


CR 2022/45 - Class Limited - employee share scheme - shares disposed of under scheme of arrangement

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Class Ruling

Class Limited – employee share scheme – shares disposed of under scheme of arrangement

📌 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.

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What this Ruling is about

1. This Ruling sets out the income tax consequences for employees of Class Limited (Class) that participated in the Class Limited Tax Exempt Employee Share Plan (the CLTEESP) to acquire ordinary shares in Class (CLTEESP Shares), which were subsequently disposed of pursuant to a scheme of arrangement on 16 February 2022.
2. Full details of this scheme are set out in paragraphs 8 to 29 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you:
 - acquired CLTEESP Shares on 18 December 2019 (2019 Tranche), 18 December 2020 (2020 Tranche) or 22 December 2021 (2021 Tranche), which you held at all times until 16 February 2022
 - were employed by Class or a ‘subsidiary’, as defined in the *Corporations Act 2001* (Corporations Act), of Class (collectively referred to as the Class Group) at all times from the date you acquired the CLTEESP Shares until 16 February 2022, and

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- were entitled to reduce the amount included in your assessable income in accordance with section 83A-35 (with the exception of the minimum holding period condition in subsection 83A-45(4)) when you acquired the CLTEESP Shares.

When this Ruling applies

5. This Ruling applies from 1 July 2021 to 30 June 2022.

Ruling

6. The Commissioner will allow the minimum holding period to end at the earlier time of 16 February 2022 for the application of Subdivision 83A-B to CLTEESP Shares acquired under the 2019 Tranche and 2020 Tranche and disposed of under the Scheme of Arrangement (paragraph 83A-45(5)(a)).

7. The Commissioner will not allow the minimum holding period to end at the earlier time of 16 February 2022 for the application of Subdivision 83A-B to CLTEESP Shares acquired under the 2021 Tranche and disposed of under the Scheme of Arrangement (paragraph 83A-45(5)(a)).

Scheme

8. 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.

Class Limited

9. Class is an Australian-resident company that was incorporated on 21 October 2005 and listed on the Australian Securities Exchange (ASX) on 18 December 2015.

10. Class is an Australian resident for tax purposes and the head company of the Class Limited tax consolidated group.

11. Class is a cloud-based technology-solutions company engaged in the simplification and automation of complex administration in the superannuation fund administration, financial services and professional services sector.

HUB24 Limited

12. HUB24 Limited (HUB24) is an Australian-resident company, listed on the ASX on 5 July 2007.

13. HUB24 is a provider of wealth management superannuation investment platforms, technology and data solutions in the Australian market. It is also involved in the provision of investment and superannuation portfolio administration services, licensee services and IT consulting.

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Scheme of Arrangement

14. On 23 September 2021, Class received a conditional, non-binding and indicative proposal from HUB24 to acquire all of the shares in Class by way of a scheme of arrangement.
15. On 18 October 2021, Class announced that it had entered into a Scheme Implementation Deed (SID) with HUB24 for the acquisition of 100% of the ordinary shares in Class in exchange for HUB24 shares pursuant to a scheme of arrangement under Part 5.1 of the Corporations Act.
16. On 4 February 2022, the Supreme Court of New South Wales approved the Scheme of Arrangement and provided orders pursuant to Part 5.1 of the Corporations Act (Effective Date). Class shares were suspended from trading on the ASX from close of trading on 7 February 2022.
17. Entitlement to the Scheme Consideration was determined based on Class shareholders as at 7:00pm (Sydney time) on 9 February 2022 (Scheme Record Date).
18. Payment of the Scheme Consideration and the transfer of Class shares to HUB24 occurred on 16 February 2022 (Scheme Implementation Date).
19. Pursuant to the Scheme of Arrangement, you received 0.09090909 HUB24 shares and 12.5 cents for every Class share you held at the Scheme Record Date.

The Class Limited Tax Exempt Employee Share Plan

20. Class established the CLTEESP on 21 September 2015. The CLTEESP is an employee share scheme for the purposes of section 83A-10.
21. The CLTEESP provided qualifying employees with the opportunity to acquire up to \$1,000 worth of ordinary shares in Class (for no consideration) in a financial year in accordance with the Class Limited Tax Exempt Employee Share Plan Rules (the CLTEESP Rules).
22. CLTEESP Shares acquired under the 2019 Tranche were offered by Class to qualifying employees on 9 December 2019 and issued to participants on 18 December 2019.
23. CLTEESP Shares acquired under the 2020 Tranche were offered by Class to qualifying employees on 10 December 2020 and issued to participants on 18 December 2020.
24. CLTEESP Shares acquired under the 2021 Tranche were offered by Class to qualifying employees on 1 December 2021 and issued to participants on 22 December 2021.
25. Under the CLTEESP Rules, a 'holding lock' was imposed on each Tranche of CLTEESP Shares issued to a participant under the CLTEESP for the duration of the Holding Lock Period.
26. The Holding Lock Period (prior to amendment of the CLTEESP Rules on 28 January 2022) began on the acquisition date of the shares issued under the CLTEESP (that is, the date the shares were registered in the name of the participant or as otherwise determined by the Board so as to ensure section 83A-35 is satisfied) and ended on the earlier of:
 - the date three years after the relevant acquisition date of the shares

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- a date determined by the Board in its discretion so as to satisfy the exemption conditions in section 83A-35; or
- the date on which the participant ceased to be an employee of the Class Group.

27. During the Holding Lock Period, a participant was not permitted to transfer the relevant shares and could not grant (or purport to grant) any security interest in or over, or otherwise dispose of or deal with (or purport to otherwise dispose or deal with) the relevant shares, or interest in those shares, held by the participant.

28. The Class Board amended the CLTEESP Rules on 28 January 2022 by exercising its discretion under the CLTEESP to determine that, on the Effective Date, if there was a Holding Lock Period applicable to any CLTEESP Shares that ended on a date after the Implementation Date, that Holding Lock Period would automatically end on the Implementation Date.

29. When the Holding Lock was removed, the shares held by participants were acquired by HUB24 under the Scheme of Arrangement on the Implementation Date.

Commissioner of Taxation

18 May 2022

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Appendix – Explanation

❶ *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

30. Shares acquired under the CLTEESP by you were employee share scheme interests subject to Division 83A.

31. You are considered not to have paid any consideration for the CLTEESP Shares. Subdivision 83A-B applies to you as the CLTEESP Shares were acquired at a discount equal to their market value on the date or dates of grant (sections 83A-20 and 83A-30).

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

33. One of the conditions which entitled you to reduce the amount included in your assessable income when you acquired the CLTEESP Shares is to not dispose of those shares within the minimum holding period (sections 83A-35 and 83A-45).

34. The minimum holding period set out in subsections 83A-45(4) and (5) is the earlier of three years from when the CLTEESP Shares were acquired or when you ceased employment with the Class Group. However, the Commissioner can allow an earlier period if the Commissioner is satisfied that:

- Class intended that the requirements as set out in subsection 83A-45(4) would apply to the CLTEESP Shares during the three years (subparagraph 83A-45(5)(a)(i)), and
- at the earlier time that the Commissioner allows, all CLTEESP Shares were disposed of under a particular scheme (subparagraph 83A-45(5)(a)(ii)).

2019 Tranche and 2020 Tranche Class Limited Tax Exempt Employee Share Plan Shares

35. CLTEESP Shares acquired under the 2019 Tranche were offered by Class to qualifying employees on 9 December 2019 and issued on 18 December 2019. Shares acquired under the 2020 Tranche were offered by Class to qualifying employees on 10 December 2020 and issued on 18 December 2020.

36. The conditional, non-binding and indicative proposal from HUB24 to acquire all of the shares in Class by way of a scheme of arrangement was not received until 23 September 2021 and the SID not executed until 18 October 2021.

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37. In these circumstances, the Commissioner is satisfied that the CLTEESP Rules prevented employees from disposing of the CLTEESP Shares acquired under the 2019 Tranche and 2020 Tranche until the earlier of the three-year anniversary of the date the CLTEESP Shares were acquired or the day after the date they ceased to be employed by the Class Group.

38. Accordingly, the Commissioner is satisfied that the requirements of subparagraphs 83A-45(5)(a)(i) and (ii) are met for the 2019 Tranche and 2020 Tranche CLTEESP Shares and will allow the minimum holding period to end at the earlier time of 16 February 2022 for CLTEESP Shares issued under the 2019 Tranche and 2020 Tranche.

2021 Tranche Class Limited Tax Exempt Employee Share Plan Shares

39. CLTEESP Shares acquired under the 2021 Tranche were offered by Class to qualifying employees on 1 December 2021 and were issued on 22 December 2021. Prior to the 2021 Tranche being offered, the conditional, non-binding and indicative proposal from HUB24 to acquire all of the shares in Class by way of a scheme of arrangement had been received and the SID had been executed.

40. In these circumstances, for the 2021 Tranche, the Commissioner is not satisfied that the requirement of subparagraph 83A-45(5)(a)(i) is met. Accordingly, the Commissioner will not allow the minimum holding period to end at the earlier time of 16 February 2022 for the CLTEESP Shares issued under the 2021 Tranche.

Status: **not legally binding**

References

Legislative references:

- ITAA 1936 6(1)
- ITAA 1997
- ITAA 1997 Div 83A
- ITAA 1997 Subdiv 83A-E
- ITAA 1997 83A-25
- ITAA 1997 83A-33
- ITAA 1997 83A-45
- ITAA 1997 83A-45(4)
- ITAA 1997 83A-45(5)
- ITAA 1997 83A-45(5)(a)
- ITAA 1997 83A-130
- ITAA 1997 83A-130(3)
- ITAA 1997 83A-325
- ITAA 1997 Div 83A
- ITAA 1997 Subdiv 83A-B
- ITAA 1997 83A-10
- ITAA 1997 83A-20
- ITAA 1997 83A-25(1)
- ITAA 1997 83A-30
- ITAA 1997 83A-35
- ITAA 1997 83A-45
- 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)
- TAA 1953
- Corporations Act 2001 Part 5.1

ATO references

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