

CR 2023/38 - Qantas Airways Limited - 2022/23 Qantas Manager Incentive Plan



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Status: **legally binding**

Class Ruling

Qantas Airways Limited – 2022/23 Qantas Manager Incentive Plan

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.

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What this Ruling is about

1. This Ruling sets out the income tax consequences for employees of Qantas Airways Limited (Qantas) and its subsidiaries (collectively, the Qantas Group) who participate in the 2022/23 Manager Incentive Plan (MIP).
2. Details of this scheme are set out in paragraphs 15 to 27 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 an employee of the Qantas Group who is:
 - granted a right to an award under the MIP (MIP Award), and
 - a resident of Australia within the meaning of subsection 6(1) of the *Income Tax Assessment Act 1936*.
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 27 of this Ruling.

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

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When this Ruling applies

6. This Ruling applies from 1 July 2022 to 30 June 2026.

Ruling

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

8. At the time you acquire the MIP Award, it is not an ESS interest as defined in paragraph 83A-10(1)(b) but an indeterminate right pursuant to section 83A-340. When the MIP Award vests and is settled with a Qantas share, it is a right to acquire a beneficial interest in a Qantas share and is an ESS interest (subsection 83A-10(1)). In these circumstances, the MIP Award is treated as if it had always been an ESS interest (subsection 83A-340(2)) and Subdivision 83A-C will apply to the MIP Award you acquired.

9. However, Division 83A will not apply if the MIP Award is settled with cash and the amount will be included in your assessable income in the income year you receive the payment.

10. The ESS deferred taxing point for your MIP Award will be (subject to the 30-day period in subsection 83A-120(3)) the earliest of:

- when the disposal restrictions for the Qantas shares end (subsection 83A-120(7)), and
- 15 years from when you acquired the MIP Award (subsection 83A-120(6)).

11. 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 Qantas share at that time (subsection 83A-110(1)).

12. If you dispose of your Qantas share on 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)).

13. No amount will be included in your assessable income from the forfeiture of an MIP Award or a Qantas share acquired upon vesting of the MIP Award, where the forfeiture occurs before the ESS deferred taxing point (subsection 83A-110(1), section 104-25 and section 130-80).

14. Where you dispose of a Qantas share after the ESS deferred taxing point:

- the first element of the cost base and reduced cost base of the Qantas share is its market value immediately after the ESS deferred taxing point (section 83A-125, section 112-15, subsection 110-25(2) and subsection 110-55(2))
- the disposal will result in CGT event A1 happening (section 104-10)
- a capital gain will be made if the capital proceeds from the disposal are more than the share's cost base and a capital loss is made if those capital proceeds are less than the share's reduced cost base (subsection 104-10(4)), and

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- if you make a capital gain from CGT event A1 happening to your Qantas share you may be entitled to treat the gain as a discount capital gain in respect of the share if it has been held for at least 12 months from the date the ESS deferred taxing point occurred, provided the other requirements of Subdivision 115-A are satisfied (section 83A-125).

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.

16. The MIP is designed to reward selected Qantas Group employees for achieving annual performance measures through such means as a cash bonus, Qantas shares or a combination of these.

17. An invitation letter was provided to you to participate in the MIP which specified the terms and conditions applying to an MIP Award.

18. No consideration is payable by you upon the grant or vesting of your MIP Award.

19. Your MIP Award may vest in whole or in part based on Qantas and individual performance measures being met during the 2022–23 financial year (Performance Measures).

20. It is anticipated that one-third of the MIP Award that vests will be provided in the form of Qantas shares while the remaining two-thirds will be provided as a cash bonus. However, this allocation may be revised in accordance with CEO discretion.

21. Any Qantas shares granted will be allocated following the finalisation of the 2022–23 financial year results.

22. The Qantas shares granted will be held on your behalf by the trustee of the Qantas Employee Share Plan Trust (the Trust) and may not be sold or otherwise dealt with until the earlier of:

- the day after the full-year results are announced in August 2024, in relation to one-half of your Qantas shares, and
- the day after the full-year results are announced in August 2025, in relation to the remainder of your Qantas shares (each a Restriction Period, and collectively, the Restriction Periods).

23. Where you resign or your employment is terminated for cause during the Restriction Periods, your Qantas shares will be forfeited. Qantas shares may be forfeited on termination of your employment if your employment is terminated before the end of a Restriction Period for reasons including resignation, redundancy where a release agreement is not signed, summary dismissal and dismissal for cause, or unacceptable performance or conduct.

24. When a Qantas share is forfeited, all rights and interests in respect of that share cease immediately.

25. At the end of the Restriction Periods, you will be free to deal in your Qantas shares (subject to applicable laws and the Qantas employee share trading policy contained in the Qantas Code of Conduct and Ethics).

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26. Immediately after the acquisition of the MIP Award under the MIP, no participant in the MIP will hold more than 10% of the shares in Qantas 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 Qantas.

27. The predominant business of Qantas 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.

Commissioner of Taxation

19 July 2023

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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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Employee share scheme interests and indeterminate rights

28. 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)).

29. Under the MIP, the MIP Award acquired is only a beneficial interest in rights that may later become rights to acquire beneficial interests in Qantas shares. The value of the award is an indicative value based on the invitation letter and subject to the Performance Measures. Once this is determined, the final value of the MIP Award is known, with the number of shares to be allocated on vesting of the MIP Award calculated based on the weighted average of the prices at which Qantas shares are traded on the Australian Securities Exchange during the 7 days up to and including the date of allocation.

30. 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. This 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?*).

31. Therefore, where the MIP Award granted to you ultimately vests and is settled with a Qantas share, section 83A-340 will apply to those awards. The MIP Award will be treated as if it had always been a right to acquire a beneficial interest in Qantas shares. That is, it will be treated as an ESS interest from when the MIP Award was granted to you which is when the MIP becomes binding between you and Qantas.

32. The MIP is an employee share scheme 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.

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

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Assessability of a right under Subdivision 83A-C

34. 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
- under subsection 83A-105(3), there is a real risk that you will forfeit the right.

35. In relation to the first condition listed in paragraph 34 of this Ruling, Subdivision 83A-B would, apart from subsection 83A-105(1), apply to the MIP Award because it is:

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

36. In relation to the second condition listed in paragraph 34 of this Ruling, paragraph 83A-105(1)(aa) requires that after applying section 83A-315 (which refers to the *Income Tax Assessment (1997 Act) Regulations 2021* 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. As the MIP Award has value and is awarded to you for nil consideration, it will be acquired at a discount.

37. In relation to the third condition listed at paragraph 34 of this Ruling, subsections 83A-45(1) to (3) and (6) apply to the MIP Award granted because:

- when the MIP Award is acquired, you were employed by the Qantas Group (subsection 83A-45(1))
- all of the ESS interests available for acquisition under the MIP relate to ordinary shares of Qantas (subsection 83A-45(2))
- the predominant business of Qantas is not the acquisition, sale or holding of shares, securities or other investments (subsection 83A-45(3)), and
- immediately after the acquisition of the MIP Award, you will not hold a beneficial interest in more than 10% 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 Qantas (subsection 83A-45(6)).

38. In relation to the fourth condition listed in paragraph 34 of this Ruling, Subdivision 83A-C applies if, under the conditions of the MIP when the MIP Award is granted, there is a real risk that you will forfeit or lose the right, other than by disposing of it, exercising the right or letting it lapse (paragraph 83A-105(3)(b)).

39. A real risk of forfeiture in a scheme may include conditions where retention of an ESS interest is subject to performance hurdles or a minimum term of employment. In cases where an ESS has both employment and performance conditions to be met, and one of these conditions satisfies the real risk of forfeiture test, it is not necessary to consider whether the other condition also satisfies the test.

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40. As the MIP Award will lapse if the Performance Measures are not satisfied, it is accepted that the real risk of forfeiture test is met.

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

ESS deferred taxing point

42. Subdivision 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)).

43. However, if you dispose of the vested right or the share within 30 days of the earliest of the times listed in paragraph 42 of this Ruling, the ESS deferred taxing point will instead be the time of the disposal (paragraph 83A-120(3)(b)).

44. For the purposes of Division 83A, the concept of 'exercising a right' does not 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 MIP Award when a Qantas share is allocated upon vesting of the MIP Award.

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

- 15 years from when you acquired the MIP Award (subsection 83A-120(6)), and
- the end of the Restriction Periods during which you are prohibited from dealing with your Qantas share (subsection 83A-120(7)).

46. However, if you dispose of your Qantas share acquired from vesting of the MIP Award within 30 days of the earliest time listed in paragraph 45 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

47. 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).

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48. 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*).

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

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Status: **not legally binding**

References

Related Rulings/Determinations:

TD 2016/17

Legislative references:

- ITAA 1936 6(1)
- ITAA 1997 Div 83A
- ITAA 1997 83A-10(1)
- ITAA 1997 83A-10(1)(b)
- ITAA 1997 83A-10(2)
- ITAA 1997 83A-20(1)
- ITAA 1997 Subdiv 83A-B
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- ITAA 1997 83A-45
- ITAA 1997 83A-45(1)
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- ITAA 1997 83A-340(1)
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- ITAA 1997 112-15
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- ITAA 1997 130-80
- ITAA 1997 130-80(1)
- ITAA 1997 Div 230
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ATO references

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