

GMS Flash Alert

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New Zealand - New Employee Share Scheme Obligations Coming Up

There are two important issues concerning changes to the taxation of employee share schemes (ESS) in New Zealand, which employers need to be aware of:

- The mechanics of paying tax on, and disclosing information about, ESS benefits will change from 1 April 2017. From that date, employers will have the ability to elect to withhold tax on ESS benefits on behalf of their employees. Employers will also need to report ESS benefits, regardless of whether or not they have withheld any tax.
- Proposals to revise the taxation of ESS benefits are currently being consulted on (this is the subject of our [GMS Flash Alert 2016-114](#) (13 October 2016).)

WHY THIS MATTERS

If you have employees who are members of an ESS, and have spent any of the vesting period performing employment services in New Zealand, the changes described in this newsletter could impact you.

From 1 April next year, employers can elect to use the Pay As You Earn (PAYE) withholding system to deduct tax on ESS benefits (similar to other forms of employee remuneration).¹ This is aimed at removing the tax compliance obligations on employees, but also, for Revenue's benefit, to make sure these amounts are being correctly taxed.

From 2017, there will be mandatory disclosure of ESS benefits to the New Zealand Inland Revenue.² This means your organization's systems and processes for handling ESS tax compliance obligations may need to change.

Appropriate processes and policies will need to be developed to enable the compensation team and the payroll team to understand what information is needed, and by when, to comply with New Zealand tax reporting (and potential withholding) obligations for ESS.

Background

In New Zealand, ESS benefits represent taxable income to employees. Currently, employees are responsible for disclosing any ESS benefits received in their annual income tax returns and for paying tax on these amounts.

This requires employees to estimate the amount of ESS benefits likely to be received for purposes of calculating their provisional tax payable (if any). If the value of ESS benefits is under-estimated, resulting in under-payments of provisional tax, this can result in interest charges and end-of-year tax liabilities for employees.

At the same time, there is no separate disclosure obligation on employers in relation to ESS benefits paid to the New Zealand Inland Revenue (e.g., to enable it to determine whether employees are in fact declaring these amounts as income and paying tax thereon).

New Disclosure and PAYE Withholding Rules

The government has introduced new rules to improve the collection of tax on, and information in relation to, ESS benefits. The key focus is shifting the burden of reporting (and collecting tax) on ESS benefits from employees to employers.

From 1 April next year, employers will have the option to elect to use the Pay As You Earn (PAYE) withholding system to deduct tax on ESS benefits (similar to other forms of employee remuneration). This is designed to remove the tax compliance obligations on employees and also to make sure that these amounts are being correctly taxed.

There is also a new requirement for employers to disclose the value of ESS benefits an employee receives to Inland Revenue. Reporting will be via the PAYE system (the employer monthly schedule). This disclosure obligation is mandatory for employers that offer ESSs, regardless of whether the employer has elected to withhold PAYE.

Any **ESS benefit that vests or is exercised on or after 1 April 2017** will be captured by the new mandatory disclosure requirements (and optional PAYE withholding mechanism).

KPMG NOTE

Wrinkles and Glitches May Be Anticipated

Due to the way the disclosures will need to be made (particularly if an employer does not elect to withhold PAYE on ESS benefits), it is anticipated by Inland Revenue that there will be reconciliation errors in employer monthly schedules. Inland Revenue is currently undergoing a transformation of its business processes and technology platforms. This includes the processes and technology underlying the current PAYE system. In the medium term, it is anticipated that changes to the PAYE system should address these reporting issues.

However, in the short term, employers will need to be prepared to deal with tax authority inquiries in relation to reconciliation errors and mismatches.

Next Steps for Employers: Payroll, Disclosing, and Withholding

Your payroll team and systems will need to be geared-up:

- to support mandatory disclosure of ESS benefit information to Inland Revenue;

- to withhold tax (PAYE) on ESS benefits and appropriate disclosure in the employer monthly schedule. Note that withholding PAYE on ESS benefits is optional but where employer's elect in, the withholding obligation applies to all members of the share purchase agreement. The choice is irrevocable for that agreement.

The payroll team responsible for New Zealand employees will need to be abreast of the following:

- Who are the members of the particular ESS (including, if there are different ESSs for different categories of employees – e.g., executives and non-executive employees).
- Employees' marginal tax rates on ESS benefits.
- The taxable value of ESS benefits (including the market value of share benefits and applicable exchange rates, if shares are denominated in a currency other than NZD).
- The portion of ESS benefit that relates to New Zealand and/or needs to be disclosed for New Zealand tax purposes. (This may be relevant if an employee is working, and subject to tax, in New Zealand during some of their vesting period.)
- Which pay period the ESS benefit should be included in.
- If tax is not being withheld on the ESS benefit through payroll, how the PAYE shortfall will be dealt with in the reconciliation reports for that pay-run.

FOOTNOTES:

1 See: [Taxation \(Transformation: First Phase Simplification and Other Measures\) Act 2016](#).

In addition, readers may also refer to "[Employee Share Schemes: Simplifying the Collection of Tax on Employee Share Schemes](#)," from Inland Revenue, Tax Policy.

2 Ibid.

Contact us

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