



Reform of the Taxation of Employee Share Schemes

**The Manager
Philanthropy and Exemption Unit
Personal & Retirement Income Division
The Treasury
Langton Crescent
Parkes ACT 2600**

11 June 2009

Email: ESSreforms@treasury.gov.au

Dear Sir or Madam,

Re: Reform of the Taxation of Employee Share Schemes

The Australian Employee Ownership Association (AEOA) was formed in 1986 and is the only non-profit membership based Association in Australia representing the interests of broad based Employee Ownership for both privately owned and publicly traded corporations.

AEOA has long been concerned about the non compliance with, and ignorance of, the taxation of employee share and option benefits and we commend the Government for its 2009 budgetary efforts to assist with improved compliance and reporting of employee share benefits. In 1993, the AEOA, in conjunction with the Australian Institute of Company Directors (AICD) and the Australian Shareholders Association (ASA) formulated guidelines for the issue of shares and options to executives. These guidelines is available at: <http://www.aeo.org.au/docs/0024/Executive%20Equity%20guidelines.pdf>

The AEOA has also assisted the Australian Council of Trade Unions (ACTU) with formulating best practice guidelines for the issue of shares and options to employees and presented guidelines to delegates attending the recent ACTU Congress in Brisbane. These guidelines are available from: <http://www.aeo.org.au/docs/0024/ACTU%20Presentation%20-%20ESO%20a%20Practioners%20Perspective.ppt>

The Association trusts that the linked information above will assist the Minister and the relevant Treasury officials better understand the framework in which reform of the taxation of Employee Share Schemes should take place.

With respect to the following reform objectives stated in Treasury's Consultation Paper:

- *the tax exempt adjusted taxable income threshold to be raised to \$150,000,*
- *limited deferral for 7 years,*
- *annual reporting obligations,*
- *new rules for valuing options and discounts,*
- *extending tax refunding on forfeited shares as well as rights,*
- *enabling access to both tax exempt and tax deferred benefits in the same year of tax,*
- *improved reporting and tax compliance measures.*

The AEOA acknowledges that the Government has significantly ameliorated Employee Share Scheme (ESS) measures announced by the Treasurer on 12 May 2009 and we applaud the Government for having the wisdom and courage to reconsider maintaining long standing Government commitment to Employee Ownership in Australia.

However, a recent report compiled by David Hetherington, from Per Capita and available at: http://www.percapita.org.au/01_cms/details.asp?ID=208 , compares the employee share policies of the UK, the United States and Australia and finds that, ‘despite the wider economic benefits of employee share plans, ordinary Australian workers have little or no incentive to participate in them’. Australian Taxation arrangements can mean that Australian workers can be penalized for participating in employee share schemes rather than making equivalent investments in the share market.

In particular, AEOA is concerned about:

- *unreasonable restrictions on access to tax refunds on upfront taxing liabilities on shares and rights, and*
- *timing of the tax triggers to coincide with vesting of the equity to avoid forcing employees into premature disposal of the equity and consequentially depleting the employee share plan of assets.*

Notwithstanding, the AEOA expects that refinement of legislation relating to Employee Share Schemes will be on going and recommends that the ESS Industry Consultation Committee be reinstated within Treasury as a matter of urgency.

Whilst the ESS Consultation Paper makes clear that:

- *the Government proposes that the taxation of discounts on employee share scheme shares and rights on acquisition will remain its starting principle; the Government also indicates that it will provide concessional tax treatment for particular schemes in the form of a tax exemption, or a tax deferral in limited circumstances.*

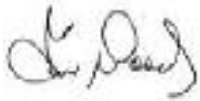
To help give practical effect to the above statement, which will help improve the uptake of Employee Ownership in Australia, the AEOA recommends:

- 1. immediate re-establishment of the Employee Share Scheme Industry Consultation Committee within Treasury and a return to quarterly meetings of parties interested and involved with the design, implementation and administration of employee share plan,***
- 2. extending the refund of upfront tax liabilities on all forfeited shares and rights, arising out of certain anomalies,***
- 3. the re-establishment of the deferral of taxation on discounts on all shares and rights subject to forfeiture conditions and/or restrictions on disposal, and***

- 4. taxation at cessation of employment and/or in the case of redundancy, retrenchment or retirement, legislation to ensure tax will not be triggered for seven years, provided the said shares continue to be held within an employee share plan.*

On behalf of the AEOA I wish to thank the Government and Treasury for the opportunity to make known our Association's views on the taxation of Employee Share Schemes and trust that the Philanthropy and Exemption Unit will find the information contained in this submission helpful when formulating its response. If requested, this Association will gladly provide expert clarification and elaboration on the contents of this submission.

Yours faithfully



Ian Woods
AEOA President
www.aeo.org.au