Ernst & Young Centre
680 George Street
Sydney NSW 2000 Australia
GPO Box 2646 Sydney NSW 2001

Tel: +61 2 9248 5555
Fax: +61 2 9248 5959
www.ey.com/au

6 October 2009

Review of Employee Share Schemes
The Board of Taxation
c/- The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir / Madam

Review into elements of the taxation of employee share scheme arrangements

Ernst & Young are pleased to provide this submission to The Board of Taxation (the **Board**) in relation to its review into elements of the taxation of employee share schemes.

We note that the Board's Terms of Reference are to review the following matters:

- How best to determine the market value of employee share scheme securities; and
- Whether shares and rights under an employee share scheme that are provided by start-up, research and development and speculative-type companies should be subject to separate tax deferral arrangements outside of those proposed by the Policy Statement.

In undertaking the review, the Board is to consider:

- Whether the existing rules for valuing unlisted rights to acquire shares properly reflect market value;
- Whether special rules are appropriate or necessary to determine the market value of employee share scheme shares and rights (listed and unlisted);
- Whether there are suitable alternative mechanisms for determining market value;
- Whether it is appropriate or necessary to provide separate deferral arrangements for employees of start-up, research and development and speculative-type companies receiving shares or rights under employee share schemes; and
- Possible options to provide assistance to start-up, research and development and speculative-type companies.

Summary

This letter sets out our key comments on the following issues:

1. **Key principles underlying the valuation approach**: We believe that any valuation approach in relation to shares or rights acquired under employee share schemes should be based on the following key principles

   - Simple to administer and understand;
   - Fair and sensible;
   - Cost effective, and
   - Not require direct input from the Australian Taxation Office (**ATO**).

2. **Valuation approach for shares**: We consider that individuals should be subject to tax on the market value of the company's shares at the relevant taxing point (either in the year of grant or a later deferred taxing point).

   Listed shares: We believe that the proposed approach (outlined in the Explanatory Memorandum (**EM**) which accompanies the ED) which would adopt the ordinary meaning of "market value"[1] for listed shares is sufficient to determine the market value of shares for employee share scheme purposes. We understand that such an approach would allow companies to use a closing price or an appropriate volume weighted average price.

   Unlisted shares: The previous valuation rules in relation to unlisted shares[2], which provided that the market value of unlisted shares could only be determined through a written valuation by a "person who is a qualified person in relation to valuing a share" or by a method approved in writing by the ATO, were overly complex, costly and difficult to use practically.

   The EM recognises that these rules are inflexible, particularly with regard to unlisted shares. It proposes that the general valuation rules also be used for unlisted shares, which would mean that unlisted companies will no longer be obliged to use an auditor to determine market value if they can determine (and sufficiently justify) the market value appropriately without an auditor.

   If the above proposals are implemented in the final share scheme legislation, we do not consider it necessary for there to be any special rules to determine the market value of shares for the purposes of the employee share scheme rules. We also agree that any restrictions or conditions attached to the shares should be ignored in determining market value for the purposes of employee share schemes.

3. **Valuation approach for unlisted rights:**

   The current approach to the valuation of unlisted rights, especially with respect to share options granted with a market value exercise price, is overly complex and can result in adverse taxation implications for individuals (for example, where an option is "underwater" at the relevant taxing point).

   Other than for individuals where an option is subject to tax at the time of grant, we consider that the taxable value of an unlisted right should be the **intrinsic value** of the

[1] Paragraphs 1.78 – 1.82
[2] Section 139 FB Income Tax Assessment Act 1936

right (i.e. the share price less the exercise price (if any)) at the relevant taxing point. We accept that any performance conditions or disposal restrictions attached to the rights should be ignored in determining the market value at the relevant taxing point.

We consider that the proposed approach of market value equalling the intrinsic value at the deferred taxing point would:

- Recognise the real market value of a right to a participant at the deferred taxing point;
- Be simpler for individuals to understand and employers to communicate;
- Remove the risk that individuals would be subject to income tax at the deferred taxing point on a value that they are subsequently unable to realise; and
- Remove the risk that individuals will not be able to obtain a refund of tax payable should the right never be exercised (e.g. if it continues to be underwater).

We consider that in the limited circumstances, under the provision of the ED, where income tax may be paid on the grant of a right, a valuation approach akin to the current approach may be appropriate.

4. **Possible options to provide assistance to start up research and development and speculative-type companies**.

We consider that the establishment of a special taxation regime which provides additional taxation concessions (for both the individual and the company) would be beneficial for start-up and R&D companies (where appropriately structured) in the following areas.

Removal of deferral conditions: In recognition that it may be difficult for start-up and R&D companies to meet all the relevant deferral conditions, these requirements should be waived for these companies (e.g. the removal of i) the requirement to use ordinary shares, ii) the 75% requirement for provision of shares (as opposed to rights) and iii) the 5% individual limit).

Individual taxation concessions: In order to provide companies with a greater ability to attract and retain employees, additional taxation concessions could be provided on equity benefits which may result in gains being exempt from income tax where the relevant qualifying conditions are met. There are examples of similar tax favoured schemes, which specifically target small to medium sized companies, in other countries (e.g., UK and Singapore).

Corporate taxation concessions: Additional relief could also be provided to the issuing companies via the provision of corporate tax relief on share plan benefits or through relief from payroll tax.

5. There should be appropriate conditions attached to any concessional treatment such that only genuine start-up and research and development businesses are able to access these tax concessions. The availability of the relief could be assessed by measurement of company size, number of employees and/or industry type.

I would welcome the opportunity to meet face to face to discuss the further changes required to ensure the appropriate operation of the legislation or to be part of the ongoing consultative group engaged bv the Board to consider these issues.

Should you wish to discuss any aspect of this submission further, please do not hesitate to contact me on 02 8295 6250.

Yours faithfully

Paul Ellis

Partner – Human Capital

Detailed comments

Outlined below are our detailed comments. We have reflected the Board's specific areas of review in our comments.

1. Key principles underlying the valuation approach

We believe that any valuation approach for shares and unlisted rights acquired under employee share schemes should be based on the following key principles:

- Simplicity of valuation approach

Individuals and employers should be able to interpret and understand the valuation provisions without the need for detailed external assistance (e.g. from accountants or professional services firms). Individuals will need to report the market value of shares and rights on their tax returns and employers will now be required to provide individuals with an estimate of the market value of shares or rights in the year in which a taxing point occurs. As such, any valuation approach should be sufficiently clear for individuals to understand and for employers to accurately communicate to employees the market value of equity benefits provided.

- Cost effective

The valuation approach for shares and rights should be cost effective for companies and should not require the company to undertake an external valuation purely to determine the market value of a share or a right for the purposes of an employee share scheme. We acknowledge that, In the case of unlisted shares, the company may wish to undertake an external valuation to determine market value but this should not be a mandatory requirement.

For example, if the market value of an unlisted right had to be determined by an option valuation process (other than the tables currently outlined in the draft Regulations), based on our experience, such valuations (e.g. Black Scholes or bi-nomial valuation) can be costly, especially where the rights are subject to the achievement of share price hurdles. Unlisted rights may vest at a number of different times during a tax year, requiring companies to undertake multiple external valuations during the same year would be an unnecessarily costly burden.

- Fair and sensible

The valuation approach should be fair and sensible to the individual. We consider that in applying this principle, individuals should not be subject to tax on an amount which is greater than the value which they could realise from selling the share at the relevant taxing point*.

*Note, a valuation approach will still be required for the limited circumstances under the ED where tax is payable on the grant of an unlisted right (this is addressed further in Section 3.2.2 below).

- No ATO approval required

It is recommended that there should not be any requirement for the ATO to approve any methodology for the valuation of shares or rights (for both listed and unlisted companies). Where approval is required, this will both increase administration for the ATO and also the time required by companies to obtain the valuation. Further, the ATO has clearly displayed an inability to practically and usefully administer provisions in the previous Division 13A that authorised it to approve valuation methodologies in certain instances.

2. Whether special rules are appropriate or necessary to determine the market value of shares?

We consider that the proposed approach outlined in the EM of using the ordinary meaning of "market value" to determine the market value of shares for employee share purposes is acceptable.

Listed shares: We understand that adopting an ordinary meaning of market value would allow companies to use a closing price or an appropriate volume weighted average price on the relevant day.

Unlisted shares: The previous rules in relation to unlisted shares[3], provided that the market value of unlisted shares could only be determined through a written valuation by a "person who is a qualified person in relation to valuing a share" or by a" method approved in writing by the ATO".

The EM[4] recognises that the valuation rules in the current law are inflexible, particularly with regard to unlisted shares. It proposes that general valuation rules are used for unlisted shares which would mean that taxpayers will no longer be obliged to use an auditor to determine market value if they can determine (and sufficiently justify) the market value appropriately without one.

If the above proposals are implemented in the final legislation, we do not consider it necessary for there to be any special rules to determine the market value of shares for the purposes of the employee share scheme rules. We also accept that any restrictions or conditions attached to the shares should be ignored in determining market value for the purposes of employee share schemes.

3. Whether special rules are appropriate or necessary to determine the market value of unlisted rights?

3.1 Impact of current valuation approach

The new share plan tax rules adopt, as a basic premise, the position that rights and options should be taxed when they become realisable as opposed to realised.

In our view, the application of this revised deferred taxing point rules for options and rights[5] in the ED together with the current valuation approach (as it applies to unlisted rights, and in particular share options), does not apply the basic principle of fair and sensible tax rules.

In relation to options and other rights to acquire shares, the deferred taxing point rules could result in options and rights being subject to tax at the time of vesting, rather than at the time of exercise (which was the established tax treatment under the pre-1 July 2009 tax rules and is consistent with the tax treatment of options in virtually all other developed countries).

Under the current valuation approach, at the time an option vests the rules could impute a taxable value for the option (based on an option's exercise price and time to expiry and the company's prevailing share price) which is significantly higher than the gain an individual could ultimately realise by exercising the option and immediately selling the underlying shares.

---

[3] Section 139FC Division 13A Income Tax Assessment Act 1936
[4] Paragraphs 1.78 – 1.82
[5] Section83A-115 (3)

In addition, under the proposed refund rules, a taxpayer will not be able to obtain a refund of tax paid on an option when it lapses, if the loss of the option is as a result of a choice made by the individual. In other words, if the taxpayer decides not to exercise an option because the company's share price remains at a level which is no greater than the option's exercise price (i.e. the option is never "in the money"), the refund provision would not apply. As a result, an individual could be taxed on the vesting of an option (based on the imputed market value rules above) which is never in the money and no refund would be available.

The examples below illustrate the potential adverse tax implications for individuals in two possible scenarios.

Example 1 – Share price is less than the option exercise price at the deferred taxing point

1,000 options (with a maximum life of seven years) are granted with an exercise price of $10 (equal to the market value of the company's shares at grant). The grant of options meets the relevant deferral conditions and the options are no longer subject to a real risk of forfeiture or any further restrictions on the second anniversary of the date of grant (which under the terms of the scheme is the deferred taxing point). At the deferred taxing point, the company's share price is $9.00.

Under the terms of the current valuation rules, an individual would be subject to tax on the greater of the

- Market value of the company's shares at the deferred taxing point less the option exercise price ($0); and
- The market value determined in accordance with the valuation regulations ($650).

Based on the current valuation tables set out in the regulations, an income tax liability of $650 still arises on the options at vesting even where the market value of the shares is LOWER than the exercise price of the options. Under the proposed refund rules, individuals will also not be entitled to claim a refund of tax paid on vested options but which are not exercised (for example, where the company's share price remains below the exercise price of the options).

Example 2 – Taxing individuals on a greater market value of the right than they could realise should the share be sold

1,000 options (with a maximum option life of seven years) are granted with an exercise price of $10 (equal to the market value of the company's shares at grant). The grant of options meets the relevant deferral conditions and the options are no longer subject to a real risk of forfeiture on the second anniversary of the date of grant (which under the terms of the scheme is the deferred taxing point). At the deferred taxing point, the company's share price is $10.05.

Under the terms of the current valuation rules, individuals would be subject to tax on the greater of the

- Market value of the company's shares at the deferred taxing point less the option exercise price ($50); and
- The market value determined in accordance with the valuation regulations ($1,320).

In this scenario, an individual will have taxable income of $1,270 more than the actual benefit that they could realise from the option at vesting.

Individuals may also assume that where an option is "in the money" (i.e. the share price is greater than the exercise price), the taxable gain on the option is the intrinsic value and not the valuation as per the valuation tables.

3.2. Recommend alternative approach for valuing Options and Rights

Section 3.2.1 and 3.2.2 below outline our recommended approach to valuing unlisted rights.

3.2.1 Unlisted rights which qualify for deferred tax treatment

Given the ability to elect to pay income tax on the grant of an unlisted right has been removed for grants made on or after 1 July 2009, we would suggest that there is no longer the need for a sophisticated approach to the valuation of unlisted rights where individuals are not subject to tax on the grant of a right (i.e. the terms of the employee scheme permit tax deferral).

Our recommended approach ("proposed approach') would be to tax the **intrinsic value** of a right at the deferred taxing point, where this arises at a time other than exercise. We consider the taxation consequence of this approach would be as follows:

Rights (granted at nil cost): Income tax would be payable on the market value of the company's share at the deferred taxing point because the rights would not have an exercise price. As with the valuation of shares, we also accept that any restrictions or conditions attached to the rights should be ignored in determining market value for the purposes of employee share schemes..

Share options: Income tax would be payable on the difference between the market value of a company's share at the deferred taxing point and the option exercise price.

We believe this suggested valuation approach is in accordance with the Government's view that rights and options should be taxed when realisable. In our view, adopting such an approach to the taxing point demands that the taxable value at this point should also be equal to the value then currently realisable, that is, the intrinsic value. No estimate of future expected value should be taken into account when this approach to the taxing point is applied.

Where the market value of a company's share is less than the option exercise price at the deferred taxing point, the intrinsic value, and therefore the market value for income tax purposes would be nil. In this instance, no further liability to income tax would arise and capital gains tax would be payable on the difference between the net sales proceeds of the shares (acquired following the exercise of the options) less the cost base of the shares (which in the case of an option would be the exercise price paid).

Individuals would only be eligible to receive the 50% capital gains tax discount where the underlying shares have been held for at least 12 months following the exercise of the option.

If the options were never exercised, no income tax would have been paid at the deferred taxing point and there would be no adverse implications for individuals as a result of the existing refund rules.

Use of alternative valuation approaches

If it is not accepted that the intrinsic value is the appropriate determination of market value for unlisted rights and that there should be a recognition of the economic value of an option at the deferred taxing point (even where the option is “underwater”), we do not consider that an approach based on the accounting value (i.e. using a binomial or other form of valuation model) is an acceptable alternative. We do not consider that these rules adequately recognise the nature of an employee share option (i.e. they do not take into account that employee share options are not a liquid investment or tradable security).

One of the criticisms of the current valuation regulations from Treasury is that they potentially undervalue an option. Whilst we would argue that an option has no market value where there is no intrinsic value at the deferred taxing point, we consider an approach based on these tables does not substantially undervalue employee options and is likely to better reflect value than an accounting model based valuation.

Summary

We consider that the proposed approach of market value equalling the intrinsic value at the deferred taxing point would:

► **Recognise the real market value of a right to a participant at the deferred taxing point**. The current valuation approach assumes that a right granted under an employee share scheme is akin to a tradable option and could still have value where the share price is lower than any exercise price. In practice, employee share options are not tradable and have little or no perceived value to individuals where the share price is below the exercise price;

► **Be simpler for individuals to understand and employers to communicate**. The current valuation approach will involve individuals and employers making a complex comparison of the intrinsic value and the valuation of the rights per the tables in the regulations to determine the correct market value of the right;

► **Remove the risk that individuals would be subject to income tax at the deferred taxing point when they are unable to realise value**. As noted above, taxing only the intrinsic value would prevent a tax liability occurring where the option is “underwater” or taxing a higher “market value” than could be realised from the sale of the underlying shares at that time (see Section 3.1.1. above).

► **Remove the risk that individuals will not be able to obtain a refund of tax payable should the right never be exercised (e.g. if it continues to be underwater).** Taxing the intrinsic value of an option at the deferred taxing point would ensure that individuals would only be subject to tax where they could realise a gain on their option (if they were to sell the underlying shares at the deferred taxing point).

3.2.2 Unlisted rights which do not qualify for deferred tax treatment

A distinction could however be made where, due to the scheme either not satisfying the deferral conditions or there being no real risk of forfeiture on the grant of rights, income tax is payable at the time the unlisted rights are granted or shortly after the grant (for example, within one year of the grant date).

In this case, we consider that determining market value using the current valuation approach (or similar) is appropriate. Otherwise individuals could potentially not be taxed on the grant of options having an exercise price equal to market value, or schemes could be artificially structured to crystalise a small taxable gain shortly after the grant of an option where there is little or no intrinsic value in an option.

In this scenario, we consider that the market value should be the greater of:

(a) the intrinsic value; and
(b) the value determined in accordance with regulations 83A - 135.05 to 83A-135.09 (the option valuation tables).

As noted above, one of the criticisms of the current valuation approach from Treasury is that it potentially undervalues an option at the date of grant. Whilst this may be the case in certain circumstances, we do not consider it appropriate to introduce a new approach to valuing unlisted rights for the limited circumstances where tax is likely to be payable at grant going forward (if, as recommended, the default position is that the intrinsic value is the market value).

4. Possible options to provide assistance to start-up, research and development and speculative companies

We consider that there are merits in providing additional assistance to start-up or research and development ("R&D") companies compared to larger organisations. The key reason is that start-up or R&D companies often need to rely heavily on the provision of equity to attract and retain key talent due to having limited cash. Therefore, an important tool for attracting and retaining employees is the ability to offer equity as compensation for paying a lower cash remuneration. Such equity will commonly display some or all of the following characteristics:

► The provision of equity is often in the form of options as the original investors/owners do not want to give away too much equity or control and only want to reward for any future growth in value of the business.

► Often there is no vesting period as a result of the equity being provided in exchange for a lower cash remuneration. Such equity will therefore not qualify for deferral under the new post 1 July 2009 taxing regime as there is no "real" risk of forfeiture.

► The options are often over an alternative class of share (sometimes non-voting) with conversion to ordinary shares at a later deferred point in time. Such shares will not qualify for deferral as they would not meet the 'ordinary shares' requirement at the grant date.

► The benefit often cannot be crystallised until a defined event in the future such as an IPO, trade sale or similar event because there is no liquidity until such time. Even if the deferral requirements are otherwise met, the exit event may not occur until long after the taxing point has otherwise arisen. In this scenario, even where the options have vested, value is not truly realisable. To tax them as if they are would produce an unfair result.

► For these reasons, many countries provide alternative concession for start-up and R& D entities

We consider that assistance could be provided in either or both of the following forms:

i) concessions for accessing deferred taxation treatment under the ED;
ii) income and/or corporate tax concessions for start-up or R&D companies providing equity to employees.

4.1 Potential deferral concessions

- **Relaxing the 5% limit:** As noted above, start-up or R&D companies often rely on the delivery of equity to provide a competitive reward package to individuals. Start-up companies may wish to provide a significant grant of equity to key executives / founders in lieu of other compensation. Increasing or removing the 5% limit would provide these companies with additional flexibility to provide competitive equity grants.

- **Removing the 75% requirement for the award of shares**: An award of shares can be a powerful incentive and retention tool because it delivers the benefits of share ownership from the outset (i.e., access to any dividends and voting rights). Start-up or R&D companies may wish to provide selected key employees with access to shares but be unable to provide a broad-based employee share scheme (e.g., due to cost/dilution issues or being unable to meet the relevant prospectus disclosure requirements where a company is unlisted). Based on the current rules they will be unable to meet the 75% requirement in relation to a share award to selected employees only. Removing the 75% requirement would provide greater flexibility for these companies in providing access to equity to employees.

- **Removing the requirement that all interests must be over ordinary shares**: As noted above, there may be certain situations where start-up or R&D companies want to provide awards to individuals over a different class of share due to the particular structure of the business or agreements with existing shareholders (e.g., the use of non-voting shares or shares with no dividend rights may be a requirement of any venture capital funding). We consider that allowing start-up and R&D companies to use non-ordinary shares for would provide them with greater flexibility in offering equity to employees.

- **Removing the requirement for a real risk of forfeiture**: As noted above, equity grants to start-up and R&D companies are often made in lieu of cash compensation. For grants made on or after 1 July 2009, income tax deferral is only available where the equity is subject to a real risk of forfeiture (assuming the deferral conditions are met). For reasons we have noted above, we consider that it would be appropriate to remove the requirement that a real risk of forfeiture is necessary for equity grants made by start-up and R&D companies. The use of disposal restrictions or a lesser forfeiture requirement (e.g., for reasons of fraud or gross misconduct) would be appropriate to enable tax deferral.

4.2 Preferential income or corporate tax treatment alternatives

Equity grants made to employees of start-up or R&D companies could be further enhanced through the availability of tax concessions for individuals. Examples of possible income tax concessions could include

- Providing income tax relief on gains made under the scheme (where the company meets certain qualifying conditions – see Section 4.3. below) such that no income tax is payable at the deferred taxing point and all the gains are taxed under the capital gains tax regime when value from the shares is eventually realised. Such an approach provides both a tax concession for individuals and would also encourage longer-term share ownership because individuals would not be required to sell shares post-vesting / exercise to fund the income tax liability.

- Removing the $5,000 salary sacrifice limit on shares. Such an approach would encourage individuals to invest in shares via pre-tax salary or bonus.

- Allowing start-up and R&D companies to obtain a statutory corporate tax deduction equal to the amount equal to the taxable benefit in the hands of employees (regardless of whether newly issued or market purchased shares are used to satisfy awards under the plan). Such an approach is already operated in the UK and US.

- Exemption from the payment of payroll tax on employee share scheme benefits.

4.3 Issue for further consideration

The availability of any concessional tax treatment should be on the basis that the only entitlements which fall within any new regime are equity entitlements that are granted as a remuneration entitlements (and proprietor type interests are no inadvertently included).

Assuming the grants are remuneration entitlements, defining the types of companies that can offer concessionally taxed equity will also be critical. There needs to be some relatively tightly defined criteria around qualification to ensure appropriate targeting of the concessions. Some of the key criteria could include:

- Maximum value of the company;
- Maximum value of the assets held by the company;
- Maximum number of employees;
- Maximum revenue;
- Types of activity that qualify; and
- The maximum percentage of issued share capital and/or value of shares that can be allocated to employees, both in total and per employee.

Given that other countries have successfully managed to define these criteria, we recommend that the Board undertake a comprehensive review of concessions on offer in similar situations in other countries, in order to help in identifying the ideal form of concessions to be offered in Australia. See Section 4.4 below for examples of plans or concessions in the UK, Singapore and Canada.

4.4 Overseas examples of tax concessional treatment

There are selected examples of overseas countries where equity schemes have been established specifically for smaller sized organisations.

UK

The UK has adopted the Enterprise Management Incentive Scheme (EMI) which provides significant tax concessions for options granted by qualifying companies.

- EMI grants are only available to companies with less than 250 employees and gross assets of less than 30 million.

- The aggregate market value of unexercised options per person must not exceed £120,000 (as at the date of grant).

- EMI options can be granted at market value or at a discount (or premium) to market value

- No income tax or National Insurance Contributions (NICs) for employee or employer on the exercise of an EMI option where the option is granted at market value (income tax is only payable when the option is exercised on the difference between the exercise price paid and the market value of the company's shares at grant).

- When the resulting shares are sold, capital gains tax payable on the difference between sales proceeds and the exercise price (or amount subject to tax at grant).

Singapore

Under the Equity Remuneration Incentive Scheme ("ERIS (Start-Ups)"), an employee of a qualifying company can receive a tax exemption of 75% of up to $10 million of gains from employee equity plans over a 10-year period, provided certain criteria are met.

In order for the equity awarded to qualify as an ERIS (Start Up), both the company and employee must meet certain qualifying conditions:

- **Company:** A qualifying company must grant the equity within the first 3 years of its incorporation, to a qualifying employee to acquire ordinary shares of the qualifying company.

- **Employee:** A qualifying employee is an employee who has been granted equity by a qualifying company and also meets the following requirements at the time of the grant of options or shares:

  - he / she is exercising employment for the qualifying company;

  - his / her committed working time per week with the qualifying company must be at least 30 hours; and

  - he / she does not have effective control of the qualifying company.

Canada (Ontario)

The Ontario Research Employee Stock Option (ORESO) credit

Eligible research employees of eligible R&D-intensive companies are able to receive a refund of their Ontario personal income tax on up to $100,000 of taxable income each year up to and including the 2009 taxation year from taxable stock option benefits and taxable capital gains arising from the sale of shares acquired through exercising eligible stock options.

The stock options must have been granted after December 21, 2000 and before May 18, 2004.

There is no lifetime limit to the amount of taxable stock option benefits and taxable capital gains that would qualify for a refund.

4.5 Other considerations – prospectus disclosure requirements for unlisted companies

Although outside the specific scope of this review, the provision of equity benefits in unlisted companies (which often includes start-up or R&D companies) is often prevented by the onerous disclosure requirements which unlisted companies must satisfy before being able to provide equity (e.g., the need to provide a prospectus or product disclosure statement) and the limited exceptions available to unlisted companies in this regard.

We consider that a reform of these disclosure rules should also be considered in conjunction with a review of the taxing provisions to encourage equity ownership amongst start-up and R&D companies.