ESS 2015/1 -

Australian Government
Australian Taxation Office

Legislative Instrument

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

I, Stephen John Vesperman, Deputy Commissioner of Taxation, make this approval under subsection 960-412(2) of the *Income Tax Assessment Act 1997*

Stephen John Vesperman
Deputy Commissioner of Taxation
Dated 23 June 2015

1. Name of Approval

This approval is the *Income Tax Assessment (Methods for Valuing Unlisted Shares) Approval 2015*.

2. Commencement

This approval commences on 1 July 2015, or on the commencement of the *Tax and Superannuation Laws Amendment (Employee Share Schemes) Act 2015*, whichever is the later.

3. Scope of approval

The methods set out in clause 5 may be used only in working out the value of unlisted ordinary shares for the purposes of subsection 83A-33(5) of the *Income Tax Assessment Act 1997* as at the time when the relevant ESS interests are acquired (in this approval called the ***valuation time***).

4. Who is covered by this approval

This approval applies to a company that:

(a) issues an ESS interest mentioned in subsection 83A-33(1) of the *Income Tax Assessment Act 1997;* and

(b) reasonably anticipates that there will not be a change of control of the company occurring within the period ending 6 months after the valuation time.

5. Approved Methods for Valuing Unlisted Ordinary Shares

Method 1

(1) For a company that:

(a) has not raised capital of more than $10 million during the period of 12 months immediately before the valuation time; and

(b) at the valuation time, either:

(i) has been incorporated for not more than 7 years; or

(ii) is a small business entity within the meaning of section 328-110 of the *Income Tax Assessment Act 1997*; and

(c) prepares, or will prepare, a financial report (within the meaning of the *Corporations Act 2001*), for the year in which the valuation time occurs, that complies with the accounting standards under the *Corporations Act 2001*;

the method set out in sub-clause (2) is an approved valuation method.

(2) The market value of an ordinary share in the company at a particular valuation time is worked out under the following method statement:

Step 1 Work out the amount of net tangible assets of the company (disregarding any preference shares on issue) at that time.

Step 2 Work out the amount of the return that would be required to be provided under the terms of any preference shares on issue at the valuation time if those shares were to be redeemed, cancelled, bought back or otherwise satisfied at that time (disregarding 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 Reduce the Step 1 amount by the Step 2 amount.

Step 4 Divide the Step 3 amount 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 that time.

Method 2

(3) A method that satisfies the requirements set out in sub-clause (4) is an approved valuation method.

(4) The requirements of this sub-clause are that the valuation of ordinary shares must be:

(a) performed by either:

(i) the chief financial officer of the company; or

(ii) a person having the knowledge, experience and training to perform such valuations; and

(b) in writing and fully documented, taking into account the following on a reasonable basis:

(i) the value of tangible and intangible assets of the company;

(ii) the present value of anticipated future cash flows;

(iii) the market value of similar businesses, including the use of earnings multiples;

(iv) uplifts and discounts for control premiums, lack of marketability and key person risk; and

(c) endorsed in a written resolution by the directors of the company as to the method used and the resultant value.

(5) If a company chooses to use a method of valuation that produces a value not less than the amount which would be produced using a method under this approval that the company could otherwise apply, that valuation is taken to have been made under this approval.