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Global Reward Update

New Zealand - Determining "value" of shares received under employee share plans

Introduction

As previously communicated in our June 2016 Update, effective April 1, 2017 (the start of the current New Zealand fiscal year) employers are required to report share benefits received by employees to the Inland Revenue.

The New Zealand Inland Revenue have now released a Commissioner's Statement CS17/01 providing guidance on how to determine the value of shares received under a share purchase agreement ("SPA") for tax purposes (including employer reporting).

Background

For New Zealand tax purposes, shares are considered to be acquired under an SPA whenever employees acquire shares for less than market value (i.e., substantially any employee share plan / incentive, potentially including options, RSUs, employee purchase plans, etc.).

The Income Tax Act does not define the taxable "value" for share based transactions. The commissioner's statement indicates that the "market value of the shares" should be measured by reference to the value that the shares would be exchanged for between two non-associated third parties, on an arm's length basis.

Valuation of the Benefit

The statement outlines certain methods and the supporting documentation that will be acceptable for determining the value of the share benefits received by employees on or after April 1, 2017:

Listed Shares

For listed shares on a recognised exchange, the following three valuation methods will be accepted by the Commissioner:

1. Volume Weighted Average Price (VWAP), which is calculated using the price of the last five trading days, inclusive of the acquisition date. The price of the share is multiplied by the number of shares traded and then divided by the total shares traded for the day.

2. Closing price of the listed share on the acquisition date.

3. If the employee disposes of the shares on the date of acquisition, the actual sale proceeds received.

For shares listed on an overseas exchange, conversions to New Zealand dollars should be undertaken using the close of trading spot exchange rate on the acquisition date.

In all cases, documentation is required to support the value and method that is used.

Unlisted Shares

For unlisted shares (excluding start-up company shares), the following methods of share valuation are considered acceptable.

1. An arm's length value determined by a qualified valuer that conforms with generally accepted practice.

2. A valuation based on an arm's length transaction (e.g. capital raising) undertaken in the last six months.

3. A valuation prepared by an appropriate person within the company.

Start-up Companies

For a start-up company the valuation methods are broadly the same as an unlisted company except that:

1. A valuation based on a recent transaction can be relied upon if the transaction has occurred within the last 12 months (as opposed to 6 months).

2. A valuation based on the determination of an appropriate person in the company will require the use of the discounted cash flow method (as this is the only method considered appropriate by the Commissioner).

Newly Listed Companies

Shares issued to employees as part of an Initial Public Offering ("IPO") are to be valued using the published offer price included in the retail offer documentation.

Deloitte's view

The guidance from the Inland Revenue is welcome news and provides clarity to employers valuing shares provided to employees under employee share plans (SPAs).

Employers are encouraged to consider the new rules and adopt the appropriate valuation approaches when reporting income from employee share plans.