

Global Rewards Update: Australia – Increased focus on ESS reporting for foreign providers and clarification of sourcing for cross-border employees

March 2014

Background

Deloitte previously issued Global Rewards Updates relating to Australian employee share scheme (ESS) reporting in June 2010 and June 2012. This update is intended to provide further clarification surrounding the Australian Taxation Office's (ATO) increased focus in this area.

Broadly, the provider of an ESS interest (such as share awards and share options) is required to report any ESS income taxation events during the Australian tax year. The taxation event is reported to the employee on an ESS statement by 14 July, and to the ATO on an ESS annual report by 14 August, following the 30 June year end. This report may be prepared via paper or electronically.

For these purposes, the term 'Employee' has a wide scope. It includes employees and associates of employees of both the company and its subsidiaries (including past and prospective employees). Individuals such as directors, contractors and consultants may also be treated as employees for ESS purposes.

Who is a provider?

An ESS provider can be a foreign headquartered company or an Australian company. For example:

- Where share awards/options are offered by a non-Australian tax resident company to employees of its Australian subsidiary, the foreign parent is considered to be the provider. The Australian subsidiary is not the provider.
- Where share awards/options are offered by a non-Australian tax resident company to its mobile employees who have an Australian service period, the foreign parent is considered to be the provider.
- Where share awards/options are offered by an Australian tax resident company to its own employees or employees of its Australian subsidiaries, the Australian company is the provider.

Recent changes indicating ATO focus on "foreign providers"

Many non-Australian-based parent companies are still not meeting their ESS reporting obligations in Australia. Therefore, the ATO has increased scrutiny surrounding the compliance of foreign providers with ESS reporting obligations. This has been demonstrated by a number of recent changes:

- The ESS annual report paper form has been updated to contain a tick box for companies that do not have an Australian Business Number (ABN) (i.e. foreign companies).

- The ATO's electronic ESS Bulk Load Excel Spreadsheet allows for the ABN field to be completed with a zero if an overseas address is entered (intended for foreign companies).
- The ATO has ensured that its website and communications refer to the 'provider' rather than employer where ESS reporting is concerned.

Sourcing for mobile employees

Earlier in 2013, the ATO also released an announcement clarifying its position in respect of participants who are taxable only on a portion of the gain in Australia as a result of being resident in another country during the life of the award.

Where the provider is able to calculate the portion of the gain assessable to a mobile employee, the provider should report the actual assessable amount of the gain (after taking into account foreign service).

If the actual amount cannot be reported by the due date, the provider should:

- report the gross amount by the due date; and
- when known, report the actual amount on an amended ESS statement to the employee and an amended ESS annual report to the ATO.

Providers should ensure that they report the actual assessable amount (taking into account any period of foreign service) where possible. This will avoid mismatches arising when the ATO subsequently compares data from ESS annual reports with employees' tax returns.

Action

Companies should determine who the "provider" is for the purposes of ESS reporting and ensure that ESS reporting is carried out correctly and on an annual basis.

If there have been failures to report ESS taxable events, a provider should, within 30 days, provide ESS statements to employees and provide any outstanding ESS annual reports with the ATO. If there are changes to or omissions in any information previously provided, the provider should amend ESS statements and ESS annual returns.

Companies should ensure that their systems for completing the ESS reporting in Australia are adequate. If you need any assistance with this or if you would like to receive information about Deloitte's automated tool for ESS reporting, please contact the mailbox below or your usual Deloitte contact.

People to contact

For assistance with this matter, or any other issue related to the operation of your global rewards plans, please contact your local Deloitte global rewards consulting services adviser or email us at globalshareplans@deloitte.co.uk, and a global rewards consultant will contact you.

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