



**Employee Ownership**  
Australia *Making it your business*



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## **Employee Ownership Australia: Submission to Government on the Proposed changes to the capital gains tax regime:**

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### **The existing Capital Gains Tax outcome under the Employee Share Scheme Start Up Concession should be preserved to facilitate value creation, innovation and global competitiveness**

#### **1 Executive Summary**

This submission addresses the interaction between proposed or contemplated changes to capital gains tax settings and the employee share scheme start up concession.

The start-up concession was introduced to provide a deliberately different and significantly concessional basis for the taxation of employee share scheme benefits as compared with the ordinary employee share scheme rules.

Under the ordinary employee share scheme regime, benefits are generally assessed to the employee as ordinary income at a defined taxing point, often disconnected from liquidity or real economic gain.

By contrast, the start-up concession was intentionally designed so that relevant amounts are instead brought to tax under the capital gains tax provisions on realisation, reflecting actual value creation, long holding periods and entrepreneurial risk.

This structural distinction is not incidental.

It is the central policy mechanism through which the regime operates.

Any changes to capital gains tax rules that apply to equity provided under the start-up concession would materially undermine the efficacy of the regime and would be entirely inconsistent with the clearly articulated purpose at the time the legislation was introduced.

If introduced, it is currently unclear whether the proposed reforms would provide comprehensive grandfathering of the existing capital gains tax rules.

While there have been indications that some form of transitional capital gains tax treatment may be contemplated to mitigate the immediate impact on existing equity holders, such transitional measures would not address the more fundamental concern.



In particular, they would not prevent the significant and ongoing disadvantage arising from the removal or dilution of the concessional capital gains tax treatment that underpins the operation and commercial viability of the start-up concession.

## **2 Basis for our submission**

There are currently considerable public statements, consultation signals and policy commentary from government indicating that changes to the basis upon which the capital gains tax rules are to be applied are under active consideration.

Those discussions may be driven by a range of fiscal, equity or integrity objectives.

However, irrespective of the policy drivers for reform, significant and serious adverse consequences will arise if any changes to the capital gains tax regime are applied without specific modification or carve out for equity issued under the employee share scheme start up concession.

In particular, such changes risk undermining the efficacy of the start-up concession, hollowing out its practical operation while leaving it nominally intact, and producing outcomes that are entirely inconsistent with the clearly articulated purpose for which the regime was introduced.

This submission is directed to that risk.

It explains why the start-up concession was deliberately constructed on a different tax base, why capital gains tax treatment is foundational to its policy intent, and why applying altered capital gains tax rules to start up concession shares would defeat the regime's role in supporting Australia's start up industry.

## **3 Employee Ownership Australia**

Employee Ownership Australia is an advocacy organisation that promotes employee ownership as a means of strengthening business performance, supporting innovation, and enabling employees to share in the long-term value they help create.

Employee ownership arrangements can improve workforce engagement and retention, align incentives between employees and founders, and support sustainable growth, particularly for early-stage and high-growth businesses. The effectiveness of these arrangements is closely linked to the stability and integrity of the supporting tax framework.

This submission is made in the context of the government's consideration of changes to the capital gains tax regime and the potential interaction of those changes with the start-up concession for employee share schemes

## **4 Legislative and Policy Background**

The employee share scheme start up concession was introduced by the Tax and Superannuation Laws Amendment (Employee Share Schemes) Act 2015, following its announcement as part of the Industry Innovation and Competitiveness Agenda on 14 October 2014.

The Explanatory Memorandum makes clear that the reforms were introduced in response to a recognised policy failure: the existing employee share scheme rules were operating as a tax handbrake on innovation, particularly for small, unlisted and early-stage companies.

The Explanatory Memorandum states that the changes were intended to:

*“improve the tax treatment of ESS interests so as to facilitate better alignment of interests between employers and their employees, and to stimulate the growth of innovative start-ups in Australia by helping small unlisted companies be more competitive in the labour market”*



## 5 **The Deliberate Structural Departure from Ordinary ESS Taxation**

The employee share scheme regime now operates on two fundamentally different taxing bases.

The first is the ordinary employee share scheme model, under which discounts and benefits are assessed as ordinary income to the employee at a statutory taxing point.

The second is the start-up concession model, which intentionally replaces income-based taxation with capital-based taxation.

The Explanatory Memorandum expressly describes the start-up concession as:

*“an additional taxation concession for employees of certain small start-up companies.”<sup>1</sup>*

That concession operates by ensuring that qualifying equity interests are not taxed as income under the employee share scheme provisions but are instead taxed under the capital gains tax provisions when real economic value is realised.

This is not a timing concession alone.

It is a change in tax base, deliberately selected to deliver a materially different outcome.

## 6 **Central Policy Role of Capital Gains Tax Treatment**

Capital gains tax treatment is the mechanism by which the policy objectives of the start-up concession are delivered.

The Explanatory Memorandum recognises that start-ups are typically cash constrained and cannot compete with established firms on salary alone.

By taxing gains on disposal rather than at grant, the regime:

- avoids taxing illiquid, unrealised value;
- aligns tax outcomes with genuine economic gain;
- recognises long holding periods and high failure risk; and
- supports employee participation without imposing funding obligations disconnected from liquidity.

The Explanatory Memorandum further states that the reforms are designed to:

*“make Australia’s taxation of employee share schemes more competitive by international standards and to facilitate the commercialisation of innovative ideas in Australia.”<sup>1</sup>*

## 7 **Long Holding Periods, Inflation and Real Economic Gain**

Equity interests issued under the start-up concession are commonly held for many years.

Over extended holding periods, nominal gains may significantly exceed inflationary gains. Employees bear sustained entrepreneurial risk during that period, often with no certainty of liquidity or return.

Taxing such gains as ordinary income would materially overstate real economic gain and impose an inequitable tax burden divorced from purchasing power.

The decision to assess start up equity under the capital gains tax provisions was therefore a principled and intentional policy choice.

## 8 **Significance and Importance of the Start Up Industry in Australia**

The start-up industry is a structural component of Australia’s long term economic strategy.



The Australian Innovation System Overview 2024 states that:

*“Innovation is a key driver of productivity, economic growth and a higher standard of living.”<sup>2</sup>*

It further observes that:

*“Diffusion, rather than idea creation, is the dominant model of Australian innovation.”<sup>2</sup>*

The Productivity Commission’s Five-Year Productivity Inquiry similarly notes:

*“Advances in knowledge and technology have been the main driver of economic growth and transformation throughout history,”<sup>3</sup>*

and that:

*“creating policy environments conducive to the creation of new ways of doing things (‘innovation’), and diffusing and maintaining these, is the key to being an innovative economy.”<sup>3</sup>*

These observations place start-ups at the centre of productivity and economic reform.

## **9 Global Competition for Talent and Capital**

Start-ups operate in a global market for talent and capital.

The Innovation Overview records that, despite growth, Australian innovators continue to face constraints around access to skills and finance, noting:

*“Despite ongoing challenges around access to finance and skills, Australian innovation has continued to grow.”<sup>2</sup>*

The start-up ESS concession was introduced specifically to ensure Australia’s tax treatment of start-up equity did not deter skilled employees or founders from participating in Australian based ventures.

However, as warned by Paul Bassat, co-founder of Seek, the contemplated changes to the capital gains tax rules could have the opposite effect:

*“If the government abolishes the ‘discount’ on capital gains and replaces it with indexation and [does not] carve out start-up founders and employees they will set back the start-up ecosystem in Australia by a decade or more [...] Founders will leave Australia in big numbers. At a time when we are about to see a tsunami of job shedding [due to artificial intelligence] by existing businesses, Australia’s best hope is a wave of start-up innovation.”<sup>6</sup>*

## **10 Importance of Policy Certainty**

Start-ups and employees make long term decisions based on expected after tax outcomes that may not crystallise for many years.

Eroding the capital gains tax outcomes that underpin the start-up concession would undermine confidence in Australia’s innovation policy framework and discourage equity participation.

## **11 Consequences of Applying Reduced Capital Gains Tax Benefits**

Any reduction in capital gains tax concessions applying to start up equity would:

- collapse the distinction between start up equity and ordinary ESS interests;
- materially reduce the after-tax value of equity incentives; and
- reintroduce the tax impediments the 2015 reforms were designed to remove.

## **12 Proposed Policy Position and Lead Recommendation**

The lead policy proposal arising from this submission is clear and narrowly framed.



Irrespective of any other changes made to the capital gains tax regime, the existing capital gains tax treatment must continue to apply to shares and rights acquired under the employee share scheme start up concession.

This proposal does not require reconsideration of the broader objectives of capital gains tax reform.

Nor does it preclude changes to capital gains tax settings in other contexts, such as housing.

Rather, it recognises that the start-up concession is a purpose built regime, deliberately constructed on the assumption that qualifying equity interests would continue to be assessed under the capital gains tax provisions as they currently operate.

Preserving existing CGT treatment for start-up concession equity is necessary to:

- maintain the material distinction between start up ESS interests and ordinary ESS interests;
- preserve the integrity and effectiveness of the regime as enacted;
- avoid retrospective erosion of long term commercial and employment decisions; and
- ensure continued alignment between tax policy and innovation policy.

Absent such preservation, the start-up concession would remain formally in place but would be substantively diminished.

### **13 Our Position**

#### **We contend that:**

- (a) The start-up concession establishes a deliberately different and concessional tax base.
- (b) Capital gains tax treatment is foundational to that design.
- (c) Any general reform to capital gains tax rules must not alter the treatment of equity acquired under the start-up concession.
- (d) Preserving existing CGT treatment for start-up concession shares is essential to maintaining the regime's purpose, significance and policy coherence.

### **14 Conclusion**

The employee share scheme start up concession is a targeted and intentional departure from ordinary employee share scheme taxation.

Its effectiveness depends on the continued application of existing capital gains tax rules to qualifying equity interests.

Applying altered capital gains tax settings to start up concession shares would hollow out the regime while leaving it nominally intact and would undermine the innovation and competitiveness objectives that the legislation was expressly designed to achieve.

For these reasons, the existing capital gains tax treatment must continue to apply to shares acquired under the start-up concession, irrespective of any broader changes to the capital gains tax regime.



### **Footnotes**

1. Explanatory Memorandum, Tax and Superannuation Laws Amendment (Employee Share Schemes) Bill 2015 (Cth).
2. Department of Industry, Science and Resources, Australian Innovation System Overview 2024, Commonwealth of Australia.
3. Productivity Commission, Five Year Productivity Inquiry: Advancing Prosperity, Commonwealth of Australia.
4. Australian Government, Industry Innovation and Competitiveness Agenda, 14 October 2014.
5. Senate Economics Legislation Committee, Report on the Tax and Superannuation Laws Amendment (Employee Share Schemes) Bill 2015.
6. Tess Bennett and John Kehoe, 'Catastrophic'. Start-ups warn against CGT Change, Australian Financial Review (6 May 2026).