NEW ZEALAND
LAW SOCIETY
NZLS EST 1869

Law Society Building, 26 Waring Taylor Street, Wellington,
DX SP20202, Wellington or PO Box 5041, Lambton Quay,
Wellington 6145, New Zealand

TEL +64 4 472 7837 • FAX +64 4 473 7909
E inquiries@lawsociety.org.nz
www.lawsociety.org.nz • my.lawsociety.org.nz

27 June 2016

Taxation of employee share schemes
c/- Deputy Commissioner, Policy and Strategy
Inland Revenue Department
P O Box 2198
WELLINGTON 6140

By email: policy.webmaster@ird.govt.nz

Taxation of employee share schemes – officials' Issues Paper

1. The New Zealand Law Society appreciates the opportunity to comment on *Taxation of employee share schemes: An officials' issues paper*, released on 12 May 2016 (**Issues Paper**).

2. If adopted, the proposals outlined in the Issues Paper will fundamentally change the tax treatment applicable to employee share schemes (**ESS**). The Law Society understands the rationale for proposing changes but is concerned that insufficient thought appears to have been given to the practical issues that will flow from enacting new ESS tax rules.

3. ESS are widely used in New Zealand by a multitude of different employers, ranging from small start-up companies to listed companies. A large number of New Zealand taxpayers participate in ESS as employees. It is imperative that proper consideration is given to the impact that new ESS rules will have on ESS participants before new rules come into effect.

4. The Law Society's response to the Issues Paper consists of two parts. In the body of this letter we comment on:

   (a) some of the significant practical issues associated with implementing the proposals outlined in the Issues Paper (many of which are not discussed in the Issues Paper);

   (b) current legal issues/uncertainties relating to the taxation of ESS that are not addressed in the Issues Paper but which could usefully form part of a broader review of the ESS rules;

   (c) the need for further specificity in relation to the "substantial conditions" test; and

   (d) officials' suggestion of repealing the existing rules relating to IRD approved and exempt benefit "share purchase schemes".

   In the Appendix to this letter we set out responses to the questions raised in the Issues Paper.

Further thought needs to be given to the practical issues flowing from the implementation of new tax legislation for ESS

5. The changes the Issues Paper proposes will create a large number of practical issues that employers (and their employees) will need to grapple with. Many of these issues are not discussed in the Issues Paper but will be fundamental to the successful implementation of new ESS legislation.

6. The issues the Law Society has identified include:

   (a) The Issues Paper's proposals could potentially have retrospective application to some employees who are "locked in" to ESS and are in the process of satisfying conditions attached to their award of shares. Those employees may have signed up to their ESS on the assumption that their shares will be taxed in accordance with the current rules, but instead find themselves subject to the proposed new rules.

   (b) The Issues Paper does not discuss the interplay between the ESS rules it is proposing and other legislation relevant to ESS, such as securities law and employment law. The ESS rules, depending on how they are drafted, could affect the application of other laws.

   (c) The Issues Paper does not consider what will happen when a company has multiple employees who qualify for their ESS shares at different times. Would, for example, there be a requirement that a company valuation be performed each time a Qualification Date for an employee arises?

   (d) The Issues Paper does not deal with the situation where employees progressively acquire shares under an ESS at different times.

   (e) There is no discussion of how dividend returns payable in relation to shares in an ESS will be taxed while the employee is qualifying for the shares.

   (f) Little attempt is made to identify or quantify the compliance costs that will arise for employees. In particular, employers offering existing ESS may need to incur significant costs in modifying their scheme to comply with the new rules.

7. The focus of the Issues Paper is on the legislative changes that could be made to the tax legislation associated with ESS. However, little consideration has been given to the practical issues that will flow from the proposed new rules. For ESS legislation to be workable it is critical that these issues are discussed and addressed *before* legislation in relation to ESS is introduced. Otherwise there is a real danger that the proposals outlined in the Issues Paper will lead to employers not offering ESS.

Proposed new rules will increase costs of providing and participating in an ESS

8. There appears to be an assumption underpinning the Issues Paper that there are currently significant costs associated with an ESS that act as a barrier to employers offering ESS. While this is accurate in some cases, it is generally not the position. Largely this is because an employee usually acquires shares for tax purposes under an ESS on the Award Date,[1] meaning that any tax liability connected to the shares (for instance because the employee acquires at a discount) will arise at that time. No further tax is payable by the employee after the Award Date. The Award Date is typically aligned for a class of employees being offered participation in the ESS, and as a consequence a single valuation of the shares is undertaken for all employees in respect of that offer.

9. The new proposed rules, if anything, are likely to increase the costs associated with offering an ESS. Going forward employers would need to value their shares each time a Qualification Date occurs for an employee and there are likely to be ongoing administrative and compliance obligations. Even where employees derive entitlements from the same offer, there is potential

---

[1] In this letter the term "Award Date" refers to the date that an employee obtains legal ownership of shares in an ESS or such shares are held on trust for the benefit of the employee. The term "Qualification Date" means the date that all conditions attached to an award of shares are satisfied by the employee.

for different Qualification Dates due to employee specific aspects of the offer and vesting conditions (e.g. good leaver provisions) which could mean employers would need to value their shares on a range of dates to assist employees in complying with their tax obligations.

10. The employee will also have a new obligation to pay tax on the Qualification Date (in the case of a conditional share scheme) which he/she may be in no position to fund (for instance, because the shares they have qualified for are illiquid).

11. These types of issues could well lead to the demise of ESS as we currently know them.

Current issues relevant to ESS that are not addressed in the Issues Paper and should form part of a wider review of the ESS rules

12. The Issues Paper also omits to address current issues associated with ESS which could usefully benefit from review and potential reform.

13. The Issues Paper does not resolve elements of the interplay between the proposed ESS rules and the trust regime in Subpart HC of the Income Tax Act 2007 (the **Act**). ESS arrangements are commonly administered through a trust holding shares on behalf of participants during a restrictive period. Issues relevant to such arrangements include:

    (a) the correct tax treatment of shares purchased by trustees and sold or allocated to participants in terms of the revenue account property rules, including significantly the tax treatment of forfeited or unallocated shares disposed of by trustees from time to time;

    (b) the correct tax treatment of settlements or contributions made by employers on a trust to fund the acquisition of shares for the benefit of participants. Such payments would typically be deductible to employers giving rise to taxable income to the trustee as a result of the application of sections HC 7(3) and HC 4(4) of the Act. The scope of the somewhat indirect resolution of the inherent potential for double taxation in section HC 27(3B) of the Act to the meaning of "settlor" could helpfully receive attention and benefit from clarification; and

    (c) at an even broader level, the treatment of the allocation of benefits from ESS trusts to participants and distributions of dividends in terms of the various categories of trust distribution addressed by Subpart HC could be helpfully clarified.

14. It would be appropriate to consider in the context of a broad policy review whether, for example, a trust established for the purposes of administering an ESS should be subject to Subpart HC or taxed as a separate entity at all. If there is a desire for broad alignment of tax outcomes across substantively similar arrangements, then ESS operated directly by the employer through contract or those administered through a trust, should be treated equally. If the underlying policy behind the proposals is to align the tax outcomes of cash-based employment payments with ESS awards, then care should be taken to ensure that the broader tax effects/uncertainties or compliance costs associated with operating an ESS through a trust under current law do not create a bias against trust-based ESS. It is accepted that the treatment proposed by the Issues Paper might achieve that outcome at the employee participant level but tax leakage, tax uncertainties and compliance costs at a trustee level have a direct impact on the cost of ESS to employers and/or employees.

15. An opportunity is presented though this review to determine a code in relation to the taxation of ESS for employers, employees and other common intermediaries (such as trustees) that resolves

the interaction of various taxing regimes (the trust regime and FBT rules to give examples) that could have potential (probably unintended) applications to such arrangements.

“Substantial conditions” test

16. The “substantial conditions” trigger for the derivation of income from ESS is possibly the most significant new concept proposed in connection with the taxation of ESS benefits. The clarity of the concept will be a key component of the success of the proposed rules.

17. The point at which the substantial conditions have been fulfilled needs to be defined in the legislation with as much specificity as possible. The question of which conditions will be regarded as substantial in terms of this test is not addressed adequately in the Issues Paper, apart from noting examples of when the full benefits and burdens of ownership might arise and that “not all conditions would be considered to be substantial”.

18. Under the current rules there is a clear concept of “acquisition” as it relates to benefits under an ESS. It is a concept that is clearly defined and well understood. This is particularly desirable in the context of rules that tax benefits derived by employees with differing levels of tax sophistication and means to access tax advice.

19. There is inherent risk in a “substantial conditions” concept, of introducing substance-based considerations into a regime that should promote certainty of outcomes given the taxpayer base it typically applies to. Base maintenance concerns identified in relation to some schemes offered to (usually) senior management should not infect the clarity of the application of the rules for the broader class of employee participants.

Exempt share purchase schemes

20. There are currently a number of widely offered ESS that take advantage of the concessional rules for share purchase schemes contained in Subpart DC of the Act.

21. The regime provides an opportunity for a broad range of employees to participate in share investment with reduced tax and tax compliance cost. The regime, by design, is targeted at broad classes of employees, which could be expected to encompass groups that would not ordinarily participate in share investment activity to provide future income and the promotion of wealth creation at all levels. There is no obvious reason why these objectives should no longer be regarded as valid in terms of tax or general government policy. It is not clear what has changed since the introduction of the exempt share scheme rules that impacts on the desirability of such schemes in policy terms.

22. The benefits of participation in an exempt share purchase scheme has a direct parallel with other tax regimes promoting the investment by all New Zealanders with reduced tax and tax compliance obligations. Key examples include the portfolio investment regime. The rationale advanced in paragraph 7.8 of the Issues Paper for the elimination of such benefits could equally be advanced in connection with those other regimes. Clearly the promotion of the same benefits justifies the existence of those regimes.

23. It is also relevant that Australia maintains a comparable tax exempt share scheme regime. For many trans-Tasman companies the ability to offer comparable benefits to Australian and New Zealand workforces is an advantage. The elimination of parity would lead to differences in the treatment of comparable benefits derived by New Zealand and Australian employees, to New Zealand employees’ relative disadvantage.

24. The Law Society considers that the exempt share purchase scheme rules should be retained but with modernisation and possibly a view to alignment with the Australian rules. That modernisation could encompass:

    (a) resetting the $2,340 threshold to a greater and more appropriate amount;

    (b) clarifying whether the threshold applies to contributions by both the employer and employee; and

    (c) eliminating the taxation of amounts received by the trustee from the employer to fund the operation of schemes so as to preserve the effective tax-free nature of participation in the scheme.

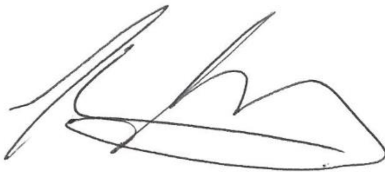
Timing

25. We understand it is proposed the new ESS rules will be implemented during the course of 2017. However, as noted earlier, the Law Society considers it is critical the implications and practical issues are properly thought through and addressed before legislation in relation to ESS is introduced.

Further information

26. This submission was prepared by the Law Society's Tax Law Committee. If you wish to discuss this further, please do not hesitate to contact the Tax Law Committee convenor Neil Russ, through the committee secretary Jo Holland (04 463 2967 / jo.holland@lawsociety.org.nz).

Yours faithfully



Kathryn Beck
President

Appendix **attached**

Appendix – Specific Comments

Consultation Question		Law Society comment
1.	***Framework for taxation of employee share schemes*** We are interested to hear from readers whether they agree that a neutral framework is the best framework for assessing the tax treatment of employee share schemes. If not, why not, and what would be a preferable framework?	We can understand that, from a tax design standpoint, the government will not want employee remuneration packages to be influenced by tax considerations (and that a principle of tax neutrality will therefore be desired). However, it is important that in attempting to achieve that neutrality, the positions of the (numerous) people who are already members of ESS are adequately taken into account and that such persons do not suffer adverse consequences due to quickly enacted legislation that does not adequately take into account the practical issues that will arise from amending the current approach. We also disagree with the assertion that ESS involving a purchase of shares should necessarily be taxed in the same way as a "phantom" share scheme. The two arrangements have significant legal, commercial and economic differences. Furthermore, in the case of exempt share purchase schemes there is a rationale for allowing concessionary tax treatment to promote wider societal objectives which remain relevant.
2.	***Employer deductions for shares provided under employee share schemes*** We are interested to hear from readers: - whether the current non-deductibility of employee share scheme benefits is a barrier to offering employee share schemes in practice;	The lack of express deductions for employee scheme benefits has not been particularly problematic or presented a barrier to ESS, because the overall outcome has typically been neutral. If shares are awarded to an employee at a discount to their market value, an asymmetric outcome could potentially arise because the employee is required to pay tax on the discount amount but the employer does not get a corresponding deduction. However, ESS that

Consultation Question		Law Society comment
		utilise trusts to hold shares for employees typically result in a deduction to the employer for amounts settled on the trust to fund the acquisition of shares. The possible absence of a deduction for shares issued by the employer is easily resolvable through the use of a trust-based ESS. In addition, under many ESS arrangements the employee will acquire their shares at their current market value as at the Award Date, meaning there is no taxable income for the employee at that time (and hence the lack of a deduction for the employer does not produce an asymmetric outcome). No taxable income will arise for the employee between the Award Date and the Qualification Date so (again) the lack of deductions for the employer has produced a neutral outcome. If the ESS rules are changed (as the Issues Paper proposes) any increase in the market value of the share between the Award Date and the Qualification Date will become taxable to the employee. To preserve a neutral outcome, it will be critical that express deductibility rules are enacted to ensure that the employer is able to claim a deduction for the uplift in the value of the shares. If no deduction was allowed, and the market value of the shares increased significantly between the Award Date and the Qualification Date, there would be an asymmetric outcome and significant over-taxation. Providing deductions for employers does not automatically prevent over-taxation. If the employer is unable to use the deduction, for instance because they are in loss or where they are not a New Zealand taxpayer (see comments below), a neutral outcome will not arise. Issues could also arise if the employer deduction was tied to the taxable benefit the employee derives. If the share price went down between the Award Date and the Qualification Date and the employer deduction was based on the value of the shares at the Qualification Date, the employer could end up in a position where their costs of providing the shares to the employee are

Consultation Question		Law Society comment
		more than the deduction they are entitled to claim in relation to the shares that have been issued.
	- whether clarifying the basis for a deduction is desirable;	As noted above, there needs to be an express entitlement to an employer deduction in the circumstances outlined above.
	- whether readers agree that the appropriate approach to quantifying and timing the deduction is to match it to the employment income recognised by the employee. If not, why not, and what would be preferable approach?	If revised ESS rules are enacted, having matching rules for employee taxable income and employer deductible is logical. Assuming that an employee is on a 33% tax rate and their employer is a company on a 28% tax rate, the net amount of income tax payable to Inland Revenue (taking into account both the employee's taxable income and the employer's tax deduction) should only be 5%. If income and deductions arose at different times (i.e. no matching) then the overall amount of tax payable could be higher or lower than 5%.
	- whether the approach should be modified where the employer is not the direct provider of the shares, for example, where there is a trust involved, or where the shares are issued by the ultimate parent company of the employer.	Yes, the approach would need to be adjusted to preserve neutrality. A deemed deduction should be available to the employer on the basis of the policy to align the tax treatment with a cash bonus paid by the employer. As noted above, it may be possible for such an approach to be applied more broadly to all ESS arrangements (which may eliminate the need for deductibility rules that apply to employers).
3.	***Taxing employment income from unconditional employee share schemes*** We are interested to hear from readers:	
	- whether they agree that the current tax treatment of unconditional employee share schemes (including employee share options) is appropriate and does not require reform;	The current tax treatment relating to unconditional ESS is well understood and no specific changes are required (although the Law Society would obviously expect that the deductibility rules referred to above would apply in circumstance where shares under an unconditional ESS were issued at a discount and the interplay between the ESS rules and the FBT rules could helpfully be clarified).
	- if you disagree with any of the above, why and what your preferred approach would be;	

Consultation Question		Law Society comment
	- whether there are any technical or remedial issues with respect to the employee share scheme rules that could be addressed as part of any legislative reform.	
4.	***Proposed taxation of conditional employee share schemes and option-like arrangements*** We are interested to hear from readers: - whether they agree that the current tax treatment of conditional employee share schemes and option-like arrangements is at odds with the neutral framework outlined in Chapter 2; and	As noted in response to question 2, ESS usually result in a neutral outcome in overall terms given that generally, where the employee pays market value for the shares, no employer deduction is available and no employee tax is paid, and where an employer settles a trust to acquire shares the employer has a deduction equivalent to the income arising for the employee or the trustee. The revised approach proposed in the Issues Paper will also lead to a neutral result in overall terms assuming that the employer is able to use the deductions it may be entitled to claim in relation to ESS shares. However, the amount of the deduction will be uncertain at the outset and could be quite different to the actual cost to the employer.
	- whether they agree with the "substantial conditions" approach to taxing employee share scheme benefits.	A large number of different ESS exist and conditions attaching to ESS can be quite different. For a "substantial conditions" approach to work, the conditions delineating between a conditional and unconditional ESS will need to be specific enough that they can applied to all ESS. They will also need to deal with the fact that certain ESS may allow for both unconditional and conditional purchases of shares. The "substantial conditions" trigger is possibly the most significant component of the proposed regime. Its clarity of application to various ESS will be a key component of the success of the new rules. Providing certainty of the taxing point should be the paramount consideration in drafting this test. Paragraph 5.24 of the Issues Paper proposes an anti-avoidance provision to ensure that the new rules are not circumvented by avoiding the employment relationship, or by issuing shares or

Consultation Question		Law Society comment
	If you disagree with any of the above, please outline why and what your preferred approach would be.	options to associates. It should be made clear that independent contractors and other non-employees participating in share schemes will not be brought into the new rules through such a provision. Schemes treated as conditional schemes under the new rules may involve employers (or their parent companies) in grey list countries, to which the FIF exemption in section EX 38 will apply. Section EX 38 should be fully aligned with the new rules, including where the issuer is non-grey list (i.e. if an employee is still subject to substantial conditions they should be outside the FIF rules).
5.	***Start-up companies*** We are interested to hear from readers: - whether valuation and liquidity issues are barriers to start-up companies offering employee share schemes; and	Shares valuations have always been an issue relevant to ESS operated by <u>all</u> non-listed employers (not just for start-up companies) and various different approaches have been adopted in ascertaining an appropriate share market value. However, liquidity issues <u>do not</u> arise under current ESS that are designed such that the employee pays a market value purchase price for the shares when they are acquired on the Award Date (financed, for example, by an employer share loan). This is particularly common for start-up companies as they have low initial value, allowing employees to acquire shares in the company for full value. As a result no tax becomes payable in the future (or needs to be funded), assuming the correctness of the valuation. If the proposals in the Issues Paper are adopted this may create new barriers to the use of ESS by non-listed companies. The new rules (if adopted) will mean that the employee will still acquire their shares at the Award Date (for their market value at that time) but could still have tax to pay

Consultation Question	Law Society comment
	at the Qualification Date if their shares increase in value. That tax liability will be a new cost the employee will be required to finance and may turn many employees off participating in ESS (particularly where their ESS shares are illiquid). The revised approach will also mean that the employer will be required to undertake a separate valuation exercise on each employee Qualification Date. With larger schemes involving shares in an unlisted company there could be a large number of different Qualification Dates meaning that the employer would need to undertake a large number of separate valuation exercises (which would impose additional compliance costs). As noted these types of issues will be created for all unlisted ESS – not just those operated by start-up companies.
- whether there are other tax obstacles to start-up companies offering employee share schemes. We are interested to hear from readers whether this flexibility in the choice of scheme structure is likely to be sufficient to resolve the liquidity and valuation issues for start-up companies, or whether there is a need for legislative solutions to be explored We are interested to hear from readers:	
- whether deferring tax until sale or listing would be beneficial;	If this was implemented, there would still need to be a valuation exercise undertaken at the Qualification Date. Otherwise, the employee could end up in a situation where they pay tax on the full value of the shares they have disposed of notwithstanding that the Qualification Date for the shares may have occurred well before this. This may be what the Issues Paper is contemplating occur, but is not an appropriate outcome. Say, for example, an employee obtains an award of shares when a start-up company first commences operations and the Qualification Date for those shares occurs a few years later when the company's future outlook is still

Consultation Question	Law Society comment
	uncertain. Following the Qualification Date the company's future becomes assured and it ultimately lists on a stock exchange. If the taxing point is the Qualification Date it is unlikely that the employee will have a significant tax liability since the future outlook of the company was uncertain at the Qualification Date and the value of the shares may therefore not have changed materially between the Award Date and the Qualification Date. If the taxing point was delayed until the listing date, significant tax could be payable by the employee despite the fact that the employee had fully qualified for the shares (on the Qualification Date) ***before*** the company's future was known and before the market value of the company had increased. This would be a perverse result.
- whether this option should be limited to non-dividend paying shares;	If this option was limited to non-dividend paying shares the option may never be available in practice because most shares used in ESS do have dividend participation rights.
- which companies should be eligible to adopt the deferral option? How should this class of companies be defined?	The rules proposed in the Issues Paper will potentially create valuation and liquidity issues for all non-listed companies. Therefore, if a deferral approach was to be adopted, it should apply to all non-listed companies.
- whether providing an option to defer the payment of tax (with UOMI applying) would be beneficial; and	It is difficult to see how this would work as a commercial matter. Say, for example, an employee Qualification Date happened in year 3 but the employee was unable to dispose of the shares until year 7 due to liquidity issues. The employee could potentially have a significant UOMI for no reason other than that their share entitlement was illiquid.
- what are the best answers to the questions raised in paragraph 6.24?	
We are interested to hear from readers: - how valuation and liquidity issues are currently dealt with in practice;	 As noted above, valuation and liquidity issues often do not arise under the existing rules but

Consultation Question		Law Society comment
		will arise if the proposals in the Issues Paper are adopted.
	- whether readers think providing approved valuation methodologies are possible and would result in reliable and robust valuations;	There is no "one size fits all" approach to valuing a company. A variety of different approaches could be adopted (e.g. discounted cash-flows, earnings multiples, net realisable assets etc) and the valuation method used for one company may not be appropriate for another. That said, without some type of guidelines, there would be a risk that an employee could be penalised where Inland Revenue disagrees with the valuation approach a company has adopted in respect of shares awarded as part of an ESS.
	- whether the provision by Inland Revenue of standard documentation and guidance would be helpful;	Inland Revenue guidance is always useful when tax legislation is enacted, particularly when the relevant tax rules are complex (as in this case).
	- whether an online tool like the Australian Easy ESS would reduce the costs associated with offering an employee share scheme – thus reducing barriers to offering such schemes;	The Law Society has no objection to an online tool like the Australian Easy ESS, but notes that such a tool may make little practical difference from a costs perspective (since the more significant costs are likely to be valuation costs and/or ongoing compliance costs created by the proposed new rules).
	- whether it would be useful to have a tool/guidance covering both the tax and securities law requirements for offering an employee share scheme; and	The Law Society supports this. In addition to tax law, the guidance will need to consider areas of law such as securities law and employment law.
	- whether there are any other options to address barriers to offering employee share schemes that fit within the proposed framework.	
6.	***Concession for widely offered share purchase schemes*** We are interested to hear from readers:	
	- whether there are good reasons for retaining the current concessionary regime or replacing it with another concessionary regime; and	Please refer to the main body of this submission. There are currently a number of widely offered ESS that take advantage of the concessional rules for ESS. It would therefore be sensible to retain these rules but to modernise them.
	- if so, whether there are any particular features of the current	

Consultation Question		Law Society comment
	concessionary regime that should be retained or removed.	
7.	***Transitional issues*** We are interested in readers' views on this approach to implementation, and whether there are any other issues that need to be taken into account	Grandfathering of the existing rules should be available to <u>all</u> current ESS participants that are in the process of qualifying for shares under a ESS regardless of when their Qualification Date is (i.e. grandfathering should not be restricted solely to scheme benefits that vest within three tax years of the new ESS rules). Otherwise a situation could potentially arise where an employee has already begun participating in an ESS on the basis of the current tax rules applicable to ESS but is taxed under the new ESS rules simply because the Qualification Date under their ESS will occur more than three tax years after the new ESS legislation is enacted. The new ESS rules would, in effect, apply retrospectively.
8.	***Administration, record keeping and reporting*** We are interested to hear from readers: - whether they think the current lack of employee share schemes reporting contributes to misunderstanding of tax obligations and non-compliance;	The Law Society understands that for the most part the existing tax rules applicable to ESS are reasonably well understood and complied with. A lack of reporting in itself certainly does not contribute to any misunderstanding of the obligations that might be present in the tax-paying community.
	- whether specific employee share schemes reporting (to Inland Revenue and employees) would impose significant compliance costs on employers;	The compliance costs associated with reporting will very much depend on what the reporting requirements actually are. Given the early stage that the proposed new rules are at, it is hard to comment on what the reporting obligations (if any) should be and if such obligations are desirable (given that, as the Issues Paper, notes the employer will already have information disclosure obligations under existing tax rules). At a high level, it is not clear what benefits are hoped to arise from a reporting obligation in respect of ESS, apart from those in respect of which the employer accounts for PAYE. Taxpayers enter into many types of arrangements that require tax positions to be taken. There is no obvious rationale for imposing

Consultation Question		Law Society comment
	- whether there are ways these compliance costs could be minimised; - whether monthly (real time) or annual reporting would be preferable; - whether it would be preferable for employers to simply be required to hold the relevant employee share scheme information, which could be requested by Inland Revenue if required; - the extent to which the information needed to report on employee share schemes is already held by employers; - whether registration of employee share schemes with Inland Revenue would impose significant compliance costs;	an obligation in respect of some arrangements (ESS for example) and not others (say, financial arrangements).
	- whether applying provisional tax to employee share schemes is problematic in practice; - whether changes could be made to reduce the practical difficulties associated with provisional tax.	