TD 97/23 - Income tax: what is the approved form of an election under subsection 139E(1) of the Income Tax Assessment Act 1936 so that it applies to all qualifying shares or qualifying rights acquired in an income year under an employee share scheme?

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This document has changed over time. This is a consolidated version of the ruling which was published on *22 August 2007*

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This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part . Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

[**Note:** This is a consolidated version of this document. Refer to the Tax Office Legal Database (http://law.ato.gov.au) to check its currency and to view the details of all changes.]

Note 2: The Addendum to this Ruling that issued on 22 August 2007 applies on and from 1 July 2006.

Taxation Determination

Income tax: what is the approved form of an election under subsection 139E(1) of the *Income Tax Assessment Act 1936* so that it applies to all qualifying shares or qualifying rights acquired in an income year under an employee share scheme?

1. Division 13A of Part III of the *Income Tax Assessment Act 1936* (ITAA 1936) provides for the taxation treatment of shares or rights acquired under employee share schemes and, very broadly, replaces section 26AAC of the ITAA 1936. Any discount from the market price of qualifying shares or qualifying rights is assessable at the time restrictions (if any) cease on the shares or rights unless the taxpayer makes an election to have the discount taxed at the time shares or rights are acquired.

2. This election is to be made under subsection 139E(1) and applies to all qualifying shares or qualifying rights acquired during the year of income by the taxpayer. The election must be in writing and in a form approved by the Commissioner - subsection 139E(2) - and be made before the taxpayer lodges his or her return for the year of income in which the shares or rights were acquired, or within such further time as the Commissioner allows.

2A. An election made under subsection 139E(1) of the ITAA 1936 will include a stapled security or right to acquire a stapled security, acquired during the year of income, on or after 1 July 2006, where the stapled security or right to acquire a stapled security is treated as a qualifying share or qualifying right because of Subdivision DB.[1] Consequently, all references to shares or rights in this Determination are to be read as including, where appropriate, stapled securities or rights to stapled securities.

3. This Determination provides the form of election approved by the Commissioner. Unless specifically requested to do so, taxpayers should not forward their section 139E elections to the Australian Taxation Office.

[1] Subdivision DB was inserted into Division 13A by *Tax Laws Amendment (2007 Measures No. 1) Act 2007* (No. 56 of 2007). The amendments apply from 1 July 2006, the measures having been announced in the 2006-07 Budget.

4. An election under section 139E must include:

- the name of the person making the election;
- a statement that the election is made under section 139E of the ITAA 1936;
- the year of income to which the election applies; and
- the signature of the person making the election and the date the election was signed.

5. While it is not compulsory, we recommend that the following additional information be noted on the election form. By including this information, a taxpayer ensures that he or she has recorded all details relevant to the election calculation and that he or she has made the calculation correctly. This could provide a useful future reference when the shares or rights are ultimately sold, and reduce both the time spent and the amount of documentation required to be kept to deal with any possible future taxation audit. The additional information that we recommend a taxpayer keep is:

- the tax file number of the person making the election;
- the name of the corporation(s) in which shares or rights were acquired during the year of income under an employee share acquisition scheme(s);
- the number of shares or rights and the date(s) they were acquired;
- the market value(s) of the shares or rights on the date(s) they were acquired; and
- the amount of consideration paid at the time of acquisition.

6. The approved form for the section 139E election is:

SECTION 139E ELECTION

Name of taxpayer:

Tax File Number (optional):

This election is made under section 139E of the *Income Tax Assessment Act 1936* (' the ITAA 1936').

I (*name of taxpayer*) elect that subsection 139B(2) of the ITAA 1936 is to apply to all of the qualifying shares or qualifying rights acquired by me under an employee share acquisition scheme(s) in terms of Division 13A of Part III of the ITAA 1936 in the 19.... (*insert relevant year end*) year of income.

The provision of these details is optional
The details of each parcel of shares or rights acquired by me during this year of income are as follows (repeat for each separate parcel acquired):

(*Name of corporation/scheme*):

No. shares/rights acquired:

Date of acquisition:

Market value on date shares/rights were acquired:

Amount paid/given at the time of acquisition:

Taxpayer's signature:

Date:

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7. This Determination applies to all elections made after its date of issue. Where the Commissioner has previously approved an election format, we recommend that taxpayers record and keep the extra information outlined in paragraph 5 above, for the reasons given there.

Commissioner of Taxation
12 November 1997

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Related Determinations:

Related Rulings:

Subject Ref: acquisition of shares; employee share ownership; qualifying right; qualifying share; shareholders; shares

Legislative Ref: ITAA 1936 Pt III Div 13A; ITAA 1936 Pt III Div 13A Subdiv DB; ITAA 1936 139B; ITAA 1936 139B(2); ITAA 1936 139E; ITAA 1936 139E(1); ITAA 1936 139E(2)

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