CR 2005/21 - Income tax: Westpac Banking Corporation Employee (Deferral) Share Plan

Class Ruling

Income tax: Westpac Banking Corporation Employee (Deferral) Share Plan

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Preamble

The number, subject heading, ***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

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax laws' 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 139B of the *Income Tax Assessment Act 1936* (ITAA 1936);
- section 139BA of the ITAA 1936;
- section 139C of the ITAA 1936;
- section 139CA of the ITAA 1936;
- section 139CC of the ITAA 1936;
- section 139CD of the ITAA 1936;
- section 139E of the ITAA 1936;
- section 139FA of the ITAA 1936;
- section 139FB of the ITAA 1936;
- section 139G of the ITAA 1936;
- section 102-20 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 104-10 of the ITAA 1997;
- section 104-25 of the ITAA 1997;
- section 109-5 of the ITAA 1997;

- section 110-25 0f the ITAA 1997;
- section 115-100 of the ITAA 1997;
- section 116-20 of the ITAA 1997;
- section 116-30 of the ITAA 1997;
- section 130-80 of the ITAA 1997; and
- section 130-83 of the ITAA 1997.

Class of persons

3. The class of persons to which this Ruling applies is all Australian resident employees of the Westpac Group (the Group) listed below who participate in the Westpac Banking Corporation Deferral Share Plan (DSP) as described in the arrangement part of this Ruling. In this Ruling, a person belonging to this class of persons is referred to as a participating employee. The Group comprises:

- Westpac Banking Corporation (Westpac);
- 1925 (Commercial) Limited;
- M.A.C. Nominees Pty Limited;
- Mazbond Pty Limited;
- Palaver Pty Limited;
- Reveille Pty Limited;
- Brenmar Holdings Pty Limited;
- Runkelli Pty Limited;
- 1925 (Industrial) Limited;
- A.C.N 001 231 027 Pty Limited;
- Personaldirect Limited;
- A.C.N 007 552 454 Limited;
- Colmso Pty Limited;
- Colmtea Pty Limited;
- Como Properties Pty Limited;
- Autodirect Pty Limited;
- 1925 (Insurance Premium Funding) Limited;
- 1925 (Properties) Limited;
- 1925 House Limited;
- Ormiston Pty Limited;
- Hesse Pty Limited;
- Pranbrooke Pty Limited;

- 1925 Advances Limited;
- General Credits Holdings Limited;
- General Credits Limited;
- G.C.L. Investments Limited;
- Island Princess Holdings Pty Limited;
- Reef International Pty Limited;
- Bill Acceptance Corporation Limited;
- Mortgage Management Limited;
- Biralo Pty Limited;
- CBA Limited;
- Westpac Properties – Vic – Limited;
- Westpac Properties – NSW – Pty Limited;
- Westpac Matching Gifts Limited;
- Huben Holdings Pty Limited;
- Hull 4381 and 4382 Leasing Pty Limited;
- Partnership Pacific Limited;
- Westpac Administration Pty Limited;
- Carseldine Pty Limited;
- Glenunga Pty Limited;
- Maliny Pty Limited;
- Partnership Pacific Securities Limited;
- Wistow Pty Limited;
- The Mortgage Company;
- Piccadilly of Sydney Pty Limited;
- Jaunty Pty Limited;
- Pitco Pty Limited;
- Sarnia Pty Limited;
- Sixty Martin Place (Holdings) Pty Limited;
- Claremont Bond Pty Limited;
- Comserv (No. 3011) Pty Limited;
- Enfield Downs Pty Limited;
- Westpac Equipment Finance (No. 1) Pty Limited;
- Ivaness Pty Limited;
- Oakjet Pty Limited;

- Westpac Direct Equity Investments Pty Limited;
- Teuton Pty Limited;
- Loy Yang B Agencies Pty Limited;
- Westpac Asian Lending Pty Limited;
- Westpac Debt Securities Pty Limited;
- Westpac Equipment Finance Limited;
- Westpac Equipment Finance (Vic) Pty Limited;
- Infrastructure Australia (No. 1) Limited;
- Infrastructure Australia (No. 2) Limited;
- Infrastructure Australia (No. 3) Limited;
- Infrastructure Australia (No. 4) Limited;
- Packaging Properties 1 Pty Limited;
- Packaging Properties 2 Pty Limited;
- Packaging Properties 3 Pty Limited;
- EHM Investco Pty Limited;
- Westpac Group Investments Australia Pty Limited;
- Howlong Pty Limited;
- Westpac Infrastructure Management Limited;
- WIML Services Pty Limited;
- Westpac Alpha Pty Limited;
- Westpac Investment Vehicle Pty Limited;
- Westpac Resources and Infrastructure Pty Limited;
- Westpac Structured Investments Limited;
- Pacific Structured Funding Limited;
- Vicpac Chatswood Pty Limited;
- Westpac Structured Products Limited;
- Net Nominees Limited;
- Westpac Securities Limited;
- Westpac Equity Holdings Pty Limited;
- Belliston Pty Limited;
- Westpac Financial Consultants Limited;
- Westpac Information Technology Services Pty Limited;
- Westpac Training Services Pty Limited;
- Westpac Private Equity Pty Limited;

- Westpac Retirement Plan Pty Limited (ex Torlane P/L);
- Westpac Securitisation Management Pty Limited;
- Westpac Financial Services Group Limited;
- Westpac Financial Services Limited;
- Westpac Insurance Services (Brokers) Limited;
- Westpac Equity Pty Limited;
- A.F.G. Insurances Limited (in vol liq);
- Westpac General Insurance Limited;
- Westpac Investment Management Pty Limited;
- Westpac Securities Administration Limited;
- The Wales Nominees (Vic) Pty Limited;
- Westpac Custodian Nominees Limited;
- Westpac Insurance Services Superannuation Fund Limited;
- Westpac Nominees – Canberra – Pty Limited;
- Westpac Nominees – SA – Pty Limited;
- Westpac Lenders Mortgage Insurance Limited;
- Westpac Life Insurance Services Limited;
- Westpac Funds Management Limited;
- Westpac Finance Pty Limited;
- Westpac Investment Holdings Pty Limited;
- Westpac Leasing Nominees Pty Limited;
- Westpac Leasing Nominees – Vic – Pty Limited;
- Westpac Leasing Pty Limited;
- Westpac OMG Holdings Pty Limited;
- Qvalent Pty Limited;
- Westpac Structured Management Pty Limited;
- Westpac Overseas Funding Pty Limited;
- Westpac Overseas Holdings Pty Limited;
- Altitude Rewards Pty Ltd;
- Altitude Administration Pty Ltd;
- Westpac Altitude Rewards Trust;
- Westpac Properties Limited;
- Collins Wales Pty Limited;

- Westpac Institutional Holdings Pty Limited;
- Westpac Property Investments Pty Limited;
- Westpac Syndications Management Pty Limited;
- Westpac Tasman No. 1 Pty Limited;
- Westpac Tasman No. 2 Pty Limited;
- BLE Capital Pty Limited;
- BLE Capital Investments Pty Limited;
- BLE Development Pty Limited;
- BLE Holdings Pty Limited;
- Westpac Funding Holdings Pty Limited;
- Challenge Limited;
- Challenge Finance Limited;
- Challenge Funds Management Limited;
- Challenge Information Technology Pty Limited;
- RESI-Statewide Mortgage Corporate Limited;
- RESI-Statewide Nominees Limited;
- RESI-Statewide Corporation Limited;
- Maracorp Financial Services Pty Limited;
- Salmoor Pty Limited;
- S.A.L. Financial Services Pty Limited;
- MFS Services Pty Limited;
- 52 Collins St Pty Limited;
- Sagitta Wealth Management Limited;
- Sagitta Investment Management Limited;
- Hargrave Investments Pty Limited;
- BT (Queensland) Pty Ltd;
- BT Australia Corporate Services Pty Ltd;
- BT Australia Pty Ltd;
- BT Finance & Investments Pty Ltd;
- BT Finance Pty Ltd;
- BT Financial Group Limited;
- BT Funds Management Ltd;
- BT Life Ltd;
- BT Nominees Pty Ltd;

- BT Portfolio Services Ltd;
- BT Securities Ltd;
- BT Wealth Management Pty Ltd;
- Chifley Services Pty Ltd;
- Oniston Pty Ltd;
- Hastings Funds Management Limited; and
- QVI Pty Ltd.

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 in paragraphs 9 to 22.

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

- 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.

Date of effect

8. This Ruling applies to years commencing both before and after its date of issue. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of a 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). Furthermore, this Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*;
- it is not taken to be withdrawn by an inconsistent later Public Ruling; or
- the relevant taxation laws are not amended.

Arrangement

All provisions mentioned hereinafter relate to the ITAA 1936 unless stated otherwise.

9. The arrangement that is the subject of the Ruling is described below. This description is based on the following documents:

- The Westpac Banking Corporation Deferral Share Plan Rules (the DSP Rules);
- the application for Class Ruling dated 27 February 2003;
- facsimile from Westpac dated 30 June 2003;
- letter from Westpac dated 9 October 2003;
- letter from Westpac dated 17 December 2003;
- letter from Westpac dated 19 February 2004; and
- e-mail from Westpac dated 5 November 2004.

These documents, or relevant parts of them, as the case may be, form part of and are to be read with this description.

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.

10. The DSP was established as part of the employee share strategy of Westpac. The DSP commenced in the year ending 30 June 2003 and is administered by Employee Share Plan Pty Ltd (the Plan Company) or such other person as nominated from time to time by the Board of Westpac (the Board).

11. The Board will invite eligible employees to apply to acquire shares in Westpac under the DSP.

12. Upon acceptance of the application, eligible employees will become participating employees.

13. At least 75% of permanent employees will have the opportunity, in a particular year, to participate in the DSP or another employee share scheme operated by Westpac.

14. Westpac may issue shares to participating employees, or the Plan Company may purchase shares on-market and allocate them to participating employees.

15. The Plan Company will fund on-market acquisitions with funds contributed by participating employees under effective salary sacrifice arrangements within the meaning of paragraphs 19 to 23 of Taxation Ruling TR 2001/10. The DSP does not otherwise provide for participating employees to provide consideration for the acquisition of shares under the DSP.

16. All shares acquired under the DSP will be ordinary shares in Westpac and will be listed on the Australian Stock Exchange (ASX).

17. Shares acquired under the DSP will be subject to a holding lock.

18. Under the holding lock a participating employee will not be permitted to dispose of shares acquired under the DSP until the earliest of:

- the 10th anniversary of the acquisition date, or such other time as may be determined by the Board;
- the date the participating employee ceases employment within the meaning of subsection 139CA(3);
- the time of receipt by the Plan Company of a participating employee's request for release from the holding lock; or
- if the Board so determines, the date on which the participating employee's employer ceases to be part of the Group.

19. Until the holding lock is released a participating employee's ownership of shares acquired under the DSP may be forfeited where the employee has acted fraudulently or dishonestly or is in material breach of his or her obligations to the Group.

20. Upon forfeiture the participating employee's shares will be transferred to the Plan Company and the Plan Company will deal with these shares in accordance with the DSP Rules. The Plan Company at its discretion may pay a total of $1 to the participating employee for all their forfeited shares.

21. Where shares are mistakenly allocated to a participating employee (the mistaken employee), the employee will have no right or interest in the shares and will hold the shares absolutely for the account of the Plan Company and when directed by the Plan Company must transfer the shares to the Plan Company as soon as practicable.

22. At no time will a participating employee hold a legal or beneficial interest in more than 5% of the shares of Westpac. Also at no time will a participating employee be in a position to cast or control the casting of more than 5% of the maximum number of votes at a general meeting of Westpac.

Ruling

23. Under the DSP a participating employee will acquire a qualifying share (for the purposes of section 139CD) when Westpac issues a share to a participating employee, or the Plan Company purchases a share on-market and allocates it to the participating employee.

Where an employee makes an election

24. Where a participating employee makes an election under section 139E, the discount given in relation to a share acquired under the DSP will be included in their assessable income in the year of income in which the share is acquired, pursuant to subsection 139B(2).

25. The discount to be included in the participating employee's assessable income is equivalent to the market value of the share at the time it is acquired. The market value of a share at this time is determined under section 139FA.

Capital gains tax

26. Where a participating employee acquires a share under the DSP they also acquire the share for capital gains tax (CGT) purposes.

27. Where the share is disposed of a capital gain will arise if the capital proceeds from the disposal exceed the cost base of the share. Conversely a capital loss will arise if the reduced cost base of the share exceeds the capital proceeds.

28. The cost base of the share will be an amount comprising the market value of the share, calculated under section 139FA, plus any other amounts identified in accordance with section 110-25 of the ITAA 1997.

29. Where the disposal is 12 months or more after acquisition, any capital gain that results from the disposal will be a discount capital gain.

Where an employee does not make an election

30. Where a participating employee does not make an election under section 139E, the discount given in relation to a share will be included in their assessable income in the year of income in which the cessation time occurs, pursuant to subsection 139B(3).

31. The cessation time will be the earliest of:

- the time when the share is released from the holding lock;
- the time when the participating employee disposes of the share (that is, through forfeiture of the share);
- the time when the participating employee ceases employment with their employer or a group company, pursuant to subsection 139CA(3); or
- the end of the 10 year period starting when the participating employee acquired the share.

Disposal within 30 days

32. Where the participating employee subsequently disposes of a share in an arm's length transaction within 30 days of the cessation time, the discount assessable at the cessation time will be the amount of consideration received on the disposal of the share, in accordance with subsection 139CC(3).

33. Where the share is disposed of as a result of forfeiture, the discount will be the amount the participating employee receives from the Plan Company for the disposal.

34. Any capital gain or capital loss made as a consequence of such a disposal will be disregarded.

Disposal after 30 days

35. Where a share is not disposed of by the participating employee in an arm's length transaction within 30 days of the cessation time, the discount will be the market value of the share at the cessation time in accordance with subsection 139CC(4).

36. Where a participating employee disposes of the share acquired under the DSP other than in an arm's length transaction within 30 days of the cessation time, a capital gain or loss may arise (refer to paragraph 27 of this Ruling).

37. In determining the gain or loss the first element of the cost base of the share is the market value of the share at the cessation time, pursuant to subsection 130-80(2) of the ITAA 1997.

Forfeiture of shares

38. Where a share is forfeited under the DSP it will be disposed of for CGT purposes when the participating employee transfers the share to the Plan Company.

39. Where the Plan Company pays a total of $1 to the participating employee for all their shares that will be the capital proceeds. However where the Plan Company pays nothing for the forfeited share, the capital proceeds will be the market value of the share at the disposal time.

Shares allocated in error

40. Where under the DSP a share is mistakenly allocated to a participating employee and subsequently transferred to the Plan Company:

- the mistaken employee does not acquire a share under an employee share scheme for the purposes of Division 13A of Part III (Division 13A); and
- the mistaken employee does not acquire a share for CGT purposes and no capital gain or loss arises on the transfer of the share to the Plan Company.

Explanation

41. A share will be acquired under an employee share scheme, pursuant to Division 13A, if it is:

- acquired within the meaning of section 139G;
- acquired in respect of the employment of an employee, pursuant to subsection 139C(1); and
- acquired for less than market value, pursuant to subsection 139C(3).

42. Section 139G provides that an employee will acquire a share in several circumstances, including by acquiring a legal interest in the share, or having it allotted or transferred to them by another person.

43. Under the DSP a participating employee acquires a legal interest in a Westpac share when Westpac issues the share to them, or the Plan Company purchases the share on-market and allocates it to them. Thus participating employees will acquire a share within the meaning of section 139G.

44. The DSP Rules note that the DSP has been established as an initiative for creating a stronger link between employee reward and increasing shareholder value. As such, any share acquired under the DSP is considered to be acquired by a participating employee in respect of their employment, pursuant to subsection 139C(1).

45. Where a Westpac share is purchased from funds contributed by Group companies under effective salary sacrifice arrangements, (refer to paragraphs 19 to 23 of Taxation Ruling TR 2001/10) no consideration will be paid or given by participating employees for the acquisition of share.

46. Thus as no consideration is paid or given by participating employees for the acquisition of a share, participating employees will acquire a share for less than market value, pursuant to subsection 139C(3).

47. The Commissioner accepts that the conditions specified in section 139CD are satisfied. Thus a share acquired under the DSP will be a qualifying share for the purposes of Division 13A.

48. Where an employee acquires a share under an employee share scheme, pursuant to subsection 139B(1), the assessable income of the employee, subject to section 139BA, includes the discount given in relation to the share.

49. Where the share is a qualifying share the year of income in which the discount is included and the amount of the discount depend on whether the employee has made a section 139E election in relation to the acquisition of the share.

Where an employee makes an election

50. An employee can elect under section 139E that subsection 139B(2) apply in respect of all shares acquired by the employee in a year of income. Subsection 139B(2) provides that the discount in relation to a share is included in the employee's assessable income in the year of income in which the share is acquired.

51. The amount of the discount to be included is calculated in accordance with subsection 139CC(2). The discount being the market value of the share at the time it was acquired by the employee.

52. Subdivision F of Division 13A contains special provisions to determine the market value of a share on a particular day. As the ordinary shares in Westpac are listed on the ASX, section 139FA provides that their market value is:

- if there was at least one transaction on the ASX in those shares in the week up to and including the date of acquisition – the weighted average of the prices at which those shares were traded on the ASX during that week; or
- if there were no such transactions in the week up to and including the date of acquisition – the last price at which an offer was made on the ASX in that period to buy such a share, or if no offer was made, the value as determined under section 139FB.

Capital gains tax

53. Where a share is issued to an employee, or purchased on-market and allocated to an employee the employee will acquire the share for CGT purposes, pursuant to section 109-5 of the ITAA 1997.

54. When the share is subsequently disposed of a capital gain will arise if the capital proceeds from the disposal exceed the cost base of the share. Conversely a capital loss will arise if the reduced cost base exceeds the capital proceeds, pursuant to subsection 104-10(4) of the ITAA 1997.

55. Where an employee acquires a qualifying share and makes a section 139E election, the first element of the cost base of the share, for the purposes of the CGT provisions is determined in accordance with subsection 130-80(2) of the ITAA 1997. Where the share is quoted on a stock market of an approved stock exchange on the day, the first element of the cost base of the share will be the market value of the share, determined under section 139FA, at the time the employee acquires the share. In addition to the first element of the cost base, any incidental costs incurred in acquiring the share, non-capital holding costs, capital expenditure incurred to increase the value of the share or to establish, preserve or defend the employee's title to the share are included in the share's cost base, pursuant to section 110-25 of the ITAA 1997.

56. Where the disposal is 12 months or more after the acquisition, any capital gain that results from the disposal will be a discount capital gain under Subdivision 115-A of the ITAA 1997. The discount percentage for participating employees will be 50%, pursuant to section 115-100 of the ITAA 1997.

Where an employee does not make an election

57. Where an employee acquires a qualifying share and does not make an election under section 139E, the discount given in relation to the share is included in the employee's assessable income in the year of income in which the cessation time occurs, pursuant to subsection 139B(3).

58. As the DSP contains forfeiture provisions, the cessation time will be determined in accordance with subsection 139CA(2). As the DSP Rules provide for a share to be forfeited up until the holding lock is released, the cessation time will be the earlier of:

- the time when the share is disposed of in accordance with the DSP forfeiture provisions;
- the time when the holding lock is lifted;
- the time when the participating employee ceases to be employed by their employer or a group company, pursuant to subsection 139CA(3); or
- the end of the 10 year period starting when the participating employee acquired the share.

59. The amount of the discount to be included in an employee's assessable income is determined under section 139CC and will depend on whether the share is disposed of in an arm's length transaction within 30 days of the cessation time.

Disposal within 30 days

60. Where an employee disposes of the share in an arm's length transaction within 30 days of the cessation time the discount to be included in assessable income, is the amount or value of any consideration received by the employee for the disposal less the amount or value of any consideration paid or given by the employee for the acquisition of the share, pursuant to subsection 139CC(3).

61. Where a participating employee forfeits a share under the DSP the Commissioner accepts the disposal will be at arm's length (refer to paragraph 68). Thus the discount to be included in assessable income will be the amount they receive from the Plan Company. Where no amount is received there is no discount included in assessable income.

62. Any capital gain or loss made as a consequence of an arm's length disposal within 30 days of the cessation time is disregarded, pursuant to subsection 130-83(2) of the ITAA 1997.

Disposal after 30 days

63. Where the employee does not dispose of a share in an arm's length transaction within 30 days of the cessation time, the discount will be the market value of the share at the cessation time less the amount or value of any consideration paid or given by the employee for the acquisition of the share, pursuant to subsection 139CC(4).

64. Where the share is a qualifying share and no election is made under section 139E of the ITAA 1936, a capital gain or loss may arise upon disposal (refer to paragraph 27 of this Ruling) and the first element of the cost base of the share will be its market value at the cessation time, pursuant to subsection 130-83(3) of the ITAA 1997.

65. For the purposes of subsection 139CC(4) of the ITAA 1936 and subsection 130-83(3) of the ITAA 1997, the market value of a share acquired under the DSP is determined under section 139FA of the ITAA 1936.

Forfeiture of shares

66. On forfeiture of a share under the DSP, CGT event A1 will happen when ownership of the share is transferred to the Plan Company. The participating employee will make a capital gain if the capital proceeds from the disposal exceed the cost base of the share, or a capital loss, if the reduced cost base exceeds the capital proceeds, pursuant to section 104-10 of the ITAA 1997.

67. Where the Plan Company pays a total of $1 to a participating employee for all their forfeited shares, the participating employee will have received capital proceeds in respect of the disposal.

68. As the DSP Rules apply equally to all participating employees, the Commissioner accepts that a participating employee and the Plan Company will deal with each other at arm's length in connection with the disposal. Thus the market value substitution rule in subsection 116-30(2) of the ITAA 1997 will not apply, and the capital proceeds from the disposal will be $1, pursuant to subsection 116-20(1) of the ITAA 1997.

69. Where the Plan Company pays nothing to a participating employee for a forfeited share, the participating employee will receive no capital proceeds from the disposal. Thus the participating employee will be taken to have received capital proceeds equal to the market value of the share at the disposal time, pursuant to subsection 116-30(1) of the ITAA 1997.

Shares allocated in error

70. An employee will acquire a share for the purposes of Division 13A if another person transfers or allots the share to the employee or the employee otherwise acquires a legal or beneficial interest in the share from another person.

71. Where a share is mistakenly allocated to a participating employee under the DSP, the DSP Rules state that the mistaken employee will have no right or interest in the share, and that the mistaken employee holds the share absolutely for the account of the Plan Company, and must transfer the share to the Plan Company when directed by the Plan Company.

72. Whilst the DSP Rules state that the mistaken employee holds the share absolutely for the account of the Plan Company, this is only to effect rectification of the mistake and the Commissioner accepts that the mistaken employee never acquires a right or interest in the share. Thus the mistaken employee will not acquire the share for the purposes of Division 13A.

Capital gains tax

73. For CGT purposes an employee will acquire a share if they become the owner. Where a share is allocated to a mistaken employee under the DSP, the mistaken employee does not acquire a right or interest in a share and thus will never own the share. In these circumstances the mistaken employee is taken never to acquire the share for CGT purposes.

74. A person will make a capital gain or loss if a CGT event happens, pursuant to section 102-20 of the ITAA 1997.

75. Where a mistaken employee transfers the share to the Plan Company, CGT event A1 will only happen if there is a change in the ownership of a share from the employee to the Plan Company, pursuant to subsection 104-10(2) of the ITAA 1997. As the mistaken employee never owns the share, CGT event A1 does not happen and as no other CGT event is considered to happen, no capital gain or loss will arise on the transfer of the share to the Plan Company.

Detailed contents list

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

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Commissioner of Taxation
13 April 2005

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

CR 2001/1; TR 92/1; TR 92/20; TR 97/16; TR 2001/10

Subject references:

- acquisition of shares
- capital gains tax
- CGT discount
- CGT cost base
- CGT events
- cost base
- dismissal of employees
- disposal of shares
- employee share ownership
- employee share schemes & options
- employees
- forfeiture of rights & entitlements
- income
- resignation of employees
- share discounts on employee share schemes
- shareholders
- shares

Legislative references:

- TAA 1953 Pt IVAAA
- Copyright Act 1968
- ITAA 1936 Pt III Div 13A
- ITAA 1936 139B
- ITAA 1936 139B(1)
- ITAA 1936 139B(2)
- ITAA 1936 139B(3)
- ITAA 1936 139BA
- ITAA 1936 139C
- ITAA 1936 139C(1)
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- ITAA 1936 139CA
- ITAA 1936 139CA(2)
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- ITAA 1936 139CC(3)
- ITAA 1936 139CC(4)
- ITAA 1936 139CD
- ITAA 1936 139E
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- ITAA 1936 139FA
- ITAA 1936 139FB
- ITAA 1936 139G
- ITAA 1997 102-20
- ITAA 1997 104-10
- ITAA 1997 104-10(2)
- ITAA 1997 104-10(4)
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- ITAA 1997 Subdiv 115-A
- ITAA 1997 115-100
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- ITAA 1997 116-30
- ITAA 1997 116-30(1)
- ITAA 1997 116-30(2)
- ITAA 1997 130-80
- ITAA 1997 130-80(2)
- ITAA 1997 130-83
- ITAA 1997 130-83(2)
- ITAA 1997 130-83(3)

ATO references

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