Australia: Changes to 2016 employee share scheme reporting

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In brief

The Australian Taxation Office (ATO) has recently announced a number of key changes to the 2016 employee share scheme (ESS) requirements, which follow changes made to the taxation of ESSs that applied from July 1, 2015. These new changes include:

- a new ESS reporting lodgement process, including the removal of the ATO Bulk Load Excel Spreadsheet and paper lodgements
- reporting for internationally mobile employees.

The lodgement dates for the 2016 financial year remain the same, with employees required to be provided with an ESS statement by July 14, 2016. An ESS annual report must be provided to the ATO by August 15, 2016.

In detail

New ESS annual report lodgement process

A significant change to 2016 ESS reporting is that the ATO will no longer accept paper or Bulk Load Excel Spreadsheet lodgements. This change may significantly impact many foreign multinationals and large unlisted companies that previously satisfied their ESS reporting required by using paper or Bulk Load Excel Spreadsheet submissions. Australian listed companies that satisfy their ESS reporting requirement through their Australian based share registry should be unaffected by this change.

For 2016, employers will only be able to lodge ESS annual reports using:

- an ESS online form (which will be available soon) for employers up to 20 participants
- software which meets the ATO's ESS electronic reporting specifications.

However, companies with more than 20 participants that previously prepared their ESS reporting requirements in-house will either need to purchase software which meets the ATO's ESS reporting specifications, develop their own software which meets the ATO's reporting specifications, or engage a provider to lodge on their behalf.

Internationally mobile employees

As internationally mobile employees may be engaged in foreign service, depending on the employee's particular facts and circumstances, only a portion of their ESS income may be subject to Australian income tax.

The ATO has previously announced that an employer may choose to report either:

- the actual assessable amount of the discount (after taking into account the foreign service), or
- the gross discount.

What is new for 2016 is that employers must indicate on the ESS annual report whether the amount reported is the 'gross' or 'assessable' ESS amount. Indicating that the ESS amount reported is 'gross' will indicate the amount has not been adjusted for amounts that relate to employment outside of Australia.

The ATO will now also give companies the option to report the start date and/or end date of the employee's overseas employment. This is not a mandatory field to be reported to the ATO and companies should consider whether or not they have this information to provide to the ATO.

Accordingly, companies will need to decide how ESS income is reported for internationally mobile employees and what additional information is provided to the ATO.

Reporting the actual assessable amount of the discount is preferable in many situations, as it ensures consistency between the amount reported for ESS reporting purposes and the amount actually disclosed in the employee's Australian income tax return. This is particularly relevant in relation to data matching (see below for further details).

Continued focus on data matching

As in prior years, we have continued to see significant ATO activity in relation to data matching ESS income.

The ATO is data matching the ESS reporting information it obtains from employers against the ESS income disclosed in employees' income tax returns. Where there is a discrepancy, employees have been required to provide additional information regarding the calculation of the ESS discount, including details of their particular interests, and in some cases, employee share plan documentation.

It is therefore important for employers to communicate to their employees how the ESS amounts reported to the ATO have been calculated. For 2016 this is of particular importance as employers will now be required to indicate whether they are reporting the gross or assessable amounts in the ESS annual report.

Tax withholding

Where employees do not provide their employer with a TFN, employers must withhold tax at the highest marginal rate and remit it to the ATO by July 21 after the end of the relevant financial year (known as TFN Withholding). Accordingly, there is no withholding requirement for employees who have provided a TFN to their employer.

However, the ATO has indicated that if an employee requests for tax to be withheld, any such tax withholding should be treated as ordinary PAYG withholding, not TFN withholding.

Therefore, where an employee requests for tax to be withheld from their ESS income at the time of the transaction (i.e., exercise of an option, vesting of a right), any such tax withholding should be reported as PAYG withholding through the same reporting mechanisms as for PAYG withholding on salary and wages.

The takeaway

Next steps

Do you have a reporting obligation?

If you are the 'provider' of an ESS interest (such as a share, right or option), you are required to comply with the ESS reporting requirements. However, the 'provider' may use an agent to fulfil the reporting obligations on their behalf. For example, where the provider is a foreign holding company, the Australian subsidiary company can assist by reporting on their behalf. If you have a reporting obligation, consider how you will report for 2016. In particular, if you previously satisfied your ESS reporting obligations using paper or the ATO Bulk Load Excel Spreadsheet, these methods of lodgment will not be available for 2016.

What do you need to report?

You will need to report all taxing events which occur in relation to your employees' ESS interests during the period July 1, 2015 to June 30, 2016 on an ESS statement. This statement must be provided to employees by July 14, 2016. The ESS annual report which employers must provide to the ATO by August 15, 2016 will include the information provided to each employee in the ESS statement.

How do you calculate the taxable discount?

Calculating the taxable discount is not always straightforward. Areas of complexity include the valuation of share options at vesting, calculation of the taxable discount for internationally mobile employees and calculation of the taxable discount for employees who have terminated employment during the year.

Do you have all the information you need?

You will need to ensure you have all the information to complete the ESS reporting. Make sure that you have access to the relevant information well before the reporting due dates, particularly where you need to obtain the information from a foreign share registry.

Have you advised your employees appropriately?

Communication to employees regarding ESS reporting is essential. Providing employees with details regarding how the ESS discount has been calculated will ensure that employees can accurately prepare their income tax returns, and that you are not inundated with queries from employees. Providing a separate communication document to accompany the ESS statement to employees has proven effective in this regard.

Let's talk

For a deeper discussion about this issue, please contact your PwC Global Mobility Services engagement team or one of the following professionals:

Global Mobility Services – Australia

Marc Bosotti
+61 02 8266 7855
marc.bosotti@au.pwc.com

Paras Sarvia
+61 03 8603 0771
paras.sarvia@au.pwc.com

Global Mobility Services – United States

Peter Clarke, *Global Leader*
+1 203 539-3826
peter.clarke@pwc.com