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Global Employer Services (GES)

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

December 2013

Background

On 5 December 2013 the Chancellor of the Exchequer delivered his Autumn Statement announcing a number of changes to the taxation and operation of employee share plans.

The UK Government have now published draft legislation (the Finance Bill 2014) and this GRU summarises the proposed changes, which remain subject to consultation. Many of these measures are broadly based on the Office of Tax Simplification (OTS) recommendations (*see* ***GRU***).

Share plans for internationally mobile employees

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

Current position

Currently, there is significant complexity in determining the UK income tax and NIC treatment of share based 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 the leaving the UK. The income tax analysis will also, in many cases, be different to the NIC analysis.

Proposed position

The draft Finance Bill seeks to simplify the treatment for all options and share awards granted to internationally mobile employees on or after 1 September 2014. The proposal is that income tax will be payable only by reference to UK workdays in the period over which the share award is earned. The existing legislation will apply to all awards granted before 1 September 2014.

There is also 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. Further details of the NIC changes will be set out in due course.

These measure will be very welcome to many employers who currently have to spend time grappling with the complex rules. However, there could also be many years of applying two different approaches depending on the date of grant. Therefore there will be some winners and some losers from the proposed changes, for

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 period working time in, ordinarily, the grant to vest period.

Action

Although this is draft legislation subject to consultation, companies should consider the possible impact on their internationally mobile employees and overall processes for tracking employees and calculating the amount of tax due. It is also important to consider the potential costs to the company, for example, if options are tax equalised.

The government may be open to representations that the new rules should apply to **vesting** events **from** 6 April 2014. If this does happen then, 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 draft 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 other conditions are met) even if the employee is not contractually employed by the UK company. 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.

This change is set to apply **from** 1 September 2014.

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.

Corporate tax relief on a company takeover

The rules for obtaining a statutory corporate tax deduction when a private company is taken over by another private company have been relaxed.

Under current rules, in order to obtain a statutory corporate tax deduction, the shares acquired at the exercise of an option must either be listed on a recognised stock exchange, in a company that is not under the control of another company, or in a company that is under the control of a listed company.

It is often the case that, when a company is taken over, all outstanding options will vest and become exercisable as a result of the transaction. However, where a private company is taken over by another private company, if an option is exercised after the transaction, the shares acquired will not qualify for a statutory corporate tax deduction. The Finance Bill proposes to allow a statutory corporate tax deduction to be available where an option is exercised within 90 days of a company being taken over by another private company.

This change is set to apply **from** 6 April 2014.

> **Comment**
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> This is another welcome change and will enable companies in similar circumstances to obtain a statutory corporate tax deduction without complex planning.

Changes to tax advantaged share plans

The Government announced an increase to the tax free limits that apply under the share incentive plan (SIP) and the Save as you earn plan (SAYE). In particular:

- The maximum value of partnership shares that can be purchased each year (under the SIP) is increased from £1,500 to £1,800.
- The maximum value of free shares that can be awarded each year (under the SIP) is increased from £3,000 to £3,600.
- The maximum value which an employee can save each month under the SAYE is increased from £250 to £500

These limits will apply to options granted or SIP shares acquired **from** 6 April 2014.

> **Action**
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> Employers who want to increase their offering should consider if they need to amend their existing rules to allow for the increased limits, and amend their employee communications appropriately.
>
> Employers who don't want to increase their offering should check their rules to ensure they are not bound by these increases.

Self-certification and online filing of share plans

As outlined in the August **GRU**, the draft Finance Bill introduces legislation covering the self-certification for tax advantaged share schemes, 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). To date HMRC have not provided any further details on the exact nature of these forms, therefore we await further information.
- 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**
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> Employers should be prepared to register new and current share plans via the PAYE Online service.
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> 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.
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> Any employers considering implementing a new tax advantaged share plan may wish to consider delaying the implementation until after 6 April 2014 in order to benefit from the self-certification regime.

Valuation of shares for tax purposes

For UK listed company shares, the market value of the shares for tax purposes is based on a specific methodology, either the ‘quarter up’ method or the ‘average of marked bargains’ method.

Following a recommendation of the OTS, the Government has confirmed that the current valuation methods will be simplified. The valuation of the shares will be taken as the closing price on the day on which the taxable event occurs.

The measure will be relevant to companies whose shares are listed on the Stock Exchange Daily Official List and is expected to be introduced by secondary legislation form 6 April 2014.

Action

In practice, many companies apply this valuation method.

Those who do not and who are on the Stock Exchange Daily Official List should be prepared to revise their methodology of calculating tax due at a taxable event, particularly where they are required to operate PAYE on this value.

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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