

## Current State of Legislation

Division 83A of the Income Tax Assessment Act 1997 provides for three main concessions for employee equity rewards.

The first is the Exempt Employee Share Plan. This benefit enables employees on adjusted taxable incomes of up to \$180,000 to receive up to \$1,000 discount benefit, income taxation free, in shares in their employer each financial year. Any subsequent increase or decrease in the value of the shares is treated as a taxable capital gain/loss in the financial year the shares are sold. In addition, the discount benefit is not subject to fringe benefits taxation (FBT). Shares must be held for three years while still employed by the organisation and there can be no forfeiture clause.

The second is the Deferred Employee Share Plan. The benefit this plan accesses enables participants, while still employees of the organisation (or a holding company or subsidiary of the organisation), to defer the income taxation on their share-based remuneration benefits for up to seven years. In the financial year in which the shares are withdrawn from the plan the participant's taxable income will increase by the value of the shares at the time of withdrawal, (or sale within 30 days of withdrawal). Additionally, this benefit is not subject to fringe benefits taxation (FBT). This concession can be accessed in two ways:

- By limiting the value of the benefit to \$5,000 per annum; or
- Through the introduction of a "real risk" of forfeiture clause.

The third concession is the Employee Option Plan. The Employee Option Plan involves the issue of call options over the unissued capital of the organisation to an employee. The employee becomes entitled to exercise these options after satisfying performance hurdles. The income taxation treatment of the option benefit in the hands of the employee is determined by the terms and conditions of the Employee Option Plan Rules. There are a number of requirements. Briefly, the term of income taxation deferral is determined by the requirement for a "real risk" of forfeiture clause and can in certain circumstances be followed by an escrow period for a total of seven years.

The legislation has a number of conditions for each of the above plans. Examples of these conditions are:

- Shares provided or the subject of options must be the 'ordinary' shares of the organisation or a holding company of the organisation.
- Share Plan offers must comply with a general distribution requirement to ensure at least 75 per cent of permanent employees of 3 years standing have a right to participate in this or some other share plan.

"Information supplied with thanks to Owen Thomas and Associates Pty Limited - see advert this page