

TD 2014/21W - Income tax: where a right to acquire a beneficial interest in a share is granted subject to shareholder approval, is the right an 'indeterminate right' within the meaning of subsection 83A-340(1) of the Income Tax Assessment Act 1997 ?

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! There is a Compendium for this document: [TD 2014/21EC](#) .

! This document has changed over time. This is a consolidated version of the ruling which was published on *9 September 2015*



Notice of Withdrawal

Taxation Determination

Income tax: where a right to acquire a beneficial interest in a share is granted subject to shareholder approval, is the right an 'indeterminate right' within the meaning of subsection 83A-340(1) of the *Income Tax Assessment Act 1997*?

Taxation Determination TD 2014/21 is withdrawn with effect from today.

1. The Determination addresses the question of whether a right to acquire a beneficial interest in a share that is granted subject to subsequent shareholder approval is a right covered by section 83A-340 of the ITAA 1997 ('indeterminate rights'). The Commissioner ruled that, where the employee acquires only a right to have the matter put to shareholders and nothing more, that right was not a right covered by section 83A-340 of the ITAA 1997 or section 83A-15 of the *Income Tax (Transitional Provisions) Act 1997* (ITTPA).
2. The Federal Court in *Davies v FC of T* [2015] FCA 773; 2015 ATC 20-520 held that a right created in contract to a share or a right to shares, which was subject to shareholder approval was a right which became a right to acquire a beneficial interest in a share for the purposes of section 83A-15 of the ITTPA. The reasoning in this decision concerning the existence of a right covered by section 83A-15 of the ITTPA is inconsistent with the approach taken in the Determination.
3. The Determination does not apply to schemes entered into after its withdrawal. The Commissioner is reconsidering the position with a view to issuing a replacement product.

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ATO references

NO: 1-77T56NX

ISSN: 2205-6211

ATOlaw topic: Income tax ~~ Assessable income ~~ Employee share schemes ~~ Other

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