

CR 2012/56 - Income tax: CSR Limited - CSR Employee Share Acquisition Plan - return of capital

⚠ This cover sheet is provided for information only. It does not form part of *CR 2012/56 - Income tax: CSR Limited - CSR Employee Share Acquisition Plan - return of capital*

⚠ This document has changed over time. This is a consolidated version of the ruling which was published on *15 January 2014*



Class Ruling

Income tax: CSR Limited – CSR Employee Share Acquisition Plan – return of capital

Contents	Para
LEGALLY BINDING SECTION:	
What this Ruling is about	1
Date of effect	9
Previous Rulings	10
Scheme	11
Ruling	38
NOT LEGALLY BINDING SECTION:	
Appendix 1:	
<i>Explanation</i>	85
Appendix 2:	
<i>Detailed contents list</i>	168

📌 This publication provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

[Note: This is a consolidated version of this document. Refer to the Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provision(s)

2. The relevant provisions dealt with in this Class Ruling are:

- Former Division 13A of Part III (Division 13A) of the *Income Tax Assessment Act 1936* (ITAA 1936);
- Former section 139B of the ITAA 1936;
- Former section 139CA of the ITAA 1936;
- Former section 139E of the ITAA 1936;
- Former section 139FA of the ITAA 1936;
- Section 83A-5 of the *Income Tax (Transitional Provisions) Act 1997* (IT(TP)A 1997);

- Section 83A-10 of the IT(TP)A 1997;
- Division 83A of the *Income Tax Assessment Act 1997* (ITAA 1997);
- Subdivision 83A-C of the ITAA 1997;
- Section 83A-105 of the ITAA 1997;
- Section 83A-110 of the ITAA 1997;
- Section 83A-115 of the ITAA 1997;
- Section 83A-125 of the ITAA 1997;
- Section 104-10 of the ITAA 1997;
- Section 104-25 of the ITAA 1997;
- Section 104-70 of the ITAA 1997;
- Subsection 104-70(4) of the ITAA 1997;
- Section 104-135 of the ITAA 1997;
- Section 106-50 of the ITAA 1997;
- Subsection 109-5(1) of the ITAA 1997;
- Subsection 109-5(2) of the ITAA 1997;
- Subsection 110-25(2) of the ITAA 1997;
- Subsection 110-55(2) of the ITAA 1997;
- Section 112-15 of the ITAA 1997;
- Division 115 of the ITAA 1997;
- Subdivision 115-A of the ITAA 1997;
- Subsection 115-30(1) of the ITAA 1997;
- Subdivision 115-C of the ITAA 1997;
- Subsection 115-215(4) of the ITAA 1997;
- Former subsection 115-30(1) of the ITAA 1997;
- Former subsection 130-80(3) of the ITAA 1997;
- Former subsection 130-83(3) of the ITAA 1997;
- Subsection 130-80(1) of the ITAA 1997; and
- Subsection 130-85(2) of the ITAA 1997.

All subsequent legislative references are to the ITAA 1997 unless otherwise indicated.

Class of entities

3. The class of entities to which this Ruling applies is all persons who acquired, under the CSR Employee Share Acquisition Plan (ESAP), beneficial interests in CSR Limited shares (CSR Shares) held by the Plan Trustee and:

- held the beneficial interests on the Record Date;
- if they acquired the beneficial interests before 1 July 2009 and made an election under section 139E of the ITAA 1936 in relation to those beneficial interests, were not at the Record Date entitled to call for the CSR Shares from the Plan Trustee;
- if they acquired the beneficial interests before 1 July 2009, made an election under section 139E of the ITAA 1936 in relation to those beneficial interests and held the beneficial interests on the Payment Date, were not at the Payment Date entitled to call for the CSR Shares from the Plan Trustee;
- are, while they own CSR Shares acquired under the ESAP, residents of Australia for the purposes of the Australian income tax legislation, including by virtue of the operation of any double tax agreement between Australia and any other country;
- are not, while they own CSR Shares acquired under the ESAP awards, 'temporary residents' of Australia within the meaning of section 995-1;
- held their CSR Shares on capital account; and
- are not subject to the taxation of financial arrangement rules in Division 230 in relation to gains and losses on their CSR Shares.

(Note: Division 230 will generally not apply to individuals, unless they have made an election for it to apply to them).

4. In this Ruling, a person belonging to this class of entities is referred to as a participating employee (notwithstanding that the person may have ceased to be a CSR employee before the return of capital).

Qualifications

5. The Commissioner makes this ruling based on the precise scheme identified in this Ruling.

6. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 11 to 37 of this Ruling.

7. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
- this Ruling may be withdrawn or modified.

8. This work is copyright. Apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without prior written permission from the Commonwealth. Requests and inquiries concerning reproduction and rights should be addressed to:

Commonwealth Copyright Administration
Copyright and Classification Policy Branch
Attorney-General's Department
3-5 National Circuit
Barton ACT 2600

or posted at: <http://www.ag.gov.au/cca>

Date of effect

9. This Ruling applies from 1 July 2010 to 30 June 2019. The Ruling continues to apply to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, this Ruling will not apply to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Previous Rulings

10. *Class Ruling CR 2011/20 Income tax: CSR Limited – return of capital.*

Scheme

11. The following description of the scheme is based on information provided by the applicant.

Note: certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under Freedom of Information legislation.

The CSR group and the sale of Sucrogen to Wilmar

12. CSR Limited (CSR) is an Australian resident public company. Prior to the sale of the Sucrogen business (as described in paragraph 13 of this Ruling), the CSR group comprised of two subgroups operating primarily in the Australian markets. The two subgroups were the CSR Building Products subgroup and the Sucrogen subgroup. CSR was the ultimate holding company of both these subgroups.

13. On 5 July 2010, the CSR group announced that it had entered into an agreement to sell its Sugar and Renewable Energy businesses, Sucrogen Ltd (Sucrogen), to Wilmar International Limited (Wilmar) for an enterprise value of approximately \$1.75 billion. Sucrogen was a wholly owned subsidiary of CSR until the completion of the sale transaction on 22 December 2010.

The Employee Share Acquisition Plan

14. Under the ESAP participating employees acquire a beneficial interest in fully paid ordinary CSR Shares held by CSR Share Plan Pty Limited (Plan Trustee) by way of salary sacrifice.

15. The CSR Shares are acquired on market by the CSR group and held in the CSR Employee Share Acquisition Plan Trust (ESAP Trust) on trust on behalf of the participating employee. The CSR Shares are registered in the name of the Plan Trustee and allocated to participating employee subaccounts. The ESAP Trust was established on 9 November 1998.

16. Under clause 3.3 of the CSR Employee Share Acquisition Plan Trust Deed (Trust Deed) and rule 7.1 of the CSR Employee Share Acquisition Plan Rules (Plan Rules), a participating employee is absolutely entitled to any dividends or other distributions (whether income or capital in nature) made in respect of the CSR Shares held in the ESAP Trust on their behalf.

17. At no time will a participating employee hold a legal or beneficial interest in more than 5% of the CSR Shares, nor be in a position to cast or control the casting of more than 5% of the maximum number of votes at a general meeting of CSR.

18. On the completion of the sale of Sucrogen to Wilmar, Sucrogen employees were no longer employed by any entity in the CSR group, and so, pursuant to the ESAP plan rules, participating Sucrogen employees had their CSR Shares transferred to them.

Pre 1 July 2009 ESAP awards

19. Pre 1 July 2009 ESAP awards were offered typically at the start of each trading window to participating employees.

20. The CSR group has advised that the CSR Shares acquired by participating employees prior to 1 July 2009 are qualifying shares within the meaning of former section 139CD of the ITAA 1936.

21. The beneficial interest in CSR Shares held by the Plan Trustee, acquired under the ESAP, are subject to forfeiture (until approval of withdrawal) where the participating employee is dismissed with cause or has committed any act of fraud, defalcation or gross misconduct in relation to the affairs of the CSR group (rule 8 of Plan Rules).

22. CSR Shares are held in the ESAP Trust and the Plan Trustee must transfer the CSR Share at the earlier of the following times:

- When the conditions for withdrawal of the share are satisfied and a Notice of withdrawal is approved by CSR;
- Termination of employment with the CSR group; or
- Ten years after the participating employee acquired the beneficial interest in the CSR Share.

23. The Plan Trustee transfers the CSR Share to the participating employee or sells the CSR Share on the date of approval of the Notice of Withdrawal or the following working day.

24. As the beneficial interests in the CSR Shares which are acquired under the ESAP were interests in qualifying shares, the participating employees were able to choose whether or not to make an election under former section 139E of the ITAA 1936 to be assessed in the year of grant under Division 13A of the ITAA 1936 on the discount in relation to the CSR Shares.

Post 30 June 2009 ESAP awards

25. Post 30 June 2009 ESAP awards were offered periodically to participating employees.

26. The CSR group has advised that for ESAP awards granted after 30 June 2009, the ESAP is a scheme within the meaning of Subdivision 83A-C. The CSR group has further advised the ESAP satisfies the conditions for a salary sacrifice arrangement in subsection 83A-105(4).

27. The beneficial interest in CSR Shares held by the Plan Trustee, acquired under the ESAP, are subject to forfeiture (until approval of withdrawal) where the participating employee is dismissed with cause or has committed any act of fraud, defalcation or gross misconduct in relation to the affairs of the CSR group (rule 8 of the Plan Rules).

28. CSR Shares are held in the ESAP Trust and the Plan Trustee must transfer the CSR Share at the earlier of the following times:

- Seven years after the participating employee acquired a beneficial interest in the CSR Share, or
- Termination of employment with the CSR group

unless the participating employee can provide evidence of severe financial hardship.

Withdrawal of CSR Shares from the plan

29. If shares have not been forfeited under rule 8 of the Plan Rules, a participating employee may submit a Notice of Withdrawal of shares to the Plan Trustee, which Notice is effective when approved by CSR.

30. Subject to rule 6 of the Plan Rules, where a Notice of Withdrawal of shares has been submitted by a participating employee, approval for withdrawal of shares will be given by CSR when CSR has determined that approval is appropriate having regard to criteria notified to the participating employee by CSR from time to time. The possibility of forfeiture of the beneficial interest ceases when approval is given.

31. If a Notice of Withdrawal of shares is approved by CSR, the Plan Trustee must either transfer the shares to the participating employee, or sell the shares on behalf of the participating employee and distribute the proceeds of sale less authorised deductions to the participating employee, at the direction of the participating employee.

Other disposal restrictions

32. Participating employees are subject to the CSR Share Trading Policy and the General Trading Restriction under that policy. The General Trading Policy provides that employees must not buy or sell CSR Shares when they are aware of price sensitive information about CSR which has not been disclosed to the Australian Securities Exchange (ASX).

33. Further, participating employees must ensure that they comply with the CSR Share Trading Policy and they may only participate in the ESAP, vary any arrangement to participate in the ESAP or request the withdrawal of their CSR Shares acquired under the ESAP during a share trading window. If however participating employees are aware of price sensitive information which has not been disclosed to the ASX during a relevant trading window then they cannot make such applications during that window.

34. Disposal restrictions cease when participating employees cease employment with the CSR group.

Return of capital

35. CSR paid a return of capital of \$0.4357 per share. The Record Date for the return of capital was 16 February 2011 and the Payment Date was 3 March 2011 (although payments may not have been received by some participating employees until 4 March 2011).

36. Where the Plan Trustee was the registered shareholder of CSR Shares and held those shares on behalf of participating employees, the trustee directed Computershare Plan Managers (Computershare) to pay the return of capital payments directly to the participating employees.

37. In accordance with the Plan Trustee's direction, Computershare paid the return of capital to employee nominated bank accounts on the payment date (or in some circumstances, one day later).

Ruling

Part 1: Pre 1 July 2009 ESAP awards – (taxed upfront or tax deferred with cessation time before 1 July 2009)

ESS interests acquired under an employee share scheme

38. Where a participating employee acquired a CSR Share under the ESAP and made an election under former section 139E of the ITAA 1936, former Division 13A of the ITAA 1936 continues to apply after the commencement of Division 83A (Subsection 83A-10(2) of the IT(TP)A 1997).

39. Where a participating employee acquired a CSR Share under the ESAP and made an election under former section 139E of the ITAA 1936, the amount of the discount is included in the participating employees assessable income in the year of income that the interest in the share was acquired (former subsection 139B(2) of the ITAA 1936).

CGT consequences of return of capital where CSR Share held by Plan Trustee at Payment Date

Subdivision 115-C

40. Subdivision 115-C applies to a participating employee in relation to any capital gain made by the Plan Trustee from CGT event G1 (section 104-135) happening when CSR paid the return of capital where the CSR Share was held by the Plan Trustee at the Payment Date.

41. Any capital gain made by the participating employee from Subdivision 115-C is a discount capital gain if the capital gain made by the Plan Trustee from CGT event G1 is a discount capital gain (paragraph 115-215(4)(a)).

CGT event E4

42. A participating employee has an interest in the ESAP trust and therefore an 'interest in the trust' for the purpose of subsection 104-70(1). Accordingly, CGT event E4 happened when a participating employee received the return of capital from the Plan Trustee in respect of each CSR Share held by the Plan Trustee at the Payment Date and for which a Notice of Withdrawal had not been approved at that date.

43. The participating employee's capital gain from the CGT event E4 is the non-assessable part of the return of capital (that is, the part of the payment to which Subdivision 115-C does not apply), less the cost base of the participating employee's interest in the trust (subsection 104-70(4)).

44. For the purposes of calculating the cost base of the participating employee's interest in the trust, the first element of cost base is nil (subsection 110-25(2)).

45. For CGT discount purposes, the interest in the trust was acquired by the participating employee at the time the Plan Trustee allocated the shares to them (subsection 109-5(1)).

CGT consequences of return of capital where CSR Share held by Plan Trustee at Record Date and by participating employee at Payment Date*Subdivision 115-C*

46. Subdivision 115-C applies to a participating employee in relation to a capital gain made by the Plan Trustee from CGT event C2 (section 104-25) happening when CSR paid the return of capital where the CSR Share was held by the participating employee at the Payment Date.

47. Any capital gain made by the participating employee from Subdivision 115-C is a discount capital gain if the capital gain made by the Plan Trustee from CGT event C2 is a discount capital gain (paragraph 115-215(4)(a)).

CGT event E4

48. If the amount of the return of capital exceeds the trustee's capital gain from CGT event C2, the excess is a non-assessable part and CGT event E4 happens (section 104-70).

49. The participating employee's capital gain from the CGT event E4 is the non-assessable part of the return of capital (that is, the part of the payment to which Subdivision 115-C does not apply), less the cost base of the participating employee's interest in the trust (subsection 104-70(4)).

50. For the purposes of calculating the cost base of the participating employee's interest in the trust, the first element of cost base is nil (subsection 110-25(2)).

51. For CGT discount purposes, the interest in the trust was acquired by the participating employee at the time the Plan Trustee allocated the shares to them (subsection 109-5(1)).

CGT consequences of return of capital where CSR Share disposed of by Plan Trustee or participating employee before Payment Date

Subdivision 115-C

52. Subdivision 115-C applies to a participating employee in relation to a capital gain made by the Plan Trustee from CGT event C2 (section 104-25) happening when CSR paid the return of capital where the CSR Share was disposed of by the participating employee or the Plan Trustee on behalf of the participating employee before the Payment Date.

53. Any capital gain made by the participating employee from Subdivision 115-C is a discount capital gain if the capital gain made by the Plan Trustee from CGT event C2 is a discount capital gain (paragraph 115-215(4)(a)).

CGT event E4

54. If the amount of the return of capital exceeds the trustee's capital gain from CGT event C2, the excess is a non-assessable part and CGT event E4 happens (section 104-70).

55. The participating employee's capital gain from the CGT event E4 is the non-assessable part of the return of capital (that is, the part of the payment to which Subdivision 115-C does not apply), less the cost base of the participating employee's interest in the trust (subsection 104-70(4)).

56. For the purposes of calculating the cost base of the participating employee's interest in the trust, the first element of cost base is nil (subsection 110-25(2)).

57. For CGT discount purposes, the interest in the trust was acquired by the participating employee at the time the Plan Trustee allocated the shares to them (subsection 109-5(1)).

Disposal of CSR Share

58. CGT event A1 happens in relation to a participating employee when a CSR Share is disposed of by the participating employee (subsection 104-10(1)) or the Plan Trustee (section 106-50).

59. The first element of the cost base of a taxed upfront CSR Share is its market value (worked out under former section 139FA of the ITAA 1936) when it was allocated for the benefit of a participating employee by the Plan Trustee (former subsection 130-80(3)).

60. The first element of the cost base of a tax deferred CSR Share is its market value (worked out under former section 139FA of the ITAA 1936) at its cessation time (former subsection 130-83(3)).

61. For CGT discount purposes, the time of acquisition of a taxed up front CSR Share is the time at which the participating employee acquired a beneficial interest in the CSR Share, which is the time at which the CSR Share was allocated to the participating employee by the Plan Trustee (former item 8 of subsection 115-30(1)).

62. For CGT discount purposes, the time of acquisition of a tax deferred CSR Share is the time at which the participating employee became absolutely entitled, as against the Plan Trustee, to the CSR Share (Event Number E5 of subsection 109-5(2)).

Part 2: Pre 1 July 2009 ESAP awards – no election made under former section 139E of the ITAA 1936 and no cessation time before 1 July 2009 (tax deferred)

ESS interests acquired under an employee share scheme

Subdivision 83A-C: salary sacrifice arrangement

63. Where a participating employee acquired a CSR Share under the ESAP prior to 1 July 2009 and did not make an election under former section 139E of the ITAA 1936, Subdivision 83A-C will apply to those shares (paragraph 83A-5(2)(a) of the IT(TP)A 1997).

64. Where a CSR Share was acquired prior to 1 July 2009 and a participating employee did not make an election in relation to the CSR Share under former section 139E of the ITAA 1936, the participating employee will include an amount in their assessable income at the ESS deferred taxing point (section 83A-110).

ESS deferred taxing point

65. The ESS deferred taxing point for the CSR Shares acquired under the ESAP, held by participating employees will, subject to paragraph 83A-5(4)(c) of the IT(TP)A 1997, be the cessation time mentioned in former section 139B(3) of the ITAA 1936.

66. The cessation time for these purposes will be the time determined in former section 139CA of the ITAA 1936.

67. Under former section 139CA of the ITAA 1936 the cessation time for participating employees in relation to a CSR Share acquired under the ESAP would be the earlier of:

- when the participating employee disposes of the share;
- when the share is no longer subject to disposal restrictions or forfeiture;
- the time when the employment in respect of which the share was acquired ceases (within the meaning of that term in former subsection 139CA(3) of the ITAA 1936); or
- the end of the 10 year period starting when the participating employee acquired the share under the ESAP award.

68. For participating employees who were employed by:

- CSR, at the time they received their CSR Shares under the ESAP, and who continue to be employed by CSR after the sale of Sucrogen to Wilmar; or
- Sucrogen, at the time they received their CSR Shares under the ESAP, and who continue to be employed by Sucrogen after the sale of Sucrogen to Wilmar,

no cessation time, as mentioned in former section 139CA of the ITAA 1936, happens at the time of the sale of Sucrogen to Wilmar – because those participating employees have not ceased employment for the purposes of former subsection 139CA(3) of the ITAA 1936 and no other cessation time arises as a result of the sale.

69. For CSR employees whose employment transferred to Sucrogen, the deferred taxing point will be the time of the sale of Sucrogen to Wilmar – because those participating employees have ceased employment for the purposes of former subsection 139CA(3) of the ITAA 1936 at that time.

70. However, the ESS deferred taxing point will, pursuant to paragraph 83A-5(4)(c) of the IT(TP)A 1997, be the time that the participating employee disposes of the share acquired under the ESAP where this disposal occurs within 30 days after the cessation time.

CGT consequences of return of capital

71. Where:

- a beneficial interest in a CSR Share was acquired before 1 July 2009;
- no election was made under former section 139E of the ITAA 1936; and

- no cessation time in relation to the CSR Share happened before 1 July 2009,

the CGT consequences of the return of capital are the same as if the beneficial interest was acquired after 30 June 2009 (as set out in Part 3 of this Ruling), except the time of acquisition of a CSR Share for CGT discount purposes (subsection 83A-5(2) of the IT(TP)A 1997).

72. For CGT discount purposes, the time of acquisition of a CSR Share to which paragraph 71 of this ruling applies is, pursuant to subparagraph 83A-5(4)(f)(i) of the IT(TP)A 1997:

- at any time after the participating employee became actually absolutely entitled as against the Plan Trustee to the CSR Share, the time the participating employee became actually absolutely entitled, which is the time at which a Notice of Withdrawal relating to the CSR Share was approved; and
- at any time before the participating employee became actually absolutely entitled as against the Plan Trustee to the CSR Share, the time at which the employee acquired the beneficial interest in the CSR Share, which is the time at which the CSR Share was allocated by the Plan Trustee to the participating employee.

72A. The time referred to in the first bullet point of paragraph 72 is the time of becoming actually absolutely entitled, rather than the time of becoming taken to be absolutely entitled pursuant to subsection 130-85(2), because subsection 130-85(2) does not apply for the purposes of the IT(TP)A 1997.

Part 3: Post 30 June 2009 ESAP awards

ESS interests acquired under an employee share scheme

73. Where a participating employee is granted an ESAP award after 30 June 2009, they have acquired an ESS interest under an employee share scheme for the purposes of Division 83A.

Subdivision 83A-C: salary sacrifice arrangement

74. The Commissioner accepts that ESAP awards acquired under the ESAP are acquired under a salary sacrifice arrangement and that Subdivision 83A-C applies to the ESAP awards.

ESS deferred taxing point

75. The ESS deferred taxing point will be determined in accordance with section 83A-115.

76. Subsection 83A-115(2) provides that the ESS deferred taxing point is the earliest of the times mentioned in subsections 83A-115(4) to (6). However the ESS deferred taxing point will be the time a participating employee disposes of the interest, if that time occurs within 30 days after the time worked out under subsection 83A-115(3).

Amount included in assessable income

77. The market value of the ESS interest at the ESS deferred taxing point is included in the participating employee's assessable income in the income year in which the deferred taxing point occurs, reduced by the cost base of the ESAP award (section 83A-110).

CGT consequences of return of capital when CSR Share held by either participating employee or Plan Trustee at Payment Date

78. When CSR paid the return of capital CGT event G1 happened to the participating employee in respect of each share where the Plan Trustee was the registered shareholder on the Record Date and either:

- continued to hold the share at the Payment Date; or
- had transferred the share to the participating employee who held the share at the Payment Date,

(section 104-135 and subsection 130-85(2)).

CGT consequences of return of capital where CSR Share disposed of by Plan Trustee or participating employee before Payment Date

79. When CSR paid the return of capital CGT event C2 happened to the participating employee in respect of each share where the Plan Trustee was the registered shareholder on the Record Date and had either:

- disposed of the share on behalf of the participating employee before the Payment Date; or
- transferred the share to the participating employee who disposed of the share before the Payment Date,

(section 104-25).

CGT consequences of a disposal of CSR Shares after return of capital***CGT event A1***

80. When a CSR Share is disposed of by a participating employee, or by the Plan Trustee on their behalf, CGT event A1 happens (subsection 104-10(1) and section 106-50).

Disposal of CSR Share at ESS deferred taxing point

81. Where a participating employee disposes of a CSR share at the ESS deferred taxing point, any capital gain or capital loss they make is disregarded (subsection 130-80(1)). Subsection 130-80(1) applies because paragraphs (a) and (b), and subparagraph (d)(ii), of that provision are satisfied.

Disposal of CSR Share after ESS deferred taxing point**Cost base for disposal of CSR Share after return of capital**

82. If the return of capital occurs after the ESS deferred taxing point and the disposal occurs after the return of capital, the cost base and reduced cost base of the CSR Share (the first element of which is its market value immediately after the ESS deferred taxing point – section 83A-125, section 112-15 and subsections 110-25(2) or 110-55(2)), is reduced (but not below nil) by the amount of the return of capital (subsection 104-135(4)).

83. If the return of capital occurs before the ESS deferred taxing point and the disposal occurs after the return of capital, the first element of the cost base and reduced cost base of the CSR Share is its market value immediately after the ESS deferred taxing point (section 83A-125, section 112-15 and subsections 110-25(2) or 110-55(2)).

CGT discount

84. For the purposes of the CGT discount in Subdivision 115-A, a participating employee is taken to have acquired the CSR Share immediately after its ESS deferred taxing point (section 83A-125).

Appendix 1 – Explanation

❶ *This Appendix 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.*

Part 1: Pre 1 July 2009 ESAP awards – (taxed upfront or tax deferred with cessation time before 1 July 2009)

ESS interests acquired under an employee share scheme

85. Where a participating employee made an election under former section 139E of the ITAA 1936 in relation to the CSR Shares acquired under the ESAP, Division 83A does not apply to the shares. Former Division 13A of the ITAA 1936 continues to apply to those shares pursuant to section 83A-10 of the IT(TP)A 1997.

86. Where a participating employee acquired a CSR Share under the ESAP and made an election under former section 139E of the ITAA 1936, the amount of the discount is included in the participating employees assessable income in the year of income that the interest in the share was acquired (former subsection 139B(2) of the ITAA 1936).

CGT consequences of return of capital where CSR Share held by Plan Trustee at Payment Date

Subdivision 115-C

87. When CSR paid the return of capital CGT event G1 happened to the Plan Trustee in respect of each share where the Plan Trustee was the registered shareholder on the Record Date, continued to hold the share at the Payment Date and a Notice of Withdrawal in relation to the share had not been approved at the Payment Date (section 104-135).

88. The cost base and reduced cost base of a CSR Share is reduced by the amount of the return of capital (but not below nil) (subsection 104-135(4)). The Plan Trustee makes a capital gain if the return of capital is more than the cost base of their CSR Share (subsection 104-135(3)). The amount of the capital gain is equal to the excess. For CGT discount purposes, the Plan Trustee's time of acquisition of the CSR Share is the time the Plan Trustee entered into a contract to acquire the CSR Share or, if none, when the previous owner stopped being the CSR share's owner (Event Number A1 (case 1) subsection 109-5(2)).

89. If the Plan Trustee makes a capital gain when CGT event G1 happens, the cost base and reduced cost base of the CSR Share is reduced to nil. The Plan Trustee cannot make a capital loss when CGT event G1 happens (subsection 104-135(3)).

90. Subdivision 115-C applies to a participating employee in relation to any capital gain made by the Plan Trustee from CGT event G1 (section 104-135) happening when CSR paid the return of capital where the CSR Share was held by the Plan Trustee at the Payment Date.

91. Any capital gain made by the participating employee from Subdivision 115-C is a discount capital gain if the capital gain made by the Plan Trustee from CGT event G1 is a discount capital gain (paragraph 115-215(4)(a)).

CGT event E4

92. CGT event E4 happens if the trustee of a trust makes a payment to you in respect of your interest in the trust and some or all of the payment is not included in your assessable income (subsection 104-70(1)).

93. An 'interest in the trust' for the purposes of subsection 104-70(1) includes a situation where shares held in an employee share trust have been allocated to a participating employee.

94. A participating employee has an interest in the ESAP trust and therefore an 'interest in the trust' for the purposes of subsection 104-70(1). Accordingly, CGT event E4 happened when a participating employee received the return of capital from the Plan Trustee in respect of each CSR Share held by the Plan Trustee at the Payment Date and for which a Notice of Withdrawal had not been approved at that date.

95. The participating employee's capital gain from the CGT event E4 is the non-assessable part of the return of capital (that is, the part of the payment to which Subdivision 115-C does not apply), less the cost base of the participating employee's interest in the trust (subsection 104-70(4)).

96. For the purposes of calculating the cost base of the participating employee's interest in the trust, the first element of cost base is nil (subsection 110-25(2)).

97. For CGT discount purposes, the interest in the trust was acquired by the participating employee at the time the Plan Trustee allocated the shares to them (subsection 109-5(1)).

Participating employee's total capital gains

98. The participating employee's total capital gains in relation to the return of capital is the total of their capital gain from Subdivision 115-C and their capital gain from CGT event E4.

CGT consequences of return of capital where CSR Share held by Plan Trustee at Record Date and by participating employee at Payment Date

Absolute entitlement

99. When a Notice of Withdrawal relating to a CSR Share is approved, the participating employee becomes absolutely entitled, as against the Plan Trustee, to the CSR Share. CGT event E5 therefore happens (subsections 104-75(1) and (2)). Any capital gain or capital loss made by the participating employee from CGT event E5 happening is disregarded (subsection 104-75(6)).

Subdivision 115-C

100. The right to receive the return of capital is one of the rights inherent in a CSR Share at the Record Date. If:

- the Plan Trustee was the registered shareholder of a CSR Share at the Record Date;
- a Notice of Withdrawal relating to the CSR Share was approved after the Record Date;
- the CSR share was transferred to a participating employee before the Payment Date; and
- the participating employee continued to hold the share at the Payment Date,

the right to receive the return of capital in respect of that share was retained by the Plan Trustee and was a separate CGT asset. When CSR paid the return of capital in respect of each such share, CGT event C2 happened to the Plan Trustee (section 104-25). The right to receive the payment (being an intangible CGT asset) ended by the right being discharged or satisfied when the payment was made.

101. The Plan Trustee made a capital gain if the capital proceeds from the ending of the right are more than its cost base. The capital gain is equal to the amount of the excess. The Plan Trustee made a capital loss if the capital proceeds from the ending of the right are less than its reduced cost base (subsection 104-25(3)). The capital loss is equal to the amount of the difference.

102. In working out the capital gain or capital loss made when CGT event C2 happened, the capital proceeds are the amount of the return of capital (subsection 116-20(1)).

103. The cost base of the Plan Trustee's right to receive the return of capital is worked out under Division 110 (modified by Division 112). The cost base of the right does not include the cost base or reduced cost base of the share that has been applied in working out a capital gain or capital loss made when a CGT event happened to the share – for example when the share was disposed of after the Record Date.

104. Therefore, if the full cost base or reduced cost base of the CSR Share has been previously applied in working out a capital gain or capital loss when a CGT event happened to that share, then the right to receive the return of capital is likely to have a nil cost base. As a result, the Plan Trustee generally makes a capital gain equal to the amount of the return of capital.

105. As the right to receive the payment of the return of capital was inherent in the CSR Share during the time it was owned, the right is considered to have been acquired at the time when the corresponding share was acquired (section 109-5). Accordingly, if the CSR Share was acquired at least 12 months before the payment of the return of capital, a capital gain made from the ending of the corresponding right satisfies the requirements of section 115-25. Such a capital gain is eligible to be treated as a discount capital gain under Subdivision 115-A provided the other conditions of that Subdivision are satisfied.

106. As a consequence, Subdivision 115-C applies to a participating employee in relation to a capital gain made by the Plan Trustee from CGT event C2 (section 104-25) happening when CSR paid the return of capital where the CSR Share was held by the participating employee at the Payment Date.

107. Any capital gain made by the participating employee from Subdivision 115-C is a discount capital gain if the capital gain made by the Plan Trustee from CGT event C2 is a discount capital gain (paragraph 115-215(4)(a)).

CGT event E4

108. If the amount of the return of capital exceeds the trustee's capital gain from CGT event C2 (which would only occur if any cost base was applied to the Plan Trustee's right to receive the return of capital), the excess is a non-assessable part and CGT event E4 happens (section 104-70).

109. The participating employee's capital gain from the CGT event E4 is the non-assessable part of the return of capital (that is, the part of the payment to which Subdivision 115-C does not apply), less the cost base of the participating employee's interest in the trust (subsection 104-70(4)).

110. For the purposes of calculating the cost base of the participating employee's interest in the trust, the first element of cost base is nil (subsection 110-25(2)).

111. For CGT discount purposes, the interest in the trust was acquired by the participating employee at the time the Plan Trustee allocated the shares to them (subsection 109-5(1)).

Participating employee's total capital gains

112. The participating employee's total capital gains in relation to the return of capital is the total of their capital gain from Subdivision 115-C and their capital gain from CGT event E4.

CGT consequences of return of capital where CSR Share disposed of by Plan Trustee or participating employee before Payment Date

Subdivision 115-C

113. The right to receive the return of capital is one of the rights inherent in a CSR Share at the Record Date. If:

- the Plan Trustee was the registered shareholder of a CSR Share at the Record Date; and
- a Notice of Withdrawal relating to the CSR Share was approved after the Record Date; and either;
 - the CSR Share was transferred to a participating employee who disposed of the share before the Payment Date; or
 - the Plan Trustee disposed of the CSR Share before the Payment Date on behalf of the participating employee;

the right to receive the return of capital in respect of that share was retained by the Plan Trustee and was a separate CGT asset. When CSR paid the return of capital in respect of each such share, CGT event C2 happened to the Plan Trustee (section 104-25). The right to receive the payment (being an intangible CGT asset) ended by the right being discharged or satisfied when the payment was made.

114. The Plan Trustee made a capital gain if the capital proceeds from the ending of the right are more than its cost base. The capital gain is equal to the amount of the excess. The Plan Trustee made a capital loss if the capital proceeds from the ending of the right are less than its reduced cost base (subsection 104-25(3)). The capital loss is equal to the amount of the difference.

115. In working out the capital gain or capital loss made when CGT event C2 happened, the capital proceeds are the amount of the return of capital (subsection 116-20(1)).

116. The cost base of the Plan Trustee's right to receive the return of capital is worked out under Division 110 (modified by Division 112). The cost base of the right does not include the cost base or reduced cost base of the share that has been applied in working out a capital gain or capital loss made when a CGT event happened to the share – for example when the share was disposed of after the Record Date.

117. Therefore, if the full cost base or reduced cost base of the CSR Share has been previously applied in working out a capital gain or capital loss when a CGT event happened to that share, then the right to receive the return of capital is likely to have a nil cost base. As a result, the Plan Trustee generally makes a capital gain equal to the amount of the return of capital.

118. As the right to receive the payment of the return of capital was inherent in the CSR Share during the time it was owned, the right is considered to have been acquired at the time when the corresponding share was acquired (section 109-5). Accordingly, if the CSR Share was acquired at least 12 months before the payment of the return of capital, a capital gain made from the ending of the corresponding right satisfies the requirements of section 115-25. Such a capital gain is eligible to be treated as a discount capital gain under Subdivision 115-A provided the other conditions of that Subdivision are satisfied.

119. As a consequence, Subdivision 115-C applies to a participating employee in relation to a capital gain made by the Plan Trustee from CGT event C2 (section 104-25) happening when CSR paid the return of capital where the CSR Share was disposed of by the participating employee or the Plan Trustee on behalf of the participating employee before the Payment Date.

120. Any capital gain made by the participating employee from Subdivision 115-C is a discount capital gain if the capital gain made by the Plan Trustee from CGT event C2 is a discount capital gain (paragraph 115-215(4)(a)).

CGT event E4

121. If the amount of the return of capital exceeds the trustee's capital gain from CGT event C2 (which would only occur if any cost base was applied to the Plan Trustee's right to receive the return of capital), the excess is a non-assessable part and CGT event E4 happens (section 104-70).

122. The participating employee's capital gain from the CGT event E4 is the non-assessable part of the return of capital (that is, the part of the payment to which Subdivision 115-C does not apply), less the cost base of the participating employee's interest in the trust (subsection 104-70(4)).

123. For the purposes of calculating the cost base of the participating employee's interest in the trust, the first element of cost base is nil (subsection 110-25(2)).

124. For CGT discount purposes, the interest in the trust was acquired by the participating employee at the time the Plan Trustee allocated the shares to them (subsection 109-5(1)).

Participating employee's total capital gains

125. The participating employee's total capital gains in relation to the return of capital is the total of their capital gain from Subdivision 115-C and their capital gain from CGT event E4.

Disposal of CSR Share between Record Date and Payment Date

126. CGT event A1 happens in relation to a participating employee when a CSR Share is disposed of by the participating employee (subsection 104-10(1)) or the Plan Trustee (section 106-50) after the Record Date but before the Payment Date.

127. The first element of the cost base of a taxed upfront CSR Share is its market value (worked out under former section 139FA of the ITAA 1936) when it was allocated for the benefit of a participating employee by the Plan Trustee (former subsection 130-80(3)).

128. The first element of the cost base of a tax deferred CSR Share is its market value (worked out under former section 139FA of the ITAA 1936) at its cessation time (former subsection 130-83(3)).

129. For CGT discount purposes, the time of acquisition of a taxed up front CSR Share is the time at which the participating employee acquired a beneficial interest in the CSR Share, which is the time at which the CSR Share was allocated to the participating employee by the Plan Trustee (former item 8 of subsection 115-30(1) which, along with former subsections 130-80(3) and 130-83(3), continue to apply to shares taxed under former Division 13A of the ITAA 1936 pursuant to item 86 of Schedule 1 of *Tax Laws Amendment (2009 Budget Measures No. 2) Act 2009*).

130. For CGT discount purposes, the time of acquisition of a tax deferred CSR Share is the time at which the participating employee became absolutely entitled, as against the Plan Trustee, to the CSR Share (Event Number E5 of subsection 109-5(2)).

Disposal of CSR Share after Payment Date

131. CGT event A1 happens in relation to a participating employee when a CSR Share is disposed of by the participating employee (subsection 104-10(1)) or the Plan Trustee (section 106-50) after the Payment Date.

132. The first element of the cost base of a taxed upfront CSR Share is its market value (worked out under former section 139FA of the ITAA 1936) when it was allocated for the benefit of a participating employee by the Plan Trustee (former subsection 130-80(3)).

133. The first element of the cost base of a tax deferred CSR Share is its market value (worked out under former section 139FA of the ITAA 1936) at its cessation time (former subsection 130-83(3)).

134. For CGT discount purposes, the time of acquisition of a taxed upfront CSR Share is the time at which the participating employee acquired a beneficial interest in the CSR Share, which is the time at which the CSR Share was allocated to the participating employee by the Plan Trustee (former item 8 of subsection 115-30(1) which, along with former subsections 130-80(3) and 130-83(3), continue to apply to shares taxed under former Division 13A of the ITAA 1936 pursuant to item 86 of Schedule 1 of *Tax Laws Amendment (2009 Budget Measures No. 2) Act 2009*).

135. For CGT discount purposes, the time of acquisition of a tax deferred CSR Share will be the time at which the participating employee becomes absolutely entitled, as against the Plan Trustee, to the CSR Share (Event Number E5 of subsection 109-5(2)).

Part 2: Pre 1 July 2009 ESAP awards – no election made under former section 139E of the ITAA 1936 and no cessation time before 1 July 2009 (tax deferred)

ESS interests acquired under an employee share scheme

136. Division 83A applies to shares, rights and stapled securities acquired under an employee share scheme on or after 1 July 2009. Division 83A also applies to certain shares, rights and stapled securities acquired before 1 July 2009 (transitional interests), pursuant to Subdivision 83A-A of the IT(TP)A 1997

137. By reason of subsection 83A-5(2) of the IT(TP)A 1997, Subdivision 83A-C (and the rest of Division 83A to the extent that it relates to that Subdivision) applies to CSR Shares acquired by participating employees under the ESAP who have not made an election under former section 139E of the ITAA 1936 because:

- they are ESS interests within the meaning of subsection 83A-10(1) (being a beneficial interest in a share in the company);
- former subsection 139B(3) of the ITAA 1936 applies in relation to the ESS interests (CSR has advised that the CSR Shares acquired under the ESAP are qualifying shares within the meaning of former section 139CD of the ITAA 1936);
- the CSR Shares acquired under the ESAP were acquired before 1 July 2009; and
- the cessation time mentioned in former subsection 139B(3) of the ITAA 1936 has not occurred before 1 July 2009.

138. The application of Subdivision 83A-C to transitional interests is, however, modified by subsection 83A-5(4) of the IT(TP)A 1997. Subparagraph 83A-5(4)(b)(i) of the IT(TP)A 1997 provides that where former section 139B(3) of the ITAA 1936 applied to a transitional interest (at the pre-Division 83A time), when applying Subdivision 83A-C, the ESS deferred taxing point for the transitional interest is treated as being the cessation time mentioned in former subsection 139B(3) of the ITAA 1936. Paragraph 83A-5(4)(c) of the IT(TP)A 1997 further provides that, where the disposal occurs within 30 days after the cessation time, the deferred taxing point is the time of disposal of a transitional interest.

139. The cessation time in relation to a participating employee's CSR Shares acquired under the ESAP award is determined by former subsection 139CA(2) of the ITAA 1936.

CGT consequences of return of capital

140. Where:

- a beneficial interest in a CSR Share was acquired before 1 July 2009;
- no election was made under former section 139E of the ITAA 1936; and
- no cessation time in relation to the CSR Share happened before 1 July 2009;

the CGT consequences of the return of capital are the same as if the beneficial interest was acquired after 30 June 2009 (as set out in Part 3 of this Ruling), except the time of acquisition of a CSR Share for CGT discount purposes (subsection 83A-5(2) of the IT(TP)A 1997).

141. For CGT discount purposes, the time of acquisition of a CSR Share to which paragraph 140 of this explanation applies is, pursuant to subparagraph 83A-5(4)(f)(i) of the IT(TP)A 1997:

- at any time after the participating employee became actually absolutely entitled (that is, not merely treated as absolutely entitled pursuant to subsection 130-85(2)) as against the Plan Trustee to the CSR Share, the time the participating employee became actually absolutely entitled, which is the time at which a Notice of Withdrawal relating to the CSR Share was approved; and
- at any time before the participating employee became actually absolutely entitled as against the Plan Trustee to the CSR Share, the time at which the employee acquired the beneficial interest in the CSR Share, which is the time at which the share was allocated by the Plan Trustee to the participating employee.

141A. The time referred to in the first bullet point of paragraph 141 is the time of becoming actually absolutely entitled, rather than the time

of becoming taken to be absolutely entitled pursuant to subsection 130-85(2), because subsection 130-85(2) does not apply for the purposes of the IT(TP)A 1997.

Part 3: Post 30 June 2009 ESAP awards

ESS interests acquired under an employee share scheme

142. Where a participating employee is granted an ESAP award after 1 July 2009, they have acquired an ESS interest under an employee share scheme for the purposes of Division 83A.

Subdivision 83A-C: salary sacrifice arrangement

143. Subdivision 83A-C applies to an ESS interest in a company if certain conditions set out in subsection 83A-105(1) are satisfied. CSR has advised that the CSR ESAP shares meet these conditions.

ESS deferred taxing point

144. When Subdivision 83A-C applies to an ESS interest, an amount will be included in the assessable income of an employee in accordance with section 83A-110 at the ESS deferred taxing point.

145. Section 83A-115 will apply in determining the ESS deferred taxing point. The ESS deferred taxing point for a participating employee will be at the earliest of the following times:

- when there is no real risk of forfeiture and the plan no longer genuinely restricts the disposal of the ESS interest;
- when the participating employee ceases employment in respect of which they acquired the ESS interest, within the meaning of section 83A-330; or
- seven years after the participating employee acquired the ESS interest.

146. If the CSR Share is disposed of within 30 days of the ESS deferred taxing point calculated above, the taxing point will instead be the date of disposal (subsection 83A-120(3)).

147. If the CSR Share is not disposed of within 30 days of the ESS deferred taxing point, then the CSR Shares are taken to have been acquired immediately after the ESS deferred taxing point for its market value at that time (section 83A-125).

Amount included in assessable income

148. The market value of the ESS interest at the ESS deferred taxing point is included in the participating employee's assessable income in the income year in which the deferred taxing point occurs, reduced by the cost base of the ESAP award (section 83A-110).

CGT consequences of return of capital

Absolute entitlement

149. When a participating employee was allocated a CSR Share held by the Plan Trustee, the participating employee became absolutely entitled as against the Plan Trustee to that CSR Share (subsection 130-85(2)).

CGT event G1

150. When CSR paid the return of capital CGT event G1 happened to the participating employee in respect of each share where the Plan Trustee was the registered shareholder on the Record Date and either:

- continued to hold the share at the Payment Date; or
- had transferred the share to the participating employee who held the share at the Payment Date;

(section 104-135 and subsection 130-85(2)).

151. The cost base and reduced cost base of a CSR Share is reduced by the amount of the return of capital (but not below nil) (subsection 104-135(4)). A participating employee makes a capital gain if the return of capital is more than the cost base of their CSR Share (subsection 104-135(3)). The amount of the capital gain is equal to the excess.

Cost base for calculating capital gain from CGT event G1

152. If the return of capital occurs after the ESS deferred taxing point, the first element of cost base of a CSR Share for the purpose of calculating a capital gain from CGT event G1 is its market value immediately after the ESS deferred taxing point (section 83A-125, section 112-15 and subsection 110-25(2)).

153. If the return of capital occurs before the ESS deferred taxing point, the first element of the cost base of a CSR Share for the purpose of calculating a capital gain from CGT event G1 is worked out under subsection 110-25(2).

154. If a participating employee makes a capital gain when CGT event G1 happens, the cost base and reduced cost base of the CSR Share is reduced to nil. A participating employee cannot make a capital loss when CGT event G1 happens (subsection 104-135(3)).

155. A capital gain made when CGT event G1 happened is eligible to be treated as a discount capital gain under Subdivision 115-A provided that the CSR Share was acquired at least 12 months before the payment of the return of capital (subsection 115-25(1)) and the other conditions of that Subdivision are satisfied. For CGT discount purposes:

- if the payment of the return of capital happened before the ESS deferred taxing point, the time of acquisition of the CSR Share is the time at which the share was allocated by the Plan Trustee to the participating employee, at which time the participating employee is taken to be absolutely entitled as against the Plan Trustee to the share (Event Number E5 of subsection 109-5(2) and subsection 130-85(2)); and
- if the payment of the return of capital happened after the ESS deferred taxing point, the time of acquisition of the CSR Share is immediately after the ESS deferred taxing point (section 83A-125).

CGT event C2

156. The right to receive the return of capital is one of the rights inherent in a CSR Share at the Record Date. If, after the Record Date but before the Payment Date, a participating employee ceased to own a CSR Share in respect of which the return of capital was payable, the right to receive the return of capital in respect of that share was retained by the employee and is a separate CGT asset.

157. When CSR paid the return of capital CGT event C2 happened to the participating employee in respect of each share where the Plan Trustee was the registered shareholder on the Record Date and had either:

- disposed of the share on behalf of the participating employee before the Payment Date; or
- transferred the share to the participating employee who disposed of the share before the Payment Date,

(section 104-25). The right to receive the payment (being an intangible CGT asset) ended by the right being discharged or satisfied when the payment was made.

158. A participating employee makes a capital gain if the capital proceeds from the ending of the right are more than its cost base. The capital gain is equal to the amount of the excess. A participating employee makes a capital loss if the capital proceeds from the ending of the right are less than its reduced cost base (subsection 104-25(3)). The capital loss is equal to the amount of the difference.

159. In working out the capital gain or capital loss made when CGT event C2 happens, the capital proceeds are the amount of the return of capital (subsection 116-20(1)).

Cost base for calculation of capital gain from CGT event C2

160. The cost base of the participating employee's right to receive the return of capital is worked out under Division 110 (modified by Division 112). The cost base of the right does not include the cost base or reduced cost base of the share previously owned by a participating employee that has been applied in working out a capital gain or capital loss made when a CGT event happened to the share – for example when the participating employee disposed of the share after the Record Date.

161. Therefore, if the full cost base or reduced cost base of the CSR Share has been previously applied in working out a capital gain or capital loss when a CGT event happened to that share, then the right to receive the return of capital is likely to have a nil cost base. As a result, the participating employee generally makes a capital gain equal to the amount of the return of capital.

162. As the right to receive the payment of the return of capital was inherent in the CSR Share during the time it was owned, the right is considered to have been acquired at the time when the corresponding share was acquired, which was:

- if the disposal of the CSR share happened at the ESS deferred taxing point (with the result that section 83A-125 had no application), the share, and so also the right, was acquired at the time at which it was allocated by the Plan Trustee to the participating employee, at which time the participating employee is taken to become absolutely entitled as against the Plan Trustee to it (Event Number E5 of subsection 109-5(2) and subsection 130-85(2)); and
- if the disposal of the CSR Share happened after the ESS deferred taxing point, the share, and so also the right, was acquired immediately after the ESS deferred taxing point (section 83A-125).

162A. Accordingly, if:

- the disposal of the CSR Share happened at the ESS deferred taxing point, and the share was acquired at least 12 months before the payment of the return of capital; or
- the disposal of the CSR Share happened after the ESS deferred taxing point, and the ESS deferred taxing point happened at least 12 months before the payment of the return of capital;

a capital gain made from the ending of the corresponding right satisfies the requirements of section 115-25. Such a capital gain is eligible to be treated as a discount capital gain under Subdivision 115-A provided the other conditions of that Subdivision are satisfied.

CGT consequences of a disposal of CSR Shares after return of capital***CGT event A1***

163. When a CSR Share is disposed of by a participating employee, or by the Plan Trustee on their behalf, CGT event A1 happens (subsection 104-10(1) and section 106-50).

Disposal of CSR Share at ESS deferred taxing point

164. Where a participating employee disposes of a CSR Share at the ESS deferred taxing point, any capital gain or capital loss they make is disregarded (subsection 130-80(1)). Subsection 130-80(1) applies because paragraphs (a) and (b), and subparagraph (d)(ii), of that provision are satisfied.

Disposal of CSR Share after ESS deferred taxing point**Cost base for disposal of CSR Share after return of capital**

165. If the return of capital occurs after the ESS deferred taxing point and the disposal occurs after the return of capital, the cost base and reduced cost base of the CSR Share (the first element of which is its market value immediately after the ESS deferred taxing point – section 83A-125, section 112-15 and subsections 110-25(2) or 110-55(2)), is reduced (but not below nil) by the amount of the return of capital (subsection 104-135(4)).

166. If the return of capital occurs before the ESS deferred taxing point and the disposal occurs after the return of capital, the first element of the cost base and reduced cost base of the CSR Share is its market value immediately after the ESS deferred taxing point (section 83A-125, section 112-15 and subsections 110-25(2) or 110-55(2)).

CGT discount

167. For the purposes of the CGT discount in Subdivision 115-A, a participating employee is taken to have acquired the CSR Share immediately after its ESS deferred taxing point (section 83A-125).

Appendix 2 – Detailed contents list

168. The following is a detailed contents list for this Ruling:

	Paragraph
What this Ruling is about	1
Relevant provision(s)	2
Class of entities	3
Qualifications	5
Date of effect	9
Previous Rulings	10
Scheme	11
The CSR group and the sale of Sucrogen to Wilmar	12
The Employee Share Acquisition Plan	14
Pre 1 July 2009 ESAP awards	19
Post 30 June 2009 ESAP awards	25
Withdrawal of CSR Shares from the plan	29
Other disposal restrictions	32
Return of capital	35
Ruling	38
Part 1: Pre 1 July 2009 ESAP awards – (taxed upfront or tax deferred with cessation time before 1 July 2009)	38
<i>ESS interests acquired under an employee share scheme</i>	38
<i>CGT consequences of return of capital where CSR Share held by Plan Trustee at Payment Date</i>	40
<i>Subdivision 115-C</i>	40
<i>CGT event E4</i>	42
<i>CGT consequences of return of capital where CSR Share held by Plan Trustee at Record Date and by participating employee at Payment Date</i>	46
<i>Subdivision 115-C</i>	46
<i>CGT event E4</i>	48
<i>CGT consequences of return of capital where CSR Share disposed of by Plan Trustee or participating employee before Payment Date</i>	52
<i>Subdivision 115-C</i>	52
<i>CGT event E4</i>	54
<i>Disposal of CSR Share</i>	58

Part 2: Pre 1 July 2009 ESAP awards – no election made under former section 139E of the ITAA and no cessation time before 1 July 2009 (tax deferred)	63
<i>ESS interests acquired under an employee share scheme</i>	63
<i>Subdivision 83A-C: salary sacrifice arrangement</i>	63
<i>ESS deferred taxing point</i>	65
<i>CGT consequences of return of capital</i>	71
Part 3: Post 30 June 2009 ESAP awards	73
<i>ESS interests acquired under an employee share plan</i>	73
<i>Subdivision 83A-C: salary sacrifice arrangement</i>	74
<i>ESS deferred taxing point</i>	75
<i>Amount included in assessable income</i>	77
<i>CGT consequences of return of capital when CSR Share held by either participating employee or Plan Trustee at Payment Date</i>	78
<i>CGT consequences of return of capital where CSR Share disposed of by Plan Trustee or participating employee before Payment Date</i>	79
<i>CGT consequences of a disposal of CSR Shares after return of capital</i>	80
<i>CGT event A1</i>	80
<i>Disposal of CSR Share at ESS deferred taxing point</i>	81
<i>Disposal of CSR Share after ESS deferred taxing point</i>	82
<u><i>Cost base for disposal of CSR Share after return of capital</i></u>	82
<u><i>CGT discount</i></u>	84
Appendix 1 – Explanation	85
Part 1: Pre 1 July 2009 ESAP awards – (taxed upfront or tax deferred with cessation time before 1 July 2009)	85
<i>ESS interests acquired under an employee share scheme</i>	85
<i>CGT consequences of return of capital where CSR Share held by Plan Trustee at Payment Date</i>	87
<i>Subdivision 115-C</i>	87
<i>CGT event E4</i>	92
<i>Participating employee’s total capital gains</i>	98
<i>CGT consequences of return of capital where CSR Share held by Plan Trustee at Record Date and by participating employee at Payment Date</i>	99
<i>Absolute entitlement</i>	99
<i>Subdivision 115-C</i>	100
<i>CGT Event E4</i>	108

<i>Participating employee's total capital gains</i>	112
<i>CGT consequences of return of capital where CSR Share disposed of by Plan Trustee or participating employee before Payment Date</i>	113
<i>Subdivision 115-C</i>	113
<i>CGT Event E4</i>	121
<i>Participating employee's total capital gains</i>	125
<i>Disposal of CSR Share between Record Date and Payment Date</i>	126
<i>Disposal of CSR Share after Payment Date</i>	131
Part 2: Pre 1 July 2009 ESAP awards – no election made under former section 139E of the ITAA and no cessation time before 1 July 2009 (tax deferred)	136
<i>ESS interests acquired under an employee share scheme</i>	136
<i>CGT consequences of return of capital</i>	140
Part 3: Post 30 June 2009 ESAP awards	142
<i>ESS interests acquired under an employee share scheme</i>	142
<i>Subdivision 83A-C: salary sacrifice arrangement</i>	143
<i>ESS deferred taxing point</i>	144
<i>Amount included in assessable income</i>	148
<i>CGT consequences of return of capital</i>	149
<i>Absolute entitlement</i>	149
<i>CGT event G1</i>	150
<i>Cost base for calculating capital gain from CGT event G1</i>	152
<i>CGT event C2</i>	156
<i>Cost base for calculating capital gain from CGT event C2</i>	160
<i>CGT consequences of a disposal of CSR Shares after return of capital</i>	163
<i>CGT event A1</i>	163
<i>Disposal of CSR Share at ESS deferred taxing point</i>	164
<i>Disposal of CSR Share after ESS deferred taxing point</i>	165
<u><i>Cost base for disposal of CSR Share after return of capital</i></u>	165
<u><i>CGT discount</i></u>	167
Appendix 2 – Detailed contents list	168

References

- Previous draft:*
- ITAA 1997 83A-330
- Not previously issued as a draft
- ITAA 1997 Div 104
 - ITAA 1997 104-10(1)
- Related Rulings/Determinations:*
- TR 2004/D25; TR 2006/10
- ITAA 1997 104-25
 - ITAA 1997 104-25(3)
 - ITAA 1997 104-70
 - ITAA 1997 104-70(1)
 - ITAA 1997 104-70(4)
 - ITAA 1997 104-75(1)
 - ITAA 1997 104-75(2)
 - ITAA 1997 104-75(6)
 - ITAA 1997 104-155
 - ITAA 1997 104-135
 - ITAA 1997 104-135(3)
 - ITAA 1997 104-135(4)
 - ITAA 1997 106-50
 - ITAA 1997 109-5
 - ITAA 1997 109-5(1)
 - ITAA 1997 109-5(2)
 - ITAA 1997 Div 110
 - ITAA 1997 110-25(2)
 - ITAA 1997 110-55(2)
 - ITAA 1997 Div 112
 - ITAA 1997 112-15
 - ITAA 1997 Subdiv 115-A
- Subject references:*
- Capital Gains Tax
 - CGT assets.
 - CGT cost base
 - CGT discount
 - CGT event A1 – disposal of a CGT asset
 - CGT events C1 – C3 – end of a CGT asset
 - CGT events E1 – E9 – trusts
 - CGT events G1 – G3 – shares
 - Employee Share Scheme
 - ESS deferred taxing point
 - ESS interest
 - return of capital on shares
 - salary sacrifice
- Legislative references:*
- ITAA 1936 Div 13A
 - ITAA 1936 139B(2)
 - ITAA 1936 139B(3)
 - ITAA 1936 139CA
 - ITAA 1936 139CD
 - ITAA 1936 139E
 - ITAA 1936 139FA
 - ITAA 1997
 - ITAA 1997 Div 83A
 - ITAA 1997 Subdiv 83A-C
 - ITAA 1991 83A-5(4)(f)(i)
 - ITAA 1997 83A-10
 - ITAA 1997 83A-105(1)
 - ITAA 1997 83A-110
 - ITAA 1997 83A-115
 - ITAA 1997 83A-115(2)
 - ITAA 1997 83A-115(3)
 - ITAA 1997 83A-115(4)
 - ITAA 1997 83A-115(5)
 - ITAA 1997 83A-115(6)
 - ITAA 1997 83A-125
 - ITAA 1997 115-25
 - ITAA 1997 115-25(1)
 - ITAA 1997 115-30(1)
 - ITAA 1997 Subdiv 115-C
 - ITAA 1997 115-215(4)(a)
 - ITAA 1997 116-20(1)
 - ITAA 1997 116-20(2)
 - ITAA 1997 130-80(1)
 - ITAA 1997 130-80(1)(a)
 - ITAA 1997 130-80(1)(b)
 - ITAA 1997 130-80(1)(d)(ii)
 - ITAA 1997 130-80(3)
 - ITAA 1997 130-83(3)
 - ITAA 1997 130-85(2)
 - IT(TP)A 1997 83A-5(2)
 - IT(TP)A 1997 83A-5(4)(c)
 - IT(TP)A 1997 83A-5(4)(f)(i)
 - IT(TP)A 1997 83A-15
 - TAA 1953
 - Copyright Act 1968

ATO references:

NO:	1-3BJ2VD0
ISSN:	1445-2014
ATOlaw topic:	Income Tax ~~ Capital Gains Tax ~~ employee share schemes