

CR 2024/73 - Aristocrat Leisure Limited - Non-Executive Director Rights Plan



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Status: **legally binding**

Class Ruling

Aristocrat Leisure Limited – Non-Executive Director Rights 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 Aristocrat Leisure Limited (Aristocrat) who participate in the Aristocrat Non-Executive Directors Rights Plan (Plan).
2. Details of this scheme are set out in paragraphs 17 to 46 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

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

4. This Ruling applies to you if you are a non-executive director (employee) of Aristocrat who:
 - acquires rights to ordinary shares in Aristocrat under the Plan (Rights), and
 - is a 'resident of Australia' as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936).

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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 17 to 46 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 to entities that enter into the scheme during 1 October 2024 to 30 September 2029.

Ruling

ESS interest and employee share scheme

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

8. The Rights granted under the Plan are taken to be ESS interests you acquire on 1 October, being the start of a plan year that runs from 1 October to 30 September (Plan Year) (paragraph 83A-10(1)(b) and subsection 83A-340(2)).

9. 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).

Subdivision 83A-C and ESS deferred taxing point

10. Subdivision 83A-C will apply to the Right granted to you under the Plan (subsection 83A-105(1)).

11. The taxation of the Rights is deferred to the ESS deferred taxing point (section 83A-110).

12. Where the Right converts into an Aristocrat share, the ESS deferred taxing point will 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 Aristocrat share (subsection 83A-120(7)).

13. However, if you dispose of the shares within 30 days of the time which would otherwise be the ESS deferred taxing point, the ESS deferred taxing point is taken to be the date of the disposal of the shares (subsection 83A-120(3)).

Amount included in assessable income at the ESS deferred taxing point

14. Your assessable income for the income year in which the ESS deferred taxing point occurs includes the market value of the Aristocrat share at that time (subsection 83A-110(1) and section 83A-315 of the *Income Tax Assessment (1997 Act) Regulations 2021*.

15. If you or your nominee dispose of the Aristocrat share on or before the ESS deferred taxing point, any capital gain or capital loss is disregarded (subsection 130-80(1)).

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Cash payment received upon cessation of employment

16. If you cease to be a non-executive director in the period after 1 October of a Plan Year and you receive a cash payment before a 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).

Scheme

17. 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.

18. Aristocrat is a public company and its shares are listed on the Australian Securities Exchange.

19. Aristocrat is an Australian resident for tax purposes and is the head company of the Aristocrat income tax consolidated group.

20. Aristocrat is a gaming content and technology company and mobile games publisher, with more than 7,500 employees in over 20 locations around the world. Aristocrat offers a diverse range of products and services including electronic gaming machines, casino management systems and free-to-play mobile games.

21. A non-executive director receives directors' fees from which Aristocrat must withhold amounts pursuant to section 12-40 of Schedule 1 to the *Taxation Administration Act 1953* (Fees).

Aristocrat Leisure Limited Non-Executive Director Rights Plan and Participation Agreement

22. The Plan provides a means for employees to increase equity ownership in Aristocrat. The objectives of the Plan are to, among other things, align the interests of employees who participate in the Plan with shareholders and provide incentives to retain those employees.

23. Each Plan Year runs from 1 October to 30 September to follow Aristocrat's financial year.

24. The Plan is operated in accordance with the terms set out in the Plan rules, together with the terms set out in the participation agreement that is executed between you and Aristocrat prior to the commencement of each Plan Year (Participation Agreement).

25. Although the Participation Agreement is executed by you prior to the commencement of the relevant Plan Year, the terms of the Participation Agreement will be binding only from 1 October of the relevant Plan Year.

26. Under the Participation Agreement, you agree that a proportion of your directors' fees for the Plan Year of between 20% to 100% will be received in the form of Rights.

Grant of rights

27. On the sixth business day following (but not including) the date on which Aristocrat publicly releases its annual financial report for the previous financial year prior to the Plan Year (Grant Date), you will be granted Rights with each Right being a right to be allocated one fully paid ordinary share in Aristocrat, provided you continue to be a non-executive

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director of Aristocrat on the Grant Date. For example, on the basis that Aristocrat is expected to release its annual financial report for the financial year ending 30 September 2024 in November 2024, the expected date of grant of the Rights for the 2025 Plan Year would be in November 2024.

28. The number of Rights granted will be equal to the amount of the directors fees you agreed to receive in the form of Rights divided by the 5-day volume-weighted average price of Aristocrat shares over the period immediately prior to the date of grant, rounded down to the nearest whole number.

29. You may not dispose of or otherwise deal with (including by granting any security interest over) a Right.

30. You can elect to acquire the Rights either in your personal name or the name of a nominee who is an 'associate' (as defined in section 318 of the ITAA 1936).

31. The Participation Agreement is null and void if you cease to be a non-executive director prior to 1 October of the relevant Plan Year.

Vesting of rights

32. For each Plan Year, Rights will vest in 2 tranches as follows:

- Tranche 1 will vest on or around the business day immediately following the date on which Aristocrat publicly releases its half-yearly financial report for the relevant Plan Year.
- Tranche 2 will vest on or around the business day immediately following the date on which Aristocrat publicly releases its annual financial report for the relevant Plan Year.

33. Upon vesting, Rights will be exercised automatically and Aristocrat shares will be allocated to you as follows:

- in respect of Tranche 1, on or around the third business day after the date on which Aristocrat publicly releases its half-yearly financial report for the relevant Plan Year, and
- in respect of Tranche 2, on or around the third business day after the date Aristocrat publicly releases its annual financial report for the relevant Plan Year.

Disposal restrictions on shares

34. You must nominate a disposal restriction date when entering into the Participation Agreement. The nominated restriction date must be between 3 and 15 years after commencement of the relevant Plan Year (Restriction Period).

35. The Restriction Period cannot be amended subsequent to the execution of the Participation Agreement.

36. You (or your nominee) must not dispose of or grant a security interest over any Aristocrat shares allocated to you (or your nominee) during the Restriction Period relating to those shares.

37. A holding lock is applied to the shares until the earlier of:

- the end of the Restriction Period

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- when you cease to be a non-executive director of Aristocrat, or
- there is a change of control event as defined in the Plan rules.

Share Trading Policy

38. The transfer or disposal of Aristocrat shares received under the Plan is also subject to restrictions under Aristocrat's share trading policy (version dated 1 August 2023 at the date of this Ruling) (Share Trading Policy).

39. Under the Aristocrat Share Trading Policy, you or your nominee are prohibited from dealing in Aristocrat shares during designated black-out periods unless an exception applies. The exception only applies in exceptional circumstances, such as severe financial hardship or compulsion of a court order, provided you are not in possession of inside information. The Aristocrat Company Secretary or Chairman has the discretion to decide whether or not exceptional circumstances exist. You must give prior notice if you intend to deal in Aristocrat shares outside of a designated black-out period.

40. Under the Aristocrat Share Trading Policy, you or your nominee are prohibited from dealing in Aristocrat shares where you are in possession of any inside information.

41. Any breaches of the Share Trading Policy are considered serious and may result in disciplinary action against you.

Ceasing to be a non-executive director

42. If you cease to be a non-executive director of Aristocrat before the Rights allocated to you or your nominee are exercised, then:

- 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 director) will vest, be automatically exercised and shares delivered within 60 days of the day on which you cease to be a director of Aristocrat, and
- the remaining unvested Rights lapsing without any corresponding payment in respect of those unvested Rights.

43. If you cease to be a non-executive director of Aristocrat in the period after 1 October of a Plan Year and before the Grant Date, 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

44. Immediately after the acquisition of any Rights under the Plan, you will not hold a beneficial interest in, or a right to acquire a beneficial interest in, more than 10% of the shares in Aristocrat 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 Aristocrat.

45. The predominant business of Aristocrat is not, and will not be at the time when the employees acquire Rights under the Plan, the acquisition, sale or holding of shares, securities or other investments, whether directly or indirectly through one or more companies, partnerships or trusts.

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

Commissioner of Taxation

27 November 2024

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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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ESS interest and employee share scheme

ESS interest and indeterminate rights

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

48. Subsection 83A-340(1) applies where you acquire a beneficial interest in a right, which is referred to as an indeterminate right, that later becomes a right to acquire a beneficial interest in a share.

49. A person will acquire an indeterminate right when they can enforce against their employer (under the terms of 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?*).

50. At the time the Rights are acquired by you on 1 October in the relevant Plan Year (that is, when the Participation Agreement becomes binding between you and Aristocrat and you commence sacrificing your agreed proportion of Fees in accordance with the Plan), they are not ESS interests but are indeterminate rights pursuant to section 83A-340 and TD 2016/17. This is because the number of Rights you receive cannot be ascertained until the calculation occurs at a later point in time (that is, the Grant Date) and is subject to you remaining a non-executive director on the Grant Date.

51. It is only when the specific number of Rights are granted to you on the Grant Date, that section 83A-340 applies to treat the indeterminate rights you received on 1 October of the Plan Year as if they had always been 'ESS interests' for the purposes of subsection 83A-10(1).

52. Therefore, you are taken to have acquired the Rights granted to you on 1 October of the relevant Plan Year.

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Employee share scheme and nominees

53. An employee share scheme is a scheme under which ESS interests in a company are provided to employees, or associates of employees, of the company, or subsidiaries of the company, in relation to the employee's employment (subsection 83A-10(2)).

54. You are an employee of Aristocrat for the purposes of Division 83A because you receive, or are entitled to receive, work and income support withholding payments (table item 1 of section 83A-325, section 995-1, and section 6 of the ITAA 1936).

55. Where you elect to acquire a Right in the name of a nominee who is an 'associate' (as defined in section 318 of the ITAA 1936), the Right is treated as having been acquired by you (section 83A-305).

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

Subdivision 83A-C and ESS deferred taxing point

Assessability of a right under Subdivision 83A-C

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

58. Subdivision 83A-C allows the discount in relation to the ESS interest to be deferred to an ESS deferred taxing point if the following conditions in subsection 83A-105(1) are satisfied:

- Subdivision 83A-B would, apart from section 83A-105, apply to the interest.
- After applying section 83A-315, there will still be a discount given in relation to the interest.
- Section 83A-33 (about start ups) does not apply.
- Subsections 83A-45(1) to (3) and (6) apply to the interest.
- 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.

59. As all the relevant conditions in subsection 83A-105(1) are met, Subdivision 83A-C applies to the Rights granted to you under the Plan.

60. As a result, the taxation of the Rights will be deferred to when an ESS deferred taxing point occurs (section 83A-110).

ESS deferred taxing point

61. Section 83A-120 provides the rules for determining when the ESS deferred taxing point occurs for a right to acquire a share. This will be the earliest of the following times:

- 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))

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- 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)).

62. However, if you dispose of the vested right or the share within 30 days of the time which would otherwise be the ESS deferred taxing point, the ESS deferred taxing point will instead be the time of disposal (paragraph 83A-120(3)(b)).

Amount included in assessable income at the ESS deferred taxing point

63. The amount to be included as assessable income at the ESS deferred taxing point is the market value of the ESS interest at the ESS deferred taxing point, reduced by the cost base of that interest (if any) (section 83A-110).

64. 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*).

65. Therefore, the amount included in your assessable income at the ESS deferred taxing point is the market value of the Aristocrat 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)).

Cash payment received upon cessation of employment

66. Division 83A will not apply to the cash payment you receive where you cease to be a non-executive director in the period after 1 October of the Plan Year and before Rights are granted.

67. Section 6-5 provides that assessable income includes ordinary income derived during an income year.

68. There is well established authority that ordinary income includes remuneration. Since the cash payment relates to the remuneration you would have received had you not entered into the Participation Agreement, the cash payment is ordinary income.

69. Therefore, you include the cash payment you receive in your assessable income in the year in which the payment is received (section 6-5).

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References

Related Rulings/Determinations:

TD 2016/17

- ITAA 1997 83A-105
- ITAA 1997 83A-105(1)
- ITAA 1997 83A-105(6)
- ITAA 1997 83A-110
- ITAA 1997 83A-110(1)
- ITAA 1997 83A-120
- ITAA 1997 83A-120(3)
- ITAA 1997 83A-120(3)(b)

Previous Rulings/Determinations:

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- ITAA 1997 83A-120(4)
- ITAA 1997 83A-120(6)
- ITAA 1997 83A-120(7)
- ITAA 1997 83A-305
- ITAA 1997 83A-315
- ITAA 1997 83A-325
- ITAA 1997 83A-340
- ITAA 1997 83A-340(1)
- ITAA 1997 83A-340(2)
- ITAA 1997 110-25(2)
- ITAA 1997 130-80(1)
- ITAA 1997 995-1(1)
- TAA 1953 Sch 1 12-40
- Income Tax Assessment (1997 Act) Regulations 2021 83A-315
- Income Tax Assessment (1997 Act) Regulations 2021 83A-315.03

Legislative references:

- ITAA 1936 6
 - ITAA 1936 6(1)
 - ITAA 1936 318
 - ITAA 1997 Div 230
 - ITAA 1997 6-5
 - ITAA 1997 Div 83A
 - ITAA 1997 83A-10(1)
 - ITAA 1997 83A-10(1)(b)
 - ITAA 1997 83A-10(2)
 - ITAA 1997 Subdiv 83A-B
 - ITAA 1997 83A-20(1)
 - ITAA 1997 83A-25(2)
 - ITAA 1997 83A-33
 - ITAA 1997 83A-45(1)
 - ITAA 1997 83A-45(2)
 - ITAA 1997 83A-45(3)
 - ITAA 1997 83A-45(6)
 - ITAA 1997 Subdiv 83A-C
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ATO references

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