
Employee Share Scheme Reporting

12 May 2014

The deadlines for 2014 Employee Share Scheme (ESS) reporting are once again almost upon us. Employees must be provided with an ESS Statement by 14 July 2014, and an ESS annual report must be provided to the Australian Taxation Office (ATO) by 14 August 2014.

What is new?

Internationally mobile employees

The ATO have confirmed that for internationally mobile employees, employers have a choice as to how ESS income is to be reported. As internationally mobile employees may be engaged in foreign service, only a portion of their ESS income may be subject to Australian income tax. The ATO have confirmed that in this situation, 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.

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.

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.

Payroll tax

The ATO is also continuing to share information with the Office of State Revenue (OSR) authorities to assist with payroll tax reviews. Accordingly, companies should consider whether the treatment they are adopting in relation to ESS awards for payroll tax purposes is correct, both in relation to Australian local and internationally mobile employees.

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 can assist by reporting on their behalf.

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 1 July 2013 to 30 June 2014 on an ESS statement. This statement must be provided to employees by 14 July 2014. The ESS annual report which employers must provide to the ATO by 14 August 2014 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 may 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?

Making sure you have all the information you need to complete the ESS reporting is essential. Ensure 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. The communication can provide an explanation of the information that is contained in the ESS statement, as well as calculations to provide further detail of things such as exchange rates, valuation of stock options, and how any amounts were apportioned, if applicable.

Under Australian law, there is no withholding requirement in relation to ESS interests unless the employee has not provided the employer or provider with their Tax File Number. This means that any tax payable on ESS income arises as result of the lodgement of the employee's income tax return. As a result, clear communication can assist employees in planning for the payment of taxes on their ESS income.

Let's Talk

For a deeper discussion of how this issue might affect your business, please contact:

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