


CR 2020/32 - Aon Group reorganisation - employee share schemes - treatment of shares or rights

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Class Ruling

Aon Group reorganisation – employee share schemes – treatment of shares or rights

📌 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 income tax consequences for Australian resident employees of Aon plc (or any of its wholly-owned subsidiaries) who, when the Aon group of companies (Aon Group) was reorganised on 1 April 2020, exchanged their entitlement for shares in UK-domiciled Aon plc with an equivalent entitlement for shares in Irish-domiciled Aon plc (Aon Ireland) under Aon's employee share schemes.
2. Details of the reorganisation and Aon's employee share schemes are set out in paragraphs 14 to 44 of this Ruling.
3. All legislative references are to provisions of the *Income Tax Assessment Act 1997* (ITAA 1997) unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you:
 - were a resident of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* and not a 'temporary resident' within the meaning of that expression in subsection 995-1(1) from the time of acquisition of the shares or rights

- were employed by Aon plc or any of its wholly-owned subsidiaries immediately prior to the reorganisation of the Aon Group
- held any of the following just prior to the time of the reorganisation
 - a beneficial interest in the common stock of Aon plc (Aon shares) acquired under the Aon Corporation Australia Limited Exempt Share Plan (AEESP) which were still subject to the three-year disposal restriction under subsections 83A-45(4) and (5)
 - Stock Options, Restricted Stock Units, Performance Share Units (collectively referred to in this Ruling as Aon rights) or beneficial ownership of shares in the holding company (Deferred Shares) acquired from 1 July 2009 under other employee share schemes in existence at the time of the reorganisation that are covered by the Aon Deferred Employee Share Plan (DESP), where Subdivision 83A-C applies to the shares or rights, and where they did not have an ESS deferred taxing point happen to them before the reorganisation.

5. This Ruling does not apply to anyone who is subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 14 to 44 of this Ruling.

Note: Division 230 will not apply to individuals, unless they have made an election for it to apply.

When this Ruling applies

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

Ruling

ESS interests provided under an employee share scheme

7. The Aon shares, Deferred Shares and/or Aon rights acquired by you under either of the Aon Employee Share Plans (Share Plans) are an 'ESS interest' under an 'Employee Share Scheme' as defined in subsections 83A-10(1) and (2).

Continuation of shares, Deferred Shares or Aon rights

8. The reorganisation of the Aon Group constituted a 'restructure' for the purposes of section 83A-130.

9. Under the reorganisation, where your Aon plc shares acquired under the AEESP or Deferred Shares acquired under the DESP were held in trust and those shares were replaced with shares in Aon Ireland, the replacement shares are treated as a continuation of shares in Aon for the purposes of subsection 83A-130(2).

10. Under the reorganisation, where your Aon rights acquired under the DESP were replaced with Aon Ireland rights, the replacement rights are treated as a continuation of the original rights for the purposes of subsection 83A-130(2).

Continuation of employment

11. If you acquired Deferred Shares or Aon rights under the DESP before the reorganisation, your employment by Aon Ireland or a subsidiary of Aon Ireland after the reorganisation is treated as a continuation of the employment in respect of which you acquired your Deferred Shares or Aon rights for the purposes of subsection 83A-130(6).

Continuation of exemption

12. Where, under the reorganisation, the Aon plc shares you acquired under the AEESP were replaced with Aon Ireland shares, replacement shares are treated as a continuation of the Aon plc shares under subsection 83A-130(2) and the disposal restriction condition under subsection 83A-45(4) is taken to be satisfied under subsection 83A-130(3). Any discount previously excluded from a participant's assessable income under section 83A-35 in respect of those shares will continue to be excluded.

Allocation of cost base

13. The cost base of the Aon plc shares, Deferred Shares or Aon rights held by you under the Share Plans just prior to the reorganisation will be allocated to the matching Aon Ireland shares, Deferred Shares or Aon rights you held under the Share Plans just after the reorganisation in accordance with subsection 83A-130(7).

Scheme

14. 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.

Aon plc

15. Aon plc is part of the Aon Group.

16. Aon plc (registered number 07876075) is a resident of the United Kingdom (UK) and was a widely publicly-held company limited by shares listed on the New York Stock Exchange (NYSE).

17. Prior to the reorganisation on 1 April 2020 (described in paragraphs 21 to 27 of this Ruling), Aon plc was the ultimate parent company of the Aon Group.

18. Aon plc is a leading global professional services firm that provides a broad range of risk, retirement, and health solutions.

Aon Ireland

19. Aon Ireland (company number 604607) is a resident of Ireland that was incorporated for the purpose of becoming the new ultimate parent company of the Aon Group.

20. Following the reorganisation of the Aon Group on 1 April 2020, Aon Ireland became a publicly-traded company limited by shares listed on the NYSE.

Reorganisation of the Aon Group

21. On 29 October 2019, Aon plc filed a preliminary proxy statement and announced a proposal to move the jurisdiction of incorporation for the Aon Group's parent company from the UK to Ireland (the reorganisation).

22. On 4 February 2020, at the special court-ordered meeting of shareholders and a related general meeting of shareholders of Aon plc, Aon shareholders approved the proposal to move holding shares from Aon plc to Aon Ireland (the new Irish-domiciled parent company of the Aon Group).

23. On 1 April 2020, Aon plc announced that it had completed the move of the jurisdiction of incorporation of its ultimate parent company from the UK to Ireland. The reorganisation was undertaken by way of a Scheme of Arrangement to acquire an Irish company in the form of a cancellation scheme. In accordance with the reorganisation of the Aon Group, Aon Ireland became the new ultimate parent company of the Aon Group.

24. As a result of the reorganisation on 1 April 2020:

- the existing shares in Aon plc were cancelled and shareholders ceased to own shares in Aon plc
- Aon plc issued new shares to Aon Ireland (new Aon UK shares)
- Aon Ireland issued shares in itself on a one-for-one basis to those who held Aon plc shares at the scheme record time being 6pm London time on 1 April 2020
- Aon Ireland shares were listed on the NYSE and traded under the symbol 'AON'
- the rights attaching to the Aon Ireland shares were, for all practical purposes, the same as the rights that were attached to the Aon plc shares.

25. On 2 April 2020, Aon Ireland transferred all the new UK Aon shares to Randolph Finance Unlimited Company (Randolph Finance) in return for shares in Randolph Finance.

26. The result of the reorganisation of the Aon Group was that Aon Ireland became the new ultimate parent company of the Aon Group, with Randolph Finance becoming a wholly-owned subsidiary of Aon Ireland and Aon plc becoming a wholly-owned subsidiary of Randolph Finance.

27. The Aon Group headquarters has remained operating in London and Aon Ireland continues to conduct the same business operations as were conducted by Aon plc prior to the reorganisation.

Employee share schemes

28. In the period leading up to the reorganisation, the Aon Group had the AEESP and DESP Share Plans in place.

Aon Corporation Australia Limited Exempt Share Plan

29. Under the AEESP, eligible employees contribute \$850 (pre-tax) to the AEESP which is used to acquire \$1,000 worth of Aon shares at a 15% discount.

30. Aon shares are acquired and held on behalf of all eligible employees by the Trustee of the Aon Corporation Limited Exempt Employee Share Plan Trust (the Trustee). The Trustee participated in the reorganisation in the same way as other Aon shareholders in relation to shares registered in its name. The Aon Corporation Limited Exempt Employee

Share Plan Trust (the Trust) is an employee share trust as described in subsection 130-85(4).

31. From the date they are acquired, Aon shares must be held in the Trust for a period of three years or until the eligible employee terminates employment with the Aon Group. Eligible employees can withdraw their Aon shares at any time after the three-year holding period is met.

32. The AEESP satisfies the conditions in Subdivision 83A-B which allow for \$1,000 of discount to be excluded from a taxpayer's taxable income for the year in which the Aon shares are acquired.

33. As part of the reorganisation, Aon plc shares acquired under the AEESP prior to the reorganisation were replaced with Aon Ireland shares.

Aon Deferred Employee Share Plan

34. Under the DESP, eligible employees are offered the opportunity to acquire beneficial ownership of Deferred Shares, or Aon rights, under one of the employee share schemes which are covered by the DESP.

35. The DESP provides for permanent or part-time employees of the company or associated company, and Executive Directors as determined by the Board of Directors of Aon plc to participate in the DESP.

36. The assets, investments and other property of the Trust are vested in the Trustee upon trust for the benefit of the participants.

37. The Deferred Shares and Aon rights are eligible for an ESS deferred taxing point pursuant to Subdivision 83A-C.

38. Unvested Deferred Shares and Aon rights granted to participants under the DESP continue to be tested in accordance with the vesting schedule set at the time of acquiring the Deferred Shares or Aon rights.

39. When the Deferred Shares or Aon rights vest, a participant will receive Aon Ireland shares in lieu of Aon plc shares for those Deferred Shares or Aon rights acquired prior to the reorganisation.

Other matters

40. Under the reorganisation, the rules of the Share Plans were amended such that Aon Ireland assumed all the rights and obligations of Aon plc.

41. All interests granted to a participant of the Share Plans by Aon plc retained the same terms and conditions after the reorganisation.

42. The relative market value of the Aon plc shares immediately before the reorganisation equalled that of the Aon Ireland shares immediately after the reorganisation.

43. Under the reorganisation, at the time the new shares, Deferred Shares or Aon rights were acquired, no participant:

- held, or was treated as holding, a beneficial interest in more than 10% (or 5% for ESS interests acquired before 1 July 2015) of the shares in Aon Ireland, and/or

- was in a position to cast or control the casting of more than 10% (or 5% for ESS interests acquired before 1 July 2015) of the maximum number of votes that may be cast at a general meeting of Aon Ireland.

44. Participants in the Share Plans were employed by the Aon Group at the time they acquired their ESS interests and did not cease that employment as a result of the reorganisation when Aon plc became a 100% subsidiary of Aon Ireland.

Commissioner of Taxation

24 June 2020

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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Continuation of shares, Deferred Shares and Aon rights

45. Section 83A-130 in Division 83A is designed to ensure that employees are not adversely affected by takeovers and restructures, by allowing taxpayers who have deferred tax under an employee share scheme to roll over an ESS deferred taxing point that would otherwise occur due to a corporate restructure.

46. The term 'restructure' is described in subparagraph 83A-130(1)(a)(ii) as '... a change (the **restructure**) in the ownership (including the structure of the ownership) of the old company ...'.

47. The Aon reorganisation constituted a restructure for the purposes of section 83A-130 as the ownership of Aon plc changed.

48. Under the reorganisation, when you ceased to hold ESS interests in Aon plc and instead held ESS interests in Aon Ireland, for the purposes of Division 83A you are taken to have disposed of your ESS interests. Pursuant to subsection 83A-115(3) for Aon shares and Deferred Shares, and subsection 83A-120(3) for Aon rights, the disposal may give rise to an ESS deferred taxing point triggered by the reorganisation.

49. However, there is no relevant disposal where your replacement ESS interests are, for the purposes of section 83A-130, treated as a continuation of ESS interests in Aon plc. In such circumstances, the reorganisation alone would not trigger an ESS deferred taxing point (provided also that you did not cease employment within the meaning of section 83A-330).

50. Section 83A-130 provides that as a result of a restructure (including the structure of the ownership) of a company (the old company), the replacement ESS interests will, for the purposes of Division 83A, be treated as a continuation of the employee's ESS interests in the old company where:

- an employee stops holding ESS interests in the old company that were acquired under an employee share scheme
- the employee acquires replacement ESS interests in a new company that can reasonably be regarded as matching the old ESS interests
- the replacement ESS interests relate to ordinary shares
- the employee is employed by the new company, or a subsidiary of the new company, or a holding company of the new company, or a subsidiary of a holding company of the new company at or about the time of the restructure, and
- at the time they acquire the replacement ESS interests, the employee

- does not hold or is not treated as holding a beneficial interest in more than 5% (or 10% for ESS interests acquired on or after 1 July 2015) of the shares in the new company, or
- is not in a position to cast or is not treated as being in a position to cast or control the casting of more than 5% (or 10% for ESS interests acquired on or after 1 July 2015) of the maximum number of votes that might be cast at a general meeting of the new company.

51. The Commissioner accepts that the conditions specified in section 83A-130 have been met under the reorganisation of the Aon Group. Accordingly, the replacement Aon shares, Deferred Shares and Aon rights in Aon Ireland are, for the purpose of section 83A-130, treated as a continuation of those Aon shares, Deferred Shares and Aon rights in Aon plc.

Allocation of cost base

52. You are required to apportion the cost bases of the original ESS interest held in Aon plc before the reorganisation among the new ESS interests in Aon Ireland which you held immediately after the reorganisation (subsection 83A-130(7)).

53. The ESS interests in Aon Ireland can reasonably be regarded as matching the old ESS interests in Aon plc (subparagraph 83A-130(8)(b)(ii)).

References*Previous draft:*

Not previously issued as a draft

- ITAA 1997 83A-120(3)
- ITAA 1997 83A-130
- ITAA 1997 83A-130(1)(a)(ii)
- ITAA 1997 83A-130(2)
- ITAA 1997 83A-130(3)
- ITAA 1997 83A-130(6)
- ITAA 1997 83A-130(7)
- ITAA 1997 83A-130(8)(b)(ii)
- ITAA 1997 995-1(1)
- TAA 1953

Legislative references:

- ITAA 1936 6(1)
- ITAA 1997 Div 83A
- ITAA 1997 83A-10(1)
- ITAA 1997 83A-10(2)
- ITAA 1997 Subdiv 83A-B
- ITAA 1997 83A-45(4)
- ITAA 1997 Subdiv 83A-C

ATO references

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