

INTERNATIONAL STOCK PLANS:  
THE PRACTITIONER'S GUIDE TO EXPORTING EMPLOYEE EQUITY

AUSTRALIA

SUMMARY TABLE

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[updated for February 2021]

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<b>EXCHANGE CONTROL</b>	Not applicable.
<b>SECURITIES LAWS</b>	<p>Under the Corporations Act, a prospectus must be lodged or registered with ASIC (Australian Securities and Investments Commission). Employee shares listed on an approved stock exchange, and employee shares that are not listed, are entitled to special relief if specific requirements are met and a notice of reliance on the ASIC relief instrument is provided to ASIC within one month after first relying on the relief. <b>Plans that include a cash-out facility may now qualify for relief if the amount to be paid is based on a formula linked to stock value.</b> Offers to senior managers are excluded from the prospectus requirement. In certain circumstances, entities can also offer shares without needing a prospectus by preparing and filing with ASIC an abridged document known as an offer information statement. <b>Since 2017, certain "start-up" companies with sales of less than AU\$50 million in the preceding year can avoid having their disclosure documents made public if special conditions are met.</b></p> <p>Subject to certain exclusions and exemptions, the Corporations Act requires persons who provide financial services or engage in certain other regulated activities to obtain a financial services license. ASIC relief from this requirement is also available for entities listed on approved stock exchanges and also for other entities if specified conditions are met.</p> <p>Following a consultation process that concluded in April 2019, the Australian government is continuing to consider a number of proposed reforms to simplify and expand the current regulatory exemptions for employee share schemes, particularly for unlisted companies.</p>
<b>LABOR LAWS</b>	<p>Benefits may be offered on a discretionary basis so long as there is no discrimination based on sex, race, age, etc. Ability to withdraw benefits depends on the terms of the original offer.</p> <p>Minimum severance payments are based on an employee's base rate of pay, which does not include stock-based benefits. Entitlement to additional severance pay may arise under the terms of the employment contract or any applicable award or collective or individual agreement.</p>
<b>PAYROLL DEDUCTIONS</b>	Payroll deductions are permitted if they are principally for the employee's benefit. Stock-based benefits would satisfy this requirement. Deductions must also be authorized in writing by the employee.
<b>PRIVACY LAWS</b>	Common law, equitable and contractual principles provide that employers owe a duty of confidentiality to their employees. Also, federal privacy law imposes privacy obligations on certain private-sector organizations. There is an exemption under the federal law for acts by an employer in relation to employee records. However, law reform proposals suggest the exemption may be eliminated in the future.

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<b>ELECTRONIC SIGNATURE</b>	Contracts that are not required by law to be in writing can be formed electronically without any special certification.
<b>TAXATION OF EMPLOYEE</b>	<p><i>Nonqualified stock options:</i> Taxed on grant unless a tax concession (see <i>Qualified stock options</i>) applies. <b>Then capital-gains rates may apply on a sale by the employee.</b></p> <p><i>Qualified stock options:</i> <b>Taxation may be deferred up to 15 years under the deferral concession if there is either a "real risk of forfeiture" or a genuine restriction on disposal and certain other conditions are met. The amount on which an employee is taxed at grant may be reduced by up to AU\$1,000 under the exemption concession if 75% of the permanent employees participate and certain other conditions are met. If the start-up concession applies, the discount is not taxed upfront.</b></p> <p><i>Restricted stock:</i> <b>Similar to stock options, but the deferral concession is only available if an employee share scheme is broadly offered to at least 75% of permanent employees. Tax deferral may also be available without a "real risk of forfeiture" if the plan provides for an offer of less than AU\$5,000 under a salary reduction agreement and certain other conditions are met.</b></p> <p><i>Restricted stock units:</i> <b>Same as stock options.</b></p> <p><i>Bonus stock:</i> <b>Same as restricted stock.</b></p> <p><i>Performance stock:</i> <b>Same as stock options.</b></p> <p><i>Stock purchase plans:</i> Discount is generally taxable upon receipt of shares.</p>
<b>TAX WITHHOLDING</b>	If the employee fails to provide a tax file number, the employer may be required to pay tax on the employee's behalf and recover it as a debt from the employee.
<b>TAX REPORTING</b>	On an annual basis, the employer is required to deliver an employee share scheme statement to each participant as well as submit an employee share scheme annual report to the Australian Taxation Office electronically.
<b>SOCIAL SECURITY TAXES</b>	Employers in Australia do not make social security contributions and required superannuation support is not required in relation to grants of shares and options. However, payroll tax of up to 6.85% may be imposed on the grant of shares or options by the states and territories.

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### STAMP DUTIES AND OTHER FACTORS

Australia's traditional stamp duties have been abolished, except that stamp duty may still be payable on a transfer of shares of a corporation or units in a unit trust that is considered to be a "land rich" holder.

An Australian corporation cannot own shares in its Parent holding company.

The Corporations Act restricts an Australian company's ability to provide financial assistance. Shareholder approval or other special exemptions may apply.

The Corporations Act restricts the payment of benefits, including those under stock-based plans, to directors and senior executives upon retirement or loss of office, unless approved by shareholders or unless limited by a statutory formula tied to one year's average base salary.

The tax regime for foreign investment funds taxes unrealized gains from foreign assets. Various exemptions may apply, including a limited exemption for qualifying rights and qualifying shares.

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