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Global Rewards Update:
Spain – changes to the taxation of employee share plans

September 2014

Background

The Spanish government presented a draft tax reform package that proposes changes to a broad range of tax matters, including the taxation of share awards and share options.

Subject to final approval, the changes affecting share plan awards would apply to awards granted on or after 1 January 2015. A transitional regime may apply in some cases (as described below) to share awards which vest, or share options which are exercised, after 1 January 2015, but which were granted prior to this date.

EUR 12,000 exemption

Current legislation allows a tax exemption on the first EUR 12,000 of income realised from share settled compensation, if the following requirements are met:

- the offer is made as part of the general remuneration policy of the company, or of the group;
- each employee, together with his/her spouse or relations (up to the second degree), does not hold a direct or indirect stake in the company or in any other of the group of companies, which exceed 5% of the capital stock of the company; and
- the employee holds the shares for at least three years following the acquisition date.

The recently proposed legislative changes intend to remove the availability of the EUR 12,000 exemption.

Reduction of taxable income

In addition to the EUR 12,000 exemption, under current legislation a reduction of 40% could be applicable on taxable income, if that income is considered to be “irregular income”. This is applicable when the following conditions are met:

- the income has been generated over a period of more than two years (e.g. there is a vesting period of at least two years); and
- the income is not obtained on a periodic or recurrent basis (e.g. income must not be obtained annually under a set vesting schedule).

There is a limit of EUR 300,000 per annum on employment income which can be subjected to the tax reduction.

The recently proposed legislative changes would affect the basis on which the reduction applies, but employees would still be able to apply the reduction, although the reduction would be of 30% (instead of the current 40%). In order for the reduction to be available, the following conditions will need to be met:

- The income subject to the reduction must be received by the employee in the same tax year.

- The requirement that the income is not obtained on a periodic or recurrent basis would no longer be applicable. Instead, the reduction would be applicable only if the individual has not applied the reduction within the preceding 5 years.

- A transitional regime may apply to awards granted before 1 January 2015 but vesting/being exercised more than two years following the date of grant (and provided the awards were not recurrent). Under the transitional regime, the reduction may apply even if the participant had obtained other income generated over more than two years, which had already benefited from the reduction.

Deloitte view

It is important for employers to consider the potential impact on their Spanish withholding tax obligations, since under the new tax legislation income that is not currently taxable will fall within the scope of taxation.

Employers should review the share awards/options provided to employees working in Spain, and where possible structure awards to benefit from the taxable income reduction. This can reduce the cost of receiving share awards to employees (or employers, where tax equalisation or tax protection policies are in place).

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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