


CR 2016/9 - Income tax: Qantas Airways Limited - employee share schemes - return of capital

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Class Ruling

Income tax: Qantas Airways Limited – employee share schemes – return of capital

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📌 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.

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.

2. In this Ruling, Division 13A of Part III of the *Income Tax Assessment Act 1936* (ITAA 1936), as in force at the time occurring just before Schedule 1 to the *Tax Laws Amendment (2009 Budget Measures No.2) Act 2009* commenced is referred to as 'former Division 13A' and a provision in force at that time is referred to as a 'former' provision of the ITAA 1936.

Relevant provision(s)

3. The relevant provisions dealt with in this Ruling are:

- former Division 13A of Part III 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-110 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
- section 104-135 of the ITAA 1997
- section 106-50 of the ITAA 1997
- section 109-5 of the ITAA 1997
- section 110-25 of the ITAA 1997
- section 112-15 of the ITAA 1997
- section 116-20 of the ITAA 1997
- Subdivision 115-A of the ITAA 1997
- section 115-30 of the ITAA 1997
- Subdivision 115-C of the ITAA 1997
- section 115-215 of the ITAA 1997
- section 130-80 of the ITAA 1997, and
- section 130-85 of the ITAA 1997.

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

Class of entities

4. The class of entities to which this Ruling applies is eligible employees of Qantas Airways Limited (Qantas) and its subsidiaries, being Eastern Australia Airlines Pty Limited, Jetstar Airways Pty Limited, Sunstate Airlines (QLD) Pty Limited, and Qantas Defence Services Pty Limited (the Qantas Group) who:

- held a beneficial interest under the 2014/15 Manager Incentive Plan (MIP), the 2014/15 Short Term Incentive Plan (STIP) or a 2005/06 to 2008/09 Deferred Share Plan (DSP) in an ordinary Qantas share (Qantas Share) held by the Plan Trustee on the Record Date

- if they acquired the beneficial interest before 1 July 2009 and an election was made in relation to the beneficial interest under former section 139E of the ITAA 1936, were at the Record Date entitled to call for the Qantas Share from the Plan Trustee, and:
 - did not do so by the Payment Date,
 - did so by the Payment Date and held the Qantas Share in their name by the Payment Date, or
 - did so and disposed of the Qantas Share before the Payment Date.
- if they acquired the beneficial interest before 1 July 2009 and no election was made in relation to the beneficial interest under former section 139E of the ITAA 1936, had no cessation time as mentioned in former section 139B(3) of the ITAA 1936 happen to it before 1 July 2009
- if they acquired the beneficial interest on or after 1 July 2009, Subdivision 83A-C applies to the Qantas Share and the Qantas Share had not had an ESS deferred taxing point happen to it before the Record Date
- are residents of Australia within the meaning of that expression in subsection 6(1) of the ITAA 1936
- are not temporary residents within the meaning of subsection 995-1(1)
- held the Qantas Share on capital account¹, and
- are not subject to taxation of financial arrangement rules in Division 230 in relation to gains and losses on their Qantas Share.

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

In this Ruling, a person belonging to this class of entities is referred to as a participant.

Qualifications

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

¹ That is, they are neither held as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)).

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 9 to 18 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.

Date of effect

8. This Ruling applies from 1 July 2015 to 30 June 2016. The Ruling continues to apply after 30 June 2016 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 taxpayers 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).

Scheme

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

Return of capital

10. On 23 October 2015, Qantas obtained shareholder approval at the Qantas Annual General Meeting to reduce its share capital by returning a total of approximately \$505 million or \$0.23 per fully paid ordinary share.

11. The return of capital was affected by way of an equal reduction of capital under section 256B of the *Corporations Act 2001*.

12. The return of capital was paid equally to each holder of a Qantas Share who was registered on the Qantas share register on 29 October 2015 (Record Date). The payment was made on 6 November 2015 (Payment Date).

13. The return of capital was debited to Qantas' share capital account. Qantas' share capital account is not tainted (within the meaning of Division 197 of the ITAA 1997).

Employee Share Schemes

14. Qantas operates the following employee share schemes that are the subject of this Ruling:

- 2014/15 Manager Incentive Plan (MIP):
 - under the MIP selected employees of the Qantas Group are offered a MIP Award, the vesting of which is partly subject to Qantas achieving various performance measures and partly subject to participants achieving their individual performance objectives.
 - on vesting a MIP Award may be satisfied by the awarding of fully paid Qantas Shares, or a cash bonus, or a mixture of both.
 - a Qantas Share allocated to a participant is held on their behalf by the trustee of the Qantas Employee Share Plan Trust (Plan Trustee) until the end of the relevant Restriction Period as determined by the CEO of Qantas.
 - while a Qantas Share is held by the Plan Trustee on behalf of a participant the participant is entitled to all of the rights and benefits of ownership of the Qantas Share including the right to:
 - any dividend paid on, or other distributions made in relation to, the Qantas Share, and
 - exercise the voting rights attached to that Qantas Share.
- 2014/15 Short Term Incentive Plan (STIP):
 - under the STIP selected employees of the Qantas Group are offered a STIP Award, the vesting of which is partly subject to Qantas achieving various performance measures and partly subject to participants achieving their individual performance objectives.
 - on vesting a STIP Award may be satisfied by the awarding of fully paid Qantas Shares, or a cash bonus, or a mixture of both.
 - a Qantas Share allocated to a participant is held on their behalf by the Plan Trustee until the end of the relevant Restriction Period as determined by the Qantas Board.

- while a Qantas Share is held by the Plan Trustee on behalf of a participant the participant is entitled to all of the rights and benefits of ownership of the Qantas Share including the right to:
 - o any dividend paid on, or other distribution made in relation to, the Qantas Share, and
 - o exercise the voting rights attaching to that Qantas Share.
- 2005/06 to 2008/09 Deferred Share Plan (DSP):
 - under the DSP the Qantas Board may from time to time offer fully paid Qantas Shares to eligible employees subject to the satisfaction of specified performance hurdles and approval by the Qantas Board.
 - a Qantas Share allocated to a participant is held on their behalf by the trustee of the Qantas Deferred Share Plan Trust (Plan Trustee) until a Holding Lock expires or is removed by the Qantas Board.
 - while a Qantas Share is held by the Plan Trustee on behalf of a participant the participant is entitled to all of the rights and benefits of ownership of the Qantas Share including the right to:
 - o any dividend paid on, or other distributions made in relation to, the Qantas Share; and
 - o exercise the voting rights attaching to that Qantas Share.

15. All of the MIP and STIP Awards that are the subject of this Ruling vested on 21 August 2015.

16. The vested MIP Awards, comprising Qantas Shares, remained subject to a Restriction Period at the time of the return of capital unless the Qantas CEO exercised discretion to end the Restriction Period.

17. The vested STIP Awards, comprising Qantas Shares, remained subject to a Restriction Period at the time of the return of capital unless the Qantas Board exercised discretion to end the Restriction Period.

18. Further details about these three employee share schemes can be found in CR 2012/60 (MIP), CR 2012/59 (STIP) and CR 2008/21 (DSP).

Ruling

Part I: Pre July 2009 ESS awards – DSP (taxed upfront)

ESS interests acquired under an employee share scheme

19. Where a participant acquired a Qantas Share under the DSP and made an election under former section 139E of the ITAA 1936 to include the discount on the Qantas Share in their assessable income, 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).

20. Where a participant acquired a Qantas Share under the DSP and made an election under former section 139E of the ITAA 1936, the amount of the discount was included in the assessable income of the participant in the year of income that the interest in the Qantas Share was acquired (former subsection 139B(2) of the ITAA 1936).

CGT consequences of return of capital where a Qantas Share is held by the Plan Trustee at the Record Date and the Payment Date

Subdivision 115-C

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

22. Any capital gain made by the participant 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

23. A participant has an interest in the DSP Trust and therefore an 'interest in the trust' for the purposes of subsection 104-70(1). Accordingly, CGT event E4 happened when a participant received the return of capital from the Plan Trustee in respect of each Qantas Share held by the Plan Trustee at the Payment Date.

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

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

26. For CGT discount purposes, the interest in the trust was acquired by the participant at the time the Plan Trustee allocated the Qantas Share to them (subsection 109-5(1)).

CGT consequences where a Qantas Share is held by the Plan Trustee at the Record Date and by the participant at the Payment Date

Subdivision 115-C

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

28. Any capital gain made by a participant 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 consequences where a Qantas Share is held by the Plan Trustee at the Record Date and by neither the Plan Trustee nor the participant at the Payment Date

Subdivision 115-C

29. Subdivision 115-C applies to a participant in relation to a capital gain made by the Plan Trustee from CGT event C2 (section 104-25) happening when Qantas paid the return of capital where the Qantas Share was held by neither the Plan Trustee nor the participant at the Payment Date.

30. Any capital gain made by the participant 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 A1

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

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

33. For CGT discount purposes, the time of acquisition of a taxed upfront Qantas Share is the time at which the participant acquired a beneficial interest in the Qantas Share, which is the time at which the Qantas Share was allocated to the participant by the Plan Trustee (former item 8 of subsection 115-30(1)).

Part 2: Pre 1 July 2009 ESS awards – DSP (tax deferred)***ESS interests acquired under an employee share scheme****Subdivision 83A-C*

34. Where a participant acquired a Qantas Share under the DSP prior to 1 July 2009 and did not make an election under former section 139E of the ITAA 1936 to include the discount on the Qantas Share in their assessable income in the year of income that the interest in the Qantas Share was acquired, Subdivision 83A-C will apply to that Qantas Share (paragraph 83A-5(2)(a) of the IT(TP)A 1997).

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

ESS deferred taxing point

36. The ESS deferred taxing point for a Qantas Share acquired under the DSP and held by a participant 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.

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

38. Under former section 139CA of the ITAA 1936 the cessation time for a participant in relation to a Qantas Share acquired under the DSP would be the earlier of:

- when the participant disposes of the Qantas Share
- when the Qantas Share is no longer subject to disposal restrictions or forfeiture
- the time when the employment in respect of which the Qantas 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 participant acquired the Qantas Share under the DSP Award.

CGT consequences where no section 139E election was made in relation to a DSP Award and a Qantas Share is held by the Plan Trustee at the Record Date and the Payment Date

CGT event G1

39. Where:

- a beneficial interest in a Qantas 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 Qantas Share happened before 1 July 2009,

CGT event G1 happened to the participant when Qantas paid the return of capital to the Plan Trustee in respect of each Qantas Share where the Plan Trustee was the registered shareholder on the Record Date and continued to hold the Qantas Share at the Payment Date (section 104-135 and subsection 130-85(2)).

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

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

42. For CGT discount purposes, the time of acquisition of a Qantas Share to which paragraph 39 of this Ruling applies is, pursuant to subparagraph 83A-5(4)(f)(i) of the IT(TP)A 1997, the time when the Qantas Share was acquired by the Plan Trustee to be held on behalf of the participant.

CGT consequences where no section 139E election was made in relation to a DSP Award and a Qantas Share is held by the Plan Trustee at the Record Date and by the participant at the Payment Date

CGT event G1

43. Where:

- a beneficial interest in a Qantas 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 Qantas Share happened before 1 July 2009,

CGT event G1 happened to the participant when Qantas paid the return of capital to the Plan Trustee in respect of each Qantas Share where the Plan Trustee was the registered shareholder on the Record Date and had transferred the Qantas Share to the participant who held the Qantas Share at the Payment Date (section 104-135 and subsection 130-85(2)).

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

45. As the return of capital occurs after the ESS deferred taxing point, the first element of the cost base of a Qantas Share for the purpose of calculating a capital gain, if any, 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)).

CGT consequences where no section 139E election was made in relation to a DSP Award and a Qantas Share is held by the Plan Trustee at the Record Date and by neither the Plan Trustee nor the participant at the Payment Date

CGT event C2

46. When Qantas paid the return of capital CGT event C2 happened to the participant in respect of each right to receive the return of capital where the Plan Trustee was the registered shareholder on the Record Date and had either:

- disposed of the Qantas Share on behalf of the participant before the Payment Date, or
- transferred the Qantas Share to the participant who disposed of the Qantas 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.

47. A participant 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.

48. 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)).

49. For CGT discount purposes, the right is considered to have been acquired at the time when the corresponding formerly held Qantas Share was acquired by the participant.

50. The time of acquisition of the formerly held Qantas Share to which paragraph 46 of this Ruling applies is, pursuant to subparagraph 83A-5(4)(f)(i) of the IT(TP)A 1997, the time when the Qantas Share was acquired by the Plan Trustee to be held on behalf of the participant.

CGT event A1

51. CGT event A1 happened in relation to a participant when a Qantas Share was disposed of by the participant (subsection 104-10(1)) or the Plan Trustee on their behalf (section 106-50). For the purposes of the CGT discount in Subdivision 115-A, a participant is taken to have acquired the Qantas Share immediately after its ESS deferred taxing point (section 83A-125), being the time when the removal of the Holding Lock is approved.

Part 3: Post 30 June 2009 ESS awards – MIP and STIP

CGT consequences where deferred taxing point has not occurred in respect of a vested MIP Award and STIP Award and a Qantas Share is held by the Plan Trustee at the Record Date and the Payment Date

CGT event G1

52. When Qantas paid the return of capital CGT event G1 happened to the participant in respect of each Qantas Share where the Plan Trustee was the registered shareholder on the Record Date and continued to hold the Qantas Share at the Payment Date (section 104-135 and subsection 130-85(2)).

53. The cost base and reduced cost base of a Qantas Share is reduced by the amount of the return of capital (but not below nil) (subsection 104-135(4)). The participant will therefore only make a capital gain if the return of capital is more than the cost base of the Qantas Share (subsection 104-135(3)). The amount of the capital gain is equal to the excess.

CGT consequences where the Plan Trustee held a Qantas Share at the Record Date and the participant held it at the Payment Date

CGT event G1

54. When Qantas paid the return of capital CGT event G1 happened to the participant in respect of each Qantas Share where the Plan Trustee was the registered shareholder on the Record Date

and had transferred the Qantas Share to the participant who held the Qantas Share at the Payment Date (section 104-135 and subsection 130-85(2)).

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

CGT consequences where the Plan Trustee held a Qantas Share at the Record Date and by neither the Plan Trustee nor the participant at the Payment Date

CGT event C2

56. When Qantas paid the return of capital CGT event C2 happened to the participant in respect of each right to receive the return of capital where the Plan Trustee was the registered shareholder on the Record Date and neither the Plan Trustee nor participant held it at the Payment Date (section 104-25).

57. A participant makes a capital gain if the capital proceeds from the ending of the right to receive the payment are more than its cost base. The capital gain is equal to the amount of the excess.

CGT event A1

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

Commissioner of Taxation

10 February 2016

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 I: Pre July 2009 ESS awards – DSP (taxed upfront)

ESS interests acquired under an employee share scheme

59. Where a participant acquired a Qantas Share under the DSP and made an election under former section 139E of the ITAA 1936 to include the discount on the Qantas Share in their assessable income in the year in which it was acquired, 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).

60. Where a participant acquired a Qantas Share under the DSP and made an election under former section 139E of the ITAA 1936, the amount of the discount was included in the assessable income of the participant in the year of income that the interest in the Qantas Share was acquired (former subsection 139B(2) of the ITAA 1936).

CGT consequences of return of capital where a Qantas Share is held by the Plan Trustee at the Record Date and the Payment Date

Subdivision 115-C

61. When Qantas paid the return of capital CGT event G1 happened to the Plan Trustee in respect of each Qantas Share where the Plan Trustee was the registered shareholder on the Record Date and continued to hold the Qantas Share at the Payment Date (section 104-135).

62. The cost base and reduced cost base of a Qantas 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 the Qantas 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 a Qantas Share is the time the Plan Trustee entered into a contract to acquire the Qantas Share or, if none, when the previous owner stopped being the owner of the Qantas Share (event A1 (case 1) subsection 109-5(2)).

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

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

65. Any capital gain made by the participant 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

66. CGT event E4 happens if the trustee of a trust makes a payment 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)).

67. 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 participant.

68. A participant has an interest in the DSP Trust and therefore an 'interest in the trust' for the purposes of subsection 104-70(1). Accordingly, CGT event E4 happened when a participant received the return of capital from the Plan Trustee in respect of each Qantas Share held by the Plan Trustee at the Payment Date.

69. The participant'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 participant's interest in the trust (subsection 104-70(4)).

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

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

Total capital gain of participant

72. The participant'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 where a Qantas Share is held by the Plan Trustee at the Record Date and by the participant at the Payment Date

Absolute entitlement

73. When the removal of the Holding Lock relating to a Qantas Share is approved, CGT event E5 happens (subsections 104-75(1) and (2)) as the participant becomes absolutely entitled, as against the Plan Trustee, to the relevant Qantas Share. Any capital gain or capital loss made by the participant from CGT event E5 happening is disregarded (subsection 104-75(6)).

Subdivision 115-C

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

- the Plan Trustee was the registered shareholder of a Qantas Share at the Record Date
- the Qantas Board exercised a discretion to remove the holding lock relating to the Qantas Share after the Record Date
- the Qantas Share was transferred to an participant before the Payment Date, and
- the participant continued to hold the Qantas Share at the Payment Date,

the right to receive the return of capital in respect of that Qantas Share was retained by the Plan Trustee and was a separate CGT asset. When Qantas paid the return of capital in respect of each such Qantas 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.

75. 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.

76. 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)).

77. 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 Qantas Share that has been applied in working out a capital gain or capital loss made when a CGT event happened to the

Qantas Share – for example when the Qantas Share was disposed of after the Record Date.

78. Therefore, if the full cost base or reduced cost base of the Qantas Share has been previously applied in working out a capital gain or capital loss when a CGT event happened to that Qantas 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.

79. As the right to receive the payment of the return of capital was inherent in the Qantas Share during the time it was owned, the right is considered to have been acquired at the time when the corresponding Qantas Share was acquired (section 109-5). As the Qantas 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.

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

81. Any capital gain made by the participant from Subdivision 115-C is a discount capital gain as the capital gain made by the Plan Trustee from CGT event C2 is a discount capital gain (paragraph 115-215(4)(a)).

CGT consequences where a Qantas Share is held by the Plan Trustee at the Record Date and by neither the Plan Trustee nor the participant at the Payment Date

Absolute entitlement

82. When the removal of the Holding Lock relating to a Qantas Share is approved, CGT event E5 happens (subsections 104-75(1) and (2)) as the participant becomes absolutely entitled, as against the Plan Trustee, to the relevant Qantas Share.. Any capital gain or capital loss made by the participant from CGT event E5 happening is disregarded (subsection 104-75(6)).

Subdivision 115-C

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

- the Plan Trustee was the registered shareholder of a Qantas Share at the Record Date, and

- the Qantas Board exercised a discretion to remove the holding lock relating to the Qantas Share after the Record Date and either:
 - the Qantas Share was transferred to a participant who disposed of the Qantas Share before the Payment Date, or
 - the Plan Trustee disposed of the Qantas Share before the Payment Date on behalf of the participant,

the right to receive the return of capital in respect of that Qantas Share was retained by the Plan Trustee and was a separate CGT asset. When Qantas paid the return of capital in respect of each such Qantas 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.

84. 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.

85. 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)).

86. 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 Qantas Share that has been applied in working out a capital gain or capital loss made when a CGT event happened to the Qantas Share – for example when the Qantas Share was disposed of after the Record Date.

87. Therefore, if the full cost base or reduced cost base of the Qantas Share has been previously applied in working out a capital gain or capital loss when a CGT event happened to that Qantas 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.

88. As the right to receive the payment of the return of capital was inherent in the Qantas Share during the time it was owned, the right is considered to have been acquired at the time when the corresponding Qantas Share was acquired (section 109-5). As the Qantas 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.

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

90. Any capital gain made by the participant from Subdivision 115-C is a discount capital gain as the capital gain made by the Plan Trustee from CGT event C2 is a discount capital gain (paragraph 115-215(4)(a)).

CGT event A1

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

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

93. For CGT discount purposes, the time of acquisition of a taxed upfront Qantas Share is the time at which the participant acquired a beneficial interest in the Qantas Share, which is the time at which the Qantas Share was allocated to the participant by the Plan Trustee (former item 8 of subsection 115-30(1) which, along with former subsections 130-80(3) and 130-83(3), continues 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*).

Part 2: Pre 1 July 2009 ESS awards – DSP (tax deferred)

ESS interests acquired under an employee share scheme

94. 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.

95. 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 Qantas Shares acquired by participants under the DSP 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 (Qantas has advised that the Qantas Shares acquired under the DSP are qualifying shares within the meaning of former section 139CD of the ITAA 1936)
- the Qantas Shares acquired under the DSP 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.

96. For the purposes of Division 83A, Part 3-1 and Part 3-3 of the ITAA 1997, a participant is treated as being absolutely entitled as against the Plan Trustee to the relevant Qantas Shares because section 130-85 applies to ESS interests transitioned by subsection 83A-5(2) of the IT(TP)A 1997.

CGT consequences where no section 139E election was made in relation to a DSP Award and a Qantas Share is held by the Plan Trustee at the Record Date and Payment Date

CGT event G1

97. When Qantas paid the return of capital CGT event G1 happened to the participant in respect of each Qantas Share where the Plan Trustee was the registered shareholder on the Record Date and continued to hold the Qantas Share at the Payment Date (section 104-135 and subsection 130-85(2)).

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

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

100. For CGT discount purposes, the time of acquisition of a Qantas Share to which paragraph 97 of this Ruling applies is, pursuant to subparagraph 83A-5(4)(f)(i) of the IT(TP)A 1997, the earliest occurring time when:

- the participant became actually absolutely entitled
- the Plan Trustee obtained legal title, or
- legal title was acquired by the participant.

101. As the return of capital will happen before a participant is actually absolutely entitled to a Qantas Share, the time of acquisition will be when the Plan Trustee obtained legal title to the Qantas Share being the time when the Qantas Share was acquired by the Plan Trustee to be held on behalf of the participant.

CGT consequences where no section 139E election was made in relation to a DSP Award and a Qantas Share is held by the Plan Trustee at the Record Date and by the participant at the Payment Date

CGT event G1

102. When Qantas paid the return of capital CGT event G1 happened to the participant in respect of each Qantas Share where the Plan Trustee was the registered shareholder on the Record Date and had transferred the Qantas Share to the participant who held the Qantas Share at the Payment Date (section 104-135 and subsection 130-85(2)).

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

104. As the return of capital occurs after the ESS deferred taxing point, the first element of the cost base of a Qantas 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)).

CGT consequences where no section 139E election was made in relation to a DSP Award and a Qantas Share is held by the Plan Trustee at the Record Date and by neither the Plan Trustee nor the participant at the Payment Date

CGT event C2

105. When Qantas paid the return of capital CGT event C2 happened to the participant in respect of each right to receive the return of capital where the Plan Trustee was the registered shareholder on the Record Date and had either:

- disposed of the Qantas Share on behalf of the participant before the Payment Date, or
- transferred the Qantas Share to the participant who disposed of the Qantas 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.

106. A participant 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 participant 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.

107. 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)).

108. For CGT discount purposes, the right is considered to have been acquired at the time when the corresponding formerly held Qantas Share was acquired by the participant.

109. The time of acquisition of the formerly held Qantas Share to which paragraph 105 of this Ruling applies is, pursuant to subparagraph 83A-5(4)(f)(i) of the IT(TP)A 1997, the time when the Qantas Share was acquired by the Plan Trustee to be held on behalf of the participant.

Cost base for calculation of capital gain from CGT event C2

110. The cost base of the participant'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 Qantas Share previously owned by a participant that has been applied in working out a capital gain or capital loss made when a CGT event happened to the Qantas Share – for example when the participant disposed of the Qantas Share after the Record Date.

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

CGT event A1

112. CGT event A1 happened in relation to a participant when a Qantas Share was disposed of by the participant (subsection 104-10(1)) or the Plan Trustee on their behalf (section 106-50).

113. For the purposes of the CGT discount in Subdivision 115-A, a participant is taken to have acquired the Qantas Share immediately

after its ESS deferred taxing point (section 83A-125), being the time when removal of the Holding Lock is approved. Accordingly the CGT discount will only apply if the Qantas Shares are disposed of more than 12 months after the ESS deferred taxing point.

Part 3: Post 30 June 2009 ESS awards – MIP and STIP

ESS interests acquired under the MIP or STIP

114. Where a participant is granted a MIP Award or STIP Award after 1 July 2009, they have acquired an ESS interest under an employee share scheme for the purposes of Division 83A.

Absolute entitlement

115. When a participant was allocated a Qantas Share held by the Plan Trustee, the participant is treated as being absolutely entitled as against the Plan Trustee to the relevant Qantas Share for the purposes of Division 83A, Part 3-1 and Part 3-3 (section 104-135 and subsection 130-85(2)).

CGT consequences where deferred taxing point has not occurred in respect of a vested MIP Award and STIP Award and a Qantas Share is held by the Plan Trustee at the Record Date and the Payment Date

CGT event G1

116. When Qantas paid the return of capital CGT event G1 happened to the participant in respect of each Qantas Share where the Plan Trustee was the registered shareholder on the Record Date and continued to hold the Qantas Share at the Payment Date (section 104-135 and subsection 130-85(2)).

117. The cost base and reduced cost base of a Qantas Share is reduced by the amount of the return of capital (but not below nil) (subsection 104-135(4)). The participant will therefore only make a capital gain if the return of capital is more than the cost base of the Qantas 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

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

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

120. 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 Qantas 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. As the Qantas Share was not acquired at least 12 months before the payment of the return of capital, any capital gain made when CGT event G1 happened is not eligible to be treated as a discount capital gain.

CGT consequences where the Plan Trustee held a Qantas Share at the Record Date and the participant held it at the Payment Date

CGT event G1

121. When Qantas paid the return of capital CGT event G1 happened to the participant in respect of each Qantas Share where the Plan Trustee was the registered shareholder on the Record Date and had transferred the Qantas Share to the participant who held the Qantas Share at the Payment Date (section 104-135 and subsection 130-85(2)).

122. The cost base and reduced cost base of a Qantas Share is reduced by the amount of the return of capital (but not below nil) (subsection 104-135(4)). A participant makes a capital gain if the return of capital is more than the cost base of their Qantas 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

123. As the return of capital occurs after the ESS deferred taxing point, the first element of the cost base of a Qantas 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)).

124. In view of the amount of the return of capital, no participant will make a capital gain when CGT event G1 happens.

CGT consequences where the Plan Trustee held a Qantas Share at the Record Date and by neither the Plan Trustee nor the participant at the Payment Date

CGT event C2

125. The right to receive the return of capital is one of the rights inherent in a Qantas Share at the Record Date. If, after the Record Date but before the Payment Date, a participant ceased to own a Qantas 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 participant and is a separate CGT asset.

126. When Qantas paid the return of capital CGT event C2 happened to the participant in respect of each right to receive the return of capital where the Plan Trustee was the registered shareholder on the Record Date and had either:

- disposed of the Qantas Share on behalf of the participant before the Payment Date, or
- transferred the Qantas Share to the participant who disposed of the Qantas 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.

127. A participant 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 participant 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.

128. 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

129. The cost base of the participant'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 Qantas Share previously owned by a participant that has been applied in working out a capital gain or capital loss made when a CGT event happened to the Qantas Share – for example when the participant disposed of the Qantas Share after the Record Date.

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

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

- if the disposal of the Qantas Share happened at the ESS deferred taxing point (with the result that section 83A-125 had no application), the Qantas Share, and so

also the right, was acquired at the time at which it was allocated by the Plan Trustee to the participant, at which time the participant is taken to have been absolutely entitled as against the Plan Trustee to it (event E5 of subsection 109-5(2) and subsection 130-85(2)), and

- if the disposal of the Qantas Share happened after the ESS deferred taxing point, the Qantas Share, and so also the right, was acquired immediately after the ESS deferred taxing point (section 83A-125).

132. A capital gain made when CGT event C2 happened is eligible to be treated as a discount capital gain under Subdivision 115-A provided that the Qantas 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. As the Qantas Share was not acquired at least 12 months before the payment of the return of capital, any capital gain made when CGT event C2 happened is not eligible to be treated as a discount capital gain.

CGT event A1

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

ESS deferred taxing point

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

135. 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 under 83A-115(3), the ESS deferred taxing point will be the time a participant disposes of the interest if that time occurs within 30 days after the time worked out under subsection 83A-115(2).

Disposal of Qantas Share at ESS deferred taxing point

136. Where an participant disposes of a Qantas 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.

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NO: 1-7EAVP8N
 ISSN: 2205-5517
 ATOLaw topic: Income tax ~ Capital gains tax ~ Employee share schemes

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