Print whole section

Employer reporting requirements

Find out about employer reporting requirements for employee share schemes.

How to lodge your employee share scheme annual report electronically

Information to help you lodge your employee share scheme (ESS) annual report electronically.

ESS - Reporting requirements for employers

Information on employer reporting requirements about employee share schemes (ESS) and examples.

QC 82045

How to lodge your ESS annual report electronically

Information to help you lodge your employee share scheme (ESS) annual report electronically.

Last updated 13 November 2024

On this page

This guide provides information to help you lodge your employee share scheme (ESS) annual report electronically.

This guide also includes information about:

- software requirements
- the formats you need to use for each report.

See also:

- Employers
- Information and answers to common questions are in the ESS annual report companion guide
- For additional information about reporting, phone us on **13 28 66**.

Employee share schemes

If you are an ESS reporting party (provider), you are required to report information to us in an annual report after the end of the financial year. This must be on our approved form (refer to the current specifications).

- You must provide an ESS statement to your employee by 14 July after the end of each financial year.
- You must lodge your ESS annual report information to us by 14 August after the end of each financial year.

Software requirement

To lodge your annual reports electronically, you must create your reports on software compatible with our systems.

If you are using commercial software, register your details with the digital service provider so you receive upgrades for future changes to our specifications.

If you are developing your own in-house software to lodge annual reports electronically, make sure you see our specifications.

Ensure you use the correct version of the specifications depending on the year you are reporting. If amending a previous year's report use the version of the specification that relates to the year you are amending.

- 2020 onwards use version 3.0.1
- 2018 and 2019 use specification version 3.0.0
- 2017 and 2016 use specification version 2.0.0
- 2015 and prior years **cannot** be lodged electronically, refer to For 2015 and prior years

Note: You should always create backup files of your annual report.

Intermediary (supplier) number to use when lodging electronically

An intermediary (supplier) is the entity lodging the ESS annual report.

This may be **either**:

- you if you lodge your own annual report
- a third party that lodges reports on behalf of others – for example, payroll service providers and tax agents.

When you save your ESS annual report information from your software to your hard drive you may be asked for a supplier number. This is the Australian business number (ABN) of the entity supplying the data (reporting party).

If you are reporting online, you need to use your ABN in the intermediary number field – the ABN you use must be linked to your Digital ID, such as myID in Relationship Authorisation Manager (RAM).

Intermediaries (suppliers) are required to complete the **Employee share scheme annual report – supplier lodgment declaration.**

If you lodge annual reports for several entities, you may use the ABN listed in your intermediary record for all lodgments – this ABN must be linked to your Digital ID, such as myID in RAM.

You must ensure the correct reporting party ABN is used in the data records. If you lodge on behalf of others, the intermediary ABN will be different to the ESS reporting party ABN.

Overseas reporting parties

From the 2015–16 reporting period onwards, there are changed procedures for overseas reporting parties.

The bulk load Excel spreadsheet and paper forms will **not** be available for reporting for the 2016 financial year onward.

Since the **2016** financial year you need to engage an intermediary (subsidiary, tax agent or share registry) to lodge your report. Your intermediary will be required to lodge via Online services for agents using the current electronic reporting specification, completing the 'Reporting Party (Provider) ABN' field with zeros.

For **2015** and prior financial years ESS amendment reporting:

- if you engage an intermediary (subsidiary, tax agent or share registry) to lodge your report, your intermediary will be required to lodge either
  - via Online services for agents using the **File Transfer** option using the electronic reporting specification **V1.0.1**
  - via Online services for agents using the **Practice mail** option and using the bulk load Excel spreadsheet **V1.3.4.** The spreadsheet is only available upon request. To request the ESS spreadsheet email ATO-ESS@ato.gov.au
  - by mail using the paper form NAT 73514
- if you do not engage an intermediary (subsidiary, tax agent or share registry) to lodge your report you are able to use the paper form *NAT 73514*.

Lodging your ESS annual report

You can lodge your ESS annual report online using either:

- Online services for business
- Online services for agents

There are minimum security and computer requirements needed to use these online services. You'll need:

- an ABN
- a Digital ID and RAM
- anti-virus and firewall protection on your computer
- the latest version of your browser and Adobe Reader.

You can use Access Manager to manage access and permissions to your account and our online services.

Prepare your files using software compatible with our systems.

There are three ways to lodge your ESS report online:

- File transfer
- Online form
- Secure mail (2015 year or earlier).

See also:

- Online services
- Online security.

Lodging files using file transfer function

Prepare your files using software compatible with our systems.

- On the Agent home page, select **Reports and forms** then **File Transfer**.
- Select **Lodge file** to submit a file to test or lodge.

Information on the Lodge file screen allows you to:

- view which reports you are authorised to test and lodge via the 'What reports can I lodge here' link
- test or lodge a file

- choose to receive, or to not receive, an email notification when a validation report or file becomes available to download
- add, update or delete an email address for notifications.

Test your file

Clients are encouraged to test their file to eliminate errors before lodging.

To test a file, use the following steps:

- From the **Lodge File** screen select the **Test** radio button.
- **Browse** to select the file from your network.
- The *Run Type (6.17)* field in the *Intermediary Data Record* must be set to 'T' for test data
- To receive a notification email advising you the validation report is available for download, enter your organisation's preferred email address for notifications. Only one email address can be input.
- Select **Submit** to transfer the file to us for testing. Files submitted as a 'test' are not 'lodged' with us.
- During the file transfer a progress indicator is displayed.
- If the test file is successfully submitted, a reference number is displayed for your records.
- To see the outcome of your test choose either the **View validation result** hyperlink on screen or **View status**.
- Errors and warnings found in the file are listed in the validation report.

Test status

The **status** of your file will indicate the **success or failure** of the validation process.

- If the status is **Test failed**, you will need to fix any errors before you lodge your file.
- If the status is **Test successful with warnings**, we recommend you review and resolve the warnings before you lodge your file (however, you can proceed to **Lodge your file)**.

- If the status is **Test successful**, you can proceed to **Lodge your file.**

Lodge your file

After successfully testing your file, you can lodge your file.

- From the **Lodge File** screen select the **Lodge** button.
- **Browse** to select the file from your network.
- Your **notification email address** will default to the last used email address (if you haven't entered an email address previously, enter the email address).
- When you select **Lodge** the 'declaration statement' is a mandatory field – read the statement and click on the declaration statement **checkbox**.
- Select **Submit** to lodge the file to us.
- During the file transfer a **progress indicator** is displayed.
- If the lodgment is successfully submitted a **reference number** is displayed for your records.
- To see the outcome of your lodgment choose either the **'view validation result'** hyperlink on screen or **View status**.

Lodgment status

The **status** of your file will indicate the **success or failure** of the validation process.

- View the status of your file under the **Status** column.
- If the status is **Lodge failed**, you will need to fix any errors before you lodge your corrected file (errors and warnings found in the file are listed in the validation report).
- If the status is **Lodge successful with warnings**, we recommend you review and resolve the warnings prior to your next lodgment (warnings found in the file are listed in the validation report).
- If the status is **Lodge successful**, you have completed the lodgment process.

Validation report

One of four validation reports are generated and available for download by the lodger from the file status screen:

- Successful Validation Report
- Successful With Warnings Validation Report
- Failed File Content Validation Report
- Failed File Format Validation Report.

Download the validation report by selecting the **'download validation report'** hyperlink. The validation report can be saved to your network.

Lodging files using the online form function

Note: This option is only available to employers reporting for 50 employees or less, with up to 3 different schemes per employee.

- For Online services for agents only, choose the client then select **Lodgments** then **Client Forms** in the menu
- For the Online services for business select **Lodgments** then **Reports and** .
- Select the **ESS annual report** form.
- Select **Lodge** for the reporting year
- Enter your data.
- Select '**Lodge**' when complete.

For 2015 and prior years

How to lodge your ESS spreadsheet online

The spreadsheet is only available upon request. To request the ESS spreadsheet email ATO-ESS@ato.gov.au.

Note: Spreadsheets can only be lodged for 2015 and prior years.

- Select **Communication**, then **secure mail**.
- Create a new mail message.
- Select the **View more topics,** then **Lodge report**, and **Employee share scheme annual report extension of time**.

- Attach your spreadsheet (ESSccyyBnnnnnnnnnVn.xls – this file will appear blank when opened).
- Select **Send**.

Note: If you cannot access the **'Mail'** or **'Practice mail'** option on the menu, request access from your Access Administrator.

If you are using an intermediary (supplier) to lodge your ESS report on your behalf, remember to download and retain your **Employee share scheme annual report – supplier lodgment declaration** for a **minimum period** of five years.

Making changes before you lodge

When you first create your report you will have three files, the:

- **template** ESS Bulk Load Excel Spreadsheet v1.3.4.xls
- **working file** ESS-ccyy-Bulk Load Tool-Bnnnnnnnnn.xls
- **file you send to us** ESSccyyBnnnnnnnnnVn.xls.

It is important you **do not** amend or change any data in the file already sent to us. To make changes prior to lodging:

- go back into the working file
- make your amendments
- create another version of the file for us.

This will ensure the data in your working file will match the data you send to us.

Backing up your data

You should always create backup files of your annual report.

If we reject the information you lodge or you need to access data (for example, for an employee who has lost a statement), you may need to reload your data. You also need to keep a copy of your annual report to meet our record-keeping requirements. Contact your digital service provider for assistance with backups.

Checklist

- Ensure you have used the correct reporting party ABN.
- Ensure your ESS annual report provides details of all ESS taxing events that occurred for employees during the financial year.
- Ensure you created a backup copy of your ESS annual report because you must retain employee statement information for a minimum five years (you may also store the information electronically).
- Do not sent copies of employee statements to us.
- Ensure you have completed the Employee share scheme annual report – **Employee share scheme annual report – supplier lodgment declaration** if you have engaged an intermediary to lodge your ESS report on your behalf.
- If you need help, phone us on **13 28 66.**

QC 23068

ESS – Reporting requirements for employers

Information on employer reporting requirements about employee share schemes (ESS) and examples.

Last updated 1 April 2022

On this page

> [TFN withholding for ESS]

If you provide your employees or their associates with ESS interests under an employee share scheme (ESS) you have certain reporting obligations.

An ESS interest is either:

- a beneficial interest in a share of a company
- a right to acquire a beneficial interest in a share of a company.

The interests can be shares, stapled securities, or rights (including options) to acquire shares or stapled securities.

The ESS rules require you to provide us – and your employee – with details of your employee's ESS interests. This page explains what you need to provide to us and to your employees, and when you need to provide it.

If an associate of your employee acquires ESS interests which are provided for employment or services, the ESS rules require the employee – rather than the associate – to include the discount in their assessable income.

Reporting to your employee

You may need to report to your employee on the following.

ESS statement

You must give your employee an **ESS statement** if:

- they or their associates, have acquired ESS interests under a taxed-upfront ESS at a discount during the financial year
- a deferred taxing point for ESS interests acquired under a tax-deferred ESS, or a cessation time for shares and rights acquired before 1 July 2009, happened or could have happened in the financial year
  - the latest possible deferred taxing point for these interests was 30 June 2019
  - this means there will be no income reportable on these interests in the 2019–20 income year and onwards

- a start-up concession acquisition event occurred, you must provide your employee with the following information about ESS interests acquired during the income year
  - number of ESS interests acquired
  - market value of ESS interests acquired
  - acquisition price of ESS interests that are shares
  - exercise price of ESS interests that are rights
  - acquisition date of the ESS interests.

You must provide the *ESS statement* to your employee by 14 July after the end of the financial year. The statement will help your employee complete their tax return.

An administrative penalty applies to providers who fail to provide the statement.

The information required on the *ESS statement* includes, but is not limited to, the following:

- the discount for ESS interests acquired under each type of taxed-upfront scheme
- the discount for ESS interests acquired under a tax-deferred scheme if a taxing point happened during the financial year
- the discount for shares and rights acquired before 1 July 2009 if a cessation time occurred during the financial year
- the total TFN amount withheld from discounts during the financial year.

When determining and reporting the discount at the deferred taxing point to your employee, you must take account of the **30-day rule** if you know the ESS interests were disposed of by the employee.

Start-up concession – 2016 and later income years

If your employee is eligible for the start-up concession, you must provide your employee with the following information about ESS interests acquired during the income year:

- number of ESS interests acquired
- market value of ESS interests acquired
- acquisition price of ESS interests that are shares
- exercise price of ESS interests that are rights
- acquisition date of the ESS interests.

Your employee will need this information to determine the cost base of their capital gains tax (CGT) asset and calculate any gain or loss when they dispose of their interests. They will not need to include a discount amount in their income tax return when they acquire the ESS interests.

Example 1: Shares eligible for the start-up concession

On 1 September 2015 Sarah is provided with 2,500 shares by Ludo's Lounges Pty Ltd under an ESS. The market value of the shares at acquisition is $1.00 and Sarah pays $0.85 to acquire them. Sarah has acquired the shares at a 15% discount ($1.00 – $0.85 = $0.15 discount). All of the conditions have been met for Sarah to receive the start-up concession.

Ludo's Lounges Pty Ltd provides Sarah with the following details, when she acquires the shares:

- number of shares, 2,500
- acquisition price of each share, $0.85
- market value of each share, $1.00
- acquisition date of shares, 1 September 2015.

On 11 August 2016, Ludo's Lounges Pty Ltd lodges a completed ESS annual report with us that provide the above details.

Under the start-up concession, Sarah does not need to report the ESS discount in the year she acquires the shares. However, she will need to report an amount under the capital gains tax provisions when she sells the shares. She will use the information provided to her by Ludo's Lounges Pty Ltd in determining the cost base of the shares.

Timeline of events

Date	Event
1 September 2015	Sarah acquires 2,500 shares with a market value of $1 per share. Sarah pays Ludo's Lounges Pty Ltd $0.85 per share. Ludo's Lounges Pty Ltd provides Sarah with details of the shares, to use in future CGT calculations.
11 August 2016	Ludo's Lounges Pty Ltd lodges a completed *ESS annual report* with us that provides information about the shares Sarah received.

ESS interests provided to an associate

The ESS rules treat ESS interests provided to an associate of your employee as if they were acquired by your employee, rather than their associate.

Depending on the type of scheme and individual circumstances, your employee will have to pay tax, either upfront or at the deferred taxing point. Once tax has been paid under the ESS rules and the interests move into the CGT system, any future capital gain or capital loss incurred on these interests is borne by the associate.

You must provide a statement to your employee, rather than to their associate, to fulfil your reporting requirements.

Reporting amendments to your employee

If you become aware of any material change to or omission from any information given to your employee on their ESS statement, you must use the **Amended employee share scheme statement** form to provide them with the corrected information within 30 days of becoming aware of the change or omission.

If you provide an employee with a right to an employment benefit that could later become an ESS interest, see Indeterminate rights.

Reporting to us

Lodgments for the 2015–16 onwards *ESS annual report* will only be accepted **electronically**. Reports are due by 14 August each year.

The *ESS annual report* you provide to us must include, but is not limited to, the following information for each employee participating in an ESS and for each ESS that the employee is participating in:

- **General**
  - plan identifier – a reference that makes a plan unique within all plans offered by you
  - acquisition date – the date the ESS interests were acquired
  - plan date – the date a taxing point happens to an ESS interest; for a taxed-upfront scheme, this will be the acquisition date; for a tax-deferred scheme, this will be the deferred taxing point
  - TFN amounts withheld from discounts on ESS interests if a taxing point arose during the financial year.

- **For start-up concession schemes (2016 and later financial years)**
  - the number of ESS interests acquired
  - the market value of the interests
  - the acquisition price of ESS interests that are shares
  - the exercise price of ESS interests that are rights.

- **For taxed-upfront schemes**
  - number of ESS interests acquired under taxed-upfront schemes eligible for reduction during the financial year
  - discount for ESS interests acquired under taxed-upfront schemes eligible for reduction
  - number of ESS interests acquired during the financial year under taxed-upfront schemes not eligible for reduction
  - discount for ESS interests acquired under taxed-upfront schemes not eligible for reduction.

- **For tax-deferred schemes**
  - number of ESS interests for which a deferred taxing point arose during the financial year
  - discount on the ESS interests for which a deferred taxing point arose during the financial year
  - discount for ESS interests acquired before 1 July 2009 for which a cessation time occurred during the financial year, whether or not the employee has made an election.

- **Paper lodgment**
  - For the 2010 to the 2015 financial years, the paper annual report form is also available.
  - The following information is not required if you are lodging a paper report for 2015 and prior years
    - number of ESS interests acquired under a tax-deferred scheme during the financial year
    - number of ESS interests acquired from a foreign source during the financial year
    - discount for ESS interests that have a foreign source
    - discount amounts are assessable or gross
    - acquisition date.

When determining and reporting the discount at the deferred taxing point to us, if you know that the ESS interests were disposed of you must take account of the 30-day rule.

Extension of time

Exceptional or unforeseen circumstances may affect your ability to lodge by 14 August and an extension of time may help. You can submit an extension of time request via the Online services for business or Online services for agents using the following steps:

- Select communication and secure mail

- create a **New message**
- Select **view more topics**, then **lodge report**
- select **Employee share scheme annual report extension of time**
- enter a message – 'ESS extension of time application'
- provide the company name and ABN (if the entity is a foreign entity that does not have an ABN, then the foreign entities name is required)
- contact name, phone number and email address
- reason for the application
- date they will be able to lodge
- select **Send**.

For foreign entities without service access, please email the request to ato-ess@ato.gov.au mailbox with the above information. Email requests will only be processed for foreign entities.

Confirmation of extensions granted, and the new lodgment date will be provided via the original message method. Generally further extensions after the extended date will not be granted.

Reporting amendments to us

Employers should report amendments as soon as it becomes apparent that records have been omitted or not reported correctly.

It is important to note, once a file has been lodged with respect to a particular employer, any further (amendment) files must be submitted via the same method.

The only exception is when:

- a file has been lodged via the Online Form method
- an amendment is required in order to add data for more employees
- the additional data would result in information for more than 50 employees being reported.

In such a circumstance it will be necessary to cancel the existing Online Form lodgment and resubmit via the File Transfer function.

To avoid any doubt, separate files for the same employer and year, that contain data for different sets of employees, must not be lodged – even if they are reported via different methods. All data for an employer must be lodged on a single file.

Amending an ESS report

There are three options available to amend previously reported ESS data that was not lodged using the Online Form. You must use Option 1 if a change is required to either or both of the Reporting Party Key Identifiers:

- provider ABN (6.4) field in the Reporting party identity record
- financial year (6.20) field.

If both of the Reporting Party Key Identifiers were correct, you can use one of the following three options.

Option 1

Create a new ESS report with all the same data records as reported on the previously lodged report. Except for the Amendment Indicator (6.62) field in each Employee details data record, report the same data as reported on the previously lodged report. Set the Amendment Indicator on each data record to **C**.

The **C** indicator results in the ATO's processing system finding and cancelling all ESS records previously reported.

Create a second new ESS report with all the correct details for each record and set the Amendment Indicator (6.62) field in the Employee details data record to **O** for all records.

The **O** indicator results in our processing system treating and processing all of the data records on the second new ESS report as if they are original records.

Lodge the cancel (**C**) file first, followed by the new original (**O**) file.

Before lodging either of the new ESS reports, ensure the respective Date timestamp report created (6.5) fields reflect the most recent creation date and time and not those of the old original.

As there can be no guarantee as to the order in which records on files, reported at or around the same time, are processed, it will be advisable to wait at least two business days between lodging the first (cancel) file and the second (new originals) file. This is to allow time for all cancellations to be processed before processing the new original records.

If you are using this option to amend due to Reporting Party Key Identifiers being incorrect or changing all Employee Key Identifiers then there is no need to delay lodging the second new original file.

Option 2

You cannot use Option 2 if a change is required to either or both of the Reporting Party Key Identifiers. This option should only be used with respect to records that need replacing because one or more incorrect Employee Key Identifiers were reported.

A single ESS replacement data file is created and lodged:

- the first part of the data file is used to cancel records reported previously that contained one or more incorrect Employee Key identifiers
- the second part is used to report, as originals, correct records.

Create a new ESS report with all the same data records as reported on the previously lodged report. Except for the Amendment Indicator (6.62) field in each Employee details data record, report the same data as reported on the previously lodged report. Set the Amendment Indicator on each data record to **C**.

Include, in the new report, an Employee Details Data Record for each employee record that should be reported. Set the Amendment Indicator (6.62) field to **O**. Report correct data in the **O** records – correct data includes any updates to Employee Key Identifiers.

Before lodging any new ESS report, ensure the Date timestamp report created (6.5) field reflects the most recent creation date and time and not those of the previous report.

Option 3

You cannot use Option 3 if a change is required to either or both of the Reporting Party Key Identifiers or Employee Key Identifiers.

You only need to report those Employee details data records to be cancelled, added or changed. A single amendment data file is created and lodged.

Create a new ESS data file

For each Employee details data record not yet reported that needs to be:

- include an Employee details data record on the new data file and populate all of the fields with the current data
- set the Amendment Indicator (6.62) field to **O**.

For each Employee details data record that should not have been included on an earlier data file:

- include an Employee details data record on the new data file and, except for the Amendment Indicator (6.62) field, populate all of the fields with the same data as previously reported (alternatively, the amount fields can be zero filled)
- set the Amendment Indicator (6.62) field to **C**.

For each Employee details data record that was included on an earlier data file, and a change (other than to any Employee key identifiers), is required:

- except for the Amendment Indicator (6.62) field, populate the new data file with an Employee details data record that contains the correct information
- set the Amendment Indicator (6.62) field to **A**.

For each Employee details data record that was correctly included on an earlier data file and requires no change:

- either exclude this Employee details data record from the new data file; or include an Employee details data record on the new data file and, except for the Amendment Indicator (6.62) field, populate all of the fields with the same data as previously reported
- set the Amendment Indicator (6.62) field to **A**.

Lodge the amendment data file.

The 30-day rule

If your employee disposes of their ESS interest (or the share acquired on exercise of the right) within 30 days after the deferred taxing point, the deferred taxing point becomes the date of that disposal – this is called the 30-day rule.

You must take this rule into account when you are aware there has been a disposal.

In some situations, this means that the 30-day rule will move the deferred taxing point from one financial year into the next.

If you become aware of the disposal:

- **Before** issuing the *ESS statement* for the earlier year to your employee, update the *ESS statement* for the earlier year so that it does not show a discount for those ESS interests in that year (but in the *ESS statement* for the later year).
- **After** issuing the *ESS statement* for the earlier year to the employee, give an amended *ESS statement* to your employee to remove the discount for those ESS interest in that earlier year – you will need to show the discount in the *ESS statement* for the later year.

If you have already sent us the *ESS annual report* for the earlier year, you will need to amend it. This will ensure that your employee's records and our records are the same.

Share trusts

If you provide shares to an employee through a trust, and the employee has an interest in a specific number of shares in the trust (rather than specific shares) we treat the employee as holding a beneficial interest in each of that number of shares.

If this is the case, you must give an *ESS statement* to all employees who have acquired shares through that trust and include this information on the statement you provide to us.

You will not need to provide a statement to the trustee of the share trust. The trustee of the share trust will not be required to provide a statement to its beneficiaries.

Example 2: Employee share trust and reporting

Lee works for Gag Ltd. Gag Ltd has an ESS that provides Lee with shares through its employee share trust, Gag Share Trust. Gag Ltd is the provider and they (rather than Gag Share Trust) must report to the employee and the ATO.

Transitional arrangements

The reporting rules apply to ESS interests acquired since 1 July 2009.

The law contains transitional provisions that apply to some ESS interests that were acquired before 1 July 2009. There were no employer reporting obligations before that date. However, you will need to know how the transitional provisions apply to affected shares and rights in order to fulfil your reporting obligations.

When the reporting rules apply

Refer to the following information to help you determine whether the reporting rules apply to ESS interests acquired before 1 July 2009, where they were qualifying shares or rights:

- If the employee has **not** elected to be taxed up front under the previous rules and a cessation of time has **not** happened – the reporting rules **will** apply.
- If the employee elected to be taxed upfront under the previous rules – the reporting rules do **not** apply and the law at the time continues to apply.
- If a cessation of time has happened to the shares or rights before 1 July 2009 – the reporting rules do **not** apply and the law at time continues to apply.

If they were non-qualifying shares or rights the reporting rules do **not** apply. The law at the time will continue to apply.

Reporting requirement for transitional arrangements

The rules about employer reporting apply to all qualifying shares or rights acquired before 1 July 2009 where no cessation time had occurred before 1 July 2009, whether or not the employee has made an election to be taxed upfront.

You must report the discount on ESS interests acquired before 1 July 2009 if a cessation time occurred during the financial year, whether or not the employee has made an election.

Indeterminate rights

At the time of acquisition of a right by an employee, the entitlement to a share or a specific number of shares could be uncertain.

For example, you could provide your employee with a right to acquire, at a future time:

- either shares or cash (whichever you decide)
- shares with a specified total value, rather than a specified number of shares
- an indeterminate number of shares – the exact number of shares is not specified at the time the employee acquires the right.

The indeterminate right will be taken as having always been a right to acquire shares if and when it becomes clear that the right will result in the receipt of:

- shares, where previously it could have been shares or cash
- a definite number of shares, where previously it was shares to a total value or an unspecified number or shares.

Your reporting responsibilities to your employee differ depending on when the right to an employment benefit was acquired and when that right becomes rights to shares.

Taxed-upfront scheme

If the right becomes a right to acquire shares under a taxed-upfront scheme:

- In the financial year the employee acquired the right, you must give the information to the employee in an *ESS statement* by 14 July and give us an *ESS annual report* by 14 August after the end of the financial year.
- After the financial year that the employee acquired the right, you must give the employee an amended *ESS statement* and give us an *ESS annual report* (with original or amended employee records as the case may be) for the acquisition year within 30 days of the rights becoming rights to shares.

Example 3: Taxed-upfront scheme – eligible for reduction

Matt works for Apple Bank Ltd and acquires 600 shares in Apple Bank Ltd under an ESS on 4 August 2015.

The total market value of the shares is $3,600. Matt is required to pay $1,200 to purchase the shares; therefore, he acquires the shares for a discount of $2,400 ($3,600 less $1,200).

On 7 July 2016 Matt's employer, Apple Bank Ltd, gives Matt an *ESS statement* as follows:

Matt's ESS statementEmployee tax file number or ABNTaxed upfront scheme - eligible for reductionDiscount from taxed upfront schemes - eligible for reduction. Label D: $2,400All other labels left blank.

As Matt has provided his TFN to Apple Bank Ltd, there is no amount displayed in the 'TFN amounts withheld from discounts (total includes cents)' field on Matt's *ESS statement*.

Matt is completing his 2016 tax return. He is eligible for the upfront concession of $1,000 because the scheme, Matt's personal circumstances and his taxable income after adjustments meet the conditions.

He writes $2,400 at D item 12 'Discount from taxed-upfront schemes – eligible for reduction' on his tax return.

As Matt has no other ESS interests, he writes $1,400 at B item 12 'Total assessable discount amount' in his tax return ($2,400 discount less $1,000 concession).

Apple Bank Ltd lodges an *ESS annual report* showing all reportable ESS data for their employees with the ATO by 14 August 2016.

Apple Bank Ltd includes the following information about Matt in the report:

- the number of shares acquired, 600, at 'Number of ESS interests from taxed-upfront schemes eligible for reduction'
- $2,400 at 'Discount from taxed-upfront schemes – eligible for reduction'.

Because Apple Bank Ltd will not know Matt's taxable income after adjustments, they report the discount as $2,400, ignoring the $1,000 concession.

Timeline of events

Date	Event
4 August 2015	Matt acquires 600 shares with a total market value $3,600. Matt pays Apple Bank Ltd $1,200. Matt acquires the shares for a $2,400 discount.
7 July 2016	Apple Bank Ltd gives Matt his *ESS statement*.
14 August 2016	Apple Bank Ltd must lodge a completed *ESS annual report* by this date.

Example 4: Taxed-upfront scheme – not eligible for reduction

Liam works for Starstruck Ltd and acquires 800 shares in Starstruck Ltd under an ESS on 23 September 2015.

The total market value of the shares on that day is $4,800. Liam is required to pay $3,900 to purchase the shares; therefore, he acquires the shares for a discount of $900 ($4,800 less $3,900).

On 9 July 2016 Starstruck Ltd gives Liam an *ESS statement* as follows:

https://www.ato.gov.au/api/public/content/a60f7600-2816-45b2-89cc-19beed931699_00245130_6_gif

Liam is completing his 2016 tax return. He writes $900 at E item 12 'Discount from taxed-upfront schemes – not eligible for reduction' on his tax return.

Because Liam has no other ESS interests, he also writes $900 at B item 12 'Total assessable discount amount' in his tax return.

Starstruck Ltd will need to include the following information about Liam in the *ESS annual report*:

- the number of shares acquired, 800, at 'Number of ESS interests from taxed – upfront schemes not eligible for reduction'

- $900 at 'Discount from taxed-upfront schemes –- not eligible for reduction'.

Timeline of events

Date	Event
23 September 2015	Liam acquires 800 shares with a total market value of $4,800. He pays Starstruck Ltd $3,900. Liam acquires the shares for a discount of $900.
9 July 2016	Starstruck Ltd gives Liam his *ESS statement*.
11 August 2016	Starstruck Ltd lodges a completed *ESS annual report*.

Example 5: Amendment to ESS statement, ESS annual report and tax return for a taxed-upfront scheme eligible for reduction

Astrid is employed by Bubble Ltd, and acquires 200 shares in her employer's ESS during the 2016 financial year.

On 10 July 2016 Astrid receives the following *ESS statement* from Bubble Ltd for the 2016 financial year:

Astrid's ESS statementEmployee tax file number/ABNTaxed upfront scheme - eligible for reduction. Discount from taxed upfront schemes - eligible for reduction. Label D: $2,112All remaining labels left blank

Astrid lodges her 2016 tax return using the *ESS statement*.

She writes $2,112 at D item 12 'Discount from taxed-upfront schemes – eligible for reduction' on her tax return.

Astrid is eligible for the upfront concession of $1,000 and writes $1,112 ($2,112 discount less $1,000 concession) at B item 12 'Total assessable discount amount' on her tax return.

On 14 August 2016, Bubble Ltd includes the following information about Astrid in their *ESS annual report:*

- 200 at 'Number of ESS interests from taxed-upfront schemes eligible for reduction'
- $2,112 at 'Discount from taxed-upfront schemes – eligible for reduction'.

On 4 September 2016, Bubble Ltd's accountant Mary is preparing the company's 2016 tax return. When she checks the company's records against the *ESS annual report*, Mary notices a discrepancy.

The *ESS annual report* shows that the total discount given, in relation to ESS interests acquired by employees during the 2016 financial year, is $900 higher than the figure in the company's records.

Mary discovers that the discrepancy relates to Astrid. Where Bubble Ltd had reported $2,112 at 'Discount from taxed-upfront schemes – eligible for reduction' in the *ESS annual report*, they should have reported $1,212. The error was also in the *ESS statement* the company gave to Astrid.

Bubble Ltd must tell both Astrid and the ATO about the error within 30 days of becoming aware of it. Bubble Ltd gives Astrid an amended *ESS statement* for the 2016 financial year on 10 September 2016 as follows:

Astrid's amended ESS statementTaxed upfront scheme - eligible for reductionDiscount from taxed upfront schemes - eligible for reductionLabel D: $1,212 All remaining labels left blank

Bubble Ltd also lodges an amended *ESS annual report* for the 2016 financial year to the ATO on 10 September 2016, including the following information about Astrid's amended details:

- 200 at 'Number of ESS interests from taxed-upfront schemes eligible for reduction'
- $1,212 at 'Discount from taxed-upfront schemes – eligible for reduction'.

On 30 September 2016, Astrid requests an amendment to her 2016 tax return. On her amendment she writes:

- $1,212 at D item 12 'Discount from taxed-upfront schemes – eligible for reduction'
- $212 at B item 12 'Total assessable discount amount' ($1,212 discount less $1,000 concession).

Timeline of events

Date	Event
10 July 2016	Bubble Ltd gives Astrid her *ESS statement*.
14 August 2016	Bubble Ltd lodges an *ESS annual report*.
4 September 2016	Bubble Ltd's accountant, Mary, discovers the *ESS annual report* overstated Astrid's discount by $900.
10 September 2016	Bubble Ltd gives an amended *ESS statement* to Astrid and lodges an amended *ESS annual report* with the ATO within 30 days of becoming aware of the error.
30 September 2016	Astrid requests an amendment for her 2016 tax return.

Example 6: Taxed-upfront scheme – not eligible for reduction with amendments to indeterminate rights

This example follows on from example 3, where Matt received shares in a taxed-upfront scheme eligible for reduction with a discount of $2,400.

On 14 April 2016, Matt is granted a right to an employment benefit by his employer Apple Bank Ltd. Matt pays no consideration for the right.

The right is not subject to a real risk of forfeiture.

The right will be satisfied on 14 April 2019. At that time, Apple Bank Ltd will determine whether to satisfy the right with cash or Apple Bank Ltd shares.

On 14 April 2019, Apple Bank Ltd decides to give Matt 1,000 shares. The right that Matt acquired on 14 April 2016 is now treated as if it had always been rights to acquire 1,000 shares. Those rights were acquired under a taxed-upfront scheme not eligible for reduction.

The market value of the rights on 14 April 2016 was $4,000. Because Matt paid no consideration for the rights, the discount on the rights is $4,000.

Within 30 days of Apple Bank Ltd determining that Matt would receive 1,000 shares, they must give Matt an amended *ESS statement* for the 2016 financial year. On 10 May 2019, Apple Bank Ltd gives Matt an amended *ESS statement* as follows:

Matt's ESS statementTaxed upfront scheme - eligible for reduction. Discount from taxed upfront schemes - eligible for reductionLabel D: $2,400 Taxed upfront scheme - not eligible for reduction. Discount from taxed upfront schemes - not eligible for reductionLabel E: $4,000All remaining labels left blank

Apple Bank Ltd also lodges an amended *ESS annual report* for the 2016 financial year with the ATO on 10 May 2019, including the following information about Matt's amended details:

- 1,000 at 'Number of ESS interests from taxed-upfront schemes – not eligible for reduction'
- $4,000 at 'Discount from taxed-upfront schemes – not eligible for reduction'
- 600 at 'Number of ESS interests from taxed-upfront schemes – eligible for reduction'
- $2,400 at 'Discount from taxed-upfront schemes – eligible for reduction'.

Ordinarily, Matt's assessment could only be amended within a two-year period. Because Matt receives a discount on a right that became rights to acquire shares, he must amend his 2016 tax return to include the discount income, despite the period being greater than two years.

Matt requests an amendment to his 2016 tax return on 6 June 2019. On his amendment he writes:

- $4,000 at E 'Discount from taxed-upfront schemes – not eligible for reduction'
- $5,400 at B item 12 'Total assessable discount amount' ($2,400 plus $4,000 less $1,000 concession).

Timeline of events

Date	Event
14 April 2016	Apple Bank Ltd provides Matt with a right to an employment benefit for nil consideration. The right entitles Matt to acquire, at Apple Bank Ltd's discretion, either shares or cash at some time in the future.
14 April 2019	Apple Bank Ltd decides to give Matt 1,000 shares to satisfy his rights. The right that Matt acquired on 14 April 2016 is now treated as if it had always been rights to acquire 1,000 shares. The rights to 1,000 shares had a market value of $4,000 at acquisition on 14 April 2016.
10 May 2019	Within 30 days of deciding to give Matt shares to satisfy his rights, Apple Bank Ltd gives an amended *ESS statement* to Matt and gives an amended *ESS annual report* to the ATO, for the 2016 financial year.
6 June 2019	Matt requests an amendment for his 2016 tax return.

Tax-deferred scheme

If the right becomes a right to acquire shares under a tax-deferred scheme and the deferred taxing point occurs:

- in a financial year **before** the rights become rights to shares you must
  - give the employee an amended *ESS statement* for the year that the deferred taxing point occurred, within 30 days of the rights becoming rights to shares
  - give us an *ESS annual report* (with original or amended employee records as the case may be) for the year that the deferred taxing point occurred, within 30 days of the rights becoming rights to shares
- **during** the financial year that the rights become rights to shares you must
  - give the employee information on the rights in their *ESS statement* by 14 July after the end of the financial year
  - give us information on the rights in the *ESS annual report* by 14 August after the end of the financial year
- **after** the financial year that the rights become rights to shares, you must
  - give the employee information on the rights in their *ESS statement* for the year that the deferred taxing point occurs
  - give us information on the rights in the *ESS annual report* for the year that the deferred taxing point occurs.

Employment ceasing on or after 1 July 2022 will no longer be a deferred taxing point.

Example 7: Tax-deferred scheme

Casey works for Pace Walker Ltd and acquires 300 shares in Pace Walker Ltd for no consideration on 30 January 2016 under a tax-deferred ESS.

Pace Walker Ltd does not need to provide an *ESS statement* to Casey or an *ESS annual report* to the ATO for the 2016 financial year as the deferred taxing point has not yet occurred.

A deferred taxing point occurs on 14 February 2018.

At the deferred taxing point, Casey's shares have a total market value of $2,000. This will also be the discount because the cost base for the shares is nil.

On 10 July 2018 Pace Walker Ltd gives Casey an *ESS statement* as follows:

Casey's ESS statement Employee tax file number/ABN Deferral schemes Discount from deferral schemes Label F: $2,000 All remaining labels left blank

Casey is completing his 2018 tax return. He writes $2,000 at F item 12 'Discount from deferral schemes' on his tax return.

Because Casey has no other ESS interests, he also writes $2,000 at B item 12 'Total assessable discount amount' on his tax return.

Pace Walker Ltd reports the following information on the *ESS annual report* that it gives to the ATO by 14 August 2018:

- 300 at 'Number of ESS interests with a deferred taxing point during the year'
- $2,000 at 'Discount from deferral schemes'.

Timeline of events

Date	Event
30 January 2016	Casey acquires shares under a tax-deferred ESS.
14 February 2018	A deferred taxing point occurs in relation to Casey's shares.
10 July 2018	Pace Walker Ltd provides an *ESS statement* to Casey.
14 August 2018	Pace Walker Ltd provides an *ESS annual report* to the ATO by this date.

Example 8: Multiple schemes

This example combines taxed-upfront schemes – one eligible for reduction and the other not eligible for reduction – and a tax-deferred scheme with a deferred taxing point.

Joe works for East Ltd and acquires ESS interests under a number of ESS in the 2016 and 2018 financial years.

During the 2016 financial year, Joe acquires 500 rights in East Ltd under a tax-deferred scheme for no consideration. East Ltd does not need to provide an *ESS statement* to Joe or an *ESS annual report* to the ATO for the 2016 financial year as the deferred taxing point has not yet occurred.

On 10 February 2018, Joe acquires 800 shares in East Ltd under a taxed-upfront scheme eligible for reduction. The shares have a market value of $3,500 and Joe pays $1,500. The discount is $2,000 ($3,500 less $1,500).

On 8 March 2018, Joe acquires 700 shares in East Ltd under a taxed-upfront scheme not eligible for reduction. The shares have a market value of $3,300 and Joe pays $1,100. The discount is $2,200 ($3,300 less $1,100).

On 30 May 2018, Joe ceases employment. This is Joe's deferred taxing point for the rights he acquired under the tax-deferred scheme. The market value of the rights at the deferred taxing point is $3,100 and the cost base is nil. Therefore, the discount is $3,100.

On 10 July 2018, East Ltd gives Joe an *ESS statement* as follows:

Joe's ESS statement Employee tax file number or ABN Taxed updfront scheme - eligible for reduction. Discount from taxed upfront schemes - eligible for reduction Label D: $2,000 Taxed updfront scheme - not eligible for reduction. Discount from taxed upfront schemes - not eligible for reduction Label E: $2,200 Deferral schemes. Discount from deferral schemes Label F: $3,100 All remaining labels left blank

Joe is eligible for the taxed-upfront scheme concession of $1,000.

When completing his 2018 tax return, Joe writes:

- $2,000 at D item 12 'Discount from taxed-upfront schemes – eligible for reduction'
- $2,200 at E item 12 'Discount from taxed-upfront schemes – not eligible for reduction'
- $3,100 at F item 12 'Discount from deferral schemes'
- $6,300 at B item 12 'Total assessable discount amount' in his tax return ($2,000 plus $2,200 plus $3,100 less $1,000 concession).

On 11 August 2018, East Ltd provides the following information about Joe in the *ESS annual report*:

- 800 at 'Number of ESS interests from taxed-upfront schemes eligible for reduction'
- $2,000 at 'Discount from taxed-upfront schemes – eligible for reduction'
- 700 at 'Number of ESS interests from taxed-upfront schemes – not eligible for reduction'
- $2,200 at 'Discount from taxed-upfront schemes – not eligible for reduction'
- 500 at 'Number of ESS interests with a deferred taxing point arising during the year'
- $3,100 at 'Discount from deferral schemes'.

Timeline of events

Date	Event
2016 financial year	Joe acquires 500 rights under a tax-deferred ESS.
10 February 2018	Joe acquires 800 shares under a taxed-upfront scheme eligible for reduction.

	The shares have a market value of $3,500 and Joe pays $1,500. Joe's discount is $2,000.
8 March 2018	Joe acquires 700 shares under a taxed-upfront scheme not eligible for reduction. The shares have a market value of $3,300 and Joe pays $1,100. Joe's discount is $2,200.
30 May 2018	Joe ceases employment. This is the deferred taxing point for Joe's rights acquired under the tax-deferred scheme. The market value of the 500 rights at this time is $3,100 and the cost base is nil. Joe's discount is $3,100.
10 July 2018	East Ltd gives Joe his *ESS statement*.
11 August 2018	East Ltd gives a completed *ESS annual report* to the ATO.

Employment ceasing on or after 1 July 2022 will no longer be a deferred taxing point.

Example 9: Amendment to ESS statement, ESS annual report and tax return as rights lapse after deferred taxing point in tax-deferred scheme

Kathleen works for Snow Ltd and acquires 400 rights to acquire shares in Snow Ltd for no consideration on 7 February 2016 under a tax-deferred ESS.

Snow Ltd does not need to provide an ESS statement to Kathleen or an ESS annual report to the ATO for the 2016 financial year because the deferred taxing point has not yet occurred.

Kathleen ceases employment on 14 April 2017 and a deferred taxing point occurs. She is allowed to keep her rights.

At the deferred taxing point, Kathleen's rights have a total market value of $2,000.

On 10 July 2017, Snow Ltd gives Kathleen an ESS statement for the 2017 financial year as follows:

Kathleen's ESS statement Deferral schemes Discount from deferral schemes Label F: $2,000 All remaining labels left blank

Kathleen lodges a tax return using the ESS statement.

Snow Ltd reports the following information on the ESS annual report and gives it to the ATO by 14 August 2017:

- 400 at 'Number of ESS interests with a deferred taxing point arising during the year'
- $2,000 at 'Discount from deferral schemes'.

On 7 February 2019, Kathleen's rights lapse because specified performance hurdles have not been met. The performance hurdles did not protect Kathleen against market risk.

The earlier deferred taxing point is now disregarded. Snow Ltd is required to provide an amended statement for the 2017 financial year to Kathleen and the ATO within 30 days of the rights lapsing.

On 21 February 2019, Snow Ltd gives Kathleen an amended ESS statement for the 2017 financial year as follows:

Kathleen's amended ESS statement Deferral schemes. Discount from deferral schemes. Labe F: $0 All remaining labels left blank

Snow Ltd lodges an amended ESS annual report for the 2017 financial year with the ATO, including the following amended information about Kathleen:

- nil at 'Discount from deferral schemes'.

Kathleen requests an amendment to her 2017 tax return to remove the discount.

Snow Ltd is only required to provide an amended report to employees if they have already had a deferred taxing point when the rights lapse.

Timeline of events

Date	Event
7 February 2016	Kathleen acquires rights under a tax-deferred ESS.
14 April 2017	A deferred taxing point occurs in relation to Kathleen's rights.
10 July 2017	Snow Ltd provides an ESS statement to Kathleen.
8 August 2017	Snow Ltd provides an ESS annual report to the ATO.
7 February 2019	Kathleen's rights subsequently lapse.
21 February 2019	Snow Ltd provides an amended statement to Kathleen and lodges an amended ESS annual report with the ATO.
28 February 2019	Kathleen requests an amendment for her 2017 tax return.

Employment ceasing on or after 1 July 2022 will no longer be a deferred taxing point.

Example 10: Indeterminate rights and tax-deferred ESS

On 10 February 2016, Lucy is granted a right to an employment benefit by her employer Pretty Posies Ltd. Lucy pays no consideration for the right.

The right will be satisfied on 10 February 2019 and Pretty Posies Ltd will determine whether to satisfy the right with cash or shares.

On 10 February 2019, Pretty Posies Ltd decides to give Lucy 1,000 shares. The right granted to Lucy on 10 February 2016 is now treated as if it had always been rights to acquire 1,000 shares. Lucy acquired those rights under a tax-deferred ESS because they were subject to a real risk of forfeiture.

Pretty Posies Ltd does not need to provide an *ESS statement* to Lucy or an *ESS annual report* to the ATO for the 2016 financial year (the year of acquisition) because the deferred taxing point did not occur in that year.

A deferred taxing point occurred for the rights on 23 January 2019 when Lucy ceased employment. The market value of the rights on 23 January 2019 is $3,300 and the cost base is nil. Therefore, the discount on her rights is $3,300.

On 12 July 2019, Pretty Posies Ltd gives Lucy an *ESS statement* as follows:

Lucy's ESS statement Taxed upfront scheme - eligible for reduction. Discount from taxed upfront schemes - eligible for reduction Label D: $2,400 Taxed upfront scheme - not eligible for reduction. Discount from taxed upfront schemes - not eligible for reduction Label E: $4,000 All remaining labels left blank

When Lucy completes her 2019 tax return, she writes $3,300 at F item 12 'Discount from deferral schemes'. As Lucy has no other ESS interests, she also writes $3,300 at B item 12 'Total assessable discount amount'.

On 14 August 2019 Pretty Posies Ltd include the following information about Lucy in their *ESS annual report*:

- 1,000, at 'Number of ESS interests with a deferred taxing point arising during the year'
- $3,300 at 'Discount from deferral schemes'.

Timeline of events

Date	Event
10 February 2016	Pretty Posies Ltd provides Lucy with a right to an employment benefit for no consideration. The right entitles Lucy

	to acquire either shares or cash at some time in the future, at Pretty Posies Ltd's discretion.
23 January 2019	Lucy ceases employment at Pretty Posies Ltd.
10 February 2019	Pretty Posies Ltd provides Lucy with 1,000 shares to satisfy her right. Lucy's right to an employment benefit is treated as if it had always been rights to acquire 1,000 shares. Those rights were acquired under a tax-deferred scheme on 10 February 2016. The deferred taxing point for those rights occurred on 23 January 2019. The discount on Lucy's rights is $3,300, which is the market value of the rights at the deferred taxing point of 23 January 2019.
12 July 2019	Pretty Posies Ltd gives Lucy her *ESS statement* for the 2019 financial year.
14 August 2019	Pretty Posies Ltd lodges a completed *ESS annual report* with the ATO for the 2019 financial year.

Employment ceasing on or after 1 July 2022 will no longer be a deferred taxing point.

Example 11: Shares acquired under a tax-deferred scheme and sold within 30 days of the deferred taxing point (the 30-day rule applies)

On 23 June 2016, Wyatt acquires 400 shares in his employer Pepper Pines Ltd under an ESS. He pays no consideration for the shares.

Wyatt cannot dispose of his shares for three years and the shares will be forfeited if he ceases employment within three years.

Pepper Pines Ltd is not required to provide Wyatt with an *ESS statement* or the ATO with an *ESS annual report* for the 2016 financial year as both of the following apply:

- the only ESS interests that Wyatt received from Pepper Pines Ltd in the 2016 financial year were acquired under a tax-deferred scheme
- a deferred taxing point did not occur during the 2016 financial year.

On 23 June 2019, Wyatt is still employed with Pepper Pines Ltd. At this time, his shares are no longer at risk of forfeiture and no longer subject to disposal restrictions. At this stage, the deferred taxing point is 23 June 2019.

The market value of the shares on 23 June 2019 is $1,400 and the cost base of the shares is nil. Therefore, the discount on Wyatt's shares is $1,400.

On 14 July 2019 Pepper Pines Ltd gives Wyatt an *ESS statement* as follows:

Wyatt's ESS statement Deferral schemes. Discount from deferral schemes Label F: $1,400 All remaining labels left blank

On 20 July 2019, Wyatt sells the 400 shares he acquired under the tax-deferred scheme, for a total of $1,518. He sells his shares on market and Pepper Pines Ltd is aware of the sale. As the sale is within 30 days of the deferred taxing point, the taxing point now becomes 20 July 2019 in accordance with the 30-day rule.

Pepper Pines Ltd must now give Wyatt an amended *ESS statement* within 30 days of becoming aware of the disposal, resulting in a change to the taxing point and discount.

The market value of the shares on 20 July 2019 is the amount Wyatt received from selling the shares, $1,518. As Wyatt paid nothing for the shares and incurred no costs, the cost base of the shares is nil. Therefore, the discount on the shares is $1,518.

Due to the 30-day rule, Wyatt must include his discount on his 2020 tax return, not his 2019 tax return.

On 30 July 2019, Pepper Pines Ltd gives Wyatt an amended *ESS statement*, removing the discount from tax-deferred schemes, as follows:

Wyatt's amended ESS statement Deferral schemes. Discount from deferral schemes Label F: $0 All remaining labels left blank

On 12 July 2020, Pepper Pines Ltd, gives Wyatt an *ESS statement*, including the discount received from tax-deferred schemes, as follows:

Wyatt's ESS statement Deferral schemes. Discount from deferral schemes. Label F: $1,518 All remaining labels left blank

Wyatt has no other ESS events in the 2020 financial year. When Wyatt completes his 2020 tax return, he writes $1,518 at F item 12 'Discount from deferral schemes'. As Wyatt has no other ESS interests, he also writes $1,518 at B item 12 'Total assessable discount amount'.

Pepper Pines Ltd includes $1,518 at 'Discount from deferral schemes' when reporting Wyatt's details in their 2020 *ESS annual report* on 12 August 2020.

Timeline of events

Date	Event
23 June 2016	Wyatt acquires 400 shares under a tax-deferred scheme.
23 June 2019	The deferred taxing point occurs. The market value of the shares is $1,400. Wyatt's discount is $1,400 (his cost base is nil).
14 July 2019	Pepper Pines Ltd gives Wyatt his *ESS statement* for the 2019 financial year.
20 July 2019	Wyatt sells the 400 shares for $1,518 (within 30 days of the deferred taxing point). This is now the deferred taxing point. Wyatt's discount is now $1,518 (his cost base is nil). Pepper Pines Ltd is aware of the sale.
30 July 2019	Pepper Pines Ltd gives Wyatt an amended *ESS statement* for the 2019

	financial year, within 30 days of becoming aware of the change to the taxing point and discount.
12 July 2020	Pepper Pines Ltd gives Wyatt his *ESS statement* for the 2020 financial year.
12 August 2020	Pepper Pines Ltd gives their 2020 *ESS annual report* to the ATO.

Example 12: Employer reporting where the company's insider trading policy requires board approval

In April 2011, Boots Co provides its employees with rights to acquire shares under a tax-deferred scheme with a real risk of forfeiture for a three-year period.

Under the conditions of the scheme, employees are required to comply with the share trading policy of Boots Co for shares acquired in satisfaction of the rights.

Some employees are considered likely to be in possession of inside information (restricted employees) and are prohibited from dealing in the shares unless cleared by the board.

For reporting purposes, Boots Co needs to take reasonable steps to accurately identify the financial year that the deferred taxing point arises.

In April 2014, employees receive shares in satisfaction of rights. This is the deferred taxing point for the shares transferred to Boots Co employees, unless the employee is a restricted employee that either:

- is in possession of inside information and has records that provide evidence of having that information
- within 10 business days of receiving the shares in satisfaction of the rights, has made a request to trade and that request

has been refused by the board.

For 2013–14, Boots Co reports as follows:

Boots Co provides an *ESS statement* and includes the discount at F item 12 'Discount from deferral schemes' for:

- all employees that are not restricted employees
- all restricted employees, unless the restricted employee either
  - has advised the company that they have possession of inside information
  - has submitted a request to trade that was refused within 10 business days of receiving the shares.

Boots Co provides an *ESS annual report* to the ATO for all employees receiving an *ESS statement*.

For those restricted employees that Boots Co does not report in 2013–14:

- Boots Co requires the restricted employees to advise when they are no longer in possession of inside information and Boots Co will record this date as the deferred taxing point
- Boots Co advises the employees that it will report on the basis that a deferred taxing point has occurred at the beginning of the next financial quarter, unless the employee either
  - advises that they are still in possession of inside information
  - makes a request to trade and that request is refused within 10 business days of the beginning of the next financial quarter.

Boots Co continues to report on this basis.

Transitioned rights

You must provide an *ESS statement* to your employee and an *ESS annual report* to us for the financial year that the possible cessation time occurs if both:

- your employee acquired a right before 1 July 2009 that, after 30 June 2009, becomes rights to shares that are qualifying
- a possible cessation time happens to those rights (whether or not the employee made an election).

There is no reporting requirement if the rights are not qualifying or if the cessation time for the rights occurred before 1 July 2009.

For more information, see:

- ESS – Indeterminate rights
- ESS interests with a taxing point before 1 July 2009.

Example 13: Indeterminate rights acquired before 1 July 2009 under an ESS

On 18 May 2009, Hilda is granted a right to an employment benefit by her employer Puppy Ltd. Hilda pays no consideration for the right.

Puppy Ltd wants to make the date the right will be satisfied 12 years after the date they are granted but the maximum time allowed under the rules is 10 years. Puppy Ltd decides the right will be satisfied on 1 January 2016 and they will determine whether to satisfy the right with cash or shares.

On 12 August 2015, Hilda ceases employment with Puppy Ltd.

On 1 January 2016, Puppy Ltd decides to give Hilda 1,000 shares. The right that Hilda acquired on 18 May 2009 is now treated as if it had always been rights to acquire 1,000 shares. As Hilda acquired the rights before 1 July 2009, they were acquired under an ESS where the previous law applies.

For the purpose of the example, the rights are qualifying rights. For reporting purposes, Puppy Ltd will report the discount on the rights for the income year in which the cessation time occurs, whether or not Hilda made an election to be taxed upfront. Hilda ceased employment and the right was satisfied before 18 May 2019, the last possible deferred taxing point for this right. Puppy Ltd will report on the basis that the cessation time occurred when Hilda ceased employment on 12 August 2015.

The market value of the rights on 12 August 2015 is $2,541 and the cost base is nil. Therefore, the discount is $2,541.

Hilda has no other ESS events in the 2016 financial year.

On 12 July 2016, Puppy Ltd gives Hilda an *ESS statement* as follows:

Hilda's ESS statement Discount on ESS interests acquired pre 1 July 2009 and 'cessation time' occurred during the financial year Label G: $2,541 All remaining labels left blank

Puppy Ltd includes $2,541 at 'Discount on ESS interests acquired pre-1 July 2009 and 'Cessation time' occurred during the financial year' when reporting Hilda's details to the ATO in the *ESS annual report*. Puppy Ltd was only able to use this field because the right was acquired before 1 July 2009.

If Puppy Ltd were reporting in 2019-20 or beyond, the 'Discount on ESS interests acquired pre-1 July 2009 and 'Cessation time' occurred during the financial year' would no longer be available, as it falls more than 10 years after the last possible deferred taxing point for a right acquired before 1 July 2009.

Timeline of events

Date	Event
18 May 2009	Puppy Ltd provides Hilda with a right to an employment benefit for no consideration. The right entitles Hilda to acquire either shares or cash at some time in the future, at Puppy Ltd's discretion.
12 August 2015	Hilda ceases employment with Puppy Ltd.
1 January 2016	Puppy Ltd provides Hilda with 1,000 shares to satisfy her right. The right Hilda acquired on 18 May 2009 is treated as if it had always been rights to acquire 1,000 shares. Puppy Ltd reports on the basis that Hilda has a cessation time on

	12 August 2016 when she ceased employment. Puppy Ltd reports on the basis that Hilda did not make an election.
12 July 2016	Puppy Ltd gives Hilda her *ESS statement*.
14 August 2016	Puppy Ltd lodges a completed *ESS annual report* with the ATO by this date.

TFN withholding for ESS

When a tax file number (TFN) has been advised for ESS reporting and there is tax withheld at the employee's request, it can be offset against PAYG withholding for the employee and the PAYG withholding remitted to the ATO. The TFN withholding amount must not exceed 50% of the discount amount.

If no TFN has been provided for ESS reporting, the employer is obliged to withhold tax at the highest marginal rate. The withholding tax can be recovered from the employee's salary or wages.

The due date for payment is 21 July after the end of the relevant financial year.

Remitting TFN withholding for ESS to ATO

If a TFN has been advised for ESS reporting and the employee has requested their employer withhold tax from the discount amount, then the withholding amount can be offset against PAYG withholding. The TFN withholding amount must not exceed 50% of the discount amount.

This can be then be remitted to the ATO on the BAS and the amount needs to be recorded at label W2.

If no TFN has been provided for ESS reporting, the withholding tax can be recovered from the employee's salary or wages and remitted to the ATO.

There are two options for remitting to the ATO. If you are:

- a large withholder and paying electronically – use EFT code 70
- a medium or small withholder – notify the amount on the relevant activity statement at W3.

Withholding when a TFN has not been provided

If an employee who has received an ESS discount has not provided you with their TFN, you must withhold tax at the highest marginal rate and remit it to the ATO by 21 July after the end of the relevant financial year.

If you are:

- a large withholder and paying electronically – use EFT code 70
- a medium or small withholder - show the amount on the relevant activity statement at W3.

As an ESS benefit is a non-cash benefit, you may recover the amount of withholding tax paid from the employee. You can do this by deducting it from other amounts payable to them, such as salary or wages.

Example 14: Employee has not provided their TFN

Lynda's salary is $20,000 per month in 2015–16. In that year, she gets an ESS discount worth $15,000. She has not quoted her TFN to her employer. The employer must remit $7,050 (47% (from 1 July 2017) of $15,000) to the ATO by 21 July 2016. The employer is a medium withholder so they show the amount at W3 on their activity statement. To recover this amount, the employer deducts $7,050 from Lynda's salary during the year.

Note: Lynda is still taxable on the $7,050 – this amount still forms part of her salary and is included in gross salary on her PAYG payment summary.

If the employee has provided you with their TFN, you do not have to withhold tax in respect of the ESS discount. If you and the employee agree, you can withhold extra tax from their salary or wages to offset their end of year tax liability. This is treated as ordinary PAYG withholding and forms part of the amount at W2 on your activity statement.

No TFN withholding for transitioned interests

You do not need to withhold tax for shares or rights that have been transitioned into the changed rules, even if the employee has not given you their TFN or ABN.

QC 23058

Our commitment to you

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

Some of the information on this website applies to a specific financial year. This is clearly marked. Make sure you have the information for the right year before making decisions based on that information.

If you feel that our information does not fully cover your circumstances, or you are unsure how it applies to you, contact us or seek professional advice.