

CR 2022/64 - Western Areas Limited - employee share scheme - shares disposed of under scheme of arrangement



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Status: **legally binding**

Class Ruling

Western Areas Limited – employee share scheme – shares disposed of under scheme of arrangement

❶ 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 Western Areas Limited (Western Areas) who participated in the Tax Exempt Share Plan (TESP) to acquire ordinary shares in Western Areas (TESP Shares) which were subsequently disposed of, pursuant to the scheme of arrangement, on 20 June 2022 (Scheme of Arrangement).
2. Full 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 TESP Shares under the TESP in February 2020, February 2021 or both, which you held at all times until 20 June 2022
 - 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 TESP Shares, and
 - were employed by Western Areas or a ‘subsidiary’ (as defined in the *Corporations Act 2001*) of Western Areas (collectively referred to as the

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Western Areas Group) at all times from the date you acquired the TESP Shares until 20 June 2022.

When this Ruling applies

5. This Ruling applies from 1 July 2019 to 30 June 2022.

Ruling

6. The Commissioner will allow the minimum holding period to end at the earlier time of 20 June 2022 for the application of Subdivision 83A-B to the TESP Shares you disposed of 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.

Relevant entities

Western Areas Limited

8. Western Areas is an Australian-resident company as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* and was a public company listed on the Australian Securities Exchange (ASX) until it was delisted as a result of the Scheme of Arrangement.
9. Western Areas is a mining company primarily located in Western Australia.

IGO Limited and IGO Nickel Holdings Pty Ltd

10. IGO Limited (IGO) is an Australian-resident company as defined in subsection 6(1) of the *Income Tax Assessment Act 1936*.
11. IGO Nickel Holdings Pty Ltd (IGO Nickel) is a wholly-owned subsidiary of IGO.

Tax Exempt Share Plan

12. Western Areas established the TESP as an employee share plan in accordance with the Western Areas Ltd Share Plan Rules dated 21 December 2016 (the Rules).
13. Under the TESP, eligible employees received up to \$1,000 of Western Areas shares for nil consideration.
14. The number of TESP Shares granted to eligible employees was calculated as the maximum number of TESP Shares that could be allocated without exceeding \$1,000 in value.
15. The TESP was offered under a non-discriminatory basis to at least 75% of the Australian-resident permanent employees of the Western Areas Group who had completed more than 3 years of service.

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16. The TESP Shares were:

- subject to a restriction period where they could not be disposed of until the earliest of
 - 3 years from the date the TESP Shares were allocated, or
 - at the time which the employee ceased being employed by the Western Areas Group, and
- not subject to any vesting conditions; that is, the TESP Shares could not be forfeited.

Scheme of Arrangement

17. On 16 December 2021, Western Areas and IGO entered into a Scheme Implementation Deed wherein IGO, through its wholly-owned subsidiary IGO Nickel, proposed to acquire all the issued shares in Western Areas by way of a Scheme of Arrangement under Part 5.1 of the *Corporations Act 2001*.

18. On 10 April 2022, Western Areas and IGO entered into a revised Scheme Implementation Deed to increase the cash consideration for each Western Areas share held by its shareholders.

19. On 20 June 2022, IGO Nickel acquired all the Western Areas shares, including the TESP Shares, pursuant to the Scheme of Arrangement.

20. Pursuant to the Scheme of Arrangement, you received cash consideration of \$3.87 for each of the TESP Shares you held.

Other matters

21. Western Areas did not enter into any formal discussions with any entity concerning a takeover or some other acquisition of all of Western Areas shares until 13 July 2021.

Commissioner of Taxation

13 July 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.*

When the minimum holding period ends

22. One of the conditions which entitled you to reduce the amount included in your assessable income when you acquired the TESP Shares is to not dispose of those shares within the minimum holding period (sections 83A-35 and 83A-45).

23. The minimum holding period set out in subsections 83A-45(4) and (5) is the earlier of 3 years from when the TESP Shares were acquired or when you ceased employment with the Western Areas Group. However, the Commissioner can allow an earlier period if the Commissioner is satisfied that:

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

24. The Commissioner is satisfied that the Rules prevented employees from disposing of the TESP Shares until the earlier of the 3-year anniversary of the date the TESP Shares were acquired or the day after the date they ceased to be employed by the Western Areas Group.

25. All Western Areas shares, including the TESP Shares, were disposed of under the Scheme of Arrangement.

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 20 June 2022.

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References

Legislative references:

- ITAA 1936 6(1)
- ITAA 1997 Subdiv 83A-B
- ITAA 1997 83A-35
- ITAA 1997 83A-45
- ITAA 1997 83A-45(4)
- ITAA 1997 83A-45(5)
- ITAA 1997 83A-45(5)(a)
- ITAA 1997 83A-45(5)(a)(i)
- ITAA 1997 83A-45(5)(a)(ii)
- Corporations Act 2001 Pt 5.1

ATO references

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