

CR 2023/15 - Australia and New Zealand Banking Group Limited - restructure - employee share scheme - treatment of shares or rights



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Status: **legally binding**

Class Ruling

Australia and New Zealand Banking Group Limited – restructure – employee share scheme – treatment of shares or rights

❶ 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 for employees of Australia and New Zealand Banking Group Limited (ANZBGL), or one of its subsidiaries, who were participants in an ANZBGL employee share scheme when ANZBGL undertook the corporate restructure on 3 January 2023 (the Restructure).
2. Details of this scheme are set out in paragraphs 19 to 51 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:
 - immediately prior the Restructure, you held one or more of the following
 - shares granted under the Variable Pay to Shares Offer (VPS Offer) and held by ANZEST Pty Ltd (Trustee) on your behalf
 - shares granted under the Deferred Share Plan and the ESS deferred taxing point pursuant to section 83A-115 had not occurred
 - rights to acquire shares subject to performance hurdles (Performance Rights) under the ANZ Employee Share Option Plan

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- (ESOP) and the ESS deferred taxing point pursuant to section 83A-120 had not occurred
 - rights to acquire shares subject to Pre Vest Assessment (Restricted Rights) under the ESOP and the ESS deferred taxing point pursuant to section 83A-120 had not occurred
 - rights to acquire shares under the ESOP (Deferred Share Rights) and the ESS deferred taxing point pursuant to section 83A-120 had not occurred, and
- you were a resident of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936*.

5. This Ruling does not apply to anyone who is subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 20 to 51 of this Ruling.

Note: Division 230 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 2022 to 30 June 2023.

Ruling

Shares granted in relation to the Variable Pay to Shares Offer

7. The ANZBGL shares granted under the VPS Offer are ESS interests provided under an employee share scheme (subsections 83A-10(1) and (2)) and constitute an arrangement to which Subdivision 83A-B applies.

8. The shares you received in ANZ Group Holdings Limited (ANZHL) as part of the Restructure in relation to the VPS Offer satisfied the conditions under subsection 83A-130(1). Therefore:

- the ANZHL shares are treated as a continuation of the ANZBGL shares granted to you under the VPS Offer for the purposes of Division 83A (subsection 83A-130(2))
- the ANZHL shares are taken to satisfy subsection 83A-45(4) so that any discount previously excluded from your assessable income under section 83A-35 in respect of the ANZBGL shares will continue to be excluded (subsection 83A-130(3)), and
- if your employment changed to ANZHL, or a subsidiary of ANZHL, it is regarded as a continuation of your employment for the purposes of Division 83A (subsection 83A-130(6)).

9. As your VPS shares were held by the Trustee on your behalf at the time of the Restructure, you are considered to be absolutely entitled to the ANZBGL shares you received under the VPS Offer (subsection 130-85(2)) for capital gains tax purposes.

10. The capital gains tax consequences that apply to shares acquired under the VPS Offer are outlined in Class Ruling CR 2023/6 *Australia and New Zealand Banking Group Limited – exchange of shares for shares in ANZ Group Holdings Limited*.

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Shares granted in relation to the Deferred Share Plan

11. The ANZBGL shares granted under the Deferred Share Plan are ESS interests provided under an employee share scheme (subsections 83A-10(1) and (2)) and constitute an arrangement to which Subdivision 83A-C applies.

12. The ANZHL shares you received as part of the Restructure in relation to the Deferred Share Plan satisfied the conditions under subsection 83A-130(1). Therefore:

- the ANZHL shares are treated as a continuation of the ANZBGL shares granted to you under the Deferred Share Plan for the purposes of Division 83A (subsection 83A-130(2))
- the ANZBGL shares being replaced with ANZHL shares did not trigger an ESS deferred taxing point under section 83A-115 (section 83A-130), and
- if your employment changed to ANZHL, or a subsidiary of ANZHL, it is regarded as a continuation of your employment for the purposes of Division 83A (subsection 83A-130(6)).

13. You disregard any capital gain or capital loss from the disposal of the ANZBGL shares granted under the Deferred Share Plan which were replaced with ANZHL shares as part of the Restructure (subsection 130-80(1)).

14. The cost base of the ANZBGL shares granted under the Deferred Share Plan held by you just prior to the Restructure will be allocated to the matching ANZHL shares you held just after the Restructure in accordance with subsection 83A-130(7).

Performance Rights, Restricted Rights and Deferred Share Rights

15. At the time of the Restructure, Performance Rights, Restricted Rights and Deferred Share Rights are not ESS interests but are indeterminate rights pursuant to section 83A-340 and will continue to be indeterminate rights after they are amended as part of the Restructure. Therefore, at the time the rights are amended as part of the Restructure:

- no ordinary income is derived for the purposes of section 6-5
- no capital gain or capital loss arises, and
- no ESS deferred taxing point occurred under section 83A-120.

16. Where your amended Performance Rights, Restricted Rights or Deferred Share Rights are satisfied by:

- a cash payment, the amount of that payment is included in your assessable income in the income year in which it is received under section 6-5, or
- the provision of a share, section 83A-340 will apply to the right and will be treated as if it had always been an ESS interest.

17. If you are employed by ANZBGL, or one of its subsidiaries, immediately prior to the Restructure, your employment with ANZBGL or one of its subsidiaries does not cease within the meaning of section 83A-330 if, after the Restructure, your employment is transferred to ANZHL (being a holding company of ANZBGL) or a subsidiary of ANZHL.

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Fringe benefits consequences

18. You do not have a reportable fringe benefits amount (as defined in subsection 995-1(1)) as a result of the Restructure.

Scheme

19. 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.

ANZ employee share schemes

20. ANZBGL had the following employee share and option schemes at the time of the Restructure:

- VPS Offer
- Deferred Share Plan
- Performance Rights
- Restricted Rights
- Deferred Share Rights.

21. ANZBGL and ANZEST Pty Ltd established the ANZ employee incentive plan trust (Trust) to hold shares for the purposes of the employee share and option schemes implemented by the ANZBGL group.

Variable Pay to Shares Offer

22. The VPS Offer operates under the ANZ Employee Share Acquisition Plan (ESAP) Rules and the relevant offer documents.

23. ANZBGL granted eligible employees ANZBGL shares up to \$1,000 each year under the VPS Offer. These shares are subject to the ESAP Rules and the relevant conditions of grant.

24. The shares granted to eligible employees under the VPS Offer were held on trust by the Trustee in accordance with the ESAP Rules and Trust Deed. The shares granted were subject to a 3-year trading restriction period from the allocation date but if the employee ceased employment with ANZBGL during the restriction period, the employee would be entitled to keep the shares and the trading restrictions will cease at the time of cessation.

Deferred Share Plan

25. The Deferred Share Plan operates under the ESAP Rules and the relevant offer documents.

26. ANZBGL granted eligible employees ANZBGL shares under the Deferred Share Plan (Deferred Shares) with vesting dates occurring over 1 to 4 years from the date of grant.

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27. Vesting was subject to the participant remaining in employment with the ANZBGL group on the relevant vesting date, and ANZBGL's ongoing and absolute discretion to defer the vesting date.

28. All grants of Deferred Shares were subject to downward adjustment at the ongoing and absolute discretion of ANZBGL (including to zero). If this discretion is exercised, participants automatically and immediately forfeit their Deferred Shares.

Performance Rights

29. The Performance Rights operate under the ESOP Rules and relevant offer documents.

30. Performance Rights granted to employees gave them the right to acquire a specified number of ANZBGL shares at nil cost.

31. Vesting of Performance Rights occurs over a 4 to 6-year period (subject to ANZBGL's ongoing and absolute discretion to defer the vesting date) and subject to specific shareholder return performance hurdles.

32. If the performance hurdles are not met or the participant ceases employment with the ANZBGL group before the vesting date, the Performance Rights are considered forfeited.

33. Performance Rights which vest and meet the performance hurdles may be satisfied by cash payments in lieu of shares. Performance Rights are also subject to downward adjustment at the ongoing and absolute discretion of ANZBGL (including to zero).

Restricted Rights

34. The Restricted Rights operate under the ESOP Rules and relevant offer documents.

35. Restricted Rights granted to employees gave them the right to acquire a specified number of ANZBGL shares at nil cost.

36. Vesting of Restricted Rights occurs over 4 to 6-years (subject to ANZBGL's ongoing and absolute discretion to defer the vesting date) and subject to a Pre Vest Assessment and the participant remaining employed in the ANZBGL Group at the vesting date.

37. If the vesting conditions are not met, the Restricted Rights are forfeited.

38. Restricted Rights are also subject to downward adjustment at the ongoing and absolute discretion of ANZBGL (including to zero).

Deferred Share Rights

39. The Deferred Share Rights operate under the ESOP Rules.

40. Deferred Share Rights granted to employees gave them the right to acquire a specified number of ANZBGL shares at nil cost.

41. Vesting of Deferred Share Rights occurs over 1 to 4 years from grant (either on a periodic basis in tranches, or on a single vesting date as set out in the relevant conditions of the offer). Vesting is subject to the participant remaining employed with the ANZBGL group on the relevant vesting date and ANZBGL's ongoing and absolute discretion to defer the vesting date.

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42. If the participant ceases employment with the ANZBGL group during the vesting period, the Deferred Share Rights are forfeited.

43. Deferred Share Rights are also subject to downward adjustment at the ongoing and absolute discretion of ANZBGL (including to zero).

The Restructure

44. Prior to the Restructure, the ESAP and ESOP rules were amended such that when the planned corporate restructure occurred, shares provided under the plans would be ANZHL shares instead of ANZBGL shares.

45. The Restructure was undertaken on 3 January 2023. ANZHL was interposed as a new parent company between ANZBGL and ANZBGL's existing shareholders pursuant to a scheme of arrangement made under Part 5.1 of the *Corporations Act 2001*. This resulted in ANZBGL shareholders exchanging their shares in ANZBGL for shares in ANZHL on a one-for-one basis.

46. ANZHL assumed responsibility for the management of the ESAP and ESOP.

47. The ANZ employee incentive plan trust deed was amended to reflect the changes to the corporate structure and ANZHL's responsibility for the management of ESAP and ESOP.

48. Before and after the Restructure, no participant in any of the employee share and option schemes held a beneficial interest in more than 10% of the shares in ANZBGL or ANZHL respectively, nor were they in a position to cast, or to control the casting of, more than 10% of the maximum number of votes that might be cast at a general meeting of ANZBGL or ANZHL respectively.

49. On 3 January 2023, the Trustee exchanged its holdings of ANZBGL shares for ordinary shares in ANZHL on a one-for-one basis. The ANZHL ordinary shares received are held by the Trustee on the same terms as the original corresponding ANZBGL ordinary shares.

50. The amended terms of the Performance Rights, Restricted Rights, and Deferred Share Rights are identical to their original terms, such that the various rights operate in the same way in relation to ANZHL as those rights operated in relation to ANZBGL.

51. At the time of the Restructure, all the ANZBGL shares allocated under the Deferred Share Plan and the VPS Offer were exchanged on a one-for-one basis with ordinary ANZHL shares.

Commissioner of Taxation

5 April 2023

Status: **not legally binding**

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.*

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Variable Pay to Share Offers

52. Section 83A-130 is satisfied for the shares received under the VPS Offer as:

- the Restructure is a 'takeover' because it resulted in ANZBGL becoming a 100% subsidiary of ANZHL (subparagraph 83A-130(1)(a)(i))
- just before the Restructure, you held interests that you acquired under an ESS (paragraph 83A-130(1)(b))
- as a result of the Restructure, you stopped holding the interests (paragraph 83A-130(2)(a))
- you acquired an ESS Interest in connection with the Restructure (subsection 83A-130(2))
- the Commissioner accepts that the ESS interests you received as part of the Restructure can reasonably be regarded as matching the ESS interests that were replaced as part of the Restructure (paragraph 83A-130(2)(b))
- the new ESS interests relate to ordinary shares in ANZHL (subsection 83A-130(4))
- you were employed by ANZHL, or a subsidiary of ANZHL, at the time you acquired the new ESS interests (paragraph 83A-130(9)(a)), and
- as a result of acquiring the ESS interests, you did not hold a legal or beneficial interest in more than 10% of ANZHL shares or were 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 ANZHL general meeting (paragraph 83A-130(9)(b)).

53. This means that 83A-130 applies and therefore the new ESS interests are a continuation of the old ESS interests (subsection 83A-130(2)), the disposal restriction condition under subsection 83A-45(4) is still on foot (subsection 83A-130(3)) and your employment with ANZHL or one of its subsidiaries is taken to be a continuation of employment with ANZBGL or that subsidiary for Division 83A purposes (subsection 83A-130(6)).

54. The capital gains tax consequences for ANZBGL shares acquired under the VPS Offer as a result of the Restructure are outlined in CR 2023/6.

Status: **not legally binding**

Deferred shares

55. For Deferred Shares, section 83A-130 is satisfied for the same reasons as described in paragraph 52 of this Ruling.

56. This means that 83A-130 applies and therefore the new ESS interests are a continuation of the old ESS interests (subsection 83A-130(2)), your employment with ANZHL or one of its subsidiaries is taken to be a continuation of employment with ANZBGL or that subsidiary for Division 83A purposes (subsection 83A-130(6)) and no ESS deferred taxing point arises.

57. Subsection 130-80(1) applies to disregard any capital gain or capital loss arising because of the Restructure as:

- only CGT events E4, G1 and K8 are excluded from the operation of section 130-80, but none of these events are relevant for present purposes, and
- as the Deferred Shares are ESS Interests to which Subdivisions 83A-C applies and the CGT event happened prior to the ESS deferred taxing point, subparagraph 130-80(1)(d)(ii) is satisfied.

Performance Rights, Restricted Rights and Deferred Share rights

58. The Performance Rights, Restricted Rights and Deferred Share Rights are indeterminate rights under section 83A-340 at the time of the Restructure, as they may be settled by cash payments in lieu of shares.

59. An indeterminate right is a right to future payment of remuneration that has the capacity to become a right to acquire a beneficial interest in a share. The form (and sometimes the amount) of that remuneration is yet to be determined.

60. The Performance Rights and Deferred Share Rights were amended to update the payment of the shares to be in ordinary ANZHL shares rather than ANZBGL shares and were not cancelled as part of the Restructure.

61. The Restricted Rights were provided in a manner that contemplated the Restructure, so no amendment to these rights was necessary. As the Restructure went ahead, this meant the shares to be provided are ordinary ANZHL shares (if the Board decides to provide shares rather than cash payments) rather than ANZBGL shares.

Fringe benefits consequences

62. No reportable fringe benefit amount arises for you as paragraph (h) of the definition of 'fringe benefit' in subsection 136(1) of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) provides that an ESS interest to which Subdivision 83A-C or Subdivision 83A-B applies is not a fringe benefit.

63. Accordingly, a 'reportable fringe benefits amount' (as defined in subsection 995-1(1)) did not arise as a result of the Restructure.

Status: **not legally binding**

References

Related Rulings/Determinations:

CR 2023/6

Legislative references:

- FBTAA 136(1)
 - ITAA 1936 6(1)
 - ITAA 1997 6-5
 - ITAA 1997 Div 83A
 - ITAA 1997 83A-10(1)
 - ITAA 1997 83A-10(2)
 - ITAA 1997 Subdiv 83A-B
 - ITAA 1997 83A-35
 - ITAA 1997 83A-45(4)
 - ITAA 1997 Subdiv 83A-C
 - ITAA 1997 83A-115
 - ITAA 1997 83A-120
 - ITAA 1997 83A-130
 - ITAA 1997 83A-130(1)
 - ITAA 1997 83A-130(1)(a)(i)
 - ITAA 1997 83A-130(1)(b)
 - ITAA 1997 83A-130(2)
 - ITAA 1997 83A-130(2)(a)
 - ITAA 1997 83A-130(2)(b)
 - ITAA 1997 83A-130(3)
 - ITAA 1997 83A-130(4)
 - ITAA 1997 83A-130(6)
 - ITAA 1997 83A-130(7)
 - ITAA 1997 83A-130(9)(a)
 - ITAA 1997 83A-130(9)(b)
 - ITAA 1997 83A-330
 - ITAA 1997 83A-340
 - ITAA 1997 130-80
 - ITAA 1997 130-80(1)
 - ITAA 1997 130-80(1)(d)(ii)
 - ITAA 1997 130-85(2)
 - ITAA 1997 Div 230
 - ITAA 1997 995-1(1)
 - Corporations Act 2001 Pt 5.1
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ATO references

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