

# AUSTRALIAN TAX REVIEW

Volume 39, Number 4

November 2010

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### **Cross-border issues arising from employee share ownership plans – *Ann O’Connell***

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| In 2009 the federal government introduced Div 83A into the Income Tax Assessment Act 1997 (Cth). The Division deals with taxation of employee shares and rights. The application of those rules and related provisions (such as the capital gains tax provisions) to cross-border employees is particularly complex. The complexity arises because the rules lack clarity, the transitional rules do not cover all possibilities and, in addition, the nature of employee share schemes means that they may be subject to tax at different times in more than one jurisdiction. This article starts with the premise that employee share schemes are different to other forms of remuneration. It considers how the rules might be applied and how the problem of double taxation might be dealt with. .... | 187 |
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### **Tolerating deferral: Australia’s proposed foreign accumulation fund rules – *Mark Brabazon SC***

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| This article reviews the rise and fall of the foreign investment fund (FIF) rules and their proposed replacement with foreign accumulation fund (FAF) rules. The government has accepted a recommendation of the Board of Taxation to enact a narrow anti-abuse rule and, for that purpose, has released a Draft Bill and Draft EM for consultation. The Board recommended a rule based on concepts of non-distribution, “low-risk” or “interest-like” investment, tax deferral benefit and dominant tax deferral purpose. It is argued that the Board has failed to assess the revenue impact of its proposals and that its design of the proposed rule is confused and contradictory. These deficiencies infect the Draft Bill and Draft EM. The real risk of tax deferral by international portfolio investment still needs to be identified, including the significance, if any, of investment risk and the debt/equity distinction. .... | 205 |
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    - <sup>1</sup> Hayton D, “Unique Rules for the Unique Institution, The Trust” in Degeling S and Edelman J (eds), *Equity in Commercial Law* (Lawbook Co, Sydney, 2005) p 284.
    - <sup>2</sup> Hayton, n 1, p 286.
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**THOMSON REUTERS**

© 2010 Thomson Reuters (Professional) Australia Limited ABN 64 058 914 668

Lawbook Co.

Published in Sydney

ISSN 0311-094X

Typeset by Thomson Reuters (Professional) Australia Limited, Pyrmont, NSW

Printed by Ligare Pty Ltd, Riverwood, NSW