



CR 2005/98 - Income tax: Qantas Deferred Share Plan - 2002 Performance Bonus Plan Rules

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Class Ruling

Income tax: Qantas Deferred Share Plan – 2002 Performance Bonus Plan Rules

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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.*

[Note: This is a consolidated version of this document. Refer to the Tax Office Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]

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 139CB of the ITAA 1936;
- section 139CC of the ITAA 1936;
- section 139CD of the ITAA 1936;
- section 139CE of the ITAA 1936;
- section 139DD of the ITAA 1936;
- section 139E of the ITAA 1936;
- section 139FA of the ITAA 1936;
- section 139FB of the ITAA 1936;
- section 139FC of the ITAA 1936;

- section 139FE of the ITAA 1936;
- section 139FF of the ITAA 1936;
- section 139G of the ITAA 1936;
- section 104-10 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 104-25 of the ITAA 1997;
- subsection 109-5 of the ITAA 1997;
- section 109-10 of the ITAA 1997;
- section 110-25 of the ITAA 1997;
- section 112-20 of the ITAA 1997;
- section 115-5 of the ITAA 1997;
- section 115-10 of the ITAA 1997;
- section 115-30 of the ITAA 1997;
- section 115-100 of the ITAA 1997;
- section 116-30 of the ITAA 1997;
- section 130-60 of the ITAA 1997;
- section 130-80 of the ITAA 1997;
- section 130-83 of the ITAA 1997; and
- section 974-75 of the ITAA 1997.

Class of persons

3. The class of persons to which this Ruling applies is all Australian resident members of the Executive Committee of Qantas Airways Limited (Qantas) who participate in the Qantas Deferred 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.

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 26.

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.

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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.

Note: The Addendum to this Ruling that issued on 18 October 2006 applies from the income year ended 30 June 2005.

Arrangement

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

- the application for Class Ruling dated 21 April 2005;
- Qantas Deferred Share Plan Terms and Conditions (DSP Terms and Conditions);
- Qantas Deferred Share Plan – 2002 Performance Bonus Plan Rules (DSP Rules);
- correspondence from Qantas Airways Limited dated 18 July 2005;

- Qantas Code of Conduct and Ethics; and
- correspondence from Qantas Airways Limited dated 19 June 2006 and 28 August 2006.

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 plan strategy of the Qantas Group and provides a platform for a broader based delivery of equity ownership to employees.

11. The DSP commenced on 17 October 2002.

12. Under the Terms and Conditions of the DSP the Board may from time to time offer shares or grant rights to an Eligible Employee subject to such conditions as it determines.

13. The DSP Rules provide for DSP shares, being fully paid ordinary shares in Qantas, to be offered to members of the Executive Committee.

14. The participating employee pays no consideration to acquire the DSP shares.

15. Participating employees will be offered 10% of their 2002 bonus in DSP shares under a salary sacrifice arrangement. They also have the opportunity to salary sacrifice a further 40% of their gross bonus in DSP shares.

16. The DSP shares are acquired on-market by Qantas and registered in the name of the participating employee. The DSP shares will be subject to a Holding Lock Period.

17. At the date of registration of the DSP shares offered under the DSP Rules, the participating employee will also be granted DSP rights on the basis of one right for every nine DSP shares acquired under the offer.

18. The DSP rights are granted to the participating employee during the Holding Lock Period.

19. The participating employee pays no consideration to acquire the DSP rights.

20. The DSP rights are personal to the participating employee and cannot be transferred, assigned or sold.

21. The applicant has advised that the DSP shares and DSP rights acquired by the participating employees under the DSP are qualifying shares and qualifying rights for the purposes of section 139CD of the ITAA 1936.

22. A disposal restriction applies to all DSP shares, such that the DSP shares cannot be dealt with by the participating employee until the expiration of the Holding Lock Period. The Holding Lock Period is

the earlier of two years or the date the participating employee ceases employment with Qantas Group.

22A. The applicant has advised that various procedures introduced since 2002 have been implemented under the Code of Conduct and Ethics – Insider Trading Policy. The procedures are intended to restrict the sale of Qantas securities by participating employees who are in possession of material, non-public information. Material, non-public information is information that could or would be likely to influence persons in deciding to buy or sell Qantas securities.

22B. Since 2002, a range of identified directors and executives (nominated employees) were required to provide prior written notice of intent to sell Qantas securities and make a statement that they were not at that time in possession of material, non-public information.

22C. From February 2006, a range of identified Qantas group finance staff (finance employees) are required to obtain approval to sell Qantas securities. Approval is subject to the non holding of material, non-public information.

22D. From July 2006, a revised process that applies to an expanded range of identified directors, executives and senior staff (expanded nominated employees) requires them to seek formal approval from the CEO (or his delegated nominee) to sell Qantas securities. The request for approval must state that at the time they do not believe they are in possession of material, non-public information.

23. Unless the Board otherwise determines, the DSP rights will lapse if the participating employee ceases employment with the Qantas Group within two years from the date of registration of the DSP shares.

24. If a DSP right has not lapsed, the DSP right will vest upon expiry of the Holding Lock Period. DSP rights which vest will automatically be converted to Qantas shares. These shares shall be acquired on-market by Qantas at no cost to the participating employee.

25. On a DSP right lapsing, all rights of the participating employee under the DSP in respect of the DSP right cease and no consideration or compensation will be payable for, or in relation to, the lapsing of the DSP right.

26. The applicant states that the Rules do not satisfy the exemption conditions in section 139CE of the ITAA 1936 and therefore subsection 139BA(2) of the ITAA 1936 will not apply to reduce the discount included in assessable income.

Ruling

[All legislative references are to the ITAA 1936 unless stated otherwise.]

27. A DSP share or DSP right will be a share or right acquired under an employee share scheme and will be a qualifying share for the purposes of section 139CD.

28. For the purposes of Division 13A a DSP share is acquired by the participating employee on the date the participating employee acquires a legal interest in the DSP share. A DSP right is acquired by a participating employee at the time the DSP right is granted.

29. A share acquired by a participating employee as result of exercising a DSP right will not be a share acquired under an employee share scheme, pursuant to subsection 139C(4).

Where an employee makes an election

30. Where a participating employee makes an election under section 139E, the discount given in relation to the DSP share or the DSP right acquired is included in the participating employee's assessable income in the year of income in which the DSP share or DSP right is acquired, pursuant to subsection 139B(2).

31. The discount included in the participating employee's assessable income will be an amount equivalent to the market value of the DSP share or the DSP right at the time of acquisition, as no consideration is paid or given by the participating employee to acquire the DSP share or right, pursuant to subsection 139CC(2).

32. Subsection 139BA(2) will not apply to reduce the discount included in the participating employee's assessable income.

Capital gains tax

33. A participating employee acquires a DSP share for capital gains tax (CGT) purposes when the DSP share is registered in the name of the participating employee pursuant to section 109-5 of the ITAA 1997.

34. Where the DSP share is subsequently disposed of by, or on behalf of, the participating employee, the participating employee makes a capital gain where the capital proceeds from the disposal are more than the cost base of the DSP share. Conversely, a capital loss will arise where the capital proceeds are less than the reduced cost base.

35. The first element of the cost base or reduced cost base of the DSP share is the market value of the DSP share worked out under sections 139FA to 139FF as at the date of acquisition pursuant to subsection 130-80(2) of the ITAA 1997.

36. A DSP right will be acquired by a participating employee for CGT purposes at the time the DSP right is granted. For the purposes of CGT, the DSP right is a convertible interest.

37. Any capital gain or capital loss made by the participating employee on the conversion of a DSP right is disregarded pursuant to subsection 130-60(3) of the ITAA 1997.

38. Where a share acquired as a result of the conversion of the DSP right is disposed of by the participating employee a capital gain or capital loss may arise.

39. Pursuant to subsection 130-60(1) of the ITAA 1997 the first element of the cost base or reduced cost base of the share will be equal to the cost base of the DSP right at the time of the conversion. The share is acquired by the participating employee at the time it is allotted or transferred to them.

40. Where the disposal of the DSP share or the share acquired as a result of conversion of the DSP right occurs 12 months or more after the date of acquisition, any capital gain that results from the disposal will be a discount capital gain, subject to meeting the requirements of Subdivision 115-A of the ITAA 1997.

Rights lapse

41. Where a participating employee acquires a DSP right and it lapses without having been exercised section 139DD applies to treat the DSP right as never having been acquired. The amount of the discount will be excluded from the participating employee's assessable income.

42. The participating employee will not make a capital gain or capital loss in relation to the DSP right lapsing.

Where an employee does not make an election

43. Where a participating employee has not made an election under section 139E, the discount given in relation to the DSP share or the DSP right will be included in the participating employee's assessable income in the year of income in which the cessation time occurs, pursuant to subsection 139B(3).

44. The cessation time for a DSP share, under subsection 139CA(2) will be the earlier of:

- the time when the participating employee disposes of the DSP share;
- the later of:
 - the time when the holding lock period ceases to have effect; and
 - the time when any additional disposal restrictions cease to have effect, that are in

effect or imposed on participating employees who are nominated employees, finance employees or expanded nominated employees, under the Qantas Code of Conduct and Ethics at the time the holding lock period expires, where those participating employees are, at that time, in possession of material, non-public information; and

- the time when any forfeiture conditions ceases to have effect;
- the time when the participating employee ceases to be employed by the Qantas Group; or
- the end of the 10 year period starting when the participating employee acquired the DSP share.

45. The cessation time for a DSP right, under subsection 139CB(1) will be the earlier of:

- the time when the participating employee disposes of the DSP right (other than by exercising it);
- the time when the participating employee ceases employment with their employer or a group company, pursuant to subsection 139CB(2);
- the time when any disposal restrictions on a DSP share (acquired on conversion by exercise of a DSP right) cease to have effect, that are in effect or imposed on participating employees who are nominated employees, finance employees or expanded nominated employees, under the Qantas Code of Conduct and Ethics at the time the DSP share is acquired, where those participating employees are, at that time, in possession of material, non-public information;
- if there are no disposal restrictions as outlined above, the time the DSP right is exercised; or
- the end of the 10 year period starting when the participating employee acquired the right.

Disposal within 30 days of cessation time

46. Where the participating employee disposes of the DSP share in an arm's length transaction at, or within 30 days of, the cessation time the discount on the DSP share is calculated under subsection 139CC(3). The discount assessable to the participating employee will be the amount or value of any consideration received on the disposal of the DSP share as no consideration has been given for the acquisition of the DSP share.

47. Where a DSP right is exercised and the participating employee disposes of the share acquired as a result of the DSP right being exercised, in an arm's length transaction at, or within 30 days of the cessation time, the discount on the DSP right is calculated under subsection 139CC(3). The discount assessable to the participating employee will be the amount of consideration received on disposal of the share, as no amount is paid to acquire or exercise the DSP right.

Capital gains tax

48. Any capital gain or capital loss made as a consequence of an arm's length disposal within 30 days of the cessation time of a DSP share or of a share acquired as a result of the conversion of the DSP right will be disregarded, pursuant to subsection 130-83(2) of the ITAA 1997.

49. Any capital gain or capital loss made by the participating employee on the conversion of a DSP right within 30 days of the cessation time is disregarded pursuant to subsection 130-83(2) of the ITAA 1997.

Disposal after 30 Days of cessation time

50. Where the participating employee does not dispose of the DSP share in an arm's length transaction at or within 30 days of the cessation time, the discount assessable will be the market value of the DSP share at the cessation time, in accordance with subsection 139CC(4).

51. Where the cessation time occurs on exercise of the DSP right and the share acquired as a result of the exercise of the right is disposed of by the participating employee more than 30 days after the cessation time, or in a non-arm's length transaction, the discount on the DSP right is calculated under subsection 139CC(4). The discount assessable to the participating employee will be the market value of the share acquired at the cessation time, calculated in accordance with section 139FA, as no amount is paid to exercise the DSP right.

52. If the DSP right is exercised after the cessation time and the share acquired as a result of the exercise of the right is disposed of by the participating employee more than 30 days after the cessation time, or in an arm's length transaction, the discount assessable to the participating employee will be the market value of the right at the cessation time.

Capital gains tax

53. Where a participating employee disposes of a DSP share, other than in an arm's length transaction at or within 30 days of cessation time, a capital gain or capital loss may arise (refer to paragraph 34 of this Ruling).

54. The first element of the cost base of the DSP share is the market value of the DSP share at the cessation time worked out under sections 139FA to 139FF, pursuant to subsection 130-83(3) of the ITAA 1997.

55. Any capital gain or capital loss made by the participating employee on the conversion of a DSP right more than 30 days after the cessation time is disregarded pursuant to subsection 130-60(3) of the ITAA 1997.

56. A capital gain or capital loss may arise on the disposal of the share acquired as a result of the conversion of the DSP right, pursuant to subsection 104-10(4) of the ITAA 1997.

57. The first element of the cost base of the share acquired as a result of the conversion of the DSP right will be the cost base of the DSP right at the time of conversion pursuant to subsection 130-60(1) of the ITAA 1997.

58. Where a DSP share or a share acquired as a result of the conversion of the DSP right, is disposed of 12 months or more after acquisition, any capital gain that results from the disposal will be a discount capital gain subject to meeting the requirements of Subdivision 115-A of the ITAA 1997.

Rights lapse

59. Where a DSP right, in respect of which no section 139E election has been made, lapses and triggers the cessation time no amount is included in assessable income under subsection 139B(3).

60. The participating employee will not make a capital gain or capital loss in relation to the DSP right lapsing.

Explanation

61. A share or right 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 the market value and therefore not excluded under subsection 139C(3).

62. Pursuant to section 139G a person will acquire a share when they acquire a legal interest in the share. A right will be acquired when another person creates the right in the employee or where the employee acquires a legal interest in the right from another person.

63. For the purposes of this Ruling, the Commissioner accepts the statement by the applicant that shares and rights acquired under the DSP are qualifying shares and qualifying rights for the purposes of section 139CD.

64. A participating employee will acquire a legal interest in a DSP share. A qualifying right is acquired when it is granted to the participating employee.

65. The DSP was established as part of the employee share scheme strategy of the Qantas group and provides a platform for a broader based delivery of equity ownership to employees. As such, any DSP share or DSP right acquired is considered to be acquired by a participating employee in respect of their employment.

66. Qantas will acquire the DSP share on-market with amounts contributed under effective salary sacrifice arrangements. Consideration paid or given by an employee to acquire shares does not include amounts sacrificed under an effective salary sacrifice arrangement. As the participating employee will not have provided any consideration to acquire the DSP share, the participating employee will not acquire the DSP shares for market value.

67. As no consideration is paid or given by a participating employee to acquire the DSP right, the participating employee will not acquire the DSP right for market value.

68. Where a participating employee acquires a DSP share or DSP right the discount given in relation to the DSP share or DSP right is included in the assessable income of the participating employee, pursuant to subsection 139B(1).

69. As the DSP share or DSP right is a qualifying share or qualifying right the year of income in which the discount is included in the participating employee's assessable income and the amount of the discount depend on whether the participating employee has made a section 139E election in relation to the acquisition of the DSP share or DSP right.

Where an employee makes an election

70. A participating employee can elect under section 139E that subsection 139B(2) applies in respect of all DSP shares or DSP rights acquired by them in a year of income. Subsection 139B(2) provides that the discount in relation to a DSP share or DSP right is included in the participating employee's assessable income in the year of income in which the DSP share or DSP right is acquired.

71. The amount of the discount to be included in the participating employee's assessable income is calculated in accordance with subsection 139CC(2). The discount on the DSP share is the market value of the DSP share at the time it was acquired by the participating employee as no consideration is paid or given by the participating employee for the acquisition of the DSP share.

72. The discount on the DSP right is the market value of the DSP right at the time it was acquired by the participating employee, as no consideration is paid or given by the participating employee for the acquisition of the DSP right.

73. Subdivision F of Division 13A contains special provisions to determine the market value of a share or right on a particular day. As ordinary Qantas shares are quoted on an approved stock exchange (ASX), section 139FA provides that its market value will be:

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

74. As the DSP right will not be quoted on an approved stock exchange, the market value of the DSP right will be determined in accordance with section 139FC or section 139FE.

75. As the DSP right has a nil exercise price, the market value of the DSP right is determined pursuant to subsection 139FE(1) and will be equal to the market value (determined under section 139FA) of a Qantas share on the day the DSP right was granted (see paragraph 73 of this Ruling).

76. Where a participating employee makes an election under section 139E and the exemption conditions in section 139CE are satisfied in relation to the DSP share or DSP right, subsection 139BA(2) will apply to reduce the discount included in assessable income by up to \$1,000.

77. Qantas has stated that the exemption conditions in section 139CE are not satisfied in relation to a DSP share or DSP right and as such subsection 139BA(2) does not apply.

Capital gains tax

78. A participating employee acquires the DSP share for CGT purposes when the DSP share is registered in the name of the participating employee pursuant to section 109-5 of the ITAA 1997.

79. Where the DSP share is subsequently disposed of a capital gain will arise if the capital proceeds from the disposal exceed the cost base of the DSP 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.

80. Where a participating employee acquires a DSP share and makes a section 139E election, the first element of the cost base or reduced cost base of the DSP share for CGT purposes is determined in accordance with subsection 130-80(2) of the ITAA 1997. Under subsection 130-80(2) of the ITAA 1997, the first element of the cost base or reduced cost base is the market value of the DSP share worked out under sections 139FA to 139FF as at the time the participating employee acquires the DSP share.

81. The participating employee will acquire a CGT asset, pursuant to subsection 109-5 of the ITAA 1997, at the time a DSP right is granted. For the purposes of CGT the DSP right is a convertible interest of the kind referred to in item 4 of the table in subsection 974-75(1) of the ITAA 1997.

82. Pursuant to subsection 130-80(2) of the ITAA 1997, the first element of the cost base of the DSP right will be the market value of the DSP right worked out under sections 139FA to 139FF at the time the participating employee acquires the DSP right.

83. Any capital gain or capital loss made by the participating employee on the conversion of a DSP right is disregarded pursuant to subsection 130-60(3) of the ITAA 1997.

84. A DSP right will be converted when the DSP right vests upon the second anniversary of having been granted the DSP right and the DSP right automatically converting to a share by Qantas.

85. A capital gain or capital loss may arise on the disposal of the share acquired as a result of the conversion of the DSP right, pursuant to subsection 104-10(4) of the ITAA 1997.

86. Where shares are allotted or transferred to a participating employee as a result of a DSP right being converted the participating employee will acquire a CGT asset at that time, pursuant to subsections 109-5 and 109-10 of the ITAA 1997.

87. Where the participating employee disposes of a share acquired as a result of conversion of the DSP right, a capital gain will arise pursuant to subsection 104-10(4) of the ITAA 1997, if the capital proceeds from the disposal of the share exceed the cost base of the share. A capital loss will arise if the reduced cost base exceeds the capital proceeds received.

88. The first element of the cost base of the share will be the cost base of the DSP right at the time of conversion, pursuant to subsection 130-60(1) of the ITAA 1997.

89. Where the participating employee disposes of a share acquired as a result of the conversion of the DSP right, any capital gain arising from the disposal will be a discount capital gain if it satisfies the requirements of Subdivision 115-A of the ITAA 1997.

90. Pursuant to subsection 115-25(1) of the ITAA 1997, any capital gain the participating employee makes on the disposal of the DSP share or the share acquired as a result of the conversion of the DSP right will be a discount capital gain if the disposal of the share occurs 12 months or more after acquisition of the share. 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

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

92. The cessation time in respect of a DSP share may be different to the cessation time in respect of a DSP right.

93. As DSP shares are subject to disposal restrictions the cessation time will be determined pursuant to subsection 139CA(2) and will be the earliest of:

- the time when the participating employee disposes of the DSP share (that is, where the holding lock period has not expired and the participating employee has forfeited their interest in the share);
- the later of:
 - the time when any restriction preventing disposal of the DSP share by the participating employee ceases (that is at the end of the holding lock period); and
 - the time when any additional disposal restrictions cease to have effect, that are in effect or imposed on participating employees who are nominated employees, finance employees or expanded nominated employees, under the Qantas Code of Conduct and Ethics – Insider Trading Policy. This will only apply to additional restrictions imposed or in place at the time the 2 year holding lock period expires, in relation to participating employees who are nominated employees, finance employees or expanded nominated employees, and who, at that time are in possession of material, non-public information; and
- the time when any forfeiture condition ceases to have effect (that is, at the end of the holding lock period and the DSP share is transferred to the participating employee);

- the time when the participating employee ceases to be employed by either their employer (being their employer at the time they acquired the share) or a Qantas Group company, pursuant to subsection 139CA(3); or
- the end of the 10 year period starting when the participating employee acquired the DSP share.

93A. Participating employees who are nominated employees, finance employees or expanded nominated employees, and who are not in possession of material, non-public information at the time of the expiry of the holding lock period and who subsequently acquire material non-public information at any time after the expiry of the holding lock period, will not be considered to be subject to additional disposal restrictions for the purposes of determining when a cessation time occurs under subsection 139CA(2).

94. The cessation time of a DSP right is determined in accordance with subsection 139CB(1). As the share acquired by a participating employee (as a result of exercising a DSP right) is not subject to disposal restrictions, nor subject to forfeiture, the cessation time will be the earlier of:

- the time when the participating employee disposes of the DSP right (other than by exercising it);
- the time when the participating employee ceases employment with their employer or a group company, pursuant to subsection 139CB(2);
- the time when any disposal restrictions on a DSP share (acquired on conversion by exercise of a DSP right) cease to have effect, that are in effect or imposed on participating employees who are nominated employees, finance employees or expanded nominated employees, under the Qantas Code of Conduct and Ethics – Insider Trading Policy. This will only apply to restrictions imposed or in place at the time the DSP share is acquired (on conversion by exercise of the DSP right), in relation to participating employees who are nominated employees, finance employees or expanded nominated employees, and who, at that time are in possession of material, non-public information;
- if there are no disposal restrictions that are in effect or imposed on participating employees who are nominated employees, finance employees or expanded nominated employees, under the Qantas Code of Conduct and Ethics – Insider Trading Policy, the time when the participating employee exercises the DSP right; and
- the end of the 10 year period starting when the participating employee acquired the DSP right.

95. The exercising of a DSP right occurs when it vests and the time when the DSP right is automatically converted to a DSP share by Qantas may be a cessation time.

95A. Participating employees who are nominated employees, finance employees or expanded nominated employees, and who, are not in possession of material, non-public information at the time a DSP share is acquired (on conversion by exercise of a DSP right) and who subsequently acquire material non-public information at any time after the DSP share is acquired, will not be considered to be subject to additional disposal restrictions for the purposes of determining when a cessation time occurs for a DSP right, under subsection 139CB(1).

96. A cessation time will occur before the DSP right vests if a participating employee ceases employment with the Group after 30 June 2006.

97. The amount of the discount to be included in a participating employee's assessable income is determined under section 139CC and will depend on whether the DSP share or DSP right, or any share acquired as a result of the exercise of the right, is disposed of in a non-arm's length transaction within 30 days of the cessation time.

Disposal within 30 days

98. Where a participating employee disposes of a DSP share in an arm's length transaction at, or within 30 days of, the cessation time the amount of the discount to be included in the participating employee's assessable income is calculated in accordance with subsection 139CC(3). The discount is the amount or value of any consideration received by the participating employee for the disposal of the DSP share as no consideration has been paid or given by the participating employee for the acquisition of the DSP share (see paragraph 67 of this Ruling).

99. Where a participating employee disposes of a share acquired as a result of the exercise of the DSP right, in an arm's length transaction within 30 days of the cessation time, the discount on the DSP right to be included in the participating employee's assessable income is determined in accordance with subsection 139CC(3).

100. Where a participating employee exercises the DSP right and disposes of the share acquired as a result of the exercise of the right, the discount on the DSP right will be the amount or value of any consideration they receive for the disposal of the share acquired as a result of the exercise of the right less the amount of any consideration they have paid or given to acquire or exercise the right.

101. As the participating employee does not pay any consideration to acquire the DSP right or to exercise that right the discount to be included in the participating employee's assessable income will be the value of the shares received in consideration for the disposal of the DSP right.

Capital gains tax

102. Subsection 130-83(2) of the ITAA 1997 has the effect that where CGT event A1, C2, E1, E2 or E5 happens in relation to the DSP share in an arm's length transaction at, or within 30 days of, the cessation time, any capital gain or capital loss the participating employee makes from the event is disregarded.

103. Any capital gain or capital loss made by the participating employee on the conversion of a DSP right within 30 days of the cessation time is disregarded pursuant to subsection 130-83(2) of the ITAA 1997.

104. As the conditions in subsection 130-83(2) of the ITAA 1997 are satisfied, any capital gain or capital loss made as a consequence of an arm's length disposal within 30 days of the cessation time of a share acquired as a result of converting the DSP right is disregarded.

Disposal after 30 days

105. Where a participating employee does not dispose of a DSP share in an arm's length transaction at, or within 30 days of, the cessation time the discount on the DSP share to be included in a participating employee's assessable income is calculated in accordance with subsection 139CC(4). The discount is the market value of the DSP share at the cessation time less the amount or value of any consideration paid or given by the employee for the acquisition of the DSP share (which is nil).

106. Where the cessation time for a DSP right occurs on exercise of the DSP right and the share acquired as a result of the exercise of the right is not disposed of by the participating employee at, or within, 30 days of the cessation time, or is disposed of in a non-arm's length transaction, the discount on the DSP right will be the market value of the share at the cessation time (see paragraphs 73 to 75 of this Ruling).

107. Where a DSP right is exercised after the cessation time and any share acquired as a result of the exercise of the right is not disposed of at, or within 30 days of the cessation time, or in a non-arm's length transaction, the discount in respect of the DSP right is determined under subsection 139CC(4).

108. The amount of the discount on the DSP right will be the market value of the DSP right at the cessation time less the amount of any consideration they have paid or given to acquire or exercise the right. As the participating employee does not pay any consideration to acquire the DSP right the discount will be the market value of the DSP right at the cessation time.

109. The market value of the DSP right is calculated pursuant to Subdivision F of Division 13A. As the DSP rights have a nil exercise price the market value of the DSP right will be equal to the market

value of the shares acquired, calculated in accordance with section 139FA (see paragraphs 73 to 75 of this Ruling).

Capital gains tax

110. Subsection 130-83(3) of the ITAA 1997 has the effect that where CGT event A1, C2, E1, E2 or E5 does not happen in relation to the DSP share in an arm's length transaction at, or within 30 days of, the cessation time, the first element of the cost base or reduced cost base of the DSP share is its market value at the cessation time.

111. For the purposes of subsection 130-83(3) of the ITAA 1997, the market value of a DSP share is determined under section 139FA.

112. Any capital gain or capital loss made by the participating employee on the conversion of a DSP right more than 30 days after the cessation time is disregarded pursuant to subsection 130-60(3) of the ITAA 1997.

113. Where a participating employee disposes of a share acquired as a result of the conversion of a DSP right a capital gain or capital loss may arise.

114. Pursuant to subsection 130-60(1) of the ITAA 1997, the first element of the cost base of the share acquired as a result of the conversion of the DSP right will be the cost base of the DSP right at the time of conversion. Pursuant to subsection 130-83(3) of the ITAA 1997, the first element of the cost base of the DSP right will be the market value of the DSP right worked out under sections 139FA to 139FF at the cessation time.

Where rights lapse

115. Where a participating employee's DSP right lapses in accordance with the DSP Rules this will constitute the ending of an intangible CGT asset (CGT event C2) and pursuant to subsection 104-25(3) of the ITAA 1997, the participating employee may make a capital gain or a capital loss on the lapse of the DSP right.

116. However, pursuant to section 139DD a lapsed DSP right is deemed never to have been acquired for the purposes of Division 13A and therefore Subdivision 130-D of the ITAA 1997 does not apply. Any capital gain or capital loss is determined under Part 3-1 of the ITAA 1997.

117. The first element of the cost base of the DSP right will be nil as a participating employee does not provide any consideration for the acquisition of the DSP right. The market value substitution rule has no application, pursuant to Item 5 in the table in subsection 112-20(3) of the ITAA 1997.

118. Whilst a participating employee will not receive any capital proceeds from the lapse of the DSP right, the market value substitution rule will not apply as it is accepted that the lapse of the

DSP right (in accordance with the DSP Rules) constitutes an ending by expiry, pursuant to subsection 116-30(3) of the ITAA 1997.

119. As such a participating employee will not make a capital gain or capital loss where a DSP right lapses in accordance with the DSP Rules.

120. Where a participating employee acquires a DSP right and it lapses without having been exercised section 139DD applies to treat the DSP right as never having been acquired. The amount of the discount will be excluded from the participating employees' assessable income. Where the conditions under section 139DD apply, subsection 139DD(4) provides that the assessable discount can be excluded from the participating employees' assessment at any time.

Detailed contents list

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Commissioner of Taxation

16 November 2005

<i>Previous draft:</i>	- ITAA 1936 139CA
Not previously issued as a draft	- ITAA 1936 139CA(2)
	- ITAA 1936 139CA(3)
<i>Related Rulings/Determinations:</i>	- ITAA 1936 139CB
CR 2001/1; TR 92/1; TR 92/20;	- ITAA 1936 139CB(1)
TR 97/16	- ITAA 1936 139CB(2)
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	- ITAA 1936 139CC(2)
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- acquisition of shares	- ITAA 1936 139CC(4)
- capital gains tax	- ITAA 1936 139CD
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