

6 February 2015

General Manager
Law Design Practice
The Treasury
Langton Crescent
PARKES ACT 2600

Email: taxlawdesign@treasury.gov.au

Dear Sir/Madam,

Exposure Draft: *Tax and Superannuation Laws Amendment (2015 Measures No. 1) Bill 2015*

The Australian Institute of Company Directors (AICD) welcomes the opportunity to comment on the Exposure Draft, "*Tax and Superannuation Laws Amendment (2015 Measures No. 1) Bill 2015: improvements to taxation of employee share schemes*" released on 14 January 2015 (Exposure Draft).

AICD is the nation's leading organisation for directors, dedicated to making a positive impact on society and the economy by promoting professional director education and excellence in corporate governance. We have a significant and diverse membership of more than 35,000 from across a wide range of industries, commerce, government, the professions, private and not-for-profit sectors.

Generally speaking, we strongly support the changes proposed to the taxation laws that apply to employee share schemes.

In particular, we commend the proposed repeal of some of the changes introduced in 2009 to the tax deferral arrangements for rights and options granted to employees under employee share schemes. As noted in our previous submissions to the then Government in relation to those changes¹, it was our view that they significantly compromised the commercial value of employee options and did not promote ongoing share ownership by employees and directors.

We also commend the introduction of tax concessions for grants of shares and options granted to employees of start-up companies (which should also be available to the non-executive directors of such companies where shares or options are granted in lieu of director fees).

However, we believe that the tax treatment of employee share schemes could be further improved by incorporating the following changes into the final legislation.

Removal of cessation of employment as a taxation trigger

The Exposure Draft does not address the triggering of tax liability in respect of unvested or restricted securities under an employee share scheme on cessation of employment. As noted in our submissions on the 2009 amendments², we believe that there is a good case for encouraging (or, at the very least, not deterring) the holding of securities by

¹ These were our submission to the then Assistant Treasurer, Nick Sherry dated 16 June 2009, submission to the Senate Economics Legislation Committee dated 16 July 2009, and submission to the Treasury dated 31 August 2009.

² See above.

employees that were issued under an employee share scheme beyond cessation of employment. Indeed, these taxation provisions work against industry-led initiatives to defer performance-based remuneration for extended periods, as well as the remuneration guidelines that apply to APRA-regulated entities and calls from various investor groups.

Accordingly, we strongly suggest that the taxation legislation be further amended to provide for the taxing point for securities issued under an employee share scheme to be when they vest (or, in the case of options, are exercised) and are no longer subject to restrictions in all cases and not be triggered by an employee's cessation of employment. We note that this was also the recommendation of the Productivity Commission in its report, "Executive Remuneration in Australia".³

Loosening the conditions for start-up companies

While we are generally supportive of the introduction of tax concessions for grants of shares and options granted to employees of start-up companies, the conditions set out in the Exposure Draft to be eligible to receive the concession are, in our view, overly restrictive.

For example, by requiring that grants be offered to at least 75% of the company's employees and that the securities must not vest earlier than 3 years, start-up companies will be constrained in how they are able to design remuneration arrangements for their directors and employees if they wish to take advantage of the tax concession. We do not see that there is sound reasoning behind constraining the employee share schemes offered by start-up companies in this way. In order to be of greater benefit to start-ups, more flexibility in relation to how they design their employee share schemes should be provided by loosening of these conditions.

We also question whether it is necessary to restrict the tax concession to only being available to start-up companies that are unlisted. This may also unnecessarily limit the usefulness of this change to genuine start-up companies who would otherwise meet the conditions set out in the Exposure Draft.

We hope that our comments will be of assistance to Treasury. Please do not hesitate to contact Senior Policy Advisor, Gemma Morgan on (02) 8248 2724 if you would like to discuss.

Yours sincerely



Rob Elliott
General Manager
Policy & Advocacy

³ See Recommendation 13 of Productivity Commission Inquiry Report, "Executive Remuneration in Australia" (19 December 2010)