

CR 2019/63 - Ruralco Holdings Limited - Exempt Employee Share Plan shares disposed of under scheme of arrangement



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Class Ruling

Ruralco Holdings Limited – Exempt Employee Share Plan shares disposed of under scheme of arrangement

❶ Relying on this Ruling

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling

Further, if we think that this Ruling disadvantages you, we may apply the law in a way that is more favourable to you.

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What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the ending of the 'minimum holding period' requirement in subsection 83A-45(4) of the *Income Tax Assessment Act 1997* and the disposal of shares acquired in the 2017 and 2018 income years under the Ruralco Holdings Exempt Employee Share Plan (RHEESP).
2. Details of the disposal of these shares are set out in paragraphs 7 to 27 of this Ruling.
3. All legislative references are to the *Income Tax Assessment Act 1997* unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you were an employee or director of Ruralco Holdings Limited (Ruralco) or a subsidiary of Ruralco (collectively referred to as the Ruralco Group), on 30 September 2019 and you:
 - acquired fully paid ordinary shares in Ruralco under the RHEESP during the income years that ended 30 June 2017 and/or 30 June 2018

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- were entitled to reduce the amount included in your assessable income in the income year or income years in which you acquired your shares under the RHEESP in accordance with sections 83A-25 and 83A-35
 - participated in the scheme of arrangement under which Nutrien Limited or one of its wholly-owned subsidiaries (Nutrien) acquired 100% of the shares on issue in Ruralco (Scheme of Arrangement) which was completed on 30 September 2019
 - were employed by the Ruralco Group at all times from the date you were granted your shares under the RHEESP until 30 September 2019
 - held your shares at all times from the date you were granted your shares until 30 September 2019, and
 - are not subject to the taxation of financial arrangement rules in Division 230 in relation to gains and losses on your shares.
- (**Note:** Division 230 will generally not apply to individuals, unless they make an election for it to apply to them.)

When this Ruling applies

5. This Ruling applies from 1 July 2019 to 30 June 2020.

Ruling

6. The Commissioner will allow the minimum holding period to end at the earlier time of 30 September 2019 for the shares acquired in the 2017 and 2018 income years under the RHEESP (paragraph 83A-45(5)(a)).

Scheme

7. The following description of the Scheme is based on information provided by the applicant. If the Scheme is not carried out as described, this Ruling cannot be relied upon.
8. Other information referenced is as follows:
- Scheme Implementation Deed (SID) dated 27 February 2019
 - RHEESP Rules
 - Scheme Booklet – Regulators Draft dated 14 May 2019, and
 - Pro forma invitations to participate in the RHEESP in 2017 and 2018.

Relevant entities

Ruralco

9. Ruralco is a resident of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* and was a widely held public company limited by shares listed on the Australian Securities Exchange.
10. The Ruralco Group services Australian farmers through the provision of an extensive range of agricultural supplies and provides agronomic advice and agency

services. The Ruralco Group also provides on farm water infrastructure services and is a broker of water entitlements to the Australian agricultural sector.

Nutrien

11. Nutrien is a Canadian incorporated public company limited by shares and admitted to the official lists of the Toronto Stock Exchange and the New York Stock Exchange.

12. Neither Nutrien nor any of Nutrien's subsidiaries held any shares in Ruralco prior to 30 September 2019.

The Ruralco Holdings Exempt Employee Share Plan

13. Ruralco established the RHEESP in 2017 as a broad based employee share plan. The RHEESP operated in accordance with the RHEESP Rules.

14. The RHEESP Rules define an 'Eligible Employee' as an employee or category of employees who are eligible to receive grants of shares under the RHEESP.

15. On 3 May 2017 (2017 Gift) and on 4 April 2018 (2018 Gift) each Eligible Employee received an email formally offering them a gift of shares.

16. When the 2017 Gift and 2018 Gift were each made, Ruralco offered at least 75% of the Ruralco Group employees who:

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

17. At the time when the 2017 Gift and the 2018 Gift were each made, the Eligible Employees were employed by a business unit within the Ruralco Group that was at least 51% owned by Ruralco.

18. At all times from when the shares were offered to Eligible Employees, Ruralco operated the RHEESP in such a way that all the shares were not permitted to be disposed of during the minimum holding period in accordance with the requirements of subsections 83A-45(4) and (5).

19. Each Eligible Employee who acquired shares under the 2017 Gift received 177 shares, representing a maximum gift amount of \$500, divided by the allocation price of \$2.82 and rounded down to the nearest whole share. The allocation price represented the five day average closing price for Ruralco shares as at 31 March 2017.

20. Each Eligible Employee who acquired shares under the 2018 Gift received 163 shares, representing a maximum gift amount of \$500, divided by the allocation price of \$3.06 and rounded down to the nearest whole share (with the exception of one Eligible Employee who was offered and received 326 shares representing a gift amount of \$1,000). The allocation price represented the five day average closing price for Ruralco shares as at 29 March 2018.

21. Under the RHEESP Rules:

- all Eligible Employees who received shares were restricted from assigning, transferring, selling, granting an encumbrance over or otherwise dealing with their shares for the period commencing on the date the Eligible Employee acquired shares as recorded by Ruralco (acquisition date) and ending on the earliest of:

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- the date that is 3 years from the acquisition date, or
- the date that the recipient ceased to be employed by the Ruralco Group, (restrictive period)
- following the expiry of the restrictive period, no restrictions on dealing with shares applied under the RHEESP Rules
- Eligible Employees who received shares faced no risk of forfeiture
- the Board could amend the RHEESP Rules with retrospective effect provided the rights of any person holding shares were not reduced.

Scheme of Arrangement

22. On 27 February 2019, Ruralco executed the SID with Nutrien, under which Nutrien or a subsidiary of Nutrien would acquire 100% of the issued share capital of Ruralco via a scheme of arrangement pursuant to Part 5.1 of the *Corporations Act 2001* (Corporations Act).

23. On 30 September 2019, Nutrien acquired all ordinary shares in Ruralco including shares acquired by Eligible Employees under the RHEESP.

24. The RHEESP was suspended with effect from 30 September 2019 pursuant to the SID.

25. The Board amended (with retrospective effect) the restrictive period in the RHEESP Rules to allow you to dispose of your shares under the Scheme of Arrangement.

26. You received a cash payment equal to \$4.40 for each share, less the amount of any fully franked special dividend of up to \$0.90 for each share you held on 25 July 2019, being the special dividend record date.

Other matters

27. Ruralco received the original Non-Binding Indicative Offer from Nutrien on 17 December 2018. Ruralco's Board formally discussed the Non-Binding Indicative Offer for the first time on 8 February 2019 and no further grants of shares were made under the RHEESP after this date. Other than Nutrien's Non-Binding Indicative Offer, no other offer concerning a takeover or other acquisition of all of Ruralco shares was seriously contemplated by Ruralco since the time the 2017 Gift was made.

Appendix – Explanation

ⓘ *This Explanation 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.*

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When the minimum holding period ends

28. Shares acquired under the RHEESP by you were ESS interests subject to Division 83A.

29. You are considered not to have paid any consideration for the shares. Subdivision 83A-B applies to you 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).

30. Generally, you must include the discount in your assessable income for the income year in which the shares are acquired (subsection 83A-25(1)).

31. Where you are able to reduce the amount of the discount included in your assessable income under subsection 83A-25(1) (subsection 83A-35(1)), you cannot reduce the amount by more than \$1,000 (paragraph 83A-35(2)(a)). This reduction is only available where your:

- adjusted taxable income for the income year in which you acquired the shares under the RHEESP does not exceed \$180,000 (paragraph 83A-35(2)(b)), and
- shares were acquired in circumstances where subsection 83A-35(6) and (7), and section 83A-45 apply (paragraphs 83A-35(1)(a) and (b)). These provisions are discussed in paragraphs 32 to 37 of this Ruling.

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

33. Subsection 83A-35(7) was satisfied as under the RHEESP Rules, your shares were not at risk of forfeiture other than by way of disposal.

34. The conditions of section 83A-45 were satisfied at the time when the shares were granted under the RHEESP as:

- the shares were granted after 1 July 2015
- you were employed by Ruralco, or the Ruralco Group (subsection 83A-45(1))
- all the shares provided under the RHEESP Rules were fully paid ordinary shares (subsection 83A-45(2)), and
- the predominant business of Ruralco and the Ruralco Group was not the acquisition, sale or holding of shares, securities or other investments (subsection 83A-45(3)).

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

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36. The 'minimum holding period' requires that at all times starting from when the shares were granted (3 May 2017 and 4 April 2018), the RHEESP was operated in such a way that all Eligible Employees who acquired shares under the RHEESP were not permitted to dispose of the shares during the 'minimum holding period' (subsection 83A-45(4)).

37. Relevantly, the 'minimum holding period' commenced when the shares were acquired under the RHEESP on either or both 3 May 2017 and 4 April 2018 (as the case may be) and ending at the earlier of:

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

38. The terms of the Scheme of Arrangement required you to dispose of your shares in the same manner as other ordinary shareholders in Ruralco. This resulted in you disposing of the shares you acquired under the RHEESP before the three year 'minimum holding requirement'. However, where the Commissioner is satisfied that the conditions in subsection 83A-45(5) are met, the Commissioner 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' requirements (subsection 83A-45(5)).

39. An Eligible Employee who acquired shares under the RHEESP was prevented from disposing of 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 Ruralco. The RHEESP Rules did not provide for an exemption from or non-compliance with this rule. Therefore, the Commissioner is satisfied that Ruralco, as the scheme operator, intended that subsection 83A-45(4) would apply to the shares acquired under the RHEESP during the three years after you acquired your shares for the purpose of subparagraph 83A-45(5)(a)(i).

40. On 30 September 2019, being the earlier time the Commissioner is considering allowing pursuant to paragraph 83A-45(5)(a), the Commissioner is satisfied that all membership interests in Ruralco, including shares acquired by you under the RHEESP, were disposed of under the Scheme of Arrangement for the purposes of subparagraph 83A-45(5)(a)(ii).

41. The Commissioner is satisfied that the requirements of subparagraphs 83A-45(5)(a)(i) and (ii) are met and will allow a modified minimum holding period ending at the earlier time on 30 September 2019.

42. Therefore, you will continue to be entitled to the reduction in your assessable income under section 83A-35 discussed in paragraph 31 of this Ruling.

References*Previous draft:*

Not previously issued as a draft

Legislative references:

- ITAA 1936 6(1)
- ITAA 1997 Div 83A
- ITAA 1997 Subdiv 83A-B
- ITAA 1997 83A-10
- ITAA 1997 83A-20
- ITAA 1997 83A-25
- ITAA 1997 83A-25(1)
- ITAA 1997 83A-30
- ITAA 1997 83A-35
- ITAA 1997 83A-35(1)
- ITAA 1997 83A-35(1)(a)
- ITAA 1997 83A-35(1)(b)
- ITAA 1997 83A-35(2)
- ITAA 1997 83A-35(2)(a)
- ITAA 1997 83A-35(2)(b)
- ITAA 1997 83A-35(6)
- ITAA 1997 83A-35(7)
- ITAA 1997 83A-35(7)(a)
- 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
- TAA 1953
- Corporations Act 2001 Pt 5.1

ATO references

NO: 1-HY15FB1

ISSN: 2205-5517

BSL: PGI

ATOlaw topic: Income tax ~~ Assessable income ~~ Employee share schemes ~~ Taxation of discounts – upfront

Income tax ~~ Assessable income ~~ Employee share schemes ~~ Other

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