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Global Employment Solutions

Global InSight

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Global Rewards Updates:
India: Tribunal decision on the apportionment of stock option income

Background

A case went before the Delhi Tribunal regarding the tax treatment of the gain made on the exercise of stock options by an Indian Resident (but not Ordinarily Resident) individual.

This case was about an individual who was only resident in India for a portion of the period between the grant and vesting of the option.

There is no guidance in the current tax law which sets out whether the entire gain should be treated as Indian-sourced income, or whether it can be apportioned.

Ruling of the Delhi Tribunal

The Delhi Tribunal ruled that only the portion of the stock option gain relating to the period of services rendered in India during the grant to vest period would be taxable in India.

Action

This ruling supports our previous understanding of the treatment that should be applied to stock options for individuals that are Resident but not Ordinarily Resident at the tax point in India. There is no immediate action for companies.

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Global Rewards Updates:
United Kingdom: Consultation on simplifying the taxation of unapproved share plans

Background

In January 2013, the Office of Tax Simplification ("OTS") published a report containing recommendations on how the UK taxation of unapproved employee share plans could be simplified.

The UK Government announced their initial response earlier this year, which was summarized in our April 2013 update. They have now published a consultation in which they have requested input and evidence from businesses in relation to some of the recommendations that were made by the OTS.
URL: https://www.gov.uk/government/consultations/office-of-tax-simplification-review-of-unapproved-share-schemes

Initial consultation

The current consultation relates to the following areas:

- Internationally mobile employees – The tax and social security treatment of share awards held by internationally mobile employees can vary according to the type of share award granted and can be inconsistent with other types of employment income. The OTS has recommended simplifying/harmonizing the treatment for income tax and social security, for inbound and outbound employees and for different types of awards. The OTS also recommended that the corporation tax deductions which are available on awards should match the income tax treatment.
- Corporation tax relief following a takeover – Currently corporation tax relief may not be available where a business over whose shares awards have been granted is taken over by an unlisted company. The OTS has recommended that corporation tax relief for employee share acquisitions should be available for 90 days following the takeover.
- S222 IT(EP)A and 'making good' – Where employees realize share plan gains, they must 'make good' the tax to their employer within a 90 day period or suffer an additional tax charge. Consideration is being given to extending this deadline to 6 July following the end of the tax year.
- Market value of listed shares – For certain listed company shares, the market value for tax purposes is based on a specific methodology, the 'quarter up' method. Broadly this means the lower of the items below. Consideration is being given whether this can be amended so that it is based on the closing price on a particular day.
  - Taking the two prices quoted in the Stock Exchange Daily Official List on the relevant date and adding one-quarter of the difference between the two to the lowest price; and
  - The average of the highest and lowest bid prices for the day.
- Share for share exchanges and rollovers – Where share options held by an employee are exchanged for new share options, for example on the takeover of a company, rollover provisions may prevent an income tax charge arising. However, no such rollover provisions apply in relation to restricted shares. This can lead to income tax charges where these restricted shares are exchanged. The OTS recommends that a consistent approach should apply to all types of share awards.

The Government has requested views and further evidence about the potential impacts, costs and benefits of the items listed. Responses should be sent by 16 August 2013, by email to shareschemes@hmrc.gsi.gov.uk or by post to: Employee Shares and Securities Unit, Room G53, 100 Parliament Street, London SW1A 2BQ.

The Government intends to publish their initial response to the consultation in autumn 2013, with any changes that are adopted to be implemented in Finance Bill 2014.

OTS's other recommendations

A number of other recommendations were made by the OTS. These include:

- "Non-marketable" shares – Proposal to change the point at which a charge to tax would arise – when shares become "marketable".
- Employee shareholding vehicle – Introduction of a simple UK vehicle to hold shares and create a market for employees' shares in unlisted companies.
- Employer reporting and withholding – Integration of share plan reporting into real time information and extension of the PAYE deadline for share gains.
- Valuation of company shares – Increased availability of pre-transaction valuations for awards being granted over unlisted shares.

The Government has stated that it will consider these issues at a later date.

Deloitte view

HMRC appear to have been receptive to the recommendations that were made by the OTS and this is encouraging for business. The proposed changes to the taxation of internationally mobile employees and the extension of the deadline for employees to 'make good' the tax will be particularly welcome as these are complex areas for employers to manage. We would encourage companies to submit their views directly to HMRC (or alternatively send them to your usual Deloitte contact).

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Have a question?
If you have needs specifically related to this newsletter's content, send us an email at **clientsandmarketsdeloittetax@deloitte.com** to have a Deloitte Tax professional contact you.

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