


CR 2018/32 - Income tax: Mantra Group Limited - Employee Share Scheme - Tax Exempt Share Plan Shares disposed of under Scheme of Arrangement

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Class Ruling

Income tax: Mantra Group Limited – Employee Share Scheme – Tax Exempt Share Plan Shares disposed of under Scheme of Arrangement

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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 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:

- section 83A-30 of the *Income Tax Assessment Act 1997* (ITAA 1997)
- section 83A-45 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 all persons who are employees of Mantra Group Limited (Mantra), or a subsidiary of Mantra, who:

- acquired ordinary shares in Mantra (Shares) as Qualifying Employees under the Mantra Group Tax Exempt Share Plan (TESP) on 25 September 2015 and/or 28 September 2016
- were entitled to reduce the amount included in their assessable income in the income year or income years in which they acquired the Shares under the TESP in accordance with sections 83A-25 and 83A-35
- participated in the scheme of arrangement under which AAPC Limited (AAPC) acquired 100% of the shares in Mantra (the Scheme of Arrangement) which was completed on 31 May 2018
- were employed by Mantra at all times from the date or dates of grant of Shares until 31 May 2018
- held their Shares at all times from the date or dates of grant of Shares until 31 May 2018
- were 'residents of Australia' as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936) at all times from the date or dates of grant until 31 May 2018, and
- are not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on their Shares.
(Note: Division 230 will generally not apply to individuals, unless they make an election for it to apply to them.)

4. In this Ruling, an entity belonging to this class of entities is referred to as a Participant.

Qualifications

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

6. This Ruling does not apply to employees, directors or others who acquired ordinary shares in Mantra and/or Performance Rights under the Mantra Group Limited Long Term Incentive Plan.

7. 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 10 to 29 of this Ruling.

8. 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

9. This Ruling applies from 1 July 2015 to 30 June 2018. The Ruling continues to apply after 30 June 2018 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 *Public Rulings*).

Scheme

10. 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:

- Scheme Implementation Agreement dated 12 October 2017
- Mantra Group Limited Scheme booklet dated 5 April 2018 (Scheme Booklet)
- Mantra Group Limited Tax Exempt Share Plan Rules (TESP Rules), and
- Pro forma invitation to participate in the Mantra Group Limited Tax Exempt Share Plan.

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

Relevant Entities

Mantra Group Limited

11. Mantra is a widely held public company limited by shares and has been listed on the Australian Securities Exchange (ASX) since June 2014.

12. Mantra is a resident of Australia as defined in subsection 6(1) of the ITAA 1936.

13. Mantra had 298,534,977 ordinary shares on issue when the Scheme of Arrangement was completed on 31 May 2018.

AAPC Limited

14. AAPC Limited (AAPC) is incorporated in Australia and is a wholly owned subsidiary of Accor S.A. (Accor). Accor is a French company listed on the Euronext Paris stock exchange.

15. Prior to the Implementation Date of 31 May 2018 neither Accor nor AAPC held any Mantra shares directly or indirectly.

Tax Exempt Share Plan

16. Mantra established the TESP in 2015 as a broad based employee share plan. The TESP is operated in accordance with the TESP Rules.

17. The TESP Rules defined a Qualifying Employee as an employee or category of employees who is or are eligible to receive grants of Shares under the TESP.

18. On 25 September 2015 (2015 offer) and on 28 September 2016 (2016 offer), Qualifying Employees were invited by the Board of Mantra (the Board) to agree to forego either \$500 or \$1,000 of their total remuneration (by way of salary sacrifice) in return for Mantra granting them with Shares of a similar value.

19. When the 2015 offer and the 2016 offer were each made, the Board invited at least 75% of the Qualifying Employees of Mantra who:

- had completed at least 3 years of service (whether continuous or non-continuous), and
- were Australian residents

to acquire Shares under the TESP.

20. Mantra granted Shares under the TESP to 394 Qualifying Employees in the 2015 offer and to 276 Qualifying Employees in the 2016 offer.

21. At the time when the 2015 offer and the 2016 offer were each made, the Qualifying Employees were employed by Mantra Hospitality Admin Pty Limited (Mantra Hospitality), a wholly-owned subsidiary of Mantra.

22. At all times from when the 2015 offer and 2016 offer were each made, Mantra operated the TESP such that all the Shares acquired under the TESP were not permitted to be disposed of during the minimum holding period in accordance with the requirements of subsections 83A-45(4) and (5).

23. The number of Shares issued to a Participant for a particular income year was calculated as the amount the Participant chose to

salary sacrifice (either \$500 or \$1,000) divided by the 5 day trading volume weighted average price (VWAP) of the ordinary shares immediately prior to the date of acquisition, rounded down to the nearest whole number. Under either the 2015 offer or the 2016 offer, a Participant may have acquired Shares with an aggregate market value of slightly less than \$500 or \$1,000.

24. Under the TESP Rules a Qualifying Employee:

- was entitled to apply for Shares in their name only and not on behalf of any other person or entity
- with the exception of ceasing their employment with Mantra, was subject to a 'disposal restriction' on their Shares for a period of at least 3 years under the TESP Rules in the form of a 'holding lock'. The restriction stated that the Qualifying Employee:

... must not transfer, encumber or otherwise dispose of, or have a Security Interest granted over the relevant Shares or take any action to permit another person to take any action to remove or circumvent the disposal restrictions over the relevant Shares acquired under the TESP until the earlier of three years from the Grant Date or when the [Qualifying Employee] ceases employment with Mantra

- faced no risk of forfeiture of the Shares
- did not hold a beneficial interest in more than 10% of ordinary shares and were not in a position to cast or control the casting of more than 10% of the votes that maybe cast at a general meeting of Mantra, and
- was granted Shares which ranked *pari passu*:

... in all respects with the shares of the same class of Mantra for the time being on issue except to the extent that rights attach to shares of that class by reference to a record date prior to the date of issue or transfer of the Shares.

Scheme of Arrangement

25. On 12 October 2017, Mantra entered into a binding Scheme Implementation Agreement (SIA) with Accor under which AAPC would acquire all of the issued shares in Mantra by way of a court ordered Scheme of Arrangement pursuant to Part 5.1 of the *Corporations Act 2001* (Corporations Act).

26. On 31 May 2018, AAPC acquired all ordinary shares in Mantra including all Participants' Shares.

27. The TESP was suspended with effect from 31 May 2018 pursuant to the SIA.

28. On 31 May 2018, Participants disposed of their Shares pursuant to the Mantra Scheme of Arrangement.

Other matters

29. Mantra did not enter into any discussions with another entity concerning a takeover or some other acquisition of all of Mantra shares from when Mantra was listed on the ASX to 28 September 2016.

Ruling

30. The Commissioner will allow the minimum holding period to end at the earlier time of 31 May 2018 for the Shares acquired under the TESP (paragraph 83A-45(5)(a)).

31. The first element of the cost base or reduced cost base of the Shares, or of each parcel of relevant shares, of a Participant is the market value of those Shares when the Shares were acquired (subsection 83A-30(1)).

Commissioner of Taxation

18 July 2018

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.*

32. Shares acquired under the TESP by Participants were ESS interests subject to Division 83A.

33. By way of salary sacrifice, a Participant agreed to forego part of their total remuneration in return for Mantra granting them with Shares of a similar value. Therefore, a Participant is considered not to have paid any consideration for the Shares. Subdivision 83A-B applied to Participants as the Shares were acquired at a discount equal to their market value on the date or dates of grant (sections 83A-20 and 83A-30).

34. Generally, a Participant must include the discount in their assessable income for the income year in which the Shares are acquired (subsection 83A-25(1)).

35. While a Participant can reduce the amount of the discount included in their assessable income under subsection 83A-25(1) (subsection 83A-35(1)), they cannot reduce that amount by more than \$1,000 (paragraph 83A-35(2)(a)). This reduction is only available where:

- the Participant's adjusted taxable income for the income year in which they acquired the Shares under the TESP does not exceed \$180,000 (paragraph 83A-35(2)(b)), and
- those Shares were acquired in circumstances where subsection 83A-35(6), subsection 83A-35(7) and section 83A-45 apply (paragraphs 83A-35(1)(a) and (b)). These provisions are discussed in paragraphs 36-42 of this Ruling.

36. Subsection 83A-35(6) was satisfied as, when a Participant acquired Shares under the TESP, the TESP was operated on a non-discriminatory basis where offers to acquire ordinary shares in Mantra were made at least 75% of the permanent employees of Mantra who had completed at least 3 years of service with Mantra (whether continuous or non-continuous) and who were Australian residents.

37. Subsection 83A-35(7) was satisfied as under the TESP Rules, Participants were not at risk of forfeiting the Shares other than by way of disposal.

38. The conditions of section 83A-45 were satisfied at the time when the Shares were granted under the TESP as:

- The Shares were granted after 1 July 2015.

- The Participants were employed by Mantra or a subsidiary of Mantra (subsection 83A-45(1)).
- All the Shares provided under the TESP Rules were fully paid ordinary shares (subsection 83A-45(2)).
- The predominant business of Mantra (or a subsidiary of Mantra) was not the acquisition, sale or holding of shares, securities or other investments (subsection 83A-45(3)).

39. The TESP must also satisfy the 'minimum holding period' requirements (subsections 83A-45(4) and (5)).

40. The 'minimum holding period' requires that at all times starting from when the Shares were granted (25 September 2015 and 28 September 2016), the TESP was operated in such a way that every Participant who acquired Shares under the TESP was not permitted to dispose of the Shares during the 'minimum holding period' (subsection 83A-45(4)).

41. Relevantly, the 'minimum holding period' commenced when the Shares were acquired under the TESP on either or both 25 September 2015 and 28 September 2016 (as the case may be) and ending at the **earlier** of:

- (a) 3 years later, or such earlier time as the Commissioner allows if the Commissioner is satisfied that:
 - Mantra intended that the requirements as set out in subsection 83A-45(4) would apply to the Shares acquired under the TESP during the 3 years after that acquisition of those Shares (subparagraph 83A-45(5)(a)(i)), and
 - at the earlier time that the Commissioner allows, all Shares in Mantra were disposed of under a particular scheme (subparagraph 83A-45(5)(a)(ii)), or
- (b) when the Qualifying Employee ceased employment with Mantra (paragraph 83A-45(5)(b)).

42. The terms of the Scheme of Arrangement required Participants to dispose of their Shares in the same manner as other ordinary shareholders in Mantra. This resulted in Participants disposing of the Shares they acquired under the TESP before the three year 'minimum holding period' requirement. However, where the Commissioner is satisfied that the conditions in subsection 83A-45(5) are met, he may allow the 'minimum holding period' to end at an earlier time so that a disposal under the Scheme of Arrangement does not breach the 'minimum holding period' requirement (subsection 83A-45(5)).

43. A Participant who acquired Shares under the TESP was prevented from disposing them from the date they acquired them until the earlier of the date of three years after that date, or until the day

after the date they ceased employment with Mantra (Holding Lock Period). The TESP Rules did not provide for an exemption from, or for non-compliance with, the Holding Lock Period. Therefore, the Commissioner is satisfied that Mantra, as the scheme operator, intended that subsection 83A-45(4) would apply to the Shares acquired under the TESP during the three years after Participants acquired those Shares for the purposes of subparagraph 83A-45(5)(a)(i).

44. On 31 May 2018, being the earlier time the Commissioner is considering allowing, the Commissioner is satisfied that all membership interests in Mantra, including Shares acquired by Participants under the TESP, were disposed of under the Scheme of Arrangement for the purposes of subparagraph 83A-45(5)(a)(ii).

45. The Commissioner is satisfied that the requirements of paragraphs 83A-45(a)(i) and (ii) are met and will allow a modified minimum holding period ending at the earlier time on 31 May 2018. In allowing the minimum holding period to end at the earlier time of 31 May 2018, the Commissioner specifically considered those issues described in paragraphs 24, 25, 26 and 43 of this Ruling.

46. Therefore, a Participant will continue to be entitled to the reduction in their assessable income under section 83A-35 discussed in paragraph 35 of this Ruling.

Other Ruling

47. Class Ruling CR 2018/27 *Income tax: Mantra Group Limited – Scheme of Arrangement and payment of Special Dividend* applies to Participants as individuals in respect of the Scheme Consideration amount of \$3.80 and the Special Dividend of \$0.16 in accordance with the terms of the TESP.

Appendix 2 – Detailed contents list

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References

- Previous draft:*
- ITAA 1997 83A-35(1)(b)
- Not previously issued as a draft
- ITAA 1997 83A-35(2)
 - ITAA 1997 83A-35(2)(a)
 - ITAA 1997 83A-35(2)(b)
- Related Rulings/Determinations:*
- TR 2006/10; CR 2018/27
- ITAA 1997 83A-35(6)
 - ITAA 1997 83A-35(7)
 - ITAA 1997 83A-45
 - ITAA 1997 83A-45(1)
 - ITAA 1997 83A-45(2)
 - ITAA 1997 83A-45(3)
 - ITAA 1997 83A-45(4)
 - ITAA 1997 83A-45(5)
 - ITAA 1997 83A-45(5)(a)
 - ITAA 1997 83A-45(5)(a)(i)
 - ITAA 1997 83A-45(5)(a)(ii)
 - ITAA 1997 83A-45(5)(b)
 - ITAA 1997 Div 230
- Legislative references:*
- ITAA 1936
 - ITAA 1936 6(1)
 - ITAA 1997
 - ITAA 1997 Div 83A
 - ITAA 1997 Subdiv 83A-B
 - ITAA 1997 83A-20
 - ITAA 1997 83A-25
 - ITAA 1997 83A-25(1)
 - ITAA 1997 83A-30
 - ITAA 1997 83A-30(1)
 - ITAA 1997 83A-35
 - ITAA 1997 83A-35(1)
 - ITAA 1997 83A-35(1)(a)
 - TAA 1953
 - Corporations Act 2001 (Cth)
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ATO references

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