

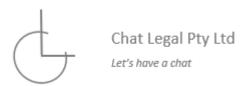
Let's chat

Employee incentives – November 2025

With:

Darius Hii – Tax and estate planning lawyer; Chartered Tax Advisor; and Director at Chat Legal

Information provided is general in nature; precise application depends on specific circumstances



Overview

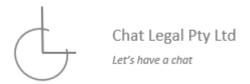
Employee share scheme considerations

Payroll tax considerations

Employer reporting and withholding

Employee incentive arrangements

Commercial considerations



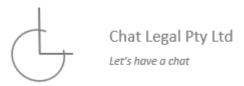
Division 83A

ESS Rules

Applies where shares or rights to acquire shares in respect of employment offered at a discount

Intend to ensure such 'value' via the discount taxed as assessable ordinary income

Concessions available include: 'start up' concession, discount concession and deferral concession



Start up concession

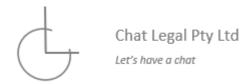
Start up company (unlisted, Australian resident, incorporated less than 10 years)

Meet employee incentive concessions

Minimum holding period (earlier of 3 years/employment ceases)

Discount cannot exceed 5% (if issuing shares)

Capital gains tax discount for ESS interest under start up concession from original grant date rather than exercise of option date



Discount concession

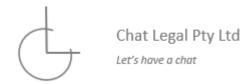
Reduce discount on receipt of ESS interest by \$1,000 in any year

Relates to ordinary shares held for at least 3 years (or until employment ceases)

Taxpayer must be employed by company and hold no more than 10% interest (and voting rights)

Taxpayer taxable income, reportable fringe benefits and superannuation...no more than \$180,000

Scheme is non-discriminatory (available for all full-time employees) and there must be **no risk** of forfeiture in respect of the ESS interest



Deferral concession

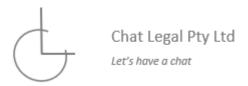
ESS rules deferred until a later time (not triggered on issue or grant)

Taxpayer employed and ESS interests relate to ordinary shares equal to less than 10% of the total interest

At least 75% of permanent participants with more than 3 years of service have or are entitled to acquire such interest*

Such interest at risk of forfeiture (need for employment of a reasonable period or dependent on real performance criteria being met)

Plan rules allow concession to apply*



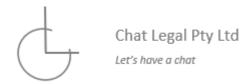
Deferral concession

Deferral taxing point

No real risk of forfeiture under the scheme and any restrictions no longer apply

Time employment or relationship ends

15 years after acquisition of the interest



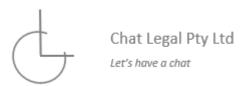
Other considerations

FBT not applicable under an incentive plan subject to the ESS rules

Non-equity plans (i.e. phantom share plans) result in participants paying tax on marginal rate on value of any benefits received

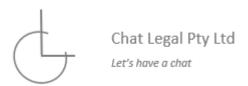
Plans offering no discount not subject to ESS rules

Division 7A and financial assistance considerations where company lends to prospective shareholder



Available options

Issue or transfer shares
Options to acquire shares
Options to acquire shares
Performance rights plans
Phantom share plan
Loan funded share plan
Flowering share scheme
Employee share trusts



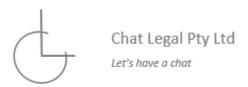
Cash bonus

So simple as not to include in prior slide

Measurable performance hurdles

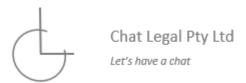
Cash flow dependent

Avoids ESS rules



Issue or transfer shares

Employees issued or transferred shares Immediately subject to vesting conditions One amount or over various tranches ESS rules can apply if issued at a discount Funding considerations for employee if they required to be consideration



Options

Employees issued options which can be exercised on certain conditions being met

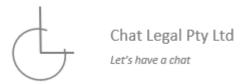
Paying exercise price entitles employee to acquire shares in company

Exercise price predeterminable and can be market value of shares at the time of grant

Options less restrictive under ESS rules

Allows company to remunerate employees without cash outflow

At risk of non-exercise of option



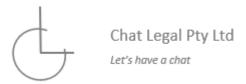
Performance rights

Performance rights exercisable on performance hurdles met

Shares issued for no consideration

Like options, allows remuneration without cash outflow and provides flexibility around taxing point

Performance hudles can be a mixture of financial and non-financial



Phantom share plan

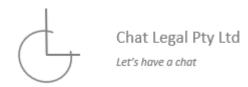
Mimics employee share plan without the formal equity offering

Growth met with cash bonuses upon a sale, liquidation or exit event

As no shares offered, employees have no voting rights

Protects equity holders without introducing additional shareholders

Downside for employees in that they receive no shares and that cash bonuses subject to payroll tax and taxable as income



Loan funded share plan

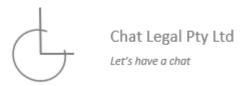
Share sale agreement conditional on loan agreement and shareholders agreement

Vendor financed and limited recourse

Shareholders agreement crucial for all parties

If company assisting financing, consider other issues

Consider FBT issues where loan is interest free or low interest



Flowering share scheme

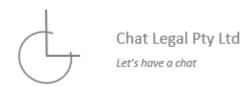
Special class of shares issued immediately

Rights suspended until milestones are met

Market value lower initially given lack of rights, and accordingly, no discount

Importance to obtain valuation of shares on outside and appropriate drafting of share rights

More complex to understand and acknowledge



Employee share trusts

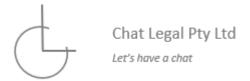
Trust established to hold shares and rights for employees

Employees buy into the trust

Trust acquires shares in company

Complicated as control of structure needs to be considered

Valuing can be difficult to buy into the trust



What's best?

Objective

- What are the key objectives of the incentive plan?
- Attracting or retaining staff; or motivating performance?

Eligibility

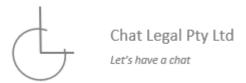
• Will participation in the incentive plan be available to all employees, or only a specific few

Funding

- How much funding is available for the scheme?
- Will participants be required to pay in order to participate in the incentive plan?
- Will the company or other person fund?

Tax implications

• Consider tax implications for the existing participants and incoming



What's best?

Vesting conditions

• Are any conditions required to be met?

Impact

• What is the impact on existing equity holders?

Implementation

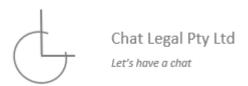
• How will be plan be implemented

Ongoing administration

• How will the ongoing administration be managed

Exit strategy

• How will employees be able to sell or otherwise deal with their shares, rights or options?



What's out there?

Succession plans for the next generation

Motivates key employees to stick around and grow the business

Too many cooks can make the broth difficult when it comes to leaving

Incoming equity holders being unreasonable with requests

Rewarding the team

Sceptism with performance milestones

Contact details

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