


# ***CR 2020/27 - Cushman & Wakefield Plc - takeover of DTZ Jersey Holdings Ltd - employee share schemes***

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## Class Ruling

### Cushman & Wakefield Plc – takeover of DTZ Jersey Holdings Ltd – employee share schemes

#### **❶ Relying on this Ruling**

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

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

Further, if we think that this Ruling disadvantages you, we may apply the law in a way that is more favourable to you.

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#### **What this Ruling is about**

1. This Ruling sets out the tax consequences for employees of Cushman & Wakefield Plc, or one of its subsidiaries, who received awards over Cushman & Wakefield Plc shares in replacement of awards issued under the DTZ Jersey Holdings Ltd (DTZ) employee equity plans as part of a restructure of these companies.
2. Full details of this restructure are set out in paragraphs 9 to 25 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997* unless otherwise indicated.

#### **Who this Ruling applies to**

4. This Ruling applies to you if you:
  - are a resident of Australia within the meaning of that term in subsection 6(1) of the *Income Tax Assessment Act 1936*
  - were employed by DTZ, or one of its subsidiaries, prior to the restructure on 8 July 2018

- held just prior to the restructure
  - unvested Restricted Stock Units over shares in DTZ under a DTZ Restricted Stock Unit Grant Agreement (DTZ RSUs)
  - options over shares in DTZ under the DTZ Management Equity Incentive Plan (DTZ Stock Options)
- did not have an ESS deferred taxing point<sup>1</sup> under Subdivision 83A-C occur in relation to your DTZ RSUs and DTZ Stock Options before the restructure
- as a result of the restructure, became an employee of Cushman & Wakefield Plc or a subsidiary of Cushman & Wakefield Plc
- as a result of the restructure, exchanged your unvested DTZ RSUs and DTZ Stock Options for
  - unvested Restricted Stock Units over shares in Cushman & Wakefield Plc (CW RSUs)
  - options over shares in Cushman & Wakefield Plc (CW Stock Options), and
- at the time of the restructure, did not hold a beneficial interest of more than 10% of the shares in Cushman & Wakefield Plc (5% if your DTZ RSUs and DTZ Stock Options were granted before 1 July 2015) and were not in a position to cast, or control the casting of, more than 10% of the maximum number of votes that might be cast at a Cushman & Wakefield Plc general meeting (5% if your DTZ RSUs and DTZ Stock Options were granted before 1 July 2015).

**When this Ruling applies**

5. This Ruling applies from 1 July 2018 to 30 June 2019.

**Ruling****No ESS deferred taxing point upon restructure – section 83A-130 applies**

6. The exchange of your unvested DTZ RSUs and DTZ Stock Options for CW RSUs and CW Stock Options under the restructure did not create an ESS deferred taxing point under Subdivision 83A-C.

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

7. The CW RSUs and CW Stock Options that you received in connection with the restructure are treated as a continuation of your unvested DTZ RSUs and DTZ Stock Options for the purposes of Division 83A.

**Continuation of your employment**

8. Your employment with Cushman & Wakefield Plc, or a subsidiary of Cushman & Wakefield Plc (including DTZ), after the restructure is treated as a continuation of your employment in respect of which you acquired your DTZ RSUs and DTZ Stock Options for

<sup>1</sup> ESS is the abbreviation for 'employee share scheme'.

the purposes of Division 83A. That is, your employment with DTZ, or one of its subsidiaries, had not ceased within the meaning of section 83A-330.

## **Scheme**

9. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

10. DTZ is a private company incorporated in Jersey and part of the DTZ group of entities. DTZ provides commercial real estate services.

11. Cushman & Wakefield (C&W) is a privately-held commercial real estate services firm founded in 1917 in the state of New York in the United States of America.

12. In 2015, C&W was purchased by a consortium comprised of TPG Capital, Pacific Alliance Group Asia Capital and Ontario Teachers' Pension Plan. This consortium also owned the DTZ Group.

13. Later in 2015, C&W merged with the DTZ Group and continued to operate under the C&W brand.

## **DTZ employee equity plans**

14. DTZ operated employee equity plans that were employee share schemes under subsection 83A-10(2).

15. Under the DTZ Restricted Stock Unit Grant Agreements and DTZ Management Equity Incentive Plan, employees were awarded ESS interests (within the meaning under subsection 83A-10(1)) in the form of restricted stock units (RSUs) and stock options.

## **DTZ Restricted Stock Unit Grant Agreements**

16. There are two types of DTZ Restricted Stock Unit Grant Agreements; one where settlement is conditional on a 'time-based' condition and the other conditional on both a 'time and performance-based' condition.

17. Under the time-based agreement:

- employees of DTZ or one of its subsidiaries were granted DTZ RSUs which represented a right to receive ordinary shares in DTZ (with each RSU being a right to receive one ordinary share in DTZ)
- the DTZ RSUs granted vest in five equal instalments on each of the first five anniversaries of the grant date, subject to the employee's continued employment through the applicable vesting date (where the employee's employment is terminated as a result of certain circumstances, these RSUs would immediately vest), and
- any portion of the DTZ RSUs that do not vest are forfeited.

18. Under the time and performance-based agreement:

- employees of DTZ or one of its subsidiaries were granted DTZ RSUs which represented a right to receive ordinary shares in DTZ (with each RSU being a right to receive one ordinary share in DTZ)
- 66.67% of the DTZ RSUs granted (the 'time-based RSUs') vest in four equal instalments on each of the first four anniversaries of 1 January 2018,

subject to the employee's continued employment through the applicable vesting date (where the employee's employment is terminated as a result of certain circumstances, these RSUs would immediately vest)

- 33.33% of the DTZ RSUs granted (the 'performance-based RSUs') vest in accordance with the achievement of performance-based targets set out in the applicable agreement with the employee, subject to the employee's continued employment through the applicable vesting date, and
- any portion of the DTZ RSUs that do not vest are forfeited.

### ***The DTZ Management Equity Incentive Plan***

19. The DTZ Management Equity Incentive Plan includes the following:

- under this plan, employees of DTZ or one of its subsidiaries were granted DTZ Stock Options which represented a right to receive ordinary shares in DTZ upon the payment of the respective exercise price following vesting
- 33.33% of DTZ Stock Options granted vest in equal 20% instalments on each of the first five anniversaries of the vesting commencement date, subject to the employee's continued employment through the applicable vesting date (where the employee's employment is terminated as a result of a 'qualifying termination' the Stock Options would immediately vest), and
- 66.67% of DTZ Stock Options granted vest in accordance with the achievement of performance-based targets set out in the applicable agreement with the employee, subject to the employee's continued employment through the applicable vesting date, and
- the DTZ Stock Options may only be exercised if they have vested, subject to other terms of the agreement.

### **Restructure**

20. On 8 July 2018, a corporate restructure occurred which resulted in a new entity, Cushman & Wakefield Plc (a United Kingdom-incorporated company), becoming the parent of all other entities in C&W. This resulted in DTZ becoming a 100% subsidiary of Cushman & Wakefield Plc.

21. At the time of the restructure, DTZ employees who held unvested awards of DTZ RSUs and DTZ Stock Options that had not yet reached a deferred taxing point were exchanged for RSU and stock option awards over Cushman & Wakefield Plc shares.

22. Upon exchange, a 1-for-10 reverse stock split occurred such that employees received 1 CW RSU for every 10 DTZ RSUs they held. Also, the exercise price of the CW Stock Options they received was adjusted by a factor of 10. This ensured the value of the Cushman & Wakefield Plc awards for the employees was identical to the value of the DTZ awards they held prior to the restructure.

23. The Cushman & Wakefield Plc awards were otherwise identical to the DTZ awards with no changes made to the vesting or performance conditions.

24. As a result of the exchange of DTZ RSUs and DTZ Stock Options for CW RSUs and CW Stock Options, no employee held a legal or beneficial interest in more than 10% of the shares in Cushman & Wakefield Plc or was in a position to cast, or control, the casting of more than 10% of the casting vote at a general meeting of Cushman & Wakefield Plc.

25. Cushman & Wakefield Plc subsequently listed on the New York Stock Exchange on 6 August 2018.

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**Commissioner of Taxation**

3 June 2020

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**Appendix – Explanation**

**①** *This Explanation is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

**No ESS deferred taxing point upon restructure – section 83A-130 applies**

26. Under section 83A-110, an amount will be included in your assessable income for the income year in which the ESS deferred taxing point occurs in respect of your ESS interest.

27. Under a restructure, you are usually taken to have disposed of your shares or rights for the purposes of Division 83A when you cease to hold shares or rights in the old company and instead hold shares or rights in the new company. The disposal may give rise to an ESS deferred taxing point.

28. However, there would not be a disposal where your replacement shares or rights in the new company are treated as a continuation of the shares or rights in the old company and your employment with the new company is treated as a continuation with the old company under section 83A-130.

29. The restructure satisfies the requirements of section 83A-130 because:

- the restructure is a 'takeover' because it resulted in DTZ becoming a 100% subsidiary of Cushman & Wakefield Plc (subparagraph 83A-130(1)(a)(i))
- just before the restructure, you held ESS interests in the form of DTZ RSUs and DTZ Stock Options (the 'old interests') that you acquired under an employee share scheme (paragraph 83A-130(1)(b))
- as a result of the arrangement, you stopped holding the old interests (paragraph 83A-130(2)(a))
- you acquired ESS interests in the form of CW RSUs and CW Stock Options (the 'new interests') in connection with the restructure (subsection 83A-130(2))
- the new interests were acquired on economically-equivalent terms and can reasonably be regarded as matching any of the old interests (paragraph 83A-130(2)(b))
- the new interests relate to ordinary shares in Cushman & Wakefield Plc (subsection 83A-130(4))
- you were employed by Cushman & Wakefield Plc, or a subsidiary of Cushman & Wakefield Plc at the time you acquired the new interests (paragraph 83A-130(9)(a)), and
- as a result of acquiring the new interests, you did not hold a legal or beneficial interest in more than 10% of Cushman & Wakefield shares (or 5% if your DTZ RSUs and DTZ Stock Options were granted before 1 July 2015) or were in a position to cast, or control the casting of, more than 10% of the maximum number of votes that might be cast at a Cushman & Wakefield Plc general meeting (or 5% if your DTZ RSUs and DTZ Stock Options were granted before 1 July 2015) (paragraph 83A-130(9)(b)).

30. Accordingly, for the purposes of Division 83A, the CW RSUs and CW Stock Options you acquired in connection with the restructure are treated as a continuation of your DTZ RSUs and DTZ Stock Options and your employment with Cushman & Wakefield Plc will be regarded as a continuation of your employment with DTZ or one of its

subsidiaries (that is, you have not ceased your employment within the meaning of section 83A-330).

31. Therefore, exchanging your DTZ RSUs and DTZ Stock Options for CW RSUs and CW Stock Options will not be an ESS deferred taxing point for you.



## References

*Previous draft:*

Not previously issued as a draft

*Legislative references:*

- |                          |                              |
|--------------------------|------------------------------|
| - ITAA 1936 6(1)         | - ITAA 1997 83A-130(1)(a)(i) |
| - ITAA 1997 Div 83A      | - ITAA 1997 83A-130(1)(b)    |
| - ITAA 1997 83A-10(1)    | - ITAA 1997 83A-130(2)       |
| - ITAA 1997 83A-10(2)    | - ITAA 1997 83A-130(2)(a)    |
| - ITAA 1997 Subdiv 83A-C | - ITAA 1997 83A-130(2)(b)    |
| - ITAA 1997 83A-110      | - ITAA 1997 83A-130(4)       |
| - ITAA 1997 83A-130      | - ITAA 1997 83A-130(9)(a)    |
|                          | - ITAA 1997 83A-130(9)(b)    |
|                          | - ITAA 1997 83A-330          |
|                          | - TAA 1953                   |

ATO references

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