

RULINGS > PRODUCT

Qantas Airways Limited

Issued: 13 December 2023

BR Prd 23/07

This Ruling sets out some tax implications of the transfer of shares in Qantas Airways Limited to New Zealand resident (but not transitional resident) employees of the Qantas Group in accordance with the Employee Recovery Retention Plan and, where the employee opted to do so, the subsequent sale of those shares pursuant to a share sale facility offered by the Qantas Group.

01/04/2023 – 31/03/2024

(THIS TITLE PAGE DOES NOT FORM PART OF THE RULING.)

Product Ruling – BR Prd 23/07

This is a product ruling made under s 91F of the Tax Administration Act 1994.

Name of person who applied for the Ruling

This Ruling has been applied for by Qantas Airways Limited.

Taxation Laws

All legislative references are to the Income Tax Act 2007 unless otherwise stated.

This Ruling applies in respect of ss CB 4, CD 1, CE 1(1)(d), CE 2, CE 7, CE 7B, CE 7CB, DB 23, GC 1 and YF 1.

The Arrangement to which this Ruling applies

The Arrangement is:

- the transfer of shares in Qantas Airways Limited (Qantas) to New Zealand resident employees of the Qantas Group in accordance with the Employee Recovery Retention Plan (the Plan); and
- where the employee opted to do so, the subsequent sale of those shares pursuant to a share sale facility offered by the Qantas Group.

New Zealand resident employees means employees that are “New Zealand resident” but not “transitional resident (as each of those terms are defined in s YA 1). The “Qantas Group” is Qantas and its wholly owned subsidiaries.

Further details of the Arrangement are set out in the paragraphs below.

Employee Recovery Retention Plan

- 1) Qantas states the Plan was introduced on 24 February 2022 to reward the commitment and recognise the important role employees of the Qantas Group played in Qantas’s recovery from the COVID-19 global pandemic.
- 2) The Plan is governed by the Recovery Retention Plan terms and conditions and the Recovery Retention Plan booklet.
- 3) Employees were invited to participate in the Plan if they:

- joined the Qantas Group on or before 1 July 2021;
- were permanent full-time or part-time employees based in Australia or New Zealand;
- maintained continuous employment until the offer date (being 30 May 2022);
- were not an employee of Qantas Superannuation Limited; and
- were not eligible to participate in the Executive Recovery Retention Plan.

The Rights

- 4) Participation in the Plan entitled an employee to an award of rights (the Rights).
- 5) The Rights were subject to vesting conditions. For each Right that vested, the employee received one share in Qantas (the Shares) at no cost to the employee.
- 6) The vesting conditions were the satisfaction of:
 - three performance hurdles between 1 July 2021 and 30 June 2023 that were tested at the end of the performance period; and
 - a service condition of being continuously employed between 1 July 2021 and the vesting date (Vesting Date), which was 25 August 2023, being the day after the Qantas Group's full-year results were announced on 24 August 2023.
- 7) For the performance hurdles vesting condition to be met, all the following hurdles had to be achieved:
 - The Qantas Group met its \$1 billion recovery programme target by 30 June 2023.
 - As at 30 June 2023, the Qantas Group's net debt was below the top end of its net debt range approved by the Board of directors of Qantas in accordance with the Qantas Group's financial framework.
 - The Qantas Group was profitable on an underlying profit before tax basis for 2022/23 (1 July 2022 to 30 June 2023).
- 8) For the service condition to be met, the employee must have remained employed by the Qantas Group at the Vesting Date.
- 9) The Rights awarded to an employee were pro-rated before the Vesting Date and may have vested as Shares to the extent that the relevant vesting conditions were satisfied where the employee:
 - remained employed for less than the full duration of the performance period;

- took leave without pay totalling 90 days or more during the performance period; or
 - took parental leave (either paid or unpaid) of more than 12 months in total during the performance period.
- 10) An employee's Rights automatically lapsed on the date employment ceased where an employee ceased employment on or before:
- 30 June 2022 for any reason; or
 - the Vesting Date in circumstances where the employee resigned, their employment was terminated for cause, or was terminated in other circumstances determined by the Board to involve unacceptable performance or conduct.
- 11) Where an employee ceased employment in circumstances other than as outlined at [10] above (that is, as a Good Leaver), the employee's Rights automatically lapsed. However, the Board could choose to make a cash payment (to be paid at the Board's discretion by 30 September 2023) where the Performance Hurdles were met at the end of the Performance Period based on:
- the number of the employee's Rights that lapsed;
 - the proportion of the Performance Period that had elapsed at the time the employee ceased employment; and
 - any other events giving rise to proration under the Service Conditions.
- 12) This Ruling does not consider or rule on discretionary cash payments made to employees under the Plan.

The Shares

- 13) Where the employee had not ceased employment with the Qantas Group, provided the performance hurdles and the service condition were satisfied, the Rights vested and converted into Shares on the Vesting Date. The employee then holds the Shares and can choose whether to retain or sell them.
- 14) The Shares vested under the Plan are listed on the ASX, rank equally in all respects with other Shares and the employees have the benefits that come with Share ownership while they hold the Shares.
- 15) The Recovery Retention Plan terms and conditions contain provisions in cl 6 relating to the forfeiture of an employee's Rights or Shares where the employee is in breach of their post-employment conditions or the Rights or Shares have been obtained in inappropriate circumstances.

Share Sale Facility Offer

- 16) Qantas offered a Share Sale Facility Offer (the Share Sale Facility) to employees participating in the Plan.
- 17) Qantas states it offered the Share Sale Facility as a means of providing employees with a simple, no cost mechanism to sell the Shares that vested on conversion of the Rights under the Plan.
- 18) The Share Sale Facility was open for employees to elect into from 3 May 2023 to 26 May 2023.
- 19) Where an employee elected into the Share Sale Facility, 100% of the employee's Shares that vested in the employee on conversion of the Rights and were transferred to the employee on the Vesting Date under the Plan were immediately sold by (reacquired from) the employee on the Vesting Date.
- 20) The agreed price for the sale of the Shares by the employee was the 1-day volume weighted average price for the Shares on 24 August 2023 (being the day of the Qantas 2023 full year results announcement and the day before the Vesting Date). The proceeds from the sale of the Shares were converted into New Zealand dollars applying the Australian dollar to New Zealand dollar exchange rate at 3pm New Zealand standard time on 24 August 2023 as published by the Reserve Bank of New Zealand and deposited directly into the employee's bank account.
- 21) Both the transfer of Shares to employees under the Plan and, if the employee opted in, the reacquisition of Shares from the employee under the Share Sale Facility, were effected by Pacific Custodians Pty Limited (that holds Shares as trustee for the purposes of Qantas's employee share arrangements).

How the Taxation Laws apply to the Arrangement

The Taxation Laws apply to the Arrangement as follows:

- (a) The Plan is an employee share scheme as defined in s CE 7.
- (b) The share scheme taxing date under s CE 7B for employees who:
 - did not elect into the Share Sale Facility was the Vesting Date (25 August 2023) when the Shares were transferred to the employees; or
 - elected into the Share Sale Facility was the Vesting Date (25 August 2023) when the Shares transferred to the employees were subsequently transferred by way of sale.

- (c) The amount of income under ss CE 1(1)(d) and CE 2 for employees who:
- did not elect into the Share Sale Facility is the market value of the Shares on the Vesting Date (25 August 2023), being the 7-calendar day (ending on the Vesting Date) volume weighted average price of the Shares under s CE 7CB(b), converted into New Zealand dollars by applying the Australian dollar to New Zealand dollar exchange rate at 3pm New Zealand standard time on 25 August 2023 as published by the Reserve Bank of New Zealand; or
 - elected into the Share Sale Facility is the price that the employee's Shares were sold for, being the 1-day volume weighted average price for the Shares on 24 August 2023 converted into New Zealand dollars by applying the Australian dollar to New Zealand dollar exchange rate at 3pm New Zealand standard time on 24 August 2023 as published by the Reserve Bank of New Zealand.
- (d) For employees who elected into the Share Sale Facility:
- the amount of income arising under s CB 4 in respect of the sale of the Shares equals the amount of the deduction under ss CE 2(4) and DB 23 for the cost of the Shares and s GC 1 does not apply; and
 - no dividend income arises under s CD 1.
- (e) The amount of income under ss CE 1(1)(d) and CE 2 for employees referred to in para (c) is derived on the "ESS deferral date" under s CE 2(7) to (9), being 14 September 2023.

The period or income year for which this Ruling applies

This Ruling will apply for the period beginning on 1 April 2023 and ending on 31 March 2024.

This Ruling is signed by me on the 13th day of December 2023.

Howard Davis
Group Leader (Tax Counsel Office)

About this document

Product Rulings are issued by the Tax Counsel Office and Customer and Compliance Services. Product Rulings set out the Commissioner's view on how tax laws apply to a particular "product" – which is an arrangement that a specified taxpayer is likely to enter into with a number of people on identical terms. Taxpayers who enter into the arrangement described in a Product Ruling may apply the ruling but are not obliged to do so. Product Rulings are binding on the Commissioner. This means that if you are entitled to apply a Product Ruling and you have calculated your tax liability in accordance with the ruling, the Commissioner must accept that assessment. A Product Ruling applies only to the taxation laws and arrangement set out in the ruling, and only for the period specified in the ruling. It is important to note that a general similarity to an arrangement covered by a Product Ruling will not necessarily lead to the same tax result.