
In December 2009, the Government made extensive changes to the taxation of employee equity plans. The amending Act provides that the word "rights" can be used to refer to options, performance rights, performance shares or zero exercise price options (ZEPOs). This is a departure from current usage where the word "rights" is used to refer to ZEPOs only. "Rights" in the following description follows the meaning used in the Act.

The main effects of the amendments are set out below. This is a summary only. Egan Associates do not give legal or tax advice.

Fringe benefits tax

The exemption of benefits under employee share plans from fringe benefits tax continues.

Tax applies on acquisition

The default position for tax on benefits is that any discount to the market value of ESS (employee share scheme) benefits of shares or rights under a plan is taxed upfront, (that is, on acquisition). The market value of the discount must be included in the employee's assessable income for that income year. The date of acquisition (the taxing point) is described below.

Tax exempt share plans

A \$1,000 tax exemption is still available to participants who pay tax up front provided they have a taxable income (adjusted) of \$180,000 or less and the employee and the rules of the plan meet certain conditions. The conditions for the concession are broadly:

- the offer must be non-discriminatory and made to 75% of permanent employees with three or more years of service,
- there must be no real risk of forfeiture of the shares, and
- the shares must be held until the earlier of three years or the termination of the employee's employment.

The exemption is not available to employees who will as a result of the grant hold more than 5% of the shares in the company or control more than 5% of the votes.

Salary sacrifice share plans

The present Act allows for a maximum deferral of tax of \$5,000 per annum. The new provisions only apply where there is a discount available under the plan. This will often arise through the granting of a proportion of matching shares without cost. Deferral under these plans continues to require a non-discrimination policy.

Tax deferred plans

(other than salary-sacrifice plans)

The maximum period for deferral of tax has been reduced from ten years to seven years. The conditions for the concession are broadly:

the offer (or offers under another share or rights plan) must be non-discriminatory and made to 75% of permanent employees with 3 or more years of service, and the conditions of the plan must include a real risk of forfeiture of the rights or shares offered under the plan.

Deferral is not available to employees who will as a result of the grant hold more than 5% of the shares in the company or control more than 5% of the votes.

The taxing point

The taxing point for grants under these types of plans is established as follows:

If the benefit is a **share**:
the earliest of when:

- there is no real risk of forfeiture of the share,
- restrictions on disposal or dealing with the share no longer apply,
- the participant's employment with the company has ceased, or
- seven years have elapsed from the date of grant.

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If the benefit is a **right (ie option or right)**:

(if the **right** has not been exercised):the earliest of when

- there is no real risk of forfeiture of the right,
- restrictions on disposal or dealing with the right no longer apply,
- the participant's employment with the company has ceased, or
- seven years have elapsed from the date of grant;

(if the right has been exercised):

the earliest of when

- there is no real risk of forfeiture of the resulting share,
- restrictions on disposal or dealing with the resulting share no longer apply,
- the participant's employment with the company has ceased, or
- seven years have elapsed from the date of grant.

The exemption also applies to a loan plan which complies with the above conditions.