


CR 2022/103 - Telstra Corporation Limited - restructure - employee share schemes - treatment of shares or rights

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Status: **legally binding**

Class Ruling

Telstra Corporation Limited – restructure – employee share schemes – treatment of shares or rights

📌 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 of the corporate restructure undertaken by Telstra Corporation Limited (Telstra) on 31 October 2022 (Restructure) for employees of Telstra, or one of its subsidiaries, who had their:

- unvested Restricted Shares in Telstra that were held by Telstra Growthshare Pty Ltd (Growthshare Trustee) on their behalf (Telstra Restricted Share Employee Share Scheme (ESS) Interests) replaced with ESS interests in Telstra Group Limited (New Telstra Corp), and/or
- unvested Telstra Performance Rights in relation to ordinary shares in Telstra that are subject to a performance and vesting period (Telstra Performance Rights) varied to be in relation to ordinary shares in New Telstra Corp.

2. Details of the Restructure are set out in paragraphs 20 to 48 of this Ruling.

3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

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Who this Ruling applies to

4. This Ruling applies to you if:
- immediately prior to the Restructure
 - you held Telstra Restricted Share ESS Interests and were employed by Telstra, or one of its subsidiaries, and/or
 - you held Telstra Performance Rights
 - you were a resident of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* and not a 'temporary resident' within the meaning of that expression in subsection 995-1(1) from the time of acquisition of your Telstra Restricted Share ESS Interests or Telstra Performance Rights
 - you did not have an ESS deferred taxing point occur in relation to your Telstra Restricted Share ESS Interests or Telstra Performance Rights prior to the Restructure
 - as a result of the Restructure, you had your
 - Telstra Restricted Share ESS Interests exchanged for Restricted Shares in New Telstra Corp that are held by the Growthshare Trustee on your behalf (New Telstra Restricted Share ESS Interests) on a one-for-one basis, and/or
 - Telstra Performance Rights amended to be in relation to the performance of New Telstra Corp and its ordinary shares (Amended Telstra Performance Rights), and
 - you are not subject to the taxation of financial arrangements rules in Division 230.

Note: Division 230 will not apply to individuals unless they have made an election for it to apply.

When this Ruling applies

5. This Ruling applies from 1 July 2022 to 30 June 2023.

Ruling**Telstra Corporation Limited Restricted Share Employee Share Scheme Interests**

6. Telstra Restricted Share ESS Interests are ESS interests.
7. The Restructure satisfies the conditions under subsection 83A-130(1) and constitutes an arrangement to which Subdivision 83A-C applies.
8. The New Telstra Restricted Share ESS Interests that you received as part of the implementation of the Restructure are treated as a continuation of your Telstra Restricted Share ESS Interests for the purposes of Division 83A in accordance with subsection 83A-130(2).
9. The exchange of your Telstra Restricted Share ESS Interests for New Telstra Restricted Share ESS Interests is not treated as a disposal due to the operation of subsection 83A-130(5).

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10. The exchange of your Telstra Restricted Share ESS Interests for New Telstra Restricted Share ESS Interests did not trigger an ESS deferred taxing point as described in subsections 83A-115(4) and (6).

11. The transfer of your employment from Telstra, or a subsidiary of Telstra, to New Telstra Corp, or a subsidiary of New Telstra Corp, after the Restructure is considered a continuation of your employment in respect of which you acquired your New Telstra Restricted Share ESS Interests for the purposes of Division 83A. That is, your employment with Telstra, or one of its subsidiaries, will not cease within the meaning of section 83A-330 if your employment is transferred to New Telstra Corp or a subsidiary of New Telstra Corp.

12. The cost base of the Telstra Restricted Share ESS Interests held by you just prior to the Restructure will be allocated to the matching New Telstra Restricted Share ESS Interests you held just after the Restructure in accordance with subsection 83A-130(7).

Telstra Corporation Limited Performance Rights

13. Telstra Performance Rights are indeterminate rights at the time of the Restructure. An indeterminate right is a right to future payment of remuneration. The form (and sometimes the amount) of that remuneration is yet to be determined.

14. No ordinary income is derived for the purposes of section 6-5 as a result of the amendment of your Telstra Performance Rights when they become Amended Telstra Performance Rights.

15. No deferred taxing point for the purposes of Division 83A happens as a result of the amendment of your Telstra Performance Rights when they become Amended Telstra Performance Rights.

16. No capital gain or capital loss arises as a result of the amendment of your Telstra Performance Rights when they become Amended Telstra Performance Rights.

17. Amended Telstra Performance Rights continue to be indeterminate rights following the Restructure.

18. When an Amended Telstra Performance Right is satisfied by:

- a cash payment, the amount of that payment is included in your assessable income in the income year in which it is received under section 6-5, or
- the provision of a share in New Telstra Corp, section 83A-340 will apply to the Amended Telstra Performance Right. The Amended Telstra Performance Right is treated as if it had always been an ESS interest.

19. If you are employed by Telstra, or one of its subsidiaries, immediately prior to the Restructure, your employment with Telstra or one of its subsidiaries will not cease within the meaning of section 83A-330 if, after the Restructure, your employment is transferred to New Telstra Corp (being a holding company of Telstra) or a subsidiary of New Telstra Corp.

Scheme

20. 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.

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21. Other information referenced is:

- Telstra Corporation Limited: Scheme Booklet: For the proposed restructure of the Telstra Group, dated 23 August 2022.

Background

22. Telstra is an Australian-resident company that is listed on the Australian Securities Exchange (ASX).

23. Telstra was the head company of the Telstra income tax consolidated group, which provides a range of telecommunications products and services domestically and internationally.

24. Telstra's history goes back to Telecom Australia, which was created on 1 July 1975.

Telstra Corporation Limited Employee Share Schemes and rights packages

25. Telstra has, over its history, operated a number of ESSs and rights packages for the benefit of its employees and the employees of its subsidiaries.

26. The Growthshare Trustee was established in 1999 for the sole purpose of facilitating the grant of ESS interests to the employees of Telstra and its subsidiaries. It is operated as an 'employee share trust', in accordance with the sole purpose test as set out in subsection 130-85(4) and is intended to continue operating as such after the Restructure.

27. The Growthshare Trustee grants Telstra Restricted Shares and Telstra Performance Rights to the employees of Telstra and its subsidiaries.

28. The Growthshare Trustee also grants 3 other employee share and rights packages to employees of Telstra and its subsidiaries:

- direct shares
- employee shares, and
- international shares.

29. These other employee share and rights packages are not covered by this Ruling.

Telstra Corporation Limited Restricted Share Employee Share Scheme Interests

30. Telstra Restricted Share ESS Interests were granted to holders on the basis of their employment with Telstra, or one of its subsidiaries, as part of their remuneration and incentive packages via the Growthshare Trustee.

31. Telstra Restricted Share ESS Interests are ordinary Telstra shares that are held by the Growthshare Trustee for the benefit of Restricted Shares holders, subject to a Restriction Period. The maximum length of this Restriction Period varies for each grant of Telstra Restricted Shares that was made.

32. Four specific tranches of Telstra Restricted Share ESS Interests were on issue at the time that the Restructure occurred:

- FY20 EVP Restricted Shares
- Restricted Shares issued under the FY20 Band B&C Deferral Plan

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- FY21 EVP Restricted Shares, and
- Restricted Shares issued under the FY21 Band B&C Deferral Plan.

Telstra Corporation Limited Performance Rights

33. Telstra Performance Rights were another grant of employee equity to the employees of Telstra and its subsidiaries.

34. Telstra Performance Rights were granted to executives of Telstra and its subsidiaries under Telstra's Executive Variable Remuneration Plan. They represented the long-term incentive component of the remuneration and incentives provided to qualifying executives for the relevant financial year.

35. If a Telstra Performance Right vested, the holder would:

- either be allocated one ordinary Telstra share by the Growthshare Trustee or, at the discretion of the Telstra Board, be paid a cash amount equivalent to the value of a Telstra share, and
- be paid an amount equal to the value of dividends paid on ordinary shares in Telstra during the period from when the Telstra Performance Right was granted until the time that the Telstra Performance Right vested.

36. Telstra Performance Rights had a performance and vesting period that ran until 5 years after the commencement of the financial year in respect of which they were granted.

37. The performance conditions that attached to the Telstra Performance Rights were what are known as Relative TSR conditions. Under these conditions, the growth in the total shareholder return of Telstra over the relevant period was measured against the growth in the total shareholder return of certain identified comparator companies. How Telstra performed according to this benchmark would determine the number of Telstra Performance Rights that became eligible to vest at the end of the relevant performance period.

38. Three specific tranches of Telstra Performance Rights were still on issue at the time that the Restructure occurred:

- all of the FY19 EVP Performance Rights
- all of the FY20 EVP Performance Rights, and
- all of the FY21 EVP Performance Rights.

The Restructure

39. On 31 October 2022, a corporate restructure of the Telstra group was undertaken. New Telstra Corp was interposed as a new parent company between Telstra and Telstra's existing shareholders pursuant to a scheme of arrangement made under Part 5.1 of the *Corporations Act 2001*. This resulted in Telstra becoming a 100% subsidiary of New Telstra Corp, with Telstra shareholders exchanging their shares in Telstra for shares in New Telstra Corp on a one-for-one basis.

40. In connection with the Restructure, New Telstra Corp was listed and its shares quoted on the ASX and Telstra's shares ceased to be quoted on the ASX.

41. At the time of the Restructure, no Class Ruling participant held a beneficial interest in more than 10% of the shares in Telstra or was in a position to cast or control the casting of more than 10% of the maximum number of votes that might be cast at a general

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meeting of Telstra, for the purposes of subsection 83A-45(6). As a result of acquiring the New Telstra Restricted Share ESS Interests, no Class Ruling participant holds a legal or beneficial interest in more than 10% of New Telstra Corp shares or is in a position to cast, or control the casting of, more than 10% of the maximum number of votes that might be cast at a New Telstra Corp general meeting.

42. At the time of the Restructure, the Growthshare Trustee held ordinary shares in Telstra on behalf of employees of Telstra and its subsidiaries (Telstra Restricted Shares).

43. The Growthshare Trustee participated in the Restructure on behalf of employees of Telstra and its subsidiaries, on the basis that Telstra Restricted Shares represented ordinary shares held by the Growthshare Trustee on behalf of employees of Telstra and its subsidiaries.

44. On 31 October 2022, the Growthshare Trustee exchanged its holdings of Telstra Restricted Shares for ordinary shares in New Telstra Corp on a one-for-one basis. The New Telstra Corp ordinary shares received are held by the Growthshare Trustee on the same terms as the original corresponding Telstra ordinary shares.

45. The terms of the New Telstra Restricted Share ESS Interests are identical to the terms of the Telstra Restricted Share ESS Interests, subject to certain amendments which were made by Telstra with effect from 31 October 2022. These amendments ensure that the New Telstra Restricted Share ESS Interests operate in the same way in relation to New Telstra Corp as the Telstra Restricted Share ESS Interests operated in relation to Telstra.

46. On 31 October 2022, the terms of the Telstra Performance Rights were amended to be in reference to New Telstra Corp and to assess the performance of Telstra and New Telstra Corp for the appropriate performance periods. These amendments ensure that the Amended Telstra Performance Rights operate in the same way in relation to New Telstra Corp as the corresponding Telstra Performance Rights operated in relation to Telstra.

47. The amendments to the terms between the Telstra Restricted Share ESS Interests and the New Telstra Restricted Share ESS Interests, and the Telstra Performance Rights and the Amended Telstra Performance Rights respectively do not waive or otherwise shorten or lessen the vesting periods or performance requirements that applied to the Telstra Restricted Share ESS Interests and Telstra Performance Rights.

48. Following the Restructure, the employing entity of some employees of Telstra and its subsidiaries, including Class Ruling participants who hold New Telstra Restricted Share ESS Interests and Amended Telstra Performance Rights, will change. Such Class Ruling participants will remain employed by New Telstra Corp or a subsidiary of New Telstra Corp at all relevant times.

Commissioner of Taxation

16 November 2022

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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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Telstra Corporation Limited Restricted Share Employee Share Scheme Interests

49. Under section 83A-110, an amount will be included in your assessable income for the income year in which an ESS deferred taxing point occurs in respect of your ESS interest.

50. Under a restructure, you are usually taken to have disposed of your shares or rights for the purposes of Division 83A when you cease to hold shares or rights in the old company and instead hold shares or rights in the new company. The disposal may give rise to an ESS deferred taxing point.

51. However, there will not be a disposal where your replacement shares or rights in the new company are treated as a continuation of the shares or rights in the old company and your employment with the new company is treated as a continuation with the old company under section 83A-130.

52. The Restructure satisfies the requirements of section 83A-130 in relation to the Telstra Restricted Share ESS Interests because:

- the Restructure is a ‘takeover’ because it resulted in Telstra becoming a 100% subsidiary of New Telstra Corp (subparagraph 83A-130(1)(a)(i))
- just before the Restructure, you held ESS interests in the form of Telstra Restricted Share ESS Interests (old interests) that you acquired under an ESS (paragraph 83A-130(1)(b))
- as a result of the arrangement, you stopped holding the old interests (paragraph 83A-130(2)(a))
- you acquired ESS interests in the form of New Telstra Restricted Share ESS Interests (new interests) in connection with the Restructure (subsection 83A-130(2))
- the new interests can reasonably be regarded as matching any of the old interests (paragraph 83A-130(2)(b))
- the new interests relate to ordinary shares in New Telstra Corp (subsection 83A-130(4))
- you were employed by New Telstra Corp, or a subsidiary of New Telstra Corp, at the time you acquired the new interests (paragraph 83A-130(9)(a)), and
- as a result of acquiring the new interests, you did not hold a legal or beneficial interest in more than 10% of New Telstra Corp shares or were in a position to cast, or control the casting of, more than 10% of the maximum

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number of votes that might be cast at a New Telstra Corp general meeting (paragraph 83A-130(9)(b)).

53. Accordingly, for the purposes of Division 83A, the New Telstra Corp Restricted Share ESS Interests you acquired in connection with the Restructure are treated as a continuation of the Telstra Restricted Share ESS Interests you previously held.

54. You did not receive anything in relation to the Restructure that is not considered to be a continuation of the ESS interests that you previously held. As such, exchanging your Telstra Restricted Share ESS Interests for New Telstra Restricted Share ESS Interests as part of the Restructure will not cause an ESS deferred taxing point for you.

55. In addition, your employment with New Telstra Corp, or a subsidiary of New Telstra Corp, will be regarded as a continuation of your employment with Telstra, or one of its subsidiaries, in accordance with subsection 83A-130(6) (that is, you have not ceased your employment within the meaning of section 83A-330) and the cost base of your old interests will be allocated to the matching new interests you held just after the Restructure, in accordance with subsection 83A-130(7).

Telstra Corporation Limited Performance Rights

56. Telstra Performance Rights are indeterminate rights under section 83A-340 at the time of the Restructure. An indeterminate right is a right to future payment of remuneration that has the capacity to become a right to acquire a beneficial interest in a share. The form (and sometimes the amount) of that remuneration is yet to be determined. Telstra Performance Rights are indeterminate rights as they are rights under which Telstra may provide you with remuneration that is either ordinary shares in Telstra or a cash amount, determined by the discretion of the Telstra Board (and subject to performance conditions).

57. No ordinary income is derived for the purposes of section 6-5 as a result of the amendment of your Telstra Performance Rights when they become Amended Telstra Performance Rights.

58. No deferred taxing point for the purposes of Division 83A happens as a result of the amendment of your Telstra Performance Rights when they become Amended Telstra Performance Rights. This is because the Telstra Performance Right is not an ESS interest.

59. No capital gain or capital loss arises as a result of the amendment of your Telstra Performance Rights when they become Amended Telstra Performance Rights.

60. Amended Telstra Performance Rights continue to be indeterminate rights following the Restructure.

61. When an Amended Telstra Performance Right is satisfied by:

- a cash payment, the amount of that payment is included in your assessable income in the income year in which it is received under section 6-5, or
- the provision of shares in New Telstra Corp, section 83A-340 will apply to the Amended Telstra Performance Right. The Amended Telstra Performance Right is treated as if it had always been an ESS interest.

62. If you are employed by Telstra, or one of its subsidiaries, immediately prior to the Restructure, your employment with Telstra or one of its subsidiaries will not cease within the meaning of section 83A-330 if, after the Restructure, your employment is transferred to New Telstra Corp (being a holding company of Telstra) or a subsidiary of New Telstra Corp.

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References

Legislative references:

- ITAA 1936 6(1)
 - ITAA 1997 6-5
 - ITAA 1997 Div 83A
 - ITAA 1997 Subdiv 83A-C
 - ITAA 1997 83A-45(6)
 - ITAA 1997 83A-110
 - ITAA 1997 83A-115(4)
 - ITAA 1997 83A-115(6)
 - ITAA 1997 83A-130
 - ITAA 1997 83A-130(1)
 - ITAA 1997 83A-130(1)(a)(i)
 - ITAA 1997 83A-130(1)(b)
 - ITAA 1997 83A-130(2)
 - ITAA 1997 83A-130(2)(a)
 - ITAA 1997 83A-130(2)(b)
 - ITAA 1997 83A-130(4)
 - ITAA 1997 83A-130(5)
 - ITAA 1997 83A-130(6)
 - ITAA 1997 83A-130(7)
 - ITAA 1997 83A-130(9)(a)
 - ITAA 1997 83A-130(9)(b)
 - ITAA 1997 83A-330
 - ITAA 1997 83A-340
 - ITAA 1997 130-85(4)
 - ITAA 1997 Div 230
 - ITAA 1997 995-1(1)
 - Corporations Act 2001 Pt 5.1
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ATO references

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