

# **EXPLANATORY STATEMENT**

## **Issued by authority of the Treasurer**

*Income Tax Assessment Act 1997*

*Income Tax Assessment Regulations 1997*

Section 909-1 of the *Income Tax Assessment Act 1997* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Income Tax Assessment Amendment (Employee Share Schemes) Regulation 2015* (Regulation) amends the *Income Tax Assessment Regulations 1997* (ITAR 1997) as detailed below.

### **Purpose**

The purpose of the Regulation is to amend the existing employee share scheme taxing rules to improve the international competitiveness and productivity of Australian companies, to assist companies to attract and retain staff, to encourage start-up companies to be established in Australia, to assist start-up companies to succeed, and to encourage further innovation in Australia.

### **Context**

An employee share scheme (ESS) is a scheme under which shares, stapled securities or rights to acquire them (ESS interests) in a company are provided to an employee or their associate in relation to the employee's employment.

Some companies encourage employees to participate in employee share schemes by offering employees shares, stapled securities, or ESS interests (including options) at a discount. ESS income tax rules apply to this discount.

The tax law contains specific rules about how tax applies to ESS interests. These rules apply to shares, stapled securities and rights to acquire them (including options), that have been provided to employees at a discount under an ESS.

From 1 July 2009, there are different types of ESS that can be offered to employees. For ESS interests acquired after 30 June 2009, the ESS tax rules contained in Division 83A of the Act apply.

If ESS interests have not been granted at a discount, the benefits given to employees may be taxed under other provisions of the tax law, such as capital gains tax.

Market value is generally used to determine the value of any ESS interest and any discount provided on its issue to an employee. However, valuation of ESS options can instead be determined by reference to rules set out in regulations. Division 83A of the ITAR 1997 sets out alternate rules and valuation tables that can be used to determine the value of an ESS right. Use of these regulations by a taxpayer is voluntary, and taxpayers may instead choose to calculate market value using general principles.

## **Application**

This regulation replaces the tables set out in subregulations 83A-315.08(1) and 83A-315.08(1) of the ITAR 1997 to reflect current market conditions. The full tables are set out in the Attachment.

In a report produced in 2009-2010, the Board of Taxation recommended that the Government should include the assumptions used to update the tables. The assumptions underlying the tables are set out in the Attachment.

This measure is part of the Government's Industry Innovation and Competitiveness Agenda.

## **Conditions**

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation commences on the day after registration.

The amendments will apply to ESS interests acquired on or after 1 July 2015.

## **Consultation**

Insert after public consultation

EXPOSURE DRAFT

**Details of the *Income Tax Assessment Amendment (Employee Share Schemes) Regulation 2015***

**Regulation 1 – Name of Regulation**

This regulation provides that the title of the Regulation is *Income Tax Assessment Amendment (Employee Share Schemes) Regulation 2015* (the amending Regulation).

**Regulation 2 – Commencement**

The amending Regulation provides that the Regulation commences on the day after registration.

**Regulation 3 – Authority**

The amending Regulation provides that the Regulation is made under the *Income Tax Assessment Act 1997*.

**Schedule 1: Amendments**

The Regulation replaces the tables set out in subregulations 83A 315.08(1) and 83A 315.09(1) of the *Income Tax Assessment Regulation 1997* (ITAR 1997).

Specifically, the purpose of the amending Regulation is to amend the existing employee share scheme (ESS) taxing rules by updating the safe harbour option valuation tables to reflect current market conditions.

***Assumptions behind the valuation tables:***

The Board of Taxation recommended in a report produced in 2009-2010 that when updating the tables, the Government should include the assumptions used to produce the tables. The assumptions used are:

- Risk-free interest rate – 4%
- Dividend yield – 4%
- Volatility – 12%

***New valuation tables***

To reflect current market conditions, the tables set out in subregulations 83A-315.08(1) and 83A-315.09(1) are to be replaced with the following tables:

**TABLE 1**

Exercise period (months)	Calculation percentage							
	50% to 60%	60% to 70%	70% to 75%	75% to 80%	80% to 85%	85% to 90%	90% to 92.5%	92.5% to 95%
108 to 120	0.2%	0.7%	1.8%	2.6%	3.7%	4.9%	6.4%	7.2%
96 to 108	0.1%	0.6%	1.6%	2.4%	3.4%	4.6%	6.1%	7.0%
84 to 96	0.1%	0.4%	1.3%	2.1%	3.0%	4.3%	5.8%	6.6%

Exercise period (months)	Calculation percentage							
	50% to 60%	60% to 70%	70% to 75%	75% to 80%	80% to 85%	85% to 90%	90% to 92.5%	92.5% to 95%
72 to 84	0.1%	0.3%	1.1%	1.7%	2.7%	3.9%	5.4%	6.2%
60 to 72	0.0%	0.2%	0.8%	1.4%	2.2%	3.4%	4.9%	5.7%
48 to 60	0.0%	0.1%	0.5%	1.0%	1.7%	2.8%	4.2%	5.1%
36 to 48	0.0%	0.0%	0.3%	0.6%	1.2%	2.1%	3.4%	4.2%
24 to 36	0.0%	0.0%	0.1%	0.3%	0.6%	1.3%	2.4%	3.2%
18 to 24	0.0%	0.0%	0.0%	0.1%	0.3%	0.9%	1.8%	2.5%
12 to 18	0.0%	0.0%	0.0%	0.0%	0.1%	0.4%	1.1%	1.7%
9 to 12	0.0%	0.0%	0.0%	0.0%	0.1%	0.2%	0.8%	1.3%
6 to 9	0.0%	0.0%	0.0%	0.0%	0.0%	0.1%	0.4%	0.8%
3 to 6	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.1%	0.3%
0 to 3	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%

Exercise period (months)	Calculation percentage					
	95% to 97.5%	97.5% to 100%	100% to 102.5%	102.5% to 105%	105% to 107.5%	107.5% to 110%
108 to 120	8.1%	9.1%	10.0%	11.1%	12.1%	13.3%
96 to 108	7.9%	8.8%	9.8%	10.9%	12.0%	13.2%
84 to 96	7.6%	8.5%	9.6%	10.7%	11.8%	13.0%
72 to 84	7.2%	8.2%	9.2%	10.4%	11.6%	12.8%
60 to 72	6.7%	7.7%	8.8%	9.9%	11.2%	12.5%
48 to 60	6.0%	7.0%	8.2%	9.4%	10.7%	12.1%
36 to 48	5.2%	6.2%	7.4%	8.6%	10.0%	11.4%
24 to 36	4.1%	5.1%	6.3%	7.6%	9.0%	10.5%
18 to 24	3.4%	4.4%	5.5%	6.8%	8.3%	9.9%
12 to 18	2.5%	3.4%	4.6%	6.0%	7.5%	9.2%
9 to 12	2.0%	2.9%	4.0%	5.4%	7.0%	8.8%
6 to 9	1.4%	2.2%	3.3%	4.7%	6.4%	8.3%
3 to 6	0.6%	1.3%	2.4%	3.8%	5.7%	7.8%
0 to 3	0.1%	0.5%	1.4%	3.0%	5.1%	7.5%

**TABLE 2**

<b>Exercise period (months)</b>	<b>Column 1</b>	<b>Column 2</b>
108 to 120	13.3%	0.6%
96 to 108	13.2%	0.6%
84 to 96	13.0%	0.7%
72 to 84	12.8%	0.7%
60 to 72	12.5%	0.7%
48 to 60	12.1%	0.7%
36 to 48	11.4%	0.8%
24 to 36	10.5%	0.8%
18 to 24	9.9%	0.8%
12 to 18	9.2%	0.9%
9 to 12	8.8%	0.9%
6 to 9	8.3%	0.9%
3 to 6	7.8%	0.9%
0 to 3	7.5%	1.0%

EXPOSURE DRAFT