



New Reporting Obligations for Employers with Employee Share Schemes (ESS)

- **Do you have any employees who have deferred tax on shares or rights issued by the employer or a related company in the last 10 years?**
- **Do any of your employees currently hold an ESS interest via a share trust on which they may not have paid tax?**
- **Has your company issued any new grants of shares or rights to employees this financial year?**
- **Not sure about what shares and options have been issued to your employees?**

If you've answered yes to any of these questions, the new reporting obligations on employers will affect you. Read below to find out how your company is affected and what you need to do.

What do I need to do?

- ✓ Read below to find out how your company might be affected by the new reporting obligations
- ✓ Commence assembling detailed information for individual employees on any shares, stapled securities and rights on which they may not have paid tax
- ✓ Consider implications of compliance in terms of record keeping, administration and resourcing
- ✓ Determine method(s) for calculating the value of the "discount" for each type of plan
- ✓ Where relevant, initiate discussions with overseas parent company

How will the reporting obligations affect my company?

1. For shares and rights acquired by an employee before 1 July 2009, employers are required to report shares or rights with a "possible cessation time", regardless of whether the shares or rights were in fact taxed upfront.
 - This means that employers will need to report on all shares and options acquired by an employee before 1 July 2009 unless a cessation time happened to the share or right before that date.
 - The ATO's rationale for requiring employers to include a possible cessation time is that under the old laws, employers would not know whether an employee elected to be taxed upfront or to defer tax.
2. Employers must provide a personalized statement to each employee who has participated in an ESS by 14th July each year (commencing on 14th July 2010) outlining the ESS interests that have been provided to them.
 - The term "employees" is used loosely. The new rules apply to former, current and prospective employees, independent contractors, office bearers (such as Directors), and associates of any employees.
 - The statement is due to be provided to employees within the same timeframe as the Individual Payment Summary (IPS), but is unlikely to be prepared by Payroll staff involved in IPS preparation. These statements represent a significant increase to end of financial year workload for HR and Finance personnel.
 - Employees will need to use the information in the statement to prepare their individual tax return. As a result of acquiring an ESS interest, they will need to pay tax in the year the taxing point occurs (which varies based on the date of acquisition, type of scheme etc).
 - Employees who have previously participated in an ESS on a deferred tax basis but no longer participate are covered by the reporting requirement unless a cessation or tax event has occurred.
 - Some employers may not have fully recorded historical arrangements; further investigation and research may be required to ensure you can meet the new reporting obligations.
 - Employers have only 5 months from now to understand their reporting obligations, locate sources of the required information, work out how to calculate the discounts for each type of scheme, and prepare separate reports for each employee.



3. Employers are also required to provide a detailed statement to the ATO by 14th August each year (commencing on 14th August 2010) containing a range of information for each employee participating in an employee share scheme. The statement must be in a form approved by the ATO.
 - Information requirements for the ATO statement are very similar to the individual employee statements.
 - Although the ATO has not yet released information about the approved form, employers need to commence work on assembling the required information to meet the new reporting obligations as soon as possible.
4. Where foreign owned companies offer ESS interests in the overseas parent company (or other overseas based associated company), the reporting obligation is on the Australian subsidiary company.
 - The new reporting obligation is likely to present significant challenges for those foreign owned companies who provide ESS interests to Australian based employees.
 - In many cases, Australian management does not have access to detailed information about ESS interests provided to individual employees by the parent company.
 - Foreign owned companies providing ESS interests in Australia will now need to either:
 - i. Provide Australian-based management staff with full access to current and historical information about individual employees' ESS interests; or
 - ii. Complete the individual employee and consolidated ATO statements at head office on behalf of the Australian subsidiary.
 - Where foreign owned companies provide ESS interests to Australian based employees, Mastertek recommend that the Australian subsidiary immediately commence discussions with their parent company. Global plan documents may also need to be reviewed.
5. In reporting the value of ESS interests to employees and the ATO, employers are obliged to report the value of the discount, not the market value. However, to do this, you will first need to determine the market value of the ESS interest.
 - The market value of an ESS interest may be difficult to calculate for some privately owned companies. Employers may choose how to work out the market value, as long as it is determined on a reasonable basis.
 - The value of the discount is calculated slightly differently for upfront and deferred schemes – you may need separate calculations for each type of plan. Mastertek recommend that you obtain specialist tax advice on how to calculate the value of the discount for each plan.
 - The value of the discount will need to be reported for the financial year that the shares or rights are acquired by an employee. For deferred schemes, employers will also need to report the value of the discount for the financial year in which tax becomes payable. It is quite possible that the discount will be a different value at these two reporting dates.
6. Employers have only 30 days to notify the employee and the ATO of any material changes or omissions to the information contained in the statement.
 - The notification must be provided to the employee and the ATO within 30 days of becoming aware of the change or omission.
 - An example of a material change could be where there is a change in the AUD market value of an ESS interest, resulting in a significant effect in the value of the discount provided to an employee.
7. Where an employer provides ESS interests to employees via a share trust, the reporting obligation is on the employer and not on the trustee.



8. At a minimum, the individual statement needs to include the following information in respect of ESS interests (i.e. shares, stapled securities or rights):

a) For all *upfront taxation schemes*, the total number of ESS interests acquired during the financial year

- In some upfront schemes, there is a conditional entitlement to shares or rights and the number of shares that are eventually acquired by employee is not known upfront.
- Where there is a conditional entitlement, the ATO considers the employee to have acquired the full ESS interest in the year they are offered. If the number changes, the employer will need to issue revised statements and the employee will need to amend their personal tax return.

b) For all *deferred taxation schemes*, the total number of ESS interests acquired during the financial year

- For deferred schemes, the employer must report ESS interests in the year they were acquired and also in the year that the taxing point occurs (see 7(d) below).

c) The total amount of the discount for the ESS interests acquired under each type of scheme (i.e. *upfront or deferred taxation schemes*)

- To calculate the amount of the discount, employers must first determine the market value of the ESS interest, although only the discount needs to be reported.
- Employers can decide how to work out the market value of an ESS interest, although it must be on a reasonable basis.

d) The total number of ESS interests provided under a deferral scheme where a taxing point occurred during the financial year, and the total amount of the discount (if any) on those ESS interests

- The taxing point depends on whether the scheme is an upfront or deferred scheme, and the specific details of your plan design. The taxing point for a deferred scheme is not necessarily the date at which shares or rights vest or exercise – it could be a different date altogether!
- Note that if an employee disposes of the ESS interest within 30 days of the taxing point, then the taxing point is moved to the date of disposal. This is known as the “30 day rule” and also applies to ESS interests acquired prior to 1 July 2009.
- In some circumstances, the “30 day rule” may result in the taxing point being moved from one financial year to another, which would affect the date at which ESS interests are reported to the employee and ATO.
- Employers may ignore the 30 day rule for the purpose of the employee and ATO statements if they do not know whether or when an employee has disposed of their ESS interest.

e) The total amount of the discount on any shares or rights acquired before 1 July 2009 for which a cessation time occurred during the financial year (if any)

- The value of the discount in the year the taxing point occurs is likely to be different to the amount estimated in the year the ESS interest was offered.

f) The total amount of any TFN amounts withheld from discounts during the financial year

- In the event that the employee has not provided their TFN or ABN to the employer, the employer must withhold tax from the value of the discount.

g) The total number of ESS interests acquired from a foreign source (if any) during the financial year, and the total amount of the discount on those ESS interests

- Employers must report any ESS interests acquired by an employee in an overseas parent or related company.

h) The total TFN amounts withheld



What do I need to do?

If your organisation either currently or has previously offered shares or rights to employees at a discount to the market value, we recommend that you consider the following list of actions to prepare for the new reporting requirements.

1. Locate source(s) and obtain information on all offers of shares, stapled securities and rights for all employees since 1 July 2000 where:
 - a. the employee did not elect to be taxed upfront; or
 - b. a cessation time has not occurred before 1 July 2009
2. Determine method of calculating the discount for each type of scheme. This may involve determining a method of calculating the market value of an ESS interest.
3. Consider internal record keeping processes and accountabilities.
4. Determine resourcing to meet new reporting obligations.
5. If you are a subsidiary, commence discussions with your parent company.
6. Communicate the reporting requirements to affected employees and potentially validate company records with these employees prior to reporting to the ATO.

About Mastertek

Mastertek's consulting practice is built on the premise of making strategy work through people. We believe that every program we create should align the focus of the client organisation's employees with activities that will help to deliver specific business outcomes, ensuring that strategies developed to realise particular aspirations really work.

We have worked extensively in the area of short and long term incentive plan design with a diverse range of clients across various industries.

If you have any questions or require additional information please contact one of our consultants:

Graham Childs	(02)82248455	graham.childs@mastertek.com.au
Jamie Anderson	(02)82248477	jamie.anderson@mastertek.com.au
Karen Vandenberg	(02)82248466	karen.vandenberg@mastertek.com.au