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Global Rewards Update

United Kingdom – Income tax and social security treatment of RSUs from 6 April 2016

Background

Over the last few years significant changes to the UK taxation of share awards for internationally mobile employees have taken place. These changes have been enacted as part of the Government's effort to simplify the UK tax legislation. However, the tax treatment of certain awards has become uncertain.

Under the current UK tax rules, Restricted Share Units (RSUs) and other "conditional share awards" can potentially be subject to income tax under two sets of rules. These rules are the "general earnings" rules, or if the RSU confers on an employee a 'right to acquire securities', the "securities options" rules.

In our Global Reward Update of ***July 2015*** we discussed HM Revenue & Customs' (HMRC) view that, based on plans they see, RSUs and other "conditional share awards" would normally be subject to income tax under the "general earnings" provisions.

On 9 December 2015, HMRC issued new draft legislation which will change this position for certain RSUs and "conditional share awards" currently taxed under the "general earnings" rules. A copy of the draft legislation can be found here.

Draft legislation

The draft legislation, which is proposed to take effect from 6 April 2016, seeks to remove RSUs and similar awards from the charge to "general earnings". Instead, awards would be subject to the securities option legislation only. If enacted, this

change is expected to have minimal impact on employers and employees where the employee is UK resident throughout the vesting period and liable to UK tax and National Insurance Contributions (NICs) on all their earnings. However, the change could have a significant impact for employers and employees where an employee is internationally mobile.

Whilst the income tax position is broadly the same for internationally mobile employees regardless of whether RSUs are taxed as “general earnings” or “securities options”, there is a substantial difference in the National Insurance (NIC) position. There may also be an impact on non-UK domiciled employees who claim the remittance basis of taxation and on all employees who are liable to UK capital gains tax when they dispose of their shares.

Although HMRC’s intention is that these rules will apply to all RSUs, the legislation as drafted would only apply to awards which confer a ‘right to acquire securities’. If awards do not confer this right, (which might be the case where, for example the employer has and uses discretion to settle an award in either shares or cash), the draft legislation does not appear to change the previous position. In these circumstances, such awards would continue to be subject to income tax under the “general earnings” provisions.

Impact on National Insurance position

If companies determine that their RSUs and “conditional share awards” do not confer a right to acquire shares (and therefore follow the ”general earnings” provisions), NIC will be determined in the same way as for a cash bonus (i.e. in full or not at all depending whether the employee is UK insured at receipt).

If, however, the RSUs do confer a right to acquire shares, NIC will instead be due on an apportioned basis, based on the amount of time during the earnings period for which the employee is insured for social security in the UK. This is regardless of the employee’s social security position at award or vesting of the award.

Deloitte’s view

Although it is HMRC’s stated intention that these changes will apply to all RSUs, the legislation as drafted does not apply to RSUs which do not confer a ‘right to acquire securities’. Employers with internationally mobile employees may need to refresh their understanding of where the borderline falls between securities option and general earnings treatment, and further HMRC guidance may be necessary.

In the meantime, companies will need to again review their plans and determine whether their RSU awards confer a right to acquire shares, and if they do, consider the impact of this change. Companies may want to:

- analyse whether the company’s costs could increase due to the change in NIC treatment, and if necessary provide for these additional costs;
- consider the personal tax impact from a capital gains tax and remittance basis perspective;
- communicate with employees impacted by any changes; and
- ensure that payroll teams are notified and can manage their withholding and reporting obligations, particularly where a NIC liability is due on an apportioned basis.

Contacts

For assistance with these issues, or any other issue related to the operation of your global equity plans, please contact your usual Deloitte adviser or email us at globalshareplans@deloitte.co.uk, and an adviser will contact you.

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