


# ***CR 2012/99 - Income tax: Accenture Group reorganisation - employee share scheme - treatment of Options and Restricted Share Units***

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## Class Ruling

### Income tax: Accenture Group reorganisation – employee share scheme – treatment of Options and Restricted Share Units

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#### **❶ This publication provides you with the following level of protection:**

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 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 provisions dealt with in this Ruling are:
- former section 139CB of the *Income Tax Assessment Act 1936* (ITAA 1936)
  - Subdivision 83A-C of the *Income Tax Assessment Act 1997* (ITAA 1997)

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

**Class of entities**

3. The class of entities to which this Ruling applies is employees of Accenture plc and any of its wholly owned subsidiaries (Accenture Group) who:

- prior to 1 July 2009 acquired Restricted Share Units (RSUs) or options to acquire ordinary shares in Accenture Ltd (Options) as referred to in paragraph 21 of this Ruling;
- in relation to any of those RSUs and/or Options;
  - did not make an election under former section 139E;
  - have not had a cessation time as mentioned in former section 139B(3) happen to them before the reorganisation; and
- immediately prior to the Accenture Group reorganisation described in paragraph 15 of this Ruling;
  - held the RSUs and Options; and
  - were residents of Australia within the meaning of subsection 6(1).

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 arrangement identified in this 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 24 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

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8. This Ruling applies from 1 July 2009. 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

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9. The following description of the scheme is based on information provided by the applicant. The following documents, or relevant parts of them form part of and are to be read with the description:

- class ruling application dated 2 August 2012;
- Accenture Ltd 2001 Share Incentive Plan (the Plan);
- Form of Restricted Share Unit Agreement (Current eUnit Holders, Universal Grant Recipients, Senior Executives) marked 'Final 07/10/01';
- Form of Nonqualified Share Option Agreement (Employees) marked 'Final 07/10/01'; and
- Assumption and General Amendment Agreement

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

**Relevant entities*****Accenture Ltd (AL)***

10. AL was incorporated in 2001 and was a tax resident of Bermuda prior to the reorganisation that is the subject of this Ruling. Until 1 September 2009 AL Class A common shares were listed on the New York Stock Exchange (NYSE).

11. AL was, prior to the reorganisation, the ultimate holding company of the Accenture Group.

12. AL had, prior to the reorganisation, the following classes of shares on issue:

- whole AL Class A common shares;
- AL Class X common shares; and
- fractional AL Class A common shares.

***Accenture plc***

13. Accenture plc was incorporated on 10 June 2009 and is a tax resident of the Republic of Ireland.

14. At the time of incorporation, Accenture plc was a wholly owned subsidiary of AL.

**Reorganisation**

15. In 2009 the Accenture Group underwent a corporate reorganisation with Accenture plc replacing AL as the ultimate holding company of the Accenture Group. The corporate reorganisation of the Accenture Group was implemented through a Scheme of Arrangement under the Bermuda Companies Act 1981.

16. The Scheme of Arrangement was subject to the approval of AL shareholders and the Supreme Court of Bermuda.

17. On 31 August 2009, all fractional AL Class A common shares were cancelled. AL shareholders who held fractional AL Class A common shares received a cash amount which was calculated based on the average of the high and low trading prices of whole AL Class A shares on the NYSE on the business day immediately preceding the effective date of the Scheme of Arrangement.

18. Under the Scheme of Arrangement and just before the transaction time, being 9:00am on 1 September 2009:

- Accenture plc acquired its own outstanding ordinary shares held by AL and its nominees for no consideration;
- all whole AL Class A common shares were cancelled;

- AL shareholders were allotted one Accenture plc Class A ordinary share for every one whole AL Class A common share cancelled;
- all AL Class X common shares were cancelled;
- AL shareholders were allotted one Accenture plc Class X ordinary share for every one AL Class X share cancelled; and
- AL issued new Class A common shares of AL to Accenture plc such that Accenture plc became the ultimate holding company of the Accenture group.

19. As a result of the Scheme of Arrangement, AL became a wholly owned subsidiary of Accenture plc.

20. Following the implementation of the Scheme of Arrangement, all whole AL Class A common shares and fractional AL Class A common shares were de-listed from the NYSE. Accenture plc Class A ordinary shares were listed on NYSE on 1 September 2009.

### **Employee share plan**

21. Prior to the reorganisation, AL operated the Plan under which participants were granted RSUs or Options. Pursuant to the Plan:

- RSUs and Options were issued to participants for no consideration;
- Options could be exercised during an exercise period by paying an exercise price, provided specified vesting conditions were satisfied; and
- the RSUs would cause a number of shares to be transferred to the participant at the end of a pre-determined period, provided specified conditions were satisfied.

22. As part of the reorganisation, Accenture plc assumed all rights and obligations of AL in respect to AL's existing RSUs and Option plans and, when required under the Plan, will issue or cause to be issued Class A ordinary shares (from Accenture plc or one of its subsidiaries) in lieu of AL Class A common shares.

23. Each RSU and Option issued to a participant retains the same terms and conditions under the Plan.

24. Immediately after the reorganisation:

- the employment of participants remained unchanged and participants remained employees of a subsidiary of the Accenture Group;
- no participant held a legal or beneficial interest in more than 5% of the shares in Accenture plc; and
- no participant was in a position to cast, or control the casting of, more than 5% of the maximum number of votes that might be cast at a general meeting of Accenture plc.

## **Ruling**

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25. The reorganisation did not trigger a cessation time under former section 139CB for the RSUs and/or Options acquired by a participant and therefore there was no ESS deferred taxing point for the purposes of Subdivision 83A-C of the ITAA 1997.

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**Commissioner of Taxation**

31 October 2012

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## Appendix 1 – Explanation

**!** *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.*

### Subdivision 83A-C

26. Subsection 83A-5(2) of the *Income Tax (Transitional Provisions) Act 1997* (IT(TP)A 1997) provides that Subdivision 83A-C of the ITAA 1997 (and the rest of Division 83A of the ITAA 1997 to the extent that it relates to that Subdivision) applies in relation to RSUs and Options (both referred to as Rights for the purposes of this Explanation) granted to a participant under the Plan if:

- the Rights were acquired (within the meaning of former Division 13A) before 1 July 2009;
- former subsection 139B(3) applied in relation to the Rights (the Rights acquired by the participant were qualifying rights within the meaning of former section 139CD and the participant did not make an election covering those Rights under former section 139E); and
- the cessation time mentioned in former subsection 139B(3) and former section 139CB for those Rights did not occur before 1 July 2009.

### ESS deferred taxing point

27. Where Subdivision 83A-C of the ITAA 1997 applies to an ESS interest, an amount will be included in the assessable income of a participant under subsection 83A-110(1) of the ITAA 1997 in respect of their ESS interest in the income year in which the earliest ESS deferred taxing point occurs.

28. The ESS deferred taxing point for rights is usually worked out under section 83A-120 of the ITAA 1997. However, because Subdivision 83A-C of the ITAA 1997 will apply to transitioned rights acquired before 1 July 2009, by virtue of subsection 83A-5(2) of the IT(TP)A 1997, subsection 83A-5(4) of the IT(TP)A 1997 applies.

29. Subparagraph 83A-5(4)(b)(i) of the IT(TP)A 1997 provides that the ESS deferred taxing point for a transitioned right acquired before 1 July 2009 will be the cessation time mentioned in former subsection 139B(3), subject to subsection 83A-120(3) of the ITAA 1997.

30. Therefore, whether an ESS deferred taxing point arises as a consequence of the reorganisation will depend on whether a cessation time as mentioned in former subsection 139B(3) results from the reorganisation.



31. A cessation time for Rights acquired before 1 July 2009 would occur as a result of the reorganisation at a time determined by former paragraph 139CB(1)(a).

32. However, former section 139CB operates within the scheme of former Division 13A. A Note at the end of former subsection 139CB(2) directs attention to former Subdivision DA of Division 13A (Subdivision DA) affecting whether the taxpayer is treated as disposing of a right or ceasing employment.

33. There will be no cessation time where the participant's replacement rights in Accenture plc are, for the purposes of Subdivision DA, treated as a continuation of the Rights in AL provided also that the participant does not cease employment within the meaning of former 139CB(2).

### ***Conditions for the continuation of Rights***

34. The reorganisation constituted a restructure within the meaning provided by former section 139GCC.

35. Former subsection 139DQ(1) relevantly provides that where, as a result of a restructure:

- an employee acquires matching rights in a new company to replace rights to shares in an old company that were acquired under an employee share scheme; and
- the conditions specified in former section 139DR are met,

the matching rights are treated, for the purposes of former Division 13A, as if they are a continuation of the rights the employee held in the old company.

36. When a participant's rights in AL (old company) acquired under the Plan are changed to rights in Accenture plc, the participant is regarded as having acquired matching rights to shares in Accenture plc that replaced the rights to shares in AL that were acquired under the Plan.

37. Former section 139DR sets out the following conditions that must be met before replacement rights are treated as a continuation of existing rights under former section 139DQ:

- immediately before the restructure the participant held rights in the old company under an employee share scheme;
- where the participant has not made an election under former section 139E in relation to their rights in the old company, the participant must at or about the time they acquire their replacement rights in the new company be an employee of the new company group;

- the rights in the new company must be rights to acquire ordinary shares in the new company; and
- at the time the participant acquires their rights in the new company:
  - they do not hold a legal or beneficial interest in more than 5% of the shares in the new company; and
  - they are not in a position to cast, or control the casting of more than 5% of the maximum number of votes that may be cast at a general meeting of the new company.

38. Former subsection 139DQ(1) applies to the participant's replacement rights in Accenture plc as:

- the reorganisation was a restructure for the purposes of former section 139GCC;
- the participant acquired matching rights in Accenture plc that replaced the Rights in AL that were acquired under an employee share scheme; and
- the conditions specified in former section 139DR are met.

Thus, for the purposes of Subdivision DA, the replacement rights in Accenture plc are treated as if they are a continuation of the participant's Rights in AL.

### ***Continuation of employment***

39. For participants who continued to be employed by a subsidiary of the Accenture Group after the reorganisation, their employment is treated by former subsection 139DQ(3) as a continuation of the employment in respect of which they acquired their Rights in AL. Accordingly they have not ceased their employment within the meaning of former paragraph 139CB(1)(b).

### **Cessation time**

40. Accordingly, the reorganisation did not trigger a cessation time under former section 139CB and therefore there was no ESS deferred taxing point for the purposes of Subdivision 83A-C of the ITAA 1997 for the Rights that were acquired prior to 1 July 2009.

## **Appendix 2 – Detailed contents list**

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

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## References

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### *Previous draft:*

Not previously issued as a draft

### *Related Rulings/Determinations:*

TR 2006/10

### *Subject references:*

- company restructuring
- employee share schemes & options
- employee share ownership

### *Legislative references:*

- TAA 1953
- Copyright Act 1968
- ITAA 1936
- ITAA 1936 6(1)
- ITAA 1936 PtIII Div 13A
- ITAA 1936 139B(3)
- ITAA 1936 139CB

- ITAA 1936 139CB(1)(a)
- ITAA 1936 139CB(1)(b)
- ITAA 1936 139CB(2)
- ITAA 1936 139CD
- ITAA 1936 PtIII Div 13A Subdiv DA
- ITAA 1936 139DQ
- ITAA 1936 139DQ(1)
- ITAA 1936 139DQ(3)
- ITAA 1936 139DR
- ITAA 1936 139E
- ITAA 1936 139GCC
- ITAA 1997 Div 83A
- ITAA 1997 Subdiv 83A-C
- ITAA 1997 83A-110(1)
- ITAA 1997 83A-120
- ITAA 1997 83A-120(3)
- IT(TP)A 1997 83A-5(2)
- IT(TP)A 1997 83A-5(4)
- IT(TP)A 1997 83A-5(4)(b)(i)

### ATO references

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