date of separation, the Participant will

forfeit any unvested TSRUs/PPSs. Vested TSRUs/PPSs will be settled in accordance with the usual terms for the TSRU/PPS as outlined above.

28. If the Participant is Retirement Eligible at the date of separation:

- if the separation date is prior to the first anniversary of the Grant Date of a particular TSRU/PPS, the TSRU/PPS will be forfeited
- if the separation date is on or after the first anniversary of the grant date:
 - unvested TSRUs will be retained and will continue to vest and be settled in accordance with the usual terms
 - unvested PPSs will continue to vest and will be paid in accordance with the usual terms at the discretion of the Committee
 - vested TSRUs will be retained and will be settled in accordance with the usual terms for the TSRU, and
 - vested PPS will be paid in accordance with the usual terms at the discretion of the Committee.

Death, total and permanent disability, restructuring, involuntary separation without cause within 24 months following a change in control, termination for cause

29. If employment ceases for another reason, whether and to what extent the Participant may retain their vested and unvested TSRUs and PPSs will be determined under the terms and conditions of the particular grant.

Election by Retirement Eligible Participants to convert vested TSRUs into PTUs

30. Pfizer allows Retirement Eligible Participants to elect to exercise their vested TSRUs prior to the fifth anniversary of grant, converting their value into PTUs. The PTUs are not separately granted.

31. A Retirement Eligible Participant can elect to exercise their TSRUs any time after the grant has vested and prior to the Settlement Date, including after they cease employment as long as they were Retirement Eligible at the time of termination.

32. If a Participant elects to exercise the TSRUs (to convert them into PTUs), the formula used to determine the number of Shares issuable at settlement of TSRUs will be used to determine the number of Shares underlying the PTUs, except that the formula will

be applied at exercise, not settlement. That is, the total number of Shares representing the PTUs will be:

$$\frac{(\text{number of TSRUs granted} \times [\text{Election Price} - \text{grant price} + \text{dividend equivalents}^*])}{\text{Election Price}}$$

* where the Committee has determined that dividend equivalents are payable on the particular TSRUs granted.

33. The Election Price is the 20-day average closing price of the Shares ending on the exercise date.

34. The only difference between PTUs and TSRUs is that the settlement price will be calculated based on the 20-day average closing price of the Shares on the exercise date rather than the Settlement Date. The PTUs may be entitled to earn dividend equivalents and will be subject to all of the terms and conditions of the original TSRU grant. The Retirement Eligible Participants who choose to convert TSRUs into PTUs will have no access to the underlying Shares on the exercise date. The PTUs will be settled on the original fifth anniversary of the grant of the relevant TSRUs.

Pfizer's insider trading policy

35. Once a Participant receives their Shares, they are free to dispose of the Shares subject to securities law requirements and Pfizer's insider trading policy.

36. Under Pfizer's insider trading policy, employees are prohibited from trading in Pfizer securities while they are aware of material non-public information relating to the Company. 'Material information' is defined in the policy as any information, an investor might consider important in deciding whether to buy, sell or hold securities. Information is considered 'non-public' under the policy until the first business day after it has been disclosed to the public.

37. Trading may therefore resume on the first business day after public disclosure of the information.

38. Violations of the insider trading policy are considered serious and may result in disciplinary action up to and including termination of employment.

Ruling

ESS interests and indeterminate rights

39. TSRUs and PPSs acquired under the Plan are indeterminate rights for the purposes of section 83A-340. Once the vesting conditions have been met and the TSRUs and PPSs have been settled with Shares on the Settlement Date, the TSRUs and PPSs will be treated as rights to acquire beneficial interests in shares (that is, they will be treated as ESS interests for the purposes of subsection 83A-10(1)) from the time the TSRUs and PPSs were acquired by the Participants.

40. Where a Retirement Eligible Participant elects to convert their vested TSRUs into PTUs prior to the Settlement Date:

- if the PTU does not continue to earn dividend equivalents after the conversion, the number of Shares that will be awarded on the Settlement Date will be crystallised at that time, or
- if the PTU continues to earn dividend equivalents until the Settlement Date, the PTU will remain an indeterminate right until the final number of Shares to be provided are known, at the Settlement Date.

41. In both cases, once the number of Shares to be provided to the Participant is known, the PTUs will be treated as ESS interests from the date the original TSRU was acquired by the Participant.

Subdivision 83A-C

42. TSRUs and PPSs acquired by Participants under the Plan are at real risk of forfeiture, and Subdivision 83A-C applies to the TSRUs (and PTUs, where a Retirement Eligible Participant elects to convert their TSRUs to PTUs) and PPSs where they are treated as ESS interests under section 83A-340.

43. No amount will be included in the Participant's assessable income in relation to the TSRUs, PPSs or PTUs until the ESS deferred taxing point.

44. The ESS deferred taxing point will occur at the earliest of the following times:

- the date a Participant ceases employment (within the meaning of section 83A-330) with Pfizer or its subsidiaries
- seven years after they acquired the TSRU or PPS, or fifteen years in the case of a TSRU or PPS acquired on or after 1 July 2015, or
- the first available trading day on or after the Settlement Date (in the case of TSRUs/PTUs) or Payment Date (in the case of PPSs) when the Participant is not (or is no longer) in possession of material non-public information.

45. If a Participant disposes of Shares within 30 days of the time that would otherwise be the ESS deferred taxing point, the ESS deferred taxing point will instead be the time of disposal.

Amount included in assessable income

46. The amount included in the Participant's assessable income, in the income year in which the ESS deferred taxing point occurs, will be the market value of the ESS interest at the ESS deferred taxing point reduced by the Participant's cost base in the ESS interest (if any).

Commissioner of Taxation6 December 2017

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.*

ESS interests and indeterminate rights

47. For the purposes of Division 83A, an ESS interest in a company is defined under subsection 83A-10(1) as a beneficial interest in:

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

48. Under the Plan, at the time the Participant acquires a TSRU or PPS, it is uncertain, in the event that the TSRU or PPS vests, how many Shares the Participant will be entitled to.

49. As such, the Participant does not, at the time of grant, have a right to acquire a beneficial interest in a share for the purpose of subsection 83A-10(1).

Indeterminate rights

50. Section 83A-340 provides that where an employee acquires a beneficial interest in a right that later becomes a right to acquire a beneficial interest in a share, Division 83A will apply as if the right had always been a right to acquire the beneficial interest in the share.

51. In order for section 83A-340 to apply, the right acquired must be capable of becoming a right to acquire a beneficial interest in a share and in fact become such a right.

52. Section 83A-340 provides examples of rights which later become rights to acquire a beneficial interest in a share:

Example 1:

You acquire a right to acquire, at a future time:

- (a) shares with a specified total value, rather than a specified number of shares; or
- (b) an indeterminate number of shares.

Example 2:

You acquire a right under which the provider must provide you with either ESS interests or cash, whichever the provider chooses.

53. The TSRUs and PPSs that a Participant is granted become a right to acquire a beneficial interest in a share if:

- the relevant vesting conditions are met, and

- the Settlement Date or Payment Date occurs, the value of the award is calculated using the relevant formula and the Shares are provided to the Participant.

54. In addition, where a Retirement Eligible Participant elects to convert their vested TSRU into a PTU, the right becomes a right to acquire a beneficial interest in a share when the number of Shares that will be paid on the award at Settlement Date is known. This will be the date of the conversion, if no dividend equivalents are payable in relation to the PTU, or the Settlement Date if dividend equivalents continue to be earned on the PTU.

55. The Commissioner considers that the rights under the TSRUs, PPSs and PTUs are rights to property which are capable of becoming rights to acquire beneficial interests in shares.

56. Therefore, where the TSRUs and PPSs ultimately vest and are settled with Shares on the Settlement Date or Payment Date as applicable, or a vested TSRU is converted into a PTU, section 83A-340 will apply. The TSRUs and PPSs will be treated as if they had always been rights to acquire a beneficial interest in the Share (that is, they will be treated as an ESS interest from the date the TSRU or PPS was granted). In addition, where a Retirement Eligible Participant elects to convert their vested TSRUs into PTUs prior to the Settlement Date, the PTUs will be treated as ESS interests from the date the original TSRU was acquired by the Participant.

Subdivision 83A-C

57. Subdivision 83A-C provides that where certain conditions are satisfied, the discount in relation to an ESS interest is not included in a Participant's assessable income when they acquire the ESS interest. Instead, under section 83A-110 the assessable income of the Participant will include, at a later time, the market value of the ESS interest at the ESS deferred taxing point reduced by the cost base of the ESS interest.

58. The conditions to be satisfied to be eligible for the deferred inclusion in assessable income are listed in subsection 83A-105(1):

- i) Subdivision 83A-B would, but for section 83A-105, have applied to the interest
- ii) for rights acquired on or after 1 July 2015, there is still a discount given in relation to the interest after applying section 83A-315
- iii) for rights acquired on or after 1 July 2015, section 83A-33 does not reduce the amount to be included in the Participant's assessable income in relation to the interest

- iv) the Participant is employed by the company, or a subsidiary of the company, at the time they acquire the ESS interest in the company
- v) all ESS interests available under the employee share scheme must relate to ordinary shares
- vi) the predominant business of the company in which the interests are acquired is not the acquisition, sale or holding of shares, securities or other investments (directly or indirectly) or, if it is, the employee is not employed by that company and also a subsidiary or holding company of that company, or a subsidiary of the holding company
- vii) immediately after the ESS interest is acquired, the Participant will not hold a beneficial interest in greater than 5% of the shares (or 10% for ESS interests acquired on or after 1 July 2015), or be in a position to control the casting of greater than 5% (or 10% for ESS interests acquired on or after 1 July 2015) of the votes that might be cast at a general meeting of the company. For ESS interests acquired on or after 1 July 2015, in determining the Participant's effective ownership and voting rights, the Participant must take into account the holdings they could obtain by exercising rights they have over shares in the employer (that is, as if all rights to acquire shares are fully vested) and the holdings of their associates – see subsection 83A-45(7) and 83A-305(2)
- viii) there must be a real risk, under the conditions of the scheme, that:
 - the Participant will forfeit or lose the ESS interest (other than by disposing of it, exercising the right or letting the right lapse), or
 - if the Participant exercises the right, they will forfeit or lose the beneficial interest in the share (other than by disposing of it).

59. On the basis of the description of the scheme, and in particular paragraph 12 relating to the potential holdings of the Participants immediately after acquisition of the TSRU and/or PPS, the Commissioner accepts, for the purpose of Subdivision 83A-C, that in relation to TSRUs, PPSs and PTUs acquired by a Participant under the Plan, conditions (i) to (vii) above are satisfied.

60. In relation to condition (viii), that there be a real risk of forfeiture (see subsection 83A-105(3)), a reasonable person must consider that there is an actual possibility of forfeiture. The risk of forfeiture must be real, not nominal, artificial or contrived. There must be more than a mere possibility.

61. 'Real risk of forfeiture' may include conditions where retention of the ESS interests is subject to performance hurdles or a minimum term of employment.

62. The TSRUs and PPSs acquired by a Participant are subject to forfeiture where the Participant ceases employment before the end of the vesting period (or, in the case of a Retirement Eligible Participant, prior to the first anniversary of the date of grant). Accordingly, the Commissioner accepts that there is a real risk that a Participant will forfeit or lose their rights under the Plan, other than by disposing them, exercising them or letting them lapse.

63. As a result, Subdivision 83A-C applies to the TSRUs (and, in turn, PTUs if a vested TSRU is converted into a PTU) and PPSs, and Subdivision 83A-B does not apply. The taxation of the rights received under the Plan will be deferred until a deferred taxing point occurs.

ESS deferred taxing point

64. As Subdivision 83A-C applies, section 83A-120 applies in determining the ESS deferred taxing point.

65. Subject to subsection 83A-120(3), the ESS deferred taxing point for rights is the earliest of the times specified in subsections 83A-120(4) to (7):

- when the right has not been exercised, there is no real risk of forfeiting the right, and the scheme no longer genuinely restricts disposal of the right (subsection 83A-120(4))
- when the Participant's employment in respect of which the right was acquired ends (subsection 83A-120(5))
- the end of the seven year period starting when the Participant acquired the right, or fifteen years in the case of a right acquired on or after 1 July 2015 (subsection 83A-120(6))
- in the case of rights acquired before 1 July 2015, 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 (former subsection 83A-120(7)), or
- in the case of rights acquired on or after 1 July 2015, when the right is exercised and there is no real risk of forfeiting the share and the scheme no longer genuinely restricts disposal of the share (subsection 83A-120(7)).

66. Under subsection 83A-120(3), if the Participant disposes of the Share within 30 days of the time which would otherwise be the ESS deferred taxing point, the ESS deferred taxing point will instead be the time of the disposal.

67. The term 'exercise' as used in Division 83A is not a defined term, and therefore takes its ordinary meaning having regard to its legislative context and the purpose or object of the statute. For the purposes of Division 83A, the concept of 'exercising a right' is not considered to necessarily require an action or activity by the beneficial owner of the right. It is enough that they become the beneficial owner of the share that was the subject of the right without having to do anything, that is it happens automatically or is instigated by the employer or another party. Therefore, a Participant is taken to have exercised the right to acquire a beneficial interest in a Share on the settlement/payment of the TSRUs, PPSs and PTUs. As there is no point in time where the right has not been exercised and there is no genuine restriction on the disposal of the right, the first taxing point is not relevant in these circumstances.

68. The Commissioner considers that the election by Retirement Eligible Participants to convert a TSRU into a PTU will not give rise to an ESS deferred taxing point under section 83A-120 at the time of the election and conversion. The conversion merely crystallises the price of the Shares to compare to the grant price in the relevant formula for calculating the Participant's entitlement, and otherwise all the terms and conditions of the original TSRU continue.

69. In relation to the maximum seven year period (or fifteen year period for rights acquired on or after 1 July 2015), it is important to note that the period commences from when the right is acquired. In relation to vested TSRUs that are converted into PTUs, it is considered that the conversion to a PTU does not constitute the grant of a separate right – it merely crystallises a component of the formula used to calculate the Participant's entitlement (or, where dividend equivalents will not continue to be earned for the PTU, it crystallises the total number of Shares the Participant will be entitled to). Through the application of section 83A-340 as outlined in paragraphs 50 to 56 above, the right will be taken to have been acquired on the date the original TSRU was granted. The seven or fifteen year period will therefore commence from that date, not when the TSRU is converted to a PTU.

70. In considering the appropriate ESS deferred taxing point for Participants, it must be determined at what point the scheme no longer 'genuinely restricts' disposal of the Share.

71. The phrase 'genuinely restricts' is not defined in the legislation. However the Explanatory Memorandum to the Tax Laws Amendment (2009 Budget Measures No. 2) Bill 2009 (the Explanatory Memorandum), which introduced Division 83A, outlines a number of key principles including:

- if disposal of an ESS interest would be a criminal offence, for example under a law regulating insider trading, then the employee would be considered genuinely restricted from disposing of the share
- a company's internal share trading policy is only considered to be a restriction preventing disposal for

the purposes of deferring the taxing point if the penalty for breaking the policy constitutes an effective sanction, and

- restrictions preventing disposal are considered to be lifted once an opportunity arises in which a taxpayer can realise the share.

72. The Commissioner considers that a scheme does not genuinely restrict disposal of an ESS interest if the employee can take action to enable disposal of the ESS interest.

73. Whether the Participant is able to take action to deal with the Shares is a question of fact.

74. The Commissioner accepts that the Participant is genuinely restricted from disposing of the Shares until the Settlement Date or Payment Date, as they do not have access to the Shares during that period to be able to dispose of them (and, unless a vested TSRU is converted to a PTU, the Participant will not even know how many Shares they will receive until that date).

75. Pfizer's insider trading policy supports the relevant legal requirements regarding inside trading. It prohibits a Participant from trading in Pfizer securities while they are aware of material non-public information relating to the Company. Under the policy, trading may resume on the first business day after public disclosure of the information. Violations of the policy are considered serious and may result in disciplinary action up to and including termination of employment. This is considered to be an effective sanction.

76. It is a question of fact, at the time a Participant receives their Shares, whether they are in possession of material non-public information that would prohibit the disposal of the Shares under Pfizer's insider trading policy.

77. If, when a Participant receives the Shares in satisfaction of the rights, they have possession of material non-public information, the Commissioner accepts that the Participant is genuinely restricted from disposing of their Shares, on the basis that disposal of the shares would be in breach of the relevant insider trading laws and Pfizer's internal policy. The restriction is considered to be lifted once the information has been publicly disclosed.

78. However, if a Participant does not have possession of material non-public information when they receive the Shares, the Commissioner does not consider the Participant to be genuinely restricted from disposing of their Shares. They can take action at that time to dispose of the Shares.

79. Participants and the Company must either have evidence, or be able to obtain evidence, to support a contention that the Participant had possession of material non-public information at the time they received the Shares.

80. Accordingly, the ESS deferred taxing point will occur at the earliest of the following times:

- the date a Participant ceases employment (within the meaning of section 83A-330) with Pfizer or its subsidiaries
- seven years after they acquire the TSRU or PPS, or fifteen years in the case of a TSRU or PPS acquired on or after 1 July 2015, or
- the first available trading day on or after the Settlement Date (in the case of TSRUs/PTUs) or Payment Date (in the case of PPSs) when the Participant is not (or is no longer) in possession of material non-public information.

81. However, if a Participant disposes of the Shares within 30 days of the time which would otherwise be the ESS deferred taxing point, the ESS deferred taxing point will instead be the time of disposal.

Amount included in assessable income

82. Under section 83A-110, the amount to be included as assessable income, in the income year in which the ESS deferred taxing point occurs, is the market value of the ESS interest at the ESS deferred taxing point, reduced by the cost base of the ESS interest (if any).

83. As the TSRUs, PPSs and Shares were issued for nil consideration (and no consideration was required for any conversion of TSRUs to PTUs), the cost base will usually be nil. Therefore the amount to be included in the Participant's assessable income, in the income year in which the ESS deferred taxing point occurs, will be the market value of the ESS interest at the deferred taxing point.

Appendix 2 – Detailed contents list

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

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NO: 1-BUXYHW4

ISSN: 2205-5517

ATOLaw topic: Income tax ~~ Assessable income ~~ Employee share schemes ~~ Refunds on forfeiture
Income tax ~~ Assessable income ~~ Employee share schemes ~~ Taxation of discounts – deferred
Income tax ~~ Assessable income ~~ Employee share schemes ~~ Taxation of discounts – upfront
Income tax ~~ Assessable income ~~ Employee share schemes ~~ Other

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