

Global Rewards Update: Australia – Government announces new tax concessions for Employee Share Schemes

October 2014

Background

The tax rules applying to employee share schemes (ESS) in Australia underwent significant changes in 2009. The changes took the Australian tax regime out of step with most of Australia's trading partners by imposing income tax at vest rather than when share options are exercised or shares are sold.

The Australian Government announced on 14 October 2014 proposed changes to the tax treatment of ESS for all companies and a special tax regime for start-up companies.

Changes

The Australian Government has announced that it is proposing to unwind the 2009 ESS changes with new tax rules to come into effect as of 1 July 2015, i.e. the start of the 2015-16 Australian tax year. However, it is currently unclear whether existing equity grants prior to this date will be grandfathered or subject to the new rules.

1. Significantly, the new tax rules as announced will mean taxation of share options will generally be at exercise (instead of at vesting) for employees of all companies who operate schemes not taxed at grant (i.e. deferred tax schemes).
2. New tax concessions are planned for employees of eligible "start-up" companies. A "start-up" company is currently defined as one that meets all of the following criteria:
 - A company with aggregated turnover of not more than A\$50 million;
 - An unlisted company; and
 - A company incorporated for less than 10 years.

For start-up companies:

- Options that are offered at a small discount and held by the employee for at least three years will have taxation deferred until sale of the underlying shares (therefore no taxation at grant, vesting or exercise).
- For shares, a small discount of up to 15 percent on the market value at the date of grant will be exempt from tax where the shares are held by the employee for at least three years.
- An extension to the maximum deferral of tax from 7 years to 15 years will be provided to "give start-ups more time to be competitive and succeed".

Deloitte view

Share options

The taxation of share options moving back to the date of exercise for everyone and not just start-ups is a positive change from the government. This is subject to the new legislation being drafted appropriately, which is still subject to consultation.

Concessions for “start-up” companies

With regards to the concessional treatment and eligibility criteria for start-ups, this is another positive move by the government to help stimulate the Australian economy. Deloitte Australia are pleased to see a close alignment to their recommendations that were submitted to Treasury in February 2014.

There are, however, still a lot of unanswered questions with the “devil in the detail”, such as:

- How will the company prove start-up status (i.e. the A\$50m aggregated turnover - is this from the company’s last profit and loss statement)?
- Will the Australian Taxation Office or other body have to approve the start-up concession or is it self-assessment?
- How do you easily value shares in an unlisted company to determine the tax market value of an option by way of the (to be) revised valuation tables in the ESS regulations?
- Is there a cap on the total value exempted from tax under the 15% small discount start-up concession for shares (as in certain circumstances this could result in a large tax free amount)?
- Is the start-up concession available to founders and investors as well as employees or just employees?
- Is this start-up concession for Australian business only or will it be used to attract overseas companies to Australia as well (providing they meet the definition)?
- Will ESS reporting be required for companies eligible for the start-up concessions where they are not subject to income tax?

Action

Deloitte will continue to work with the government on these proposed changes. If your company would like to be part of the Deloitte representations to Government, then please join the debate at the following website <http://www.retainingtalent.com.au/> and share your views.

People to contact

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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