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Global Reward Update – Wrap up

April 2023

As we approach spring it seems a good time for some share plan "spring cleaning" and checking in on key developments impacting global incentive plans since our last update. Some are an update on information provided in previous Global Reward Updates (GRUs) and others are new developments.

We hope this summary is useful, and if you have any questions, please do get in touch with your usual Deloitte contact or any of the Incentives partners listed on the final page.

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Global tax & legal updates

China: Extension of preferential tax policies

China's Ministry of Finance and State Taxation Administration has published bulletins extending the period for which certain preferential policies for individual income tax will apply until the end of 2023.

This includes an extension of the preferential tax treatment available for Chinese resident taxpayers receiving equity incentive income. The existing eligibility requirements will also continue.

Please contact us if you would like more information about whether your plans could benefit from this preferential tax treatment, or if you would like assistance with the relevant reporting obligations in China.

France: Ease of tax compliance burden of foreign employers

Since 1 January 2019, employers have been required to report taxable compensation and remit income taxes to the French Tax Authorities ("FTA") on a monthly basis (via the *"prélèvement à la source"* or "PAS") for individuals who perform all or part of their duties in France.

Where these individuals are not subject to French social security (e.g. where they are socially insured in another country), the foreign employer would also have monthly *passage des revenus autres* ("PASRAU") requirements. PASRAU reporting is complex, with many foreign employers encountering tax and administrative obstacles to be able to complete this effectively. France's 2023 Finance Bill (effective 1 January 2023) will simplify these procedures for individuals who are resident in France but not subject to French Social Security.

Under the 2023 Finance Bill, employers will only be required to submit annual declarations to the FTA; confirming the amount of taxable compensation for each employee. This submission should be used by the employees to submit their annual income tax returns, and as a reconciliation for the FTA to ensure all income has been reported. The employees would then settle their income tax payments directly via a direct debit, utilising the *"acompte contemporain"* mechanism.

However, whether an individual/company will be able to benefit from this simplification will depend on the country they are coming from and the cross border agreements that are in place with France. For example, it will only apply to foreign employers domiciled in an EU member state, or a country that has concluded a convention on mutual administrative assistance with France against tax fraud and tax evasion. Furthermore, the simplification is not expected to apply to individuals seconded into France by their employer if they remain subject to their home country social security scheme.

France: Ease of tax compliance burden of foreign employers (continued)

There will be added complexities for UK employers as a result of Brexit and the implementation of the Trade and Cooperation Agreement on 1 January 2021. For individuals working in France prior to this date, they may be able to benefit from the new rules and relaxation. However for individuals starting to work in France on or after 1 January 2021, they would still be subject to the monthly PASRAU requirements. Furthermore, the FTA have confirmed that penalties for not processing PASRAU will be applied; and any earlier relaxation of the penalty regime due to COVID will no longer be available. Therefore understanding your reporting requirements on a per employee basis will be vital for UK employers.

Comments from the FTA are expected in due course; to provide further guidance and clarity as to how the updated measure will work in practice.

If you would like more information about whether and how this will affect your employees working in France, please contact your local Deloitte representative.

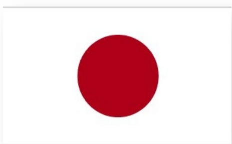
India: Changes to exchange control restrictions

Recent changes made by the Indian Government to the exchange control rules regarding overseas investment (the "OI Rules") affect share awards made by foreign issuers. Under the OI Rules, approval of the Reserve Bank of India ("RBI") is typically required where foreign shares are acquired or disposed of by Indian employees unless an exemption applies. Where issuers rely on the exemption, they must file a report with the RBI. The timing and content of these reports has recently changed.

Previously reports were required annually. Under the new rules reports must be prepared by the local employing company twice a year using the prescribed Overseas Portfolio Investment Form ("OPI Form"). Reports must be filed no more than 60 days after 31 March (covering awards from the previous October to the end of March) and 30 September (covering awards from April to the end September) of each year. The OPI form is submitted to the relevant authorised dealer bank.

The first semi-annual report under the OI Rules was due on 29 November 2022.

Please contact us if you would like our assistance with considering how these new requirements impact your share plans, or preparing and filing the OPI Form.



Japan: Proposed extension of exercise period for QSOs in start-up companies

As part of a package of the recently passed tax reforms intended to support start-up companies, the Japanese government has announced the extension of the maximum exercise period applicable to "qualified stock options" (QSOs) from 10 to 15 years in respect of QSOs held by employees and directors of Japanese start-up companies. The maximum exercise period has remained the same for QSOs held by employees/directors in other companies.

Japanese employees/directors currently benefit from capital treatment on the disposal of stock acquired on the exercise of QSOs which meet certain qualifying criteria. The government hopes that extending the maximum holding period in start-ups will encourage staff retention in these early-stage companies. In order to qualify as a "start-up" company certain qualifying criteria must be met (including that the Japanese company has been in existence for less than 5 years and is unlisted).

Please let us know if you require any further information about this update or the operation of your employee incentive arrangements in Japan.

Netherlands: Change to tax point for options with sales restrictions

As discussed in our Global Wrap Up Update in December 2021 (here is a link), the Dutch government proposed to move the taxation date for employee stock option rights to the date on which employees can trade the shares, because this is the date when employees can sell (part of) their shares to pay any tax arising. This change has been approved by the 1st chamber of the Dutch parliament and took effect from 1 January 2023.

Please let us know if you would like assistance in preparing communications to your employees regarding the impact of these changes.

Portugal: Changes to taxation of stock option gains in early-stage companies

The Portuguese government has proposed new legislation aimed at encouraging growth and attracting talent in early-stage companies (with particular emphasis on those in the innovation, research and development and technology sectors).

The changes are proposed to be effective from 1 January 2023. The taxation of employee stock option gains in certain early-stage companies would be deferred from the date of exercise to the date of disposal. In addition, only 50% of such option gains would be subject to personal income tax at the special rate of 28% resulting in an effective rate of tax of 14%. We understand a minimum holding period of 1 year would apply in relation to the relevant stock options.

In addition to companies classified as "start-ups" under the new rules, the legislation may also apply to small and medium-sized companies (SMEs), small mid-cap companies and certain other companies operating in the innovation/research and development/ technology sectors.

The current proposal remains under discussion and is subject to change. We will keep this under review and keep you updated.

United Kingdom: Changes to tax advantaged CSOP

The changes impacting Company Share Option Plan (CSOP), mentioned in our December 2022 Global Wrap Up (here is a link), have now been finalised and legislation has been published in the Finance Bill 2023.

This means that from 6 April 2023 CSOP will be available to a wider range of companies, with changes to the monetary limit on the value of share options and share class restrictions. The Finance Bill has confirmed that the changes apply to share options exercised on or after 6 April 2023 (regardless of when those share options were granted). We anticipate that this may lead to many companies re-considering the use of CSOP as part of their incentive package for UK employees.

We recommend employers examine their current UK share plan offerings to identify whether these changes create an opportunity to make more advantageous awards to UK employees. This is of particular relevance to employers currently granting non-tax advantaged market value options to UK employees.

United Kingdom: Changes to CGT annual exempt amount

As announced in the 2022 Autumn Statement, from 6 April 2023 the Capital Gains Tax (CGT) annual exempt amount will be reduced from £12,300 to £6,000. This will then be reduced further to £3,000 from 6 April 2024. These changes will mean some share plan participants may now be liable to CGT where they were not previously.

We recommend Employers consider updating their employee communications to inform them about the changes. This is particularly the case where employees may be subject to CGT on the shares received under their incentive plans, for example growth share plans, CSOP, and SAYE.

United Kingdom: EMI: improvements to the process to grant options

HMRC have announced three changes to simplify the process for granting options under an Enterprise Management Incentives (EMI) plan (in Employment Related Securities Bulletin 49). The requirements being changed are:

1. the company must set out within the option agreement the details of any restrictions on the shares to be acquired under the option;
2. the company must declare that an employee has signed a 'working time declaration' when they are issued an EMI option;
3. the EMI options must be notified to HMRC within 92 days of the date of grant.

The government has announced that the requirements set out in 1 and 2 above will be abolished for options granted on or after 6 April 2023. In relation to the working time requirements, it is worth noting that the employee must still meet that requirement and only the requirement to sign a working time declaration has been removed.

In relation to the third condition, the government has announced that the time limit for notifying EMI options will be extended to 6 July after the end of the tax year in which the EMI options were granted. This extended time limit would apply to EMI options granted on or after 6 April 2024.

Please let us know if you would like assistance with these new requirements and how these impact the granting of your EMI options.

United Kingdom: Call for evidence on SIP and SAYE plans

Share Incentive Plan (SIP) and Save as you Earn (SAYE) are all-employee tax advantaged share schemes which are available in the UK. The government has announced a call for evidence in respect of these plans with a view to considering how it can improve and simplify the schemes.

Once further details are provided by the government, we encourage Employers to please provide feedback to your Deloitte contact or industry bodies like ProShare.

United Kingdom: Changes to ERS return template

HMRC have announced changes to the Employment Related Securities (ERS) return template from 6 April 2023 (in Employment Related Securities Bulletin 47). These changes include the now mandatory completion of formerly optional fields and amendments to column headings. Although they are minor changes, they are important to note as incomplete returns will be rejected.

The fields that are now mandatory are: 'PAYE reference of the employing company', 'Is PAYE operated Y/N' and the employee National Insurance number (NINO).

Previously most individuals on a return had a National Insurance number, except in very particular circumstances. However as of 6 April, all individuals on the ERS return will need the NINO field filled, and those without a National Insurance number will need an alternative reference number. This is created using HMRC guidance and is only used on the ERS return leading to an additional administrative burden. We are currently in discussion with HMRC regarding the finalisation of these template changes. We will share any further clarification in due course.

Please contact us if you require any assistance with your ERS returns.

United States: SEC Clawback

New SEC rules require companies with a US listing to implement certain clawback requirements. The requirement applies to all companies with a US share listing as well as those with level 2 and 3 American Depositary Receipts (ADRs) or US-listed debt – so it is wide ranging. Most UK companies already include malus and clawback provisions in their share plans – but those which have a US listing will need to take action. Firstly, the rules requires recovery whereas most UK share plan rules give the company discretion to operate clawback but do not require it. In addition, companies will need to check their existing malus and clawback provisions meet the requirements of this rule which may require an amendment to the plan rules.

The rules require companies to recover any overpayment where: (i) the company restates its financial results due to a material error; and (ii) as a result of such error, an "Executive Officer" received an overpayment of "incentive-based compensation".

"Executive Officer" means the president, principal financial officer, principal accounting officer, any vice-president of the issuer in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions for the company.

Incentive based compensation includes any variable remuneration awarded in whole or in part on the basis of the achievement of a financial reporting measure.

Full compliance, including the development of a clawback policy, will be required by early 2024 at latest (depending on when the relevant exchanges implement their updated rules). Companies will be required to file their clawback policy as an exhibit to their 2023 US annual report (typically on Form 20-F for foreign private issuers).

Further information on the clawback requirements can be found here.

Please contact us if you would like our assistance with considering possible updates to your plan rules, award documentation, and/or any existing malus and clawback policy.

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