



Canadian Tax & Legal Alert

RSU taxation in Canada: Clarifications from the Canada Revenue Agency

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Background

Employment income is generally subject to tax on a cash basis for Canadian tax purposes. However, for long-term incentives, such as restricted stock units (RSUs) and other equity programs, taxation may occur earlier, when the plan is not structured in accordance with Canadian rules, as previously discussed in our April 2021 tax alert.¹ This may be the case when the plan is considered a salary deferral arrangement (SDA). Subsection 248(1) of the *Income Tax Act*² defines an SDA as a plan or arrangement under which a taxpayer has a right in a taxation year to receive an amount after the year where it is reasonable to consider that one of the main purposes for the creation or existence of the right is to postpone tax payable on salary or wages for services rendered by the taxpayer in the year or a preceding taxation year. Under an SDA, the employer will treat the deferred salary and wages as employment income in the year the employee earns the amount.

¹ Deloitte, "[CRA issues new views on RSU taxation in Canada](#)," April 21, 2021.

² *Income Tax Act*, RSC 1985, c. 1 (5th Supp.), as amended (the "Act").

Some plans are excluded from the SDA definition. One of these exceptions is for a three-year-bonus plan,³ which refers to a plan or arrangement under which a taxpayer has a right to receive a bonus for services rendered in a taxation year to be paid within three years following the end of the year.

In late 2020 and early 2021, the Canada Revenue Agency (CRA) was asked to comment on whether a hypothetical equity award plan, such as RSUs, where each unit granted provides for the right to receive one share (or its equivalent dollar value) at a later date, was an SDA. The CRA considers such award as having intrinsic value at the time of grant. The CRA stated that its long-standing position is that:

where the amount to be paid to an employee under an RSU plan is based on the full value of the specified shares, the RSUs have generally been granted in respect of the employee's past services. Unless section 7 or one of the specific exceptions in the SDA definition applies, the RSU plan will generally be considered an SDA.⁴

The CRA further indicated that "[they] generally assume that an award is attributable to past service if employees receive something of value on the grant date."⁵

Issues

When these comments were issued in 2021, this perceived change in the CRA's position was considered to alter the historic tax treatment of RSUs in Canada that was applied in practice for most plans and accelerate taxation of the plan participants in 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.

For employees who have been granted RSUs that can either be settled in cash or shares, or a combination of both, this perceived change in position may result in the RSUs no longer being compliant with the SDA rules and, as a consequence, trigger unintended tax repercussions. In addition to the adverse personal tax implications, this would also directly impact the corporate tax deduction and have other employer implications, including the financial reporting associated with these awards.

Clarifications issued by the CRA

After the issuance of these comments in 2021, the CRA was asked about circumstances under which a grant of full-value RSUs would be considered not to be in respect of services rendered by the employee prior to the grant date and was also provided with a set of hypothetical scenarios. The CRA was also asked if the comments in the technical interpretation 2020-0864831I7 meant a change in the CRA's position regarding the paragraph (k) exception to the SDA definition, considering "equity award plans under which employees are awarded RSUs with a three-year vesting period have generally been accepted as being outside the ambit of the SDA rules, even if the RSUs are not governed by section 7 of the Act."

Contacts:

[Rob Jeffery](#)

National Tax Policy Leader
Tel.: 902-721-5593

[Guy Jason](#)

Tel.: 613-751-6674

[Chantal Baril](#)

Tel.: 514-393-6507

[Amélie Desrochers](#)

Tel.: 514-393-5554

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³ Paragraph (k) of the definition of SDA in subsection 248(1) of the Act.

⁴ CRA Views doc. no. 2020-0864831I7: "Equity Award Plan and Recharge Agreement," November 13, 2020.

⁵ CRA Views doc. no. 2019-0832211I7: "Cross-Border Restricted Share Units," January 20, 2021.

In November 2023, the CRA issued new views⁶ clarifying prior comments and indicated that:

Our view continues to be that such bonuses [such as full-value RSUs] will be excluded from the SDA definition by virtue of paragraph (k) if the arrangement provides that the bonus will be paid before the end of the third calendar year following the calendar year containing the end of the corporate fiscal year in which the services were rendered.

The CRA also stated:

Since the service period, the employer's fiscal year-end date and the grant date are all important variables in ascertaining the application of the SDA rules, it cannot simply be assumed as a matter of fact that a grant of full-value RSUs that vest within three years from the end of the Grant Year will automatically fall within the paragraph (k) exception to the SDA definition in subsection 248(1).

As regards to a grant of full-value RSUs solely in respect of services to be rendered after the grant date, the CRA acknowledged that there are circumstances in which this might be the case (for example, a signing bonus for a new employee or a bonus awarded to an existing employee for accepting an overseas assignment). The CRA indicated that determining the service periods to which a grant of full-value RSUs is attributable is ultimately a question of fact.

On the other hand, even where a grant of full-value RSUs is with respect to past services, it is still possible that those past services were rendered solely in the grant year (for example, a grant made in recognition of a performance accomplishment that occurred earlier in the grant year). Here again, the CRA specified that "an examination of the specific circumstances in which the award of full-value RSUs was made and the details of the relevant incentive plan would be required."

Key takeaways

- There is a rebuttable presumption from the CRA that RSUs with intrinsic value at the date of grant are in respect of past services rendered prior to that date.
- Consideration will be given to any relevant documentation or agreement in ascertaining when the services were rendered; however, such documentation or agreement will not be determinative "if there is other evidence supporting the conclusion that the grant was made in respect of services rendered in a calendar year prior to the grant year."

Deloitte's perspective

To avoid unintended consequences, it is still recommended to:

- Review the RSU plans to ensure there is appropriate documentation (in addition to the specific facts and circumstances) to support that the RSU plan and the related award agreements are related to services to be rendered in the future by the employee and can be distinguished from the CRA's comments, where appropriate, in order to be exempt from the SDA provisions. Update supporting plan text and supporting documentation as required.

⁶ CRA Views doc. no. 2021-0895571E5: "Clarification of Comments in 2020-086483 – Section 248(1)", November 29, 2023.

- Assess all equity plans, while also considering recent changes to stock option taxation⁷ in Canada, to ensure the existing compensation framework is still appropriate for Canadian employees.
- Identify 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 plan financing. This will ensure that the incentive plans yield the desired outcomes for all relevant stakeholders.

How can Deloitte help?

Deloitte Canada's Global Employer Services (GES) Equity and Incentive team can assist you in reviewing incentive plans, as well as assessing the corporate tax, personal tax, and employer obligations. Please reach out to your Deloitte advisor or the contacts listed in this alert if you would like more information or to discuss this further.

⁷ For more information, see [Deloitte, "Canadian Federal Economic Update – Employee Stock Options," February 15, 2021.](#)



Deloitte LLP
Bay Adelaide Centre, East Tower
8 Adelaide Street West, Suite 200
Toronto ON M5H 0A9
Canada

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