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Global Reward Update
Australia
Change to Deferred Income Tax Point for Employee Share Schemes

June 2021

Key points to know

- The Australian Government announced its intention to remove cessation of employment with the group company as an early income tax point for employee share schemes (ESS), bringing the tax rules more in line with its major trading partners.
- This means the deferred income tax point will extend beyond cessation of employment, to the earliest of, broadly:
  - For restricted shares – when the shares are no longer subject to a real risk of forfeiture and/or genuine disposal restriction;
  - For conditional shares (which includes RSUs/options/other rights to shares) – when the conditional share awards, and the shares delivered via exercise or automatic exercise, are no longer subject to a real risk of forfeiture and/or genuine disposal restriction;
  - For ESS interests acquired after 1 July 2009 and before 1 July 2015, seven years from the date the restricted share or conditional share was acquired/granted; or
  - For ESS interests acquired after 1 July 2015, 15 years from the date the restricted share or conditional share was acquired/granted.
- The change will apply to ESS interests acquired from the first Australian tax year (1 July to 30 June) following the tax year in which the amending legislation receives Royal Assent. **The amending legislation has not been introduced yet.**

Background

Currently, under a deferred ESS an early tax point arises when an employee leaves employment with the group company and keeps their untaxed ESS interests. This is problematic because the employee is required to pay tax on an ESS interest that may still be subject to conditions or restrictions rendering it incapable of sale to help the employee fund the income tax due. Even if a sale were possible, it may not be commercially desirable at that time.

Australia is a global outlier in this respect. The cessation of employment tax trigger does not align with the operation of ESS around the world, meaning companies are unable to design and implement consistent ESS across their workforces.

The proposed removal of cessation of employment as a deferred income tax point will address this long-standing issue.

Deloitte's view

The income tax event at the date the individual ceases employment has often left participants in employee share plans with a "dry" tax charge, because they are unable to sell shares to cover taxes.

Australia has long been an outlier globally in this regard. We believe the removal of the early tax point on cessation of employment for future awards better aligns the tax event with the timing of the economic benefit and removes the punitive impact of the previous rule.

Who to contact

If you would like to discuss this further, or have any questions, please speak to your usual Deloitte contact or any of the contacts listed below:

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