


# ***CR 2025/36 - Canva, Inc - treatment of Subdivision 83A-C stock options and restricted stock units***

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Status: **legally binding**

## Class Ruling

# Canva, Inc – treatment of Subdivision 83A-C stock options and restricted stock units

### **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 certain holders of specified stock options or restricted stock units (RSUs) in the entity formerly known as Canva, Inc. (now registered as Canva Australia Holdings Pty. Ltd.) (Canva), where these stock options or RSUs were replaced with stock options or RSUs in the new Canva, Inc. (New Canva) in connection with the restructure of the Canva corporate group, which commenced on 13 February 2025 (AEDT) (Restructure).
2. Details of this scheme are set out in paragraphs 13 to 39 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:
  - (a) you are an individual
  - (b) you participated in one of the following Canva stock plans:
    - (i) 2016 Consultant Stock and Option Plan
    - (ii) 2018 Canva, Inc. Employee Share Ownership Plan
    - (iii) 2019 Amended & Restated Equity Incentive Plan or
    - (iv) 2024 Global Equity Incentive Plan

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- (c) immediately before and at the time of the Restructure:
  - (i) you were a resident of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936*, or a temporary resident within the meaning of subsection 995-1(1)
  - (ii) you were employed by Canva or one of its subsidiaries
  - (iii) you held stock options or RSUs in Canva which were granted to you under one of the stock plans listed in subparagraph (b) (Canva stock options or RSUs)
  - (iv) Subdivision 83A-C applies to those Canva stock options or RSUs
  - (v) no ESS deferred taxing point happened in relation to those Canva stock options or RSUs
  - (vi) if you were a temporary resident within the meaning of subsection 995-1(1), your Canva stock options or RSUs were not taxable Australian property within the meaning of section 855-15
- (d) as a result of the Restructure, your Canva stock options or RSUs were replaced with stock options or RSUs in New Canva (New Canva stock options or RSUs)
- (e) at the time you acquired the New Canva stock options or RSUs:
  - (i) you did not hold a legal or beneficial interest in more than 10% of New Canva shares, and
  - (ii) 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 New Canva.

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 13 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 2024 to 30 June 2025.

## **Ruling**

### **Continuation of stock options and restricted stock units**

7. The New Canva stock options or RSUs you received as part of the Restructure satisfied the conditions under subsection 83A-130(1). Therefore:

- the New Canva stock options or RSUs you received in exchange for the cancellation of your Canva stock options or RSUs are treated as a continuation of your Canva stock options or RSUs for the purposes of Division 83A (subsection 83A-130(2)), and
- no deferred taxing point arises as a result of the Restructure in relation to the stock options or RSUs to which Subdivision 83A-C applies.

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### **CGT event C2 happens**

8. CGT event C2 happened to each of your Canva stock options or RSUs when it was cancelled as part of the Restructure.
9. The time of the CGT event is the date when your Canva stock options or RSUs were cancelled (paragraph 104-25(2)(b)).
10. Subject to the application of section 130-80 and section 768-915:
  - You will make a capital gain if the capital proceeds received for a Canva stock option or RSU exceeds its cost base. The capital gain is the amount of the excess.
  - You will make a capital loss if the reduced cost base of a Canva stock option or RSU exceeds the capital proceeds. The capital loss is the amount of the difference (subsection 104-25(3)).
11. The capital proceeds are equal to the market value of the New Canva stock option or RSU you received in respect of the cancellation of your Canva stock option or RSU, worked out at the time your Canva stock option or RSU ended (paragraph 116-20(1)(b)).

### **Disregard capital gains on stock options or restricted stock units to which Subdivision 83A-C applies and that have not been subject to an ESS deferred taxing point**

12. Any capital gain or capital loss you made from CGT event C2 happening to your Canva stock option or RSU to which Subdivision 83A-C applies, and that have not been subject to an ESS deferred taxing point, is disregarded (subsection 130-80(1) and, if you were a temporary resident, also under subsection 768-915(1)).

## **Scheme**

13. 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.

### **Background**

14. Canva was incorporated in the State of Delaware in the United States of America (US) on 28 June 2012 under the *Delaware General Corporation Law* (DGCL).
15. Canva is a resident of Australia (as defined in subsection 6(1) of the *Income Tax Assessment Act 1936*) and a resident of the US for tax purposes.
16. Canva is the head company of the Canva income tax consolidated group comprising Canva, Canva Pty Ltd (CPL) and its wholly owned Australian subsidiaries. Canva also owns shares in various non-Australian subsidiaries directly and indirectly through CPL.
17. Canva had the following classes of shares on issue:
  - Class A common stock
  - Class B common stock
  - FF preferred stock, and

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- preferred stock.

### **Stock plans**

18. Canva maintained several stock plans for employees, directors and consultants of Canva and its subsidiaries. This included the following stock plans (together, the Plans and each a Plan) under which it issued options and RSUs to its employees and contractors (participants):

- 2016 Consultant Stock and Option Plan
- 2018 Canva, Inc. Employee Share Ownership Plan
- 2019 Amended & Restated Equity Incentive Plan, and
- 2024 Global Equity Incentive Plan.

19. The stock options were governed by the rules of the relevant Plan and were subject to the agreements associated with the relevant Plan.

20. The key features of stock options issued under each Plan were broadly as follows:

- RSUs and stock options were granted to participants for nil consideration.
- RSUs and stock options issued under the Plan were subject to such vesting conditions as specified in the relevant offer, such as time, exit and liquidity event conditions.
- Options issued under the Plans could only be transferred in limited circumstances, including with prior written consent of the Canva board or after an 'exit event' (as defined in the applicable Plan).

21. Subdivision 83A-C applied to the stock options and RSUs issued to participants under the Plans.

### **Restructure**

22. As part of the restructuring of the Canva global corporate group, commencing on 13 February 2025 (AEDT), New Canva was incorporated as the ultimate holding company of the Canva group.

23. Participation in the Restructure was available on the same terms to all interest holders of a particular type in Canva.

24. Post-Restructure, CPL intends to continue its business operations in substantially the same manner.

### **Detailed steps of the Restructure**

25. In carrying out the Restructure, the steps detailed at paragraphs 26 to 39 of this Ruling were undertaken.

#### ***Step 1: Incorporation of new company***

26. New Canva was incorporated in Delaware as a wholly owned subsidiary. Canva owned all the shares in New Canva.

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**Step 2: Incorporation of Merger Sub**

27. A wholly owned subsidiary of New Canva was incorporated in Delaware in the US (Merger Sub). New Canva owned all the shares in Merger Sub.

**Step 3: The Merger**

28. Pursuant to section 251(g) of the DGCL, the following steps occurred (collectively, the Merger):

- Canva surrendered its shares in New Canva.
- Merger Sub merged with and into Canva under a 'reverse triangular merger'.
- All shares of Canva were immediately cancelled and converted into a right to receive the same number of shares in New Canva, with the same rights, privileges and preferences as applied to the previously outstanding shares of Canva.
- Canva survived the merger as a wholly owned subsidiary of New Canva.

29. The Merger happened in accordance with section 251(g) of the DGCL and subject to and upon the terms and conditions of a merger agreement (Merger Agreement) entered into between Canva, New Canva and Merger Sub (collectively, the Parties).

30. The Merger became effective on 13 February 2025 (AEDT) (12 February 2025 US Eastern Standard Time (EST)) (Effective Time).

31. At the Effective Time, by virtue of the Merger and without any further action by the Parties or Canva shareholders:

- Merger Sub was merged with and into Canva, the separate corporate existence of Merger Sub ceased, and Canva continued as the surviving corporation of the Merger with all the contractual rights and obligations of Merger Sub being assumed by Canva as a result of the Merger. Under the DGCL, Merger Sub did not dissolve. Rather, the separate corporate existence of Merger Sub ceased to exist, and Canva continued as the surviving corporation, assuming all contractual rights and obligations of Merger Sub.
- All shares of Canva held by shareholders were cancelled under section 251(g) of the DGCL. In exchange, New Canva issued an identical number of shares with the same terms as the cancelled Canva shares. As a result, shareholders of Canva ceased to hold shares in Canva but instead became shareholders of New Canva.
- The ownership percentage or rights of shares held by Canva shareholders in Canva were the same as the ownership percentage and rights of shares they hold in New Canva. No monetary consideration was required for the exchange of Canva shares for New Canva shares.
- The rights attached to each New Canva share are equivalent to those attached to each cancelled Canva share, with the relative value of each New Canva share being identical to each cancelled Canva share.
- The outstanding shares of Merger Sub held by New Canva were, by operation of the DGCL, converted into shares of Canva, resulting in Canva surviving the Merger as a wholly owned subsidiary of New Canva.

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- The New Canva shares held by Canva immediately prior to the Merger were surrendered.

32. The Merger was completed at the Effective Time (Merger Closing Date), and Canva became a wholly owned subsidiary of New Canva.

33. At the Effective Time, pursuant to the Merger Agreement, Canva transferred to New Canva, and New Canva assumed all rights and agreed to perform all obligations of Canva with respect to, Canva's stock options and RSUs. The assumption of equity plans, equity awards and agreements was effected pursuant to the Merger Agreement and board actions by Canva and New Canva boards.

34. Under section 10 of the Merger Agreement, existing holders of stock options and RSUs in Canva were issued corresponding New Canva stock options and RSUs, which mirrored the terms and economic conditions of the existing Canva stock plans.

#### ***Step 4: Conversion to a Delaware limited liability company***

35. On the day after the Merger Closing Date (US EST), Canva converted to a Delaware limited liability company (Canva LLC), carried out in accordance with section 18-214 of the *Delaware Limited Liability Company Act* (DLLCA) and section 266 of the DGCL (conversion). The conversion became effective on 13 February 2025 (AEDT and US EST), being the date on which Canva filed the certificate of conversion (executed in accordance with the DGCL) with the Delaware Secretary of State.

36. Under Delaware law:

- Canva LLC's existence post conversion will be deemed to have commenced on 28 June 2012, the original incorporation date of Canva.
- Canva (prior to the conversion) and Canva LLC (post conversion) are considered to be the same legal entity. The conversion did not constitute a dissolution of Canva. The conversion involved a change of corporate form only, with the entity retaining the same assets and liabilities both before and after the conversion.

37. In connection with the conversion:

- The shares of Canva were converted into membership interests in Canva LLC under section 18-214(i) of the DLLCA and section 266(g) of the DGCL.
- Canva LLC maintained a separate legal existence, distinct from its members, for US corporate law purposes.
- Under Delaware corporate law, Step 4 required the consent of Canva shareholders holding a majority of voting power of Canva's share capital.

#### ***Step 5: Transfer of registration in Australia***

38. On 12 March 2025 (AEDT and US EST), Canva LLC registered as Canva Australia Holdings Pty. Ltd. (Canva Australia Holdings), a proprietary company limited by shares under Part 5B.1 of the *Corporations Act 2001*, transferring its registration from the US to Australia.

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**Step 6: US ‘check-the-box’ election**

39. A US ‘check the box’ election was made in respect of Canva Australia Holdings by filing US Internal Revenue Service Form 8832. The election classified Canva Australia Holdings as a ‘disregarded entity’ for US federal income tax purposes, effective from the time Canva LLC’s registration was transferred to Australia.

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**Commissioner of Taxation**

28 May 2025

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## Appendix – Explanation

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**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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### **Stock options and restricted stock units**

40. The object of section 83A-130 is to allow an ESS interest to continue being taxed under Division 83A, where either:

- an arrangement (takeover) is entered into that is intended to result in a company (old company) becoming a 100% subsidiary of another company, or
- there is a change in the ownership of an old company and, as a result, ESS interests in the old company can reasonably be regarded as having been replaced, in whole or part, by ESS interests in one or more other companies.

41. The Restructure satisfies the requirements of section 83A-130 in relation to Canva stock options and RSUs because:

- the Restructure is a 'takeover' because it resulted in Canva becoming a 100% subsidiary of another company, New Canva (subparagraph 83A-130(1)(a)(i))
- just before the Restructure, you held ESS interests in Canva in the form of Canva stock options or RSUs (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 New Canva stock options or RSUs (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, as they have the same terms as the old interests (paragraph 83A-130(2)(b))
- the new interests relate to ordinary shares in New Canva (subsection 83A-130(4))
- you were employed by New Canva, or a subsidiary of New Canva, at the time you acquired the new interests (paragraph 83A-130(9)(a)), and
- at the time you acquired the new interests, you did not hold a legal or beneficial interest in more than 10% of New Canva shares, and 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 New Canva (paragraph 83A-130(9)(b)).

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42. Accordingly, for the purposes of Division 83A, the New Canva stock options or RSUs you acquired in connection with the Restructure are treated as a continuation of your Canva stock options or RSUs you previously held (subsection 83A-130(2)).

43. There will not be an ESS deferred taxing point for the purposes of Subdivision 83A-C upon the exchange of your Canva stock options or RSUs for New Canva stock options or RSUs as part of the Restructure.

#### **Capital gains disregarded**

44. Any capital gain or capital loss from CGT event C2 happening to your Canva stock options or RSUs to which Subdivision 83A-C applies, and that have not been subject to an ESS deferred taxing point, will be disregarded under subsection 130-80(1) for the following reasons:

- the stock options or RSUs are ESS interests that you acquired under an employee share scheme (paragraph 130-80(1)(a))
- the CGT event that happens is CGT event C2 and not CGT event E4, G1 or K8 (paragraph 130-80(1)(b))
- Subdivision 83A-C applies to the stock options or RSUs, and CGT event C2 happened before the ESS deferred taxing point (subparagraph 130-80(1)(d)(ii)), and
- Subdivision 83A-C applies to the stock options or RSUs, and CGT event C2 did not happen because the ESS interest was forfeited or lost (subsection 130-80(2)).

45. If you were a temporary resident within the meaning of subsection 995-1(1) immediately before and at the time of the Restructure, any capital gain or capital loss you made from CGT event C2 happening to your Canva stock option or RSU is, disregarded also under subsection 768-915(1)).

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## References

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### *Legislative references:*

- ITAA 1936 6(1)
  - ITAA 1997 Div 83A
  - ITAA 1997 Subdiv 83A-C
  - 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(9)(a)
  - ITAA 1997 83A-130(9)(b)
  - ITAA 1997 104-25(2)(b)
  - ITAA 1997 104-25(3)
  - ITAA 1997 116-20(1)(b)
  - ITAA 1997 130-80
  - ITAA 1997 130-80(1)
  - ITAA 1997 130-80(1)(a)
  - ITAA 1997 130-80(1)(b)
  - ITAA 1997 130-80(1)(d)(ii)
  - ITAA 1997 130-80(2)
  - ITAA 1997 Div 230
  - ITAA 1997 768-915
  - ITAA 1997 768-915(1)
  - ITAA 1997 855-15
  - ITAA 1997 995-1(1)
  - Corporations Act 2001 Pt 5B.1
  - Delaware General Corporation Law 251(g)
  - Delaware General Corporation Law 266
  - Delaware General Corporation Law 266(g)
  - Delaware Limited Liability Company Act 118-214
  - Delaware Limited Liability Company Act 18-214(i)
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### ATO references

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