

Global Rewards Update: Spain – Availability of the EUR 12,000 exemption

February 2015

Background

In our Global Rewards Update of September 2014 ([click here for full details](#)), we discussed the changes affecting share plan awards that were proposed by the Spanish government in its draft tax reform package.

Following the approval of the tax reform package, the proposed changes to the “reduction of taxable income” preferential tax treatment remain as detailed in our September Global Rewards Update. The 40% reduction to taxable income previously available to irregular income generated over a period of more than two years was replaced by a 30% reduction, available if income is received in the same tax year and the individual has not applied the reduction within the preceding five years.

However, the final tax reform package amended the conditions to be met for the EUR 12,000 to apply rather than removing the availability of the exemption altogether.

EUR 12,000 exemption – new applicability

The draft tax reform package by the Spanish government proposed to remove the exemption available for the first EUR 12,000 of income realised from share settled compensation. However, in the final version of the reform package, the government did not remove the exemption for income tax purposes.

Although the exemption remains available, the tax reform introduced changes to the relevant eligibility requirements. Previously the tax exemption was available if the following conditions were met:

- 1) the offer is made as part of the general remuneration policy of the company, or of the group;
- 2) each employee, together with his/her spouse or relations (up to the second degree), does not hold a direct or indirect stake in the company or in any other of the group of companies, which exceed 5% of the capital stock of the company; and
- 3) the employee holds the shares for at least three years following the acquisition date.

The reform amended the first of the conditions so that now the general remuneration policy must include **all employees of the company**, with no exception (i.e. all employees must be offered participation in the plan). Previously, it was not necessary for the plan to be available to all employees in the company but rather to all individuals within the same category/grade of the company.

However, it is not currently clear whether the new condition will be met if the plan rules do not specify that all employees are eligible to participate in the plan but in practice the plan is offered to all employees of the company or group.

Further regulations are expected from the Spanish authorities on this point. Deloitte will be monitoring the developments as they emerge.

The exemption was previously removed for social security purposes and there is no change to this position.

Deloitte view

For awards exercised/delivered on or after 1 January 2015, employers that have historically applied the EUR 12,000 exemption to share settled compensation received by their employees should review their plans to assess whether the exemption is still available for income tax purposes:

- If previously the exemption was applied to awards received under a plan which was made available to all employees within a certain company category or grade (but not to all company employees), the exemption will no longer be applicable.
- If previously the exemption was applied to awards received under a plan which was made available to all company employees and this is stated in the plan rules, the exemption will continue to be available.
- If previously the exemption was applied to awards received under a plan which was in practice made available to all company employees but the plan rules do not specify that all company employees are eligible to participate in the plan, the exemption may no longer be available. Further guidance is expected from the Spanish Tax Authorities on this. In the meantime, as long as in practice the plan is offered to all company employees, the risk of the decision to apply the exemption being challenged by the authorities is relatively small.

People to contact

For assistance with this matter, or any other issue related to the operation of your global rewards plans, please contact your local Deloitte global rewards consulting services adviser or email us at globalshareplans@deloitte.co.uk, and a global rewards consultant will contact you.

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