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Global Employer Services

Global Rewards Update:
Australia – new employee share scheme tax rules now law

July 2015

Background

Further to our Global Rewards Updates of **January 2015** and **April 2015**, the new employee share scheme (ESS) tax rules in Australia are now law.

Deloitte Australia previously called for a broader change to the tax on employee stock options as well as specific equity tax incentives for start-ups. We are pleased to see that the Australian government shared this view and that the amendments focus on both.

In Deloitte's earlier submissions to treasury, we noted that a holistic view of the ESS changes, and not just a simplified solution, was needed to meet the needs of the start-up community. We are pleased to see that the vast majority of our suggested changes for start-ups have been included in the final approved legislation. We have highlighted these in the table further below.

Summary of changes

The new rules generally amend the *Income Tax Assessment Act 1997* to apply to ESS interests acquired (e.g. stock options or restricted stock units granted) on or after 1 July 2015 as follows:

- Revision of deferred taxing points for rights to the date of exercise;
- Relaxation of the significant ownership and voting rights limitations;
- Changes to the refund of income tax for forfeited shares and rights;
- Updated ESS tax valuation tables for unlisted rights in the regulations to reflect current market conditions; and
- Various concessions for start-up companies.

For details on the new rules, please refer to our previous Global Rewards Updates released this year in January and April (links are above).

New concessions for start-up companies

The following table summarises the new ESS rules affecting start-ups, including Deloitte's original recommendations in our submission to treasury.

New rules for start-up companies	Deloitte's original recommendations
Definition of start-up companies that can access the concessions: • Employing company must be an Australian tax resident;	Definition of start-up companies that can access the concessions: • Company must be Australian-based business;

- Must be incorporated less than 10 years; - ESS interest needs to be in a company that has an aggregated (group) turnover not exceeding $50 million for the income year prior to the income year in which the ESS was acquired; and - No equity interest in the company can be listed on an approved stock or securities exchange.	- Providing (new) products or services for no more than 10 years in Australia; - Consolidated revenue of $15 million per annum or less.
The rights (or any share acquired on exercise of the right) or shares must be held for a period of three years or until termination of employment with the employer or group company, if earlier.	Rights and underlying shares must be held for at least three years (share options to be held for at least two years from grant and shares acquired on exercise to be held for at least one year).
Taxation event at disposal.	Taxation event at sale or disposal (exit event or ten years).
Consultations with industry to ensure simpler valuation methodologies are created.	Simplified valuation methodology for ESOP tax purposes to reduce the cost of establishing and maintaining an ESOP.
Standard plan documents approved by the Commissioner.	Standard plan documents approved by the Commissioner.

Action

All companies granting share incentives or rewards in Australia on or after 1 July 2015 should consider if the more favourable tax treatment under the new ESS tax rules is available to their employees.

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.

This Global Rewards Update information is also included in our bi-weekly GES newsletter, Global InSight, which you will receive directly if you are on the central distribution list.

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