



TD 97/23A - Addendum - Income tax: what is the approved form of an election under subsection 139E(1) of the Income Tax Assessment Act 1936 ('the Act') so that it applies to all shares or rights acquired in an income year under a qualifying employee share acquisition scheme?

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Addendum

Taxation Determination

Income tax: what is the approved form of an election under subsection 139E(1) of the *Income Tax Assessment Act 1936* ('the Act') so that it applies to all shares or rights acquired in an income year under a qualifying employee share acquisition scheme?

This Addendum amends Taxation Determination TD 97/23 to:

- take into account the inclusion of stapled securities and rights to stapled securities in Division 13A of Part III of the *Income Tax Assessment Act 1936* (Division 13A) following amendments to that Division;¹
- amend the Determination question to reflect the correct terminology used in Division 13A; and
- update references to the *Income Tax Assessment Act 1936*.

The changes do not affect the answer to the question raised in this Determination.

TD 97/23 is amended as follows:

1. Title

Omit the title; substitute:

Income tax: what is the approved form of an election under subsection 139E(1) of the *Income Tax Assessment Act 1936* so that it applies to all qualifying shares or qualifying rights acquired in an income year under an employee share scheme?

¹ *Tax Laws Amendment (2007 Measures No. 1) Act 2007* (No. 56 of 2007).

2. Paragraph 1

Omit the paragraph; substitute:

1. Division 13A of Part III of the *Income Tax Assessment Act 1936* (ITAA 1936) provides for the taxation treatment of shares or rights acquired under employee share schemes and, very broadly, replaces section 26AAC of the ITAA 1936. Any discount from the market price of qualifying shares or qualifying rights is assessable at the time restrictions (if any) cease on the shares or rights unless the taxpayer makes an election to have the discount taxed at the time shares or rights are acquired.

3. Paragraph 2

After the paragraph, insert:

2A. An election made under subsection 139E(1) of the ITAA 1936 will include a stapled security or right to acquire a stapled security, acquired during the year of income, on or after 1 July 2006, where the stapled security or right to acquire a stapled security is treated as a qualifying share or qualifying right because of Subdivision DB.¹ Consequently, all references to shares or rights in this Determination are to be read as including, where appropriate, stapled securities or rights to stapled securities.

4. Paragraphs 4 and 6

Omit 'the Act' (wherever occurring); substitute 'the ITAA 1936'.

5. Subject references

Insert:

qualifying right
qualifying share

6. Legislative references

Omit the references; substitute:

ITAA 1936 Pt III Div 13A; ITAA 1936 Pt III Div 13A Subdiv DB; ITAA 1936 139B;
ITAA 1936 139B(2); ITAA 1936 139E; ITAA 1936 139E(1); ITAA 1936 139E(2)

¹ Subdivision DB was inserted into Division 13A by *Tax Laws Amendment (2007 Measures No. 1) Act 2007* (No. 56 of 2007). The amendments apply from 1 July 2006, the measures having been announced in the 2006-07 Budget.

This Addendum applies on and from 1 July 2006.

Commissioner of Taxation

22 August 2007

ATO references

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