


# ***CR 2024/9 - InvoCare Limited - employee share scheme - shares disposed of under a scheme of arrangement***

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Status: **legally binding**

## Class Ruling

# InvoCare Limited – employee share scheme – shares disposed of under a 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 InvoCare Limited (InvoCare) who participated in the Employee Share Purchase Plan (the Plan) to acquire ordinary shares in InvoCare which were disposed of for cash consideration pursuant to a scheme of arrangement on 24 November 2023.
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 the InvoCare shares under the Plan
  - were restricted from disposing of these shares under the Plan until 24 November 2023
  - 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 InvoCare Shares, and

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- were employed by InvoCare or a 'subsidiary' (as defined in the *Corporations Act 2001*) of InvoCare (collectively referred to as the InvoCare Group) at all times from the date you acquired the InvoCare shares prior to 24 November 2023.

### **When this Ruling applies**

5. This Ruling applies from 1 July 2023 to 30 June 2024.

### **Ruling**

6. The Commissioner will allow the minimum holding period to end at the earlier time of 24 November 2023 for the application of Subdivision 83A-B to the InvoCare shares you received cash consideration for under the scheme of arrangement (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.

#### **InvoCare Limited**

8. InvoCare is an Australian incorporated company that operates an Australian, New Zealand and Singapore funeral services, cemeteries and crematoria business, overseeing an extensive network of cemeteries, memorial parks and cremators.
9. InvoCare is the head company of an income tax consolidated group and was listed on the Australian Stock Exchange until the business day immediately following the scheme implementation date (24 November 2023).

#### **Eternal Aus BidCo Pty Ltd**

10. Eternal Aus BidCo Pty Ltd (BidCo) is an Australian incorporated company and an indirect subsidiary of Eternal Aus HoldCo Ltd (HoldCo).
11. HoldCo is an Australian incorporated company and is an Australian-resident for income tax purposes and is the head company of an income tax consolidated group of which BidCo is a member.

#### **Employee share purchase plan**

12. InvoCare established the Plan as an employee share plan in 2006 in accordance with the share plan rules. The current relevant share plan rules are those dated July 2018 (the Rules).
13. Under the Plan, InvoCare made offers to eligible employees to acquire up to \$1,000 of ordinary shares in InvoCare via a salary sacrifice arrangement.

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14. These offers were made to over 75% of the permanent Australian tax resident employees of InvoCare who had completed 6 months service on a non-discriminatory basis.

15. At the time of the offers, the employees to whom the offers were made were employed by InvoCare Group.

16. No offers on the Plan were made after 1 July 2022.

17. These InvoCare shares were:

- subject to a minimum holding period such that the participant could not dispose of the shares until the earliest of
  - 3 years from the date the shares were granted, or
  - at the time which the employee ceased being employed by the InvoCare Group, and
- not subject to any vesting conditions; that is, the shares could not be forfeited.

#### **Disposal of all of InvoCare Limited shares to Eternal Aus BidCo Pty Ltd**

18. TPG Capital Asia (TPG) entered into a scheme of arrangement to acquire all the issued capital of InvoCare not already held by TPG and its related entities.

19. As part of the takeover, BidCo obtained all of the shares of InvoCare held by TPG and its related entities pursuant to a share sale agreement dated 9 November 2023.

20. The remaining shares were acquired by BidCo by way of a scheme of arrangement under Part 5.1 of the *Corporations Act 2001* on 24 November 2023.

#### **Other matters**

21. InvoCare did not enter into any formal discussions with any entities concerning a takeover or some other acquisition of all of InvoCare's shares before 1 July 2022.

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**Commissioner of Taxation**

21 February 2024

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Status: **not legally binding**

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## **Appendix – Explanation**

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**①** *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**

22. Section 83A-35 allows for a reduction in the amount included in your assessable income for certain ESS Interests that you acquire. One of the requirements is that you meet the minimum holding period (subsection 83A-45(4)).

23. Broadly, the minimum holding period is met when the scheme is operated so that it does not allow you to dispose of the InvoCare shares for 3 years. However, the Commissioner can allow an earlier period if the Commissioner is satisfied that:

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

24. The Commissioner is satisfied that the Rules prevented you from disposing of your InvoCare Shares until the earlier of the 3-year anniversary of the date of when you acquired the shares or the day after you ceased to be employed by the InvoCare Group.

25. All InvoCare shares, were disposed of under a scheme such that BidCo became the sole holder of these shares.

26. Accordingly, 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 24 November 2023.

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## References

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*Legislative references:*

- |                          |                                |
|--------------------------|--------------------------------|
| - ITAA 1997 Subdiv 83A-B | - ITAA 1997 83A-45(5)(a)       |
| - ITAA 1997 83A-35       | - ITAA 1997 83A-45(5)(a)(i)    |
| - ITAA 1997 83A-45(4)    | - ITAA 1997 83A-45(5)(a)(ii)   |
|                          | - Corporations Act 2001 Pt 5.1 |
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ATO references

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