Share plan developments in the UK

Have you considered…..?

March 2015

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Introduction

The past twelve months have led to some of the biggest changes to impact share incentives in the UK since 2003. Whilst a number of these are to be welcomed, others will lead to additional complexity and further burdens for employers.

Over the past few months, the Deloitte team have been sharing their views on these changes on Deloitte's Global Shares & Incentives LinkedIn group. This group is now in its second year and provides members with unique insights, news and updates on the share incentive industry.

We are very pleased to bring together some of the best posts from the group here in one place and hope you find them of interest. All the views contained in the document are the team's personal views and due to the fast pace of some of the changes, in some cases the debate may already have moved on! They cover a broad range of the changes that have had an impact on the share plan industry in the past twelve month to help spark further debate.

Please do not hesitate to contact me or any one of the Deloitte contributors if you would like to discuss any of the content further. If you are not already a member, please feel free to join our LinkedIn group and continue the discussion there.

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Employees lose thousands due to employer's admin blunder…

Posted on 18 November 2014

This could be the (unlikely) newspaper headline next year if companies forget to register and self-certify their tax advantaged share plans (SAYE, SIP, CSOP). Where a company does forget, the clock cannot be turned back and tax advantageous treatment will be lost, even for some existing awards, on share plans which are not registered by the 6 July 2015 deadline. This can include those previously approved by HMRC.

HMRC have (at their own admission) been disappointed in the number of registrations completed so far and are concerned that companies may leave it to the last minute and, potentially, could miss the deadline. Our experience reassures us that companies are well aware of the requirement, it is just that, at the moment, they have many other things to do first (particularly bearing in mind the 6 July 2015 deadline!). However, we have noted that some companies are increasingly starting to turn their attention to this matter so what are the key challenges?

1. Who has access to the company's PAYE portal to complete the registration? Is it the employment taxes team, is it payroll, or is it the person in the company's satellite office who never responds to emails …
2. Who will be given authority to 'push the button'? If you are not the company secretary, will your company secretary join you at your screen as you register or will you take screenshots of the registration pages as evidence of the information you submitted?
3. Where you operate multiple non-tax advantaged plans, will you register them together or separately?
4. Are your tax advantaged plans in line with the statutory requirements? If your plans have previously been approved by HMRC, you may have more comfort that your documentation is in order than if the plan was implemented post 6 April 2014. However, in either case, is the plan being operated correctly in practice? If in doubt, seek advice!
5. When do I do this? When you have time… although the 6 July 2015 deadline will arrive quickly and we certainly do not recommend you leave it close to that date to start!

In our view, the requirement for companies to register and self-certify their share plans is not the most difficult obligation that HMRC have introduced over recent years (it is not like Real-Time information!). With the required information at hand, it should be relatively straight forward. However, our advice is to give yourself plenty of time, make sure you do register all of your plans and keep the confirmation on file. Then, all that remains is actually to complete the returns….

Good luck!

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Why didn't you tell me the rules were changing, then I could have done something about it…

Posted on 25 November 2014

It has long been a source of frustration for many businesses that commercially similar, but legally different, forms of equity award can give rise to very different tax outcomes in the hands of mobile employees. In particular, the fact that options granted outside the UK are not taxed on exercise, while share awards are taxed on delivery of shares regardless of grant location, has caused complexity and confusion.

6 April 2015 will see a welcome change – with new legislation coming into force which will, in the majority of cases, enforce a consistent treatment on these varied types of award. As with any change, however, there will be both winners and losers – and communication to plan participants is potentially critical in minimising the numbers of the latter!

The most significant group of employees that stand to "lose" from this change are those that hold Options granted prior to arrival in the UK, but which vested (i.e. became exercisable) after arrival – these individuals could potentially face a significantly higher UK income tax bill if they exercise after 6 April. There may, in many cases, also be an NIC cost for the employer.

Given this, what will you do to provide information to affected employees in sufficient time for them to take action?

It's also important to consider the impact of these changes on your own processes and systems – do you currently track the right individuals? Do you have processes in place to determine what amount is actually subject to UK income tax? Have you thought about the impact on tax equalisation costs for inbound employees? These are just some of the many questions that businesses are currently thinking about.

There is no doubt that, in many respects, the overall impact of these changes brings both greater simplicity and greater fairness to the taxation of mobile employee equity in the UK – but in the short term there are a lot of issues to get a grip on well ahead of the new rules coming into force for chargeable events on or after 6 July.

How are you addressing these changes in your organisation? Are you prepared? Please feel free to share any thoughts or questions below!

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So I sold my share and received 95p but I pay tax as if I received £1…?

Posted on 2 December 2014

As readers may be aware, the taxable value of employee shares historically depended on whether or not the shares were listed on the London Stock Exchange (LSE). For those listed on the LSE, the starting point was that a specific calculation - known as the “quarter-up rule” - was used to calculate the value. For all other shares, companies were, effectively, allowed to specify their own methodology (assuming it was reasonable).

There was, however, a well-established concession that said that where shares were sold on the day of the taxable event or the subsequent day, the sales proceeds could be regarded as market value.

In the summer, HMRC published draft legislation in which they:
- Abolished the distinction between LSE listed shares and all other shares – it was proposed that the market value for tax purposes would ordinarily be the closing mid-market price on the day of the taxable event; and
- Codified PART OF their previous concession into statute.

The issue, however, is that based on the wording of the draft legislation, sales proceeds would only be regarded as market value where the shares are sold ON THE DAY of the taxable event. This ignores the commercial reality of many companies that shares will often be sold over a period of days either because of low levels of liquidity and/or in order to ensure that the shares do not ‘flood the market’.

One hopes that when HMRC produce updated draft legislation – perhaps in the Autumn Statement due tomorrow – they will allow a longer timeframe, say five days, over which shares can be sold and the sales proceeds be regarded as market value. Otherwise, the headline of this article may be seen more frequently than anticipated.

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To ESV or not to ESV, that is the question…

Posted on 6 January 2015

As readers may be aware, the Government consulted over the summer on the OTS' proposals for a new employee shareholding vehicle (ESV). The ESV was intended to aid the operation of share plans, especially by private companies, and offer an alternative to the employee benefit trust (EBT). However, no doubt based on the mixed feedback received, the Government has recently announced that there is insufficient demand and the ESV will not be implemented.

Employers regularly incentivise and reward employees through unapproved employee share ownership plans, often involving an EBT to act as a warehouse or market maker. However, there are a number of tax issues, costs and complexities associated with a 'traditional' EBT. Further, more often than not EBTs are located offshore. The ESV was proposed as a simpler, more cost effective, onshore alternative.

Deloitte fed into the consultation noting a number of significant practical challenges and tax issues that would have to be overcome in order to make the ESV a viable proposal. Our view was that it was always going to be a difficult to overcome these without opening the gates to tax avoidance. We are also doubtful whether there is sufficient demand for an alternative vehicle. It is therefore no surprise that the ESV will not be taken further and the 'traditional'" EBT will retain its current role, at least for the foreseeable future.

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Last chance to secure 0% capital gains tax rate for employee shareholder share awards?

Posted on 16 January 2015

You may recall the furore back in 2013 when the coalition government introduced the Employee Shareholder ("ES") Shares regime. Many column inches were spent discussing this so-called 'shares for rights' scheme.

Over a year in and after a slow start, ES Shares have proved popular with many unlisted companies for their employees. We have seen them used to:

- incentivise management to achieve an exit (both by private equity and individual private business owners);
- retain key employees by giving them a stake in the business;
- provide tax efficiency for management shares (as all growth in share value following award is tax-free);
- incentivise management groups in relation to the performance of their own subsidiary.

The ES Shares regime could however be no more after the general election as both Labour and the Liberal Democrats have said that they will abolish it if they win.

If there is a change of government, ES Share awards are unlikely to be possible in the future. Although in this scenario the fate of pre-election ES Share awards cannot be certain, the next four months could be the last chance to offer some or all of your employees the opportunity to become employee shareholders.

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Some good news on tax advantaged plans?

Posted on 5 February 2015

The last 18 months have seen the most significant changes to UK tax-advantaged share plans for a decade. The impact of these changes will be brought into sharp relief for employers over the next six months as companies face the challenge of “self-certifying” to HM Revenue and Customs (HMRC) for the first time that their share plans have been operated in accordance with the relevant legislation and guidance. This shift has been triggered, by the fact that, under the new regime, much of the compliance responsibility for operating a tax-advantaged share plan moves from HMRC to the employing company.

The changes are broadly to be welcomed - indeed the first increase in the maximum amounts applicable to the all-employee plans in over ten years can be looked on as well overdue. Employees who make savings as part of SAYE or Sharesave plans can now contribute up to £500 a month (compared to £250 previously) and participants in Share Incentive Plans (SIPs) can now receive up to £3600 worth of free shares and acquire up to £1800 worth of partnership shares a year (up from £3000 and £1500 historically).

We have already seen some companies use these increased limits and view these changes as likely to encourage the use of all employee share plans in the future. The question remains though whether the increased limits (particularly for SAYE plans) will benefit management rather than employees further down the organisation.

HMRC has also extended the circumstances in which employees can benefit from a tax-advantaged receipt of shares, provided that the relevant vesting or exercise is in line with the rules and satisfies certain legislative criteria. These changes centre around two scenarios: employees leaving early in “good leaver” circumstances and the company being subject to a takeover. These changes are good news for participants that may now be able to keep the tax-advantaged treatment. However, care will need to be taken that transitional rules are followed and, on transactions, companies will need to note that some common transaction structures will continue to disqualify awards from tax beneficial treatment.

Finally, the relaxation of the provisions prohibiting employees' shares being forfeited should enable a new class of companies (principally private) which could not previously operate tax-advantaged share plans to do so. Whilst one of the consequences of the new regime is to allow companies who had operated SIPs to apply more onerous forfeiture provisions to offers of free or matching shares than in the past, early indications suggest that companies are as a matter of practice continuing to offer SIP participation in the same way as they have done until now.

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Clawback – a challenge that is here to stay

Posted on 3 March 2015

Malus and clawback are currently high on the agenda for many listed companies, following amendments to the UK Corporate Governance Code in September 2014. Many companies already have malus in their armoury, but clawback is less common. This is starting to change as increasing numbers of companies now implement clawback.

Before amending an incentive plan to include clawback provisions, a company will need to determine the circumstances in which clawback could be used. Some companies draw on the types of triggers that PRA-regulated companies are required to include: evidence of employee misconduct or a failure of risk management. Other companies seek to include more bespoke triggers. Whatever triggers are chosen, many companies often then seek to restrict the circumstances in which they can be used, such as by reference to time or culpability. This provides comfort to the participant but does not necessarily provide the flexibility to use clawback in what are likely to be unforeseen circumstances.

Introducing clawback provisions is, however, only the beginning of the story. Using them will have its own challenges.

Invoking clawback will necessarily involve some co-operation from the employee. If employees do not co-operate (and it is likely that they won't), the company may need to litigate. Enforceability of the clawback provisions is, therefore, key. A wider clawback trigger is likely to give an employee less scope to undermine a claim by the company and explicit written agreement should also help. But enforcing clawback will still be challenging, particularly internationally.

Once a company decides to operate clawback, it needs to determine how much it will demand. This will entail further difficulties. Some employees may have retained shares after the vesting of a share award, whereas others may have sold their shares. The company will need to decide whether to claw back by reference to the share price at the time of vesting or at the time of the clawback. And should the company seek to claw back on a gross or net basis? The answers to these questions will, of course, depend on the circumstances, but difficult questions concerning clawback are likely to be with us for some time.

This continues a series of personal views from the Deloitte team on recent (or proposed) changes to the UK tax and reporting treatment of share plans. Over the coming weeks, the team will continue this series to cover the broad range of share plan changes that will be affecting UK employers. We do hope you find these of interest and please add your comments below or contact your usual Deloitte contact if you would like to discuss further.

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UK share plan reporting – what's all the fuss about?

Posted on 12 March 2015

Annual share plan reporting in the UK is changing – and it's a big change!

Gone are the days of filing a paper return to HMRC which they may not review for some time. With the new Online Filing, HMRC will be able to get information about your share plans and their operation at the click of a button!

So how will this impact me?

Because, for example, HMRC will have far greater visibility of your compliance.

Ask yourself this question: "Where PAYE was not operated, am I confident this was correct?" Even if you aren't sure of the answer to this, HMRC will now be better equipped to identify where withholding was not operated, and investigate whether this was appropriate.

What else do I need to know?

There are new questions. For example: Who was the grantor of an option? Where restricted securities are awarded, for how many years do the restrictions last? What is the Actual Market Value (AMV) and Unrestricted Market Value (UMV) of the shares acquired? Are all shares sold after the exercise of a tax advantaged option?

There has been a major change in the format of the returns: The templates have to be in a certain format, only a certain number of decimal places can be used, dates have to be in the correct style etc. If a return isn't in the correct format you will not be able to file it online.

There is no 'white space': You can no longer caveat a response to a question or provide further clarification on a response.

Automatic penalties come in to force if you miss the 6 July deadline. Increased penalties also apply for incorrect returns.

What should I do now?

Register your plans (if you have not already done so).

Review the template annual returns. Do you understand what the questions mean and can you answer them (in the correct format)?

Consider whether you have been operating your plans in a compliant manner?

Start the process now!

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