


CR 2024/38 - Best & Less Group Holdings Pty Limited - employee share scheme - disposal of shares

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Status: **legally binding**

Class Ruling

Best & Less Group Holdings Pty Limited – employee share scheme – disposal of shares

📌 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 Best & Less Group Holdings Pty Limited (BLG) and its subsidiaries (collectively, the BLG Group) who participated in the Best & Less Group Holdings Limited Tax Exempt Share Plan (Plan) to acquire ordinary shares in BLG which were subsequently disposed of pursuant to an off-market takeover by BBRC Admin 1 Pty Ltd (BBRC).
2. Details of this scheme are set out in paragraphs 7 to 20 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 BLG shares on 22 July 2021 under the Plan, which you held at all times until their disposal pursuant to the scheme set out in paragraphs 7 to 20 of this Ruling
 - were entitled to reduce the amount included in your assessable income in accordance with section 83A-35 (with the exception of the condition in subsection 83A-45(4) – minimum holding period) when you acquired the shares
 - were employed by BLG, Best & Less Group Pty Ltd (BLGPL) or Best & Less Pty Limited (BLPL) at all times you held the shares, and

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- were a resident of Australia (as defined in subsection 6(1) of the *Income Tax Assessment Act 1936*), and were not a temporary resident within the meaning of subsection 995-1(1), on 14 August 2023.

When this Ruling applies

5. This Ruling applies from 1 July 2021 to 30 June 2024.

Ruling

Minimum holding period satisfied

6. In regard to the BLG shares you acquired on 22 July 2021 under the Plan, the Commissioner will allow the minimum holding period to end at the earlier time being when BBRC acquired the shares under the takeover offer which was completed on 14 August 2023 (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, this Ruling cannot be relied upon.

Relevant entities

Best & Less Group Holdings Pty Limited

8. BLG (formerly known as Best & Less Group Holdings Limited) was incorporated in New South Wales on 29 July 2020 and is an apparel retail business operating in Australia and New Zealand. BLG employs over 4,000 employees on a full-time, part-time and casual basis across Australia and New Zealand.
9. The BLG shares were listed on the Australian Securities Exchange from 26 July 2021 until 17 July 2023 when trading was suspended.
10. BLGPL and BLPL are wholly owned subsidiaries of BLG and, together with BLG, are the employers of those who participated in the Plan.

BBRC Admin 1 Pty Ltd

11. BBRC was incorporated in New South Wales on 1 May 2023 as a special purpose proprietary company limited by shares for the sole purpose of acquiring 100% of the BLG shares under a takeover offer that was made by BBRC on 22 May 2023.

Best & Less Group Holdings Limited Tax Exempt Share Plan

12. In 2021, BLG established the Plan as an employee share scheme to assist in the reward, retention and motivation of participants in the Plan and to align the interests of the participants with the interests of shareholders of BLG.
13. On 22 July 2021, eligible employees were granted up to \$500 of BLG shares as part of the initial public offering of BLG.

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14. Under the Plan rules:

- The Plan was established to comply with section 83A-35.
- The BLG shares were not subjected to a real risk of forfeiture.
- A holding lock applied to all BLG shares offered under the Plan to prevent participants from disposing of or dealing with the shares during the holding lock period.
- The holding lock period was the period from the date the BLG shares were granted to the participant until the earlier of
 - 3 years after the grant date of the shares, or
 - the day after the date on which the participant ceased employment with BLG or one of its subsidiaries.

15. The Board of BLG did not exercise its discretion to waive or diminish the holding lock period for the BLG shares granted under the Plan.

Takeover offer

16. On 22 May 2023, BLG received an all-cash off-market takeover offer from BBRC under Part 6.5 of the *Corporations Act 2001* to acquire 100% of the BLG shares for \$1.89 cash per share. The takeover offer was subject to the satisfaction of certain conditions.

17. The shareholders (including participants) of BLG could either accept or reject the takeover offer from BBRC to acquire their BLG shares during the offer period.

18. On 10 July 2023, BBRC announced it would compulsorily acquire the remaining BLG shares.

19. By 14 August 2023, BBRC had acquired 100% of the BLG shares.

Other matters

20. BLG did not enter into any formal discussions with any other entity concerning a takeover or any other acquisition of all of BLG shares prior to 22 July 2021.

Commissioner of Taxation

3 July 2024

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

21. One of the conditions which allowed you to reduce the amount included in your assessable income when you acquired the BLG shares was that the Plan rules restricted the BLG shares being disposed of within the minimum holding period of 3 years or when you ceased employment with BLG or one of its subsidiaries (sections 83A-35 and 83A-45).

22. However, the Commissioner can allow the minimum holding period of 3 years to end earlier, if the Commissioner is satisfied that:

- BLG intended that the requirements, as set out in subsection 83A-45(4), would apply to the BLG shares during the 3 years (subparagraph 83A-45(5)(a)(i)), and
- at the earlier time that the Commissioner allows, all BLG shares were disposed of under a particular scheme (subparagraph 83A-45(5)(a)(ii)).

23. The Commissioner is satisfied that the Plan rules prevented employees from disposing of the BLG shares during the 3 years after the shares were acquired.

24. By 14 August 2023, BBRC had acquired 100% of the BLG shares under the takeover offer.

25. Therefore, 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 being when BBRC acquired the shares under the takeover offer which was completed on 14 August 2023.

26. Consequently, you remain entitled to reduce the amount included in your assessable income in accordance with section 83A-35.

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References

Legislative references:

- ITAA 1936 6(1)
 - ITAA 1997 83A-35
 - ITAA 1997 83A-45
 - ITAA 1997 83A-45(4)
 - ITAA 1997 83A-45(5)(a)
 - ITAA 1997 83A-45(5)(a)(i)
 - ITAA 1997 83A-45(5)(a)(ii)
 - ITAA 1997 995-1(1)
 - Corporations Act 2001 Pt 6.5
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ATO references

NO: 1-117PENRM
ISSN: 2205-5517
BSL: PG
ATOlaw topic: Income Tax ~~ Employee share schemes ~~ Minimum holding period

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