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29 July 2021

# Government releases Exposure Draft Legislation to reform employee share schemes

The Government has today released draft legislation to implement the reforms to regulatory and tax arrangements for employee share schemes (ESS).

The reforms make it easier for businesses to offer ESS and will support Australian businesses to attract and retain the talent they need to compete on the global stage.

The tax reforms, announced in the 2021-22 Budget, will remove the cessation of employment taxing point for the tax-deferred ESS that are available for all companies. Tax will be deferred until the earliest of the remaining taxing points.

Under the regulatory reforms, employers will not have to consider the *Corporations Act 2001* when making ESS offers, provided that they do not charge or lend to employees that they offer these remuneration packages to, and are not otherwise engaged in regulatory avoidance behaviours.

This means they will not unnecessarily incur regulatory costs associated with considering and complying with disclosure, licensing, anti-hawking, advertising, and on-sale obligations.

In addition, the regulatory reforms incorporate feedback previously provided through consultation.

Where employees pay, whether directly, or via a contribution plan or through use of a loan, to participate in an ESS, these reforms:

- increase the value limit of eligible financial products that can be offered by unlisted companies in a 12 month period from \$5,000 per employee to \$30,000 per employee;
- relax the requirements to lodge disclosure documents; and
- consolidate exemptions and class order relief from disclosure, licensing, anti-hawking, advertising and other obligations under the *Corporations Act 2001*.

By removing these regulatory barriers, it will be easier for businesses to attract employees with ESS offers, in addition to wages.

The Exposure Draft Bill and Explanatory Memorandum for this measure is available on the Treasury website (<https://treasury.gov.au/consultation/c2021-138967>). Submissions for both measures will be accepted between 29 July 2021 and 25 August 2021.

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