



Global Rewards Update

Australia – Tax Office announces changes to ESS annual reporting requirements

Background

Since 2009, providers of Employee Share Scheme (ESS) interests in respect of employment in Australia must provide ESS statements to employees by 14 July, and file an ESS annual report to the Australian Taxation Office (ATO) by 14 August, annually after the end of each relevant financial year.

As part of the ATO's modernisation programme, increased data-matching and automation of processes is being implemented across a broad sweep of employment tax-related obligations. As such, the ATO has announced changes to the following ESS obligations for tax years beginning from 1 July 2015:

- the method of filing of the employer ESS annual report, and
- the information to be included in the ESS annual report and ESS statement.

Changes to filing of the ESS annual report to the ATO

ESS annual reports have historically been accepted by the ATO generally as:

1. a paper based form; or
2. a report created using the ATO's "bulk load excel spreadsheet"; or

3. a report prepared and filed online in compliance with the ATO's official software specifications (version 1.0.1).

For tax years beginning from 1 July 2015, the first two of these methods will no longer be accepted by the ATO. Instead, the following two alternatives will be available:

1. A new "Online ESS" webpage-based portal will be available for providers reporting for 20 or fewer individuals; or
2. Online filing in accordance with the ATO's updated software specifications (version 2.0.0).

The paper-based filing and bulk load spreadsheet will only remain available for the amendment of 2014/15 or earlier ESS annual reports.

As a result of this change, many companies who currently meet their ESS reporting obligations in-house may face difficulties with preparing and filing the ESS annual report for the 2015/16 tax year onwards. This change in filing process essentially means that such companies must either purchase and familiarise themselves with dedicated complying software or seek professional advice.

Key Changes to the ESS Annual Report

'Assessable' vs 'gross' amounts

Many organisations have ESS participants in Australia and overseas so the taxation on such ESS interests may be 'sourced' according to the location(s) that the employee was providing his/her services. This can be further complicated by the individual's tax residency and the domestic tax treatment of ESS income.

For tax years beginning from 1 July 2015 onwards, the ATO will require disclosure of whether the amounts reported are the "gross" amount or the "assessable" amount for individuals who have worked overseas. This indicator is intended to identify whether the reported amount has been adjusted for periods of overseas employment (i.e. "assessable"), or has not been apportioned (i.e. "gross") regardless of any period of overseas employment.

Assignment dates of mobile employees

For individuals who have worked in multiple jurisdictions, the ATO will also require disclosure of his/her overseas assignment start date and assignment end date. The ATO has indicated that in the event an individual is selected by the ATO for a compliance audit, the dates supplied in the annual report would be cross matched with other sources (such as the individual's personal income tax returns).

Where an individual has more than one overseas assignment period, again the ATO has suggested that only the first set of assignment dates should be included in the annual report. It is not yet clear how this would work in practice or how this would affect the ATO's assessment in a compliance audit.

The ATO has also indicated that one set of assignment dates should be reported for each award, rather than just once per employee.

This additional information being requested by the ATO demonstrates the greater emphasis the ATO is placing on ESS income reported in respect of international assignments. There is an increased need for companies to ensure that amounts are being correctly and consistently apportioned across individuals, as well as to ensure appropriate communications is made to affected individuals. This will in turn require companies to more closely manage and track the movements of their international employees and their Australian income tax residency status.

Start-up company concessions

A number of significant taxation concessions for start-up companies have been introduced in Australia effective 1 July 2015 as part of the Australian Government's agenda to increase innovation and attract talent in the Australian start-up sector. For more information, please see our Global Rewards Update of [July 2015](#).

To account for these changes, the ESS annual report will also require details of the specifics to which the start-up concessions have been applied, including whether a company meets the start-up conditions and number and market value of shares/rights acquired under the start-up concessions.

Changes to the ESS statement

The ESS statement has historically been a one-page statement which provides employees with the total taxable ESS amounts for the relevant tax year. The ATO has indicated that the ESS statement will also be updated to include additional information. It is not yet known what the new statement will contain or what the new format will be, but we expect that it will

include additional fields in relation to the start-up concessions and could also include additional fields for assignment-related information.

Deloitte's view

The significant shift in filing methods puts many companies currently preparing their own ESS reporting in a difficult position as the commonly used bulk load spreadsheet will no longer be available. Deloitte has obtained approval from the ATO to offer an automated solution to help companies meet their ESS reporting obligations and the ATO's new online filing requirements.

The additional information required by the ATO through the ESS annual report reflects the increased use of data-matching being undertaken by the ATO and emphasises the increasing need for employers to ensure they are reporting consistent data across the board for their various tax and employer obligations.

The additional information being requested in respect of international assignments shows that the ATO is placing further scrutiny on ESS interests for internationally mobile employees. This increases the need for employers to ensure they have accurate and up-to-date assignment and tax residency information. Ensuring this data is now accurately held by the company is key.

With more information being requested by the ATO, it is important that providers update their communication documents that accompany the employee ESS statement so each participant has a greater understanding of the amounts reported on their behalf.

With a greater amount of information being requested by the ATO, employers must be mindful of data-security and authorisation by third-parties to access the personal information of their employees.

Contacts

For assistance with these issues, or any other issue related to the operation of your global equity plans, please contact your usual Deloitte adviser or email us at globalshareplans@deloitte.co.uk, and an adviser will contact you.

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