



Australian Government

Australian Government response to the
House Committee on Tax and Revenue report:

Owning a Share of Your Work: Tax Treatment of
Employee Share Schemes

May 2024

Response to the recommendations

Recommendation 1

The Committee recommends that the Australian Taxation Office obtains and publishes up-to-date data on Employee Share Scheme use.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 2

The Committee recommends that the Australian Taxation Office establish a public awareness program to inform current and potential business owners of the existence and benefits of Employee Share Schemes, and where and how to access the available resources.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 3

The Committee considers any changes to legislation resulting from this inquiry and the 2019 Treasury consultation referred to in Chapter 4 of this report should be reviewed by the Productivity Commission five years after the date of commencement of the changes.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 4

The Committee recommends that the Productivity Commission investigate how the use of employee ownership trusts can be facilitated and encouraged.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 5

The Committee recommends that the Productivity Commission explore the structure of Employee Share Schemes and their related taxation treatment in xviii other countries, and how this could be adapted to the Australian taxation system to support productivity and innovation.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 6

The Committee recommends that the following changes be made to the definition of a ‘start-up’ for tax concession purposes: The definition be extended to listed companies that otherwise fulfil the criteria to be considered a ‘start-up’. The aggregated turnover test be removed to relate to wholly owned groups or entities that can be shown to be controlled by the entity as per the definitions of control under the Corporations Act 2001.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 7

The Committee recommends that the definition of ‘safe harbour’ valuation contained in Legislative Instrument – Income Tax Assessment (ESS 2015/1) be extended to all unlisted companies.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 8

The Committee recommends increasing the \$1,000 limit in section 83A.35(2)(a) of the Income Tax Assessment Act 1997 to \$50,000.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 9

The Committee recommends that the Government remove the taxation point on the cessation of employment by removing sections 83A-115(5) and 83A120(5) of the Income Tax Assessment Act 1997.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 10

The Committee recommends that the Government proceed with the proposals announced on 13 November 2018 and discussed in the Treasury Employee Share Schemes Consultation Paper dated April 2019.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 11

The Committee recommends that the requirement for a maximum 15 per cent discount under the Income Tax Assessment Act 1997 start-up regime be scrapped.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 12

The Committee recommends that the Australian Taxation Office simplify its documentation to no more than two pages, and make recommendations to the Government of any legislative changes that could further simplify this process. The Committee recommends that the Australian Taxation Office establish a one stop shop approach to ESS, including documentation, processes and Australian Securities and Investments Commission reliefs to enable start-ups in particular to find all they need in one place, combined with a help line to answer any questions specific to their circumstances.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 13

The Committee recommends that the Australian Taxation Office re-instate the option for lodgement of the ESS annual report in a spreadsheet format.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 14

The Committee recommends that a 'safe-harbour' methodology be introduced for ESS buy-backs for the purposes of determining the dividend / capital split and administrative treatment be allowed when no part of the purchase price paid under an ESS buy-back is deemed to be capital.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 15

The Committee recommends that the Australian Taxation Office (ATO) clarify whether sections 109F(4) and 245-35(a) of the Income Tax Assessment Act 1997 and ATO Interpretive Decision Fringe Benefits Tax (2003/317) mean that Fringe Benefits Tax is not in fact payable for discharged ESS loans.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 16

The Committee recommends that the Australian Taxation Office include in its examples of 'merely incidental' activities in Taxation Determination Income tax: what is an 'employee share trust' (2019/13), actions that are taken in common corporate transactions such as rights issues, demergers and other capital raising transactions.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 17

The Committee recommends removing the real risk of forfeiture requirement for shares and removing the 75 per cent offer requirement for shares.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 18

The Committee recommends that the Australian Taxation Office expand its model documents to include documents similar to those produced by the United Kingdom Department for Business Innovation and Skills.

Australian Government response

The Government **notes** this recommendation. However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.
