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18 March 2020

Mr Jason Falinski MP
Chair
Standing Committee on Tax and Revenue
PO Box 6021
Parliament House
Canberra ACT 2600

Dear Jason,

Right Click Capital submission on inquiry into Tax Treatment of Employee Share Schemes

Right Click Capital (RCC) appreciates the Standing Committee on Tax and Revenue's invitation to comment on the inquiry into Tax Treatment of Employee Share Schemes.

RCC is an institutionally-backed venture capital firm, investing in technology businesses that have started their journey in Australia, New Zealand or South East Asia. The firm's partners have all founded multiple successful technology businesses, and have extensive operational and investment experience. Our status as the Australasian member of the Draper Venture Network allows us to uniquely support portfolio companies with access to key resources and new international markets.

RCC supports the 2015 changes made to the tax treatment of employee share schemes (ESS). Employees should be taxed on their shares in a startup when there is a liquidity event instead of when they are granted. At the time of the 2015 changes, the then treasurer commented the new treatment would, "make it easier for small startup companies to attract the skills and talent they need to grow". He was right and this was the single greatest benefit of the changes. Many early employees at startups desire the opportunity for part of their remuneration to take the form of upside in the business. They have a vested interest in the growth and success of the startup. Venture capital firms rarely work with startups that don't offer an ESS.

Aside from the clear benefit of attracting top talent that the balance sheet would not otherwise support, we have seen that early employees who cash out of high performing startups are likely to form new startups. These early employers and founders are also highly likely to invest in the next generation of entrepreneurs.

For the last six years, unlisted businesses have been able to use ESS as an important lever for growth if they meet the criteria of being less than ten years old with an aggregated turnover of less than $50 million and allocated shares to employees at a discount no greater than 15% of market value.

While the tax treatment of ESS is not broken, we suggest the committee considers a few modifications to make the scheme more attractive, inclusive and further encourage innovation.

Improvements to ESS

1. Startups should be exempt from the requirement to prepare a product disclosure statement to employees; even ASIC has argued preparation of such statements to be disproportionately burdensome. If we want founders to focus on the growth of their business, the arduous task of a PDS will only serve as a distraction.

2. The aggregated annual turnover test should be significantly increased as many ecommerce or marketplace businesses can post high turnovers but have high cost of goods sold. Currently the upper limit is $50m, however increasing this to $100m or $150m would encourage our fast-growing companies to accelerate their growth, providing a greater contribution to our economy through employment, exports and company tax.

3. Currently, NTA can be used to value unlisted ordinary shares where companies are less than seven years from incorporation and have raised $10m or less in the year before employees are granted access to ESS. Early stage companies should not be unfairly penalised because of the successes they have had in raising capital. Any early stage company, regardless of the size of funds raised should have the same tax treatments.

Making these changes will build additional capability for the future and foster innovation in Australia at a very short-term cost to the Treasury.

Thank you for the opportunity to put this submission to you as part of the consultation process. If you have any queries in relation to this submission, please do not hesitate to contact me

Yours sincerely,

Benjamin Chong
Partner