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# Canadian Tax & Legal Alert

## CRA issues new views on RSU taxation in Canada

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The Canada Revenue Agency (CRA) has issued new commentary[1] with respect to taxation of restricted stock units (RSUs). Unless specific facts and circumstances support otherwise, the CRA states that RSUs have a value upon grant and are granted for services provided in the year before the year in which an award is granted, especially if such grant is made in the beginning of the tax year. Such change in position from the CRA could alter the historic tax treatment of RSUs in Canada and could accelerate taxation of the plan participants on these awards. This would apply to local Canadian employees as well as any employees who are on international assignments in Canada currently or in the past.

**Contacts:**

**Guy Jason**
Tel.: 613-751-6674

**Chantal Baril**
Tel.: 514-393-6507

**Amélie Desrochers**
Tel.: 514-393-5554

[1] CRA Views doc. 2019-0832211I7: "Cross-Border Restricted Share Units," January 20, 2021; and CRA Views doc. 2020-0864831I7: "Equity Award Plan and Recharge Agreement," November 13, 2020.

For employees that have been granted RSUs that can either be settled in cash or shares, or a combination of both, this change in position may result in the RSUs being no longer compliant with the salary deferral arrangement (SDA) rules, as such triggering unintended tax repercussions. In addition to the adverse personal tax implications, this will also directly impact the corporate tax deduction and employer implications, and even the financial reporting associated with these awards.

Furthermore, for international assignees, allocating a value at grant to the services rendered in a period before the grant may directly impact the quantum of the employment benefit that will be subject to tax in all relevant jurisdictions, including Canada, and could trigger double taxation. This will also increase the complexity in properly assessing the corporate tax and employer implications related to such RSUs.

## Deloitte's perspective

To avoid unintended consequences, it is recommended that:

- The RSU plans are reviewed so that there is documentation to support that the RSU plan and the related award agreements can be distinguished from CRA's comments, where appropriate, in order to be exempt from the SDA provisions.
- Review the sourcing allocation for international assignees to ensure reasonable assumptions are used in quantifying the employment benefit crystallized by employees related to their Canadian assignment.
- Considering CRA's recent activity in the space, review the RSU plans together with the proposed changes to stock option taxation[2] to engage in a review of RSU and option plans with respect to Canadian employees.
- Assess any adjustments required to optimize the global tax implications (corporate tax, transfer pricing, and employment tax) of the current incentive plans, which may also include share planning financing. This will ensure that the incentive plans yield the desired outcomes for all relevant stakeholders.

Deloitte Canada's GES Equity & Incentive team can assist you in reviewing incentive plans, as well as assessing the corporate tax, personal tax, and employer obligations. Please reach out if you would like more information or to discuss this further.

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Deloitte LLP
Bay Adelaide Centre, East Tower
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Canada



[2] As announced in the Fall Economic Statement released on November 30, 2020. Deloitte's Canadian Tax & Legal Alert on this topic is available here.