



## Global Reward Update – Wrap up

**August 2022**

We hope you have had a chance to have a break over the summer, or have one planned. We thought it would be a good time to circulate a few 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.

## Please use the links below for each of the country updates:

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# Global tax updates



## **Canada:** Format for Employers to notify Canada Revenue Agency (CRA) when granting employee share options

The CRA have published the format to be used by Employers to notify the CRA of non-qualified security options grants. Click [here](#) for this notification format, which is Schedule 59 to the corporate income tax return.

As we explained on our Global Wrap Up Update from December 2021 (here is a [link](#)), this notification should be made on or before the employer's filing due date for the taxation year in which the stock options are granted.

We await further guidance on the format employers provide notification to employees. As we previously mentioned, until guidance is published, we recommend employers provide a formal notice (typically through the option grant agreement, or through a separate letter) to all participants indicating whether their options are qualified or non-qualified.

There are a few other technical changes on which we are hoping the CRA will provide further guidance, which we have included in previous GRU Wrap Ups. **We will keep these points under review and keep you updated.**



## **Ireland:** Compliance campaign on share awards

We are aware that the Irish Revenue is undertaking a national compliance campaign relating to share awards.

The Revenue have contacted employers regarding their concerns that participants may not be fully aware of their tax obligations where they are engaged in share-based remuneration schemes (particularly where there is no requirement to operate withholding via payroll and where dividends are received, or shares sold, by participants). The Revenue's letter asks employers to remind the relevant participants of their tax obligations by circulating a Revenue prepared factsheet (or at a minimum being comfortable that the relevant information has been shared with participants in some other form).

**We recommend** employers review the content of their employee communications with respect to the income tax and CGT implications of the share awards participants receive. We suggest any tax guides or FAQ documents are reviewed to consider whether all tax obligations are covered. If employers currently do not provide any tax information to employees and operate share options, they may consider making the Revenue fact sheet available to participants for ease of reference.





### **Ireland:** Withholding obligations for early release of shares from restricted share plans

As discussed in our previous Global Reward Update (here is a [link](#)), the Irish Revenue released an update in respect of the treatment of restricted shares. These changes required employers to operate payroll withholding where additional tax becomes payable on the early release of shares before the end of a restricted/clog period. This can only occur in certain situations that are outlined in legislation, such as a sale or change in control, or the participant's death. The update applied for both new and existing restricted share schemes, where the lifting of a clog period takes place from February 2022.

In correspondence with Revenue, it was argued that the legislation does not necessarily support the application of PAYE withholding in this instance; however Revenue have reiterated that their stated position has not changed. Revenue have confirmed that PAYE withholding must be operated on the additional taxes arising where a restriction or clog is lifted early.

The administrative difficulties in applying PAYE in the year that the restriction was lifted, and the knock-on impact for employees seeking to claim a credit for the taxes paid was also raised. Revenue confirmed the adjustment should be reported in the relevant year of acquisition of the restricted shares, and not in the year that the restriction or clog is removed.

**We recommend** employers review any restricted share schemes in operation, to confirm if there are any cases since February 2022 where a restriction was lifted early. In such cases, they should check that PAYE withholding has been appropriately applied.

Care should be taken in making any adjustments to prior year payroll submissions, or P35 returns (for years prior to 2019), to ensure that Revenue's recently updated Code of Practice for Revenue Compliance Interventions is considered.

In addition, **we recommend** relevant employers consider updating existing restricted share plan documentation to address the possible collection of tax via payroll.



### **United Kingdom:** Amended restricted securities elections guidance

HM Revenue & Customs (HMRC) has updated its guidance on restricted securities elections (including 'section 431' elections) in the [ERSM](#). Among other clarificatory changes, the amendments confirm that:

- Elections can be made in formats other than HMRC's standard forms, including electronically and as part of another document such as a share subscription agreement (see [ERSM30460](#)).
- If the employee does not have a National Insurance number, this will not affect the validity of the election (see [ERSM30450](#)).
- An election can cover more than one type of security issued by more than one company, although all the companies must be in the same group (see [ERSM30450](#)).

Although the amendments reflect existing HMRC practice, they are a **welcome clarification** of an area in which potentially incorrect or incomplete documentation can cause issues for advisers, particularly during due diligence on a corporate transaction.





### **United Kingdom:** Health and Social Care Levy clarifications for share incentive schemes

In our previous Global Reward Update (here is a [link](#)) we discussed the UK Health and Social Care Levy's impact for share incentive schemes. In our correspondence with HMRC, they have clarified the following points:

- Where a salary sacrifice is effective for National Insurance Contributions (NIC), it will also reduce pay for the purposes of the Health and Social Care Levy;
- Employers with share plans who wish to transfer the Employer's Health and Social Care Levy cost, in the same way as they do Employer's NIC, will be able to do so;
- The Senior Accounting Officer regime does not apply to the Health and Social Care Levy; and
- For Research & Development staff costs will potentially include the extra NIC for the current year, but not the Health and Social Care Levy itself.

These comments are a **reassuring confirmation** that, for share incentive schemes, Health and Social Care Levy will largely be treated in the same way as NIC.



### **United Kingdom:** End of COVID-19 extended Enterprise Management Incentive (EMI) valuation period

HMRC has confirmed the upcoming end of a COVID-19 related extension of the normal time period for the validity of EMI valuation agreement letters issued by HMRC (in [Employment Related Securities Bulletin 44](#)). EMI valuation agreement letters issued on or after 1 December 2022 onwards will revert to being valid for 90 days, instead of the extended 120 days.

**We recommend** Employers with EMI plans should review their grant processes to ensure completion within the shortened period.



### **United Kingdom:** Office of Tax Simplification (OTS) launch review for hybrid and distance working

The OTS have announced a launch of a review of hybrid and distance working, including cross border movement. This is planned to be a high-level review covering changes in working practices, which could give rise to tax complexities or challenges for employers and employees. At this stage, their work is limited to an initial scoping review, though a fuller Call for Evidence is expected to be released in the autumn.

Many employers face difficulties considering how hybrid and distance working impacts the taxation of incentive plans and we welcome the OTS's review as this should provide greater clarity in this area. **We will keep this under review and keep you updated.**



# Global legal updates



## **Australia:** Changes to exemptions from prospectus requirements

Significant changes to Class Order 14/1000 (which provides an exemption from the need for a prospectus in connection with an offer of securities) come into force on 1 October 2022. The changes are intended to simplify compliance with the Class Order.

As the changes are substantial, we will be publishing a further, more detailed update in due course, but **we recommend** that employers planning to make offers of participation in incentive plans after 1 October 2022 consider taking further professional advice to ensure that offers are compliant.



## **Poland:** Filing required at least 7 days before information document provided to participants

For several years now, the Polish Financial Supervision Authority (the “PFSA”) have required that any ‘information document’ provided to participants in order to meet the requirements of the exemption from the EU Prospectus Regulation for offers of share plan participation to employees or directors (the “**employee exemption**” from the “EUPR”) be provided in Polish.

The PFSA have very recently introduced a new filing requirement, effective from 1 August 2022, that requires that they are notified at least 7 days before this information document is made available to participants.

It is understood that this notification can be made either via post or via the official government online portal.

As this filing requirement is new there is little practical guidance on PFSA expectations. **We recommend** that if you are expecting to make an offer of participation to employees in Poland, you obtain further advice to ensure compliance with these new requirements.



## **Saudi Arabia:** New personal data protection law

A new Personal Data Protection Law was introduced in Saudi Arabia in September 2021 and is due to come into force on 23 March 2023.

The new law is broadly similar to the EU’s General Data Protection Regulation, although it has a number of unique features - in particular, there will be strict restrictions on the transfer of data outside of Saudi Arabia.

The regulations governing such transfers have not been published and so it is currently unclear what these restrictions will be and whether there will be a requirement to obtain a permit from the relevant Saudi authority in order to transfer data outside of the country. Further regulations are expected to be published.

**We recommend** that employers assess whether their data protection framework in Saudi Arabia meets these requirements.





**United Arab Emirates:** Changes to data protection law

Although the UAE enacted a new data protection law which came into effect on 2 January 2022, the regulations which will clarify a number of elements of the UAE DP law have yet to be released.

Under the new law, data controllers are required to have a lawful basis for processing personal data and processing is prohibited without the consent of the data subject unless an exception applies.

The regulations are expected to provide further guidance on the use of consent and whether or not consent provided by an employee as part of an employment relationship will be acceptable. For the time being, we understand that written consent remains acceptable.

**We will continue to monitor the situation and keep you updated.**



**United Kingdom:** SAYE bonus rates

HMRC has announced a review of the mechanism for calculating SAYE bonus rates. In the meantime, rates will remain at 0%.



**United Kingdom:** Trust registrations are due by 1 September 2022

Employee benefit trusts (“EBTs”) established on or after 4 June 2022 will now need to be registered with HMRC’s Trust Registration Service (“TRS”) within 90 days unless they fall within one of the limited exemptions.

The registration requirements are broad and include all UK trusts and some non-UK trusts.

**We recommend** that employers check whether their EBTs fall within the registration requirements, whether registration has taken place and, if not, register as a matter of priority.





# Who to contact

## **Peter Simeonidis**

**Partner, Global Equity & Incentives Leader**

+1 (212) 436 3092

[psimeonidis@deloitte.com](mailto:psimeonidis@deloitte.com)

## **Anita Grant**

**Partner**

+44 (0) 118 322 2861

[anigrant@deloitte.co.uk](mailto:anigrant@deloitte.co.uk)

## **Rob Basker**

**Partner**

+61 2 9322 7551

[rbasker@deloitte.com.au](mailto:rbasker@deloitte.com.au)

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