


# ***CR 2022/98 - Single Cell Mobile Consulting Pty Ltd - Portt Options Plan - reducing the minimum holding period***

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Status: **legally binding**

## Class Ruling

# Single Cell Mobile Consulting Pty Ltd – Portt Options Plan – reducing the minimum holding period

### **① 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 Single Cell Mobile Consulting Pty Ltd (Single Cell) who were granted options under the Portt Options Plan (Options).
2. Details of this scheme are set out in paragraphs 7 to 23 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 Options on 30 June 2020, which you held at all times until they were cancelled on 4 March 2022, being the completion of the Share Sale Agreement (SSA)
  - were entitled to reduce the amount included in your assessable income in accordance with section 83A-33 (with the exception of the condition in subsection 83A-45(4) – minimum holding period) when you acquired the Options, and

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- were employed by Single Cell or a 'subsidiary' (as defined in the *Corporations Act 2001*) of Single Cell (collectively referred to as the Single Cell Group) and at all times from the date you acquired the Options until 4 March 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 4 March 2022 for the application of Subdivision 83A-B to the vested Options that you held and were cancelled as a result of the SSA (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**

#### ***Single Cell Mobile Consulting Pty Ltd***

8. Single Cell is a private company and a resident of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936*.
9. Single Cell is in the business of procuring and supplying management software, trading under the name of Portt.

#### ***Advanced Business Software and Solutions Limited***

10. Advanced Business Software and Solutions Limited (Advanced) is a software company based in the United Kingdom.

### **Portt Options Plan**

11. On 22 January 2020, Single Cell established the Portt Options Plan (the Plan) as an employee incentive plan.
12. The Plan facilitated the grant of Options to eligible employees of the Single Cell Group, where each Option represented a right to acquire an ordinary share in Single Cell.
13. On 30 June 2020, Single Cell granted Options to eligible employees for no consideration (the Participants).
14. The Options were:
- non-transferrable and, if a Participant disposed of or otherwise dealt with or purported to deal with or encumber an Option, it would be immediately forfeited, and

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- subject to a restriction period where they could not be disposed of until the earliest of
    - 3 years from the date the Options were granted, or
    - the time at which the Participant ceased being employed by the Single Cell Group.
15. The Plan details the default vesting conditions, which specify that:
- the Options had vesting conditions as set out in the invitation letter at the time the Options were granted; for example, 33% of Options vest 12 months after the issue date and the remaining 67% of Options vest on a monthly basis over the next 2 years
  - the Single Cell Board (the Board) may accelerate vesting and determine in its absolute discretion to vest all or some of the unvested Options, and
  - the Options will only vest while the Participant is employed by the Single Cell Group during the vesting period and as at the vesting date.
16. The Plan describes an exit event to include a merger, consolidation, share sale and a listing of the company (Exit Event).
17. Vested Options may not be exercised until an Exit Event or unless otherwise determined by the Board at its absolute discretion.
18. On the occurrence of an Exit Event:
- vested Options held by Participants may participate in the Exit Event
  - unvested Options held by Participants who have worked for
    - more than 2 years with the Single Cell Group since the Options were granted will vest and the Participants may participate in the Exit Event
    - less than 2 years with the Single Cell Group since the Options were granted will immediately lapse.

### **Share Sale Agreement**

19. On 22 September 2021, Advanced provided a written, non-binding letter of intent to Single Cell to acquire 100% of its shares (the Transaction). The Transaction was an Exit Event under the Plan.
20. On 24 December 2021, Single Cell and Advanced signed the SSA in relation to the Transaction. The SSA contemplated some vested Options would be exercised prior to the completion of the Transaction.
21. The completion of the Transaction was subject to a number of conditions. One such condition was that the vested Options were cancelled in exchange for an option cancellation payment pursuant to the Option Cancellation Agreement.
22. On 4 March 2022, all shares in Single Cell were acquired by Advanced following the satisfaction or waving of all conditions precedent to the SSA.

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## Other matters

23. No discussions or negotiations commenced between Single Cell and Advanced, or any other potential purchaser, prior to the Options being granted by Single Cell on 30 June 2020.

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**Commissioner of Taxation**

2 November 2022

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## **Appendix – Explanation**

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**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**

24. One of the conditions which entitled you to reduce the amount included in your assessable income when you acquired the Options is to not dispose of those Options within the minimum holding period (sections 83A-33 and 83A-45).

25. The minimum holding period set out in subsections 83A-45(4) and (5) is the earlier of 3 years from when the Options were acquired or when you ceased employment with the Single Cell Group. However, an earlier period can be allowed if the Commissioner of Taxation is satisfied that:

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

26. The Commissioner is satisfied that the Plan prevented the Participants from disposing of the Options until the earlier of the 3-year anniversary of the date the Options were acquired or the day after the date they ceased to be employed by the Single Cell Group.

27. Pursuant to the SSA, all the shares in Single Cell were purchased by Advanced and, as a pre-condition to the completion of the SSA, all the vested Options were cancelled pursuant to the Option Cancellation Agreement.

28. 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 in respect of the vested Options to end at the earlier time of 4 March 2022.

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## References

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### *Legislative references:*

- ITAA 1936 6(1)
- ITAA 1997 Subdiv 83A-B
- ITAA 1997 83A-33
- 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

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### ATO references

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