

4 February 2015

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Dear Treasury

Income Tax Assessment Amendment (Employee Share Schemes) Regulation 2015

Governance Institute of Australia is the only independent professional association with a sole focus on the practice of governance. We provide the best education and support for practising chartered secretaries, governance advisers and risk managers to drive responsible performance in their organisations.

Our members are all involved in governance, corporate administration, risk management and compliance with the Corporations Act 2001 (the Act) with their primary responsibility being the development and implementation of governance and risk management frameworks in public listed and public unlisted companies, private companies, and not-for-profit organisations. Many of our members work in the financial services industry and all have extensive experience of financial markets.

Governance Institute of Australia the welcomes the opportunity to comment on the Draft Regulation, Income Tax Assessment Amendment (Employee Share Schemes) Regulation 2015 and draws upon the experience of our members in formulating our submission.

Support for the Improvements to the Taxation of Employee Share Schemes Regulation

Governance Institute is pleased to see the proposed amendments that seek to reverse and improve some of the changes introduced in 2009 in relation to concessions for eligible start-up companies and the implementation of employee incentive schemes. We strongly support the proposed reforms of the tax rules applying to ESSs, particularly in light of the challenges that face start-up companies, including accessing capital, attracting and retaining skilled employees, managing fast growth and being competitive in the labour market.

Governance Institute is cognisant of the *Industry and Innovation and Competition Agenda* and we welcome the the majority of the proposed legislation as an indication that the government is committed to offering companies a competitive advantage by being able to align employee interests with those of the company, namely the performance of the company's share price. The employee is provided with an opportunity to derive a benefit by realising the value of the share or option at a later time than when initially offered to the employee or executive. In many cases the option being offered to the employee or executive is also discounted, making the potential

gain more profitable in the longer run. Options, therefore, are attractive for companies and employees because they can provide real value and incentive to the employee if the share prices moves upwards over time.

Governance Institute does not, however, support the exclusion of listed companies and the caps placed on start-ups, to the employee share scheme regulation. We question why the scheme does not extend to all companies, particularly given that companies with long-lead times, such as biotech companies, are usually listed.

We support the other improvement set out in the regulation, in relation to the Australian Taxation office working with industry to develop and improve safe harbour valuation methods and standardised documentation that will streamline the process of establishing and maintaining ESS and have no comment to make on this provision.

Moving the taxation point

Governance Institute strongly supports the proposed changes to restore the position that existed pre-2009 to move the taxation point for tax-deferred share options to when the employee exercises the options, even if they are not subject to a risk of forfeiture.

However, Governance Institute does not support the regulations in their entirety. As noted above, we do not support the exclusion of listed companies. Furthermore, we do not support the remaining imposition on employees who leave their group employment and are unable to exercise their rights to sell the shares in order to fund the tax liability.

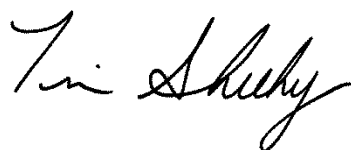
Governance Institute's preference is to support the recommendation made by the Productivity Commission to move the taxation point of share or options schemes to be delayed until the point of realising the value of the share or option **even where** the employee has ceased group employment with the company. This would bring Australia into line with other jurisdictions, including some of our major trading partners, including but not limited to, the United Kingdom and the United States of Australia.

Conclusion

Governance Institute supports the Income Tax Assessment Amendment (Employee Share Schemes) Regulation 2015. Our support is based on our views that the tax laws should now not be an impediment to companies implementing option plans if they choose to. We are of the view that the government should also take the opportunity to remove the rule that exists where the taxation point still arises when an employee leaves their employment and also review the exclusion of listed companies. Where we have not provided a specific comment on a proposal, Treasury may assume that we are in agreement with the proposal and do not have any further significant comment to make about it.

We would welcome the opportunity to meet and elaborate on these issues.

Yours sincerely



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Chief Executive