



TECHNICAL UPDATE

EMPLOYEE SHARE SCHEMES BILL BEFORE PARLIAMENT

THE BILL LARGELY MIRRORS THE PREVIOUSLY RELEASED EXPOSURE DRAFT LEGISLATION, WHICH WAS THE SUBJECT OF AN EARLIER BDO TECHNICAL UPDATE. THERE WERE, HOWEVER, SOME CHANGES IN RESPONSE TO SUBMISSIONS, WHICH MADE MEANINGFUL IMPROVEMENTS WHEN COMPARED TO THE EXPOSURE DRAFT.

These changes include:

- In relation to the 'start-up concession':
 - The 12 month holding period requirement for the capital gains tax discount will be made available in respect of employee share scheme (ESS) interests, that are subject to the concession, where options are converted into shares and the options and resulting shares were held, in total, for greater than 12 months; and
 - Eligible venture capital investments will be excluded from the \$50 million aggregated turnover test and grouping rules (when determining eligibility for the concession) where the investment is made by venture capital limited partnerships, early stage venture capital limited partnerships, Australian venture capital funds of funds or tax exempt deductible gift recipients (such as universities).
- Ensuring that ESS interests deemed to have a nil value under the ESS provisions are not subject to fringe benefits tax (FBT)
- Allowing the Australian Taxation Office discretion with respect to the three year holding rule (that applies for the up to \$1,000 reduction of amounts included in assessable income concession) when the holding period is not met due to circumstances beyond the control of the employee
- Clarifying that the definition of broad availability of the scheme continues to only apply to shares.

The intention is that the start date of the changes remains 1 July 2015.

SECTOR

Tax

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BDO comment

The changes to the exposure draft represent appreciable improvements. It is particularly pleasing to see the exclusion of interests assigned a nil value under the ESS provisions from FBT. This change was the subject of one of [BDO's submissions](#) to Treasury in respect of the exposure draft.

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