In this issue:

Australia:
Changes to main residence capital gains tax exemption reintroduced

On 23 October 2019, the Australian government reintroduced legislation to deny the main residence capital gains tax (CGT) exemption if the owner is a foreign resident on the sale date. If enacted, the CGT exemption will only apply if, broadly:

- The owner is an Australian tax resident on the sale date, or
- The owner is not a tax resident of Australia on the sale date, but:
    - Has been a foreign resident for not more than six years up to the sale date, and/or
    - Sold the property owing to a life event (*e.g.*, terminal illness or death of a spouse or child or as the result of divorce, etc.).

There are broadly similar changes to the corresponding CGT exemption rules for deceased estates.

The existing CGT exemption rules still apply if the owner returns to Australia and is an Australian tax resident on the sale date.

If enacted, the new rules would apply to sales after 7:30 pm ACT (Australian Capital Territory Time) on 9 May 2017 for homes acquired after that date. Homes owned prior to that date will be affected only if sold after 30 June 2020 (which is a 12-month extension from the 2017 announcement).

What does the change mean?

Many Australian taxpayers considering overseas assignments may be disappointed that the consultation process on the proposed changes to the CGT exemption, including direct feedback from business groups representing Australian employees working overseas, did not result in additional modifications to the proposed legislation, which essentially operates as retrospective removal of a tax exemption that has existed in its current form since 1996.

Previous legislation to change the CGT exemption was blocked by nongovernment parties in the Senate, and the proposed changes made to the reintroduced bill do not seem to address all of the Senate's previous concerns. For that reason, it is anticipated that further amendments could be made to the reintroduced bill in the Senate before the changes become law, such as potentially limiting CGT gains to increases in value after the owner becomes a foreign resident.

The proposal also places an administrative burden on taxpayers who may not have retained evidence of costs to include as part of the CGT cost base, such as the cost of additions, renovations, repairs, ownership, and interest on loans to purchase the home or fund renovations.

Deloitte's view

These new rules will need to be considered carefully by foreign resident owners of Australian residential property. The CGT liabilities at stake in these circumstances could be material given the significant increases in house prices in Australia over recent years, especially in Sydney and Melbourne.

Employers may need to consider compensating employees for this additional cost in order for employees to agree to remain on foreign assignments after deciding to sell their Australian homes.

— Shelley Nolan (Brisbane)
Partner
Deloitte Australia
shnolan@deloitte.com.au

George Kyriakacis (Perth)
Partner
Deloitte Australia
gkyriakacis@deloitte.com.au

Trisha Grice (Melbourne)
Partner
Deloitte Australia
trishagrice@deloitte.com.au

Kumar Krishnasamy (Melbourne)
Deloitte Australia
kkrishnasamy@deloitte.com.au

Paul Rubinstein (Melbourne)
Partner
Deloitte Australia
prubinstein@deloitte.com.au

Kathy Saveski (Sydney)
Partner
Deloitte Australia
ksaveski@deloitte.com.au

Will Schofield (Sydney)
Partner
Deloitte Australia
wschofield@deloitte.com.au

Michael Ward (Sydney)
Partner
Deloitte Australia
michaelward1@deloitte.com.au

Global Rewards Updates:
UK annual share plan returns: Reporting of awards that are net settled

Key points to know

- HM Revenue & Customs ("HMRC") have recently published Employment Related Securities Bulletin 33 in which they set out how "net settled" share awards should be reported on the UK end of year share plan return.
- The changes are likely to mean that additional reporting will be required for companies that net settle awards. Companies will need to ensure that their systems are able to provide the additional information needed for the purposes of the share plan return.
- HMRC will also have greater visibility as to whether companies are net settling their employee share awards. Companies should carefully check they are calculating an appropriate UK Corporation Tax deduction in respect of net settled awards.

Background

In the UK, a statutory Corporation Tax (CT) deduction may be available where equity gains are realised by UK employees – for example on exercise of a share option or vesting of a conditional share award. There are number of conditions which need to be satisfied but these would generally be met for most types of awards over listed company shares. Assuming the conditions are satisfied, the CT deduction in respect of a UK domestic employee is based on the market value of the shares received by the employee less the price paid. This is also broadly the same as the amount on which an employee would normally be subject to income tax (assuming the award is not a tax advantaged award). As discussed, however, in our GRU of February 2019, where awards are "net settled", the UK CT deduction that is available may be more limited.
URL: https://ukinfo.deloitte.com/tQI0200OR00wF042G0000Dv

HM Revenue & Customs Bulletin

HM Revenue & Customs ("HMRC") have recently published Employment Related Securities Bulletin 33 which can be found here. The bulletin sets out how net settled awards should be reported on the UK annual share plan return (formerly known as "Form 42"). In particular, the bulletin has stated that – assuming the award is regarded as a "securities option" for UK tax purposes – net settled awards should be reported on two rows of the return:
URL: https://ukinfo.deloitte.com/p0000R4DGI000w2GQw000O2

1. One row should show the net (after tax) number of shares delivered to the employee; and
2. The second row should report the cash 'delivered' to the employee but which is then immediately withheld and remitted to HMRC in settlement of the taxes due.

Deloitte view

As a result of the changes, it will become more apparent to HMRC which companies are net settling their share awards. Companies should ensure that they have taken into account awards which are net settled when calculating the UK CT deductions that are available in respect of employee equity awards. Companies may also wish to consider if steps could be taken to maintain the availability of a full corporation tax deduction, either through settling awards to UK employees under a "sell to cover" arrangement or through the use of a share "recycling" arrangement.

The changes are also likely to mean that, going forward, companies who net settle awards will need to comply with additional reporting requirements. Companies should therefore ensure that their systems are able to provide the information needed for timely completion of the year end return (the return for the 2019/2020 UK tax year is due by 6 July 2020).

© 2019. For information, contact Deloitte Touche Tohmatsu Limited.