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Global Employer Services (GES)

Global Rewards Update:
United Kingdom – Finance Bill 2014 – new legislation on employee share plans

April 2014

Background

Following the announcement in December 2013 of proposals to change the taxation and reporting of employee share plans in the UK, Finance Bill 2014 was released on 27 March 2014.

The changes proposed in this legislation were broadly in line with the earlier proposals. However there are a number of important differences. Employers should take early action to ensure that both they, and their employees, understand the implications of these changes on individuals working in, or with a connection to the UK.

Share plans for internationally mobile employees

The legislation aims to simplify the UK income tax and National Insurance (NIC) treatment of share incentives for internationally mobile employees.

Current position

Currently, there is significant complexity in determining the UK income tax and NIC treatment of share incentives for internationally mobile employees. There can be different outcomes depending on, for example, the type of award granted and residency at that point, whether the employee is inbound to or outbound from the UK, and which country they reside in after leaving the UK. The income tax analysis will also, in many cases, be different to the NIC analysis.

Proposed position

The Finance Bill seeks to simplify the treatment for all options and share awards held by employees with a connection to the UK, where the relevant "chargeable event" (typically exercise for share options, and vesting for RSU or restricted stock awards) occurs on or after 6 April 2015. This will apply regardless of when or where the original award was granted.

This is a change from the initial proposals, which would have related only to new grants made on or after 1 September 2014.

There is specific guidance on the sourcing period to be used in these circumstances. However, in cases where the sourcing period specified in the legislation is not considered to be 'just and reasonable', it should be possible to use a sourcing period that would be considered as such.

The Government have also announced that they will align the NIC position to follow the income tax treatment as far as possible.

These measures will be welcome to many employers who currently have to spend time grappling with the complex rules. However, there are significant implications for individuals who have come to the UK holding equity awards, which may now be subject to tax on a different basis to that which they would have been expecting. The most significant impact will be on employees who were granted share options or restricted stock before coming to the UK, who will now be subject to UK income tax if the share option is exercised, or the restricted stock vests, on or after 6 April 2015.

Example

An employee was granted a stock option outside of the UK whilst not UK resident, and not in anticipation of UK duties. The employee subsequently moved to the UK where he exercised the option. Under the current rules, no UK income tax would arise at exercise as the employee was not UK resident at grant. However, under the new rules, UK income tax would arise at exercise based on the UK working time in, ordinarily, the grant to vest period.

It should however also be noted that there will be “winners” from these changes. In particular individuals leaving the UK to work in a “non-treaty” country, such as the UAE, will now be taxed on an apportioned basis whereas previously options would have been subject to UK tax in full.

Action

This is a significant change that will affect many individuals holding equity awards. Employers will need to consider a number of implications, including:

- ensuring the changes are understood by stock and payroll teams;
- communicating these changes to employees; and
- determining whether this change will impact existing policies (e.g. on tax equalisation/protection).

Employers will also need to consider whether current procedures for identifying individuals with UK tax liabilities on equity awards are appropriate to capture all impacted individuals. This also represents an opportunity to review procedures in respect of mobile employees more broadly, to ensure that both the “winners” and “losers” from these changes are treated appropriately.

In addition, employees who hold vested share options may wish to consider if it would be beneficial for the employee (or the company if the employee is tax equalised) to exercise the option before or after the new rules take effect.

Corporate tax relief for internationally mobile employees

The new legislation relaxes the rules for obtaining a statutory corporate tax deduction for options and share awards granted to employees who are on assignment or secondment in the UK (i.e. are not contractually employed by the UK company).

Currently, in order to obtain a statutory corporate tax deduction a number of conditions have to be met. One of the key conditions is that the employee must be contractually employed by the company claiming the statutory deduction.

The draft legislation proposes a statutory corporate tax deduction (assuming the other existing conditions are met) even if the employee is not (or was not) contractually employed by the UK company at the relevant time. Provided that the employee is performing services for the UK company, a deduction should be available for share income up to the amount on which the employee is chargeable to income tax. The legislation will now also apply to individuals who are permanently transferred to the UK business during the vesting period.

This change is set to apply to all exercise of options and/ or receipt of shares **from** 6 April 2015.

Action

This is welcome news and potentially allows employers to claim a statutory corporate tax deduction for employees where they previously could not.

Companies should consider how they can track employees into the UK and establish the amount of the relevant deduction.

Self-certification, online notification of share plans, and share plan annual returns

As previously outlined in our GRU in **February 2014**, new legislation is being introduced in the UK covering self-certification for tax advantaged share plans, along with the registration and online filing requirements for all employee share plans.

From 6 April 2014:

- Employers will be required to register their employee share plans with HM Revenue & Customs (HMRC) via the PAYE Online service.
- Companies will be obliged to file their annual share plan returns (including Form 42) online (for the 2014/15 tax year onwards). In addition, from the 2014/15 tax year onwards, a new automatic penalty regime will apply to late filed Forms 42.
- Companies who wish to implement a tax advantaged plan will no longer need to seek formal approval of the plan from HMRC. Instead they will be asked to self-certify that their plan meets the conditions set down in legislation. This would be done as part of the online registration process mentioned above.

Action

Employers should be prepared to register new and current share plans via the PAYE Online service.

Employers may also want to review the manner in which they compile their share plan annual returns, and consider whether this approach should change as a result of the introduction of online filing. For the year ending 5 April 2014, existing processes will apply, and therefore the current year is also potentially the final opportunity to bring any previously unfiled years into compliance ahead of the new penalty regime

People to contact

For assistance with this matter, or any other issue related to the operation of your global rewards plans, please contact your local Deloitte global rewards consulting services adviser or email us at **globalequity@deloitte.com**, and a global rewards consultant will contact you.

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