

CR 2024/19 - Symbio Holdings Limited - employee share scheme - shares disposed of under scheme of arrangement



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Status: **legally binding**

Class Ruling

Symbio Holdings Limited – employee share scheme – shares disposed of under scheme of arrangement

❗ 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 Symbio Holdings Limited (Symbio) who participated in the Symbio Holdings Limited employee share plan (Plan) to acquire ordinary shares in Symbio (SESP Shares) which were subsequently disposed of on 28 February 2024 pursuant to a scheme of arrangement.
2. Details of this scheme are set out in paragraphs 9 to 23 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 SESP Shares on 11 February 2022, 10 February 2023 or 20 December 2023 under the Plan, which you held at all times until 28 February 2024
 - were entitled to reduce the amount included in your assessable income in accordance with section 83A-35 (with the exception of the condition in subsection 83A-45(4) – minimum holding period) when you acquired the SESP Shares

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- were employed by Symbio at all times from the date you acquired the SESP Shares until 28 February 2024, and
- were a resident of Australia (as defined in subsection 6(1) of the *Income Tax Assessment Act 1936*) on 28 February 2024.

When this Ruling applies

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

Ruling

Minimum holding period satisfied

6. The Commissioner will allow the minimum holding period to end at the earlier time of 28 February 2024 for the SESP Shares you acquired on 11 February 2022 or 10 February 2023 under the Plan (paragraph 83A-45(5)(a)).

Minimum holding period not satisfied

7. The Commissioner will not allow the minimum holding period to end at the earlier time of 28 February 2024 for the SESP Shares you acquired on 20 December 2023 under the Plan (paragraph 83A-45(5)(a)).
8. Therefore, your assessable income for the income year ending 30 June 2024 includes the discount given in relation to the SESP Shares you acquired on 20 December 2023 under the Plan (section 83A-25) as you are not entitled to reduce that amount included in your assessable income (subsections 83A-35(1) and 83A-45(4)).

Scheme

9. 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

Symbio Holdings Limited

10. Symbio is a resident of Australia which was incorporated on 8 March 2006 and listed on the Australian Securities Exchange on 18 May 2006.
11. Symbio delivers cloud and software-based technology such as communication-platform-as-a-service with software platforms providing for voice and messaging communication needs for companies across Australia, New Zealand and Singapore.

Aussie Broadband Limited

12. Aussie Broadband Limited (ABB) is a resident of Australia which was incorporated on 7 July 2008 and listed on the Australian Securities Exchange on 15 October 2020.

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13. ABB is a telecommunication and technology company, servicing residential, business, wholesale and government customers.

Symbio Holdings Limited employee share plan

14. Symbio established the Plan in accordance with the Employee Share Plan Rules (Plan Rules) to provide eligible employees with the opportunity to acquire an ownership interest in Symbio.

15. On 11 February 2022, 10 February 2023 and 20 December 2023, Symbio granted SESP Shares up to the value of \$1,000 to eligible employees (Participants) for no consideration.

16. Under the Plan Rules:

- The Plan was established to comply with section 83A-35.
- No provision provided for the SESP Shares to be forfeited.
- A holding lock applied to all SESP Shares held for the duration of the holding lock period. The holding lock prevented the Participant from transferring or dealing with SESP Shares.
- The holding lock period was the period from the date the SESP Shares were allocated to the Participant until the earliest of the
 - third anniversary of the date the SESP Shares are allocated to the Participant, and
 - date on which the Participant ceased employment within the meaning of section 83A-330.

17. The Board of Symbio has not exercised its discretion to allow the disposal of SESP Shares during the holding lock period.

Scheme of arrangement

18. On 29 September 2023, Symbio received a non-binding indicative conditional proposal from ABB to acquire all the shares in Symbio shares via a scheme of arrangement.

19. On 1 November 2023, Symbio announced that its Board unanimously recommended that Symbio shareholders vote in favour of the scheme of arrangement.

20. On 1 November 2023, ABB and Symbio entered into a Scheme Implementation Agreement under which ABB agreed to acquire all the Symbio shares via a scheme of arrangement under Part 5.1 of the *Corporations Act 2001*.

21. On 28 February 2024, ABB acquired all Symbio shares, including the SESP Shares in exchange for ABB shares, a cash payment, or a combination of ABB shares and a cash payment.

22. The ABB shares received by the Symbio shareholders (including the Participants) under the scheme of arrangement, were free from any restrictions on disposal.

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Other matters

23. Symbio did not enter into any formal discussions with any entity concerning a takeover or some other acquisition of all of Symbio shares prior to 10 February 2023.

Commissioner of Taxation

20 March 2024

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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When the minimum holding period ends

24. One of the conditions which allowed you to reduce the amount included in your assessable income when you acquired the SESP Shares was that the Plan Rules restricted the SESP Shares being disposed of within the minimum holding period of 3 years or when you ceased employment with Symbio (sections 83A-35 and 83A-45).

25. However, the Commissioner can allow the minimum holding period to end earlier, if the Commissioner is satisfied that:

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

26. The Commissioner is satisfied that the Plan Rules prevented employees from disposing of the SESP Shares until the earlier of the 3-year anniversary of the date the SESP Shares were acquired or the day after the date they ceased to be employed by Symbio.

27. All Symbio shares, including the SESP Shares, were disposed of under the scheme of arrangement.

Minimum holding period satisfied

28. 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 to end at the earlier time of 28 February 2024 for the SESP Shares you acquired on 11 February 2022 or 10 February 2023 under the Plan.

29. Therefore, you remain entitled to reduce the amount included in your assessable income in relation to the SESP Shares you acquired on 11 February 2022 or 10 February 2023 under the Plan in accordance with section 83A-35.

Minimum holding period not satisfied

30. The Commissioner is not satisfied that the requirements of subparagraphs 83A-45(5)(a)(i) and (ii) are met and will not allow the minimum holding period to end at the

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earlier time of 28 February 2024 for the SESP Shares you acquired on 20 December 2023 under the Plan.

31. When Participants acquired the SESP Shares on 20 December 2023, ABB and Symbio had already entered into a Scheme Implementation Agreement under which ABB had agreed to acquire all the Symbio shares via the scheme of arrangement. Having regard to the circumstances surrounding the proposed scheme of arrangement, it is reasonable to conclude that the operator of the Plan was aware (or should have been aware) that the SESP Shares acquired on 20 December 2023 would be disposed of within the 3 years of the shares being acquired.

32. Therefore, your assessable income for the income year ending 30 June 2024 includes the discount given in relation to the SESP Shares you acquired on 20 December 2023 under the Plan (section 83A-25) as you are not entitled to reduce that amount included in your assessable income (subsections 83A-35(1) and 83A-45(4)).

Status: **not legally binding**

References

Legislative references:

- ITAA 1936 6(1)
 - ITAA 1997 83A-25
 - ITAA 1997 83A-35
 - ITAA 1997 83A-35(1)
 - ITAA 1997 83A-45
 - ITAA 1997 83A-45(4)
 - ITAA 1997 83A-45(5)(a)
 - ITAA 1997 83A-45(5)(a)(i)
 - ITAA 1997 83A-45(5)(a)(ii)
 - ITAA 1997 83A-330
 - Corporations Act 2001 Pt 5.1
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ATO references

NO: 1-100M364Y

ISSN: 2205-5517

BSL: PG

ATOlaw topic: Income tax ~~ Assessable income ~~ Employee share schemes ~~ Other
Income tax ~~ Assessable income ~~ Employee share schemes ~~ Taxation of
discounts – upfront

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