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Assistant Secretary
Individuals and Indirect Tax and Superannuation Division
The Treasury
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Dear Assistant Secretary

Employee Ownership Australia: Submission to the Treasury on the Exposure Draft Legislation for the Innovative Business CGT Concession (IBCC)

1. Introduction

Employee Ownership Australia welcomes the opportunity to comment on the exposure draft legislation for the Innovative Business CGT Concession (IBCC), contained in the Treasury Laws Amendment (Tax Reform No. 5) Bill 2026, specifically the proposed insertion of Subdivision 115-BA into the Income Tax Assessment Act 1997 (ITAA 1997) and the associated transitional provisions in the Income Tax (Transitional Provisions) Act 1997.

This submission builds on EOA's submission dated 10 July 2026 in response to Treasury's consultation paper on capital gains tax reforms for innovative start-ups. It also draws on EOA's submission of 9 June 2026 to the Senate Economics Legislation Committee on the Tax Reform No. 1 Bill.

EOA supports the policy objective of encouraging innovation, entrepreneurship and long-term productive investment in Australia. Employee ownership is integral to that objective. It aligns the interests of employees with those of founders and investors, fosters retention of key talent, and encourages the risk-taking and commitment that early-stage ventures require.

The exposure draft includes some improvements. EOA acknowledges in particular the reduction of the minimum holding period from five years (as proposed in the consultation paper) to three years (paragraph 115-150(1)(f)), the extension of the incorporation limit from 10 to 15 years (paragraph 115-155(1)(a)), the introduction of a registration framework administered by the Industry Secretary (section 115-165 and Subdivision 115-BB), the provision for safe harbour legislative instruments (subsections 115-155(3) and (4)), and the specific carve-out for employee share trust interests (subparagraph 115-150(1)(e)(iv)). EOA acknowledges these changes.

As a threshold matter, while EOA welcomes the changes reflected in the exposure draft, the exposure draft does not adequately reflect the substantive concerns raised by EOA in its 10 July 2026 submission. The improvements are positive, but they are not sufficient, standing alone, to achieve the regime's stated objectives for employees.



The exposure draft does not adequately reflect the concerns raised in the earlier submission

EOA's 10 July 2026 submission identified fundamental design concerns in the proposed IBCC.

It made clear that the existing start-up ESS concession should be retained as a standalone regime, or, at a minimum, that existing interests should be fully grandfathered, and that employee equity should be treated as a central design consideration rather than as a peripheral application of a concession designed primarily for financial investors.

Since EOA's earlier submission raised a significant number of recommendations, it is appropriate to acknowledge that the exposure draft responds positively to some of those concerns, as noted in the Introduction above.

The more fundamental concerns — including retention of the standalone start-up ESS concession, the absence of a specific carve-out for employee equity, the Division 83A multi-event architecture and associated transitional difficulties, the testing time for options, the policy gap between employee and investor thresholds, the need for rollover continuity rules, and the need for safe harbours for founders and early employees — have not been addressed in the exposure draft.

These outstanding concerns are not matters of detail; they go to the structural adequacy of the regime for employees.

Primary recommendation

Employee Ownership Australia reiterates its primary and most strongly held

recommendation from its 10 July 2026 submission: the existing start-up employee share scheme concession in Subdivision 83A-E of the Income Tax Assessment Act 1997 should be retained as a standalone regime. If Parliament proceeds with the broader reforms, all existing interests under the current start-up concession should be fully grandfathered.

Recommendation: *The existing start-up employee share scheme concession should be retained as a standalone regime. In the alternative, all existing interests should be fully grandfathered, and transitional arrangements should ensure that no employee is retrospectively exposed to new eligibility requirements or adverse tax outcomes.*

This submission is structured in two parts. The first addresses the broader IBCC regime and its impact on the viability of innovative start-ups — the ecosystem within which employee ownership operates. The second addresses matters specifically relating to employees and employee share schemes.

2. Central thesis — Employee ownership cannot be examined in isolation

The central thesis of this submission is that it is not appropriate to examine the impact of the IBCC on employee ownership for start-ups in isolation. The changes made are directed primarily at the operation of the concession for financial investors and the broader innovation framework. They do not resolve the specific design inadequacies affecting employees.

The viability and impact of the new regime on innovative start-ups more generally should be taken into account.

The IBCC is not a standalone measure. It is a targeted exception to a broader reform that will, from 1 July 2027, fundamentally alter the capital gains tax treatment of investments in innovative businesses.

The exception preserves concessional treatment only for assets that satisfy the cumulative requirements of section 115-150 (IBCC asset) and section 115-155 (IBCC company), including the company's age (paragraph 115-155(1)(a)), turnover (paragraph 115-155(1)(d)), Australian residence and workforce nexus (paragraphs 115-155(1)(e) and (f)), the innovative company test (subsection 115-155(2)), the predominant activity test (subsection 115-155(5)), and registration with the Industry Secretary (paragraph 115-155(1)(i) and section 115-165).



The regime therefore determines the universe of companies within which employee ownership can operate on concessional terms.

The regime is too prescriptive and layers too many gateways

The stated object of the IBCC in proposed section 115-140 is to encourage early investment in innovative start-up businesses with growth potential.

The Government has recognised, in the 2026-27 Budget and in the consultation paper, that young firms are central to generating jobs and driving economic dynamism, that innovative start-ups create new products and establish new markets, and that the tax system should not disincentivise early-stage investment. EOA endorses that policy objective.

However, we believe the exposure draft does not reflect that policy in its detailed design. The regime layers multiple substantive, temporal and administrative gateways that should be navigated before any participant can access the concession. A company should satisfy requirements concerning its age (paragraph 115-155(1)(a)), affiliate relationships (paragraph 115-155(1)(b)), listing status (paragraph 115-155(1)(c)), turnover (paragraph 115-155(1)(d)), Australian residence (paragraph 115-155(1)(e)), workforce and asset nexus (paragraph 115-155(1)(f)), the innovative company test (subsection 115-155(2)), the predominant activity test (subsection 115-155(5)), and registration with the Industry Secretary (paragraph 115-155(1)(i) and section 115-165). Each of these is a separate condition that should be satisfied simultaneously and continuously.

We consider the cumulative effect is a regime that is too prescriptive and too technical. It is not an investment incentive that founders, employees and investors can confidently rely upon when making long-term commercial decisions.

It is an administrative eligibility regime that requires extensive professional advice, detailed factual analysis and ongoing compliance.

The IBCC should be redesigned as an investment incentive rather than an administrative eligibility regime. It should identify genuine innovative Australian start-ups through clear substantive criteria and provide predictable treatment for genuine at-risk investment by founders, early investors and employees.

Financial capital and human capital are complementary

Innovation requires both financial capital and human capital.

They are complementary inputs. We believe a regime that supports venture capital investment but weakens employee equity is incomplete. Employees who accept equity in lieu of market-rate remuneration are making an investment decision comparable to that of a financial investor. They accept illiquidity, dilution risk and the risk that the venture will fail. If the tax regime does not adequately recognise that investment, the cost of attracting and retaining talent rises, and the competitiveness of Australian start-ups is diminished.

The viability of employee equity depends on the health of the start-up ecosystem

The value of employee equity is a function of the company in which it is held. If the broader regime makes it harder to establish, fund and scale innovative businesses in Australia, employee ownership becomes less valuable regardless of its specific tax treatment.

Eligibility thresholds, innovation testing and transitional rules all affect the viability of companies within which employee ownership operates.

Cliff-edge outcomes — where a company loses IBCC eligibility precisely when it begins to succeed — discourage businesses from scaling in Australia. They encourage founders to incorporate offshore, relocate operations, or structure around Australian thresholds. Each of these responses undermines the environment in which employee ownership thrives.

A coherent framework, not a narrow exception



We consider the IBCC should provide a coherent framework for concessional treatment of investments in innovative businesses, encompassing both financial and human capital. It should not be a narrow exception that addresses investor concerns while leaving employee concerns unresolved.

The following section of this submission addresses specific features of the exposure draft that affect the broader start-up ecosystem and, through it, the prospects for employee ownership.

3. The broader regime — viability and impact on innovative start-ups

This section addresses key features of the exposure draft that affect the viability of innovative start-ups generally and, through them, the environment in which employee ownership operates.

Age and turnover thresholds

Paragraph 115-155(1)(a) of the exposure draft requires an IBCC company to have been incorporated by or under an Australian law for less than 15 years. This is an improvement on the 10-year limit proposed in the consultation paper, and EOA welcomes the change. A 15-year horizon more realistically reflects the development trajectory of innovative businesses, particularly in capital-intensive sectors such as biotechnology, advanced manufacturing and clean energy.

However, the \$50 million turnover threshold in paragraph 115-155(1)(d) may still be too narrow for companies approaching commercial scale.

We understand the vast majority of start-ups launched will have a turnover under \$10 million, so the \$50 million threshold captures the vast majority of the target cohort. The concern is at the margin: companies approaching \$50 million in turnover are precisely those that have demonstrated commercial viability and are seeking to scale. A cliff-edge loss of eligibility at that point is counterproductive.

- The \$50 million turnover threshold should be indexed to the consumer price index or a similar measure to prevent erosion over time.
- Consideration should be given to a tapering mechanism rather than a hard threshold, so that eligibility is not lost in a single income year.
- The incorporation date may not accurately reflect when the relevant innovative business commenced. Companies may be incorporated for administrative or corporate structuring purposes well before commencing innovative activities. The legislation should permit a company to demonstrate when its innovative business activities commenced, rather than relying solely on its date of incorporation.

Recommendation: *The \$50 million turnover threshold should be indexed. A tapering mechanism should replace the cliff-edge loss of eligibility. The legislation should allow companies to demonstrate when innovative activities commenced, rather than relying solely on the date of incorporation.*

The affiliate limb of the 15-year requirement is too broadly drafted

Paragraph 115-155(1)(b) provides that if an IBCC company is an affiliate of another entity, the other entity should also have been incorporated for less than 15 years. The explanatory memorandum states that these requirements ensure the company cannot be controlled by another company that is 15 or more years old.

EOA recognises the legitimate integrity concern: an established business should not obtain a fresh eligibility period merely by incorporating a new company and transferring an existing business into it. However, the affiliate rule goes substantially further than is necessary to address that concern. A genuinely new innovative business may be established by or with the support of an existing entity that has operated for more than 15 years. The new venture may involve new technology, new intellectual property, new employees and substantially different commercial risks. The affiliate rule



can prevent such a business from qualifying as an IBCC company despite being precisely the type of innovative start-up the concession is intended to support.

The affiliate limb should be removed or replaced with a targeted integrity provision that addresses the continuation or transfer of an existing business into a newly incorporated entity, rather than the mere existence of a corporate relationship with an older entity. If an affiliate rule is retained, a clear statutory safe harbour should be provided for genuinely new innovative businesses associated with older entities.

Recommendation: *The affiliate limb in paragraph 115-155(1)(b) should be removed or replaced with a targeted integrity provision. Access to the IBCC should be determined by the substance and age of the innovative business, not by the corporate history of an affiliated entity.*

Innovation testing and the registration framework

The exposure draft introduces a requirement for registration with the Industry Secretary under section 115-165 as a precondition to IBCC company status (paragraph 115-155(1)(i)). EOA does not support registration as a mandatory precondition. Subdivision 115-BB establishes the registration framework, including initial registration (section 115-165), annual reporting (section 115-166), automatic suspension for failure to report (section 115-167), and cancellation (section 115-168).

A registration framework can provide certainty to companies, employees and investors before transactions are entered into, rather than requiring parties to bear the risk of retrospective ATO assessment.

The provision in subsections 115-155(3) and (4) for the Industry Secretary to make legislative instruments specifying safe harbour criteria for the innovative company test is a positive development. However, the effectiveness of the safe harbour will depend entirely on how it is used. If the safe harbour criteria are drawn narrowly or require subjective qualitative assessment, they will not deliver the certainty the regime requires.

- The safe harbour legislative instrument should specify objective, bright-line criteria wherever possible. Companies that meet those criteria should be entitled to registration without further qualitative assessment.
- A binding certification pathway is needed. Companies should be able to apply for and receive a binding determination of their IBCC status that cannot be withdrawn retrospectively except in cases of fraud or material misrepresentation.
- The qualitative innovation criteria in the primary legislation remain uncertain. The term “innovative” is inherently subjective. Without clear guidance, companies and their advisers will be unable to determine with confidence whether they qualify.

The innovative company test should not operate as five cumulative gateways

The five conditions in subsection 115-155(2) — genuine focus on developing innovation for commercialisation, high growth potential, ability to scale, ability to address broader than local markets, and competitive advantages — should not operate as cumulative gateways. A company may plainly be an innovative Australian start-up but fail because one forward-looking limb cannot yet be demonstrated. The core requirement should be that the business is established and operated for the purpose of developing and generating commercial success from genuine innovation. Growth potential, scalability, broader market potential and competitive advantage should be relevant factors or statutory safe harbours rather than independent conditions that should all be satisfied.

The predominant activity test imposes an unnecessary second innovation test

Subsection 115-155(5) imposes a separate predominant activity test after the company has already satisfied the innovative company test. The company should conduct relevant development or commercialisation activities which are not ineligible activities and then satisfy at least two of three



separate 75 per cent tests concerning assets, employees and income. This is an unnecessary second innovation test and should be removed or materially simplified.

Paragraph 115-155(5)(c) also requires that the company not intend to cease the relevant activity within five years after first registering and that a reasonable person would not expect it to do so. This forward-looking intention requirement is inconsistent with start-up reality. Innovative businesses pivot, acquire complementary businesses or intellectual property, and change the relative composition of their assets, employees and income as they move from development to commercialisation. The five-year intention test should be removed.

The predominant activity test in subsection 115-155(5) creates particular difficulties for companies that hold significant cash balances following capital raisings. Paragraph 115-155(5)(b) requires that more than 75 per cent of the company's assets, employees or income be attributable to eligible innovative activities.

A start-up that raises \$20 million in a Series B round and holds that capital pending deployment may fail the 75 per cent asset test because a substantial proportion of its assets are cash rather than assets used in eligible activities. This is an anomalous outcome. The temporary holding of cash following a genuine capital raise should not put eligibility at risk. Safe harbours should address this scenario.

Recommendation: *The safe harbour legislative instrument should specify objective, bright-line criteria. A binding certification pathway should be established. The active business test should include a safe harbour for companies holding cash from recent capital raisings.*

The temporal requirements are a fundamental structural problem

Paragraph 115-150(1)(d) requires an asset issued on or after 1 July 2027 to be issued at a time when the company is an IBCC company. This is not a minor timing rule. It determines whether each particular interest can become a qualifying asset and requires the company-level conditions to be considered at the point when the founder, investor or employee acquires the interest.

This creates particular difficulties for founders and early employees. Founders ordinarily acquire their original shares at or around incorporation, when the company may have no operating history, employees, customers, revenue or established intellectual property. That is precisely when it may be hardest to demonstrate high growth potential, successful scalability, broader market access and competitive advantage. The persons assuming the earliest entrepreneurial risk are therefore the persons for whom it is hardest to establish qualification.

The same concern applies to early employees who accept equity during the formative period. They bear the greatest career and economic risk, yet face the greatest uncertainty because the company cannot demonstrate every forward-looking statutory characteristic at the time they join.

Although subsection 115-155(8) provides retrospective treatment for registration, it applies only for the purposes of paragraph 115-155(1)(i). It does not retrospectively deem paragraphs 115-155(1)(a) to (h) to have been satisfied when the earlier interest was issued. A separate statutory mechanism is required to protect genuine formative-stage interests where the business subsequently demonstrates within an appropriate period that it satisfies the substantive policy criteria.

Recommendation: *The temporal requirements should be amended to protect genuine founder and early employee interests issued during the formative period. A look-back or safe harbour mechanism should apply where the company subsequently satisfies the IBCC criteria within a defined period after the interest was issued.*

Registration should operate as an optional safe harbour

Registration with the Industry Secretary under section 115-165 is welcome as a mechanism for providing certainty. However, registration should operate as an optional safe harbour, not as a mandatory precondition to accessing the concession. A company and its investors should remain able to establish entitlement by demonstrating that the substantive statutory conditions are satisfied



without registration. Making registration mandatory creates an additional administrative gateway that may delay or prevent access to the concession for companies that substantively qualify.

Recommendation: *Registration should operate as an optional safe harbour providing binding certainty, rather than as a mandatory precondition to the concession.*

Transitional arrangements

The exposure draft contains transitional rules for assets issued before 1 July 2027 in proposed section 115-145 of the Income Tax (Transitional Provisions) Act 1997. Under those rules, a pre-commencement asset is an IBCC asset if it was issued by a company that was registered as an IBCC company before the relevant CGT event (subsection 115-145(2) of the IT(TP)A 1997), satisfied specified requirements at the time of registration (subsection 115-145(3)), was incorporated for less than 15 years on 30 June 2027 (subsection 115-145(4)), and had aggregated turnover not exceeding \$50 million and satisfied the innovative company and predominant activity tests for the later of the 2025-26 income year or the year of incorporation (subsection 115-145(5)).

These rules are complex and may create uncertainty for existing ventures and their stakeholders.

- Existing ventures that have raised capital or issued employee equity on the basis of the current CGT regime should have simplified transitional pathways into the IBCC framework.
- Retrospective innovation testing is unfair. Companies that were established under a regime that did not require formal innovation credentials should not be required to demonstrate innovation retrospectively as a condition of transitional relief.
- The cost base of pre-1 July 2027 assets should be clearly established, and the transitional rules should not produce outcomes that are less favourable than the current regime for assets already held.

Recommendation: *Transitional arrangements should be simplified for existing ventures. Retrospective innovation testing should not be required. The transitional rules should not produce outcomes less favourable than the current regime for assets already held.*

Coherence with existing regimes

The IBCC should operate coherently with existing innovation and investment incentive regimes, including the research and development tax incentive (RDTI), the employee share scheme (ESS) rules in Division 83A and Subdivision 130-D of the ITAA 1997, and the venture capital limited partnership (VCLP) and early stage venture capital limited partnership (ESVCLP) regimes under the Venture Capital Act 2002.

Of particular concern is the exclusion of financial services and financial technology businesses from the ESVCLP regime, and the ineligible activities listed in subsection 115-155(6) of the exposure draft, which exclude finance (to the extent it involves banking, providing capital, leasing, factoring or securitisation — paragraph 115-155(6)(b)) and insurance (paragraph 115-155(6)(c)).

While subsection 115-155(7) provides that developing technology for use in relation to finance or insurance is not ineligible, this carve-out may not adequately address the position of technology-enabled financial services businesses whose predominant activity involves both developing technology and providing regulated financial services. The FinTech sector contributes \$13.6 billion annually to the Australian economy (Deloitte research). The IBCC should not perpetuate barriers that prevent FinTech businesses from accessing concessional treatment available to other innovative sectors.

More broadly, the exclusions in subsection 115-155(6) are too broadly drawn. There may be activities which the Government determines should not receive concessional treatment for substantive public policy reasons. However, that is conceptually different from excluding innovation because it occurs within a conventional industry. A genuinely innovative financial business may itself provide finance, and an innovative insurance business may itself conduct insurance. The



exclusions should be narrowed so that a product, service, process or business model which is genuinely innovative remains eligible, subject only to targeted public policy exclusions.

Recommendation: *The IBCC, RDTI, ESS rules and venture capital regimes should operate coherently. The exclusion of FinTech businesses from ESVCLP-equivalent concessions should be reconsidered in the context of the IBCC framework.*

4. Matters specifically relating to employees

This section addresses matters arising from the exposure draft that relate specifically to employees and employee share schemes. It carries forward and develops the recommendations made in EOA's submission of 10 July 2026.

This section carries forward and develops the employee-specific recommendations made in EOA's submission of 10 July 2026. As noted above, the exposure draft does not reflect the substance of those recommendations, with the exception of the reduced holding period.

Retention of the existing start-up ESS concession

This is EOA's foremost recommendation, reiterated from the 10 July 2026 submission. The existing start-up employee share scheme concession in Subdivision 83A-E should be retained as a standalone regime, operating independently of the IBCC framework.

The start-up ESS concession has been in operation since 2015. It is understood by employers, employees and their advisers. It provides a known and workable framework for issuing equity to employees of eligible start-ups at a concessional tax cost. Replacing it with the IBCC regime introduces complexity, transitional risk and the possibility that employees who are currently eligible for concessional treatment will lose that eligibility.

The start-up ESS concession should operate without the innovation requirement

The existing start-up ESS concession in section 83A-33 does not require the company to satisfy an innovation test. It requires only that the company be unlisted, incorporated for less than 10 years and have turnover of less than \$50 million. These are objective, bright-line criteria that can be self-assessed by companies and their advisers without the need for expert evidence, professional opinions or engagement with government agencies.

The IBCC imposes an additional and fundamentally different layer of requirements. Under the exposure draft, the company should also satisfy the innovative company test in subsection 115-155(2), the predominant activity test in subsection 115-155(5), and should be registered with the Industry Secretary under section 115-165. The effect is that employee share scheme interests that currently qualify for concessional treatment under section 83A-33 may cease to qualify under the IBCC if the company cannot satisfy the innovation or predominant activity tests, or fails to register.

This creates a duplication and complication of requirements that is both unnecessary and counterproductive. The start-up concession imposes one set of eligibility conditions directed at enabling companies to use equity to attract and retain employees. The IBCC imposes a different and additional set directed at incentivising financial investment in innovative businesses. These are different policy objectives.

The two sets of requirements are not aligned and are in significant respects mutually inconsistent. A company may satisfy the start-up concession's criteria — it is unlisted, young and small — yet fail the IBCC's innovation test because it cannot demonstrate that it has "high growth potential" or "competitive advantages" within the meaning of subsection 115-155(2). Conversely, a company that is genuinely innovative may exceed the start-up concession's turnover threshold while still qualifying as an IBCC company.

Layering the IBCC's innovation requirements on top of the start-up concession's eligibility conditions does not serve the employee ownership objective. It undermines it. EOA's strong recommendation is that the start-up ESS concession should be retained as a standalone regime,



operating on its existing objective eligibility criteria, without any requirement to satisfy the IBCC's innovation test, predominant activity test or registration requirements. If Treasury does not accept this, the IBCC should not at a minimum impose requirements on employee equity that are more onerous than those under the existing start-up concession.

If the legislation nevertheless connects the employee outcome to the innovation regime, the two sets of requirements should not be cumulative. An explicit no-worse-off principle should apply: overlapping conditions should be coordinated and the more favourable and less onerous standard should govern. This principle should apply to company age and size criteria, issue timing, registration, innovation and predominant activity tests, employee share trust mechanics, the three-year holding period, compulsory disposal on cessation of employment, and subsequent company-level reporting or compliance.

If the start-up concession is not retained in its current form:

- All existing interests issued under the start-up concession should be fully grandfathered. No employee should be retrospectively exposed to new eligibility requirements or adverse tax outcomes in respect of interests already granted.
- Grandfathering should operate effectively where the form of the interest changes — for example, where options are exercised and converted to shares, or where shares are transferred to a trust and reallocated.

Recommendation: *The existing start-up ESS concession should be retained as a standalone regime. In the alternative, all existing interests should be fully grandfathered, , and grandfathering should extend to changes in the form of interests.*

Employee equity is not passive investment

A fundamental deficiency in the exposure draft is the absence of any express recognition that employee equity is qualitatively different from passive investment. Employees who receive shares or options under an employee share scheme:

- accept below-market remuneration in exchange for equity, bearing the risk that the equity will become worthless;
- are exposed to employment risk — they may lose their equity on termination;
- hold illiquid interests that they cannot sell or pledge;
- bear dilution risk from subsequent capital raisings; and
- are subject to vesting conditions, forfeiture provisions and disposal restrictions.

Employee share schemes are productive arrangements that align employee incentives with company performance. They are not passive investments of the kind the broader CGT reform is directed at. The exposure draft contains no equivalent carve-out for ESS interests. This is a significant omission.

Employees lack control over the matters that determine their tax treatment

Employees are fundamentally different from founders and financial investors because they lack control over the key decisions that determine the value and tax treatment of their equity.

Unlike founders, employees do not control the company's innovation strategy, its compliance with IBCC requirements, its registration status under section 115-165, its annual reporting to the Industry Secretary under section 115-166, its decision to maintain or cease eligible activities, or its corporate transactions. Unlike financial investors, employees cannot diversify their exposure, cannot generally choose when to invest, cannot ordinarily sell their interests, and bear concentrated risk through both their employment and their equity in the same enterprise.

Under the exposure draft, the employee's access to the IBCC discount depends on matters entirely within the company's control: whether the company satisfies the innovative company test in subsection 115-155(2), whether it maintains registration under section 115-165, whether it files



annual reports under section 115-166, and whether it becomes a disqualified company under section 115-160.

A failure by the company on any of these counts — including a failure to lodge an annual report, resulting in automatic suspension under section 115-167 and potential cancellation under section 115-168 — can extinguish the employee's entitlement to the IBCC discount. The employee has no capacity to prevent that outcome and may not even be aware of the company's non-compliance until the adverse tax consequence has crystallised.

This is a fundamental design flaw. A regime directed at encouraging employees to accept equity in innovative businesses should not impose adverse tax consequences on those employees by reason of matters over which they have no control and no capacity to influence. The legislation should include a specific protection ensuring that an employee's access to the IBCC discount is not affected by the company's post-issuance failure to maintain registration, lodge reports or satisfy ongoing eligibility requirements.

Recommendation: *The IBCC should include a specific protection for employees so that the tax treatment of their equity interests is not adversely affected by the company's failure to satisfy registration, reporting or eligibility requirements that are within the company's control and outside the employee's control.*

Recommendation: *The IBCC should include a specific carve-out recognising that employee equity under a qualifying employee share scheme is not passive investment and should not be subject to the same restrictions as financial investments.*

The multi-event architecture of Division 83A creates transitional difficulties

The employee share scheme rules in Division 83A and Subdivision 130-D of the ITAA 1997 operate on a multi-event architecture. Section 83A-33 provides the start-up concession, section 83A-110 specifies the deferred taxing point, section 83A-120 determines the ESS assessable amount, and section 130-80 establishes the cost base rules for ESS interests.

The tax treatment of an ESS interest is determined by reference to inputs at different times: the discount at grant, the taxing point (which may be deferred under Subdivision 83A-C), the cost base at the taxing point, and the capital gains tax treatment on subsequent disposal.

The transitional rules in the exposure draft appear to assume a single asset with a known cost base at 1 July 2027. This assumption does not hold for many ESS interests:

- Tax-deferred shares under Subdivision 83A-C may not have a crystallised cost base at 1 July 2027. The taxing point may not have occurred, and the discount may not have been assessed.
- Options and rights create further complexity. An option granted before 1 July 2027 but exercised after that date produces a share that is technically issued after the commencement date. While subsection 115-150(5) of the ITAA 1997 provides that a share acquired from exercising an option that was an IBCC asset is taken to be acquired at the time the option was acquired, this rule applies only to options that are themselves IBCC assets.

For pre-commencement options, the interaction between this rule and the transitional provisions in section 115-145 of the IT(TP)A 1997 is unclear. The transitional rules should clarify whether the resulting share qualifies as a pre-commencement asset.

- Where a deferred taxing point occurs after 1 July 2027, the interaction between Division 83A and the new IBCC rules is unclear. The employee may be subject to Division 83A tax on the discount and then find that the IBCC discount does not apply on disposal because the transitional requirements are not met.



Recommendation: *The transitional rules should be amended to accommodate the multi-event architecture of Division 83A. Specific provision is needed for tax-deferred shares, options exercised after commencement, and the interaction between Division 83A taxing points and IBCC eligibility.*

Holding period

The exposure draft specifies a minimum holding period of three years for IBCC assets in paragraph 115-150(1)(f). The three-year period applies generally under subparagraph 115-150(1)(f)(i), with exceptions for takeover or similar arrangements under subparagraph 115-150(1)(f)(ii). This is a welcome reduction from the five-year period proposed in the consultation paper, and EOA acknowledges this improvement.

However, two issues remain:

- Carve-outs are needed for events outside the employee's control. An employee who is made redundant, whose employment is terminated, or who is required to dispose of equity on a change of control should not lose IBCC eligibility solely because the holding period has not been satisfied. These are not elective disposals.
- For options, the holding period should be measured from the date of grant or vesting, not the date of exercise. An employee who is granted options with a three-year vesting period and exercises them immediately on vesting should not then be required to hold the resulting shares for a further three years. The economic commitment was made at grant.

Recommendation: *The three-year holding period should include carve-outs for involuntary disposals and events outside the employee's control. For options, the holding period should be measured from grant or vesting, not exercise.*

Cessation of employment and deemed or required disposals

A significant practical issue for employee equity is that many employee share scheme arrangements provide for a deemed disposal or required disposal of shares on cessation of employment. This is a standard and widespread feature of employee equity plans. An employee who ceases employment — whether voluntarily, by redundancy, by termination, by death or by permanent incapacity — may be required under the plan rules to transfer shares back to the company, to an employee share trust, or to another participant. Alternatively, the plan rules may provide for automatic forfeiture, compulsory buy-back or redemption.

Under the exposure draft, these disposals may trigger a CGT event. If the three-year holding period in paragraph 115-150(1)(f) has not been satisfied at the time of cessation, the employee will lose access to the IBCC discount. This is an unreasonable outcome. The employee did not choose to dispose of the interest. The disposal was required by the terms of the plan or by the circumstances of their departure from the company.

The exposure draft recognises in subparagraph 115-150(1)(f)(ii) that holding period requirements should not apply where all or substantially all interests in the company are acquired under a particular scheme — that is, on a takeover or similar arrangement. This principle — that involuntary or externally driven disposals should not defeat the holding period — should be extended to cover cessation of employment disposals. These events are similarly involuntary from the employee's perspective and are a standard feature of the Australian employee equity landscape.

The legislation should expressly provide that cessation of employment disposals — whether by way of compulsory transfer, buy-back, forfeiture or redemption under the terms of an employee share scheme — do not disqualify the employee from the IBCC discount, provided the employee held the interest in good faith throughout the period of their employment.

Recommendation: *Cessation of employment disposals — including compulsory transfers, buy-backs, forfeitures and redemptions under employee share scheme rules — should not disqualify the employee from the IBCC discount where the employee held the interest in good faith throughout their employment.*



Testing time for employee interests

The exposure draft requires under paragraph 115-150(1)(d) that the asset be issued at a time when the company is an IBCC company within the meaning of section 115-155. For employee share scheme interests acquired through an employee share trust under subparagraph 115-150(1)(e)(iv), the relevant time is when the interest is acquired by the trust, not when it is allocated to the employee. For employee share scheme interests, eligibility should be tested at the time of grant.

It would be anomalous for an employee to lose concessional treatment because the company grew, succeeded or ceased to satisfy the innovation test between the date of grant and the date of disposal. The employee made an investment decision at grant based on the company's status at that time. The policy objective is to incentivise employees to join and remain with innovative businesses. Testing eligibility at a later point undermines that incentive.

Recommendation: For ESS interests, IBCC company eligibility should be tested at the time of grant. Employees should not lose concessional treatment because the company's circumstances changed after the equity was issued.

Existing ESS interests should be preserved

Employees who hold existing ESS interests issued under the current start-up concession should not be retrospectively exposed to new requirements. The exposure draft should include:

- Express preservation of the tax treatment of existing ESS interests, regardless of whether the issuing company qualifies as an IBCC company.
- Deemed qualification for existing interests, so that employees are not required to demonstrate that their employer satisfies the new innovation and registration requirements in respect of equity already granted.

Recommendation: Existing ESS interests should be expressly preserved. The exposure draft should include deemed qualification for interests already issued under the current start-up concession.

Employee share trust rules

EOA welcomes the inclusion of a specific carve-out for employee share trust interests in subparagraph 115-150(1)(e)(iv) of the exposure draft, which provides that an ESS interest acquired in an IBCC company under an employee share scheme that is an interest held in, or provided by, an employee share trust (within the meaning of section 130-85 of the ITAA 1997) may qualify as an IBCC asset regardless of whether it was issued directly by the company to the employee. This is an important recognition that employee share trusts play a legitimate and valuable role in facilitating employee ownership.

However, the carve-out may not address all relevant scenarios. Employee share trusts engage in a range of transactions that should be accommodated:

- Acquisition of shares by the trustee (whether by subscription or market purchase).
- Warehousing of shares pending allocation to employees.
- Allocation of shares to employees on satisfaction of vesting conditions.
- Forfeiture and reallocation of unvested shares.
- Trustee disposals to fund the acquisition of replacement shares or to return surplus shares to the company.
- Beneficiary-level qualification — the employee beneficiary should be the relevant taxpayer for IBCC purposes, not the trustee.

Specific rules are needed to ensure that each of these transactions is accommodated within the IBCC framework without triggering unintended CGT consequences.

The scope of circumstances where shares can be transferred should be expanded



The exposure draft's requirement in paragraph 115-150(1)(e) that an IBCC asset be issued directly by the company creates a structural limitation poorly suited to the realities of employee share schemes. In practice, employee equity is frequently provided through mechanisms other than direct issuance: transfers from existing shareholders, trust warehousing arrangements, secondary market facilitation, management equity reallocation, and buyback-and-reissue structures. These are all legitimate commercial mechanisms that serve the same policy objective as direct issuance — providing employees with genuine equity participation in the business.

The employee share trust carve-out in subparagraph 115-150(1)(e)(iv) addresses some of these scenarios but does not cover all of them. In particular, it does not address: shares acquired by an employee share trust from existing shareholders rather than by subscription; shares transferred directly from a founder or existing shareholder to an employee as part of a management equity arrangement; shares provided to employees as consideration for services outside a formal employee share scheme; or shares reissued or reallocated following forfeiture by a departing employee.

The scope of subparagraph 115-150(1)(e) should be expanded to cover all circumstances in which an employee acquires a genuine equity interest in an IBCC company, regardless of whether the shares were newly issued by the company or transferred from an existing holder, provided the acquisition is connected with the employee's employment or engagement with the business. Without this expansion, the regime will exclude legitimate employee ownership transactions and create a perverse incentive for companies to structure employee equity as new issuances — with the associated dilution to existing shareholders — rather than using commercially preferable transfer mechanisms.

Recommendation: *The scope of paragraph 115-150(1)(e) should be expanded to cover all circumstances in which an employee acquires a genuine equity interest in an IBCC company, regardless of whether the shares were newly issued or transferred from an existing holder, provided the acquisition is connected with the employee's employment or engagement with the business.*

In addition, EOA reiterates its recommendation from the 10 July 2026 submission that employee share trusts and employee ownership trusts should be excluded from the proposed minimum tax on discretionary trusts. This issue is addressed in detail in EOA's submission of 18 September 2026 to Treasury on the exposure draft for the minimum tax on discretionary trusts, which recommends the insertion of express exclusions in proposed section 101AB of the ITAA 1997 for employee share trusts satisfying the sole activities test in subsection 130-85(4) and for qualifying employee ownership trusts.

Recommendation: *The employee share trust carve-out in subparagraph 115-150(1)(e)(iv) should be expanded to cover the full range of trust transactions, including acquisition, warehousing, allocation, forfeiture, reallocation and trustee disposals. Beneficiary-level qualification should be ensured. Employee share trusts and employee ownership trusts should be excluded from the proposed minimum tax on discretionary trusts.*

Policy inconsistency: employee versus investor thresholds

The exposure draft highlights a significant policy inconsistency between the thresholds applicable to venture capital investments and those applicable to employee share schemes. Under sections 118-407 and 118-425 of the ITAA 1997, read with the Venture Capital Act 2002, the ESVCLP regime provides flow-through tax treatment for investments satisfying asset thresholds that are materially higher than the turnover thresholds applicable to the ESS start-up concession in section 83A-33.

Under the ESVCLP regime, the relevant thresholds are: assets of less than \$80 million at entry, assets of less than \$420 million on an ongoing basis, and fund sizes of up to \$270 million. There is no listing requirement and no age restriction on the investee company.



Under the current ESS start-up concession, the thresholds are: the company should be unlisted, incorporated for less than 10 years, and have turnover of less than \$50 million. The exposure draft retains the \$50 million turnover threshold (with the incorporation period extended to 15 years).

This creates a gap: a company with \$60 million in assets qualifies for ESVCPLP venture capital concessions, but its employees cannot access the ESS start-up concession if the company's turnover exceeds \$50 million. Financial investors receive concessional treatment that is unavailable to the employees who create the company's value.

Young firms create approximately 60 per cent of all new jobs, according to e61 Institute and ABS data. It is inconsistent with the policy objective of supporting innovation and employment to provide more generous thresholds for financial investors than for employees.

Recommendation: *The eligibility thresholds for employee share scheme concessions should be aligned with those for venture capital concessions. The policy gap between investor and employee thresholds should be closed.*

5. Conclusion

Employee ownership is integral to innovation. It cannot be assessed in isolation from the broader regime within which innovative businesses operate. The exposure draft includes some improvements to the IBCC framework, but those improvements do not adequately address the substantive concerns raised in EOA's earlier submissions. The changes — while positive — are not sufficient standing alone to ensure that the regime achieves its stated objectives for employees. The IBCC should provide certainty, coherence and commercial practicality for both financial investors and the employees whose talent, commitment and risk-taking are essential to the success of innovative ventures.

This submission builds on EOA's submission of 10 July 2026 in response to the consultation paper and on EOA's submission of 9 June 2026 to the Senate Economics Legislation Committee. The recommendations made in those submissions that have not been addressed in the exposure draft are reiterated.

EOA acknowledges that some improvements have been included in the exposure draft.,

However, the more fundamental structural concerns raised in EOA's 10 July 2026 submission — and reiterated in this submission — remain largely unresolved. The absence of a standalone start-up ESS concession, the lack of specific recognition of employee equity, the unresolved Division 83A transitional difficulties, the failure to align employee and investor thresholds, and the absence of adequate safe harbours for founders and early employees each represent significant gaps in the exposure draft that should be addressed before the legislation is introduced.

Employee Ownership Australia stands ready to assist Treasury in developing the IBCC framework to ensure it serves the interests of employees, employers and the broader Australian innovation ecosystem.

Yours faithfully,

Andrew Clements

Co-Chair

Employee Ownership Australia