



BUSINESS COUNCIL
OF CO-OPERATIVES AND MUTUALS

Submission in response to the Treasury consultation paper on
Employee Share Schemes

April 2019

The Business Council of Co-operatives and Mutuals (BCCM) welcomes the opportunity to make a submission to the Treasury's consultation about Employee Share Schemes. The BCCM supports any regulatory change that simplifies and encourages incentivising employees through the sharing of business success under provisions that ensure appropriate disclosure.

As the national peak body representing co-operative and mutual enterprises (CMEs), BCCM's submission focusses on the availability of Employee Share Schemes for these organisations and their attendant tax treatment.

The CME sector comprises both

- mutual companies registered under the *Corporations Act*, and
- co-operatives registered under the *Co-operatives National Law (CNL)*, the uniform scheme of State and Territory laws.

Mutual companies do not issue ordinary shares in the manner of other companies. Each member holds a single 'member share' that is not capable of being traded and has no capital gain. Recent changes to the *Corporations Act* by the *Treasury Laws Amendment (Mutual Reforms) Act 2019* have introduced new securities for these entities called Mutual Capital Instruments. These securities can be issued without risk to the mutual nature of the company and represent an investment opportunity that is similar to shares for employees under an ESS.

The offer of co-operatives shares is governed principally by the State and Territory CNL. Like member shares in mutual companies, co-operative shares have no capital gain. However, since 2014, co-operatives have been permitted to offer other securities called Co-operative Capital Units (CCUs). These securities can be structured in a similar way to ordinary shares without compromising the co-operative ownership principles of a co-operative. CCUs can be listed securities and, like Mutual Capital Instruments, present a form of security that is suitable for offer under an ESS.

The offer of CCUs by co-operatives is governed principally by the CNL except when those offers are made outside the co-operative's state of registration, in which case, Chapter 6D of the *Corporations Act* applies.

Employee share scheme offers and the attendant tax concessions for employees currently only apply to *fully paid voting ordinary shares, units in or options over fully paid voting ordinary shares*.

Co-operatives and mutuals are limited liability corporations. They are owned by and exist to benefit their members, who are drawn from the stakeholders of the business (the customers, suppliers or employees). They carry on business nationally and compete in the same markets as other corporations. Co-operatives and mutuals not only make a significant contribution to GDP, they are direct employers of more than 50,000 people. Many regional co-operatives are the largest employers in their region.

Employee Share Schemes, have potential to deliver business growth, particularly for start-ups, and increase employee well-being and retention. Co-operative and mutual enterprises should be treated even-handedly in respect of the regulatory regime that impacts them particularly where the regulatory regime is designed to promote business growth.

Recommendations

Broadly, the BCCM takes the position that CMEs and their employees should have access to the same benefits and incentives as all other corporations. To achieve regulatory equity it is necessary to expand the availability of any ESS as follows:

1. The categories of securities capable of offer under an ESS should be expanded to include Mutual Capital Instruments for mutual companies and Co-operative Capital Units by co-operatives where such offers are impacted by Chapter 6D of the *Corporations Act*.
2. Tax incentives for employees wishing to take up an offer, including where the offer is under a contribution scheme, should equally apply to employees taking up offers of Mutual Capital Instruments or Co-operative Capital Units.

The BCCM would like to meet with Treasury to discuss these matters further, particularly recommendation 2.

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About the BCCM

Formed in 2013 following the United Nations International Year of Co-operatives, the Business Council of Co-operatives and Mutuals (BCCM) is the peak body for Australian co-operatives, mutuals and member-owned enterprises. The BCCM represents a diverse range of enterprises operating in sectors including agriculture, finance and banking, insurance, motoring services, health services, aged care, disability employment, education, indigenous services, social housing and retail.

The BCCM advocates for recognition of the sector and for measures that create a level playing field between co-operatives and other businesses, including implementation of the recommendations of the Senate Economics References Committee report into Cooperative, mutual and member-owned firms, and implementation of the Hammond Review recommendations to improve access to capital for CMEs. The Hammond Review recommendations were implemented in April 2019, with the passing of the Treasury Laws Amendment (Mutual Reforms) Act 2019.