ShineWing Australia
Advisors & Accountants

Take the lead

Start-ups & SMEs

Employee Share Schemes attract & retain talent, assist cash flow

Using Employee Share Schemes (ESS) to attract and retain talent can benefit both company and employee, particularly in the digital and start-up space.

Start-up tax concessions were introduced to the ESS rules in 2015, and companies that qualify for the ESS start-up concessions are finding that ESS can help with both their cash flow hurdles and staff remuneration.

Additionally, while a formal market valuation for the share price can be costly and time-consuming, companies qualifying for ESS start-up concessions can utilise an alternative, ATO-approved method for valuing unlisted shares, based on the Net Tangible Asset (NTA) position of the company.

This is great news in times of cash flow issues, but it doesn't come without risk. The ESS plan you choose and the underlying tax structuring is essential to making the ESS work for everyone.

How ESS benefits staff

Once the business eligibility requirements are met, the primary advantage of an ESS start-up plan for employees is that the taxing point for any options or shares granted will be deferred to the date that the underlying share is sold.

This prevents employees from being subject to upfront taxation in Australia. The ESS interest falls into the Capital Gains Tax (CGT) regime, so the employee will not pay taxes until the ultimate disposal of the underlying share. This means, no income tax for employees:

- at time of grant
- when options or shares vest
- on exercise or disposal restrictions lifting.

Eligible employees will also be able to apply the CGT 50% discount to any gains made between the time of grant and sale, where they held the ESS interest for greater than 12 months. For employees, this is a very attractive offer, as it removes any potential risk of the share value dropping between the date of grant and disposal (i.e. where they would potentially be in the situation of upfront taxation followed by a subsequent loss).

There are several advantages for companies implementing and using ESS plans:

- companies can use an ATO-approved 'safe-harbour' valuation method for valuing unlisted shares
- attraction of new key talent, engagement and retention of key employees
- rewards past performance while gearing employees to a future focus
- provides an improved and tax effective remuneration package
- offers tax deferral opportunities.

ESS plans - structure is vital

To ensure business objectives are met, it is critical to seek professional advice before setting up an ESS plan. We have worked with several companies that have not, and there are complex issues to work through retrospectively.

One of these is a failure to meet the business's reporting obligations, and unexpected income tax consequences for employees, such as upfront taxation. Unexpected upfront taxation is something that we often see when an ESS plan has been poorly drafted, and can result with employees being left to fund a tax liability before they are able to access the underlying shares or receive any sale proceeds.

ShineWing Australia has assisted companies at various stages of the business cycle to navigate ESS requirements and implement effective ESS plans, including:

- Choosing the right ESS plan (e.g. shares, options, rights, start-up, etc)
- Facilitating the drafting of the ESS plan rules and the offer letters to employees
- Understanding the employer and employee tax implications and reporting obligations
- Communicating with the employees to obtain maximum engagement
- Assistance with annual compliance and ensuring that ATO reporting obligations are met.

Professional experience in implementing and managing ESS plans for companies, in particular ESS start-up plans, is absolutely key to creating benefits for both the business and the employee.

Contact us

To ensure you get the essential elements right, from the start, contact our team to arrange a discussion on how an ESS plan may benefit your company.

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