Income Tax Assessment (Methods for Valuing Unlisted Shares for the Employee Share Scheme start-up concession) Legislative Instrument 2025

I, Ben Kelly, Deputy Commissioner of Taxation, make the following legislative instrument.

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Ben Kelly **DRAFT ONLY—NOT FOR SIGNATURE**
Deputy Commissioner of Taxation

Contents

1 Name

This instrument is the *Income Tax Assessment (Methods for Valuing Unlisted Shares for the Employee Share Scheme start-up concession) Legislative Instrument 2025*.

2 Commencement

(1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	**Column 2**	**Column 3**
Provisions	**Commencement**	**Date/Details**
1. The whole of this instrument.	1 October 2025	1 October 2025

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

(2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under subsection 960-412(2) of the Act.

4 Definitions

Note: A number of expressions used in this instrument are defined in section 995-1 of the Act, including the following:
- (a) Employee Share Scheme;
- (b) ESS interest;
- (c) market value;
- (d) small business entity.

In this instrument:

Act means the *Income Tax Assessment Act 1997*.

financial report has the meaning given by section 9 of the *Corporations Act 2001*.

raised capital means funds raised by a company through the issue of instruments of debt, equity, or a combination of debt and equity.

suitable valuer means a person having the skill, knowledge and experience required to determine the market value of unlisted shares in a company.

5 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

6 Approved methods

(1) The methods set out in sections 7 and 8 are approved for working out the market value of an unlisted ordinary share in a company, for the purposes of determining if the conditions relating to market value in subsection 83A-33(5) of the Act are satisfied, if:

- (a) the company provides an ESS interest to a participant at that time; and
- (b) the company's directors reasonably anticipate that there will not be a change of control of the company within the period ending 6 months after that time.

(2) Where a company chooses to use a method to work out the market value that results in a value not less than the market value worked out using a method it could have otherwise chosen under subsection 6(1), that method is approved.

7 Method One

(1) Under this method the market value of an unlisted ordinary share in a company is:

- (a) worked out by either:
  - (i) the chief financial officer of the company; or
  - (ii) a suitable valuer;
- (b) worked out taking into account the following matters on a reasonable basis:
  - (i) the value of tangible and intangible assets of the company;
  - (ii) the market value of similar businesses (including through the use of earnings multiples);
  - (iii) uplifts and discounts for control premiums, lack of marketability and key person risk;
  - (iv) the present value of anticipated future cash flows; and
- (c) endorsed, both the methodology and value in a written resolution by the company's directors.

8 Method Two

(1) Under this method the market value of an unlisted ordinary share in a company is worked out by applying the method statement set out in subsection 8(3).

(2) This method is only approved where the company:

- (a) has not raised capital of more than $10 million during the period of 12 months immediately before the time of the valuation; and
- (b) at the time of valuation, either:
  - (i) has been incorporated for not more than 7 years; or

(ii) is a small business entity; and

(c) has prepared, or will prepare, a financial report for the year in which the time of valuation occurs.

(3) The method statement for the purposes of subsection 8(1) is as follows:

Step 1 – work out the value of net tangible assets of the company (disregarding any preference shares on issue). Step 2 – work out the amount that would be required to discharge the company's obligation in respect of its preference shares on issue at the time of valuation if those shares were redeemed, cancelled, bought back or otherwise satisfied at that time (disregard any contingencies as to the provision of that return and any return that would not rank before ordinary shareholders upon a winding up). Step 3 – subtract the Step 2 result from the Step 1 result. Step 4 – divide the Step 3 result by the total number of: (i) ordinary shares; and (ii) any preference shares that may participate together with any ordinary shares in the residual assets of the company upon a winding up; on issue in the company at the time of valuation.

Schedule 1—Repeals

Income Tax Assessment (Methods for Valuing Unlisted Shares) Approval 2015

1 The whole of the instrument

Repeal the instrument