


CR 2011/93 - Income tax: Citigroup Inc reverse stock split - effect on employee share schemes

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Class Ruling

Income tax: Citigroup Inc reverse stock split – effect on employee share schemes

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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, we must apply the law to you in the way set out in the ruling (unless we are satisfied that the ruling is incorrect and disadvantages you, in which case we may apply the law in a way that is more favourable for you – provided we are 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 Class Ruling sets out the Commissioner's opinion on the treatment and impact of a reverse stock split on Citigroup Inc's Employee Share Scheme for income tax purposes. Specifically, it considers the way in which the relevant provision(s) 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:

- Section 83A-110 of the *Income Tax Assessment Act 1997* (ITAA 1997).

All subsequent legislative references in this Ruling are to the ITAA 1997 unless otherwise indicated.

Class of entities

3. The class of entities to which this Ruling applies is all persons who were granted deferred stock under the Capital Accumulation Program (CAP); or stock options to acquire common stock in Citigroup Inc under the Citi Employee Option Grant Program (Option Program), on or after 1 July 2009 while they were employees of either Citigroup Pty Ltd or Citicorp Pty Ltd, and held those deferred stock or stock options immediately prior to the reverse stock split. They are persons who:

- from the time of grant to the time of the reverse stock split, were residents of Australia within the meaning of subsection 6(1) of the *Income Tax Assessment Act 1936*; and
- had not had an ESS deferred taxing point happen in relation to those deferred stock or stock options prior to the reverse stock split.

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

Qualifications

4. 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 8 to 25 of this Ruling.

5. 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

7. This Ruling applies from 1 July 2010 to 30 June 2011. The Ruling continues to apply after 30 June 2011 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. 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

8. The following description of the scheme that is the subject of this Ruling is based on the following documents provided by Citigroup Pty Ltd. These documents, or relevant parts of them, as the case may be, form part of and are to be read with this description.

- Application for Class Ruling dated 9 June 2011 (the Application)
- Proxy Statement dated 10 March 2011
- Citigroup Inc Press Release dated 9 May 2011
- 2009 Citigroup Inc Stock Incentive Plan (the Plan)
- 2011 Capital Accumulation Program Prospectus dated 18 January 2011 (CAP Prospectus)
- Citi Employee Option Grant Program dated 29 October 2009 (Program Prospectus)
- Question and Answers Flyer issued on 29 April 2011

9. Citigroup Inc (Citigroup) is a public company incorporated in the United States, the common stock of which are listed and traded on the New York Stock Exchange (NYSE).

10. Citigroup Pty Ltd and Citicorp Pty Ltd are both Australian resident subsidiaries of Citigroup.

Employee share schemes

11. Citigroup operates a number of employee share scheme programs under the Citigroup 2009 Stock Incentive Plan (the Plan). These include the CAP and the Option Program, which are the subject of this Ruling.

Deferred stock

12. Under the CAP, participants are granted awards of deferred stock in accordance with the CAP Prospectus. An award is an unfunded, unsecured promise to deliver common stock in Citigroup on a specified vesting date. The number of shares in an award is calculated by dividing the value of the award by the average closing prices of Citigroup common stock on the NYSE for the five trading days immediately preceding the grant date.

13. Awards of deferred stock granted to participants:

- are subject to cancellation or forfeiture in specified circumstances;
- will vest 25% per year over four years, beginning one year after the grant date;
- are not subject to disposal restrictions after they vest unless the Personal Trading Policy applies to the participant.
- are not transferrable and cannot be sold or assigned as collateral.

14. The CAP Prospectus provides that, subject to the terms of the Plan, stock dividends, conversions, stock splits, or other transactions or events affecting Citigroup's capital structure will result in an adjustment to the number of shares in a participant's award to the extent necessary to prevent the enlargement or diminution of the participant's rights.

Stock options

15. Under the Option Program, participants are granted stock options. The stock options:

- entitle a participant to purchase a specified number of shares of Citigroup common stock at a fixed price called the grant price;
- cannot be sold or transferred to anyone;
- expire six years from the grant date;
- vest in three equal annual instalments beginning on the first anniversary of the grant date; and
- are subject to cancellation and forfeiture in specified circumstances.

16. The Program Prospectus provides that, subject to the terms of the Plan, stock dividends, conversions, stock splits, or similar equity restructurings will result in an equitable adjustment to the number of shares subject to the options and the option grant price to the extent necessary to prevent the enlargement or diminution of the participant's rights.

Reverse Stock Split

17. The reverse stock split (also known as a share capital consolidation) was approved by Citigroup shareholders at its annual general meeting on 21 April 2011 and took effect on 9 May 2011.

18. The effect of the reverse stock split is that each ten shares of common stock are combined into one share.

19. The common stock of Citigroup is reduced from approximately 29 billion to approximately 2.9 billion. The reduction in the number of shares on issue has had no effect on the intrinsic market capitalisation of Citicorp.

20. Equitable adjustments are made to the common stock without Citigroup's shareholders having to take any action in connection with the reverse stock split. Stockholders' relative ownership interests in Citigroup and their proportionate voting powers are not affected by the reverse stock split.

21. No fractional shares are issued in connection with the reverse stock split. Shareholders who would otherwise hold a fractional share of Citigroup common stock receive a cash payment in lieu of a fractional share.

Adjustments to deferred stock and stock options

22. As a result of the reverse stock split, proportionate adjustments are made on a ten for one basis to the unvested deferred stock held by participants. The number of unvested deferred stock is reduced by a factor of 10. The intrinsic value and the terms and conditions of unvested deferred stock are not affected by the reverse stock split.

23. Similar equitable adjustments are made to the unvested stock options held by participants under the Program Prospectus. The number of stock options is reduced proportionately and the exercise price of the stock options increased so that the intrinsic value of stock being delivered upon exercise and the total cost to exercise the stock option is not changed by the reverse stock split.

24. Any rights to fractional shares that arise under the reverse stock split continue to be held by participants after the reverse stock split.

25. Participants were advised by a Citigroup Question and Answers Flyer that they were not required to take any action and the overall intrinsic value and the terms and conditions of their unvested deferred stock or unexercised options would not be affected.

Ruling

26. The adjustments made to a participant's unvested deferred stock or unvested stock options at the time of the reverse stock split do not result in an amount being included in the assessable income of the participant under section 83A-110.

Commissioner of Taxation

19 October 2011

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.*

27. The Commissioner accepts that the deferred stock and the stock options granted to participants under the CAP and the Option Program are ESS interests within the meaning of subsection 83A-10(1). They are rights to acquire a beneficial interest in ordinary shares in Citigroup.

28. The Commissioner further accepts that for the purposes of Subdivision 83A-C, the deferred stock and stock options are at real risk of forfeiture.

29. When Subdivision 83A-C applies to an ESS interest, an amount is included in the assessable income of an employee in accordance with section 83A-110 at the ESS deferred taxing point. The amount includes the market value of the interest at the ESS deferred taxing point reduced by the cost base of the interest.

30. The ESS deferred taxing point for the deferred stock and stock options is determined under section 83A-120 as they are ESS interests that are rights to acquire shares.

31. Under section 83A-120, the ESS deferred taxing point for a right to acquire a share will be the earliest of the following times:

- seven years after a participant acquired the right;
- when the participant ceases the employment in respect of which they acquired the right;
- when there is no real risk of forfeiting the right and the scheme no longer genuinely restricts disposal of the right;
- when there is no real risk of forfeiting the right or underlying share, and the scheme no longer genuinely restricts exercise of the right or disposal of the resulting share; or
- if the right (or the share acquired on exercise of the right) is disposed of within 30 days after the deferred taxing point, the date of that disposal.

Reverse Stock Split

32. Following the reverse stock split, unvested deferred stock and stock options:

- retain their intrinsic value; and
- continue to be subject to a real risk of forfeiture and disposal restrictions.

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33. Consequently, an ESS deferred taxing point does not arise because of the reverse stock split and no amount will be included in the assessable income of a participant under section 83A-110 in relation to the unvested deferred stock or unvested stock options.

34. The unvested deferred stock and stock options held by a participant after the reverse stock split will continue to be subject to Subdivision 83A-C.

Appendix 2 – Detailed contents list

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

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References

Related Rulings/Determinations:

TR 2006/10

Subject references:

- employee share schemes and options
- ESS interest
- ESS deferred taxing point

Legislative references:

- ITAA 1997 Subdiv 83A-C
 - ITAA 1997 83A-10(1)
 - ITAA 1997 83A-110
 - ITAA 1997 83A-120
 - ITAA 1936 6(1)
 - TAA 1953
 - Copyright Act 1968
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ATO references

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