



CR 2011/109 - Income tax: CSR Limited - CSR Universal Share Ownership Plan - Sale of Sucrogen Ltd and Return of Capital

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Class Ruling

Income tax: CSR Limited – CSR Universal Share Ownership Plan – Sale of Sucrogen Ltd and Return of Capital

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This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

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What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provision(s)

2. The relevant provisions dealt with in this Class Ruling are:

- Former Division 13A of Part III (Division 13A) of the *Income Tax Assessment Act 1936* (ITAA 1936);
- Division 83A of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 104-10 of the ITAA 1997;
- section 104-25 of the ITAA 1997;
- section 104-135 of the ITAA 1997;
- section 109-5 of the ITAA 1997;
- section 110-25 of the ITAA 1997;

- section 110-55 of the ITAA 1997;
- section 112-15 of the ITAA 1997;
- Subdivision 115-A of the ITAA 1997;
- section 130-80 of the ITAA 1997;
- former section 130-80 of the ITAA 1997; and
- Section 83A-5 of the *Income Tax (Transitional Provisions) Act 1997* (IT(TP)A 1997).

All subsequent legislative references are to the ITAA 1997 unless otherwise indicated.

Class of entities

3. The class of entities to which this Ruling applies is all persons who acquired CSR Limited shares (CSR Shares) under the CSR Universal Share Ownership Plan (USOP) (previously named the Universal Share/Option Plan) under the USOP 2008 award and/or the USOP 2010 award and:

- continued employment with either the CSR Group or Sucrogen Australia Pty Ltd (Sucrogen Australia) after the sale of Sucrogen Ltd (Sucrogen) to Wilmar International Limited (Wilmar) on 22 December 2010;
- are, while they own shares acquired under the USOP 2008 or 2010 awards, residents of Australia for the purposes of the Australian income tax legislation, including by virtue of the operation of any double tax agreement between Australia and any other country;
- are not, while they own shares acquired under the USOP 2008 or 2010 awards, 'temporary residents' of Australia within the meaning of section 995;
- held their CSR Shares neither as 'revenue assets' nor as 'trading stock' – that is, broadly on capital account; and
- are not subject to the taxation of financial arrangement rules in Division 230 in relation to gains and losses on their CSR Shares.

(Note – Division 230 will generally not apply to individuals, unless they have made an election for it to apply to them).

In this Ruling, a person belonging to this class of entities is referred to as a 'participating employee'.

Qualifications

4. The Commissioner makes this ruling based on the precise scheme identified in this Ruling.
5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 10 to 23 of this Ruling.
6. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:
- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
 - this Ruling may be withdrawn or modified.
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Date of effect

8. This Ruling applies from 1 July 2010 to 30 June 2014. The Ruling continues to apply to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, this Ruling will 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 this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Previous Rulings

9. CR 2011/20 – Class Ruling, Income tax: CSR Limited – return of capital. Refer to paragraph 91 of this Class Ruling.

Scheme

10. The following description of the scheme is based on information provided by the applicant.

Note: certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under Freedom of Information legislation.

The CSR group

11. CSR Limited (CSR) is an Australian resident company. Prior to the sale of the Sucrogen business (as described in paragraph 12 of this Ruling), the CSR group comprised of two subgroups operating primarily in the Australian markets. The two subgroups were the CSR Building Products subgroup and the Sucrogen subgroup. CSR was the ultimate holding company of both these sub-groups.

The sale of Sucrogen to Wilmar

12. On 5 July 2010, CSR announced that it had entered into an agreement to sell its Sugar and Renewable Energy businesses, Sucrogen, to Wilmar for an enterprise value of approximately \$1.75 billion. Sucrogen was a wholly owned subsidiary of CSR until the completion of the sale transaction on 22 December 2010.

The Employee Share Acquisition Scheme

13. Under the USOP, eligible employees acquired all their CSR Shares under the USOP award at 50% of their market value at the time of acquisition.

The USOP 2008 award

14. CSR Shares acquired by participating employees under the USOP 2008 award were transferred to those participating employees on 26 September 2008. The employees acquired legal title to the shares at that date.

15. As at 26 September 2008, these participating employees were either:

- employed by Refined Sugar Services Pty Ltd (a subsidiary of CSR) which was renamed Sucrogen Australia in January 2010, and who continued employment with Sucrogen Australia at the time of sale of Sucrogen to Wilmar; or
- employed by CSR, and continued to be employed by CSR after the sale of Sucrogen to Wilmar; or

- employed by CSR and then transferred employment to Sucrogen Australia on 31 January 2010 and continued to be employed by Sucrogen Australia at the time of sale of Sucrogen to Wilmar.

16. CSR has advised that the CSR Shares acquired under the USOP 2008 award on 26 September 2008 are 'qualifying shares' within the meaning of former section 139CD of the ITAA 1936.

17. CSR has advised that the USOP has been operated so that the exemption conditions under former section 139CE of the ITAA 1936 are satisfied.

The USOP 2010 award

18. CSR Shares acquired by participating employees under the USOP 2010 award were transferred to the employees on 31 August 2010. The employees acquired legal title to the shares at that date.

19. These participating employees were either:

- employed by Sucrogen Australia, and continued to be employed by Sucrogen Australia following the sale to Wilmar; or
- employed by CSR, and continued to be employed by CSR after the sale of Sucrogen to Wilmar.

20. CSR has advised that the CSR Shares acquired under the USOP 2010 award on 31 August 2010 are subject to section 83A-35 and meet the reduction conditions in subsections 83A-35(3) to 83A-35(9).

Disposal restrictions

21. The CSR Shares acquired under the USOP 2008 award and USOP 2010 award are subject to disposal restrictions until the earlier of:

- the expiration of the period of three years commencing at the time of the allocation of the CSR Share to the participating employee; or
- the time when the participating employee is no longer employed by either the employer in that employment or the holding company or subsidiary of that employer.

22. Further, former CSR employees whose employment transferred to Sucrogen Australia on 31 January 2010 prior to the sale of Sucrogen are still subject to the three year disposal restriction.

Return of capital

23. CSR paid a return of capital of \$0.4357 per share to shareholders who were registered on the CSR share register on 16 February 2011, being the Record Date for determining entitlement under the return of capital. The Payment Date for the return of capital was 3 March 2011.

Ruling

USOP 2008 award – election made under former section 139E of the ITAA 1936 (taxed upfront)

Division 13A

Entitlement to \$1,000 reduction

24. Where a participating employee made an election under former section 139E of the ITAA 1936 in relation to the CSR Shares acquired under the USOP 2008 award, former Division 13A of the ITAA 1936 will continue to apply to those shares held by the participating employee after the commencement of Division 83A (Subsection 83A-10(2) of the IT(TP)A 1997).

25. As disposal restrictions continue to remain in force for all participating employees after the sale of Sucrogen, former section 139BA of the ITAA 1936 will continue to apply to participating employees who acquired CSR Shares under the USOP 2008 award, and any discount previously excluded from a participating employee's assessable income, pursuant to former section 139BA in respect of those shares, will continue to be excluded.

Capital gains tax (CGT) consequences of the disposal of CSR Shares

CGT event A1

26. CGT event A1 happens when a CSR Share is disposed of by a participating employee (subsection 104-10(1)).

Cost base for disposal of CSR Share before capital return

27. Where a participating employee makes an election under former section 139E of the ITAA 1936, and the disposal of the CSR Share occurs before the return of capital, the first element of the cost base and reduced cost base of a CSR Share acquired under the USOP 2008 award is its market value (worked out under former section 139FA of the ITAA 1936) when it was acquired (former subsection 130-80(2)) which, pursuant to item 86 of Schedule 1 of *Tax Laws Amendment (2009 Budget Measures No. 2) Act 2009*, continues to apply to shares taxed under former Division 13A of the ITAA 1936).

Cost base for calculation of G1 capital gain at time of capital return

28. The first element of the cost base of a CSR Share for the purpose of calculating any capital gain from CGT event G1 is as described in paragraph 27 of this Ruling.

Cost base for disposal of CSR Share after capital return

29. At the time the return of capital happens, the cost base and reduced cost base of the share (the first element of which is calculated in accordance with paragraph 27 of this Ruling) is reduced (but not below nil) by the amount of the return of capital (subsection 104-135(4)).

CGT Discount

30. A participating employee is taken to have acquired a taxed upfront CSR Share acquired under the USOP 2008 award, for the purposes of the CGT discount in Subdivision 115-A, on the date on which the CSR Share was transferred to the participating employee (subsection 109-5(2), event A1, case 1).

CGT consequences of the return of capital*CGT event G1*

31. CGT event G1 (section 104-135) happened when CSR paid the return of capital to a participating employee in respect of a CSR Share that they owned at the Record Date and continued to own at the Payment Date.

CGT event C2

32. CGT event C2 (section 104-25) happened when CSR paid the return of capital to a participating employee in respect of a CSR Share that they owned at the Record Date, but ceased to own before the Payment Date.

USOP 2008 award – no election made under former section 139E of the ITAA 1936 (tax deferred)***Division 83A****Employee Share Scheme (ESS) deferred taxing point*

33. Where a participating employee acquires a CSR Share under the USOP 2008 award and does not make an election under former section 139E of the ITAA 1936, Subdivision 83A-C will apply to those shares (Paragraph 83A-5(2)(a) of the IT(TP)A 1997).

34. The ESS deferred taxing point for the CSR Shares acquired under the USOP 2008 award held by participating employees will, subject to paragraph 83A-5(4)(c) of the IT(TP)A 1997, be the cessation time mentioned in former section 139B(3) of the ITAA 1936.

35. The cessation time for these purposes will be the time determined in accordance with former section 139CA of the ITAA 1936.

36. The cessation time for participating employees in relation to the CSR Shares acquired under the USOP 2008 award would be the earlier of the following times:

- when the participating employee disposes of the share;
- when the shares are no longer subject to disposal restrictions or forfeiture;
- when the employment in respect of which the share was acquired ceases (within the meaning of that term in former subsection 139CA(3) of the ITAA 1936); or
- the end of the 10 year period starting when the participating employee acquired the share under the USOP 2008 award.

37. The ESS deferred taxing point for participating employees who were employed by:

- CSR, at the time they received their CSR Shares under the USOP 2008 award, and who continue to be employed by CSR after the sale of Sucrogen to Wilmar; or
- Refined Sugar Services Pty Ltd at the time they received their CSR Shares under the USOP 2008 award, and who continue to be employed by Sucrogen Australia after the sale of Sucrogen to Wilmar,

will be the cessation time determined under former section 139CA of the ITAA 1936. No cessation time, as mentioned in former section 139CA of the ITAA 1936, happens at the time of the sale of Sucrogen to Wilmar because those participating employees will not be taken to have ceased employment under subsection 139CA(3) of the ITAA 1936 and no other potential cessation time arises as a result of the sale.

38. For CSR employees whose employment transferred to Sucrogen in January 2010, the deferred taxing point will be the time of the sale of Sucrogen to Wilmar because those participating employees will be taken to have ceased employment under subsection 139CA(3) of the ITAA 1936.

39. However, the ESS deferred taxing point referred to in paragraph 37 of this Ruling will, pursuant to paragraph 83A-5(4)(c) of the IT(TP)A 1997, be the time that the participating employee disposes of the share acquired under the USOP 2008 award where this disposal occurs within 30 days after the cessation time.

CGT consequences of the disposal of CSR Shares*CGT event A1*

40. CGT event A1 happens when a CSR Share is disposed of by a participating employee (subsection 104-10(1)).

Disposal of a CSR Share at the ESS deferred taxing point

41. Where a participating employee does not make an election under former section 139E of the ITAA 1936 and disposes of the CSR Share at the ESS deferred taxing point, any capital gain or capital loss is disregarded (subsection 130-80(1)).

*Disposal of a CSR Share after the ESS deferred taxing point**Cost base for disposal of CSR Share before capital return*

42. Where a participating employee does not make an election under former section 139E of the ITAA 1936, and the disposal of the CSR Share occurred before the return of capital, the first element of the cost base and reduced cost base of a CSR Share acquired under the USOP 2008 award is its market value immediately after its ESS deferred taxing point (section 83A-125, section 112-15 and either subsection 110-25(2) or subsection 110-55(2)).

Cost base for calculation of G1 capital gain at time of capital return

43. If the return of capital occurs after the ESS deferred taxing point, the first element of the cost base of a CSR Share for the purpose of calculating any capital gain from CGT event G1 is as described in paragraph 42 of this Ruling.

44. If the return of capital occurs before the ESS deferred taxing point, the first element of the cost base of a CSR Share for the purpose of calculating any capital gain from CGT event G1 is worked out under subsection 110-25(2).

Cost base for disposal of CSR Share after capital return

45. If the return of capital occurs after the ESS deferred taxing point and the disposal occurs after the return of capital, the cost base and reduced cost base of the CSR Share (the first element of which is calculated in accordance with paragraph 42 of this Ruling), is reduced (but not below nil) by the amount of the return of capital (subsection 104-135(4)).

46. If the return of capital occurs before the ESS deferred taxing point and the disposal occurs after the return of capital, the first element of the cost base and reduced cost base is as described in paragraph 42 of this Ruling.

CGT discount

47. For each of the scenarios a participating employee is taken to have acquired a tax deferred CSR Share acquired under the USOP 2008 award, for the purposes of the CGT discount in Subdivision 115-A, on the date on which the participating employee acquired legal title to the CSR Share (subparagraph 83A-5(4)(f)(i) of the IT(TP)A 1997) which is when the shares were transferred to the participating employees.

CGT consequences of the return of capital

CGT event G1

48. CGT event G1 (section 104-135) happened when CSR paid the return of capital to a participating employee in respect of a CSR Share that they owned at the Record Date and continued to own at the Payment Date.

CGT event C2

49. CGT event C2 (section 104-25) happened when CSR paid the return of capital to a participating employee in respect of a CSR Share that they owned at the Record Date but ceased to own before the Payment Date.

USOP 2010 award

Division 83A

Entitlement to \$1,000 reduction

50. Participating employees are entitled to reduce the amount included in their assessable income in relation to the CSR Shares acquired under the USOP 2010 award under section 83A-35, provided that the participating employee's taxable income for the year and other amounts, as specified in paragraph 83A-35(2)(b), does not exceed \$180,000.

CGT consequences of the disposal of CSR Shares

CGT event A1

51. CGT event A1 happens when a CSR Share is disposed of by a participating employee (subsection 104-10(1)).

Cost base for disposal of CSR Share before capital return

52. The first element of the cost base and reduced cost base of a CSR Share acquired under the USOP 2010 award and disposed of before the return of capital is its market value at the time it was acquired (section 83A-30, section 112-15 and either subsection 110-25(2) or subsection 110-55(2)).

Cost base for calculation of G1 capital gain at time of capital return

53. The first element of the cost base of a CSR Share for the purpose of calculating any capital gain from CGT event G1 is as described in paragraph 52 of this Ruling.

Cost base for disposal of CSR Share after capital return

54. At the time the return of capital happened, the cost base and reduced cost base of the share (the first element of which is calculated in accordance with paragraph 52 of this Ruling, is reduced (but not below nil) by the amount of the return of capital (subsection 104-135(4)).

CGT Discount

55. A participating employee is taken to have acquired a CSR Share acquired under the USOP 2010 award, for the purposes of the CGT discount in Subdivision 115-A, on the date on which the CSR Share was transferred to the participating employee (subsection 109-5(1)) which is when the participating employees acquired legal title to the shares.

CGT consequences of the return of capital*CGT event G1*

56. CGT event G1 (section 104-135) happened when CSR paid the return of capital to a participating employee in respect of a CSR Share that they owned at the Record Date and continued to own at the Payment Date.

CGT event C2

57. CGT event C2 (section 104-25) happened when CSR paid the return of capital to a participating employee in respect of a CSR Share that they own at the Record Date but ceased to own before the Payment Date.

Commissioner of Taxation

21 December 2011

Appendix 1 – Explanation

❶ *This Appendix 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.*

USOP 2008 award – election made under former section 139E of the ITAA 1936 (taxed upfront)

Division 13A

Entitlement to \$1,000 reduction

58. Where a participating employee made an election under former section 139E of the ITAA 1936 in relation to the CSR Shares acquired under the USOP 2008 award, Division 83A does not apply to the shares in accordance with section 83A-5 of the IT(TP)A 1997. Former Division 13A of the ITAA 1936 continues to apply to those shares pursuant to section 83A-10 of the IT(TP)A 1997.

59. The assessable income of the participating employee in relation to the CSR Shares acquired under the USOP 2008 award includes the discount given in relation to the shares (former subsection 139B(1) of the ITAA 1936). However, the total amount is only included in the assessable income to the extent that it is greater than \$1,000 (former subsection 139BA(2) of the ITAA 1936) because the exemption conditions in former section 139CE of the ITAA 1936 have been satisfied (former subsection 139BA(1) of the ITAA 1936).

60. CSR has advised that the CSR Universal Share/Option Plan has been operated so that the exemption conditions under former section 139CE of the ITAA 1936 are satisfied. As CSR have also advised that all participants, including those who transferred to Sucrogen from CSR, will continue to be subject to the three year disposal restriction, the exemption conditions will continue to be satisfied after the Sucrogen sale.

CGT consequences of the disposal of CSR Shares

CGT event A1

61. CGT event A1 happens when a CSR Share is disposed of by a participating employee (subsection 104-10(1)).

Cost base for disposal of CSR Share before capital return

62. The first element of the cost base and reduced cost base of a taxed upfront CSR Share acquired under the USOP 2008 award, if the disposal of the CSR Share occurs before the return of capital, is its market value (worked out under former section 139FA of the ITAA 1936) when it was acquired by the participating employee (former subsection 130-80(2)).

Cost base for calculation of G1 capital gain at time of capital return

63. The first element of the cost base of a CSR Share for the purpose of calculating any capital gain from CGT event G1 is as described in paragraph 62 of this Ruling.

Cost base for disposal of CSR Share after capital return

64. At the time the return of capital happened, the cost base and reduced cost base of the CSR Share (the first element of which is calculated in accordance with paragraph 62 of this Ruling) is reduced (but not below nil) by the amount of the return of capital (subsection 104-135(4)).

CGT Discount

65. A participating employee is taken to have acquired a taxed upfront CSR Share acquired under the USOP 2008 award, for the purposes of the CGT discount in Subdivision 115-A, on the date on which the share was transferred to the participating employee (subsection 109-5(2), event A1, case 1).

Note: See paragraphs 91 to 103 of this Ruling for an explanation of the CGT consequences of the return of capital on the shares of a participating employee by CSR.

USOP 2008 award – no election made under former section 139E of the ITAA 1936 (tax deferred)***Division 83A****ESS deferred taxing point*

66. Division 83A applies to shares, rights and stapled securities acquired under an employee share scheme on or after 1 July 2009. Division 83A also applies to certain shares, rights and stapled securities acquired before 1 July 2009 (transitional interests), pursuant to Subdivision 83A-A of the IT(TP)A 1997.

67. By reason of subsection 83A-5(2) of the IT(TP)A 1997, Subdivision 83A-C (and the rest of Division 83A to the extent that it relates to that Subdivision) applies to CSR Shares acquired by participating employees under the USOP 2008 award who have not made an election under former section 139E of the ITAA 1936 because:

- they are ESS interests within the meaning of subsection 83A-10(1) (being a beneficial interest in a share in the company);
- former subsection 139B(3) of the ITAA 1936 applies in relation to the ESS interests (CSR has advised that the CSR Shares acquired under the USOP 2008 award are qualifying shares within the meaning of former section 139CD of the ITAA 1936);

- the CSR Shares acquired under the USOP 2008 award were acquired before 1 July 2009; and
- the cessation time mentioned in former subsection 139B(3) of the ITAA 1936 has not occurred before 1 July 2009.

Therefore, Subdivision 83A-C will apply to the CSR Shares acquired under the USOP 2008 award where a participating employee has not made an election under former section 139E of the ITAA 1936.

68. The application of Subdivision 83A-C to transitional interests is, however, modified by subsection 83A-5(4) of the IT(TP)A 1997. Subparagraph 83A-5(4)(b)(i) of the IT(TP)A 1997 provides that where former section 139B(3) of the ITAA 1936 applied to a transitional interest (at the pre-Division 83A time), when applying Subdivision 83A-C, the ESS deferred taxing point for the transitional interest is treated as being the cessation time mentioned in former subsection 139B(3) of the ITAA 1936. Paragraph 83A-5(4)(c) of the IT(TP)A 1997 further provides that the deferred taxing point is shifted to the time of disposal of a transitional interest where the disposal occurs within 30 days after the cessation time.

69. The cessation time in relation to a participating employee's CSR Shares acquired under the USOP 2008 award is determined by former subsection 139CA(2) of the ITAA 1936.

CGT consequences of the disposal of CSR Shares

CGT event A1

70. CGT Event A1 happens when a CSR Share is disposed of by a participating employee (subsection 104-10(1)).

Disposal of CSR Share at the ESS deferred taxing point

71. Subsection 130-80(1) applies because paragraphs (a) and (b), and subparagraph (d)(ii), of that provision are satisfied.

Disposal of CSR Share after the ESS deferred taxing point

Cost base for disposal of CSR Share before capital return

72. Subdivision 83A-C, including section 83A-125, applies to a tax deferred CSR Share acquired under the USOP 2008 award. The modification of the cost base (section 110-25) and reduced cost base (section 110-55) is facilitated by section 112-15.

73. If the ESS deferred taxing point of a tax deferred CSR Share acquired under the USOP 2008 award has already happened and the disposal of the CSR Share occurs before the return of capital, the first element of the cost base and reduced cost base of the share is its market value immediately after its ESS deferred taxing point (section 83A-125, section 112-15 and either subsection 110-25(2) or 110-55(2)).

Cost base for calculation of G1 capital gain at time of capital return

74. If the return of capital occurs after the ESS deferred taxing point, the first element of the cost base of a CSR Share for the purpose of calculating any capital gain from CGT event G1 is as described in paragraph 73 of this Ruling.

75. If the return of capital occurs before the ESS deferred taxing point, the first element of the cost base of a CSR Share for the purpose of calculating any capital gain from CGT event G1 is worked out under subsection 110-25(2).

Cost base for disposal of CSR Share after return of capital

76. If the return of capital occurs after the ESS deferred taxing point and the disposal occurs after the return of capital, the cost base and reduced cost base of the CSR Share (the first element of which is calculated in accordance with paragraph 73 of this Ruling), is reduced (but not below nil) by the amount of the return of capital (subsection 104-135(4)).

77. If the return of capital occurs before the ESS deferred taxing point and the disposal occurs after the return of capital, the first element of cost base and reduced cost base is as described in paragraph 73 of this Ruling.

CGT discount

78. For each of the scenarios a participating employee is taken to have acquired a tax deferred CSR Share acquired under the USOP 2008 award, for the purposes of the CGT discount in Subdivision 115-A, on the date on which the participating employee acquired legal title to the CSR Share (subparagraph 83A-5(4)(f)(i) of the IT(TP)A 1997) which is when the shares were transferred to the participating employees.

Note: See paragraphs 91 to 103 of this Ruling for an explanation of the CGT consequences of the return of capital on the shares of a participating employee by CSR.

USOP 2010 award***Division 83A****Entitlement to \$1,000 reduction*

79. Section 83A-35 provides that where:

- ESS interests acquired by an individual under an employee share scheme at a discount satisfy the conditions in subsections 83A-35(3) to (9); and

- the individual's taxable income for the income year plus the other amounts specified in paragraph 83A-35(2)(b) does not exceed \$180,000,

the total amount otherwise included in the individual's assessable income under subsection 83A-25(1) in relation to those ESS interests, is only included to the extent that it is greater than \$1,000.

80. CSR has advised that the CSR Shares acquired under the USOP 2010 award on 31 August 2010 are subject to section 83A-35 and meet the reduction conditions in subsections 83A-35(3) to 83A-35(9).

81. Subsection 83A-35(8) requires that the scheme under which an individual acquires their ESS interests to be operated so that any ESS interest (scheme interest) acquired under the scheme or a beneficial interest in a share acquired as a result of a scheme interest cannot be disposed of before the earlier of:

- 3 years after acquisition of the scheme interest; or
- ceasing employment within the meaning of section 83A-330.

82. In the letter dated 8 November 2010, Sucrogen employees were advised that the disposal restrictions on their CSR Shares acquired under the USOP 2010 award continue to apply.

83. Section 83A-330 provides that an individual is treated as ceasing employment when they are no longer employed by any of the following:

- their employer in that employment;
- a holding company of their employer; or
- a subsidiary of their employer or of a holding company of their employer.

84. Participating employees who acquired CSR Shares on 31 August 2010 under the USOP 2010 award were either employed by Sucrogen Australia or CSR, and continued to be employed by Sucrogen Australia or CSR, respectively, following the sale of Sucrogen to Wilmar. Hence, they are not considered to have ceased employment for the purposes of section 83A-330.

CGT consequences of the disposal of CSR Shares

CGT event A1

85. CGT event A1 happens when a CSR Share is disposed of by a participating employee (subsection 104-10(1)).

Cost base for disposal of CSR Share before capital return

86. Subdivision 83A-B, in particular section 83A-30, applies to a CSR Share acquired under the USOP 2010 award. The modification of the cost base (section 110-25) and reduced cost base (section 110-55) is facilitated by section 112-15.

87. The first element of the cost base and reduced cost base of a CSR Share acquired under the USOP 2010 award and disposed of before the return of capital, is its market value at the time it was acquired, that is, 31 August 2010 (sections 83A-30 and 112-15 and subsections 110-25(2) and 110-55(2)).

Cost base for calculation of G1 capital gain at time of capital return

88. The first element of the cost base of a CSR Share for the purpose of calculating any capital gain from CGT event G1 is as described in paragraph 87 of this Ruling.

Cost base for disposal of CSR Share after capital return

89. At the time the return of capital happens, the cost base and reduced cost base of the share (the first element of which is calculated in accordance with paragraph 87 of this Ruling, is reduced (but not below nil) by the amount of the return of capital (subsection 104-135(4)).

CGT Discount

90. A participating employee is taken to have acquired a CSR Share acquired under the USOP 2010 award, for the purposes of the CGT discount in Subdivision 115-A, on the date on which the share was transferred to the participating employee (subsection 109-5(1)) which is when the participating employee acquired legal title to the shares.

Note: See paragraphs 91 to 103 of this Ruling for an explanation of the CGT consequences of the return of capital on the shares of a participating employee by CSR.

CGT consequences of the return of capital*Application of CR 2011/20*

91. Class Ruling CR 2011/20, published on 16 February 2011, applies to CSR shareholders generally in relation to the return of capital.

CGT event G1

92. CGT event G1 happened when CSR paid the return of capital amount to a participating employee in respect of a share that they owned at the Record Date and continued to own at the Payment Date (section 104-135).

93. If the return of capital (\$0.4357 per share) was equal to or less than the cost base of the CSR Share at the Payment Date, the cost base and reduced cost base of the share is to be reduced by the amount of the return of capital (subsection 104-135(4)).

94. A participating employee makes a capital gain if the return of capital is more than the cost base of their CSR Share (subsection 104-135(3)). The amount of the capital gain is equal to the excess.

95. If a participating employee makes a capital gain when CGT event G1 happens, the cost base and reduced cost base of the CSR Share is reduced to nil. A participating employee cannot make a capital loss when CGT event G1 happens (subsection 104-135(3)).

96. A capital gain made when CGT event G1 happened is eligible to be treated as a discount capital gain under Subdivision 115-A provided that the CSR Share was acquired at least 12 months before the payment of the return of capital (subsection 115-25(1)) and the other conditions of that Subdivision are satisfied.

CGT event C2

97. The right to receive the return of capital is one of the rights inherent in a CSR Share at the Record Date. If, after the Record Date but before the Payment Date, a participating employee ceased to own a CSR Share in respect of which the return of capital was payable, the right to receive the return of capital in respect of that share was retained by the employee and is a separate CGT asset.

98. CGT event C2 happened when the return of capital was paid (section 104-25). The right to receive the payment (being an intangible CGT asset) ended by the right being discharged or satisfied when the payment was made.

99. A participating employee makes a capital gain if the capital proceeds from the ending of the right are more than its cost base. The capital gain is equal to the amount of the excess. A participating employee makes a capital loss if the capital proceeds from the ending of the right are less than its reduced cost base (subsection 104-25(3)). The capital loss is equal to the amount of the difference.

100. In working out the capital gain or capital loss made when CGT event C2 happens, the capital proceeds are the amount of the return of capital (subsection 116-20(1)).

101. The cost base of the participating employee's right to receive the return of capital is worked out under Division 110 (modified by Division 112). The cost base of the right does not include the cost base or reduced cost base of the share previously owned by a participating employee that has been applied in working out a capital gain or capital loss made when a CGT event happened to the share – for example when the participating employee disposed of the share after the Record Date.

102. Therefore, if the full cost base or reduced cost base of the CSR Share has been previously applied in working out a capital gain or capital loss when a CGT event happened to that share, then the right to receive the return of capital is likely to have a nil cost base. As a result, the participating employee generally makes a capital gain equal to the amount of the return of capital.

103. As the right to receive the payment of the return of capital was inherent in the CSR Share during the time it was owned, the right is considered to have been acquired at the time when the corresponding share was acquired (section 109-5). Accordingly, if the CSR Share was acquired at least 12 months before the payment of the return of capital, a capital gain made from the ending of the corresponding right satisfies the requirements of section 115-25. Such a capital gain is eligible to be treated as a discount capital gain under Subdivision 115-A provided the other conditions of that Subdivision are satisfied.

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

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Subject references:

- Capital Gains Tax
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- CGT event
- cost base
- Employee Share Scheme
- election
- no election
- qualifying share

Legislative references:

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