Global Reward Update – Wrap Up

December 2024

As we approach the festive season and the end of the year, we wanted to summarise some key developments we have seen impacting global incentive plans since our last update. These include developments in connection with previous Global Reward Updates (GRUs), while others are new.

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:

Global tax & legal updates

Global tax & legal updates

Canada: Delays in proposed changes to capital gains and stock option inclusion rate

The proposed changes to capital gains and the stock option inclusion rate have been subject to further delays in implementation.

As discussed in our August 2024 Global Wrap Up (here is the link), the 2024 federal Budget proposed an increase in the capital gains inclusion rate from 50% to 66.67% for capital gains realised after 24 June 2024, and a corresponding reduction in the stock option deduction from 50% to 33.33%.

Assuming the legislation will eventually be enacted as currently drafted, the key issue for employers is whether they should withhold taxes at the new 66.67% income inclusion rate on all stock option benefits realised after 24 June 2024, or continue to use the current 50% inclusion rate and only switch to the new inclusion rate when the legislation is enacted.

Considering the uncertainties, Deloitte Canada has prepared a summary guidance note (here is the link) addressing the alternative approaches and associated considerations employers may wish to consider pending enactment of the legislation.

Please contact us if you would like to have a more in-depth discussion or have any questions relating to the above, or if you would like our assistance in preparing communications to any of your employees regarding the impact of these changes.

Czech Republic: Proposed changes to the deferral of tax point for share-settled awards

Since 1 January 2024, when employees acquire stock in relation to an Employee Stock Ownership Plan (ESOP) for free, or at a discounted price, the taxation of such non-monetary benefit is generally deferred until the first of several defined taxable events (e.g., sale of shares, departure of the employee from the company, or the lapse of 10 years from the acquisition of shares). This deferral regime is not currently optional. We have previously covered this topic in both our March and August GRU Wrap Ups.

The proposed amendment is intended to make the current mandatory deferral regime optional. If enacted, companies who determine the new regime too administratively demanding will be able to apply the regime that was previously in place until the end of 2023 (i.e., no tax deferral, with tax being due at delivery). Alternatively, employers may 'opt in' to the current deferral regime.

The change is currently in the Czech legislative process and if adopted, would likely come into force from 1 January 2025. It is important to note that, if adopted as currently proposed, the amendment will also have an impact on tax liabilities for 2024. It is expected that the proposed amendment will impact all types of ESOPs (except for phantom plans) and, depending on the preferred approach, may bring additional reporting obligations and require processing of income subject to the deferral regime in 2024 through payroll. **We will keep this under review and will provide any necessary updates.**

We recommend that employers decide whether they wish to use the current deferral regime or revert to the pre-2024 regime (i.e., no deferral) both for awards settled in 2024 and going forwards (assuming the change is enacted). A different approach can be taken for different plans/groups of employees, and depending on the approach taken, employers may face additional reporting and payroll withholding obligations in relation to income from 2024 share-settled awards.

We also recommend employers communicate any change of approach to employees, so that they understand the tax consequences and are tax compliant if they are reporting the income through their personal tax returns. **Please contact us** if you would like our assistance in preparing employee communications or have any questions in relation to the proposed changes to the deferral regime.

Ireland: Share-based remuneration public consultation

In December 2023, the Irish Department of Finance (DoF) launched a wide-ranging public consultation on Ireland's Taxation of Share-based Remuneration (SBR).

Deloitte Ireland responded to the SBR consultation in early 2024 and our key recommendations included the retention of the employer PRSI exemption and the introduction of legislation to better support the use of SBR schemes by start-ups and SMEs.

In autumn 2024, an independent review of the consultation was published by Indecon (an independent economic research and consultancy organisation). Amongst Indecon's key recommendations were the following:

- the introduction of a cap on the level of employer Pay Related Social Insurance (PRSI) exemption (either per employee or per company);
- the introduction of short-term measures to enhance the attractiveness of the Key Employee Engagement Programme ("KEEP") (e.g., greater clarity on tax valuation) with possible wider amendments to KEEP post-2025 to reflect State aid constraints;
- the taxation of Restricted Stock Units (RSUs) for internationally mobile employees (IMEs) should move to a sourcing/apportionment approach;
- initiatives to simplify the administrative burden of SBR arrangements should be considered; and
- the benefit-in-kind rate on loans advanced to employees to acquire shares in their employer should be reduced.

It may take some time for the Minister of Finance and the DoF to consider the recommendations in the Indecon report. **We will keep this under review and will provide any necessary updates. Please contact us** if you would like any assistance in considering any of the above.

Italy: Increased scrutiny on share plan reporting

Employee share plans offered to Italian tax residents drive specific tax reporting obligations within the broader context of financial asset monitoring of non-Italian investments. Earlier this year we issued a Global Reward Update (here is the link) regarding the changes to the personal tax filing requirements for foreign investments held by Italian tax residents. The requirement for completion of both the "ordinary" and "simplified" tax returns in relation to participation in employee share plans has led to increased confusion, making tax compliance even more complicated than previously for participants.

In this new landscape, the Italian Tax Authority is becoming more diligent in issuing tax audits in cases of non-compliance or 'misalignment' with the data gathered through the international exchange of tax information. The Italian Minister of Economy recently announced that over 3 million audit letters will be issued in the first quarter of 2025, and failure to respond promptly and effectively may result in significant penalties and administrative costs for the participants involved.

We recommend that employers consider updating their employee communications and providing support to employees who are beneficiaries of equity plans whenever a non-Italian plan administrator is involved. **Please contact us** if you would like our assistance or have any questions relating to the above.

Luxembourg: Proposal to overhaul tax regime for highly skilled impatriate workers

In a bid to attract and retain global talent, Luxembourg has proposed a significant overhaul of its tax regime for highly skilled and qualified impatriate workers. If approved, the new regime would replace the existing system with effect from 1 January 2025. There will be a transition period for employees currently benefiting from the existing regime who will be given the choice of whether to opt into the new system or continue to benefit from the existing regime (so long as the conditions are satisfied). However, the decision, once made, would be final and irreversible.

Under the new rules, impatriate employees would be eligible for a 50% tax exemption on their gross annual compensation, capped at EUR 400,000. This exemption would be available for a period of eight years following the year of arrival. Tax-exempt benefits and benefits-in-kind would not be eligible for this exemption. It is unclear whether equity/cash settled incentive awards would be included within gross annual compensation for these purposes, and we understand that the Luxembourg tax authorities are considering this point.

We will keep this under review and will provide any necessary updates. Please contact us if you would like our assistance in considering any of the above.

Netherlands: Scaling back of 30% ruling expected to be cancelled

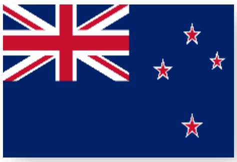
The scaling back of the 30% ruling in the Netherlands, which came into force on 1 January 2024 (as discussed in our December 2023 Global Wrap Up, here is the link) is expected to be cancelled.

Instead of scaling back the 30% ruling over 60 months, the Dutch government is now planning to introduce a 27% flat rate with effect from 1 January 2027 which will be renamed the 'Dutch expat facility' and will apply for 5 years.

However, expatriates who received the 30% ruling before 2024 can continue to apply the 30% tax-free amount for the entire 5 years. Legislation confirming this is expected shortly. **We will keep this under review and will provide any necessary updates**

In the meantime, **we continue to recommend** that relevant employers take steps to:

- update employee communications; and
- plan for possible adjustments in compliance and payroll processes.



New Zealand: Confirmation of proposed changes to PAYE withholding on ESS benefits

As discussed in our June Global Reward Update (here is the link), we can now confirm that the proposed changes to PAYE withholding on cash settled ESS benefits came into force with effect from 1 November 2024.

We recommend employers consider updates to their withholding processes and any employee communications to consider these updates, if they have not already done so. **Please let us know** if we could be of assistance.

Norway: Proposals to change to exit tax rules

The Norwegian government has included proposed changes to the exit tax regime in its 2025 Budget Bill presented to Parliament.

Exit taxation in Norway refers to the tax implications for individuals when they cease tax residency, either in accordance with Norwegian domestic law, a tax treaty, or they move shares or other qualifying investments to individuals that are resident abroad. It aims to ensure that any unrealised ("latent") gains on such assets that arise during their stay in Norway (as tax residents) are subject to tax at the time of leaving Norway. The exit tax includes shares, options (including vested and unvested awards) and their equivalents, (including pension and retirement savings with shares as the underlying investment), as well as various other securities.

The most important proposed changes to the exit taxation rules are set out below (these could make exit tax relevant for more employees):

- exit tax will be applicable when latent gains exceed NOK 3 million (it is currently NOK 500,000). For transfers to any person, company or entity abroad, as inheritance, the limit is NOK 100,000 per income year.
- exit tax can no longer be deferred indefinitely and must be paid within 12 years following the move.
- exit tax is calculated based on values at the time of entering and leaving Norway. There are no adjustments for any increases/decreases in value after emigration.

The proposal provides the option to defer payment of the exit tax for up to 12 years with the exit tax liability eliminated if the taxpayer regains Norwegian tax residency within the 12-year timeframe.

Under the new proposals, the taxpayer can choose one of 3 options to pay their tax liability. They can:

- pay in full at the time of breaking residency;
- pay interest free instalments over 12 years, (N.B., if an individual was to then regain their Norwegian tax residency within the 12-year period their exit tax would be refunded to them); or
- pay the full exit tax after 12 years. However, the taxpayer will be subject to accrued interest in these circumstances.

We recommend that employers consider the impact of the proposed changes to the Norwegian exit tax on their mobile employee population and consider whether any updates are required to plan documents or employee communications.

Norway: Proposals to change share option taxation for new companies

The Norwegian government has outlined proposals which will expand the beneficial share option tax scheme for companies in the start-up and growth phase. The proposals, aimed at promoting employee ownership and participation in share option schemes, were included as part of the 2025 Budget Bill.

Currently, where companies meet certain qualifying criteria, option gains are subject to tax as capital gains on sale rather than tax as salary on exercise. The following changes have been proposed which will increase the number of new / growth phase companies which will qualify for the beneficial option tax regime:

- a company's maximum age will increase from 10 to 12 years since establishment;
- the maximum number of employees will increase from 50 to 150; and
- the total assets threshold will increase from NOK 80 million to NOK 200 million.

We will keep these proposals under review and will provide any necessary updates. Please contact us if you would like our assistance in considering any of the above.

Slovenia: Special option tax treatment for employees in innovative startups

The Slovenian government has approved amendments to the Personal Income Tax Act which will defer the income tax point for employee stock options from exercise. For employees in innovative startups meeting certain registration requirements, the tax point will be deferred from acquisition until the earlier of:

- the disposal of shares;
- the termination of the employment relationship;
- the employer ceasing to exist or undergoing certain reorganisations; or
- 10 years having elapsed since the acquisition of the shares in question.

Please contact us if you would like to discuss these changes in more detail.

Sweden: Increased focus by Swedish Tax Agency in relation to tax withholding

The Swedish Tax Agency has increased their focus on tax audits relating to employer reporting and withholding obligations in connection with equity-based incentive plans which operate a 'sell to cover' mechanism.

Adding a 'sell to cover' mechanism to a share plan is a common approach in many countries. It is used to offset the net income impact a share benefit can have on payroll, while also satisfying the tax withholding obligations related to a reportable share benefit. However, from a Swedish perspective, there is a payroll remittance limitation, as sales proceeds from the sale of shares cannot be used by the company for tax withholding purposes. In Sweden, the tax withholding can only be made against cash remuneration paid out in the month of reporting down to net zero for the relevant month.

We have observed an increase in activity from the Swedish Tax Agency, including penalty fees and tax surcharges for both employers and employees, when employers fail to meet their withholding obligations. It can be difficult and time consuming to navigate through the applicable regulatory tax and compliance obligations relating to an equity-based share plan in Sweden. **We therefore recommend** employers carry out a compliance review if:

- You have employees in Sweden and equity is part of your compensation package;
- You have not previously analysed your share plan from a Swedish tax and legal perspective;
- You are distributing sales proceeds to employees; and
- Either:
    - You are withholding or selling shares on behalf of employees to cover/remit employment taxes (i.e., 'sell-to-cover'); or
    - The share plan allows for any type of net share settlement.

We also recommend that employers who are aware that they have not fulfilled their withholding obligations submit a voluntary correction to the Swedish Tax Agency to avoid penalty charges.

Please contact us if you would like our assistance in considering any of the following:

- Reviewing share plans and advising on the tax and legal treatment of the plan from both an employer and employee perspective;
- Guidance and support to local payroll teams on the compliant reporting of equity income and tax withholding; or
- Processing sell-to-cover arrangements from a Swedish payroll and tax perspective in a compliant manner, while mitigating the net salary impact for employees in the month of reporting.

United Kingdom: Update to independence requirement for EMI

HMRC has issued an update in relation to the "arrangements" that could jeopardise a company's eligibility for Enterprise Management Incentives (EMI) by impacting its independence.

The key takeaway is that any agreement, understanding, or plan – even if not legally binding – that could lead to another entity controlling the company can cause problems. This includes informal agreements, 'Heads of Terms', and 'Letters of Intent'.

HMRC has provided examples of scenarios which it considers to be of concern in the following contexts:

- Decision-Making Control: e.g., agreements granting another company decisive voting power, such as deadlock provisions or investor-appointed directors with predetermined decision-making authority;
- Performance-Based Control: e.g., provisions allowing investors to take control if a company underperforms, e.g., 'swamping rights' triggered by missed targets; and;
- Investor-Friendly Structures: e.g., situations where investor-appointed directors have disproportionate influence, such as holding a casting vote as board chair.

HMRC has distinguished between distress provisions and performance-based control. Distress provisions, which allow investor intervention to rescue a failing company (e.g., during loan defaults or insolvency), do not inherently affect EMI eligibility. However, if triggered, they can lead to disqualification.

Conversely, agreements granting investors control based on subjective performance assessments or non-distress events (e.g., 'reasonable opinion' clauses, control over director appointments tied to financial covenants, or gaining majority voting rights for non-distress reasons) are likely to raise red flags.

We recommend that companies considering EMI:

- review existing and planned agreements in view of the updated guidance;
- ensure EMI plan documentation aligns with the updated guidance; and
- seek professional advice to navigate any complexities and mitigate risks.

United Kingdom: HMRC guidance updated following ruling on Vermillion court case on employment related securities

In October 2023, the Supreme Court published its ruling in the case of HM Revenue & Customs (HMRC) v Vermillion Holdings Limited, in favour of HMRC. We covered the judgement in our December 2023 Global Wrap Up (here is the link).

As a reminder, share options will be taxed as “employment-related” where acquired by reason of employment. However, they will also be “deemed” to be employment-related securities (“ERS”) where acquired from a person’s employer (or a person connected to the employer). The Vermilion case supported HMRC’s view that where the deeming provision applies, there is no need to look further at causation: the fact of acquisition from an employer is enough for share options to be taxed as ERS.

Following the publication of the ruling by the Supreme Court, HMRC has recently updated its guidance on the rules relating to ERS and securities options. This guidance can be found in HMRC’s ERS Manual at ERSM20215.

HMRC has emphasised the importance of considering whether the deeming provision set out in section 471(3) of the Income Tax Earnings and Pensions Act 2023 (ITEPA 2003) applies prior to considering whether the causation test under section 471(1) of that Act applies. This principle will also extend to the acquisition of shares and other securities under section 421B ITEPA 2003.

There remains a statutory exemption from the deeming provision where the right or opportunity to acquire shares is made available by an individual in the normal course of domestic, family, or personal relationships. However, this is likely to be available only in limited cases (e.g., the transfer of shares to a spouse or child).

The updated guidance makes it clear that HMRC is now taking a strict approach in applying the deeming provision. As such, if an option is granted by, or shares acquired from, an employer (or a person connected to the employer such as a parent company), this will almost always be considered an ERS. This will be the case even if it is clear that the option, shares or other securities were not factually acquired by reason of employment. For example, HMRC’s guidance provides that where a company makes a rights issue or issues warrants to shareholders who happen to include employees, this will fall within the scope of ERS.

If the exemption for transfers in the normal course of a domestic, family or personal relationship could apply, HMRC have stated that they will take a common-sense view in considering whether the exemption is available.

We recommend that employers review the grant of options, or issue of shares or other securities which fall within the deeming provision, with a view to ensuring that income tax and National Insurance Contributions (NICs) are operated correctly, and that appropriate online annual return reporting is adopted.

United Kingdom: Change to Share Incentive Plan legislation regarding statutory neonatal care pay

The Autumn Budget announced a small change to the legislation governing UK tax-advantaged Share Incentive Plans (SIP) to take account of the introduction of statutory neonatal care pay from April 2025.

Currently, under the SIP legislation, SIP rules must provide that a company cannot enter into a partnership share agreement unless the agreement contains a notice, in a prescribed form, warning the employee of the potential impact of partnership share deductions on the employee's entitlement to certain benefits, including statutory maternity pay.

Once the Finance Bill 2024-25 receives Royal Assent, that notice will also need to include a reference to statutory neonatal care pay in the list of potentially impacted statutory payments.

Companies operating SIPs will need to work with their advisors and SIP trustee / administrators to review their plan documentation / communications, make appropriate updates and make employees / participants aware of the change.

Please contact us if you would like our support reviewing and updating plan documentation and / or communications.

United Kingdom: HMRC EOT & EBT Consultation Response

In our August 2023 Global Wrap Up (here is the link), we discussed a consultation published by the government that sought views on proposals for targeted reform of the Employee Benefit Trust (EBT) and Employee Ownership Trust (EOT) regimes, with the objective of rewarding employees and encouraging employee engagement. Following this consultation, the government has announced a package of reforms that we discussed in our post budget announcement (here is the link).

Once the Finance Bill 2024-25 receives Royal Assent, the following legislative changes, which were included in the draft Finance Bill released in November 2024, will take effect:

- companies owned by EOTs;
- companies that have established EBTs; and
- trustees of such EOTs and EBTs.

The changes are expected to apply retrospectively from 30 October 2024.

We recommend that employee-owned companies or owners thinking of transitioning to employee ownership contact us if they wish to discuss these changes.

Who to contact

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