

CR 2023/25 - Qantas Airways Limited - 2022/23 Qantas Short Term Incentive Plan



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Status: **legally binding**

Class Ruling

Qantas Airways Limited – 2022/23 Qantas Short Term Incentive Plan

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 Qantas Airways Limited (Qantas) and its subsidiaries (collectively, the Qantas Group) who participate in the 2022/23 Qantas Short Term Incentive Plan (STIP).
2. Details of this scheme are set out in paragraphs 17 to 29 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 are an employee of the Qantas Group who is:
 - granted a right to be allocated a Qantas share under the STIP (STIP Right), and
 - a resident of Australia within the meaning of subsection 6(1) of the *Income Tax Assessment Act 1936*.
5. This Ruling does not apply to anyone who is subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 17 to 29 of this Ruling.

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

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When this Ruling applies

6. This Ruling applies from 1 July 2022 to 30 June 2027.

Ruling

7. The STIP is an employee share scheme as defined in subsection 83A-10(2).
8. The right to be granted a Qantas share under the STIP (the STIP Right) is an ESS interest as defined in paragraph 83A-10(1)(b).
9. Subdivision 83A-C will apply to the STIP Right granted to you.
10. The STIP Right granted to you under the STIP will be an indeterminate right as it is based on the value of shares rather than a specified number of shares (section 83A-340).
11. Once the vesting conditions are met and the number of shares that are to be provided under the employee share scheme are known, the STIP Right will be treated as a right to acquire a beneficial interest in a share from the time the STIP Right was granted to you (subsection 83A-340(2)).
12. The ESS deferred taxing point for your STIP Right will (subject to the 30-day period in subsection 83A-120(3)) be the earliest of:
- when the disposal restrictions for the STIP Shares end (subsection 83A-120(7)), and
 - 15 years from when you acquired the STIP Right (subsection 83A-120(6)).
13. Your assessable income for the income year in which the ESS deferred taxing point occurs (as determined in section 83A-120) includes the market value of the Qantas share at that time (subsection 83A-110(1)).
14. No amount will be included in your assessable income from forfeiting a STIP Right, or a Qantas share acquired upon vesting of a STIP Right, where the forfeiture occurs before the deferred taxing point (subsection 83A-110(1), section 104-25 and section 130-80).
15. If you dispose of your Qantas share on or before the ESS deferred taxing point (including where the ESS deferred taxing point is extended under the 30-day rule in subsection 83A-120(3)), any capital gain or capital loss is disregarded (subsection 130-80(1)).
16. Where you dispose of a Qantas share after the ESS deferred taxing point:
- the first element of the cost base and reduced cost base of the Qantas share is its market value immediately after the ESS deferred taxing point (section 83A-125, section 112-15, subsection 110-25(2) and subsection 110-55(2))
 - the disposal will result in CGT event A1 happening (section 104-10)
 - a capital gain will be made if the capital proceeds from the disposal are more than the share's cost base and a capital loss is made if those capital proceeds are less than the share's reduced cost base (subsection 104-10(4)), and

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- if you make a capital gain from CGT event A1 happening to your Qantas share you may be entitled to treat the gain as a discount capital gain in respect of the share if it has been held for at least 12 months from the date the ESS deferred taxing point occurred, provided the other requirements of Subdivision 115-A are satisfied (section 115-25 and section 83A-125).

Scheme

17. 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.

18. The STIP provides a means for the delivery of equity ownership to Qantas Group executives in order to, among other benefits, improve alignment between an executive's interest and those of Qantas shareholders.

19. An invitation letter was provided to you to participate in the STIP. This specified the relevant terms and conditions for the STIP Rights.

20. No consideration is payable by you upon the grant or vesting of your STIP Rights.

21. Your STIP Rights may vest in whole or in part as they are subject to Qantas and your individual performance conditions being met during the 2022-23 financial year (Performance Measures).

22. One-third of the STIP Rights that vest will be provided in the form of Qantas shares (STIP Shares) with two-thirds being provided as a cash bonus.

23. Any STIP Shares granted will be allocated at the end of the 2022-23 financial year. The number is calculated based on the figure in your invitation letter and the result of the Performance Measures. These shares are then held on your behalf by the Qantas Employee Share Plan Trust (the Trust).

24. The STIP Shares are subject to a restriction of sale or transfer for 2 years from when the Qantas share is allocated (Deferral Period), an additional one-year period (Holding Lock Period) and, if you elected, an additional variable period (together Restriction Period).

25. During the Deferral Period, where you resign or your employment is terminated for cause, all of your STIP Shares will be forfeited automatically on the date you cease employment (subject to the Board determining otherwise).

26. After the Deferral Period, but before the end of the Restriction Period, if you cease employment, you will retain your STIP Shares (subject to the Board determining otherwise based on your performance or conduct) and the STIP Shares will be released from the Trust, and you will be free to deal in the shares once the Holding Lock Period ends.

27. At the end of the Restriction Period, you will be free to deal in your STIP Shares (subject to applicable laws and the Qantas employee share trading policy contained in the Qantas Code of Conduct and Ethics).

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28. Immediately after the acquisition of the STIP Right under the STIP, no participant in the STIP will hold more than 10% of the shares in Qantas or be 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 meeting of Qantas.

29. The predominant business of Qantas is not the acquisition, sale or holding of shares, securities or other investments, whether directly or indirectly through one or more companies, partnerships or trusts.

Commissioner of Taxation

17 May 2023

Status: **not legally binding**

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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Employee share scheme interests and indeterminate rights

30. An ESS interest in a company is a beneficial interest in a share in the company or a right to acquire a beneficial interest in a share in the company (subsection 83A-10(1)).

31. Under the STIP, the STIP Rights acquired are only beneficial interests in rights that will later become rights to acquire beneficial interests in Qantas shares. This is because the invitation gave an indicative value of the rights rather than a number of rights. Once the Performance Measures have been calculated so that the final value of the STIP Rights is known, the number of shares this represents is calculated based on market value at that time. Once this occurs, the STIP Rights become rights to acquire Qantas shares.

32. Subsection 83A-340(1) applies where you acquire a beneficial interest in a right that later becomes a right to acquire a beneficial interest in a share which is referred to as an indeterminate right. A person will acquire an indeterminate right when they can enforce against their employer (under the terms of the contract) rights that will later become a beneficial interest in a share (refer to Taxation Determination TD 2016/17 *Income tax: in what circumstances does a contractual right, which is subject to the satisfaction of a condition, become a right to acquire a beneficial interest in a share for the purposes of subsection 83A-340(1) of the Income Tax Assessment Act 1997?*).

33. Therefore, where the STIP Rights granted to you ultimately vest, section 83A-340 will apply to those rights. The STIP Rights will be treated as if they had always been rights to acquire a beneficial interest in Qantas shares. That is, they will be treated as an ESS interest from when you acquired the STIP Rights which is when the STIP becomes binding between you and Qantas.

34. The STIP is an ESS as defined in subsection 83A-10(2), as it is a scheme under which ESS interests in a company are provided to employees, or associates of employees, of the company, or a subsidiary of the company, in relation to the employee's employment (subsection 83A-10(2)).

35. The STIP provides that a STIP Right is issued for no consideration. This means the STIP Right was issued at a discount pursuant to subsection 83A-20(1). Subdivision 83A-B will apply to the STIP Right acquired by you under the STIP, unless Subdivision 83A-C applies.

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Assessability of a right under Subdivision 83A-C

36. Subdivision 83A-C allows the discount in relation to the ESS interest to be included in assessable income at a later time if the following conditions are satisfied:

- Subdivision 83A-B would, apart from section 83A-105, apply to the interest
- paragraph 83A-105(1)(aa) results in a participant continuing to receive a discount in relation to the interest
- subsections 83A-45(1) to (3) and (6) apply to the interest, and
- pursuant to subsection 83A-105(3), there is a real risk that you will forfeit the right.

37. In relation to the first condition listed in paragraph 36 of this Ruling, Subdivision 83A-B would, apart from subsection 83A-105(1), apply to the STIP Right because it is:

- a beneficial interest in a right to acquire beneficial interest in a share of Qantas, and
- provided to you as an employee of Qantas Group in relation to your employment and will be provided for nil consideration (that is, at a discount).

38. In relation to the second condition listed in paragraph 36 of this Ruling, paragraph 83A-105(1)(aa) requires that after applying section 83A-315 (which refers to the regulations for calculating the market value of an ESS interest where it is an unlisted right), there is still a discount given in relation to the interest.

39. Section 83A-315.03 of the *Income Tax Assessment (1997 Act) Regulations 2021* states:

If the lowest amount that must be paid to exercise the right to acquire the beneficial interest in a share is nil or cannot be determined, the value of the right on a particular day is the same as the market value of the share on that day.

40. As the STIP Right is provided for nil consideration, that is a discount to the market value of an ordinary share in Qantas. As such, you will receive a discount in relation to the STIP Right.

41. In relation to the third condition listed at paragraph 36 of this Ruling, subsections 83A-45(1) to (3) and (6) apply to the STIP Right granted because:

- when the Right is acquired, you were employed by the Qantas Group (subsection 83A-45(1))
- all of the ESS interests available for acquisition under the STIP relate to ordinary shares of Qantas (subsection 83A-45(2))
- the predominant business of Qantas is not the acquisition, sale or holding of shares, securities or other investments (subsection 83A-45(3)), and
- immediately after the acquisition of the STIP Right, you will not hold a beneficial interest in more than 10% of the shares in Qantas nor be 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 meeting of Qantas (subsection 83A-45(6)).

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42. In relation to the fourth condition listed in paragraph 36 of this Ruling, Subdivision 83A-C applies if the:

- interest is a beneficial interest in a right (paragraph 83A-105(3)(b)), and
- Performance Measures must be met otherwise you will lose your ESS interests (subparagraph 83A-105(3)(b)(i)).

43. As a result, Subdivision 83A-C applies to the STIP Right, and Subdivision 83A-B does not apply. The taxation of the STIP Right received under the STIP will be deferred until an ESS deferred taxing point occurs.

ESS deferred taxing point

44. Section 83A-120 provides the rules for determining when the ESS deferred taxing point occurs for a right to acquire a share as the earliest of:

- when the right has not been exercised, there is no real risk of forfeiting the right, and the scheme no longer genuinely restricts immediate disposal of the right (subsection 83A-120(4))
- 15 years after you acquired the right (subsection 83A-120(6)), or
- after the right is exercised, when there is no real risk of forfeiting or losing the share and the scheme no longer genuinely restricts disposal of the share (subsection 83A-120(7)).

45. However, if you dispose of the vested right or the share within 30 days of the earliest of the times listed in paragraph 44 of this Ruling, the ESS deferred taxing point will instead be the time of disposal (paragraph 83A-120(3)(b)).

46. For the purposes of Division 83A, the concept of 'exercising a right' does not necessarily require an action or activity by the beneficial owner of the right. It is enough that they become the beneficial owner of the share that is the subject of the right (this can happen automatically or at the instigation of the participant, the employer or another party). Therefore, you are taken to have exercised the STIP Right when a Qantas share is allocated upon vesting of the STIP Right.

47. As determined in section 83A-120, where your STIP Right vests, the ESS deferred taxing point will (subject to the 30-day rule) be the earliest of:

- 15 years from when you acquired the STIP Right (subsection 83A-120(6)), and
- the end of the period during which you are prohibited from dealing with your Qantas share (subsection 83A-120(7)).

48. However, if you dispose of your Qantas share acquired from vesting of the STIP Right within 30 days of the earliest time listed in paragraph 47 of this Ruling, the ESS deferred taxing point will be the date of disposal (subsection 83A-120(3)).

Amount to be included in assessable income

49. In accordance with section 83A-110, the amount to be included as assessable income in the income year in which the ESS deferred taxing point occurs is the market value of the ESS interest at the ESS deferred taxing point, reduced by the cost base of that interest (if any).

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50. Where the ESS interest is a right to acquire a beneficial interest in a share, the market value of the right at the ESS deferred taxing point is the market value of the share at that time (section 83A-315.03 of the *Income Tax Assessment (1997 Act) Regulations 2021*).

51. Therefore, the amount included in your assessable income at the ESS deferred taxing point is the market value of the Qantas share acquired upon vesting of a STIP Right at the ESS deferred taxing point, less the cost base of the STIP Right. As the STIP Right is granted for nil consideration and no amount is paid to exercise the STIP Right, the first element of the cost base of the STIP Right is nil (subsections 83A-110(1) and 110-25(2)).

Status: **not legally binding**

References

Related Rulings/Determinations:

TD 2016/17

Legislative references:

- ITAA 1936 6(1)
- ITAA 1997 Div 83A
- ITAA 1997 83A-10(1)
- ITAA 1997 83A-10(1)(b)
- ITAA 1997 83A-10(2)
- ITAA 1997 83A-20(1)
- ITAA 1997 Subdiv 83A-B
- ITAA 1997 83A-45(1)
- ITAA 1997 83A-45(2)
- ITAA 1997 83A-45(3)
- ITAA 1997 83A-45(6)
- ITAA 1997 Subdiv 83A-C
- ITAA 1997 83A-105
- ITAA 1997 83A-105(1)
- ITAA 1997 83A-105(1)(aa)
- ITAA 1997 83A-105(3)
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- ITAA 1997 83A-105(3)(b)(i)
- ITAA 1997 83A-110
- ITAA 1997 83A-110(1)
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- ITAA 1997 83A-315
- ITAA 1997 83A-340
- ITAA 1997 83A-340(1)
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- ITAA 1997 104-10
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- ITAA 1997 104-25
- ITAA 1997 110-25(2)
- ITAA 1997 110-55(2)
- ITAA 1997 112-15
- ITAA 1997 Subdiv 115-A
- ITAA 1997 115-25
- ITAA 1997 130-80
- ITAA 1997 130-80(1)
- ITAA 1997 Div 230
- ITAR (1997 Act) 2021 83A-315.03

ATO references

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