


# ***CR 2021/74 - Woolworths Group Limited - demerger of Endeavour Group Limited - employee share scheme***

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## Class Ruling

# Woolworths Group Limited – demerger of Endeavour Group Limited – employee share scheme

### **📌 Relying on this Ruling**

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

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

<b>Table of Contents</b>	<b>Paragraph</b>
What this Ruling is about	1
Who this Ruling applies to	4
When this Ruling applies	5
<b>Ruling</b>	<b>6</b>
<b>Scheme</b>	<b>13</b>
<b>Appendix – Explanation</b>	<b>31</b>

### **What this Ruling is about**

1. This Ruling sets out the income tax consequences for employees of Endeavour Group Limited (Endeavour) who had rights to shares in Woolworths Group Limited (Woolworths) cancelled and received replacement rights to shares in Endeavour as a result of the demerger.
2. Full details of this scheme are set out in paragraphs 13 to 30 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

### **Who this Ruling applies to**

4. This Ruling applies to you if:
  - you are a resident of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936*
  - you accepted the offer to participate in the Woolworths Incentive Share Plan (WISP)
  - your right to a share in Woolworths under the WISP was cancelled before the demerger (Cancelled Right) and you received a replacement right to a

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share in Endeavour (Replacement Right) under the Endeavour Incentive Share Plan

- when you received the Replacement Right
  - you did not hold a beneficial interest in more than 10% of the Endeavour shares, and
  - you were not in a position to cast, or control the casting of, more than 10% of the maximum number of votes that might be cast at a general meeting of Endeavour, and
- you are not subject to the taxation of financial arrangements rules in Division 230.

**Note:** Division 230 will not apply to individuals, unless they have made an election for it to apply.

### **When this Ruling applies**

5. This Ruling applies from 1 July 2020 to 30 June 2024.

### **Ruling**

#### **ESS interest**

6. Your right to a Woolworths share under the WISP (WISP Right) which was cancelled was an ESS interest as defined in subsection 83A-10(1) just before it was cancelled.
7. The Replacement Right is an ESS interest as defined in subsection 83A-10(1).

#### **The demerger is a restructure**

8. The demerger of Endeavour by Woolworths constitutes a restructure for the purposes of subsection 83A-130(1).

#### **New ESS interest treated as a continuation of old interest**

9. The Replacement Right is treated as a continuation of the Cancelled Right for the purposes of subsection 83A-130(2).

#### **Continuation of employment**

10. Your employment with Endeavour or a subsidiary of Endeavour after the demerger will be treated as a continuation of your employment in respect of which you acquired the WISP Right for the purposes of Division 83A (subsection 83A-130(6)).

#### **No ESS deferred taxing point**

11. No ESS deferred taxing point will arise under section 83A-120 when your WISP Right was cancelled and replaced with a Replacement Right.

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Page status: **legally binding**

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### **Disregard capital gain or capital loss**

12. You disregard any capital gain or capital loss made on the cancellation of the WISP Right under subsection 130-80(1).

### **Scheme**

13. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

### **Woolworths Incentive Share Plan**

14. Woolworths has a number of employee share schemes in place, including its long-term incentive plan for executives, known as the WISP.

15. Under the WISP, rights were granted to employees, which are rights to acquire Woolworths shares.

16. The number of WISP Rights granted was determined by dividing the maximum award value by the volume-weighted average price (VWAP) of Woolworths shares traded on the Australian Securities Exchange during the five trading days up to and including the first date of the performance period.

17. The WISP Rights carried rights with respect to dividends paid on the underlying Woolworths shares over the performance period. Dividends paid during the vesting period by Woolworths increase the number of shares carried by the WISP Rights and will vest in the same proportion as the WISP Rights vest.

18. The vesting of the WISP Rights was subject to service and performance conditions. The performance conditions relate to three equally-weighted performance measures, being relative total shareholder return, sales per trading square metre and return on funds employed.

19. Prior to the demerger, Woolworths determined that the portion of the unvested WISP Rights that related to tenure after the demerger would not be cash settled and therefore could only be settled in shares on vesting.

### **The demerger of Endeavour Group Limited**

20. Immediately before the demerger, Woolworths held approximately 85.4% of the ordinary shares in Endeavour.

21. On 1 July 2021, the demerger of Endeavour was implemented by Woolworths transferring approximately 70.8% of the issued shares in Endeavour to ordinary shareholders in Woolworths.

### **Replacement of Woolworths Incentive Share Plan rights**

22. Employees of Endeavour who participated in the WISP had some of their WISP Rights impacted by the demerger.

23. The portion of an employee's WISP Rights representing the period of the service condition served prior to the demerger remains for future vesting under the WISP.

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Page status: **legally binding**

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24. The other portion of an employee's WISP Rights were cancelled when Woolworths deemed them to be forfeited in accordance with the WISP rules. These rights, being the Cancelled Rights, were replaced by Replacement Rights granted on 28 October 2021.
25. The Replacement Rights are rights to acquire ordinary Endeavour shares.
26. The Replacement Rights are issued under Endeavour's employee share scheme known as the Endeavour Incentive Share Plan.
27. The total face value of Replacement Rights granted to an employee is equal to the number of their Cancelled Rights multiplied by the VWAP of Woolworths shares during the five trading days up to and including 23 June 2021.
28. The vesting of the Replacement Rights are subject to service and performance conditions. The performance conditions relate to three performance measures, being relative total shareholder return, return on funds employed and leading in responsibility.
29. The Replacement Rights may only be settled in shares on vesting.
30. The Replacement Rights carry rights with respect to dividends paid on the underlying Endeavour shares over the performance period.

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**Commissioner of Taxation**

17 November 2021

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**Appendix – Explanation**

**❶** *This Explanation 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.*

<b>Table of Contents</b>	<b>Paragraph</b>
ESS interest	31
New ESS interest treated as a continuation of old interest	34
Disregard capital gain or capital loss	41

**ESS interest**

31. An ESS interest in a company is a beneficial interest in a share in the company or beneficial interest in a right to acquire a beneficial interest in a share in the company (subsection 83A-10(1)).

32. The WISP Right issued by Woolworths under the WISP, which was cancelled before the demerger, was an ESS interest just before it was cancelled, being a beneficial interest in a right to acquire a Woolworths share.

33. The Replacement Right issued by Endeavour is an ESS interest, being a beneficial interest in a right to acquire an Endeavour share.

**New ESS interest treated as a continuation of old interest**

34. An amount is included in your assessable income for the income year in which an ESS deferred taxing point occurs in respect of your ESS interest (section 83A-110).

35. An ESS deferred taxing point may occur at the time you dispose of an ESS interest (paragraph 83A-120(3)(a)).

36. However, while a disposal of an ESS interest occurs under a restructure, it will not be treated as a disposal but a continuation of that interest if it can be reasonably regarded as having been replaced by another ESS interest in the new company (section 83A-130).

37. The demerger satisfies the requirements of section 83A-130 in relation to the WISP Right which were cancelled because:

- the WISP Right was an ESS interest in Woolworths acquired under an employee share scheme which can reasonably be regarded as having been replaced by an ESS interest in Endeavour as a result of a change in the ownership of Endeavour, a demerger subsidiary of Woolworths (the restructure) (subparagraph 83A-130(1)(a)(ii))
- just before the restructure, you held an ESS interest in the form of a WISP Right (old interest) that you acquired under an employee share scheme (paragraph 83A-130(1)(b))
- you acquired an ESS interest in the form of a Replacement Right (new interest) in connection with the restructure (subsection 83A-130(2))

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- as a result of the restructure, you stopped holding the WISP Right (paragraph 83A-130(2)(a))
- the Replacement Right can reasonably be regarded as matching the WISP Right which you stopped holding (paragraph 83A-130(2)(b))
- the Replacement Right relates to ordinary shares in Endeavour (subsection 83A-130(4))
- you were employed by Endeavour, or a subsidiary of Endeavour, at the time you acquired the Replacement Right (paragraph 83A-130(9)(a))
- at the time of acquiring the Replacement Right, you did not hold a legal or beneficial interest of more than 10% in Endeavour and were not in a position to cast, or control the casting of, more than 10% of the maximum number of votes that may be cast at an Endeavour general meeting (including the beneficial interest in Endeavour shares that you can acquire under the Replacement Right and are taken to hold for this purpose and the votes that you are in a position to cast as a result of holding that interest in those shares) (paragraph 83A-130(9)(b)).

38. Accordingly, for the purposes of Division 83A, the Replacement Right you acquired in connection with the restructure is treated as a continuation of the WISP Right you previously held.

39. In addition, your employment with Endeavour, or a subsidiary of Endeavour, will be regarded as a continuation of your employment with Woolworths or one of its subsidiaries in accordance with subsection 83A-130(6). That is, you have not ceased your employment within the meaning of section 83A-330 in respect of which you acquired the WISP Right which was cancelled.

40. Therefore, no ESS deferred taxing point will arise under section 83A-120 when your WISP Right was cancelled and replaced with a Replacement Right.

#### **Disregard capital gain or capital loss**

41. You disregard any capital gain or capital loss on the WISP Right being cancelled because:

- the CGT event happened in relation to the WISP Right acquired under a Woolworths employee share scheme (paragraph 130-80(1)(a))
- the CGT event is not CGT event E4, G1 or K8 (paragraph 130-80(1)(b))
- Subdivision 83A-C applied to the WISP Right, the CGT event happened on the date of the cancellation of the WISP Right, which was before an ESS deferred taxing point occurred for that right (subparagraph 130-80(1)(d)(ii)), and
- subsection 130-80(2) does not apply.

42. Accordingly, any capital gain or capital loss made from the WISP Right being cancelled is disregarded under section 130-80.

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## References

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*Previous draft:*

Not previously issued as a draft

*Legislative references:*

- ITAA 1936 6(1)
  - ITAA 1997 Div 83A
  - ITAA 1997 83A-10(1)
  - ITAA 1997 Subdiv 83A-C
  - ITAA 1997 83A-110
  - ITAA 1997 83A-120
  - ITAA 1997 83A-120(3)(a)
  - ITAA 1997 83A-130
  - ITAA 1997 83A-130(1)
  - ITAA 1997 83A-130(1)(a)(ii)
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  - ITAA 1997 83A-130(2)
  - ITAA 1997 83A-130(2)(a)
  - ITAA 1997 83A-130(2)(b)
  - ITAA 1997 83A-130(4)
  - ITAA 1997 83A-130(6)
  - ITAA 1997 83A-130(9)(a)
  - ITAA 1997 83A-130(9)(b)
  - ITAA 1997 83A-330
  - ITAA 1997 130-80
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  - ITAA 1997 130-80(1)(a)
  - ITAA 1997 130-80(1)(b)
  - ITAA 1997 130-80(1)(d)(ii)
  - ITAA 1997 130-80(2)
  - ITAA 1997 Div 230
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ATO references

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