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— Analysis

3 ways to make employee share schemes better

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As we approach the 10th anniversary of Australia's 2015 employee share scheme tax reforms, it's worth reflecting on how far we've come — and how much further we need to go.

ESS has become a cornerstone of our start-up ecosystem. It boosts productivity, helps align employees and shareholders, and supports Australia's aspirations to be a serious player in the global innovation economy. But 2025 brings new pressures and unless the federal government is willing to back the next wave of reform, we risk going backwards.

Let's start with a quick history lesson.

The federal government should change the employee share scheme by making it part of the pay as you go regime; lifting the exemption cap for listed companies, and by reforming tax laws that apply to it. **Simon Letch**

In 2009, the Rudd-Swan government inflicted serious damage on the ESS landscape by introducing a regime that taxed employee options at vesting — even if they weren't exercised or in-the-money at that time. Taxing "phantom" gains crushed the sector.

It wasn't until 2015, as part of then prime minister Malcolm Turnbull's innovation agenda, that the tax rules were redesigned. The reforms reversed many of the 2009 missteps and, crucially, introduced a start-up concession regime allowing tax deferral and access to the 50 per cent capital gains tax discount.

It was a clear signal: if you're willing to forgo a salary and earn sweat equity in a high-risk venture, the tax system will back you.

Since then, ESS has flourished — especially in the start-up space, but also in private business and ASX listed companies. Most Australian tech start-ups have embraced the rules and many employees have benefited from the tax concessions. Rightly so. Giving up the stability of a corporate salary to help build a company from scratch is a bold move. The tax system should applaud it.

Despite this growth, Australia is still only middle of the pack internationally when it comes to embracing the concept of employee share ownership.

A recent Global Equity Organisation survey ranked us 13th in the world — behind most developed European Union nations where ESS is part of mainstream economic infrastructure. While we continue to lead the Asia-Pacific region, our global competitiveness in this space remains lacklustre.

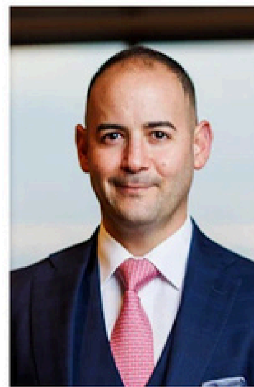
And that's not good enough — especially now.

Venture capital is tightening. The government's attack on high-balance self-managed super funds — traditionally a lifeline for start-ups — is pushing capital elsewhere.

Family offices continue to reposition assets offshore amid heightened concern that the tax on unrealised capital gains in superannuation will form the blueprint for wealth taxes more broadly.

And in this perfect storm, it is start-ups that are feeling the squeeze most acutely. This is the moment for government to lean in, not step back.

Historically, governments have raised two concerns about ESS: that it disproportionately benefits top executives and risks exploiting lower-paid workers. But those objections no longer hold much weight.



Shaun Cartoon, partner at Arnold Bloch Leibler. **AARON FRANCIS**

For a start, listed company remuneration is under intense scrutiny. Proxy advisers and institutional investors exert outsized, and generally downward, influence on pay. The "two strikes" rule gives shareholders the nuclear option — a board spill — if they think executive pay is excessive.

As for the exploitation concern, technological advances from platforms like Computershare and Boardroom have transformed how employees engage with their equity.

They can now view, manage and sell their holdings in real time, directly from their phones. ESS is no longer a shadowy benefit they don't understand — it's a tangible reward that's turning employees into nouveau capitalists.

The government should seize the opportunity to build on the last decade of progress and here are three big ideas to start the next chapter.

The first is to bring ESS into the pay as you go regime. Right now, ESS is the only employment-related benefit where employees must self-assess and self-report their tax liabilities. It's a trap for the unadvised. I've seen countless employees accidentally trigger tax bills without selling enough equity to cover them. That's bad for employees — and for trust in the system.

Second, employees should be able to elect to be taxed upfront on the grant of their shares or options, locking in capital gains tax treatment on future gains. And gains on start-up qualifying options and shares should be completely exempt.

Finally, lift the $1000 exemption cap for listed companies. The current cap is woefully out of date. It was introduced in 1997 and has not been indexed.

If we want to encourage broader-based employee ownership, especially among lower-paid workers, we need to make it worthwhile for ASX listed issuers to offer the plans.

Australia's ESS framework has come a long way since 2015. But resting on our laurels isn't an option.

With risk capital drying up, start-ups under pressure and stagnant productivity in the national spotlight, now is the time for policymakers to double down on low-hanging productivity enhancing reforms.

ESS isn't just a tax incentive — it's an economic strategy. Let's treat it like one.

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