

Contents

A brief history of the Employee Share Scheme rules

New ESS reporting requirements for 2015-2016

Sourcing

ESS reporting challenges. What 6,000 ESS statements a year can tell you

Payroll Tax and ESS

Take away points

Questions and answers

A brief history of the Employee Share Scheme rules

ESS changes over the past 6 years

1 July 2009		1 July 2015
←		→
		New ESS tax rules
Acquired before 1 July 2009	Acquired 1 July 2009 to 30 June 2015	Acquired on or after 1 July 2015
<ul style="list-style-type: none"> • Qualifying rights (mostly Options): tax point at exercise (or on cessation of employment with company or 10 years after acquisition) • Able to elect tax at acquisition in cases where certain conditions are fulfilled • Not-qualifying shares or rights: tax point at grant 	<ul style="list-style-type: none"> • Qualifying rights (mostly Options): tax point at vest (or on cessation of employment with company or seven years after acquisition) • Not-qualifying shares or rights: tax point at grant 	<ul style="list-style-type: none"> • Qualifying rights (mostly Options): tax point at exercise (or on cessation of employment with company or 15 years after acquisition) • Not-qualifying shares or rights: tax point at grant

The introduction of ESS reporting

Why ESS reporting?

- Ensure employee and employer compliance with ESS rules
- To provide Australian Taxation Office with information to conduct data matching
- Ensure appropriate income tax paid on ESS benefits

Dates to watch



- Employee share scheme statement to employees by **14 July**, together with annual payment summary
- ESS annual report to ATO by **14 August**
- Extensions are possible if applied for appropriately

Who must report ESS?

Reporting Responsibility

- 'Provider' of ESS benefit, typically for MNCs, the parent company of the Australian subsidiary
- For foreign providers, the local employer cannot report as the parent company, however, they can sign on behalf of the parent company



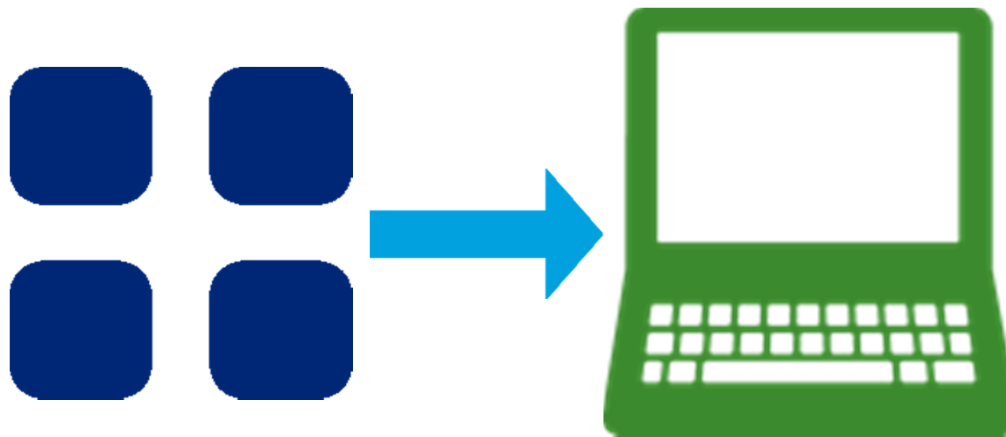
ESS reporting before 2015-2016

- ESS annual report through paper, ECI and physical media storage
- For mobile employees
 - Report the actual assessable amount of the discount (after taking into account the foreign service) by the due date ('sourced amount')
 - If the sourced amount not determined by the due date, report the gross amount and amend the statement when known.
- Mismatch between ESS annual report and information in an employee's tax return
 - Can lead to full ATO audit

New ESS Reporting requirements for 2015-2016

New ESS reporting requirements for 2015-2016

- NEW ESS statement format
 - Includes startup tax grants
- Annual ESS report **MUST** be lodged electronically either
 - Through online form or
 - Via business portal but need ATO specific file
- Previous methods are **ONLY** available for prior year amendments



New ESS Statement

Employee share scheme statement

Employee summary for year ending June 30 20xx

Employee details

NOTICE TO EMPLOYEE
Non-Start-up schemes:
 Use the information in this statement to complete your tax return.
Start-up schemes:
 You should only use the information in this statement to complete your tax return for the year in which you dispose of these shares. You do not need to include the information about the acquisition of shares or options in the year in which you acquire them.

For more information, you can:
 • visit www.ato.gov.au
 • phone 13 28 61 between 8.00am and 5.00pm, Monday to Friday.

Employee tax file number/ABN

Taxed upfront scheme – eligible for reduction

Discount from taxed upfront schemes – eligible for reduction D \$

Taxed upfront scheme – not eligible for reduction

Discount from taxed upfront schemes – not eligible for reduction E \$

Deferral schemes

Discount from deferral schemes F \$

ESS Interests acquired pre 1 July 2009

Discount on ESS Interests acquired pre 1 July 2009 and 'cessation time' occurred during the financial year G \$

TFN Amounts

TFN amounts withheld from discounts C \$

Acquisition of shares under start up concession

Number of shares acquired

Market value of shares acquired \$

Acquisition price of shares acquired \$

Acquisition date

Acquisition of options under start up concession

Number of options acquired

Market value of ordinary shares on the date options acquired \$

Exercise price per option acquired \$

Acquisition date

Employer details

Employer ABN

Employer Name

Signature of authorised person

Date

! Variations to the ATO layouts for the summaries are not permitted, however the use of a company logo is acceptable providing it does not alter the position of any of the boxes or wording of the layout.

ESS Annual Report

New lodgement process

Reporting for **50 or fewer** employees

- Online reporting form (yet to be released but it is expected to require manual entry)
- Provider must indicate whether or not the reportable discount is gross (**G**) or sourced (**A**) in the annual report
- Where sourced, provider must also disclose the relevant foreign employment start and end date associated with each reportable award
- ATO will share information provided with other departments as part of a compliance audit
- Acquisition date is now required
 - ASX companies must also provide ASX code

ESS Annual Report

New lodgement process

Reporting for **more than 50** employees

- Online lodgement through business portal but only file produced using ATO specification will be accepted (reporting specification v2.0.0)
- Provider must indicate whether or not the reportable discount is gross (**G**) or sourced (**A**) in the annual report
- When sourced, provider must also disclose the relevant foreign employment start and end date associated with each reportable award
- ATO will share information provided with other departments as part of a compliance audit
- Acquisition date is now required
- ASX companies must also provide ASX code

ESS Annual Report

New lodgement process

Reporting for **more than 50** employees (*continued*)

- Companies have three alternatives:
 - Develop own software
 - Purchase ATO approved software from external developer (listed on ATO website)
 - Use supplier to lodge

Sourcing

Mobile employees

Who must be provided with an ESS statement?

The only exclusion

“If the provider is an Australian parent company that has provided interests to foreign resident employees of a foreign subsidiary, and the employment is not considered to be Australian sourced income, then there will be no inclusion of the discount in the employee’s assessable income, and no reporting requirement arises”

Everyone else requires a statement including:

- Inbound assignees remaining on overseas payroll
- Outbound transfers (no longer on Australian payroll)

ESS Reporting challenges

ESS Reporting challenges

Managing your employees' expectations

Outstanding filing obligations

Managing your employee expectations

What we hear

I did not know that these awards are taxable. I sold all my shares now and did not set aside the money.

I did not know that only half of the amount in the statement is taxable because of my international assignment.
I was told it is too late now to amend my tax return...

I have no idea what to do with this statement and how the amount is calculated. I left Australia many years ago!

Company did not provide me any statement that year so I did not declare it on my tax return. Surely the ATO won't penalise me for this?

The ATO is questioning my tax return because my number is different to the company's. Help!

Even though disclosure of the correct ESS income is ultimately the employee's responsibility, they need guidance and support from you

Communication is essential

Meet your ESS Reporting requirements

- There are penalty provisions for the provider failing to meet ESS reporting or incorrect reporting including prosecution penalties
- We have not seen the ATO raise penalties in respect of ESS reporting
 - But this may change in the near future
- Lodge as soon as possible if you have outstanding filing obligations

Payroll Tax and ESS

Payroll Tax and ESS

What is payroll tax?

- A State tax levied on the employer and payable on taxable wages
- Taxable wages include the grant to employees of shares and rights (includes options) that are ESS interests
- Harmonisation efforts have ensured that payroll tax rules with respect to ESS interests are now consistent between States

Payroll Tax and ESS

State Revenue Office trends:

- Increased audit activity and data matching
- Noticeable upskilling of OSR audit officers
- ESS interests required to be separately disclosed on payroll tax return forms

Questions and answers