


CR 2022/95 - Atlassian Corporation Plc - employee share scheme - treatment of restricted stock units under the restructure

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Status: **legally binding**

Class Ruling

Atlassian Corporation Plc – employee share scheme – treatment of restricted stock units under the restructure

📌 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
Who this Ruling applies to	4
When this Ruling applies	6
Ruling	7
Scheme	15
Appendix – Explanation	43

What this Ruling is about

1. This Ruling sets out the income tax consequences for certain holders of unvested restricted share units (RSUs) in Atlassian Corporation Plc (Atlassian UK) who had their RSUs replaced with unvested RSUs in Atlassian Corporation (Atlassian US) in connection with a broader restructure of the Atlassian Group (the Restructure).
2. Details of this scheme are set out in paragraphs 15 to 42 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 are a resident of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* or a non-resident who was a resident of Australia as defined in subsection 6(1) of that Act when you acquired your Atlassian UK RSUs
 - you participated in the Atlassian Corporation Plc 2015 Share Incentive Plan (UK ESS)
 - just prior to the Restructure, you
 - held unvested Atlassian UK RSUs pursuant to the UK ESS, and

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- did not have an ESS deferred taxing point under Subdivision 83A-C occur in relation to your Atlassian UK RSUs
- as a result of the Restructure, your unvested Atlassian UK RSUs were replaced with unvested Atlassian US RSUs
- at the time of the Restructure
 - you did not hold a beneficial interest in more than 10% of the Atlassian UK shares
 - you were not 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 Atlassian UK, and
 - you were employed by Atlassian UK, or one of its subsidiaries, immediately prior to the Restructure.

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 15 to 39 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 2022 to 30 June 2023.

Ruling

No ESS deferred taxing point on restructure

7. Atlassian UK RSUs are ESS interests.
8. The Restructure satisfies the conditions under subsection 83A-130(1) and constitutes an arrangement to which Subdivision 83A-C applies.
9. The replacement of your unvested Atlassian UK RSUs for unvested Atlassian US RSUs under the Restructure did not trigger an ESS deferred taxing point under Subdivision 83A-C (section 83A-130).
10. An amount will not need to be included in your assessable income under section 83A-110 on the replacement of your unvested Atlassian UK RSUs for unvested Atlassian US RSUs as the Restructure does not give rise to a deferred taxing point (subsection 83A-110(1)).

New ESS interests are a continuation of old ESS interests

11. The Atlassian US RSUs that you received in connection with the Restructure are treated as a continuation of your unvested Atlassian UK RSUs for the purposes of Division 83A (subsection 83A-130(2)).

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Continuation of employment

12. Your employment with Atlassian US, or a subsidiary of Atlassian US (including Atlassian UK), after the Restructure is treated as a continuation of your employment in respect of which you acquired your Atlassian UK RSUs for the purposes of Division 83A (subsection 83A-130(6)). That is, your employment with Atlassian UK, or one of its subsidiaries, had not ceased within the meaning of section 83A-330.

13. The cost base of the Atlassian UK RSUs held by you just prior to the Restructure will be allocated to the matching Atlassian US RSUs you held just after the Restructure in accordance with subsection 83A-130(7).

Capital gains and losses

14. You disregard any capital gains or capital losses that arise as a result of the replacement of your unvested Atlassian UK RSUs for unvested Atlassian US RSUs under the Restructure (section 130-80).

Scheme

15. 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.

The Atlassian Group

16. The Atlassian Group licenses and sells software products that support the process of planning, building and launching software. It operates in various jurisdictions around the world and has seen significant growth in its operations in the United States of America (US).

Atlassian Corporation Plc

17. Atlassian UK was incorporated in the United Kingdom (UK) on 14 November 2013 and is a tax resident of the UK.

18. Atlassian UK was the holding company of the Atlassian Group before redomiciling.

19. Atlassian UK had issued Class A ordinary shares and Class B ordinary shares. The Class A ordinary shares were listed for quotation on the NASDAQ on 10 December 2015, under the NASDAQ code 'TEAM'.

20. Atlassian UK also had in place a number of share plans for executives and employees of Atlassian UK and its subsidiaries.

Atlassian UK employee share scheme

21. Atlassian UK RSUs have been issued to employees of Atlassian UK, or subsidiaries of Atlassian UK, who participated in the UK ESS.

22. An Atlassian UK RSU represents the right to receive one Class A ordinary share of Atlassian UK upon fulfillment of the vesting conditions set out in the UK ESS and/or the applicable RSU agreement. There are no rights to receive cash or other consideration under the RSUs instead of Class A ordinary shares.

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23. The RSUs are issued for nil consideration and the employees pay no exercise price upon vesting.

24. When the RSUs vest, the employee is issued Class A ordinary shares subject to any applicable taxes. The RSUs are considered restricted because they are subject to forfeiture and restrictions on transfer until they vest, as set forth in the UK ESS.

25. The RSUs provide no rights as a shareholder with respect to Class A ordinary shares of Atlassian UK unless and until such shares are issued upon vesting of the RSUs.

26. Rights in an employee's RSUs will automatically terminate if the employee terminates their employment with the Atlassian Group for any reason prior to the satisfaction of any applicable conditions or restrictions, unless the Administrator of the UK ESS determines otherwise.

Atlassian Corporation

27. Atlassian US was incorporated in Delaware in the US on 1 July 2022 and is a tax resident of the US.

28. Atlassian US was incorporated to be the new holding company of the Atlassian Group upon the group redomiciling from the UK to the US.

29. Upon the incorporation of Atlassian US and before the redomiciling, each of the 2 individual co-founders of the Atlassian Group had been issued one share in Atlassian US (the Formation Shares). Each Formation Share had been issued for a nominal amount of share capital.

Atlassian Holdings, Inc.

30. Atlassian Holdings, Inc. (Atlassian Holdco) was incorporated in Delaware in the US on 1 July 2022 and is a tax resident of the US.

31. Atlassian Holdco is a wholly-owned subsidiary of Atlassian US.

Redomiciling to the United States of America

32. On 10 February 2022, Atlassian UK announced plans to redomicile from the UK to the US.

33. On 12 July 2022, Atlassian UK published a proxy statement containing the text of a proposed scheme of arrangement to be entered into between Atlassian UK and with its shareholders.

34. On 23 August 2022, two special meetings of shareholders of Atlassian UK were held. The first shareholder meeting (the Court Meeting) approved the scheme of arrangement under Part 26 of the *Companies Act 2006* (UK). The second shareholder meeting (the General Meeting) approved a special resolution of Atlassian UK that was also required to effect the redomiciling.

35. On 13 September 2022, after the date of the Court Meeting but prior to the Effective Date, Atlassian UK issued a single Class C ordinary share to Atlassian US for nominal consideration.

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36. On 1 October 2022 (Effective Date), pursuant to the scheme of arrangement and special resolutions:

- All Class A ordinary shares and Class B ordinary shares in Atlassian UK were cancelled as part of a reduction of capital under section 641 of the *Companies Act 2006* (UK) and Atlassian UK became a wholly-owned subsidiary of Atlassian US.
- For each Class A ordinary share in Atlassian UK that was cancelled, Atlassian US issued a replacement share of Class A common stock of Atlassian US to the registered holder of the Class A ordinary share in Atlassian UK at the Scheme Record Time, which is 11:00 am AEST on 29 September 2022.
- For each Class B ordinary share in Atlassian UK that was cancelled, Atlassian US issued a replacement share of Class B common stock of Atlassian US to the registered holder of the Class B ordinary share in Atlassian UK at the Scheme Record Time.
- Atlassian UK issued new Class A ordinary shares and new Class B ordinary shares in Atlassian UK (the Intra-Group Shares) to Atlassian US, equal to the number of Class A and Class B ordinary shares in Atlassian UK that were cancelled pursuant to the reduction of capital.
- The UK ESS was amended to facilitate the assumption of all obligations under the UK ESS by the new holding company, Atlassian US, effectively cancelling the rights to Atlassian UK Class A ordinary shares and replacing that right with a right to Atlassian US shares of Class A common stock.

37. Immediately after the completion of the scheme of arrangement, all unvested Atlassian UK RSUs will, upon vesting, provide for the issuance of shares of Class A common stock of Atlassian US in lieu of Class A ordinary shares of Atlassian UK (on a one-for-one basis).

38. The replacement Atlassian US shares of common stock issued will have the same kind of rights and obligations and substantially the same market value as the respective Atlassian UK shares for which they were received.

39. The terms of the Atlassian UK RSUs are identical to the Atlassian US RSUs and no changes have been made to the vesting or performance conditions.

40. On 1 October 2022, Atlassian US redeemed the Formation Shares.

41. On 4 October 2022, Atlassian US contributed its Class C ordinary share and Intra-Group Shares in Atlassian UK to Atlassian Holdco for no consideration. Atlassian UK then became a wholly-owned subsidiary of Atlassian Holdco and indirectly a wholly-owned subsidiary of Atlassian US.

42. The Class A ordinary shares in Atlassian UK were suspended from trading on the NASDAQ following the close of trading US Eastern time on 30 September 2022. The shares of Class A common stock of Atlassian US were then listed on the NASDAQ at the opening of trade on 3 October 2022 US Eastern time under the same symbol 'TEAM'.

Commissioner of Taxation

26 October 2022

Status: **not legally binding**

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.*

No ESS deferred taxing point upon restructure – section 83A-130 applies

43. Under section 83A-110, an amount will be included in your assessable income for the income year in which the ESS deferred taxing point occurs in respect of your ESS interest.

44. Under a restructure, you are usually taken to have disposed of your shares or rights for the purposes of Division 83A when you cease to hold shares or rights in the old company and instead hold shares or rights in the new company. The disposal may give rise to an ESS deferred taxing point.

45. However, there would not be a disposal where your replacement shares or rights in the new company are treated as a continuation of the shares or rights in the old company and your employment with the new company is treated as a continuation of your employment with the old company under section 83A-130.

46. The Restructure satisfies the requirements of section 83A-130 in relation to Atlassian UK RSUs because:

- the Restructure is a 'takeover' because it resulted in Atlassian UK becoming a 100% subsidiary of Atlassian US (subparagraph 83A-130(1)(a)(i))
- just before the Restructure, you held ESS interests in the form of Atlassian UK RSUs (the old interests) that you acquired under an employee share scheme (paragraph 83A-130(1)(b))
- as a result of the arrangement, you stopped holding the old interests (paragraph 83A-130(2)(a))
- you acquired ESS interests in the form of Atlassian US RSUs (the new interests) in connection with the Restructure (subsection 83A-130(2))
- the new interests can reasonably be regarded as matching any of the old interests (paragraph 83A-130(2)(b))
- the new interests relate to ordinary shares in Atlassian US (subsection 83A-130(4))
- you were employed by Atlassian US, or a subsidiary of Atlassian US, at the time you acquired the new interests (paragraph 83A-130(9)(a)), and
- as a result of acquiring the new interests, you did not hold a legal or beneficial interest in more than 10% of Atlassian US shares or were 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 Atlassian US general meeting (or 5% if your Atlassian UK RSUs were granted before 1 July 2015) (paragraph 83A-130(9)(b)).

47. Accordingly, for the purposes of Division 83A, the Atlassian US RSUs you acquired in connection with the Restructure are treated as a continuation of your Atlassian UK RSUs you previously held.

48. You did not receive anything in relation to the Restructure that is not considered to be a continuation of the ESS interests that you previously held. As such, exchanging your

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Atlassian UK RSUs for Atlassian US RSUs as part of the Restructure will not be an ESS deferred taxing point for you.

49. In addition, your employment with Atlassian US or one of its subsidiaries will be regarded as a continuation of your employment with Atlassian UK or one of its subsidiaries (that is, you have not ceased your employment within the meaning of section 83A-330) and the cost base of your old interests will be allocated to the matching new interests you held just after the Restructure, in accordance with subsection 83A-130(7).

Status: **not legally binding**

References

Legislative references:

- ITAA 1936 6(1)
- ITAA 1997 Div 83A
- ITAA 1997 Subdiv 83A-C
- ITAA 1997 83A-110
- ITAA 1997 83A-110(1)
- ITAA 1997 83A-130
- ITAA 1997 83A-130(1)
- ITAA 1997 83A-130(1)(a)(i)
- ITAA 1997 83A-130(1)(b)
- ITAA 1997 83A-130(2)
- ITAA 1997 83A-130(2)(a)
- ITAA 1997 83A-130(2)(b)
- ITAA 1997 83A-130(4)
- ITAA 1997 83A-130(6)
- ITAA 1997 83A-130(7)
- ITAA 1997 83A-130(9)(a)
- ITAA 1997 83A-130(9)(b)
- ITAA 1997 83A-330
- ITAA 1997 130-80
- ITAA 1997 Div 230
- Companies Act 2006 (UK) Pt 26
- Companies Act 2006 (UK) 641

ATO references

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