

## Changes to the taxation of employee equity arrangements in Australia

### Global share plans – equity alert

21 October 2009

---

#### What has happened?

On 21 October 2009, the Australian Government introduced legislation into Parliament that proposed changes to the taxation of employee share plans. This follows a number of announcements made by the Australian Government since May 2009 that had led to a degree of uncertainty.

Although the legislation is yet to be enacted, at this stage it does not appear that the legislation will be opposed by other parties so we expect it to be passed.

Therefore, companies can now move forward by making new awards under existing employee share plans and/or potentially redesigning their employee share plans – many companies had been waiting for certainty before taking action.

#### What are the details?

The proposed legislative amendments have a number of significant differences from the current rules. Most notably:

- The conditions for tax deferral are now more stringent, with an additional requirement that shares or rights/options are subject to a “genuine risk of forfeiture”.
- Generally this will mean that for share options and restricted stock unit type awards, taxation arises on vesting (where there is a real risk of forfeiture and there are no genuine disposal restrictions on the underlying shares). However, it should be noted that in Australia tax can be payable on an earlier date in certain circumstances, for example on the cessation of employment. Further conditions apply in relation to restricted shares – although not covered here please contact us if you require further information.

- There is no longer the ability for participants to elect to be taxed at grant on their employee share awards.
- New employer reporting requirements have been introduced together with limited tax withholding for certain employee share awards.
- A new approach to the taxation of employee share awards for internationally mobile employees has been introduced.

#### If enacted when do the new rules apply?

Once enacted, the new rules will apply to awards acquired on or after 1 July 2009.

#### What actions should you take?

- Review the equity plans you currently operate and assess the impact the proposed changes will have on your plans. The changes will be particularly marked where share options are offered or there is no real risk of forfeiture.
- Put in place procedures to ensure that the correct data on taxable amounts is collected.
- Revisit employee communications.
- Ensure the equity and remuneration arrangements that you have in place are achieving their objectives.

#### PwC and global share plans

PwC has a network of specialists in many countries who specialise in giving advice on the implications of offering share plans globally.

We pride ourselves on our ability to provide clear, comprehensive and practical advice about the operation of global share plans and the implications for employers and employees.

Our advice covers:

- Legal and regulatory issues impacting the granting and vesting/exercise of stock based compensation;
- Foreign exchange regulations;
- Data protection laws;
- Legal and tax considerations of offering and operating global nominee accounts for participants;
- Personal tax advice for participants;
- Corporate tax advice for companies including structuring to maximise the efficiency of operating global plans; and
- Taxation advice (including employer withholding and reporting advice) for internationally mobile employees using our automated software shareTax.

## Who you can speak to at PwC

If you wish to discuss how we can help you, please call your regular contact or alternatively:

**Graham Rowlands-Hempel**

+44 (0) 20 7212 8751

graham.rowlands-hempel@uk.pwc.com

**Kate Harris**

+44 (0) 20 7804 8427

kate.harris@uk.pwc.com

**Carol Dempsey**

+44 (0) 20 7 212 4641

carol.dempsey@uk.pwc.com

**Michelle Bergin**

+44 (0) 20 7 212 5556

michelle.a.bergin@uk.pwc.com

This publication has been prepared for general guidance on matters of interest only, and does not constitute professional advice. You should not act upon the information contained in this publication without obtaining specific professional advice. No representation or warranty (express or implied) is given as to the accuracy or completeness of the information contained in this publication, and, to the extent permitted by law, PricewaterhouseCoopers LLP, its members, employees and agents accept no liability, and disclaim all responsibility, for the consequences of you or anyone else acting, or refraining to act, in reliance on the information contained in this publication or for any decision based on it.

PricewaterhouseCoopers provides industry-focused assurance, tax, and advisory services to build public trust and enhance value for its clients and their stakeholders. More than 155,000 people in 153 countries across our network share their thinking, experience and solutions to develop fresh perspectives and practical advice.