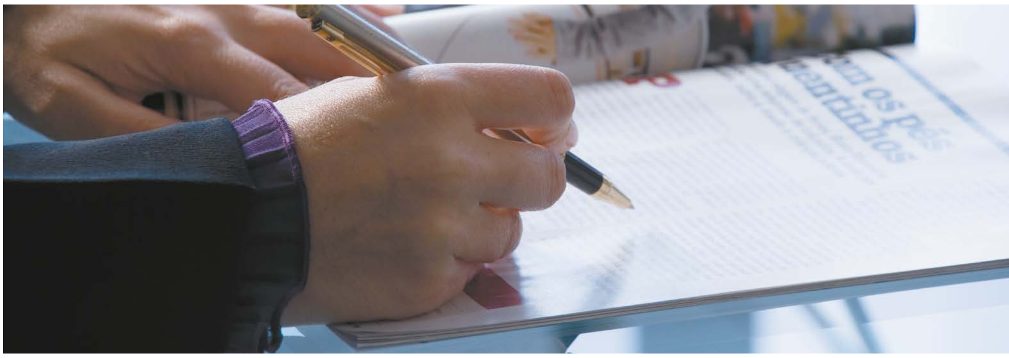

TECHNICAL UPDATE

CHANGES TO TAXATION OF EMPLOYEE SHARE SCHEMES

THE FEDERAL GOVERNMENT HAS AS PART OF ITS 'NATIONAL INDUSTRY INVESTMENT AND COMPETITIVENESS AGENDA' ANNOUNCED THAT IT INTENDS TO AMEND THE TAX RULES THAT APPLY TO EMPLOYEE SHARE SCHEMES. THE AMENDMENTS WILL BENEFIT ALL EMPLOYEE OPTION HOLDERS AND BOTH OPTIONS AND SHARES IN SELECTED START UP COMPANIES. THE RULES FOR SHARES IN NON-START UP COMPANIES APPEAR TO BE UNCHANGED.

The Federal Government has issued a media release which announced the changes to the taxation of employee share schemes. These proposed changes were expected, having been reported in various media outlets and newspapers.

The Government has also released a fact sheet on the new rules but does not provide much detail apart from some examples. Below is our summary of the changes based on the press release and fact sheet. However, there may be some changes when a more detailed explanation is provided by the Federal Government.

Taxation of Options

The media release indicates that the Government will unwind the changes made to the taxation of options which were introduced in 2009 by the former Labor Government. The media release announces that this change will apply to employee options issued by all companies.

Under the new law (assuming it is based exactly on the pre-2009 law), employees who receive discounted options will be taxed when they exercise the options. This is confirmed in an example provided in the accompanying fact sheet. That example indicates that the employee who receives discounted options will pay tax on that discount at the earliest of:

- The date of exercise
- The date the taxpayer ceases to be an employee of the issuing company
- The date at which the maximum holding period is exceeded (seven years).

No mention is made regarding the taxing point if the options are sold prior to exercise.

Further changes for options in start up companies

The Government has extended the concession for employees of start up companies. An eligible start up company is indicated to be a company that:

- Has an aggregate turnover of $50 million (or less)
- Is unlisted
- Has been incorporated for less than 10 years.

SECTOR
Tax

CONTACT

MARCUS LEONARD
National Leader, Tax
Tel: +61 2 9240 9771
marcus.leonard@bdo.com.au

LISA PRITCHARD
Partner, Adelaide
Tel: +61 8 7421 1418
lisa.pritchard@bdo.com.au

MARK MOLESWORTH
Partner, Brisbane
Tel: +61 7 3237 5999
mark.molesworth@bdo.com.au

ERIC OLUFSON
Partner, Cairns
Tel: +61 7 4046 0000
eric.olufson@bdo.com.au

MAL SCIACCA
Partner, Darwin
Tel: +61 8 8981 7066
mal.sciacca@bdo.com.au

BRETT SKIRVING
Partner, Hobart
Tel: +61 3 6234 2499
brett.skirving@bdo.com.au

DAVID BLAKE
Partner, Melbourne
Tel: +61 3 9603 1709
david.blake@bdo.com.au

JAMES MASSIE-TAYLOR
Partner, Perth
Tel: +61 8 6382 4600
james.massie-taylor@bdo.com.au

In addition, the options must be held for at least three years.

Where the employee holds qualifying options, they will be able to defer the tax on the discounted options until the shares acquired through the exercise of the options are sold (or the employee ceases to be an Australian resident), and taxed as a capital gain.

Taxation of Shares – General

The media release makes no mention of the general taxation of employee shares and the reversal of the 2009 amendments. It is unclear whether the current general taxation rules for employee shares will be amended or the 2009 amendments will continue. However, the example in the fact sheet relating to shares acquired in non-start up companies refers to the application of the 2009 provisions. Presumably, the 2009 provisions will continue to apply to shares acquired in non-start up companies.

Further changes for shares in start up companies

Where the employee receives shares in an eligible start up company, and those shares are issued at a small discount (there is no indication how great or small the discount must be, although the example provided refers to a discount of 15% as qualifying), and provided the employee retains the shares for at least three years, the discount is not subject to tax. When the employee subsequently sells the shares, the CGT cost base of the shares will be the market price on the date of issue (i.e. the discount is included as part of the CGT cost base meaning it is also exempt from CGT). In the example, the employee receives $1 shares for 85 cents. The CGT cost base is $1.

Consequential amendments

The Government has also announced that:

- The safe harbour valuation tables that are used to value share options will be updated
- The integrity provisions introduced in 2009 will be retained
- The $1,000 upfront tax concession will be retained for employees who earn less than $180,000
- The maximum tax deferral period for start up companies will be extended from seven years to 15 years.

Applicability

The Government has indicated these measures are intended to apply from 1 July 2015.

BDO comment

Relief from the strictures of the current tax rules in respect of employee share schemes, particularly in the case of start up companies, is to be welcomed.

Having said that, the tax component of the *National Industry Investment and Competitiveness Agenda* is rather underwhelming when measured against the expectations that were generated in respect thereof.

National expertise

The BDO Tax team is one of the largest and most dynamic tax practices in Australia, with 27 partners and more than 150 specialists located in each major city across the country.

MORE INFORMATION

1300 138 991

www.bdo.com.au

NEW SOUTH WALES

NORTHERN TERRITORY

QUEENSLAND

SOUTH AUSTRALIA

TASMANIA

VICTORIA

WESTERN AUSTRALIA