CR 2014/54 - Income tax: Goodman Group Long Term Incentive Plan

Class Ruling

Income tax: Goodman Group Long Term Incentive Plan

Contents Para

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:

- Division 83A of the *Income Tax Assessment Act 1997* (ITAA 1997)
- Subdivision 83A-C of the ITAA 1997
- section 83A-20 of the ITAA 1977
- section 83A-120 of the ITAA 1997
- section 110-55 of the ITAA 1997
- section 130-80 of the ITAA 1997
- section 130-85 of the ITAA 1997, and
- section 130-90 of the 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 employees and other individuals providing services to Goodman Property Services (Aust) Pty Limited and Moorabbin Airport Corporation Pty Limited (together, the Employers and each an Employer) which are subsidiaries of Goodman Limited (Goodman), who:

- are granted performance rights (Rights) under the Goodman Group Long Term Incentive Plan (LTIP)
- are at all times residents of Australia within the meaning of that expression in section 6(1) of the *Income Tax Assessment Act 1936* (ITAA1936)
- are not temporary residents of Australia within the meaning of that expression in subsection 995-1(1)
- are not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on their Securities.

  (Note - Division 230 will generally not apply to individuals, unless they make an election for it to apply to them).

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

Qualifications

4. The Commissioner makes the 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 8 to 32 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.

Date of effect

7. This Ruling applies from 1 July 2012. 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 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:

- application for a Class Ruling dated 3 December 2013
- Goodman Group Long Term Incentive Plan Summary of September 2013 LTIP Grant
- Goodman Group LTIP Plan Rules (LTIP Rules)
- Goodman LTIP Trust Deed (Trust Deed)
- Goodman securities trading policy
- additional information received from the applicant in relation to the Class Ruling.

9. The Goodman Group is listed on the Australian Securities Exchange (ASX) and is a resident of Australia for tax purposes.

10. The listed securities in the Goodman Group are stapled securities (Securities) with each Security comprised of:

(a) a fully paid ordinary share in Goodman

(b) a fully paid ordinary unit in the capital of the Goodman Industrial Trust, and

(c) a Chess Depository Instrument over a share in Goodman Logistics (HK) Limited (Goodman HK).

11. Goodman HK is a company incorporated in Hong Kong and the Goodman Industrial Trust was established under a constitution dated 11 November 2001 as amended.

The LTIP

12. The LTIP is an employee incentive scheme designed to allow Participants to share in the benefits of the long term success of the Goodman Group.

13. The LTIP is operated under, and is governed by, the LTIP Rules as amended on 3 August 2012 and applies to Rights granted under the LTIP for the income year commencing 1 July 2012.

14. Under the LTIP, the Board of the Goodman Group (the Board) may, from time to time, grant Rights to eligible employees and other individuals providing services to the group.

15. Each Right is a right to acquire a stapled security (Security) in the Goodman Group without payment of an exercise price and is granted for nil consideration.

16. A Participant will be deemed to have accepted the grant of Rights on the date of the award, unless the offer is declined in writing by the Participant.

17. Prior to vesting of a Right, a Participant has no legal or beneficial interest in the Security by virtue of holding a Right.

Vesting conditions of Rights

18. The Rights are divided into three equal tranches which vest progressively on the third, fourth and fifth anniversaries of the initial grant date. Vesting of the Rights is subject to continuing employment and performance conditions. The number of Rights that vest depends on the extent to which performance hurdles set out in the vesting conditions are satisfied.

Employment conditions

19. If a Participant ceases employment before the vesting of their Rights, the unvested Rights will generally lapse on the date which is one month after the date on which their employment ceases (Standard Early Lapse Date). Any Rights which vest on or before the Standard Early Lapse Date will be satisfied upon vesting.

20. Where a Participant ceases employment due to a 'special circumstance', which includes retirement, redundancy, death or permanent disablement of a Participant, their unvested Rights will continue to vest as if the Participant continues to be employed by the Goodman Group until the applicable vesting dates. However, the Board may exercise its discretion to determine the Participant will only be allowed to keep some of the Rights at the time of termination of employment. The Board may also exercise its discretion to determine that the unvested Rights cease to be subject to any vesting conditions and the Rights will immediately vest.

Performance conditions

21. Each tranche of Rights is subject to the following performance conditions which are tested progressively over a three year period starting from the year the Rights are granted and vest progressively on the third, fourth and fifth anniversaries of the initial grant date:

(i) 25% of that tranche will be subject to a measure of total security holder return (TSR), and

(ii) 75% of that tranche will be subject to a measure of aggregate operating earnings per security (EPS).

22. The first performance condition compares Goodman's TSR performance against the TSR performance of a number of entities comprising the S&P/ASX 200 Index over a three year period (Testing Period). The number of Rights that will vest under the TSR performance condition in any tranche will depend on the extent of the Goodman's TSR performance result.

23. The second performance condition is determined by comparing the Goodman Group's aggregate operating EPS to a target EPS as set by the Board around the commencement of each financial year over the Testing Period. Where the aggregate EPS achieved over the Testing Period is to equal or greater than the aggregate target EPS, the condition is satisfied and 100% of the Rights that are subject to the EPS performance condition in that tranche will vest on the designated vesting date.

24. Any Rights which do not satisfy the relevant conditions will lapse and the Participants will not be entitled to any Securities with respect to the lapsed Rights.

25. The applicant has advised that:

- no Participant will be employed by more than one entity at any one time such that subsection 83A-35(5) will never be satisfied
- the predominant business of the Goodman Group is not the acquisition, sale or holding of shares, securities or other investments (whether directly or indirectly through one or more companies, partnerships or trusts), and
- immediately after acquiring their Rights, no Participant will be entitled to hold a beneficial interest in more than 5% of the Securities nor be in a position to cast, or to control the casting of, more than 5% of the maximum number of votes that might be cast at a general meeting of the Goodman Group.

Goodman Employee Share Trust

26. Goodman has recently settled the Goodman Employee Share Trust (Trust) under the Goodman Long Term Incentive Plan Trust Deed (Trust Deed) for the purposes of warehousing Securities that will issue to the Participants under the terms of the LTIP.

27. The sole purpose of the Trust is acquiring, holding and transferring Securities to Participants.

28. The Trust Deed also provides that the Trust must at all times be managed and administered so that it satisfies the 'sole activities test' for the purposes of subsection 130-85(4).

29. The Securities are acquired and held by the Trustee prior to the allocation to Participants on the vesting of Rights.

Vesting of Rights

30. Goodman will provide funds to the Trust and direct the Trustee to acquire Securities to be held by the Trustee for the purpose of enabling the Goodman Group to satisfy its obligation to the Participants on vesting of the Rights.

31. Upon vesting, the Participants will automatically become entitled to receive the Securities on the applicable vesting date.

32. Disposal of the Securities by the Participants are subject to Goodman's internal securities trading policy.

Ruling

ESS interests acquired under an employee share scheme

33. The Rights acquired by a Participant are ESS interests acquired under an employee share scheme and Division 83A will apply to the interests.

34. The Rights are acquired by the Participant under an employee share scheme at a discount for the purposes of section 83A-20.

Subdivision 83A-C

35. Subdivision 83A-C will apply to the Rights acquired by the Participant under the LTIP.

36. No amount will be included in a Participant's assessable income in relation to the Right until the ESS deferred taxing point.

37. The ESS deferred taxing point for Rights acquired by a Participant under the LTIP will be the earlier of the following times:

- the time when the Participant ceases employment (subsection 83A-120(5))
- the first time a Participant is able to dispose of the Securities after vesting of the Rights under Goodman's internal securities trading policy (subsection 83A-120(7)).

38. If a Participant disposes of the Securities acquired on vesting of the Rights within 30 days after the first occurrence of one of the above times, the ESS deferred taxing point will instead be the time of the disposal.

39. The amount to be included in assessable income will be the market value of the Securities at the ESS deferred taxing point reduced by the cost base of the interest.

Forfeiture/lapse of Rights

40. Where a Participant's unvested Rights are forfeited or lapse because the Participant ceases employment, no amount will be included in the assessable income of the Participant under Subdivision 83A-C.

Capital gains tax (CGT) consequences

41. The granting of a Right to a Participant does not result in a CGT event for the Participant.

42. Any capital gain or capital loss made by a Participant, who continues to be employed by Goodman, arising from the vesting of Rights or disposal of Securities on or before the ESS deferred taxing point (including an ESS deferred taxing point under the 30 day rule in subsection 83A-120(3)) will be disregarded under subsection 130-80(1).

43. Where a Participant continues to be employed by Goodman and the ESS deferred taxing point occurs before disposal of the Securities:

- the Participant is deemed to have acquired, at market value, the Rights (and the Securities acquired as a result of the vesting of the Rights) immediately after the ESS deferred taxing point, and
- the first element of the cost base and reduced cost base of the Rights (and the Securities acquired as a result of the vesting of the Rights) is their market value immediately after the ESS deferred taxing point.

44. Where a Participant ceases employment under a 'special circumstance' and their unvested Rights do not lapse:

- any capital gain or loss associated with the vesting of their Rights will be disregarded under section 130-90(1); and
- the first element of the cost base and reduced cost base of the Rights (and the Securities acquired as a result of the vesting of the Rights) is their market value immediately after the ESS deferred taxing point.

45. A Participant will not make a capital gain or a capital loss from forfeiture or lapse of a Right, provided that there is no amount included in elements of the reduced cost base under section 110-55 other than the first element.

Employee share trust

46. The Trust is an employee share trust for the purposes of subsection 130-85(4).

Commissioner of Taxation
2 July 2014

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.

Application of Division 83A

47. Division 83A applies to shares, rights and stapled securities acquired under an employee share scheme on or after 1 July 2009.

48. An employee share scheme is defined in subsection 83A-10(2) as a scheme under which ESS interests in a company are provided to employees, or associates of employees, of the company, or a subsidiary of the company, in relation to the employee's employment.

49. An ESS interest in a company is defined in subsection 83A-10(1) as a beneficial interest in:

(a) a share in the company; or

(b) a right to acquire a beneficial interest in a share in the company.

50. The LTIP is an employee share scheme as it provides Rights to Securities to Participants in relation to their employment with the Goodman Group.

51. The Securities are stapled securities with each Security comprised of:

(a) a fully paid ordinary share in Goodman

(b) a fully paid ordinary unit in the capital of the Goodman Industrial Trust, and

(c) a Chess Depository Instrument over a share in Goodman HK.

52. Under section 83A-335, a stapled security is treated in the same way as it applies in relation to a share for the purposes of Division 83A, provided that at least one of the elements in the stapled security is a share in a company. Rights to acquire such stapled securities are treated as rights to acquire shares.

53. This brings stapled securities, and rights to acquire stapled securities, within the employee share scheme regime, on equivalent terms to shares and rights to acquire shares. Therefore, Rights acquired by a Participant are ESS interests as one element of the Security comprised of an ordinary share in Goodman.

54. As a Participant acquires their Rights for no consideration, they are acquired at a discount and Subdivision 83A-B will apply to the Rights pursuant to subsection 83A-20(1).

55. Under subsection 83A-25(1) of Subdivision 83A-B, a Participant is required to include the discount in relation to the ESS interest in their assessable income for the income year in which the ESS interest is acquired. However, Subdivision 83A-B will not apply if Subdivision 83A-C applies.

Subdivision 83A-C

56. Subdivision 83A-C allows for the deferral of tax on the amount assessable in respect of an ESS interest if certain conditions are satisfied. Subdivision 83A-C will apply to the Rights if the following conditions in section 83A-105 are satisfied:

(a) subdivision 83A-B would, apart from section 83A-105, apply to the Rights; and

(b) subsections 83A-35(3), (4), (5) and (9) apply to the Rights; and

(c) there is a real risk that a Participant will forfeit or lose the interest (other than by disposing of it, exercising the right or letting it lapse) pursuant to subsection 83A-105(3).

57. In relation to the first condition, section 83A-20 provides that Subdivision 83A-B would apply to an ESS interest which is acquired under an employee share scheme at a discount. Subdivision 83A-B will apart from subsection 83A-105(1), apply to the Right because the Right:

- is an ESS interest acquired under an employee share scheme, and
- is provided for nil consideration (that is, at a discount).

58. In relation to the second condition, subsections 83A-35(3), (4), (5) and (9) apply to each Right granted to a Participant because:

- when the Right is acquired, the Participant is employed by a company in the Goodman Group (subsection 83A-35(3));
- subsection 83A-35(4) applies to an ESS interest acquired under an employee share scheme if all of the ESS interests available for acquisition under the LTIP relate to ordinary shares. Subsection 83A-335(2) provides that Division 83A applies to a stapled security in the same way it applies to an ordinary share in a company if at least one of the ownership interests that are stapled together to form the stapled security is an ordinary share in a company. This means that Rights to acquire such stapled securities are treated as rights to acquire ordinary shares. As one of the components of the Securities is an ordinary share in Goodman, the Securities will be taken to be an ordinary share for the purposes of applying Division 83A and this condition will be satisfied;

- the requirement in subsection 83A-35(5) is satisfied as the predominant business of Goodman is not the acquisition, sale or holding of shares, securities or other investments, directly or indirectly; and
- the requirement in subsection 83A-35(9) is satisfied as after the acquisition of the Rights, a Participant will not hold a beneficial interest in more than five per cent of the Securities in Goodman Group nor be in a position to cast, or control the casting of, more than five per cent of the maximum number of votes that might be cast at a general meeting of Goodman Group.

Real risk of forfeiture

59. In relation to the third condition, Subdivision 83A-C applies to a right if, under the conditions of the LTIP when the right is granted, there is a real risk that a Participant will forfeit or lose the right (other than by disposing of it, exercising the right or letting it lapse).

60. Real risk of forfeiture in a scheme may include conditions where retention of the ESS interests is subject to performance conditions or a minimum term of employment. In cases where an employee share scheme has both employment and performance conditions to be met, and one of these conditions satisfies the 'real risk of forfeiture' test, it is not necessary to consider whether the other condition also satisfies the test.

61. Under the LTIP, vesting of Rights is subject to a Participant meeting a minimum employment condition and performance conditions.

62. As the Rights acquired by a Participant are subject to forfeiture if the Participant ceases employment (other than in special circumstances) before the vesting time, it is accepted that the real risk of forfeiture test is met.

63. Therefore the Commissioner accepts that the Rights granted are at the time of acquisition subject to a real risk of forfeiture or loss for the purposes of paragraphs 83A-105(1)(d) and 83A-105(3)(b).

64. As a result, Subdivision 83A-C applies to the Rights, and Subdivision 83A-B does not apply. The taxation of the Rights received under the LTIP will be deferred until an ESS deferred taxing point occurs.

ESS deferred taxing point

65. Section 83A-120 provides the rules for determining when the ESS deferred taxing point occurs for Rights or Securities acquired under the LTIP. This will be the earliest of the following times:

- when a Participant ceases the employment (within the meaning of section 83A-330) in respect of which they acquired the rights;

- seven years after a Participant acquired the rights;
- when the right has not been exercised, there is no real risk of forfeiting the right, and the scheme no longer genuinely restricts disposal of the right; and
- 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.

66. The word 'exercise' as used in Division 83A is not a defined word, thus it should take its ordinary meaning having regard to its legislative context and the purpose or object of the statute. For the purposes of Division 83A, the concept of 'exercising a right' is not considered to necessarily require an action or activity by the beneficial owner of the right. It is enough that they become the beneficial owner of the share that was the subject of the right, without having to do anything, that is, it happens automatically or is instigated by the employer or another party. Therefore, a Participant is taken to have exercised the Rights when Securities are allocated on vesting of the Rights.

67. In respect of the Participant's Rights, the ESS deferred taxing point in relation to these ESS interests will (subject to the 30 day rule) be the earliest of:

- the first time when the Securities acquired on vesting of those Rights are no longer subject to disposal restrictions (including any restrictions imposed by the Goodman securities trading policy)
- the time when the Participant ceases employment, and
- seven years from the date the Participant was deemed to have accepted the Rights.

68. However, where a Participant disposes of the Securities within 30 days of the earlier of the above times, the ESS deferred taxing point will be the date of disposal.

Amount to be included in assessable income

69. In accordance with section 83A-110, the amount to be included in assessable income at the ESS deferred taxing point will be the market value of the ESS interest reduced by the cost base of the interest.

70. Section 83A-315 provides that whenever Division 83A uses the market value of an ESS interest, you must instead use the amount specified in the regulations for the purposes of section 83A-315 if the regulations specify an amount.

71. Subregulation 83A-315.01(1) of the *Income Tax Assessment Regulations 1997* (ITAR) applies to unlisted rights that must be exercised within ten years of acquisition and therefore applies to Rights granted to the Participants under the LTIP. Under this subregulation a Participant can choose to value their Right at either:

- the market value according to its ordinary meaning; or
- the amount determined by the application of the rest of the regulations in Division 83A of the ITAR.

72. Under regulation 83A-315.02 of the ITAR, if a right is not quoted on an approved stock exchange on a particular day, the market value of the right (for the purpose of the regulation) is the greater of:

(a) the market value (on that day) of the share that may be acquired by exercising the right, less the lowest amount that must be paid to exercise the right; or

(b) subject to regulation 83A-315.03 of the ITAR, the value determined in accordance with regulations 83A-315.05 to 83A-315.09 of the ITAR.

73. Regulation 83A-315.03 of the ITAR provides that if the lowest amount that must be paid to exercise a right to acquire a beneficial interest in a share is nil, the value of the right on a particular day is the same as the market value of the share on that day.

74. As a Participant is not required to pay an exercise price for a Right granted under the LTIP, the value of the Right at the ESS deferred taxing point is the same as the market value of a Security on that day.

Ceasing employment because of a 'special circumstance'

75. Where a Participant ceases employment with an Employer because of a 'special circumstance' prior to the vesting date and retains their unvested Rights, the Participant will include the discount on their Rights in their assessable income for the year in which they ceased employment, subject to the 30 day rule in subsection 83A-120(3).

Forfeiture/lapse of Rights

76. If a Participant ceases employment with an Employer prior to the vesting date, the LTIP provides that any unvested Rights will lapse on the date which is one month after the date the Participant ceases employment with the Employer. As the Participant still holds unvested Rights at the time the employment ceases, the unvested Rights will have an ESS deferred taxing point and the Participant is assessable in relation to the unvested Rights.

77. Where a Participant has an amount included in their assessable income under Division 83A in respect of unvested Rights granted under an employee share scheme, and the Rights or some of the Rights are subsequently forfeited, section 83A-310 may apply in respect of the lapsed Rights.

78. Section 83A-310 will apply if:

(a) either

(i) the individual forfeits the interest; or

(ii) in the case of an ESS interest that is a beneficial interest in a right – the individual forfeits or loses the interest (without having disposed of the interest or exercised the right); and

(b) the forfeiture or loss is not the result of:

(i) a choice made by the individual (other than a choice by that individual to cease particular employment); or

(ii) a condition of a scheme that has the direct effect of protecting (wholly or partly) the individual against a fall in the market value of the interest.

79. Therefore, if a Participant has an amount in relation to their unvested Rights included in their assessable income under Subdivision 83A-C and the Rights or some of the Rights subsequently lapsed (without having disposed of the Rights), then section 83A-310 will apply and the inclusion of the amount in assessable income is taken never to have happened. Where the amount has been included in an earlier year, the Participant can request an amendment to exclude the amount that was related to the lapsed Rights.

80. Where the forfeiture of the Rights occurs in the same income year that the amount would otherwise be assessable, the Participant can exclude the amount from assessable income in that income year.

Employee share trust

81. An employee share trust is defined in subsection 995-1(1) as having the meaning given by subsection 130-85(4).

82. Subsection 130-85(4) provides that an employee share trust, for an employee share scheme, is a trust whose sole activities are:

(a) obtaining shares or rights in a company; and

(b) ensuring that ESS interests in the company that are beneficial interests in those shares or rights are provided under the employee share scheme to employees, or to associates of employees, of:

(i) the company; or

(ii) a subsidiary of the company; and

(c) other activities that are merely incidental to the activities mentioned in paragraphs (a) and (b).

83. Under the LTIP, the Trustee of the Trust is required to acquire, allocate and transfer Securities (being ESS interests) to Participants. These activities will satisfy the sole activities test in paragraphs (a) and (b) of subsection 130-85(4).

84. Under clause 3.5 of the Trust Deed the Trustee is provided with general power such as bookkeeping, the opening and operation of a bank account to facilitate the receipt and payment of money, and maintenance of Participants' accounts which supplement the functions of the sole activities of the Trust. These activities, which are a necessary part of managing the LTIP and administering the Trust, are considered to be incidental activities covered by paragraph 130-85(4)(c).

85. The Trust deed does not provide for any additional benefits to be available for employees.

86. Accordingly, the Trust is an employee share trust for the purposes of subsection 130-85(4).

CGT consequences

Grant of Rights

87. No CGT event occurs in connection with the grant of Rights and therefore the granting of Rights does not result in a capital gain or capital loss for a Participant.

Vesting of Rights

88. For a Participant who has not ceased employment at the time of the ESS deferred taxing point (including an ESS deferred taxing point under the 30 day rule in subsection 83A-120(3)), any capital gain or loss arising on or before the ESS deferred taxing point will be disregarded under subsection 130-80(1).

89. For a Participant who is allowed to retain their unvested Rights after ceasing employment, and those Rights subsequently vest, CGT event E5 occurs upon vesting of the Rights. Any capital gain or capital loss associated with the vesting of the Rights will be disregarded under subsection 130-90(1).

Time of acquisition of Securities

90. For a Participant who has not ceased employment at the time of the ESS deferred taxing point the date of acquisition of a Security acquired pursuant to vesting of a Right to which this ruling applies is the time immediately after the ESS deferred taxing point of the Right, unless the ESS deferred taxing point occurs at the time the interest is disposed of, in accordance with section 83A-125.

First element of the cost base of Securities

91. The first element of the cost base and reduced cost base of a Right (and the Security acquired by a Participant as a result of the vesting of the Right) is the market value of the Security immediately after the ESS deferred taxing point of the Right, in accordance with section 83A-125, section 112-15, subsection 110-25(2) and subsection 110-55(2).

Disposal within 30 days

92. Where the ESS deferred taxing point of a Right happens at the time of disposal of the Security acquired pursuant to vesting of the Right, any capital gain or capital loss made by a Participant from that disposal is disregarded in accordance with subsection 130-80(1). Therefore, where the Security acquired on vesting of the Right under the LTIP is disposed of within 30 days of the ESS deferred taxing point, any capital gain or capital loss made by a Participant is disregarded.

Forfeiture after the ESS deferred taxing point

93. Where a Right is forfeited after the ESS deferred taxing point, CGT event C2 happens in accordance with subsection 104-25(1).

94. Where CGT event C2 happens, a capital gain is made if the capital proceeds from the event are more than the asset's cost base. A capital loss is made if those capital proceeds are less than the asset's reduced cost base (subsection 104-25(3)).

If section 83A-310 applies

95. If section 83A-310 applies in relation to a forfeiture of a Right after the ESS deferred taxing point and the Participant pays nothing for the Right, the market value substitution rule for cost base and reduced cost base in section 112-20 does not apply, in accordance with subsection 130-80(4).

96. Where a Participant receives no capital proceeds from the forfeiture of the Right, the market value substitution rule for capital proceeds in section 116-30 also does not apply, in accordance with subsection 130-80(4).

97. Therefore, as a result of subsection 130-80(4), a Participant will not make a capital gain or a capital loss (if there are no amounts included in elements of the reduced cost base under section 110-55 other than the first element) from forfeiting a Right after the ESS deferred taxing point if section 83A-310 applies.

Appendix 2 – Detailed contents list

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

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Subject references:

- employee share schemes

Legislative references:

- ITAA 1936 6(1)
- ITAA 1997 Div 83A
- ITAA 1997 Subdiv 83A-B
- ITAA 1997 Subdiv 83A-C
- ITAA 1997 83A-10(1)
- ITAA 1997 83A-10(2)
- ITAA 1997 83A-20
- ITAA 1997 83A-20(1)
- ITAA 1997 83A-25(1)
- ITAA 1997 83A-35(3)
- ITAA 1997 83A-35(4)
- ITAA 1997 83A-35(5)
- ITAA 1997 83A-35(9)
- ITAA 1997 83A-105
- ITAA 1997 83A-105(1)
- ITAA 1997 83A-105(1)(d)
- ITAA 1997 83A-105(3)
- ITAA 1997 83A-105(3)(b)
- ITAA 1997 83A-110
- ITAA 1997 83A-120
- ITAA 1997 83A-120(3)
- ITAA 1997 83A-120(5)
- ITAA 1997 83A-120(7)
- ITAA 1997 83A-125
- ITAA 1997 83A-310
- ITAA 1997 83A-315
- ITAA 1997 83A-330
- ITAA 1997 83A-335
- ITAA 1997 83A-335(2)
- ITAA 1997 104-25(1)
- ITAA 1997 104-25(3)
- ITAA 1997 110-25
- ITAA 1997 110-25(2)
- ITAA 1997 110-55
- ITAA 1997 110-55(2)
- ITAA 1997 112-15
- ITAA 1997 112-20
- ITAA 1997 116-30
- ITAA 1997 130-80
- ITAA 1997 130-80(1)
- ITAA 1997 130-80(4)
- ITAA 1997 130-85
- ITAA 1997 130-85(4)
- ITAA 1997 130-85(4)(c)
- ITAA 1997 130-90
- ITAA 1997 130-90(1)
- ITAA 1997 Div 230
- ITAA 1997 995-1(1)
- TAA 1953
- ITAR 1997
- ITAR 1997 83A-315.01(1)
- ITAR 1997 83A-315.02
- ITAR 1997 83A-315.03
- ITAR 1997 83A-315.05
- ITAR 1997 83A-315.09

ATO references

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