Global Rewards Update

United Kingdom – Income tax and social security treatment of RSUs and conditional share awards from 6 April 2015

July 2015

Background

As discussed in our Global Reward Updates of **July 2014**, **February 2015,** and **May 2015,** significant changes to the UK taxation of share awards for internationally mobile employees (IMEs) took effect from 6 April 2015.

While these changes impacted a number of areas, one particular point of uncertainty has been the treatment of Restricted Share Units (RSUs) and other “conditional share awards”.

Deloitte have recently discussed this with HM Revenue & Customs (HMRC) and the output of those discussions is summarised below.

RSUs typically taxable as “general earnings”

HMRC has confirmed that their view is that RSUs will be typically taxable at vest as “general earnings” under UK legislation. The amount liable to UK income tax at vest will normally be calculated by time-apportioning the total value of the shares received at vest by reference to the period(s) the employee was UK resident/liable to UK tax on UK workdays during the earnings period of the RSU (which will generally be from grant to vest).

In HMRC’s view, the general earnings charge, where applicable, takes precedence over any charge arising under the specific provisions in the legislation which deal with the taxation of employee securities.

Impact on National Insurance position

Where companies tax RSUs as “general earnings”, whether or not NIC is due will be determined in the same way as for a cash bonus, i.e. broadly whether the employee is UK insured at receipt. NIC will be due in full or not at all – there will be no apportionment.

As a result, the new NIC apportionment rules for options and restricted shares which came into effect from 6 April 2015 will not apply.

National Insurance elections

A National Insurance election (or agreement) allows employers to pass on, to employees, the employer National Insurance cost arising on vesting/exercise.

Based on a technical reading of the relevant legislation, an NIC election can only be operated where an award is taxed as securities income rather than “general earnings”. HMRC have confirmed that they do not wish to disadvantage companies that have entered into NIC elections. As such, provided that an RSU represents a “right to acquire securities” (i.e. a “securities option” within the relevant legislation) and is taxed as such, they will permit companies to continue to operate NIC elections.

However, in this case as (by concession) HMRC is accepting the securities income charge as the primary point of taxation, they will also expect the National Insurance charge to be calculated on this (apportioned) basis.

This means that any company operating an NIC election on RSU income that wishes to continue to do so after 5 April 2015 will also be expected to operate NIC on the “new” apportioned basis. Provided that this position is applied consistently for all employees this should be acceptable to HMRC even though, as noted above, s62 is the default charging position.

Action

As noted above, these rules came into effect for vestings on or after 6 April 2015 so companies operating RSU plans will need to review the basis on which they are operating RSU plans, particularly where NIC elections are in place for UK employees. Companies that wish to continue to operate NIC elections will need to ensure that they have appropriate processes in place to ensure full NIC compliance going forward.

People to contact

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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