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Global Reward Update

United Kingdom – A summary of key changes to incentive plans for listed companies for 2016/17

There have been several recent changes which will impact the operation of share plans in the UK. Each of the changes are described in more detail below.

UK share plan reporting

Background

In 2015, HM Revenue and Customs (HMRC) published new share plan reporting templates for the 2014/15 tax year (replacing Forms 34, 35, 39, 40 and 42) which were required to be filed online for the first time by companies that operate share plans in the UK. HMRC have updated these templates for the 2015/16 tax year and companies will need to download the latest templates from https://www.gov.uk/guidance/tell-hmrc-about-your-employment-related-securities.

The new templates

In terms of content, there have been two key changes to the information required for reporting non-tax advantaged plans on the Other Employment Related Securities (ERS) schemes template (formerly Form 42). The changes are detailed below:

- Previously employers were asked for the Actual Market Value (AMV) of a security. Now employers only need to report the AMV where securities are restricted and an election has NOT been made to disregard ALL of the restrictions. Where a security is unrestricted or an election was made to disregard ALL restrictions employers should report the unrestricted market value of the security.

The AMV of a security previously caused some confusion where securities were restricted but an election had been made to disregard ALL restrictions as the AMV was not relevant for tax purposes.

- Previously, companies were asked to indicate if "any adjustments were made for amounts subject to the remittance basis". Employers are now asked to provide a yes/no answer as to whether any apportionment was applied when calculating the taxable income for the relevant individuals (e.g. if they were an internationally mobile employee).

There are no substantial changes to the remaining templates.

Restricted Share Units (RSUs)

In our Global Rewards Update of December 2015, we discussed HMRC's draft legislation in respect of RSUs and similar awards. In particular, the draft legislation, which subsequently came into effect from 6 April 2016, confirms that where an RSU qualifies as a "securities option" under UK legislation, only the securities option legislation can apply and the general earnings provisions cannot.

Companies need to determine whether their awards qualify as securities options as this can have a significant impact for National Insurance Contributions (NIC), capital gains tax, corporate tax and overseas workday relief for internationally mobile employees. Details of the impact can be found in our December Global Rewards Update.

NIC consultations

A NIC election is a formal election which requires the approval of HMRC and legally transfers the Employer's Class 1 NIC obligation arising in respect of a share award to the employee.

HMRC are proposing to discontinue the availability of such NIC elections in relation to employee incentive plans. NIC agreements, which are a less formal method of transferring the employer NIC cost, will continue to be available.

The consultation is open until 13 July 2016 (more details can be found here). Companies that currently operate NIC elections and who want to continue to do so should consider responding to the consultation.

Dividends

From 6 April 2016, the rules on the taxation of dividends in the UK have changed. Dividends received by individuals in the UK were previously deemed to be paid net of a notional tax credit of 10%. UK income tax would then be due on the grossed-up value of the dividend received at the individual's marginal tax rate (previously 10%/32.5%/37.5%). The notional tax credit has now been removed and replaced by a tax free allowance for individuals.

In particular, UK taxpayers are now eligible to receive an annual £5,000 tax free dividend allowance. Where an individual receives dividend income in excess of the £5,000 limit, they will be obliged to pay income tax on the excess at their marginal tax rate (for dividend income in 2016/17 the rates have changed to 7.5%/32.5%/38.1%).

The impact of this is that individuals who receive significant UK dividend income will ultimately pay more tax on their UK dividends. A welcome change, however, will be for individuals receiving less than £5,000 of dividend income who will no longer have a tax liability in respect of such income.

Capital Gains Tax (CGT)

The tax rates for UK CGT payable by individuals disposing of assets (including shares) have been reduced. Previously, where the individual was a basic rate taxpayer any gains in excess of the annual allowance (currently £11,100 for 2016/17) would be charged at a rate of 18%, and at 28% for higher/additional rate taxpayers. These rates have been reduced to 10% and 20% respectively.

Deloitte's view

UK share plan reporting
It is welcome to see that there have been few changes since last year and companies should continue preparing their returns for this year. At the time of writing, there have been some issues with the HMRC portal but hopefully, HMRC will resolve these as soon as possible.

Restricted Share Units (RSUs)
Employers with internationally mobile employees will need to carefully consider whether their RSUs are regarded as "securities options" and tax as appropriate for awards vesting since 6 April 2016.

NIC consultations
Employers should consider whether they have a need for NIC elections and decide if they want to make a submission before the consultation ends.

Dividends and Capital Gains Tax (CGT)

Employers should consider whether their employee communications are accurate in relation to the changes to the tax treatment of dividends and capital gains tax.