CR 2022/47 - CSL Limited - non-executive director rights plan

Australian Government
Australian Taxation Office

Page status: **legally binding**

Class Ruling

CSL Limited – non-executive director rights plan

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.

Table of Contents | **Paragraph**

What this Ruling is about

1. This Ruling sets out the income tax consequences for employees of CSL Limited (CSL) who participate in the CSL Limited Non-Executive Director Rights Plan (the Plan).

2. Full details of this scheme are set out paragraphs 17 to 44 of this Ruling.

3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

4. This Ruling incorporates legislative changes (uncommenced at the date of issue) contained in the *Corporate Collective Investment Vehicle Framework and Other Measures Act 2022*, which, as the Act received Royal Assent on 22 February 2022, have operation from 1 July 2022 (see item 9 in Schedule 10 of that Act).

Note: By issuing this Ruling, the ATO is not endorsing the Plan. Potential participants must form their own view about the Plan.

Who this Ruling applies to

5. This Ruling applies to you if you are a non-executive director (NED) of CSL who:

- participates in the Plan, and
- is a resident of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936 (*ITAA 1936).

When this Ruling applies

6. This Ruling applies from 1 July 2021 to 30 June 2026.

Ruling

7. The Plan is an employee share scheme (ESS) as defined in subsection 83A-10(2).

8. The right to be granted a CSL share under the Plan for each participation agreement (the Right) is an ESS interest as defined in paragraph 83A-10(1)(b).

9. Subdivision 83A-C will apply to the Right granted to you.

10. Where the Right is granted to your nominee, the Right is treated as having been acquired by you instead of your nominee (section 83A-305).

11. If you cease to be a NED and you receive a cash payment before the Right is granted, Division 83A will not apply and the cash payment will be included in your assessable income in the same income year you received that payment (section 6-5).

12. For the purposes of Division 83A, the time the Right is acquired for a plan year that runs from 1 July to 30 June (Plan Year) is 1 July, being the start of the Plan Year (section 83A-340).

13. Where the Right converts into a CSL share, the ESS deferred taxing point (as determined in section 83A-120) will (subject to the 30-day period in subsection 83A-120(3)) be the earliest of the:

- end of the 15-year period starting when the Right was acquired for the purpose of Division 83A (subsection 83A-120(6)), or
- end of the period during which you are prohibited from dealing with your CSL share; this will generally be the disposal restriction date you nominated (subsection 83A-120(7)).

14. However, if you cease employment on or before 30 June 2022, former subsection 83A-120(5) will apply such that the deferred taxing point will be when you cease employment (subject to the 30-day period in subsection 83A-120(3)).

15. Your assessable income for the income year in which the ESS deferred taxing point occurs (as determined in section 83A-120) includes the market value of the CSL share at that time (subsection 83A-110(1)).

16. If you dispose of the CSL share on or before the ESS deferred taxing point (including where the ESS deferred taxing point is extended under the 30-day rule in subsection 83A-120(3)), any capital gain or capital loss is disregarded (subsection 130-80(1)).

Scheme

17. The following description of the scheme is based on information provided by CSL. If the scheme is not carried out as described, this Ruling cannot be relied upon.

CSL Limited Non-Executive Director Rights Plan

18. The objectives of the Plan are to, among other things, align the interests of employees who participate in the Plan with shareholders and to provide incentives to retain those employees.

19. Each Plan Year runs from 1 July to 30 June to follow CSL's financial year.

20. The Plan is operated in accordance with the terms set out in the Plan rules together with the terms set out in the agreement (Participation Agreement) that CSL sends to you each year.

21. Once you execute and return the Participation Agreement to CSL, the terms of the Participation Agreement are binding from 1 July, which is the commencement of the relevant Plan Year.

22. To participate in the Plan, you must agree to sacrifice a minimum percentage of 20% of your NED fee for the Plan Year and can elect to sacrifice a higher percentage up to 100%.

23. You must nominate a disposal restriction date when entering into the Participation Agreement that is between 3 and 15 years after commencement of the Plan Year in which the Rights are granted. The nominated disposal restriction period cannot be amended subsequent to the execution of the Participation Agreement.

24. Provided you continue to be a director of CSL, CSL will grant to you the number of Rights at the times provided for in the Participation Agreement.

25. The Rights to which you are entitled in respect of the relevant Plan Year will be granted to you on or around the sixth business day following the date on which CSL publicly releases its annual financial report for the previous financial year.

26. The number of Rights granted will be equal to the amount of sacrificed fees for the Plan Year divided by the 5-day volume-weighted average price of CSL shares over the period immediately prior to the date of grant.

Vesting of the Rights under the CSL Limited Non-Executive Director Rights Plan

27. For each Plan Year, the Rights will vest in 2 tranches.

28. Tranche 1 will vest on or around the business day immediately following the date on which CSL publicly releases its half-yearly financial report for the relevant Plan Year.

29. Tranche 2 will vest on or around the business day immediately following the date on which CSL publicly releases its annual financial report for the relevant Plan Year.

30. No CSL shares will be allocated on the vesting dates.

31. Upon vesting, Tranche 1 Rights will be exercised automatically and CSL shares will be allocated on or around the third business day after the date on which CSL publicly releases its half-yearly financial report for the relevant Plan Year.

32. Upon vesting, Tranche 2 will be exercised automatically and CSL shares will be allocated on or around the third business day after the date CSL publicly releases its annual report for the relevant Plan Year.

Disposal restrictions

33. The transfer or disposal of CSL shares received under the Plan is subject to restrictions under the Plan rules and CSL's Securities Dealing Policy.

34. You are prohibited from dealing in your CSL share allocated to you for the restriction period.

35. You must not dispose of or grant a security interest over any CSL shares allocated to you as part of the Plan until the earliest of:

- your nominated restriction period ending
- when you cease to be a NED of CSL, or
- when there is a change of control event as defined in the Plan rules.

36. CSL will instruct the share registry to apply a holding lock to the allocated shares for the term of the restriction period and each Participant who is allocated shares irrevocably consents to any such holding lock being applied.

37. Under the CSL Securities Dealing Policy, you are prohibited from dealing in CSL shares during designated black-out periods unless an exception applies. The exception only applies in exceptional circumstances provided you are not in possession of inside information; for example, severe financial hardship. The CSL Chairman (in the case of Participants) has the discretion to decide whether or not exceptional circumstances exist. You must give prior notice if you intend to deal in CSL shares outside of a designated black-out period.

38. Under the CSL Securities Dealing Policy, you are prohibited from dealing in CSL shares where you are in possession of any inside information.

Ceasing to be a non-executive director

39. If you cease to be a NED of CSL before the Rights allocated to you are exercised:

- any vested Rights will not lapse
- the pro rata number of unvested Rights (based on the number of weeks in the Plan year that have elapsed at the time you cease to be a NED) will vest with the remaining unvested Rights lapsing without any corresponding payment, and
- the pro rata number of vested Rights will then be automatically exercised and CSL shares will be delivered to you or your nominee within 60 days of the day on which you cease to be a NED of CSL.

40. If you cease to be a NED of CSL in the period after 1 July of a Plan Year and before the Rights are granted, you will be paid a cash amount that you would have received if you had not entered into the Participation Agreement (less any applicable taxes and superannuation contributions).

Other matters

41. Immediately after the acquisition of any Rights under the Plan, you will not hold a beneficial interest in more than 10% of the shares in CSL or be in a position to cast or control the casting of more than 10% of the maximum number of votes that might be cast at a general meeting of CSL.

42. The predominant business of CSL is not the acquisition, sale or holding of shares, securities or other investments, whether directly or indirectly through one or more companies, partnerships or trusts.

43. Any nominee nominated by you must be an ‘associate’ of yours within the meaning of section 318 of the ITAA 1936.

44. The governing rules of the Plan expressly state that the Plan is intended to operate in accordance with Subdivision 83A-C.

Commissioner of Taxation
1 June 2022

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.

Table of Contents | **Paragraph**

Employee share scheme interests and indeterminate rights

45. An ESS interest in a company is a beneficial interest in a share in the company or a right to acquire a beneficial interest in a share in the company (subsection 83A-10(1)).

46. Under the Plan, rights acquired on 1 July in the relevant Plan Year are only beneficial interests in rights that will later become rights to acquire beneficial interests in CSL shares. This is because the number of rights cannot be ascertained until the calculation occurs at a later point in time, as outlined in paragraphs 25 and 26 of this Ruling. Upon completion of the calculation, the number of rights is ascertained and therefore become rights to acquire CSL shares.

47. Subsection 83A-340(1) applies where you acquire a beneficial interest in a right that later becomes a right to acquire a beneficial interest in a share which is referred to as an indeterminate right. A person will acquire an indeterminate right when they can enforce against their employer (under the terms of the contract) rights that will later become a beneficial interest in a share (refer to Taxation Determination TD 2016/17 *Income tax: in what circumstances does a contractual right, which is subject to the satisfaction of a condition, become a right to acquire a beneficial interest in a share for the purposes of subsection 83A-340(1) of the Income Tax Assessment Act 1997?*).

48. Therefore, where the Rights granted to you ultimately vest and are settled with CSL shares after the vesting date, section 83A-340 will apply to those Rights. The Rights 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 when you acquired the Rights which is when the Plan becomes binding between you and CSL for the relevant Participation Agreement and you commenced sacrificing your agreed proportion of base NED fee in accordance with the Plan.

49. The Plan is an ESS as defined in subsection 83A-10(2), as it is a scheme under which ESS interests in a company are provided to employees, or associates of employees, of the company, or a subsidiary of the company, in relation to the employee's employment (subsection 83A-10(2)).

50. The Plan provides that the Right is issued for no consideration. This means the Right was issued at a discount pursuant to subsection 83A-20(1). Subdivision 83A-B will apply to the Right acquired by you under the Plan, unless Subdivision 83A-C applies.

Nominee

51. Where you nominate a nominee who is then granted the Right (and any resulting share), the Right is treated as having been acquired by you and not your nominee (section 83A-305). That is, Division 83A will apply to the you as if the Right (and any resulting share) acquired by the nominee was acquired by you.

Assessability of a right under Subdivision 83A-C

52. Subdivision 83A-C allows the discount in relation to the ESS interest to be included in assessable income at a later time if the following conditions are satisfied:

- Subdivision 83A-B would, apart from section 83A-105, apply to the interest
- paragraph 83A-105(1)(aa) results in a participant continuing to receive a discount in relation to the interest
- subsections 83A-45(1) to (3) and (6) apply to the interest, and
- pursuant to subsection 83A-105(6), at the time you acquired the interest the scheme genuinely restricted you immediately disposing of the Right and the governing rules of the scheme expressly state that Subdivision 83A-C applies to the scheme.

53. In relation to the first condition listed in paragraph 52 of this Ruling, Subdivision 83A-B would, apart from subsection 83A-105(1), apply to the Right because it is:

- a beneficial interest in a right to acquire beneficial interest in a share of CSL, and
- provided to you as an employee of CSL in relation to your employment and will be provided for nil consideration (that is, at a discount).

54. In relation to the second condition listed in paragraph 52 of this Ruling, paragraph 83A-105(1)(aa) requires that after applying section 83A-315 (which refers to the regulations for calculating the market value of an ESS interest where it is an unlisted right), there is still a discount given in relation to the interest.

55. Section 83A-315.03 of the *Income Tax Assessment (1997 Act) Regulations 2021* states:

> If the lowest amount that must be paid to exercise the right to acquire the beneficial interest in a share is nil or cannot be determined, the value of the right on a particular day is the same as the market value of the share on that day.

56. As the Right is provided for nil consideration, that is a discount to the market value of a share in CSL. As such, you will receive a discount in relation to the Right.

57. In relation to the third condition listed at paragraph 52 of this Ruling, subsections 83A-45(1) to (3) and (6) apply to the Right granted because:

- when the Right is acquired, you were employed by CSL (subsection 83A-45(1))
- all of the ESS interests available for acquisition under the Plan relate to ordinary shares of CSL (subsection 83A-45(2))
- the predominant business of CSL is not the acquisition, sale or holding of shares, securities or other investments (subsection 83A-45(3)), and

- immediately after the acquisition of the Right, you will not hold a beneficial interest in more than 10% of the shares in CSL nor be in a position to cast, or control the casting of, more than 10% of the maximum number of votes that might be cast at a general meeting of CSL (subsection 83A-45(6)).

58. In relation to the fourth condition listed in paragraph 52 of this Ruling, Subdivision 83A-C applies if:

- the interest is a beneficial interest in a right (paragraph 83A-105(6)(a))
- the Plan genuinely restricts you from immediately disposing of the Right (subparagraph 83A-105(6)(b)(i)), and
- the governing rules of the Plan expressly state that the Plan is intended to operate in accordance with Subdivision 83A-C (subparagraph 83A-105(6)(b)(ii)).

59. As a result, Subdivision 83A-C applies to the Right, and Subdivision 83A-B does not apply. The taxation of the Right received under the Plan will be deferred until an ESS deferred taxing point occurs.

ESS deferred taxing point

60. Section 83A-120 provides the rules for determining when the ESS deferred taxing point occurs for a right to acquire a share:

- when the right has not been exercised, there is no real risk of forfeiting the right, and the scheme no longer genuinely restricts immediate disposal of the right (subsection 83A-120(4))
- 15 years after you acquired the right (subsection 83A-120(6)), or
- after the right is exercised, when there is no real risk of forfeiting or losing the share and the scheme no longer genuinely restricts disposal of the share (subsection 83A-120(7)).

61. Additionally, if you cease employment on or before 30 June 2022, former subsection 83A-120(5) will apply such that the ESS deferred taxing point will be when you cease employment.

62. However, if you dispose of the vested right or the share within 30 days of the earliest time outlined in paragraphs 60 and 61 of this Ruling, the ESS deferred taxing point will instead be the time of disposal (paragraph 83A-120(3)(b)).

63. 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 is the subject of the Right (this can happen automatically or at the instigation of the participant, the employer or another party). Therefore, you are taken to have exercised the Right when a CSL share is allocated upon vesting of the Right.

64. As determined in section 83A-120, where your Right vests, the ESS deferred taxing point will (subject to the 30-day rule) be the earliest of:

- the time when you cease employment (former subsection 83A-120(5)) if you cease employment on or before 30 June 2022
- 15 years from when you acquired the Right (subsection 83A-120(6)), or

- the end of the period during which you are prohibited from dealing with your CSL share (subsection 83A-120(7)).

65. However, if you dispose of your CSL share acquired from vesting of the Right within 30 days of the earliest time outlined in paragraph 64 of this Ruling, the ESS deferred taxing point will be the date of disposal (subsection 83A-120(3)).

Amount to be included in assessable income

66. In accordance with 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 that interest (if any).

67. Where the ESS interest is a right to acquire a beneficial interest in a share, the market value of the right at the ESS deferred taxing point is the market value of the share at that time (section 83A-315.03 of the *Income Tax Assessment (1997 Act) Regulations 2021*).

68. Therefore, the amount included in your assessable income at the ESS deferred taxing point is the market value of the CSL share acquired upon vesting of a Right at the ESS deferred taxing point, less the cost base of the Right. As the Right is granted for nil consideration and no amount is paid to exercise the Right, the first element of the cost base of the Right is nil (subsections 83A-110(1) and 110-25(2)).

Where a cash payment is made

69. Division 83A will not apply where you cease to be a NED in the period after 1 July of the Plan Year and before Rights are granted. You will instead be paid the cash amount that you would have received had you not entered into the Participation Agreement.

70. Section 6-5 provides that assessable income includes ordinary income derived during an income year. Therefore, you include the full amount of any base fee cash payment you receive in your assessable income for the year in which the cash is received.

Page status: **not legally binding**

References

Related Rulings/Determinations:

CR 2018/35; TD 2016/17

Legislative references:

- ITAA 1936 6(1)
- ITAA 1936 318
- ITAA 1997 6-5
- ITAA 1997 Div 83A
- ITAA 1997 Subdiv 83A-B
- ITAA 1997 Subdiv 83A-C
- ITAA 1997 83A-10
- ITAA 1997 83A-10(1)
- ITAA 1997 83A-10(1)(b)
- ITAA 1997 83A-10(2)
- ITAA 1997 83A-20(1)
- ITAA 1997 83A-45(1)
- ITAA 1997 83A-45(2)
- ITAA 1997 83A-45(3)
- ITAA 1997 83A-45(6)
- ITAA 1997 83A-105
- ITAA 1997 83A-105(1)
- ITAA 1997 83A-105(1)(aa)
- ITAA 1997 83A-105(6)
- ITAA 1997 83A-105(6)(a)
- ITAA 1997 83A-105(6)(b)(i)
- ITAA 1997 83A-105(6)(b)(ii)
- ITAA 1997 83A-110
- ITAA 1997 83A-110(1)
- ITAA 1997 83A-120
- ITAA 1997 83A-120(3)
- ITAA 1997 83A-120(3)(b)
- ITAA 1997 83A-120(4)
- ITAA 1997 83A-120(5)
- ITAA 1997 83A-120(6)
- ITAA 1997 83A-120(7)
- ITAA 1997 83A-305
- ITAA 1997 83A-340(1)
- ITAA 1997 83A-325
- ITAA 1997 83A-340
- ITAA 1997 130-80(1)
- TAA 1953
- Income Tax Assessment (1997 Act) Regulations 2021 83A-315.03
- Corporate Collective Investment Vehicle Framework and Other Measures Act 2022

ATO references

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