

CR 2023/70 - B&C Hospitality Holdings Pty Ltd - employee share scheme - reducing the minimum holding period



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Status: **legally binding**

Class Ruling

B&C Hospitality Holdings Pty Ltd – employee share scheme – reducing the minimum holding period

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 B&C Hospitality Holdings Pty Ltd (B&C) who were granted options under the Employee Share Option Plan (ESOP).
2. Details of this scheme are set out in paragraphs 7 to 21 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:
 - acquired options under the ESOP in May 2022 (Options), which you held at all times until they were cancelled on 22 September 2023, pursuant to the Share Purchase Deed (SPD)
 - were entitled to reduce the amount included in your assessable income in accordance with section 83A-33 (with the exception of the condition in subsection 83A-45(4) – minimum holding period) when you acquired the Options, and
 - were employed by B&C or a ‘subsidiary’ (as defined in the *Corporations Act 2001*) of B&C (collectively referred to as the B&C Group).

Status: **legally binding**

When this Ruling applies

5. This Ruling applies from 1 July 2021 to 30 June 2024.

Ruling

6. The Commissioner will allow the minimum holding period to end at the earlier time of 22 September 2023 for the Options that you held and were cancelled as a result of the SPD (paragraph 83A-45(5)(a)).

Scheme

7. 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.

Relevant entities***B&C Hospitality Holdings Pty Ltd***

8. B&C is a private company and a tax resident of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936*.

9. B&C owns 100% of the shares, directly or through intermediate subsidiaries, of the following entities:

- Now Book It Pty Ltd
- Gift A Restaurant Pty Ltd
- Now Book It UK – incorporated in the UK
- Now Book it Inc – incorporated in the US
- Now Book It NZ – incorporated in New Zealand, and
- Pt Now Book It Indonesia – incorporated in Indonesia.

10. The B&C Group developed and operates an online hospitality reservation platform.

Valsoft Australia Pty Ltd

11. Valsoft Australia Pty Ltd (Valsoft) is the Australian branch of Valsoft Corporation, a company based in Montreal, Canada with a focus on acquiring and growing vertical market software businesses which provide solutions to various industries.

12. Valsoft is in the business of acquiring software companies.

Employee share option plan

13. In May 2022, B&C introduced the ESOP for the purpose of incentivising and rewarding employees of the B&C Group.

Status: **legally binding**

14. B&C granted B&C Group employees Options to acquire ordinary shares in B&C which are subject to the terms of the employees' individual offer letters and the ESOP Rules (Plan Rules).
15. The Options issued to B&C Group employees in May 2022 for no consideration.
16. Clause 4 of the Plan Rules places restrictions on the disposals of Options or shares acquired upon exercising the Options. Specifically, Clause 4(d) provides for an overriding disposal restriction which states the following:
- Unless an Optionholder disposes of an Option or an Option Share under an arrangement which meets the requirements in section 83A-130 of the Tax Act, a legal or beneficial interest in an Option or an Option Share may not be Disposed of until the earlier of:
- (1) 3 years after the issue of the Option or such earlier time as the Commissioner of Taxation allows in accordance with section 83A-45(5) of the Tax Act; and
 - (2) Where the Option holder becomes a Leaver (as defined in rule 3((a))).
17. Since the Options were granted to the employees, in accordance with the disposal restrictions in Clause 4(d) of the Plan Rules, the ESOP has operated in a way that prevented employees from disposing of their Options until the earlier of 3 years of acquiring the Options or ceasing employment.

The transaction

18. Valsoft first approached B&C on 14 June 2022, requesting a discussion regarding software utilised by the Now Book It entities.
19. On 22 September 2023, the shareholders of B&C entered into an arrangement pursuant to the SPD for the sale of 100% of the shares in B&C to Valsoft.
20. Pursuant to the SPD, each of the Optionholders had their Options cancelled with effect from 22 September 2023.

Other matters

21. B&C did not enter into any serious negotiations with any other entity regarding acquisition.

Commissioner of Taxation
13 December 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.*

When the minimum holding period ends

22. One of the conditions which entitled you to reduce the amount included in your assessable income when you acquired the Options was that the Plan Rules restricted the Options from being disposed of within the minimum holding period of 3 years or when you ceased employment with the B&C Group (sections 83A-33 and 83A-45).

23. However, the Commissioner can allow the minimum holding period of 3 years to end earlier, if the Commissioner is satisfied that:

- B&C intended that the requirements as set out in subsection 83A-45(4) would apply to the Options during the 3 years (subparagraph 83A-45(5)(a)(i)), and
- at the earlier time that the Commissioner allows, all Options were disposed of under a particular scheme (subparagraph 83A-45(5)(a)(ii)).

24. The Commissioner is satisfied that the Plan Rules prevented employees from disposing of the Options until the earlier of the 3-year anniversary of the date the Options were acquired or the day after the date they ceased to be employed by the B&C Group.

25. On 22 September 2023, all shares in B&C were purchased by Valsoft and, as a pre-condition to the completion of the SPD, all Options were cancelled.

26. Therefore, the Commissioner is satisfied that the requirements of subparagraphs 83A-45(5)(a)(i) and (ii) are met and will allow the minimum holding period in respect of the Options to end at the earlier time of 22 September 2023.

27. Consequently, you remain entitled to reduce the amount included in your assessable income in accordance with section 83A-33.

Status: **not legally binding**

References

Legislative references:

- ITAA 1936 6(1)
 - ITAA 1997 83A-33
 - ITAA 1997 83A-45
 - ITAA 1997 83A-45(4)
 - ITAA 1997 83A-45(5)
 - ITAA 1997 83A-45(5)(a)
 - ITAA 1997 83A-45(5)(a)(i)
 - ITAA 1997 83A-45(5)(a)(ii)
 - Corporations Act 2001
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ATO references

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