TD 2014/21W - Income tax: where a right to acquire a beneficial interest in a share is granted subject to shareholder approval, is the right an 'indeterminate right' within the meaning of subsection 83A-340(1) of the Income Tax Assessment Act 1997?

This cover sheet is provided for information only. It does not form part of TD 2014/21W - Income tax: where a right to acquire a beneficial interest in a share is granted subject to shareholder approval, is the right an 'indeterminate right' within the meaning of subsection 83A-340(1) of the Income Tax Assessment Act 1997?

There is a Compendium for this document: **TD 2014/21EC**.

This document has changed over time. This is a consolidated version of the ruling which was published on 9 September 2015



Taxation Determination

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Notice of Withdrawal

Taxation Determination

Income tax: where a right to acquire a beneficial interest in a share is granted subject to shareholder approval, is the right an 'indeterminate right' within the meaning of subsection 83A-340(1) of the *Income Tax Assessment Act 1997*?

Taxation Determination TD 2014/21 is withdrawn with effect from today.

- 1. The Determination addresses the question of whether a right to acquire a beneficial interest in a share that is granted subject to subsequent shareholder approval is a right covered by section 83A-340 of the ITAA 1997 ('indeterminate rights'). The Commissioner ruled that, where the employee acquires only a right to have the matter put to shareholders and nothing more, that right was not a right covered by section 83A-340 of the ITAA 1997 or section 83A-15 of the *Income Tax (Transitional Provisions) Act 1997* (ITTPA).
- 2. The Federal Court in *Davies v FC of T* [2015] FCA 773; 2015 ATC 20-520 held that a right created in contract to a share or a right to shares, which was subject to shareholder approval was a right which became a right to acquire a beneficial interest in a share for the purposes of section 83A-15 of the ITTPA. The reasoning in this decision concerning the existence of a right covered by section 83A-15 of the ITTPA is inconsistent with the approach taken in the Determination.
- 3. The Determination does not apply to schemes entered into after its withdrawal. The Commissioner is reconsidering the position with a view to issuing a replacement product.

Commissioner of Taxation

9 September 2015

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ATO references

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ATOlaw topic: Income tax ~~ Assessable income ~~ Employee share schemes ~~ Other

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