GMS Flash Alert

Global Compensation Edition

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Australia – Time to Plan for Employee Share Scheme Reporting Is Now

For the year ending 30 June 2023, in Australia, employers are required to provide Employee Share Scheme (ESS) statements to their employees by 14 July 2023, and submit the ESS annual report to the Australian Taxation Office (ATO) by 14 August 2023.[1]

With the annual vesting cycle for equity incentive plans typically having already occurred for most organisations, now is the time to plan in connection with FY23 ESS reporting obligations.

WHY THIS MATTERS

If employers do not meet their annual obligation to file ESS reports of information for 2023 by the deadline, financial penalties can arise, as well as other non-financial consequences.

The deadline is particularly important for companies with globally-mobile employees and cross-border board directors, where they have been awarded shares, stapled securities, or rights (including options) to acquire shares or stapled securities.

For companies with globally-mobile employees, it may take some time for employers to review their share-based remuneration reports and assess who is required to be included on the relevant returns, and then to collect and organise the relevant information for reporting purposes.

The ESS Reporting Requirement

Employers have an annual obligation to report taxable ESS events – this covers all forms of equity compensation, such as shares, performance rights, and options.

The ATO requires that the ESS annual report is lodged electronically, complying with specific software specifications.

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Main Considerations

Six important things to consider in terms of next steps for meeting the ESS reporting deadline:

1 *Starting early can go a long way*

Given the ATO mandated software specifications for the reporting, many employers find they cannot handle the reporting requirements internally and may therefore engage with a third-party provider to at least some extent. Employers should consider starting the conversation now with their third-party providers about the 30 June 2023 reporting – doing so would give the employer sufficient time to line up all the ducks in a row, so to speak. Waiting until the end of June would be imprudent.

2 *Making the data request concise can make the process run smoothly*

Being clear about the data the employer needs – and doesn't need – for the reporting, is critical. This enables, among other things, the requests the employer makes to other parts of the business to be specific. The reporting typically involves analysis of large data sets, so making sure that the data being requested is limited to that which is needed can help reduce risk and increase efficiency.

3 *Engaging individuals with the right skills helps increase efficiencies and reduce errors and overlap*

It is important to consider who is best placed to perform the data cleansing and analysis work. It has historically been quite common for organisations to only outsource the final calculation and reporting of the ESS income. However, where an entity has lots of transactions, employees, and/or plans, the initial data cleansing and analysis piece that is required before the calculations can even begin is of itself a huge time burden that stretches in-house resources.

Because of this, we're starting to see a trend in organisations outsourcing this work to leverage the skills of data analysis specialists.

4 *Taking on a global mindset is necessary when cross-border workers are part of the workforce*

If a company has globally-mobile employees with ESS income, this adds an extra layer of complexity to the calculations. Making sure that accurate records are kept showing where the company's employees have been working can help lower the risk of missing or inaccurate data, and untimely collection and reporting. Business travellers and employees that localise in a location following an international assignment are common examples that organisations tend to struggle with.

5 *Legislative change should be a catalyst*

A recent legislative change in Australia was the removal of cessation of employment as a deferred taxing point for all new and existing awards, effective 1 July 2022. Employers should consider the impact of this change, which may allow the employer to start preparation of the ESS reporting earlier in the year than previously. However, it also may mean individuals need to be tracked long after they have already left employment.

6 *There's more to it than just reporting*

Although payroll tax reporting doesn't always align with ATO ESS reporting, state revenue authorities actively match payroll tax reporting with ATO ESS reporting and will initiate reviews if there appears to be an unexplained discrepancy.

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KPMG INSIGHTS

There have been multiple updates to the ESS legislation over the last 15 years, meaning different rules apply to different awards depending on when they were granted.

Most recently, cessation of employment was removed as a deferred taxing point for all new and existing awards, effective 1 July 2022.

The data that is required to be collected tends to be large and spread out amongst different parts of the business and share plan administrators, sometimes in multiple jurisdictions.

Add to this the short turnaround between the 30 June year-end and the first reporting deadline of 14 July, and it's not difficult to see how things can become challenging.

If an employer turns its attention to the reporting requirements now, particularly whilst the annual vesting cycle is still fresh, the analysis for the bulk of the transactions can be brought forward and this might save some stress and inconvenience during what is traditionally a very busy period in the first two weeks of July.

FOOTNOTE:

1 For more information, see the ATO's webpage "ESS – Reporting requirements for employers" at: https://www.ato.gov.au/general/employee-share-schemes/in-detail/employer-reporting-requirements/ess---reporting-requirements-for-employers/ .

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