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Global Employer Services (GES)

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GES NewsFlash

Ireland – Restricted Stock Units "RSUs" - Cross-border tax treatment

January 11, 2013

On 14 December 2012, for the first time, Irish Revenue issued guidance on how RSUs should be treated for Irish income tax purposes in cross-border situations.

Background

The income tax treatment of RSUs granted to employees and directors was set out in Revenue's Tax Briefing Issue 63, published in May 2006. This guidance material only dealt with how RSUs should be taxed in Ireland in a purely domestic context and confirmed that RSUs are subject to income tax in Ireland at the date of vest.

Since 1 January 2011, share awards, including RSUs have been liable to Irish income tax (PAYE) and the Universal Social Charge (USC) withholding. From 1 January 2012, such share awards have also been liable to employee social security withholding (PRSI) (employee PRSI may have applied during 2011, but there was an exemption for awards that were granted prior to 1 January 2011, and were evidenced in writing).

Cross-border situations

Various groups have asked Revenue to clarify their position on the Irish tax treatment of RSUs in cross-border situations.

Having considered the various options, Revenue's guidance note confirms the Irish tax treatment is as follows:

- RSUs are fully taxable in Ireland if they vest at a time when the employee/director is an Irish tax resident without any apportionment by reference to any part of the vesting period during which the employee/director was a resident elsewhere.

- If the RSUs vest and the holder is no longer an Irish tax resident, the RSUs are not taxable in Ireland, regardless of the fact that the holder may have been an Irish tax resident at the time of the grant.

The approach that Revenue has adopted is commonly referred to as the "all in/all out" approach.

Relief for Double Taxation

Certain individuals may, in addition to having a liability under the PAYE system in Ireland, also have a liability to income tax in a foreign country on the RSU or a portion of the RSU.

Revenue has now confirmed that in such cases, and where a double taxation agreement is in place between Ireland and the other country, the individual will be entitled to a credit in relation to any amount of the RSU income subject to double taxation.

There is a combined Irish marginal withholding tax rate of 52% (41% PAYE, USC 7%, and PRSI 4%) applying to RSUs. A foreign withholding tax liability could mean that the individual has a total withholding tax liability approaching the full value of the shares, which is clearly inequitable for employees, and runs counter to the employee share ownership ethos developed by employers over many years in Ireland. Employees would either have to instantly sell the majority of the shares they just acquired through the RSU vest to cover the withholding taxes in both countries or they would have to fund the liability from personal funds.

In order to alleviate this inequitable situation, Revenue has now confirmed that it is prepared to grant foreign tax credit relief via payroll during the tax year that the RSUs vested in rather than the employee/director having to wait until after the end of the tax year to claim the foreign tax credit on his or her tax return. This mechanism will apply from 1 January 2013.

Conditions for the "real-time" foreign tax credit

In order to avail of the "real-time" foreign tax credit mechanism through payroll, the main conditions are:

- The relevant employees must file their annual income tax return by 31 January of the following tax year. There have been early indications from Revenue that this deadline may be moved to later in the year.
- The employer must provide information on all such cases to Revenue by 31 March of the following tax year, as per Revenue's template report.
- Evidence of deduction of foreign income tax at source (which must be nonrefundable) must be available for production if required.

Withdrawal of relief

Where the conditions are not met, Revenue will make an estimate of the full amounts due and the standard interest and penalty provisions will apply. In addition, the facility provided by this arrangement will be withdrawn from the company, and full PAYE will have to be operated on future RSUs subject to payroll taxes in Ireland with the resulting administrative and cash flow difficulties as mentioned above.

Deloitte's view

The "all in/all out" approach is at variance with most developed countries approach in dealing with RSUs in a cross-border context (e.g., a time-apportionment basis over the grant to vest period of the RSUs is used in the U.S. and the UK). The guidance, however, is the first formal acknowledgement from Revenue that a cross-border issue exists and provides some degree of clarity to the situation for both employees and employers.

Employers should review their current employee communication documents and procedures to ensure that employees understand the above process and are able to fulfill their tax return filing obligation, which is nine months earlier than the standard Irish tax return filing deadline of 31 October of the year following the year of assessment. Therefore, employers will need to ensure that they issue a Form P60 (year-end statement of earnings) to relevant employees in early January to allow the employees enough time to prepare and file their return by 31 January.

Deloitte will continue to make representations to Revenue on the various issues including the advanced filing deadline.

Employers will also have to adjust their employee communication materials and payroll procedures to take account of the employees who are no longer Irish tax residents at the date of vest.

While the Revenue guidance refers specifically to RSUs, the same procedures may apply to other share awards, such as free shares, performance shares etc., where the employee only becomes the beneficial owner of the shares at the date

of vest.

Employers should also review how RSUs have been taxed via payroll in cross-border cases in prior tax years on a case-by-case basis to determine whether any adjustment is warranted.

People to contact

If you have any questions concerning the issues in this *GES NewsFlash*, please contact one of the tax professionals at our Deloitte offices as follows:

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