

25th October 2009

Review of Employee Share Schemes
The Board of Taxation
The Treasury
Langton Crescent
Parkes ACT 2600

To whom it may concern

I apologise for the late response of our submission to the elements of the taxation of employee share scheme arrangements. AMEC would be most grateful if you could consider the enclosed comments in the context of the review.

AMEC is a national industry body representing the junior to mid cap size companies that take considerable risk in the context of being an exploration company and in particular in attracting staff. These companies usually have very limited access to capital and do not have the same levels of cash resources to pay salaries at the level offered by many of the larger producers. In order to attract and reward staff they are dependant upon the capacity to provide shares through incentive schemes.

AMEC suggests that the Board consider the introduction of a two tier system where the proposed changes to the employee share scheme apply only to those companies that have a market capitalization greater than say, \$100m.

AMEC members recommend that the previous rules that applied to the employee share arrangements are maintained. Should this not be the case then the following comments are provided in response to the two questions put by the Board.

Point 1: Market Value

AMEC is of the view that the current method of calculating market value should not be changed to increase the market value of the benefits.

Employees should be provided the choice of being able pay tax at the time of the benefit being granted or at the time they are exercised. This will allow for the management of the employees capacity to pay through a better managed cash flow.

Point 2: Deferral Arrangements

The Government should be commended to moving the taxing point for options *from* the time the taxpayer will no longer have a real risk of losing the option *to* the time when there is no longer a real risk of the taxpayer losing the option *and* there are no restrictions preventing the taxpayer from either disposing of the option, or exercising the option. This is interpreted to mean deferral can occur until the interest is vested. Up to that time, there are restrictions which operate to prevent the taxpayer from disposing or exercising the option.

The proposed deferral of tax for salary sacrifice arrangements up to \$5,000, should be changed to \$10,000. The \$5,000 is too restrictive and companies may consider that with the additional administration being proposed a \$5,000 salary sacrifice arrangement is not worth the effort.

Refunds

There are two primary issues in relation to refunds.

Firstly, AMEC believes that the rules contained in section 139DD of the *Income Tax Assessment Act 1936* should be maintained. That is, broadly where a taxpayer loses the right to acquire a share without having exercised it, and the company was at the time the right was acquired, the employer of the taxpayer or a holding company of the employer of the taxpayer, and then the right to acquire a share is considered never to have been acquired by the taxpayer.

AMEC notes that the Government's proposed refund rules are not intended to protect an employee from downside market risk and that a refund is not proposed to be available where the share interest is forfeited only because the value of the securities has fallen due to market losses.

AMEC considers this to be harsh and unconscionable. In broad terms, on the grant of the rights the employee will be obliged to include the value of the discount as a *revenue* amount. In the event that market conditions are such that the employee never realizes any value it is AMEC's view that a full refund should be granted. It is considered inappropriate to only allow the employee a capital loss in these circumstances and a refund on revenue account should be allowed.

Secondly, AMEC considers that the refund rules should be clarified to extent to the circumstances where the employee has appropriately nominated an associate to acquire the rights to shares and the associate does not exercise the right to realize the value of rights to acquire shares.

Unlisted Shares

AMEC welcomes the changes proposed for unlisted shares whereby a company auditor is no longer required to provide a written report in the approved form, confirming the arm's length value of the unlisted shares. It is recommended however that further clarification is given to determine in more detail how unlisted shares should be valued so that the employee is not carrying unacceptable risk that the market value used will be challenged by the Australian Taxation Office.

Thank you for your consideration. Please do not hesitate to contact the undersigned should you wish to discuss any matters further or seek additional information.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Simon Bennison', with a stylized flourish at the end.

Simon Bennison
Chief Executive Officer

