


# ***CR 2022/53 - Whitefield Ltd - bonus share plan***

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Status: **legally binding**

## Class Ruling

### Whitefield Ltd – bonus share plan

#### **📌 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.

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

1. This Ruling sets out the income tax consequences where shareholders of Whitefield Ltd (Whitefield) elected to receive bonus shares in lieu of dividends under the Whitefield bonus share plan (Plan).
2. Full details of this scheme are set out in paragraphs 15 to 26 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1936*, unless otherwise indicated.

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

4. This Ruling applies to you if you:
  - are an Australian resident as defined in subsection 6(1)
  - receive fully-paid ordinary shares in Whitefield in lieu of dividends under the Plan (Bonus Shares), and
  - hold your shares in Whitefield on capital account; that is, your Whitefield shares are neither held as revenue assets (as defined in section 977-50 of the *Income Tax Assessment Act 1997* (ITAA 1997)) nor as trading stock (as defined in subsection 995-1(1) of the ITAA 1997).
5. This Ruling does not apply to you if you are subject to the taxation of financial arrangements rules in Division 230 of the ITAA 1997 in relation to the scheme outlined in paragraphs 15 to 26 of this Ruling.

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**Note:** Division 230 of the ITAA 1997 will not apply to individuals, unless they have made an election for it to apply.

### **When this Ruling applies**

6. This Ruling applies from 1 July 2019 to 30 June 2024.

## **Ruling**

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### **Bonus Shares not a dividend**

7. The value of the Bonus Shares issued to you under the Plan is not a dividend as defined in subsection 6(1) and will not be taken to be a dividend under subsection 6BA(5).

### **Anti-avoidance provisions do not apply**

8. The value of the Bonus Shares issued to you under the Plan will not be taken to be a dividend under subsection 45(2).

9. The Commissioner will not make a determination under subsections 45A(2) or 45B(3) that section 45C applies in relation to the whole, or a part, of the Bonus Shares issued to you, and the Bonus Shares will not be taken to be a dividend under subsection 45C(1).

### **Bonus Shares not assessable under section 44**

10. The value of the Bonus Shares will not be included in your assessable income under section 44 as the Bonus Shares are not a dividend and will not be taken to be a dividend.

### **Acquisition date of Bonus Shares**

11. The Bonus Shares you receive in respect of the Whitefield shares that participate in the Plan (Original Shares) are taken to have been acquired when you acquired the Original Shares (table items 1 and 3 of subsection 130-20(3) of the ITAA 1997).

### **Cost base of Bonus Shares**

12. If you acquired, or are taken to have acquired, your Original Shares on or after 20 September 1985, the first element of the cost base and reduced cost base of the Bonus Shares issued in respect of those Original Shares will be determined by apportioning the first element of the cost base and reduced cost base of the Original Shares over both the Original Shares and the Bonus Shares (subsection 6BA(3) and table item 1 of subsection 130-20(3) of the ITAA 1997).

13. If you acquired, or are taken to have acquired, your Original Shares before 20 September 1985, any capital gain or capital loss you make on the Bonus Shares issued in respect of them are disregarded (table item 3 of subsection 130-20(3) of the ITAA 1997).

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### **No deduction for listed investment company capital gain**

14. You will not be entitled to a deduction under section 115-280 of the ITAA 1997 for the Bonus Shares issued to you.

### **Scheme**

15. 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.

### **Whitefield Ltd**

16. Whitefield is a widely-held public company incorporated on 21 March 1923 and listed on the Australian Securities Exchange (ASX).

17. Whitefield is an Australian-resident investment company holding a diversified portfolio of ASX-listed industrial (non-resource) shares. Whitefield satisfies the definition of a listed investment company (LIC) as defined in section 115-290 of the ITAA 1997.

18. Whitefield has paid dividends to its shareholders, twice a year, since 1989. Since 1987, all dividends have been fully franked and Whitefield intends to continue paying fully franked dividends.

### **Bonus share plan**

19. On 5 March 2015, Whitefield established the Plan under which holders of ordinary shares may elect to relinquish their right to a dividend and instead receive Bonus Shares of equivalent market value. Participation in the Plan was limited to shareholders who were residents of Australia or New Zealand. An amended version of the Plan came into operation on 18 August 2020, although the amended version did not change the terms and conditions of the Plan in any material particular.

20. Participation in the Plan is entirely optional. Shareholders may elect to join, vary their participation in or withdraw from the Plan at any time.

21. The number of Bonus Shares a shareholder who elects to participate (Participating Shareholder) receives is determined by dividing the amount of the Participating Shareholder's dividend entitlement foregone by the relevant market price, rounded up or down to the nearest whole number of shares.

22. The relevant market price is the volume-weighted average price per share (as traded on the ASX) during the 5 days of trading from and including the day the shares are first quoted on an ex dividend basis on the ASX in relation to the dividend (Market Price). In addition, Whitefield may discount the Market Price by up to a maximum of 5% in accordance with its discount policy as announced on the ASX.

23. To the extent that shareholders opt not to participate in the Plan or do not fully nominate for their shareholdings to participate, they will receive a dividend, fully franked to the extent of the franking credits available.

24. Participating Shareholders may sell any Bonus Shares acquired under the Plan at any time.

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25. Participating Shareholders are not required to provide consideration in order to receive the Bonus Shares under the Plan; rather, they will forfeit their entitlement to receive a dividend.

26. As the Plan will not be a dividend reinvestment plan, the issue of Bonus Shares under the Plan will not result in a debit to retained earnings or a credit to Whitefield's share capital account.

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**Commissioner of Taxation**

15 June 2022

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 Status: **not legally binding**


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## Appendix – Explanation

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**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.*

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### **Bonus Shares not a dividend**

27. Subsection 6(1) defines a 'dividend' to include any distribution made by a company and any amount credited by a company to any of its shareholders. As no amount was credited by Whitefield to any of its shareholders when it issued the Bonus Shares, the Bonus Shares will not be a dividend as defined in subsection 6(1).

28. Section 6BA provides the taxation treatment where a company issues bonus shares to a shareholder in respect of shares they hold in the company (subsection 6BA(1)).

29. If subsection 6BA(5) applies, bonus shares issued by a company will be treated as the payment of a dividend where a shareholder, who has a choice to receive a dividend or to be issued with shares, chooses to be issued with shares. While the Plan provides that choice to Whitefield shareholders, subsection 6BA(5) is subject to subsection 6BA(6).

30. Subsection 6BA(6) states that subsection 6BA(5) will not apply if paragraphs 6BA(6)(a) and (b) apply. Paragraph 6BA(6)(a) will apply because Whitefield is a 'listed public company' as defined in subsection 995-1(1) of the ITAA 1997. Paragraph 6BA(6)(b) will apply because Whitefield will not credit its share capital account in connection with the issue of Bonus Shares under the Plan. Therefore, the requirements of subsection 6BA(6) will be satisfied.

31. As the requirements of subsection 6BA(6) are satisfied, the Bonus Shares will not be taken to be a dividend under subsection 6BA(5), and subsection 6BA(3) will apply (Note to subsection 6BA(6)).

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**Anti-avoidance provisions do not apply****Section 45**

32. Section 45 applies where a company provides some of its shareholders with bonus shares while paying minimally franked dividends (as defined in subsection 45(3)) to some of its other shareholders (subsection 45(1)).

33. Section 45 will not apply to you as the shareholders who do not participate in the Plan will receive fully franked dividends, not minimally franked dividends.

34. Therefore, the value of the Bonus Shares issued to you will not be taken to be a dividend under subsection 45(2).

**Section 45A**

35. Section 45A applies in circumstances where capital benefits are streamed to certain shareholders who would derive a greater benefit from the receipt of capital and it is reasonable to assume that other shareholders have received or will receive dividends (subsection 45A(1)). However, section 45A will not apply where those other shareholders receive fully franked dividends (subsection 45A(5)).

36. As Whitefield has paid and will continue to pay fully franked dividends to shareholders who do not participate in the Plan, section 45A will not apply to you.

37. Therefore, the Commissioner will not make a determination under subsection 45A(2) that section 45C applies in relation to the whole, or a part, of the Bonus Shares under the Plan, and the Bonus Shares will not be taken to be a dividend under subsection 45C(1).

**Section 45B**

38. Section 45B applies where certain capital payments are paid to shareholders in substitution for dividends (subsection 45B(2)).

39. Having regard to the relevant circumstances (as set out in subsection 45B(8)) of the Plan, it cannot be concluded that a person would have entered into, or carried out, the Plan for more than an incidental purpose of enabling you to obtain a tax benefit.

40. Therefore, the Commissioner will not make a determination under subsection 45B(3) that section 45C applies in relation to the whole, or a part, of the Bonus Shares issued under the Plan, and the Bonus Shares will not be taken to be a dividend under subsection 45C(1).

**Bonus Shares not assessable under section 44**

41. Section 44 includes amounts received as dividends paid out of profits in the assessable income of a shareholder.

42. As the Bonus Shares are not a dividend under subsection 6(1), and will not be taken to be a dividend under subsections 6BA(5), 45(2) or 45C(1), the value of the Bonus Shares will not be included in your assessable income under section 44.

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**Acquisition date of shares**

43. The Bonus Shares you receive in respect of Original Shares are taken to have been acquired when you acquired the Original Shares (table items 1 and 3 of subsection 130-20(3) of the ITAA 1997).

44. If your Original Shares consist of shares you acquired, or are taken to have been acquired, at different times, you must allocate the Bonus Shares you receive under the Plan on a pro rata basis across those parcels of Original Shares. That is, you will have to work out how many of your Bonus Shares are taken to have been acquired at each of those times.

**Cost base of shares**

45. If you acquired, or are taken to have acquired, your parcel of Original Shares on or after 20 September 1985, the first element of the cost base and reduced cost base of the Bonus Shares issued in respect of them will be determined by apportioning the first element of the cost base and reduced cost base of the Original Shares in a reasonable way over both the Original Shares and the Bonus Shares (subsection 6BA(3) and table item 1 of subsection 130-20(3) of the ITAA 1997).

46. The Commissioner considers it reasonable to apportion the first element of the cost base and reduced cost base of each parcel of the Original Shares on a pro rata basis over both the parcel of Original Shares and the Bonus Shares issued in respect of them. The result of this apportionment will be the first element of the cost base and reduced cost base of each of those Whitefield shares.

47. If you acquired, or are taken to have acquired, your parcel of Original Shares before 20 September 1985, any capital gain or capital loss you make on the Bonus Shares issued in respect of them are disregarded (table item 3 of subsection 130-20(3) of the ITAA 1997).

**No deduction for listed investment company capital gain**

48. A deduction is allowable for an amount of dividend paid to you if all or some part of the dividend is reasonably attributable to an 'LIC capital gain' made by a LIC (section 115-280 of the ITAA 1997).

49. As the Bonus Shares are not and will not be taken to be a dividend, you will not be entitled to claim a deduction under section 115-280 of the ITAA 1997.

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Status: **not legally binding**

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## References

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*Related Rulings/Determinations:*

CR 2015/21

*Legislative references:*

- ITAA 1936 6(1)
- ITAA 1936 6BA
- ITAA 1936 6BA(1)
- ITAA 1936 6BA(3)
- ITAA 1936 6BA(5)
- ITAA 1936 6BA(6)
- ITAA 1936 6BA(6)(a)
- ITAA 1936 6BA(6)(b)
- ITAA 1936 44
- ITAA 1936 45
- ITAA 1936 45(1)
- ITAA 1936 45(2)
- ITAA 1936 45(3)
- ITAA 1936 45A
- ITAA 1936 45A(1)
- ITAA 1936 45A(2)
- ITAA 1936 45A(5)
- ITAA 1936 45B
- ITAA 1936 45B(2)
- ITAA 1936 45B(3)
- ITAA 1936 45B(8)
- ITAA 1936 45C
- ITAA 1936 45C(1)
- ITAA 1997 115-280
- ITAA 1997 115-290
- ITAA 1997 130-20(3)
- ITAA 1997 Div 230
- ITAA 1997 977-50
- ITAA 1997 995-1(1)

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ATO references

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