

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

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1 June 2010

Question: **BET 405**

Topic: **Employee Share Schemes (ATO)**

Hansard Page: **Written**

Senator EGGLESTON asked:

1. What has been the upshot of changes to employee share schemes?
2. Can the Minister update the Senate as to the dispute talks between the private equity industry and the ATO?

Answer:

1. The Treasurer announced in the 2009 Budget that the Government would make changes to the taxation treatment of employee share schemes to better target eligibility for the employee share scheme tax concessions and reduce opportunities for tax avoidance. These changes received Royal Assent on 14 December 2009 and took effect from 1 July 2009. These laws apply to shares, stapled securities and rights to acquire them (including options), that have been provided at a discount, under an employee share scheme.

Under the past law, individual taxpayers, subject to certain conditions, were able to choose to defer paying tax on employee share scheme income. Under the new law, the rules and structure of the employee share scheme determine when an individual taxpayer pays tax on their employee share scheme income.

From 1 July 2009 there are four different types of employee share schemes that can be offered by employers:

- Taxed-upfront scheme: the default position
- Taxed-upfront scheme: eligible for \$1,000 reduction
- Tax-deferred scheme: salary sacrifice
- Tax-deferred scheme: real risk of forfeiture

Generally, any discount to the market value of employee share scheme interests in shares or rights provided under an employee share scheme is taxed upfront (that is, on acquisition). That means that the market value of the discount must be included in an employee's assessable income for that income year.

A \$1,000 tax exemption is available to taxpayers participating in an employee share scheme who pay tax upfront, if they have a taxable income (after adjustments) of \$180,000 or less, and the employee and the scheme meet certain conditions.

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The other conditions for the upfront concession are:

- the employee must be employed by the company offering the scheme, or one of its subsidiaries;
- the scheme must be offered in a non-discriminatory way to at least 75 per cent of Australian resident permanent employees with three or more years service;
- the shares or rights provided must not be at real risk of forfeiture;
- the employee share scheme interests offered under the scheme must relate to ordinary shares;
- the shares or rights must be required to be held by the employee for three years or until the employee ceases employment; and
- the employee must not receive more than 5 per cent ownership of the company, or control more than 5 per cent of the voting rights in the company, as a result of participating in the scheme.

The new law requires employers who provide employee share scheme interests to annually report certain information to the Commissioner of Taxation, to enable the Commissioner to ensure that the employee share scheme tax law is being complied with. Additionally, employers are required to provide employees who participate in an employee share scheme with an annual statement. Employees use the information on this statement to help them complete their income tax return.

The ATO has conducted wide consultation during the implementation.

2. Following the release in December 2009 of Draft Tax Determinations TD 2009/D17 (*Income tax: treaty shopping, can Part IVA of the Income Tax Assessment Act 1936 apply to arrangements designed to alter the intended effect of Australia's International Tax Agreements network?*) and 2009/D18 (*Income tax: can a private equity entity make an income gain from the disposal of the target assets it has acquired?*), consultation on the Draft Tax Determinations included a meeting in February 2010 between the ATO and bodies representing the tax profession and the Australian Venture Capital Association (AVCAL). Written submissions were received from each of the tax professional bodies and AVCAL and are currently under consideration by the ATO.

The ATO will continue to meet with both private equity and representatives of the tax profession with a view to finalising its view.