

## TAX GUIDANCE - TESOP 97 and TESOP 99

**The taxation of employee share plans is extremely complex and may vary depending on your personal circumstances. This tax guidance is provided for general information purposes only. You should seek independent expert tax advice in relation to your circumstances.**

The only taxation implications that might arise for you each income year in relation to your TESOP 97 and TESOP 99 shares will relate to:

1. The receipt of Telstra dividends; and
2. The disposal of shares, which may have capital gains tax (CGT) consequences.

### **1. RECEIPT OF TELSTRA DIVIDENDS**

The receipt of Telstra dividends on your TESOP 97 and/or TESOP 99 shares are the same as any other dividend received, i.e. they are assessable to you in the year they are received with a credit available to you for any franking credits attaching to those dividends.

### **2. DISPOSAL OF SHARES**

If you sold your TESOP 97 and/or TESOP 99 shares during an income year, you will need to determine whether any capital gain or loss is required to be included in your income tax return for that year.

Your capital gain or loss will essentially be calculated by deducting your cost base of the shares from the proceeds you received on the sale of those shares. A capital gain may be eligible for a 50% discount. A capital loss may be available to you for offset against other capital gains you made in the income year, or to carry forward for offset against any capital gains you may make in the future. Please refer to [Table A](#) for more detail.

#### **Cost base**

You will need to determine what the CGT cost base of your TESOP 97 and TESOP 99 shares is in order to calculate any capital gain or loss. Determining the cost base is complicated because it depends on:

- The type of TESOP share you were granted (refer to [Table C](#));
- Whether or not you made a Written Election in your 1998 and 2000 income tax returns to be taxed upfront on your shares (refer to [Table C](#));
- If you did make a Written Election, whether you chose to apply the “old rules” or the “new rules” to determine your cost base (refer to [Table B](#)); and
- Whether you have repaid your TESOP loans (and if so when).

**We recommend you seek independent expert tax advice to assist you in determining your cost base.**

The type of TESOP share you were granted is highly relevant because your cost base generally depends on the relevant share’s trade restriction period (refer to [Table D](#)).

Whether or not you made a Written Election in your 1998 and 2000 income tax return for your TESOP 97 and TESOP 99 shares respectively is particularly important because the law governing Employee Share Schemes changed in 2001. For shares granted prior to these changes, such as TESOP 97 and TESOP 99 shares, where an employee has made a Written Election the employee has the choice to determine the cost base under either the “new rules” or under the “old rules” (refer to [Table B](#)). The choice is between using either the:

- Tax market value of the shares at the expiry of the restriction period (“old rules”); or
- Tax market value of shares when you first obtained your interest in the shares (“new rules”).

The choice is evidenced simply by how you prepare your return i.e. the choice does not have to be in writing.

## CGT Discount

As a general proposition, the 50% CGT discount should be available in relation to any share held for greater than 12 months from the expiry of the restriction period. However, this also will be impacted by whether or not you made a Written Election (refer to [Table A](#)). If you made a Written Election the share must be held for greater than 12 months from when you first obtained an interest in the share.

### Disclaimer

This is a general description of the tax consequences, which can apply to your participation in TESOP 97 or TESOP 99. The tax consequences for you may be different depending on your own circumstances, particularly if you have participated in other employee share schemes, if you have any particular arrangements in relation to your shares or for shares you acquire otherwise than under TESOP 97 or TESOP 99.

This information has been prepared for participants who are, and will continue to be, Australian tax residents. The information does not apply to:

- individuals engaged in foreign service;
- temporary residents of Australia for tax purposes;
- foreign tax residents; or
- individuals who are no longer employees of Telstra.

If you fall within any of these categories you should discuss the matter with your tax advisor.

The description of the CGT consequences of your participation in TESOP 97 and/or TESOP 99 is based on Class Ruling (CR 2001/28) issued by the Commissioner of Taxation.

If you have any questions about preparing your tax return or the tax consequences of your participation in TESOP 97 or TESOP 99 (including the CGT consequences) in your particular circumstances, **you should seek guidance from your own registered tax adviser.**

## TAX MATRIX - TESOP 97 and TESOP 99

Share	Written Election	No Written Election
<b>TESOP 97 Non Loan Shares</b>	Capital gain/(loss) = Proceeds of sale less \$3.30 Any resulting capital gain reduced by 50%	Capital gain/(loss) = Proceeds of sale less \$3.30 Any resulting capital gain reduced by 50%
<b>TESOP 97 Extra Non-Loan Shares</b>	Capital gain/(loss) = Proceeds of sale less <u>either</u> \$6.58 or \$3.30* Any resulting capital gain reduced by 50%  *You have a choice to use the: - Old Rules - TMV of the shares on 15 November 2000 being the expiry of the relevant restriction period (\$6.58); or - New Rules - TMV of the shares on the date you first acquired your interest in the shares (\$3.30)	Capital gain/(loss) = Proceeds of sale less \$6.58* Any resulting capital gain reduced by 50%  * TMV of the shares on 15 November 2000 being the expiry of the relevant restriction period
<b>TESOP 97 Loyalty Shares</b>	Capital gain/(loss) = Proceeds of sale less \$3.30 Any resulting capital gain reduced by 50%	Capital gain/(loss) = Proceeds of sale less \$6.55* Any resulting capital gain reduced by 50%  *TMV of shares at 17 November 1998 being the date the shares were allocated to you
<b>TESOP 97 Loan Share TESOP 97 Extra Loan Shares</b>	Capital gain/(loss) = Proceeds of sale less <u>either</u> \$2.70 or \$3.30* Any resulting capital gain reduced by 50%  *You have a choice to use: - Old Rules - TMV of the shares on 25 March 2011 being the expiry of the relevant restriction period i.e. the date the loan was repaid (\$2.70) – assuming the loan was not repaid early (otherwise the TMV will be the share price on the date the loan was repaid); or - New Rules - TMV of the shares on the date you first acquired your interest in the shares (\$3.30)	Capital gain/(loss) = Proceeds of sale less \$4.69* Any resulting capital gain reduced by 50%  *TMV of shares at 15 November 2007 being the expiry of the relevant restriction period i.e. the ten year anniversary of the granting of the shares - assuming the loan was not repaid before this date (otherwise the TMV will be the share price on the date the loan was repaid)
<b>TESOP 99 Loan Shares</b>	Capital gain/(loss) = Proceeds of sale less <u>either</u> TMV on loan repayment date or \$7.40* Any resulting capital gain reduced by 50%  *You have a choice to use: - Old Rules - TMV of the shares on the date the loan was repaid being the expiry of the relevant restriction period; or - New Rules - TMV of the shares on the date you first acquired your interest in the shares (\$7.40)	Capital gain/(loss) = Proceeds of sale less \$3.15* Any resulting capital gain reduced by 50% if the shares were sold more than 12 months after the loan was repaid  *TMV of shares at 16 October 2009 being the expiry of the relevant restriction period i.e. the ten year anniversary of the granting of the shares - assuming the loan was not repaid before this date (otherwise the TMV will be the share price on the date the loan was repaid)
<b>TESOP 99 Loyalty Shares TESOP 99 Extra Shares</b>	Capital gain/(loss) = Proceeds of sale less <u>either</u> \$4.81 or \$7.40* Any resulting capital gain reduced by 50%  *You have a choice to use: - Old Rules - TMV of the shares on 16 October 2002 being the expiry of the relevant restriction period (\$4.81); or - New Rules - TMV of the shares on the date you first acquired your interest in the shares (\$7.40)	Capital gain/(loss) = Proceeds of sale less \$4.81 Any resulting capital gain reduced by 50%  *TMV of the shares on 16 October 2002 being the expiry of the relevant restriction period

TMV – Tax Market Value

Old Rules vs New Rules – see Table B

Relevant Restriction Periods – see Table D

**CHOICE OF COST BASE – WHERE WRITTEN ELECTION WAS MADE**

- When the TESOP grants were made (1997 and 1999) the existing tax laws (including Class Ruling CR 2001/28) determined the tax treatment of the various grants (**Old Rules**).
- In 2003, *Taxation Laws Amendment Act (No.3) 2003 (TLA)* changed the tax treatment of Employee Share Scheme (**ESS**) grants made after 27 February 2001 where the recipient made a written election to be immediately taxed on grant (**New Rules**).
- Further, TLA stipulated that where an ESS recipient received a grant prior to 27 February 2001 (eg TESOP 97 and TESOP 99) and made the written election to be immediately assessed the recipient could choose to apply either the old rules or the new rules to the grant. This choice will be evidenced simply by the way the recipient’s tax return is prepared when the relevant shares are disposed of.

OLD RULES			NEW RULES		
Written Election	Rule	Application	Written Election	Rule	Application
<b>Cost base</b>	TMV on expiry of restriction period	Choice	<b>Cost base</b>	TMV on when interest first obtained	Choice
<b>Discount start date</b>	12 months from expiry of restriction period	Superseded (by New Rules)	<b>Discount start date</b>	12 months from when interest first obtained	Automatic
<b>No Written Election</b>			<b>No Written Election</b>		
<b>Cost base</b>	TMV on earlier of expiry of restriction period or 10 years from when interest was first obtained	Mandatory	<b>Cost base</b>	N/A	N/A
<b>Discount start date</b>	12 months from earlier of expiry of restriction period or 10 years from when interest was first obtained	Mandatory	<b>Discount start date</b>	N/A	N/A

**TMV** – Tax Market Value

**GLOSSARY OF TERMS**

- **Old Rules** – The Employee Share Scheme taxation laws (including Class Ruling CR 2001/28), that applied to taxpayers who made a Written Election, that were in existence when shares were granted under TESOP 97 and TESOP 99 (refer **Table D**).
- **New Rules** – Changes that applied from 27 February 2001 to the Employee Share Scheme taxation laws, that apply to taxpayers who made a Written Election, resulting from the enactment of *Taxation Laws Amendment Act (No.3) 2003* (refer **Table D**).
- **Restriction Periods** – period in which employee holding TESOP 97 and/or TESOP 99 shares are prohibited from trading in the shares. During this period the shares are held by the TESOP Trustee (refer **Table B**).
- **Tax Market Value** – if the taxing point for your shares under the employee share scheme provisions of the Tax Act happens prior to 1 July 2009 – the weighted average of the prices at which the shares were traded on the stock exchange in the one week up to and including the day on which the restriction period ends. This value is available from the Telstra Share Registry (1300 88 66 77).

If the taxing point for your shares is determined under the employee share scheme provisions of the Tax Act and happens on or after 1 July 2009 – the ordinary market value of your shares.

- **TESOP 97** – offer made to employees to acquire shares in Telstra under the Telstra Employee Share Ownership Plan as part of the 1997 initial public float of Telstra shares.
- **TESOP 97 Extra Loan Shares** – the extra 1 for 4 shares provided to employees who acquired Loan shares in TESOP 97.
- **TESOP 97 Extra Non-Loan Shares** – the extra 1 for 4 shares provided to employees who acquired Non-Loan Shares in TESOP 97.
- **TESOP 97 Loan Shares** – shares purchased by employees as part of TESOP 97 using the interest free loan provided by Telstra.
- **TESOP 97 Loyalty Shares** – the extra 1 for 10 shares provided to employees who acquired Public Offer Shares in the 1997 float of Telstra shares and held them for 12 months.
- **TESOP 97 Non-Loan Shares** – shares purchased by employees as part of TESOP 97 using their own money instead of the interest free loan provided by Telstra.
- **TESOP 99** – offer made to employees to acquire shares in Telstra under the Telstra Employee Share Ownership Plan as part of the 1999 additional public float of Telstra shares.
- **TESOP 99 Loan Shares** – shares acquired by employees as part of the Telstra component of TESOP 99 using the interest free loan provided by Telstra.
- **TESOP 99 Loyalty Shares** – the extra 1 for 10 shares provided under the Commonwealth component of TESOP 99 to employees who acquired Guaranteed Allocation Shares and held them until at least 2 November 2000.
- **TESOP Extra 99 Shares** – the extra 1 for 4 shares provided under the Commonwealth component of TESOP 99 to employees who acquired Guaranteed Allocation Shares.
- **Written Elections** – the \$1,000 tax exemption election under tax law made by an employee before they lodged their 1997/98 Tax Return (affecting their TESOP 97 shares) and/or their 1999/2000 Tax Return (affecting their TESOP 99 shares).

**TESOP TRADE RESTRICTION PERIOD****Written Election Made**

Where you sought the relevant \$1,000 tax exemption (in your 1997/98 tax return and/or your 1999/2000 tax return)

Share Type	Restriction Period Expiry Date
TESOP 97 – Loan Shares / Extra Loan Shares	Latter of : <ul style="list-style-type: none"> <li>• 15 November 2000; or</li> <li>• the date the loan is repaid <sup>1</sup></li> </ul>
TESOP 97 – Extra (1:4) Non-loan Shares	Earlier of: <ul style="list-style-type: none"> <li>• 15 November 2000; or</li> <li>• when you cease employment with the Telstra Group <sup>2</sup></li> </ul>
TESOP 99 – Extra (1:4) Shares and TESOP 99 – Loyalty (1:10) Shares	Earlier of: <ul style="list-style-type: none"> <li>• 16 October 2002; or</li> <li>• when you cease employment with the Telstra Group <sup>2</sup></li> </ul>
TESOP 99 - Loan Shares	For continuing employees the date is the latter of : <ul style="list-style-type: none"> <li>• 16 October 2002; or</li> <li>• the date the loan is repaid <sup>3</sup></li> </ul>
<ol style="list-style-type: none"> <li>1. This is irrespective of whether your relevant employment with the Telstra Group has ceased. If you had ceased employment prior to 15 November 2000, the relevant date was when the loan was repaid. Where the shares are sold for you by the Trustee, the relevant time is immediately prior to when the shares are sold.</li> <li>2. This also includes situations where you cease employment with a company that was part of the Telstra Group at the time of the relevant Telstra float (and you were employed by that company at the time of the float).</li> <li>3. This is irrespective of whether your relevant employment with the Telstra Group has ceased. However, if you cease employment prior to 16 October 2002, the relevant date is when the loan was repaid. Where the shares are sold for you by the trustee, the relevant time is immediately prior to when the shares are sold.</li> </ol>	

**NO Written Election Made**

Where you did **not** seek the relevant \$1,000 tax exemption (in your 1997/98 tax return and/or your 1999/2000 tax return)

The expiry of the relevant Restriction Period will be determined in the same manner as described in the table.

When working out whether you make a capital gain or loss when you sold your TESOP shares, the tax cost will be the Tax Market Value of those shares at the earlier of:

- the abovementioned times;
- when your relevant employment with the Telstra Group ceased; or
- The 10 year anniversary of the relevant share scheme.

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