Dr. Brendon Nelson MP
Chair
House of Representatives Standing Committee (EEWR)
Parliament House, Canberra ACT 2600

Dear Dr. Nelson,

I am responding to your letter of 22 November 1999 and the questions attached to that letter. My response to the questions is in the attachment "HoR response - - " below. I apologise for the delay in responding but I have discussed this response with a number of corporates to ensure it reflects the experience and expectations of the "market".

There are a number of issues of concern to me that were not raised directly

by the questions your Committee has asked including:-

1. How to action the outstanding policy and other issues evident in the Division 13A rules as listed in the attachment to my original submission to your Committee? It seems to me that neither Treasury nor the ATO is anxious to discuss these matters at this time or in the near future notwithstanding the fact that the issues have been evident for many years. To some degree, I think the burden of dealing with the Business Tax Review (BTR) has pushed many other matters off the short-term agenda but this raises the question as to what priority should be afforded to ESOP issues particularly in light of the many associated proposals (eg CGT / levels and categories of ownership etc) in the BTR. Perhaps a factor often overlooked is that the burden of the taxation of ESOP's appears to fall on the employees but in reality falls on the employer who must design an appropriate plan. As it currently stands, there is a significant incentive to avoid Division 13A.
2. How to approach the taxation of ESOP's in future having regard to the BTR proposals and, in particular, the changed CGT rules? To some extent I have raised these issues in my attached response but the CGT issue is now so urgent that I must raise the matter directly with the Treasurer or through the focus groups being formed to develop rules to align with the new initiatives from the BTR.
3. How does FBT fit into all this? I have treid to deal with this under question 6, but it is not strictly a "Ralph" issue (The Government has rejected most of the "Ralph FBT recommendations).

Having regard to the above, I propose to tell the Treasurer that I have responded to a number of questions asked by your Committee and that I have no reasons why your Committee should not provide him with a copy of my response should he request it directly from the Committee.

One other matter which was discussed during my “evidence” was the UK initiatives and their possible relevance to Australian plans. I visited the UK in September last year and at that time was informed that the proposals are still being developed under consultation with business and professional groups. From more recent discussions, I understand this remains the case. However, it needs to be recognised that the apparent “generosity” of the UKproposals probably has its genesis in the fact that there is a very high threshhold exemption from CGT in the UK. The offer of exemption or deferral of taxation of the ESOP participation there is not a very bold or difficult policy initiative viewed from the perspective of the fact that the CGT threshhold would have had a comparable result for all but the very few who use it fully. This is why I view our $1000 exemption as very limited and consider our CGT rules would be much improved by a threshhold exemption (which could take the pressure off the size of the ESOP exemption). However, at this time, such is not the case and there seems to be little scope for pursuing what appear to be the bold ESOP initiatives in the UK.

I shall be pleased to further discuss any of the matters I have raised or respond to any further questions your Committe may have. I remain concerned about the time it has taken for the Goverment to consider how it may make ESOP participation more attractive to both employers and employees and to recognise the extent to which bad law has promoted inappropriate behaviour and abuses.

yours sincerely

jon kirkwood

Jon Kirkwood's response to 14 questions attached to the standing committee - inquiry into Employee Share Ownership Plans - letter of 22 November 1999.

Question 1 - Will you provide the Committee with more detail on the nature of a "share trading block" and the way that such blocks operate?

A "share trading block" is an arrangement or agreement between the share issuing company the Stock Exchange and the share registry whereby, consistent with the terms of the employee share plan, the share registry will not effect a transfer in circumstances where the conditions precedent to unfettered trading in the share have not occurred. For example, if there is a loan to the employee in respect of the share, and that loan has not been fully repaid, the terms of the plan would usually not permit a transfer of the share and accordingly the share register would not effect any requests (by the employee) to transfer the share. The arrangement/agreement would usually obligate the employer to advise the share registry of any events (eg repayment of a loan) which have the effect of lifting the restrictions on trading in the share. A share trading block can only operate in respect of listed shares with the approval of the ASX. In this sense, a share trading block is a tripartite agreement where listed shares are involved but could work for unlisted shares provided the share registry is not related to or an associate of the issuing company.

The benefits of a share trading block lie essentially in the avoidance of a trust for employees and in the simplicity of its operation.

Question 2 - Evidence received by the Committee has stated that in Australia, ESOPs occur mostly within the larger, listed companies. In the United States it is the reverse: most ESOPs occur within the smaller companies, usually unlisted companies.

In your view, is the reason for this largely the 5% rule and the fact that it acts as an impediment to small, unlisted companies establishing ESOPs?

To answer this question it will first be necessary to delineate the difference between an ESOP as it is known in **Australia** and an ESOP as it is know in the **United States**. This question presents the idea of Employee Share Ownership Plans as a description of all the arrangements by which an employee might acquire shares in a company as a consequence of their employment. In Australia, this could include participation in an Employee Share Purchase Plan (often supported by loan arrangements) or an Employee Share Option Plan which merely gives employees an opportunity to acquire shares at some time in the future. There are many variations of "share" and "option" plans but it would appear this question intends to cover all the variations.

In the United States, the acronym ESOP is taken to refer specifically to arrangements which involve a "sell-down" of the traditional ownership of the company to the employees. There are special taxation and corporate law rules designed to support and encourage the sell-down including, in particular, the deferral of capital gains tax to the

vendor for as long as at least 30% of the holding is transferred to a trust for the benefit of employees and the proceeds are invested in publicly traded stocks and bonds. Usually the company will fund the acquisition of the employee's interests and where this occurs, a deduction is allowed to the company for their contributions (both principal and interest). There are many collateral benefits which can be realised from a US style ESOP and it is relatively common for such ESOPs to facilitate the transfer of 100% of the ownership of the company to the employees.

Having regard to the above, is only natural that US style ESOPs are almost exclusively related to unlisted companies. In Australia, the absence of capital gains tax benefits, the 5% cap on ownership, prospectus requirements and difficulties with many of the provisions in Division 13A have discouraged unlisted companies from implementing ESOPs. In other words, the 5% rule is a factor but it is one of only a number of issues which pose impediments to the implementation of ESOPs by unlisted companies.

Question 3 - Would it improve the popularity of ESOPs if

- **i) the requirement is removed that a person divests shares acquired under an ESOP when they cease employment with that employer?**
- **ii) benefits were transportable to other ESOP schemes?**

Whilst most plans require divestment on cessation of employment (other than cessation for reasons of normal retirement/illness etc) this is unlikely to be a major factor in discouraging **participation** (but are very discouraging when encountered by a participant who has no control over their occurrence - in this regard, they operate as a "trap"). Exceptions might arise where the period given for divestment is "unfairly short" (usually a period of 3 months is allowed). However, the Division 13A requirement that cessation of employment is a prescribed "cessation time" at which the participant must be taxed (assuming they have not been taxed at an earlier time) is unfair. This is so even where the participant is permitted under the rules of the plan to retain their shares or options (eg: where the cessation arises for reasons of normal retirement/illness/death etc). This is dreadful policy and would certainly act as a discouragement for persons intending to hold shares after they had retired (this is permitted by many plans). Penalties for cessation should be a matter entirely between the employee and the employer and should not be a matter of taxation policy.

One particularly burdensome outcome of the cessation rules is that there is, in effect, no encouragement for participants to exercise options and hold the resulting shares because the exercise date is a "cessation time" which attracts tax (except where there is a restriction on the sale of the resulting shares or there has been an election to be taxed "up-front"). It seems bizarre that our tax rules discourage long term ownership of shares resulting from participation in ESOP's. See also response to question 7.

The idea of "benefits being transportable to other ESOPs schemes" seems strange if it is intended to convey the idea that movement from one employer to another means that the entitlement to acquire and/or to hold shares in the first employer must be emulated by the

second employer. Such a policy would make no sense because the new employer may have no ESOP or may have a more beneficial ESOP than the old employer. Taxation policy should not mandate an offer of participation to an employee transferring from an employer whether or not the former employer had offered participation in its plan.

Question 4 - Some ESOPs are available to only full-time, permanent employees. Other ESOPs are available to part-time and casual staff. Flexible employment modes are increasingly common.

Should qualifying ESOPs be available to all employees, irrespective of the mode of employment?

Most ESOPs include offers to a wider range of employees than just the “permanent employees”. Nevertheless, it is not sensible for taxation policy to mandate an offer to particular classes of employees. However, if “taxation benefits” are to be offered to participants or employers then it should be recognised that there are significant industry based differences which cause employers to limit or expand the scope of offers of participation. Itinerancy and short hours/sporadic work are significant factors in this regard. Typically there would be a very much larger percentage of employees in the “permanent part time” category in the retail industry than there would be in the manufacturing industry. In this regard the current requirements (75% test) may be relatively easily met by a manufacturer but may be very difficult for a retailer who would view such a large percentage of its employees as “barely committed” to the organisation.

Having said that, there is clearly a need to encourage employers to extend offers as far as is reasonably sensible among its employee population. This being so, the focus should be on benefits for the employer rather than for the employee. An example of such a benefit could be the provision of a taxation deduction for the discount in a share offer and the notional cost of issuing shares resulting from the exercise of options. The availability of these deductions could be conditional on threshold and/or increasing width of offers of participation. Care would need to be taken in setting the levels particularly regarding offers of participation in option plans because these are not currently perceived as attractive to the general body of employees.

Question 5 - Some witnesses have testified that where the level of risk to the employee is low, there should not be strict disclosure requirements. Witnesses have also suggested that strict disclosure and prospectus requirements, because they are costly, discourage the creation of ESOPs.

(1) The CLERP legislation has been passed by Parliament. Will it help address these issues or is further legislative action required?

The CLERP changes did not go far enough. There should be an exemption from the application of all the prospectus provisions of the Corporations law for all offers, invitations and issues of shares and options (and shares issued on exercise of options) under an ESOP. However, such an exemption should carry an obligation to reasonably

inform the potential applicants by providing say, :-

- copies of the constituent documents of the company
- copies of the relevant plans
- an outline of the likely tax implications for participants
- copies of the most recent financial statements presented to the shareholders
- a broad/sensible commentary regarding post balance date events (ie- to update the fin statements)

Other possibilities are mentioned in 5(3) below but may not be appropriate for inclusion in Corporate law.

The difficulty in determining what is needed arises from the wide variation in the level of knowledge which is likely to exist among the many "classes" of potential applicants. However, it is almost axiomatic that the more information that is given, the more likely it is that the information may cause some confusion among less "experienced" persons. In many cases it may not be sensible to provide all the information required by some people as it may result in the proper decision making process being subsumed by opinions which may only be relevant for "informed" investors.

(2) Are non-executive employees given sufficient information concerning ESOPs?

Even strict adherence to the requirements of Corporate law will not necessarily provide "sufficient information" concerning ESOPs to all employees. In this regard employees will need a wide range of information which will significantly vary from employee to employee. Some may perceive that they need to be told when they could best sell the shares whereas others may consider themselves well enough informed regarding the vagaries of the stockmarket to make the decision themselves. Accordingly, this type of information should never be mandated as it could not sensibly be provided by the employer. On the other hand, a commentary outlining the rules of the plan should be an essential component of the information provided whether or not the plan itself is made available for inspection of offerees. Usually larger companies view the offer as an HR exercise and make significant efforts to meet the requirements of the employees individually and collectively. Smaller companies experience difficulties in this regard as they do not have the resources to respond to a large number of enquires if that were to occur (but they should observe that there is something "missing" if there is some consistency to the questions asked).

(3) Should standard information about the ESOP be provided to employees? What should it contain? Who should prepare it?

Yes, I think some form of "standard information" about the ESOP should be provided to offerees but any regulation should not be prescriptive. As mentioned

above, there are minimum levels of information that should be provided but the gap between the knowledge (or lack of it) by some employees of the investment opportunity presented to them and the perception of the employer as to what may be required in this regard may often be too great to sensibly fill.

Yes, I agree - in all circumstances a sensible commentary regarding the likely taxation implications for participants should be provided. Obviously a summary of the rules of the plan would be an essential ingredient of the information provided and should be reviewed by a third-party, suitably qualified person (however, it is often necessary to avoid overly legalistic language in which case the document may require some "comprehensibility testing" before it is released. This comment underlines the difficulty inherent in mandating particular information as distinct from ensuring that information can be understood).

Question 6 - What will be the effect of the recommendations of the Ralph review on the operation and development of ESOPs?

This is a very significant issue and it is strange that the Ralph review did not make any comment regarding the likely impact on ESOP's or even consider possible changes to Division 13A. - Broadly, the RBT recommendations which may have an impact on ESOP fall into three categories.

- entity ownership requirements
- changes to the CGT rules
- FBT rules

Entity ownership requirements

The current and proposed RBT taxation rules are sprinkled with tests regarding levels of ownership of entities. These tests determine a wide range of qualifications/disqualification for particular treatment including:

- loss carry forward and use
- control tests (eg. CFC/FIF)
- scrip for scrip rollover rules
- consolidation rules

The simplest way to eliminate the problems which "counting the employee ownership" poses would be to eliminate entirely the employee ownership from the body of shares/units/interests to be tested. However, a question arises as to what is "an employee share"? - Generally, this should be defined as a share acquired as a consequence of an offer arising from services provided to the employer but which ("shares") are currently subject to some restriction (including restrictions arising from a liability attaching to the purchase of the share). All options that are not "Exchange tradeable" should be likewise ignored.

For example, the requirement for a scrip for scrip rollover (recent CGT changes) that the offer result in the acquisition of 80% of the voting shares should exclude employee shares from the denominator and numerator.

Changes to the CGT Rules

The recent RBT inspired changes to the CGT rules will make participation in an Employee Share or Option Plan relatively less attractive than other forms of investment not tied to the employer. The reason for this is that the reduced rate of capital gains tax can only be achieved if the asset has been held for at least one year. For shares arising from the exercise of options this will very rarely be the case and for shares held as part of a share purchase plan there may be circumstances where, beyond the control of the employee, an early disposal is forced. The outcome is complicated by the fact that Division 13A subjects amounts which should have been subject to capital gains tax to ordinary income tax. When this aspect of the application of Division 13A is considered and understood, participants will be even more inclined (than they are now) to avoid the application of Division 13A and attract the application of capital gains tax. This is likely to lead to other investments being preferred to ESOPS.

As a matter of policy, the only portion of the gain realised by a participant in an ESOP which should be subject to ordinary income is the "discount" evident in the participation at the time the offer of participation is made. Arguably, such a discount is compensation for past services and should be taxed as ordinary income. However, gains arising during participation in the plan (ie. from the growth in value of the shares or options) should only be subject to capital gains tax. There is a complication regarding option participation which needs to be resolved. The benefit of the 50% reduction in CGT rates only arises if the asset has been held for at least 12 months (see above). Usually, shares arising from options are sold within 30 days of the date of exercise of the option in which case the gain would be subject to ordinary income tax. This inappropriate outcome (for participants in ESOP's) could be resolved by deeming the period of ownership of the option (or participation in the plan) to be part of the period of ownership of the resulting share. For participants in share plans, the 12 month holding rule should be waived where a forced sale occurs as a consequence of cessation of employment (it would be unfair to tax the resulting gain as ordinary income if the participant could not control the taxing point).

FBT Rules

Whilst there were no relevant changes to FBT rules arising from the Review of Business Tax, there are some significant issues which require attention:

Possible debt forgiveness

Many share plans (a significant majority?) are underpinned by a loan from the employer. Circumstances occasionally arise where the relevant shares have fallen in value from the date when the loan was made and hardship would result from

any insistence by the employers for recovery. However, if the employer does not insist on recovery of the "shortfall", there should be no FBT applied to the assumed or actual forgiveness of debt.

From a policy standpoint it should be recognised that where the shares have fallen in value, there will have been **no benefit to the employee** from his or her participation in the plan and it is unfair and wrong for FBT to be payable where the employer takes the fair and sensible action of , in effect, forgiving the shortfall between the amount owing and the realisable value of the participation.

No FBT if it is an "employee share scheme"

The FBT rules provide an exemption for any benefit arising from participation in an "employee share scheme" as defined in section 139C of the 1936 Act. Unfortunately, if the ESOP does not provide any "discount" (eg where the amount payable by the employee is equal to or greater than the current market value of the share) then the participant is not acquiring a share or right under "an employee share scheme". This outcome is bizarre as it mandates a discount to prevent FBT applying whereas, from a policy standpoint, the desirable form of participation would surely be undiscounted?

Leaving the question of whether there is a benefit to the vagaries of the FBT rules is an invitation to argument which may be very expensive to resolve. The better process would be to make it clear that if the participation arises from either of the circumstances referred to in Sub-sections 139C (1) or (2) (essentially where the taxpayer has rendered services which give rise to the participation) then there is no benefit for FBT purposes and Division 13A and / or the CGT rules will be the only assessing provisions.

Question 7 - Would removing the present cessation requirements and replacing them with a single requirement, that tax is payable on disposal of the asset, assist the development of ESOPs:

- **i) in general?**
- **ii) for non-executive employees?**
- **iii) for unlisted companies?**

See paragraph two under question 3 above. The current cessation time rules discourage long term ownership of shares under an ESOP.

As stated (in the response to question 6 above) the general principle of taxation particularly regarding employment income and capital gains tax is that taxation should only arise on realisation. Accordingly, "cessation" rules should be replaced with a general rule that amounts will only be assessable when the relevant asset (usually shares) has been sold. This change should be made for all three cases (general/non executive employees/unlisted companies) mentioned in this question. However, some debate may

arise regarding the point in time when a "discount" should be taxed. In this regard, the view could be taken that the discount is realised at the time the offer of participation in the ESOP is accepted. Perhaps a more sensible policy would be to tax the discount as ordinary income but defer the assessment until the relevant asset is realised with a "time value of money" uplift on the discount portion to compensate the revenue for the delay in assessment.

It is considered that the removal of the cessation time rules coupled with a general rule that tax will only be assessed on realisation of the relevant asset will greatly assist in providing certainty of the application of taxation rules for participants in ESOPs.

Question 8 - Do you have any specific suggestions that could further reduce the abuse of ESOPs by those who wish to use them to artificially reduce tax?

This question may assume there is some common purpose between those who design and implement ESOPs and those who participate in ESOPs. This is very seldom the case and would be more likely to arise by way of accident than by design (eg. A decision maker also becoming a participant). What needs to be recognised is that the so called abuse of ESOPs is probably driven more by the fact that Division 13A contains errors and unintended consequences (which have remained uncorrected for more than four years) the existence of which has inspired plan designers to devise methods of avoiding Division 13A or reducing its impact. It should also be recognised that some of the rulings issued by the ATO would appear to be wrongly conceived but resulted in a proliferation of some plans which may be described as abusive.

I suggest Division 13A be thoroughly reviewed and overhauled particularly its reflection of the ill-based concept that taxation can arise before realisation. I would be further inclined to focus the benefits for "appropriate behaviour" on the employers rather than the employees particularly having regard to the fact that qualification for the benefits, under current rules, depends more on the behaviour of the employer than the employee.

Question 9 - To what extent should an ESOP be permitted to use equities other than ordinary shares or rights to ordinary shares?

AND

Question 10 - Should a distinction be made here between unlisted and/or small companies, "sunrise" companies, and listed companies in respect of the use of equities other than ordinary shares or rights to ordinary shares?

Where the shares are not "ordinary shares" but are widely held or easily tradeable or listed (eg. Listed preference shares or preferred ordinary shares) they should be accepted as providing a basis for "qualifying participation".

There is a "subsidiary" question here and that is whether the rules should be changed to enable small or unlisted companies to offer some form of employee participation other

than by way of ordinary shares. For example, non-voting shares which entitle employees to a dividend referable to profits - a "profit participation share" which may not reflect the traditional equity interests of an ordinary share but could inspire employees to a higher level of performance and could be the pre-cursor to an employee buy-out (especially if the rules encourage something akin to the US style ESOP). Clearly the 5% issue would need to be dealt with but I believe there is a need to permit forms of participation other than ordinary shares or options to them.

So my response is in two parts:

- For listed companies - any interests which are widely held or easily tradeable should be accepted as "qualifying
- For unlisted or small companies (less than say, $5M market capitalisation), any form of profit or equity participation should be accepted as qualifying.

Question 11 - Should a distinction be made between schemes open to general employees and those open only to executives, in respect of using equities other than ordinary shares, or rights to ordinary shares?

No. I don't think there is any line to be drawn between "executive" and "general employee" participation in ESOPS. In fact, the Corporations law already puts significant constraints on the involvement of "officers" of the company in its equity and drawing any further lines in the sand for tax purposes is akin to defining the "quality" of people. It should also be noted that many schemes which are "open" only to "executives" would not be attractive to the majority of "general employees" because they often contain "hurdle" conditions and they usually require a level of understanding of the employer's standing in the sharemarket which would be unlikely to be found in those "general employees". Without that knowledge, the participation might not be optimised. The situation is different for share plans because all that is required to maximise participation is a "sell" decision.

Question 12 - To what extent, if any, and on what basis should a qualified ESOP scheme be permitted to purchase shares or options in companies other than the employer company? Should a distinction be made here between unlisted and/or small companies, "sunrise" companies, and listed companies?

Whilst the Division 13A issues in this regard were designed to prevent an "abuse", there will be cases where the key initiative is a form of savings plan in which case there should not be a mandate for participation in the employer's equity or profits. However, such a (savings) plan must in my view be based on publicly traded equities or bonds and should not involve any "wrap-around" cash flow. I think there is a case to be made for ESOP treatment being extended to employer sponsored savings plans especially if participation is offered to a high percentage of employees. This vehicle to carry the participation may need to be a form of CIV which is not taxed provided all its income is distributed. The peculiarity which will need to be addressed is the fact that each participant will have, in

effect, an allocated fund which would behave like a “bare trust”. This theme needs to be developed.

Question 13 - What would be the effect of replacing the present taxation arrangements with a single rate, payable at disposal of the share or option, at:

- **i) the marginal income tax rate?**
- **ii) the capital gains tax rate suggested in the Ralph report?**

This question brings us back to some fundamental questions largely addressed in my response to question 6 (Ralph Review) above. The fundamental policy issue is “taxation without realisation”.

Taxation of participation in ESOPS needs to be sensibly divided between ordinary income treatment and CGT treatment. As stated above, in my view, ordinary income treatment should apply only to the “discount” value evident at the time of the offer of participation and all subsequent benefits from participation should be taxed under CGT rules with the 12 month holding period running from the date of acceptance of the offer to the employee.

Whilst it is clearly desirable that both the ordinary income and the CGT amounts are only taxed when the participation is complete (CGT when the relevant asset is disposed of) there is an argument the “discounts” are compensation for past services and should be taxed when “received”. The problem here is that grant of participation in an ESOP does not provide cash-flow to the employee and so it is “unfair” to tax them at that time. Perhaps an election to be taxed then (at grant date on the then evident amount) or later on a larger sum determined by the Commonwealth bond interest over the period of deferral would be more appropriate.

It should be noted that Ralph did not result in a lower “rate” of CGT - rather, the amount subject to CGT is reduced if the asset is a CGT asset and is held for at least 12 months. These new requirements do not align with ESOP participation and the effective rate reduction will only be realised if the period of participation in the plan is recognised in the required holding period.

Question 14 - Present legislative arrangements may present difficulties to overseas employers attempting to establish ESOPs for their Australian employees and that for Australian companies wishing to establish ESOPs for their foreign employees.

- **i) What particular difficulties do you see?**
- **ii) How can they be remedied?**

It needs to be recognised that plans devised and approved in other countries will have some provisions which do not clearly align with our tax and other regulatory rules. This is the case for a very wide range of source countries including both the United States (where the genesis of most of “our” plans is found) and the UK. Those two countries represent a very significant portion of inwards investment and therefore employment in Australia. The critical issue here, especially for US based plans, is that they cannot be amended, just to align with Australian rules as such action is potentially discriminatory

and if so, not permitted in that country. In any event, the process of making amendments to well established plans just to enable them to fit within the rules of another country would be extraordinarily difficult for a Board of Directors to propose to shareholders unless the number of Australian employees or their importance in the overall wealth of the company justified the effort.

Accordingly, we are increasingly seeing plans which are a “near miss” on the Australian tax rules and it seems that some tolerance to this fact needs to be developed. This is not the place to go into chapter and verse on the likely differences as I think that is a matter for consultation and an open mind on what really matters. In this regard, I expect the process you are currently engaged in could provide a fresh look at the essential policy issues and when that has settled, perhaps some of the differences in offshore based plans will not be intolerably significant.

There is also the question of whether or when a participant should be subject to Australian tax where the services which gave rise to the participation were rendered outside Australia or the participant is not a resident of Australia. In this regard, it can be observed that Division 13A does not contain any source rules any may have much wider application than is sensible from a jurisdictional standpoint. To some extent, this issue would be resolved by a division of the “benefit” into the “compensation” element (ie: the discount evident at date of grant) and the “gain” element (ie: the growth in value over the period of participation). Such a division would look at the residency at the time of grant and the source of the “discount” and at the period of residency in Australia as the relevant “gain” period where realisation occurs during Australian residency. Generally, the CGT rules regarding assets with the “necessary connection” with Australia could guide the taxation of gain rules.