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## Reforms to the Taxation of Employee Share Schemes

The Government first announced reforms to the employee share scheme tax concessions in the 2009 Budget. The reforms aim to better target eligibility to low and middle income earners, and to reduce the scope for tax evasion.

After responding to concerns and following consultation with the public, the legislation containing modified reforms has now passed through Parliament.

The reforms affect an interest under an employee share scheme (ESS) such as a share or a right in a share, acquired from 1 July 2009. The key changes to the taxation of a share or right under an employee share schemes, now known as an ESS interest, are as follows:

- Whether the discount on the market value of an ESS interest is taxed 'up-front' (on acquisition) or is instead deferred, will now depend on the structure of the scheme rather than by an election of the employee. The employer will need to advise the employee and the ATO of the tax arrangements applying, based on the structure of the scheme.
- Where employees under a scheme are subject to up-front taxation, there is a \$1,000 tax concession available provided certain conditions are met. The conditions for the concession are stricter than those previously in place and include the requirement that the employee's taxable income (after adjustments) be less than \$180,000.
- The deferred tax rules apply where:
  - the ESS interest which relate to ordinary shares, are acquired at a discount and are subject to a real risk of forfeiture, or
  - the ESS interest which relate to shares (not rights to shares), are acquired for no consideration under a 'salary sacrifice arrangement' and do not exceed \$5,000 per financial year.
- Under the deferred tax rules, the taxing point can generally be deferred until the earlier of when:
  - there is no real risk that the employee will forfeit the share or right, or lose the share or right other than by disposing or exercising of it; and there are no genuine restrictions preventing disposal or exercising; or
  - when the employee ceases the employment in respect of which they acquired the share or right; or
  - seven years after the employee acquired the share or right.

We recommend that clients seek qualified tax advice regarding the taxation of their ESS interest.

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