



Global Reward Update Canada Revenue Agency Update – Taxation of RSUs

June 2021

Further to our GRU published in May 2021 this supplemental document sets out some additional information with regards to the new guidance issued by the Canada Revenue Agency (CRA). At this stage we appreciate there are still questions outstanding and we will provide additional information once further guidance/ comments are issued by the CRA.

Salary Deferral Arrangement (SDA) rules

As a reminder, the SDA rules can accelerate the taxation of individuals who participate in plans under which the payment of salary or other remuneration is deferred to a subsequent year. If the SDA rules are triggered, employees are subject to a punitive tax regime. For equity awards, tax would be assessed at grant on the value of the shares at that time and on an annual basis thereafter (based on any increase in share price until vesting or exercise), with the final liability calculated at delivery.

There are several exemptions from the SDA rules that can be relied upon so that employees are not subject to the punitive tax regime. One of the most common exemptions is the “three-year deferral exemption”. Under this exemption awards must be similar in nature to a bonus and must vest and be distributed within three years of the end of the first year in which the services that gave rise to the grant of awards were rendered.

Recent update

As per our GRU in May 2021, the CRA has issued new guidance with respect to the taxation of restricted stock units (RSUs). Unless specific facts and circumstances support a different position, the guidance states that RSUs must be treated as being granted for services provided in the prior year, especially if the grant is made at the beginning of the tax year.

This change in position from the CRA may result in RSUs no longer being compliant with the SDA rules, and so may trigger unintended tax consequences as mentioned above.

This would apply to local Canadian employees as well as any internationally mobile employees who are currently in Canada or have been in the past.

Frequently Asked Questions

Below we have set out our responses to several questions that have been raised since the new guidance was released. Our answers are based on our current understanding of the CRA's guidance. Further guidance or clarifications from the CRA may impact the positions set out below.

Q: Which award types does the new guidance apply to?

Our understanding is that the new guidance applies to all conditional share awards (e.g. RSUs, PSUs) that can be settled in either cash or shares (as determined by the company). If the plan rules only allow for share settlement (with newly issued shares), then awards may be exempt from the SDA rules and as such this guidance is not relevant.

We are aware that most companies would have a cash alternative clause in their plan rules and therefore plans are likely to fall within the SDA rules.

Q: When was this announced by the CRA and when are these rules effective from?

The comments from the CRA are dated December 2020 but were published during March 2021. The guidance indicated that it will only apply to shares / cash delivered after 31 December 2020.

Q: Will the CRA issue any further guidance so that companies have more clarity?

The CRA have indicated that they will issue more comments on the topic. They may also request that Deloitte submit a formal interpretation request if there are specific elements that we require clarification on.

Q: It was mentioned in the GRU that there is more likely to be an issue when the award is granted early in the year. Does the guidance refer to the calendar year (i.e. the Canadian tax year), or the company's financial year?

The comments issued referred to the calendar year (which is the same as the tax year for individuals in Canada). At this stage it is difficult to say what would be considered as early in the year.

Q: Most UK companies grant in their new financial year, once results are announced. For companies with a December year end, grants are likely to be made in March or April. Would this be considered "early in the year"?

The fact that the grant may be driven by the financial results from the year preceding the grant could be considered as an argument that the grant made relates to services provided in the prior year. Where the awards are forward looking, we would recommend that employee documentation is clear on this fact.

Q: What is the impact of a performance condition?

Having a forward-looking performance condition may support a position that the award is granted for future services when considering the "three-year deferral exemption".

Depending on the risk of forfeiture involved, it may also be worth considering whether the grant falls outside of the SDA rules.

Q: Do we recommend that companies ask for their incentive plans to be reviewed to give a clear position as to whether this new guidance applies or not?

As a starting point, we recommend that companies have an initial discussion with their tax advisors to determine the level of risk involved before making any changes to current tax practice or plan design for Canadian participants. The level of risk can vary depending on the plan type and complexity, amongst other factors.

Who to contact

If you would like to discuss this further, or have any questions, please speak to your usual Deloitte contact or any of the contacts listed below:

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