

## Global Rewards Update: United Kingdom – Finance Act 2014 and recent Government consultations relating to share plans

July 2014

### Background

On 17 July 2014, Finance Bill 2014 received Royal Assent. As discussed in the Global Rewards Update (GRU) of **April 2014**, the Finance Bill contained a number of significant amendments to the UK legislation governing both tax advantaged and non-tax advantaged share plans.

The changes, which take effect on various dates, have a wide ranging impact on employers and employees. Early action should be taken to ensure that all relevant stakeholders (representing HR, share plans, payroll, mobility and corporate tax) understand the implications of these changes. A recap of these changes is provided later in this GRU.

The majority of the changes enacted in the Finance Act 2014 came as a result of recommendations made by the Office of Tax Simplification (OTS) in their review of UK share plans in 2012 and 2013. The remaining recommendations made by the OTS are now subject to consultation, and are discussed below.

### Valuation of listed shares - consultation

HMRC has recently published draft regulations to simplify the process of valuing listed shares for employment tax purposes. Currently shares listed on the main market of the London Stock Exchange are, technically, valued on a “quarter up” basis (i.e. taking the lowest recorded price for the day plus a quarter of the difference between the lowest price and the highest recorded price). There are no statutory rules for valuing shares listed on a foreign exchange.

The proposal is to replace the “quarter up” method with using the closing mid-market price (or equivalent on foreign exchanges). If employment-related securities are sold on the date they are acquired, the sale proceeds will be taken to be the market value.

Responses to the consultation are due by 22 August 2014.

#### ***Deloitte's view***

The aim of this proposal is to simplify how listed shares are valued for tax purposes. However, the current proposal does not help a situation where, for example, shares cannot be sold on the same day they vest due to liquidity concerns (e.g. not being able to sell all shares immediately in one day). In this example the taxable value would be based on the close price at vest and not the sale proceeds. We would like to hear from you if this is a concern, or if you have any other thoughts or comments regarding the proposals that you would like to feed into Deloitte's response to the consultation.

## Marketable security - consultation

This consultation is based on the OTS's recommendations to change the time at which shares become taxable. Broadly, under the consultation proposal, a tax charge will only arise on a share when it becomes 'marketable', at which point income tax and National Insurance will be due. The consultation also contains a proposal to allow the employee and employer to jointly elect for a tax charge to arise at the time of award even if the shares are not marketable at that point.

The consultation asks for responses to a number of questions about the reasons for, and the consequences of, introducing the concept of marketable securities and necessary consequential amendments to the legislation.

The full consultation can be found at: <https://www.gov.uk/government/collections/government-response-to-the-ots-review-of-unapproved-employee-share-schemes>.

Responses to the consultation are due by 10 October 2014.

### ***Deloitte's view***

This proposal is aimed at helping facilitate share plans in private companies where a market for the shares is not readily available. The OTS highlighted that dry tax charges, in particular, were a barrier to participation, and this proposal seeks to help alleviate those concerns. However, these proposals will have a far reaching impact on all companies, not just those in the private environment. We would be grateful for any feedback with this regard.

## Employee shareholding vehicle - consultation

A further consultation has been opened on the OTS's recommendations to introduce a new form of employee shareholding vehicle. The purpose of such a vehicle would be to allow employers to use an alternative to a traditional off-shore employee benefit trust (EBT) to acquire shares, warehouse shares, deliver the shares to employees, or to create an internal market for the shares.

The consultation asks a number of questions on the level of demand for such a vehicle and requests comments on which exemptions would be needed for the vehicle to be successful, and what safeguards are needed. The full consultation can be found at the link above.

Responses to the consultation are due by 10 October 2014.

### ***Deloitte's view***

This proposal is particularly aimed at small companies who struggle with the administration and costs associated with operating an EBT. However, if such proposals were taken up, the new 'vehicle' could be suitable for all types and sizes of companies, and could help with the funding and operation of global share plans. We would be grateful for any additional feedback you may have.

## Finance Act 2014 – summary of changes

### **Online registration and filing for 2014/15**

As discussed in our GRU of **May 2014**, the Finance Act 2014 has introduced the requirement for employers to register their share plans with HMRC online via the PAYE online service. The requirement to register applies to any share plan or arrangement (both existing and new) which has participants in the UK. This registration must be completed before the submission deadline of the 2014/15 share plan annual returns of 6 July 2015.

The Finance Act 2014 also contains the legislative provisions under which the share plan annual returns should be filed online. These returns will be significantly different from those in prior years both in terms of format and reportable information, as summarised in the GRU of May 2014.

### **Action**

Employers should ensure that they register their share plans well in advance of the deadline of 6 July 2015.

Employers should analyse the draft share plan reporting templates to ensure that they are able to capture all relevant information. In particular, where there is a new reporting requirement, such as reporting the lapse of share options, employers should consider how this information can be made available when the returns are compiled.

A failure to comply with these new rules could give rise to penalties.

### **Tax advantaged share plans**

The Finance Act 2014 made a number of changes to the tax advantaged share plans (formally HMRC approved plans). The majority of these changes aim to simplify the operation of these plans; however, some of the other key changes are:

- Increase in SIP Free share limit to £3,600 and Partnership share limit to £1,800 from 6 April 2014.
- Increase in the SAYE monthly savings limit to £500 from 6 April 2014.
- Removal of the requirement to obtain formal approval of the plans, and instead require companies to self-certify their plans are operated compliantly.

### **Action**

The increase in limits for the SIP and SAYE are welcome changes. Employers who want to increase their limits will need to first ensure that their plan rules allow for the change. Updates should then also be made to any relevant employee communications to reflect the changes.

Employers will need to ensure they have self-certified all their tax advantaged share plans with HMRC as part of the online registration process before 6 July 2015. Employers should be aware that this requirement to self-certify applies for both new plans and those that had previously been given express approval from HMRC.

### **Share plans for internationally mobile employees**

As discussed in our GRUs of **April 2014** and **June 2014**, significant changes were proposed to the taxation of share awards for internationally mobile employees. These changes will now take effect from 6 April 2015 and apply to all share releases and option exercises occurring on or after 6 April 2015 (irrespective of the date on which the award was granted).

Where a relevant “chargeable event” (typically exercise for share options, and releases of shares for RSU or restricted stock awards) occurs for internationally mobile employees, the UK tax treatment will generally be based on the apportioned income earned in the UK over the grant to vest period. Where a restricted stock award is subject to tax on its full unrestricted value at award in another jurisdiction, and the employee subsequently moves to the UK, no further charge to income tax should generally arise.

HMRC published a consultation document on 24 July 2014 detailing their proposal to align the NIC position with the income tax treatment as far as possible (broadly an apportionment approach). The consultation is open until 16 October 2014 with the proposed changes to take effect from 6 April 2015.

The full consultation can be found at: <https://www.gov.uk/government/consultations/internationally-mobile-employees-and-earnings-related-securities>.

### **Action**

This is a fundamental change to the taxation of mobile employees. Employers should seek to fully understand the impact on their current employees and ensure the changes are communicated to them. Employers may also need to review their tax equalisation/protection policies, and their processes for tracking the movement of mobile employees in order to comply with the new requirements.

Companies should consider how they will be affected by the proposed changes to the NIC rules and whether they have sufficient processes to enable compliance. Companies may want to consider replying to the consultation directly or providing their comments to Deloitte to feed back to HMRC.

### **Corporate tax relief for internationally mobile employees**

The GRU of **April 2014** also discussed the proposed amendments to the rules for obtaining a statutory corporate tax deduction for options and share awards granted to employees who were on assignment or secondment in the UK (but did not have the UK company as their contractual employer).

Finance Act 2014 has now enacted the proposed changes that, from 6 April 2015, the requirement to be contractually employed by a UK company will be relaxed. As a result, provided all other existing conditions are met, where an individual is providing services to the UK company, a statutory corporate tax deduction should be available for share income up to the amount that the employee is subject to UK income tax.

### **Action**

Companies should consider how this change will impact their corporate tax deductions, whether changes need to be made to track employees in the UK, and establish a method for ensuring the correct deduction is taken for each relevant individual.

### **Other legislative changes**

The Finance Act 2014 has also implemented a number of other smaller changes that affect share plans, including:

- Relaxing the timeframe in which an employer is required to recover from an employee the tax due on notional payments (such as share vests) to 90 days following the end of the tax year.
- Relaxing the rules for claiming a statutory corporate tax deduction for share options exercised following the takeover by an unlisted company. Under the new rules, provided the option is exercised within 90 days of the transaction, a deduction may still be available.
- Amending legislation to permit a tax free rollover of restricted shares (in an effort to mirror the position for share options).

### **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](mailto:globalshareplans@deloitte.co.uk), and an adviser will contact you.

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