

DETAILS OF FURTHER INDUSTRY CONSULTATIONS ON EMPLOYEE SHARE SCHEMES TAX REFORMS

The Assistant Treasurer, Senator Nick Sherry, has today released the timeframes for the final round of industry consultations on reforms to the taxation of employee share schemes, including releasing the Terms of Reference for the Board of Taxation review component.

"As I said when I released the final policy statement, I want to continue to fully engage the industry on the remaining issues, being technical matters relating to the draft legislation, and the two substantive issues to go before the Board of Taxation," said the Assistant Treasurer.

As set out in the final Policy Statement of 1 July 2009, the Government will undertake a three-stage consultation process.

The three stages are:

- a two-week consultation period on a draft Exposure Bill beginning in August;
- a Board of Taxation consultation on technical issues to report to the Assistant Treasurer within approximately one month of the release of the draft Exposure Bill; and
- a comprehensive Board of Taxation review on two further substantive issues to report to the Assistant Treasurer by 28 February, 2010.

Following the first two stages of this consultation process, it is envisaged legislation based on the policy statement will be introduced into Parliament in the Spring sittings.

The Assistant Treasurer has also today released the Terms of Reference for the Board of Taxation's review, being the third stage of the consultation process. The issues before the Board are:

- how to best determine the market value of employee share scheme benefits; and
- whether shares and rights under an employee share scheme at a start-up, R&D or speculative focused company should have separate tax deferral arrangements.

The full Terms of Reference of the review are attached.

"These are important tax reforms designed to ensure the integrity, equity and fairness of the tax system but maintain and encourage the use of employee share schemes," the Assistant Treasurer said.

"We've listened to and acted on concerns raised over the original measure following an earlier stage of consultations."

"I am pleased with industry's response to the Policy Statement. My door is always open and I look forward to working with all concerned over the coming months."

CANBERRA
24 July 2009

TERMS OF REFERENCE REVIEWS INTO ELEMENTS OF THE TAXATION OF EMPLOYEE SHARE SCHEME ARRANGEMENTS

Background

Two issues remained unresolved by the 1 July Policy Statement - how best to determine the market value of employee share scheme benefits and whether employees of start-up, research and development and speculative-type companies should benefit from a tax deferral arrangement despite not being subject to a real risk of forfeiture.

Market valuation of employee share scheme benefits

The Government has announced that the general principles of market value will apply in determining the market value of listed and unlisted securities. It also announced scope for regulations to be made to provide for a 'rule-of-thumb', where necessary, and, as an interim measure, for the existing valuation rules for unlisted rights will be replicated in the regulations. The issues were outlined in the Consultation Paper issued in June 2009.

Start-up, research and development and speculative-type companies

The Government received a number of submissions that raised concerns that the proposed changes would disproportionately affect start-up, research and development and speculative-type companies because they have limited capital and cash flows, and rely on employee share schemes to attract skilled labour.

Scope of the review

The Board of Taxation is requested to examine:

- a. how best to determine the market value of employee share scheme securities; and
- b. whether shares and rights under an employee share scheme that are provided by start-up, research and development and speculative-type companies should be subject to separate tax deferral arrangements outside of those proposed by the Policy Statement.

In undertaking the review, the Board is to consider:

- whether the existing rules for valuing unlisted rights to acquire shares properly reflect market value;
- whether special rules are appropriate or necessary to determine the market value of employee share scheme shares and rights (listed and unlisted);
- whether there are suitable alternative mechanisms for determining market value;
- whether it is appropriate or necessary to provide separate deferral arrangements for employees of start-up, research and development and speculative-type companies receiving shares or rights under employee share schemes; and
- possible options to provide assistance to start-up, research and development and speculative-type companies.

In conducting the review, the Board is to:

- have regard to the Government's taxation review headed by Dr Ken Henry;
- seek public submissions and consult widely (including with representatives of the previous Consultative Group); and

- produce a final report by 28 February 2010.