Employee Share Scheme Reporting Changes

From 1 April 2017

pwc

From 1 April 2017, employers will have compulsory reporting requirements in New Zealand in respect of employee share scheme (ESS) taxable income. The reporting will be administered via the existing PAYE (salary withholding tax) reporting system.

In addition employers will need to decide whether to elect to voluntarily withhold PAYE on ESS taxable income. Regardless of whether an election to withhold is made, employers will need to comply with the new mandatory reporting requirements via the PAYE system.

This is a significant change in New Zealand as previously there were no ESS obligations for employers.

As an employer, are you ready to address these new obligations?

Historical Treatment

- Where an employer provides shares to employees as part of their remuneration package, any taxable discount is deemed to be taxable employment income. The taxable discount is the difference between the market value of the shares at acquisition and the price paid by the employee at that time [that acquisition date has been contentious for certain schemes and draft legislation is pending to modify the existing law].
- The onus for reporting the taxable discount and paying the tax thereon has always rested with the employee. For any taxable discounts arising from 1 April 2017, the onus for reporting the income shifts to the employer. The onus for paying the income tax may also shift to the employer but that is an elective choice which rests with the employer.
- No employer reporting obligations exist for exempt share schemes approved by the Inland Revenue.

New Employer Reporting

- The employer reporting will be made through the PAYE Employer Monthly Schedules (EMS). This will mean that employers and their payroll teams will need to have accurate and timely information as to when taxable discounts arise and how much taxable discount is to be reported.
- The EMS reporting deadline for large employers (those that pay PAYE twice a month) has been extended to the following month where the taxable discount arises in the 16th to 31st PAYE reporting period.
- Inland Revenue and payroll software providers are expected to release new EMS forms in due course.

Exempt Employees

- Employers need not report taxable discounts for former employees. However, the scope of who may be considered a former employee is complicated. For example, if a former employee receives a usual PAYE income amount (such as a cash bonus or back pay) after the taxable discount arises, they are not considered a former employee for these reporting rules.

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 New Zealand income tax.

Tax withholding

- Employers will be able to elect to withhold on an employee by employee basis. PAYE will be deducted at the rate used for other lump sum (extra pay) amounts and will be paid through the usual PAYE process. A concession exists for large employers to pay in the next PAYE period.
- Tax withholding needs to be considered carefully. ESS income is not like usual cash remuneration and therefore employers will need to consider how they fund the PAYE. In some cases, the funding of PAYE may require changes to plan rules or at least the administration of the ESS.
- Where withholding is adopted, the taxable discount remains excluded from the scope of ACC and Kiwisaver.

Employee Obligations

- Employees will still be liable to pay the income tax on the taxable discount where no PAYE is withheld or if PAYE withheld is insufficient.
- As the taxable discount will be reported by the employer, it is expected this income will be shown in the employee's Summary of Earnings and therefore the amount need not be reported again in the employee's IR 3 or IR 3NR return.

Continued focus on data matching

- In prior years, Inland Revenue made efforts to data match ESS income against employee tax returns. This was historically achieved by requesting ESS data from employers via risk reviews and audits. It is expected that these new employer reporting obligations may further assist the Inland Revenue to match data and identify employees who have failed to report ESS income for 31 March 2017 and prior income years.

We appreciate there are many issues to consider, so below we have summarised the key points that you need to think about and also your PwC contacts if you need assistance.

Next steps

1 Do you have a reporting obligation?	If you operate an ESS, you are required to comply with the ESS reporting requirements if the ESS delivers a taxable discount to your employees.
2 What do you need to report?	You will need to report all taxable discounts that arise from 1 April 2017. You will need to accurately identify those former employees where reporting is not required.
3 How do you calculate the taxable discount?	Calculating the taxable discount is not always straightforward. Areas of complexity include the acquisition date of certain shares, the valuation of unlisted shares and the calculation of the taxable discount for internationally mobile employees.
4 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.
5 Should you adopt withholding?	You will need to assess your ability to administer withholding based on the current plan rules and their operation and the ability to fund PAYE by the required PAYE due dates.
6 Do you need to report under your current PAYE registration?	Inland Revenue does allow multiple PAYE registrations. A separate PAYE registration may be beneficial to preserve confidentiality within an organisation particularly where the administration of the existing payroll is either outsourced or under different lines of responsibility within your organisation.
7 Have you advised your employees appropriately?	Communication to employees regarding ESS reporting is essential. Providing employees with details of employer reporting and whether or not you have adopted withholding will ensure that employees can accurately prepare their income tax returns, and address any payment obligations they may have. Providing a summary communication document to employees has proven effective in this regard.

Can we help?

If you have any questions or would like assistance in fulfilling your new ESS reporting obligations, please contact your usual PwC representative, or any of the contacts below.

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