



EMPLOYEE SHARE SCHEMES – NEW RULES

There has been much concern since the 2009/10 Budget regarding the changes to the tax treatment of shares or rights (ie options) obtained under an employee share plan.

The new draft rules have been released for public consultation. The new rules will apply to shares or rights that are issued after 1 July 2009.

Under the new draft rules (which are still to be enacted), taxpayers no longer have a choice whether to be taxed upfront or choose deferral tax treatment in relation to any discount on shares or rights acquired under an employee share scheme.

Taxation will be upfront unless the conditions for deferral are satisfied. This will depend on the terms of the scheme itself.

Deferral has been limited to schemes where there is a 'real risk' of forfeiture. Unless more guidance is provided about what constitutes a "real risk", this will result in uncertainty and confusion about how these rules are to be applied.

Limited deferral will also be available for certain salary sacrifice schemes offering no more than \$5,000 worth of shares

If the deferral conditions are satisfied, the deferred taxing point will be the earliest point at which:

1. for shares – the ending of risk of forfeiture and restrictions on disposal;
2. for rights – the ending of the risk of forfeiture and restrictions on exercise or disposal of the option and disposal of the underlying share acquired on exercise;
3. cessation of employment; or
4. 7 years.

Taxpayers with an adjusted taxable income of less than \$180,000 who are taxed upfront will be eligible for a concession and not pay tax on the first \$1,000 of discounts received provided that the scheme satisfies certain conditions.

Taxpayers who are going to acquire shares or rights under an employee share scheme should consider the impact of these new rules before acquisition. Taxpayers may be faced with upfront taxation even though they cannot sell the rights or shares to fund the tax!

If you would like further information or require assistance in relation to the above please do not hesitate in contacting our office on 02 9555 1309.

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