

Creating the right environment for start-ups

Proposed amendments to the employee share scheme provisions for start-ups

On 14 October 2014, the Honourable Bruce Billson, the Honourable Tony Abbott and the Honourable Joe Hockey issued a media release titled “Encouraging employee share ownership and entrepreneurship”.

The position of the Government in respect of the application of the employee share scheme (ESS) provisions to start ups has been long awaited, with it being seen as fundamental to the innovative nature of start-up companies, and the need to ensure that they retain a work environment that fosters new ideas.

The media release confirms the Government’s intention to reform the tax treatment of ESS to bolster entrepreneurship in Australia and support innovative start-up companies.

The proposed reforms include:

1. The unwinding of the changes to the tax treatment under the ESS provisions that were introduced by the former Government in 2009 in relation to the taxing point for options. This means that discounted options will be taxed when they are exercised (converted to shares) rather than when an employee receives an option.
2. ESS options or shares not being subject to upfront taxation where the following are satisfied:
 - a. they are provided at a “small discount”;
 - b. the company in which the shares or options are held being an “eligible start-up company”, with the media release indicating that a company will be eligible where it has an aggregate turnover of not more than \$50 million, and the company is unlisted and has been incorporated for less than 10 years;
 - c. the shares or options being held by the employee for at least three years.

The media release outlines that in respect of shares issued (as distinct from options) at a “small discount”, that the discount is exempt from tax, but doesn’t provide an explanation of what constitutes a “small discount”.

3. The maximum term for tax deferral will be increased from 7 years to 15 years.
4. "Safe harbour" valuation tables, which are used by companies to value their options, will be updated to reflect market conditions.

The media release makes no mention of how valuation of shares (as opposed to options) will be addressed.

Consultation with industry in relation to draft legislation will be undertaken, with the legislation proposed to come into effect on 1 July 2015

For further information, or to discuss this recent media release, please contact:

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