

## Global Rewards Update: Australia

July 2009

### EMPLOYEE SHARE PLANS - FINAL PROPOSED CHANGES

#### POLICY STATEMENT ANNOUNCEMENT

This is a further update to our Global Rewards Updates of May and June 2009. On July 1, 2009 the Federal Government released its final position on the proposed changes to the tax treatment of Employee Share Schemes (ESSs), following significant feedback from business and unions to the consultation paper and amending legislation issued on June 5, 2009.

The new statement confirms most of the positions outlined in the consultation paper, most notably that the proposed new measures will apply to shares and rights (such as options) acquired on or after July 1, 2009. As previously announced, the existing law will apply to all shares and rights acquired before July 1, 2009.

Some important modifications have been made to the positions outlined in the consultation paper in response to concerns raised by industry, advisors and stakeholder groups as follows:

- The most typical “deferred taxing point” will arise:
  - For qualifying shares: When there is no longer a real risk of forfeiture and no disposal restrictions (set at acquisition) attached to the shares.
  - For qualifying rights: When there is no longer a real risk of forfeiture and no restrictions (set at acquisition) preventing the disposal or exercise of the rights. If the shares acquired upon exercise of a right are subject to both a real risk of forfeiture and disposal restrictions (set at acquisition), the taxing point will be deferred until there are no forfeiture conditions and no disposal restrictions attached to the shares.
- The income threshold to access the tax exemption of up to A\$1,000 on discounts for broadly based employee share plans that satisfy certain conditions will be increased to an adjusted taxable income of A\$180,000. The previous proposed threshold was A\$150,000.

- Reporting by an employer will still require disclosure of the number of shares and rights acquired under an ESS at both grant and the taxing point, however, the employer will only be required to estimate the market value of the awards at the employee's taxing point, not upon grant.
- The ability to obtain a refund of tax paid at grant will be extended to cover forfeited shares.

### **ADDITIONAL MEASURES**

The Federal Government announcement also addressed the following as part of its proposed final framework for the taxation of ESSs:

- The Board of Taxation will be asked to consider how best to determine the market value of ESS benefits and whether shares and rights provided to start-up, research and development and speculative-type companies should be subject to a tax deferral arrangement.
- Explanatory materials, including specific illustrations, will be developed to provide further clarity on the meaning of "real risk of forfeiture". Notably, the announcement suggests the test to determine whether a real risk of forfeiture exists is to consider the judgment of a reasonable person.

**The Federal Government will introduce the new legislation effecting the ESS changes into Parliament in August 2009.**

### **ACTION**

- Companies should review share plan arrangements immediately to assess the likely impact of the tax changes on future awards to Australian participants.

### **People to Contact**

For assistance in this matter or any other issue related to the operation of your global rewards plans, please contact your local Deloitte global rewards consulting services advisor or email us at: [globalequity@deloitte.com](mailto:globalequity@deloitte.com) and a global rewards consultant will contact you.

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