

Global Rewards Update: Bermuda – Change in payroll tax treatment

October 2014

Background

Payroll tax is charged in Bermuda on employers with employees that are wholly or mainly employed in Bermuda and who provide services during any tax period. Payroll tax is currently payable at 14% on employee remuneration, which includes benefits derived by the employee as a result of his/her employment, whether paid in cash or in kind. Therefore, although share-based awards are not subject to income tax or social security in Bermuda, they are subject to payroll tax.

Although payroll tax is an employer liability, employers can (but are not required to) recover 5.25% of the 14% payroll tax rate from employees.

Change in payroll tax treatment of share options

The Office of the Tax Commissioner ('OTC') of Bermuda has previously generally taken the position of treating share options granted to employees as subject to payroll tax on the difference between the fair market value and the exercise price of the share options at the date of grant. This meant that there would be no tax on any market value options (i.e. share options with an exercise price equal to the fair market value at grant).

Recently, the OTC revised this policy on the point of taxation for share options. This has occurred without any corresponding changes or amendments to current legislation. The OTC's revised position is that, effective for reporting tax periods beginning on or after 1 July 2014, share options granted to employees on or after 1 July 2014 will now be subject to payroll tax on the difference between the fair market value and the exercise price only when the options have vested/become exercisable.

Application to other equity awards

The OTC has confirmed that the change in the tax point for payroll tax purposes can be applied to other share-based awards similar to share options. For typical PSP/RSU plans, payroll tax should now also be payable at vesting (on the fair market value at vesting), rather than at grant (on the fair market value at grant).

Transitional provisions

New share option plans or similar benefits granted to employees on or after 1 July 2014 will be eligible for the revised treatment. However, no refund claims will be accepted for payroll taxes that have already been reported and paid under the previous policy.

The OTC will consider refunds for payroll taxes already paid at the date of grant on share option rights and conditional share awards that were subsequently forfeited due to employment termination/failure to meet performance conditions before the end of the vesting period. This remains consistent with prior OTC policy.

Action

Companies should revise their processes, to ensure that they are making payroll tax payments according to the revised policy:

- For awards granted prior to 1 July 2014 – payroll tax is payable at grant on any positive difference between the fair market value at grant and the exercise price (if any);
- For awards granted post 1 July 2014 – payroll tax is payable at vesting on any positive difference between the fair market value at vesting and the exercise price (if any).

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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