

EXPOSURE DRAFT

1 Inserts for

2 **Tax Laws Amendment (2009 Budget**
3 **Measures No. 2) Bill 2009: Employee**
4 **share schemes**

5
6 **Schedule 1—Employee share schemes**
7

8 **Part 3—Application provisions**

9 *Income Tax (Transitional Provisions) Act 1997*

10 **80 At the end of Part 2-40**

11 Add:

12 **Division 83A—Employee share schemes**

13 **83A-5 Application of Division 83A of the *Income Tax Assessment Act***
14 ***1997***

- 15 (1) Division 83A of the *Income Tax Assessment Act 1997* applies in
16 relation to an ESS interest if:
17 (a) the interest was acquired on or after 1 July 2009; and
18 (b) the relevant share or right (within the meaning of
19 Division 13A of Part III of the *Income Tax Assessment Act*
20 *1936*, as in force at the time (the ***pre-Division 83A time***)
21 occurring just before Schedule 1 to the *Tax Laws Amendment*
22 *(2009 Budget Measures No. 2) Act 2009* commenced,
23 (***former Division 13A***)) was *not* acquired (within the
24 meaning of former Division 13A) before 1 July 2009.
- 25 (2) Furthermore, Subdivision 83A-C of the *Income Tax Assessment*
26 *Act 1997* (and the rest of Division 83A of that Act, to the extent
27 that it relates to that Subdivision) also applies in relation to an ESS
28 interest if:
29 (a) all of the following subparagraphs apply:
30 (i) at the pre-Division 83A time, subsection 139B(3) of the
31 *Income Tax Assessment Act 1936* applied in relation to
32 the interest;

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- 1 (ii) the interest was acquired (within the meaning of former
2 Division 13A) before 1 July 2009;
- 3 (iii) the cessation time mentioned in subsection 139B(3) of
4 the *Income Tax Assessment Act 1936*, as in force at the
5 pre-Division 83A time, for the interest did not occur
6 before 1 July 2009; or
- 7 (b) all of the following subparagraphs apply:
- 8 (i) at the pre-Division 83A time, section 26AAC of the
9 *Income Tax Assessment Act 1936*, as in force at that
10 time, (**former section 26AAC**) applied in relation to the
11 interest;
- 12 (ii) the interest was acquired (within the meaning of former
13 section 26AAC) before 1 July 2009;
- 14 (iii) an amount has not been included in a person's
15 assessable income under former section 26AAC in
16 relation to the interest before 1 July 2009.
- 17 (3) Subsection (2) applies despite section @83A-105 of the *Income*
18 *Tax Assessment Act 1997*.
- 19 (4) If Subdivision 83A-C of the *Income Tax Assessment Act 1997*
20 applies in relation to an ESS interest because of subsection (2):
- 21 (a) do not include an amount in your assessable income under
22 subsection @83A-110(1) of that Act in relation to the ESS
23 interest to the extent that the amount relates to your
24 employment outside Australia; and
- 25 (b) subject to subsection @83A-115(3) or @83A-117(3) of that
26 Act, whichever is applicable, treat the **ESS deferred taxing**
27 **point** for the interest as being:
- 28 (i) if paragraph (2)(a) of this section applies—the cessation
29 time mentioned in subparagraph (2)(a)(iii); or
- 30 (ii) if paragraph (2)(b) applies—the earliest time at which
31 an amount is included in a person's assessable income
32 under former section 26AAC in relation to the interest;
33 and
- 34 (c) treat the reference in subsection @83A-115(3) or
35 @83A-117(3) (30 day rule for ESS deferred taxing point),
36 whichever is applicable, of that Act to the time worked out
37 under subsection @83A-115(2) or @83A-117(2) of that Act
38 as being a reference to the time worked out under
39 paragraph (b) of this subsection; and
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- 1 (d) treat the requirements in paragraphs @83A-310(a), (b) and
2 (c) of that Act as being satisfied in relation to the interest if,
3 and only if:
4 (i) if paragraph (2)(a) applies—the 2 requirements
5 mentioned in section 139DD of the *Income Tax*
6 *Assessment Act 1936* (as in force at the
7 pre-Division 83A time) are satisfied in relation to the
8 interest; or
9 (ii) if paragraph (2)(b) applies—the requirements in
10 paragraphs (8D)(a), (b) and (c) of former
11 section 26AAC are satisfied in relation to the interest.

12 **83A-10 Savings—continued operation of former provisions**

- 13 (1) This section applies if:
14 (a) at the time (the *pre-Division 83A time*) occurring just before
15 Schedule 1 to the *Tax Laws Amendment (2009 Budget*
16 *Measures No. 2) Act 2009* commenced:
17 (i) Division 13A of Part III of the *Income Tax Assessment*
18 *Act 1936*, as in force at that time, (**former Division 13A**)
19 applied in relation to a share or right (within the
20 meaning of former Division 13A); or
21 (ii) section 26AAC of that Act, as in force at that time,
22 applied in relation to a share or right (within the
23 meaning of that section as in force at that time); and
24 (b) if there is a beneficial interest in the share or right that is an
25 ESS interest—Division 83A of the *Income Tax Assessment*
26 *Act 1997* does not apply in relation to the interest under
27 section 83A-10.
- 28 (2) If subparagraph (1)(a)(i) applies, to avoid doubt, sections 26AAC
29 and 26AAD of the *Income Tax Assessment Act 1936*, as in force at
30 the pre-Division 83A time, continue to apply (in spite of their
31 repeal) to the share or right.
- 32 (3) If subparagraph (1)(a)(ii) applies, to avoid doubt, former
33 Division 13A continues to apply (in spite of its repeal) to the share
34 or right.

35 **80A At the end of Division 703**

36 Add:

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1 703-35 Employee share schemes

2 Despite the amendments of section 703-35 of the *Income Tax*
3 *Assessment Act 1997* made by Schedule 1 to the *Tax Laws*
4 *Amendment (2009 Budget Measures No. 2) Act 2009*,
5 subsection (4) of that section continues to apply, from the
6 commencement of that Schedule, to each share and membership
7 interest that it applied to just before that commencement.

8 80B At the end of Subdivision 719-B

9 Add:

10 719-30 Employee share schemes

11 Despite the amendment of section 719-30 of the *Income Tax*
12 *Assessment Act 1997* made by Schedule 1 to the *Tax Laws*
13 *Amendment (2009 Budget Measures No. 2) Act 2009*,
14 subsection (2) of that section continues to apply, from the
15 commencement of that Schedule, to each share and membership
16 interest that it applied to just before that commencement.

17 81 Application of other amendments

18 The amendments made by this Schedule (other than items 1, 80, 80A
19 and 80B) apply in relation to the ESS interests mentioned in subsections
20 83A-5(1) and (2) of the *Income Tax (Transitional Provisions) Act 1997*,
21 as inserted by this Schedule.

22 82 Transitional—regulations

23 Despite subsection 12(2) of the *Legislative Instruments Act 2003*,
24 regulations that:

- 25 (a) are made for the purposes of Division 83A of the *Income Tax*
26 *Assessment Act 1997*, added by this Schedule; or
27 (b) are made for the purposes of a taxation law (within the
28 meaning of that Act) and relate to the amendments made by
29 this Schedule;

30 may take effect from any time on or after 1 July 2009, if the regulations
31 are made before the end of the period of 2 months commencing on the
32 day this Schedule commences.