

CR 2024/52 - CSR Limited - employee share schemes - disposal of shares under scheme of arrangement



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Status: **legally binding**

Class Ruling

CSR Limited – employee share schemes – disposal of shares under scheme of arrangement

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.

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What this Ruling is about

1. This Ruling sets out the income tax consequences for employees of CSR Limited (CSR) who participated in the CSR Universal Share Ownership Plan (USOP) or the Equity Incentive Plan (EIP) to acquire ordinary shares in CSR that were subject to disposal restrictions (Restricted Shares) which were subsequently disposed of on 9 July 2024 pursuant to a scheme of arrangement.
2. Details of this scheme are set out in paragraphs 7 to 23 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 Restricted Shares on 26 July 2021, 29 July 2022 or 27 July 2023 which you held at all times until 9 July 2024
 - 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
 - were employed by CSR or a ‘subsidiary’ (as defined in the *Corporations Act 2001*) of CSR (collectively referred to as the CSR Group) at all times from the date you acquired the Restricted Shares until 9 July 2024, and

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- were a resident of Australia (as defined in subsection 6(1) of the *Income Tax Assessment Act 1936*) on 9 July 2024.

When this Ruling applies

5. This Ruling applies from 1 July 2021 to 30 June 2025.

Ruling

Minimum holding period satisfied

6. We will allow the minimum holding period to end at the earlier time of 9 July 2024 for the Restricted Shares you acquired on 26 July 2021, 29 July 2022 or 27 July 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

CSR Limited

8. CSR is an Australian tax-resident company which was listed on the Australian Securities Exchange. It was also the head company of the CSR income tax consolidated group.

9. The CSR Group is a manufacturer and distributor of building products. CSR operates businesses in building products (interior systems, construction systems and masonry and insulation), aluminium (manufacturing and sale of aluminium) and property (sale of former operating sites).

Compagnie de Saint-Gobain

10. Compagnie de Saint-Gobain (Saint-Gobain) is a French company listed on the Euronext Paris.

11. Saint-Gobain designs, manufactures and distributes materials and services for the construction and industrial markets.

CSR employee share plans

12. CSR established and operated employee share plans, being the:
- USOP, in operation until 29 June 2022, and
 - EIP, in operation from 30 June 2022
- (collectively, the Plans).

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13. On 26 July 2021, in accordance with the USOP, and on 29 July 2022 and 27 July 2023, in accordance with the EIP, you acquired Restricted Shares, up to the value of \$1,000, that were subject to a restriction period where you could not dispose of them until the earlier of:

- 3 years from the date the Restricted Shares were granted to you, or
- you ceasing employment with the CSR Group.

14. The Restricted Shares were granted to you for nil consideration and could not be forfeited.

15. The board of CSR has not exercised its discretion to waive or diminish the disposal restrictions with respect to the Restricted Shares you acquired on 26 July 2021, 29 July 2022 or 27 July 2023, other than on 28 May 2024 and 13 June 2024 in which the board of CSR exercised its discretion to lift all dealing restrictions on the Restricted Shares for the purpose of implementing the scheme of arrangement described in paragraphs 17 to 21 of this Ruling.

16. No Restricted Shares have been granted under the Plans since July 2023.

Scheme of arrangement

17. CSR was approached by Saint-Gobain on 9 January 2024 to acquire 100% of the issued shares in CSR under a scheme of arrangement.

18. CSR and Saint-Gobain agreed on the terms of the acquisition by signing the Scheme Implementation Deed (SID) on 26 February 2024.

19. Under the terms of the SID, upon satisfaction of all conditions precedent, each CSR shareholder recorded on the CSR Share Register as at 2 July 2024, the Scheme Record Date, were required to transfer all CSR shares held by that CSR shareholder to a subsidiary of Saint-Gobain in return for receiving cash consideration on 9 July 2024, the Implementation Date.

20. Under clause 4.5 of the SID, CSR undertook to take such action as necessary to ensure that all applicable restrictions are removed from Restricted Shares in order to enable the Restricted Shares to participate in the scheme of arrangement.

21. All conditions precedent were satisfied and the scheme was implemented on the Implementation Date.

Other matters

22. CSR did not enter into any formal discussions with any entity concerning a takeover or some other acquisition of all of its shares at any time between January 2021 and the offer of Restricted Shares on 27 July 2023.

23. Although CSR and Saint-Gobain had an existing commercial relationship, there were no discussions or negotiations between CSR and Saint-Gobain regarding an acquisition of CSR by Saint-Gobain prior to 9 January 2024, nor had CSR marketed itself as available for a takeover or sale prior to this date.

Commissioner of Taxation

21 August 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

24. One of the conditions which allowed you to reduce the amount included in your assessable income when you acquired the Restricted Shares was that the Plans restricted the shares being disposed of within the minimum holding period of the earlier of 3 years from when the Restricted Shares were acquired by you or when you ceased employment with the CSR Group (sections 83A-35 and 83A-45).

25. However, we can allow the minimum holding period to end earlier if we are satisfied that:

- CSR intended that the requirement, as set out in subsection 83A-45(4), would apply to the Restricted Shares during the 3 years after the acquisition of those shares (subparagraph 83A-45(5)(a)(i)), and
- at the earlier time that we allow, all CSR shares were disposed of under a particular scheme (subparagraph 83A-45(5)(a)(ii)).

26. We are satisfied that the Plans prevented you from disposing of your Restricted Shares, and that CSR intended that the requirement pursuant to subsection 83-45(4) would apply to the Restricted Shares, during the 3 years after the shares were acquired.

27. On 9 July 2024, all shares in CSR, including the Restricted Shares, were disposed of under the scheme of arrangement.

28. Therefore, we are 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 9 July 2024 for the Restricted Shares you disposed of under the scheme of arrangement.

29. Consequently, you remain entitled to reduce the amount included in your assessable income in respect of the Restricted Shares 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)
 - Corporations Act 2001
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ATO references

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