


CR 2008/72 - Income tax: Skilled Group Limited Executive Share Option Plan

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Class Ruling

Income tax: Skilled Group Limited Executive Share Option Plan

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This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provisions identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provision(s)

2. The relevant provision dealt with in this ruling is:
- Division 13A of Part III (Division 13A) of the *Income Tax Assessment Act 1936* (ITAA 1936).

All legislative references in this Ruling are to the ITAA 1936 unless otherwise indicated.

Class of entities

3. The class of entities to which this Ruling applies is persons who are granted an option to acquire shares in Skilled Group Limited (an option) under the Skilled Group Limited Executive Share Option Plan (the plan).

In this Ruling, a person belonging to this class of entities is referred to as a participant.

Qualifications

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

5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 9 to 15 of this Ruling.

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

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme 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 from 1 July 2008. However, this Ruling will 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 this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Scheme

9. The scheme that is the subject of this Ruling is described below. This description is based on the following documents. These documents, or 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 the scheme are:

- the application for a Class Ruling from Deloitte Touche Tohmatsu Ltd dated 22 August 2008; and
- a copy of the Skilled Group Limited Executive Share Option Plan 2007 Rules.

10. Under the plan, eligible employees of Skilled Group Limited (Skilled Group) or a subsidiary company may be granted an option to acquire ordinary shares (shares) in Skilled Group.

11. When an option is granted, the directors of Skilled Group will determine the number of shares that may be acquired upon exercise of that option, the exercise price, the exercise period, and the conditions (including the performance criteria) to be satisfied before exercise.

12. Options are generally granted to a participant for no consideration.

13. Where the performance criteria are met, an option will vest after three years from the date of grant. Options that have not vested are retested against the performance criteria in the fourth and fifth years. To the extent that an option does not vest after this time, it will lapse.

14. Performance criteria are based on the minimum average annual percentage increase in earnings per share in the three financial years from the beginning of the financial period from which the performance measurement commences.

15. An option granted under the plan entitles a participant to acquire multiple shares, usually in parcels of 10,000. When the vesting criteria are satisfied a participant may exercise the option to acquire some or all of the shares subject to that option by paying the exercise price for the number of shares being acquired. Any shares not acquired by exercise remain exercisable until all shares under the option have been acquired or the option has lapsed.

Ruling

16. Where a participant acquires an option under the plan, the participant acquires a right under an employee share scheme for the purposes of Division 13A.

Commissioner of Taxation

5 November 2008

Appendix 1 – Explanation

❶ ***This Appendix 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.***

17. An employee will acquire a right under an employee share scheme for the purposes of Division 13A where that right is:

- a right for the purposes of Division 13A;
- acquired within the meaning of section 139G;
- acquired in respect of their employment (subsection 139C(1)); and
- acquired for less than market value (subsection 139C(3)).

18. The expression right as used in Division 13A is not defined, but as the expressions right and right to acquire a share are used interchangeably throughout Division 13A, the Commissioner considers that a right should be taken to mean a right to acquire a share.

19. Where at the time a right is granted to an employee:

- the employee has a right to acquire a share on the exercise or operation of the right; and
- for the purposes of subsection 139B(2), the amount of the discount in respect of such a right can reasonably be determined,

the Commissioner considers the right to be a right for the purposes of Division 13A.

20. The plan provides for a participant to acquire a number of shares (usually in parcels of 10,000) on the exercise of a vested option. The vesting of an option and the number of shares that may actually be obtained on exercise may vary according to whether certain performance criteria are satisfied.

21. Where a participant is granted an option under the plan which, subject to the vesting criteria, gives a participant multiple rights to acquire shares, the amount of the discount (in relation to all such rights) to be included in the participant's assessable income for the purposes of subsection 139B(2) must be capable of being calculated at the time of grant of the option. When determining the amount of the discount, the Commissioner considers that calculation should be based on the maximum number of rights under the option that will vest where the performance criteria are satisfied in full, providing those criteria are reasonably capable of being satisfied.

22. Pursuant to the performance criteria in the plan, the maximum number of rights that can vest under an option granted to a participant is considered reasonably achievable. Accordingly, the amount to be included in the assessable income of a participant, for the purposes of subsection 139B(2), is capable of being calculated at the time the option is granted.

23. Therefore, when a participant is granted an option under the plan which creates an entitlement that may result in a participant acquiring more than one share, the Commissioner accepts that such an option creates in the participant a number of rights to acquire shares under an employee share scheme for the purposes of Division 13A.

Appendix 2 – Detailed contents list

24. The following is a detailed contents list for this Ruling:

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Subject references:

- employee share schemes & options

Legislative references:

- ITAA 1936
 - ITAA 1936 Pt III Div 13A
 - ITAA 1936 139B(2)
 - ITAA 1936 139C(1)
 - ITAA 1936 139C(3)
 - ITAA 1936 139G
 - TAA 1953
 - Copyright Act 1968
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ATO references

NO: 2008/16953

ISSN: 1445-2014

ATOlaw topic: Income Tax ~~ Assessable income ~~ employee share schemes