


CR 2021/82 - Youfoodz Holdings Limited - employee share scheme - shares disposed of under scheme of arrangement

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Status: **legally binding**

Class Ruling

Youfoodz Holdings Limited – employee share scheme – shares disposed of under scheme of arrangement

📌 Relying on this Ruling

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

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

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What this Ruling is about

1. This Ruling sets out the income tax consequences for employees of Youfoodz Holdings Limited (Youfoodz) who acquired ordinary shares under the Employee Gift Offer or the Exempt Share Awards (collectively referred to as the Plan Shares) which were subsequently disposed of pursuant to the scheme of arrangement on 27 October 2021 (Scheme of Arrangement).
2. Full details of the scheme are set out in paragraphs 7 to 22 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:
 - acquired Plan Shares in Youfoodz which you held at all times until 27 October 2021
 - were entitled to reduce the amount included in your assessable income in accordance with section 83A-35 (with the exception of the condition in

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subsection 83A-45(4) – minimum holding period) when you acquired the Plan Shares

- were employed by Youfoodz or a ‘subsidiary’ (as defined in the *Corporations Act 2001*) of Youfoodz (collectively referred to as the Youfoodz Group) at all times from the date you acquired the Plan Shares until 27 October 2021, and
- are not subject to the taxation of financial arrangements rules in Division 230 in relation to gains and losses on your shares.

Note: Division 230 will generally not apply to individuals, unless they make an election for it to apply to them.

When this Ruling applies

5. This Ruling applies from 1 July 2021 to 30 June 2022.

Ruling

6. The Commissioner will allow the minimum holding period to end at the earlier time of 27 October 2021 for the Plan Shares you disposed of under the Scheme of Arrangement (paragraph 83A-45(5)(a)).

Scheme

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

8. The following documents were also referred to:

- Scheme Implementation Deed dated 13 July 2021
- Equity Incentive Plan Rules (Plan Rules)
- Scheme Booklet dated 2 September 2021, and
- Youfoodz Initial Public Offering Prospectus dated 30 October 2020.

Relevant Entities

Youfoodz Holdings Limited

9. Youfoodz is a resident of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* and was a public company listed on the Australian Securities Exchange until it was delisted as a result of the Scheme of Arrangement.

10. Youfoodz’s business is a food delivery platform that enables users to order subscription-based ready-made meals and other food-related products.

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HelloFresh SE

11. HelloFresh SE is a public company based in Berlin, Germany and provides food services such as meal-kits. It operates in the United States of America, Australia, Canada, Denmark, New Zealand, Sweden and Western Europe.

Employee Gift Offer and Exempt Share Awards

Employee Gift Offer

12. As part of the Employee Gift Offer under the Initial Public Offering, Youfoodz made offers to Youfoodz Group employees to acquire shares for a value of up to \$1,000 which was intended to be treated as Exempt Share Awards under the Plan Rules.

13. On 30 November 2020, Youfoodz granted 59,112 shares to Youfoodz Group employees.

Exempt Share Awards

14. As part of the Exempt Share Awards under the Plan Rules, Youfoodz made offers to Youfoodz Group employees to acquire shares for a value of up to \$1,000.

15. On 22 December 2020, Youfoodz granted 6,660 shares to Youfoodz Group employees.

16. The Plan Shares were offered under a non-discriminatory basis to at least 75% of the Australian-resident permanent employees of the Youfoodz Group who had completed more than three years of service, for no consideration.

17. The Plan Shares were:

- subject to a restriction period where they could not be disposed of until the earliest of
 - three years from the date the Plan Shares were granted, or
 - at the time which the employee ceased being employed by the Youfoodz Group, and
- not subject to any vesting conditions; that is, the Plan Shares could not be forfeited.

Scheme of Arrangement

18. On 13 July 2021, Youfoodz entered into a binding Scheme Implementation Deed with HelloFresh SE or one of its wholly owned subsidiaries (collectively referred to as HelloFresh) under which HelloFresh would acquire all of the issued shares in Youfoodz by way of a court ordered Scheme of Arrangement pursuant to Part 5.1 of the *Corporations Act 2001*.

19. On 27 October 2021, HelloFresh acquired all the Youfoodz shares, including the Plan Shares, pursuant to the Scheme of Arrangement.

20. Pursuant to the Scheme of Arrangement, you received cash consideration of 93 cents for each of the Plan Shares you held.

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Other matters

21. The Plan Shares were issued prior to the commencement of any negotiations with HelloFresh in relation to the Scheme of Arrangement.
22. Subdivision 83A-B applies to the Plan Shares and not Subdivision 83A-C.

Commissioner of Taxation

24 November 2021

Status: **not legally binding**

Appendix – Explanation

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

When the minimum holding period ends

23. One of the conditions which entitled you to reduce the amount included in your assessable income when you acquired the Plan Shares is to not dispose of those shares within the minimum holding period (sections 83A-35 and 83A-45).

24. The minimum holding period set out in subsections 83A-45(4) and (5) is the earlier of three years from when the Plan Shares were acquired or when you ceased employment with the Youfoodz Group. However, the Commissioner can allow an earlier period if the Commissioner is satisfied that:

- Youfoodz intended that the requirements as set out in subsection 83A-45(4) would apply to the Plan Shares during the three years (subparagraph 83A-45(5)(a)(i)), and
- at the earlier time that the Commissioner allows, all Youfoodz shares were disposed of under a particular scheme (subparagraph 83A-45(5)(a)(ii)).

25. The Commissioner is satisfied that the Plan Rules prevented employees from disposing of the Plan Shares until the earlier of the three-year anniversary of the date the Plan Shares were acquired or the day after the date they ceased to be employed by the Youfoodz Group.

26. All Youfoodz shares, including the Plan Shares, were disposed of under the Scheme of Arrangement.

27. Accordingly, the Commissioner is satisfied that the requirements of subparagraphs 83A-45(5)(a)(i) and (ii) are met and will allow the minimum holding period to end at the earlier time of 27 October 2021.

Status: **not legally binding**

References

Previous draft:

Not previously issued as a draft

Legislative references:

- ITAA 1936 6(1)
- ITAA 1997 Subdiv 83A-B
- ITAA 1997 Subdiv 83A-C
- ITAA 1997 83A-35
- ITAA 1997 83A-45
- ITAA 1997 83A-45(4)
- ITAA 1997 83A-45(5)
- ITAA 1997 83A-45(5)(a)
- ITAA 1997 83A-45(5)(a)(i)
- ITAA 1997 83A-45(5)(a)(ii)
- ITAA 1997 Div 230
- TAA 1953
- Corporations Act 2001 Pt 5.1

ATO references

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