


# ***CR 2003/91 - Income tax: Thales SA 'World Classic 2002' Employee Share Offer***

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## **Class Ruling**

### **Income tax: Thales SA ‘World Classic 2002’ Employee Share Offer**

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Contents	Para
What this Class Ruling is about	1
Date of effect	8
Arrangement	9
Ruling	19
Explanation	26
Detailed contents list	38

#### ***Preamble***

*The number, subject heading, and the **What this Class Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Arrangement** and **Ruling** parts of this document are a ‘public ruling’ in terms of Part IVAAA of the **Taxation Administration Act 1953**. CR 2001/1 explains **Class Rulings** and **Taxation Rulings** TR 92/1 and TR 97/16 together explain when a Ruling is a public ruling and how it is binding on the Commissioner.*

## **What this Class Ruling is about**

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1. This Ruling sets out the Commissioner’s opinion on the way in which the ‘tax law(s)’ identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates.

#### **Tax law(s)**

2. The tax laws dealt with in this Ruling are
- Section 23L of the *Income Tax Assessment Act 1936* (ITAA 1936);
  - Division 13A of the ITAA 1936;
  - Section 104-10 of the *Income Tax Assessment Act 1997* (ITAA 1997);
  - Section 104-25 of the ITAA 1997;
  - Section 110-25 of the ITAA 1997;
  - Subsection 112-20(1) of the ITAA 1997;
  - Division 110 of the ITAA 1997;
  - Division 115 of the ITAA 1997;
  - Subsection 116-20(1) of the ITAA 1997;
  - Section 43 of the *Fringe Benefit Tax Assessment Act 1986* (FBTAA 1986); and
  - Subsection 136(1) of the FBTAA 1986.

## **Class of persons**

3. The class of persons to which this Ruling applies consists of the Australian residents employed by Thales SA's Australian employer companies. These include Thales ATM Pty Ltd, Thales Solutions Australia Pty Ltd, Thales Geosolutions (Australasia) Ltd, Thales Training & Simulation Pty Ltd and Thales Underwater Systems Pty Ltd, who will participate in the offer under the arrangement described below in paragraphs 10 to 19. This ruling also applies to the class of persons consisting of Australian residents employed by ADI Ltd and its Australian subsidiaries who will participate in the offer under the arrangement described below in paragraphs 9 to 18. For convenience, these companies are collectively referred to below as the Thales SA group.

## **Qualifications**

4. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.

5. The class of persons defined in this Ruling may rely on its contents provided the arrangement actually carried out is carried out in accordance with the arrangement described below at paragraphs 9 to 18 in this Ruling.

6. If the arrangement actually carried out is materially different from the arrangement that is described in this Ruling:

- this Ruling has no binding effect on the Commissioner because the arrangement entered into is not the arrangement on which the Commissioner has ruled; and
- this Ruling may be withdrawn or modified.

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## Date of effect

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8. This Ruling applies to arrangements entered into during the income year ending 30 June 2003. This Ruling continues to apply, in respect of the tax law(s) ruled upon, even following 30 June 2003, for arrangements entered during the income year ended 30 June 2003. This is subject to there being no material change in the arrangement or in the class of persons involved in the arrangement. However, this Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

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## Arrangement

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9. The arrangement that is the subject of this Ruling is described below. It is entered into when the subscriptions referred to in paragraphs 12 to 14 below are made by employees. This description is based on the documents listed below. These documents, or the relevant parts of them, as the case may be, form part of and are to be read with this description. The relevant documents or parts of documents incorporated into this description of arrangement are:

- The application for Class Ruling dated 28 February 2003;
- Regulations of the 'Actionnariat Salarie Thales' A multi-compartment *Fonds Commun de Placement D'Enterprise (FCPE)*;
- Information Notice for the multi-compartment *fonds commun de placement d'entreprise*; and
- Draft Group Savings Plan (with amendments).

**Note: certain information received has been provided on a commercial-in-confidence basis and will not be disclosed or released under the Freedom of Information Legislation.**

### Description of the arrangement

10. 'World Classic 2002' is an arrangement under which Australian resident employees of the Thales SA group may invest in securities concerning a portfolio of Thales SA shares. It is referred to as the 'Classic Plan' to distinguish it from the 'World Leverage 2002' offer, known as the 'Leveraged Plan.'

11. Under the Classic Plan the share portfolio is held through a multi-compartment *Fonds Commun de Placement d'Entreprise* (FCPE). A FCPE is a collective investment vehicle without legal personality commonly used in France to facilitate employee share offers. There are six compartments of the Thales SA FCPE; 'World Classic 2002' is one.

12. The FCPE manager subscribes for ordinary shares in the capital of Thales SA pursuant to a capital increase reserved to company employees on a worldwide basis by Thales SA. The shares are held by the FCPE custodian in the name of the FCPE.

13. The 'Subscription Price' payable by the FCPE is at a discount of 20% to the 'reference price' – the average of the opening market price of the Thales SA shares over the 20 trading days preceding the date the price is set by the board of directors of Thales SA or its president as applicable (i.e. 2 July 2002).

14. The minimum investment under the Classic Plan has been fixed at 120 euro. The maximum amount that may be invested is 25% of the employees 2002 estimated gross annual compensation. The amount invested may be paid by account deduction or bank debit.

15. In consideration for their investment employees are allotted units in the FCPE. When a unit is issued, one unit is equivalent to the value of one Thales SA share. However, from that time the value of a unit is the 'Net Asset Value' as defined under the FCPE By-laws. Accordingly the units held are an entitlement to a fraction of the net assets held under the FCPE name.

16. Units may be redeemed by a unit holder for Net Asset Value less a redemption commission of 0.30% at the maturity date of 2 April 2007 or earlier in the event that a condition of early redemption is satisfied.

17. At the maturity date unit holders may redeem their entitlements for Thales SA shares. In the case of early redemption, e.g. the unit holder ceases employment with the Thales SA group, the unit holder's entitlements based on the Net Asset Value at the relevant time are satisfied by Thales SA shares.

18. Dividends paid on the shares held in the Fund are not paid on to unit holders but reinvested by the FCPE in further Thales SA shares.

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## Ruling

19. When units in the FCPE are issued to a Thales SA Australian employee, they constitute a fringe benefit as defined in subsection 136(1) of the FBTA 1986. Fringe benefits are exempt from income

tax in the hands of the employee, under section 23L of the ITAA 1936.

20. Dividends received by the FCPE manager in relation to Thales SA shares held in the name of the FCPE are not assessable to the Australian resident unit holders.

21. If an Australian resident unit holder redeems units in the FCPE, a CGT event C2 occurs pursuant to section 104-25 of the ITAA 1997. A capital gain results if the capital proceeds exceed the cost base of the units. A capital loss occurs if the capital proceeds are less than their reduced cost base.

22. The capital proceeds of a redemption (CGT event C2) consist of any cash received and the market value of any shares acquired in consideration for the redemption (subsection 116-20(1) applies).

23. The cost base or reduced cost base of the units redeemed consists of the amount invested by the unit holder i.e. their contribution to the Subscription Price. (section 110-25 applies).

24. If an Australian resident unit holder makes a capital gain on redemption of the unit holder's units and the interest in the FCPE represented by the units redeemed was acquired 12 months or more prior to the CGT event C2 happening, the gain is a discount capital gain pursuant to Division 115 of the ITAA 1997.

25. If an Australian resident unit holder, having redeemed their units in the FCPE in consideration for Thales SA shares, disposes of the shares a CGT event A1 happens (refer section 104-10). The capital gain or capital loss with respect to the disposal of the Thales SA shares is calculated on the basis of the first element of cost base or reduced cost base of the shares being their market value at the date of acquisition. If a capital gain is made, it will be a discount capital gain pursuant to Division 115 if the acquisition of the shares occurred 12 months or more prior to the disposal.

## **Explanation**

### **Exemption of the benefit from acquisition of units at a discount**

26. The provision of units in the FCPE to Australian resident employees is a fringe benefit for the purposes of the FBTAA 1986. The provision of the units are a 'fringe benefit' as defined in subsection 136(1) as the units are a benefit that are provided to an employee by the employee's employer and are provided in respect of their employment with the Thales SA group.

27. The benefit provided is not excluded from the fringe benefits tax regime by paragraph (ha) of the definition of 'fringe benefit' in subsection 136(1); it is not 'a benefit constituted by the acquisition by a person of a share or right under an employee share scheme (within the meaning of Division 13A of Part III of the *Income Tax Assessment Act 1936*)'. In this regard the unit holder's interest under the FCPE regulations (a *chose in action*) is not identical with the inherent or underlying interest that the unit holder may have in shares that are part of the net assets. This issue is discussed in greater depth in CR 2003/53 at paragraphs 47 to 56 inclusive.

28. The fringe benefit is classified as an external property fringe benefit, the taxable value of which falls for determination under section 43 of the FBTAA 1986.

29. In accordance with section 23L of the ITAA 1936 Australian resident employees acquiring units in the Fund are exempt from tax on the benefit obtained.

### **Taxation of dividends**

30. Dividend income received with respect to Thales SA shares held in the name of the FCPE will not be assessable income of Australian resident unit holder's as they are not directly entitled to that income.

### **Capital Gains Tax**

31. The general capital gains tax rules under Part 3-1 of the ITAA 1997 would apply to CGT events in relation to the interests in net assets of the FCPE represented by units and shares acquired via redemption of units. The units are not units in a unit trust and Taxation Determination TD 2000/32 does not apply.

32. Section 104-25 provides that CGT event C2 happens if your ownership of an intangible CGT asset ends by it being redeemed or cancelled. Accordingly when an Australian resident unit holder redeems units in the FCPE there will be a CGT event.

33. If the redemption is satisfied fully or partly by the transfer of Thales SA shares, the capital proceeds with respect to CGT event C2 will include in addition to any money received the market value of the shares at the date of the redemption (refer subsection 116-20(1)).

34. Under Division 110, the cost base or reduced cost base of units in the FCPE acquired by subscription includes the subscription price paid. In the event that, during the period of the unit holder's membership of the FCPE, unit holders' interests have been redenominated by the manager adjusting the number of units in the Fund and accordingly the number held by each unit holder, the original cost base or reduced cost base will be spread over the revised number of units.

35. If a unit holder redeems FCPE units for Thales SA shares and subsequently sells the shares, a CGT event A1 occurs pursuant to section 104-10 with respect to the shares. The first element of the cost base or reduced cost base of the shares will be the market value of the Thales SA shares at the date they were acquired (subsection 112-20(1) applies).

36. For the purposes of Division 115 (discount capital gains) the time of acquisition of units will be the date that the units related to the interest redeemed were subscribed for by the unit holder. This is when the relevant interest in the FCPE was acquired regardless of whether at the date of redemption the interest was denominated differently as a result of adjustments made by the FCPE manager for the purpose of equalising unit value with the market price of a Thales SA share.

37. Thales SA shares obtained by redeeming units in the FCPE are acquired at the redemption time for the purposes of Division 115 (discount capital gains).

## **Detailed contents list**

38. Below is a detailed contents list for this Class Ruling:

	<b>Paragraph</b>
<b>What this Class Ruling is about</b>	<b>1</b>
Tax law(s)	2
Class of persons	3
Qualifications	4
<b>Date of effect</b>	<b>8</b>
<b>Arrangement</b>	<b>9</b>
Description of the arrangement	10



# CR 2003/91

<b>Ruling</b>	<b>19</b>
<b>Explanation</b>	<b>26</b>
Exemption of the benefit from acquisition of units at a discount	26
Taxation of dividends	30
Capital Gains Tax	31
<b>Detailed contents list</b>	<b>38</b>

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**Commissioner of Taxation**22 October 2003

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*Previous draft:*

Not previously released in draft form

- fringe benefits tax

- reduced cost base

- reinvested income

*Related Rulings/Determinations:*

CR 2001/1; CR 2003/53; TR 92/1;

TR 97/16; TR 92/20; TD 2000/32

*Legislative references:*

- ITAA 1936 23L

- ITAA 1936 Div 13A

- ITAA 1936 Div 13A Part III

- ITAA 1997 Part 3-1

- ITAA 1997 104-10

- ITAA 1997 104-25

- ITAA 1997 110-25

- ITAA 1997 112-20(1)

- ITAA 1997 Div 110

- ITAA 1997 Div 115

- ITAA 1997 116-20(1)

- FBTAA 1986 43

- FBTAA 1986 136(1)

- FBTAA 1986 136(1)(ha)

- Copyright Act 1968

- TAA 1953 Part IVAAA

*Subject references:*

- acquisition of share or right

- capital gains tax

- CGT event A1

- CGT event C2

- cost base

- chose-in-action

- discount capital gains

- dividends

- employee savings plan

- employee share schemes

- external property fringe benefit

- Fonds Commun De Placement

D'Enterprise

- fringe benefit

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ATO references

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