# *CR 2024/64 - Civmec Singapore Limited - employee share scheme - replacement of performance rights*

Status: **legally binding**

# Class Ruling

## Civmec Singapore Limited – employee share scheme – replacement of performance 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.

**Table of Contents** **Paragraph**



## What this Ruling is about

1. This Ruling sets out the income tax consequences of employees of Civmec Singapore Limited (Civmec) or its subsidiaries (together referred to as Civmec Group) who had their performance rights (PR 2018) issued pursuant to the Civmec Performance Rights Plan 2018 replaced by performance rights (PR 2024) issued pursuant to 2024 Civmec Key Senior Executives Performance Rights Plan as a result of the Performance Rights Exchange Deed entered into in connection with the Civmec Group Restructure.

2. Details of this scheme are set out in paragraphs 10 to 16 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 were employed by Civmec Group prior to the Civmec Group Restructure
- you were employed by Civmec Limited (NewCo) or a subsidiary of NewCo at the time you acquired the replacement PR 2024
- you did not have an ESS deferred taxing point under Subdivision 83A-C occur in relation to your PR 2018
- after you received your PR 2024, you did not hold a beneficial interest of more than 10% of the shares in NewCo and were not 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 NewCo general meeting, and

- you are a resident of Australia within the meaning of that term in 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 10 to 16 of this Ruling.

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

### When this Ruling applies

6. This Ruling applies from 1 July 2024 to 30 June 2025.

## Ruling

### New ESS interests are a continuation of old interests

7. The PR 2024 that you received are treated as a continuation of your PR 2018 for the purposes of Division 83A (subsection 83A-130(2)).

### No ESS deferred taxing point upon takeover

8. The replacement of your PR 2018 for PR 2024 did not result in an ESS deferred taxing point under section 83A-120.

### Continuation of your employment

9. Your employment after the Civmec Group Restructure is treated as a continuation of your employment for the purposes of Division 83A (subsection 83A-130(6)). That is, your employment had not ceased within the meaning of section 83A-330 due to the Civmec Group Restructure.

## Scheme

10. 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.

### Civmec Group Restructure

11. Prior to the Civmec Group Restructure:

- Civmec was the head company of the Civmec Group and incorporated in Singapore with 507,606,000 ordinary shares, and
- NewCo was incorporated in Australia with 1 ordinary share.

12. The Civmec Group Restructure on 4 September 2024 (Effective Date) resulted in:

- Civmec shareholders exchanging their shares in Civmec for newly issued ordinary shares in NewCo on a one-for-one basis
- the existing NewCo share concurrently being cancelled via a capital reduction
- NewCo holding 100% of the shares of Civmec
- NewCo being interposed as a new parent company between Civmec and Civmec's existing shareholders, and
- Civmec's listing on the mainboard of the Singapore Exchange and the Australian Securities Exchange effectively being transferred to NewCo.

### Performance Rights cancelled and replaced

13. Prior to the Civmec Group Restructure, some employees held PR 2018 which, based on meeting certain conditions would result in these employees gaining an ownership interest in Civmec ordinary shares.

14. As part of the Civmec Group Restructure, Civmec and NewCo entered into a Performance Rights Exchange Deed with each employee that held PR 2018s.

15. Pursuant to this agreement the PR 2018s were cancelled and replaced with PR 2024s on a one-for-one basis, that is, one PR 2018 representing an ownership interest in one potential Civmec ordinary share replaced with one PR 2024 representing an ownership interest in one potential NewCo ordinary share.

16. The performance conditions for each PR 2018 were replicated for each PR 2024, the only difference for the PR 2024 was that the employees would receive an ownership interest in a NewCo ordinary share when the performance conditions were met instead of a Civmec share.

**Commissioner of Taxation**
9 October 2024

# 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.***

## No ESS deferred taxing point upon takeover

17. An amount will be included in your assessable income for the income year in which the ESS deferred taxing point occurs in respect of your ESS interest (section 83A-110).

18. An ESS deferred taxing point may occur at the time you dispose of an ESS interest (paragraph 83A-120(3)(a)).

19. However, where the conditions in section 83A-130 are met, it will not be treated as a disposal for Division 83A purposes.

20. The requirements of section 83A-130 were satisfied when NewCo became the new head entity for the Civmec Group because:

- the Civmec Group Restructure is considered a 'takeover' because it resulted in Civmec becoming a 100% subsidiary of NewCo (subparagraph 83A-130(1)(a)(i))
- just before the Civmec Group Restructure, you held ESS interests in the form of PR 2018 (the 'old interests') that you acquired under an employee share scheme (paragraph 83A-130(1)(b))
- as a result of the restructure, you stopped holding the PR 2018 (paragraph 83A-130(2)(a))
- you acquired ESS interests in the form of PR 2024 (the 'new interests') in connection with the Restructure (subsection 83A-130(2))
- the PR 2024 were acquired on economically equivalent terms and can reasonably be regarded as matching the PR 2018 (paragraph 83A-130(2)(b))
- the PR 2024 relate to ordinary shares in NewCo (subsection 83A-130(4))
- you were employed by NewCo or a subsidiary of NewCo at the time you acquired the PR 2024 (paragraph 83A-130(9)(a)), and
- at the time of acquiring the PR 2024, you did not hold a legal or beneficial interest in more than 10% of NewCo shares or were 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 NewCo general meeting (paragraph 83A-130(9)(b)).

21. Accordingly, for the purposes of Division 83A, the PR 2024 you acquired in connection with the takeover are treated as a continuation of your PR 2018 you previously held (subsection 83A-130(2)) and there will not be an ESS deferred taxing point under section 83A-120.

22. Your employment with NewCo, or a subsidiary of NewCo, will be regarded as a continuation of your employment with Civmec 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.

Status: **not legally binding**

# References

*Legislative references:*
- ITAA 1936 6(1)
- ITAA 1997 Div 83A
- ITAA 1997 Subdiv 83A-C
- ITAA 1997 83A-110
- ITAA 1997 83A-120
- ITAA 1997 83A-120(3)(a)
- ITAA 1997 83A-130
- 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(6)
- ITAA 1997 83A-130(9)(a)
- ITAA 1997 83A-130(9)(b)
- ITAA 1997 83A-330
- ITAA 1997 Div 230

ATO references

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