



Atlassian's Submission to the Inquiry into the Tax Treatment of Employee Share Schemes

Committee Secretariat
Standing Committee on Tax and Revenue
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By email: TaxRev.reps@aph.gov.au

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Dear Committee Secretariat,

Atlassian appreciates the opportunity to participate in the Committee's inquiry and report into the tax treatment of Employee Share Schemes (ESS) and, in particular, the effectiveness of the rule changes made by the Government in 2015, whether the current tax treatment of ESS remains relevant to start-up companies, and whether any further changes can be made to improve the schemes.

We believe Atlassian is in a unique position to inform the Committee's inquiry. Over the past 17 years, Atlassian has grown from a Sydney-based start-up into a global software concern. From the stops on that journey, we keenly appreciate the needs and priorities of the Australian technology sector, from nascent start-ups looking to make their mark to larger enterprises seeking to compete on the global stage. And we continue to engage with the start-up sector as well as more mature technology companies on ways to expand and improve the tech economy in Australia. As such, we consider it an important part of our corporate responsibility to highlight concerns which impact the sector at large, including those of the start-up community, which may not have available the resources to engage with government at length.

Atlassian is proud to have advocated for earlier changes to the ESS, several of which were reflected in the last major amendments in 2015, and continues to support the overarching goal of bolstering technology entrepreneurship in Australia and supporting start-up companies. We are mindful that large, successful technology enterprises are not born overnight—they grow from fledgling start-ups that struggle for early survival. And a strong ESS scheme is key to attracting and retaining the talent required for survival and success in today's global tech sector.

In that context, employee share schemes are pivotal to attracting the human capital needed to compete at a high level. It is now commonplace for technology ventures to start with such a scheme already in place, as stock compensation has become an expected component of tech employee compensation. Given the fierce competition between technology hubs around the world, a competitive ESS is crucial to ensuring that Australia can continue to attract and retain



the best companies and employees and that Australian companies are not put to a disadvantage compared to their global peers.

We believe that the 2015 changes were a positive step to providing Australia with competitive employee shareholding schemes. Those changes, and in particular the start-up concessions, made employee shareholdings more attractive and facilitated greater uptake of ESS in Australia. They also had the desired effect of removing numerous disadvantages faced by Australian concerns compared with their global competitors. As one survey conducted by StartupAUS showed, over 62% of high growth companies in the technology sector already have an ESS in place, while 30% more intended to adopt such a scheme. (*See StartupAUS Submission 30.*) Furthermore, these companies had a generally positive view of the ESS in improving recruiting and employee satisfaction. (*Id.*)

Then as now, however, there remains room for further improvement. Generally speaking, Atlassian supports efforts to make ESS programs more advantageous for Australian companies and employees, and to render them simpler to institute for smaller companies and less risky for everyday employees. In addition to keeping Australian companies competitive in the global marketplace, further improvement to the ESS would be a timely measure to aid the recovery of the Australian technology sector and economy at large in light of the COVID pandemic. In short, now is an opportune time for the Government to provide Australian companies with an advantage in attracting and retaining the talent needed to compete on the global stage.

In particular, Atlassian proposes that:

- the successful start-up concession should be expanded to allow more Australian companies to access this competitive advantage;
- the “cessation of employment” tax event be removed from tax-deferred schemes, as it creates undue risk and hardship for employees holding illiquid shares or rights; and
- disclosure and safe valuation requirements should be simplified for start-ups to encourage ESS participation.

We further note the thoughtful submissions made by industry and tax experts to this inquiry that align with our general aims, including a detailed submission from StartupAUS that we endorse (Atlassian is a Crossroads Partner of StartupAUS).

1. Expand access to the start-up concession.

The start-up concession directly promotes Australian entrepreneurship by incentivizing employees to join smaller companies with tax-preferred ownership stakes that are not available at larger concerns. As a point of comparison, the tax treatment of options granted under the start-up concession is more favourable than the non-statutory scheme in the United States that is broadly available to employees. As such, it can be considered a point of advantage for Australian start-ups.

As a policy matter, we believe that broadening the availability of the start-up concession would boost the Australian start-up ecosystem and thereby the tech sector generally by giving more companies the ability to offer this inducement. As a knowledge-based industry, the technology sector’s lifeblood is its human capital—the people who innovate valuable new products capable of competing on the global stage. Australia’s technology economy will only gain if more talented people choose to enter its ranks via the start-up ecosystem, whether domestically or from abroad.



Already, it is reported that the tech sector contributes 6.6% of the national GDP, employs 580,000 workers in highly-skilled and productive positions, and constitutes the 9th largest employment sector in Australia. (See DIGI's September 2019 report, *Australia's Digital Opportunity*.) But when compared to OECD countries, the relative proportion of the Australian tech economy is second to last, below the OECD average, and falling. (*Id.*) While improving the ESS program alone will not reverse this trend, it would be a step in the right direction of investing in the future of Australia's economic prosperity.

Currently, the start-up concession is gated by three major requirements. A company must be unlisted, be incorporated for less than 10 years, and generate less than \$50M in annual turnover. We believe that these restrictions should be loosened to allow for greater access to this successful scheme.

In particular, we propose that the 10-year limit be removed entirely. Companies take different paths to maturity and start-ups sometimes re-use corporate forms even though entirely new business lines are entered into. So long as a company is fledgling, it requires support from the concession and there should not be a time limit on that support.

Similarly, the current \$50M turnover limit cuts out many successful start-ups, particularly companies with high revenue and low margin, such as e-commerce concerns. To boost support for Australian start-ups as they grow and scale, we propose that this turnover limit should at least be doubled to \$100M.

2. Remove 'cessation of employment' as a deferred taxing point from Division 83A.

Atlassian considers this to be a significant issue affecting employee use of ESS in Australia. As others have noted, requiring employees to pay tax on the cessation of their employment often results in those employees being required to pay tax on rights that are illiquid, especially in private companies.

The current scheme has a number of disadvantages. Its operation results in departing employees either desperately seeking means to fund the tax liability or entirely foregoing their interests due to inability to shoulder the tax consequences. Alternatively, employees may choose to remain 'trapped' in a job that no longer suits them or their employer, with resultant impacts on productivity. And in the midst of the COVID pandemic, stories abound of employee layoffs and consequent tax liabilities that compound an already dire situation. Moreover, these effects tend to have an unequal impact on employees, as wealthier executives are more often able to pay the taxes required to retain their rights.

The cessation of employment taxing point is also a comparative disadvantage for Australian companies and employees. The United States, as a reference point for the technology sector, does not treat termination of employment as a taxable event. And while some companies adopt post-termination exercise policies, the trend is toward more permissive policies with longer exercise periods for the very reasons stated here.

To address these disadvantages, we propose that cessation of employment be removed as a deferred taxing point in tax-deferred schemes.

3. Simplify disclosure and valuation requirements for start-ups.

By providing simpler, less onerous and expensive means of meeting disclosure and valuation requirements, Atlassian believes that these changes will encourage greater



adoption of ESS by Australian start-ups, to the end of stimulating entrepreneurship and supporting fledging companies.

Simpler disclosure requirements. Currently, there is a significant hurdle for start-ups wishing to set up an ESS program in the prospectus/disclosure requirements found within the Corporations Act or ASIC Class Order Relief under CO 14/1001. These requirements are onerous in that they require disclosure of commercially sensitive information and are expensive for start-ups to comply with. While certain relief is allowed under the current laws, the exemptions are inadequate. In particular, start-ups can currently find relief for grants of small value (less than \$5,000 in 12 months), grants to senior management, and the “small scale offerings” exemption (offers to no more than 20 investors in a 12-month period raising no more than \$2M). These exemptions do not address the common situation of a start-up company seeking to provide significant equity to a broad swath of its workforce.

There are a number of viable proposals for addressing this issue, including by adding a specific exemption to the prospectus/disclosure requirement for start-up companies, as defined by the qualification criteria for the start-up concession. If needed, a less onerous disclosure/prospective regime can be defined for employees who are already familiar with the business prospects of the company.

Simpler valuations. The safe-harbour valuation provisions provide for an NTA valuation method that simplifies the ESS program set up for start-ups, but is currently available only to companies incorporated for less than seven years and that have raised less than \$10M in capital in the prior 12 months.

Atlassian proposes that the qualification criteria for the NTA valuation method be expanded so that more small companies can take advantage of its benefits. In particular, the time limit of 7 years is overly restrictive and should be removed and the capital raise cap should also be increased. A potential path toward greater simplification would be to align the qualification criteria for NTA valuation with those for the start-up concession. If necessary, an additional cap may be considered with respect to the raising of capital, but significantly raised from the current \$10M limit.

We greatly appreciate the opportunity to engage in the Committee’s inquiry. Atlassian is committed to working further with the Government, industry and other stakeholders on these issues to ensure that Australia is well placed to support the technology sector and the start-up ecosystem, now and into the future.

Yours sincerely

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