



Mobility: Tax alert

March 2024

New Zealand

Employee share schemes: Publications released by Inland Revenue

Executive summary

The Inland Revenue Department (IRD) has announced the launch of a program to assist employer taxpayers manage their compliance related obligations for Employee Share Scheme (ESS) awards granted to their employees.

To increase awareness of these obligations, the IRD have released the following publications:

- ▶ PUB00364A: What an ESS is, the taxing date and apportionment
- ▶ PUB00364B: Deductions for parties to ESS
- ▶ PUB00364C: Nominee trustee
- ▶ PUB00364D: ESS benefits paid in cash – PAYE and KiwiSaver
- ▶ PUB00364E: Employer funded tax cost
- ▶ PUB00364F: Fringe benefit tax – ESS loan and associates

These publications are intended to provide practical guidance in relation to the employer's obligations under the ESS rules that came into effect from 29 September 2018.

These publications are open for submissions until 26 April 2024.

PUB00364A - Defining an ESS and the share scheme taxing date; and the application of the apportionment rules

The purpose of this Interpretation Statement is to clarify what an ESS is, the timing of receipt, and calculation of the taxable value.

In addition, the meaning of the term "vest" in relation to the apportionment of awards is discussed and the application of these apportionment rules in various illustrative scenarios is considered.

PUB00364B - Deductions that may be claimed
In this Interpretation Statement the IRD discusses the deductions that can be claimed by employees and employers. The deduction that an employer may claim is only available when the general rules regarding deductions are satisfied.

PUB00364C - Trustee of ESS treated as nominee
IRD has clarified that where a nominee trust is utilised as part of an ESS scheme, the company effectively owns its own shares. This may influence other provisions of the Income Tax Act.

PUB00364D PAYE and KiwiSaver obligations when settled in cash
There has been some confusion about the application of the tax rules when the ESS award is settled in cash. The IRD has explained in this Interpretation Statement that, where an ESS is delivered in cash, the cash payment is subject to PAYE withholding and to the payment of Accident Compensation Corporation (ACC) levies. These cash settled award will not be subject to KiwiSaver contributions.

In the case of a phantom share scheme, the benefit received will be subject to PAYE withholding, ACC levies and KiwiSaver contributions.

PUB00364E - ESS loans and Fringe benefit tax (FBT)
The IRD has confirmed that the exemption from FBT applicable to ESS loans should also apply to those scenarios where the loan is provided to an associated party (such as a family trust) where all the requirements are met.

PUB00364F - Funding the tax cost of an ESS benefit

This "Questions we've been asked" (QWBA) bulletin provides taxpayers with advice regarding the calculation of the taxable value to be reported where the employer chooses to pay the tax on the ESS award.

Next steps

Submissions in relation to these publications are due by 26 April 2024.

These publications are a timely reminder to ensure employer obligations in relation to ESS awards offered to employees have been satisfied. Please contact your EY tax advisor if you have concerns about whether your company has failed to meet these obligations, if you would like to discuss any of these issues or if you would like to talk about making a submission.

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