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**Sent:** Friday, 9 October 2009 1:10 PM

**To:** Tax Board

**Subject:** Market value of employee share scheme securities

To the members of the Board of Tax,

I submit that the regulations in relation to market value of shares and options should contain a number of 'safe harbours'. Such 'safe harbours' will reduce compliance costs and provide certainty for taxpayers and employees for determining their reporting and tax obligations on the grant of shares or options.

### **1. Listed companies**

At present the proposed regulations do not set out any guidelines for determining the market value of shares. There should be a 'safe harbour' for determining the market value of the shares of listed companies as per s.139FA of the ITAA 1936.

### **2. Unlisted companies – ESOP pre IPO**

A company preparing to list on the stock exchange will often undertake an employee share plan in the lead up to the IPO. At present this would require the company to undertake a valuation of the shares pre-listing. A safe harbour should be introduced to allow companies that undertake a share or option plan within 2-3 months of listing to use the offer price for the shares under the IPO as the market value of the shares under the ESOP.

### **3. Unlisted companies – major share allocation**

Often in private equity investments, an employee share or option plan will be put in place around the time of the issue of shares to the private equity investor. As the price that the PE fund acquires its shares will be a negotiated, arm's length value it would be useful if there were a safe harbour for private companies to use the issue price to a major investor as the market value of the shares if a share or option plan is undertaken at around the same time.

These submissions represent my own thoughts and do not necessarily reflect the views of Greenwoods & Freehills.

I apologise for this submission being sent by email but I am out of the office at the time of preparing and was unable to draft in a more formal document.

Please let me know if you would like to discuss any of these suggestions.

Kind regards,

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