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Global Reward Update–Wrap up

December 2022

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.

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Global tax & legal updates

Canada: Further delays to additional trust reporting requirements

In our Global Wrap Up Update from April 2022 (here is a link) we explained the implementation of additional reporting requirements for non-resident trusts had been delayed until the end of 2022. It has now been announced that this has been postponed a further year, and it is anticipated that the changes outlined in our Global Reward Update back in 2018 (here is a link), will apply for all trust tax years ending after 30th December 2023.

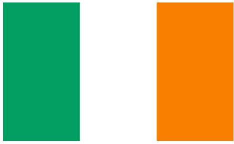
As explained previously, if you have not done so already, **we recommend** employers consider gathering the requisite information and keeping it on file, as well as ensuring that, at a minimum, copies of trust indentures are on file.

Canada: Translation requirements in Quebec

Previously, employee share plan documents provided to participants in Quebec had to be provided in French, unless the participant consented to them being supplied in English. Consent was given by way of a 'exclusion clause' included in plan documents or in a grant letter.

While recent changes to the legislation regarding the translation of employment-related documents in Quebec have created some uncertainty around the continuing effectiveness of such an 'exclusion clause', we understand that currently such clauses are still effective.

Regardless, **we recommend** that employers obtain further advice to ensure they comply with all necessary translation requirements in Quebec.



Ireland: Continued focus on share scheme compliance & updates to KEEP scheme

Alongside various tax rate and threshold changes, the Irish 2023 Budget signaled an intention by the Revenue to focus on Pay-As-You-Earn (PAYE) compliance with a continuing emphasis on share schemes. We mentioned the compliance campaign on share awards in our Global Wrap Up Update from August 2022 (here is a link). 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.

The budget also extended the Key Employee Engagement Programme (KEEP) scheme to the end of 2025. The KEEP scheme is a tax-advantageous share-option incentive arrangement for start-ups and small and medium-sized enterprises (SMEs). KEEP in its current design has been widely criticised as not providing SMEs with an easy to implement and cost-effective way to offer shares to employees. The announcement of the extension and the expected commencement of the Finance Act 2019 changes (regarding group structures and qualifying employees), with additional amendments, will therefore be a welcome development for many companies. Changes also included provisions for buy-back of KEEP shares by the company, which is another welcome change. However, some challenges may remain in relation to KEEP such as the definition of a holding company for KEEP and the lack of a safe harbour or Revenue guidance regarding the valuation of shares. Please let us know if you would like assistance considering whether your plans satisfy the relevant conditions or if you are designing a new qualifying plan.

Here is a link to our summary of the income and employment tax changes arising from the Irish 2023 budget.

Netherlands: Proposed 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 the tax. This change has been approved by the 2nd chamber of the Dutch parliament and it is now subject to approval from the 1st chamber. Discussions are scheduled in mid December 2022 and if approved the new scheme would be effective from 1 January 2023.

Should the new scheme come into force, please let us know if you would like assistance in preparing communications to your employees regarding the impact of these changes.

Netherlands: Proposed tightening of 30% ruling

Alongside various tax rate changes, the Dutch 2023 Budget proposed the introduction of a cap on the 30% ruling as from 1 January 2024.

Currently employees recruited from outside of the Netherlands can, under certain conditions, apply for a ruling so 30% of their total annual employment income can be treated as a tax-free allowance, for a maximum of five years.

It is proposed that, from January 2024, the 30% ruling will be capped up to the 'WNT norm'. Based on the 2022 WNT norm, the flat-rate tax free reimbursement would be capped at €64,800. This maximum amount applies to all employment relationships of an employee at affiliated companies.

For employees to whom the 30% facility applies in the last payroll period of 2022, the cap on the 30% facility base will not apply until 31 December 2025, if they remain employed by the same withholding agent.

Additionally, it is proposed that from January 2023 individuals will have a once-a-year choice if they want their actual extraterritorial costs to be reimbursed or if they want to apply the 30% ruling.

Please contact us if you would like our assistance considering how this proposal may impact the tax compliance relating to your incentive arrangements.

Poland: Details of securities law filing method confirmed

In our Global Wrap Up Update from August 2022 (here is a link) we explained the new requirement that the Polish Financial Supervision Authority must be notified at least seven days before an 'information document' was provided to participants. An information document must be provided where relying on the exemption from the EU Prospectus Regulation for offers to employees or directors.

We can now confirm that the notification must be made online via the Polish government's KNF portal (you can find a link to this here). We recommend that employers bookmark this for future filings.

United Kingdom: Changes to tax advantaged Company Share Option Plan ("CSOP")

The CSOP is a UK tax advantaged discretionary share option scheme. Under CSOP, market value options may be granted to any number of employees, and the exercise of these options after a holding period of three years will be free from income tax and social security (for both the employee and employer). Employees will instead pay capital gains tax on sale of the shares (currently charged at a rate of 20% for higher and additional rate taxpayers, as compared to a combined income tax and national insurance rate of 47%).

Historically, it has been possible to grant qualifying CSOP options over shares with a market value of up to £30,000 per employee (measured at the date of grant). There were also restrictions on the type of shares which could be offered under CSOP awards. This meant that CSOP was often not available or considered of limited benefit to many companies.

In the UK Growth Plan 2022 ("emergency mini-budget") it was announced that the limit for CSOP would be increased to £60,000 per employee, and the restrictions on qualifying classes of shares would be removed, for CSOP awards made from 6 April 2023. Whilst many of the initiatives announced at the mini-budget have since been reversed, the government has confirmed their intention to retain the proposed changes to CSOP.

These changes are proposed to be effective for awards made from 6 April 2023. We anticipate this may lead to companies considering the introduction of CSOP as part of their incentive package for UK employees. We recommend employers examine their current UK share plans to identify opportunities to take advantage of these changes, including whether existing plans can be amended to take advantage of these more generous conditions. Please let us know if you would like our assistance in considering this, or with the design and implementation of a new CSOP.

United Kingdom: Use of discretion in Enterprise Management Incentive ("EMI") plans

The Enterprise Management Incentive ("EMI") scheme is a UK tax advantaged discretionary share option plan targeted at smaller businesses, with gross assets under £30m, fewer than 250 employees, and carrying out a qualifying trade. EMI is very popular and well utilised by companies meeting the conditions, and legacy EMI awards (which can be very valuable) are held by executives of many larger companies. The exercise of qualifying EMI options is free from income tax and social security (for both the employee and employer). Employees will instead pay capital gains tax at a reduced rate on sale of the shares (currently charged at a rate of 10% for higher and additional rate taxpayers, as compared to a combined income tax and national insurance rate of up to 47%).

It is common for EMI options to be structured as "Exit Based" awards, that become exercisable on a change of control of the company, or other

corporate realisation event. Plans may also allow options to be exercised at other times, at the discretion of the Board.

Recent changes to the guidance issued by the UK tax authorities confirms their view that allowing exercise under such a discretion (i.e. where the trigger event for the exercise is not specified in the rules) will be considered the grant of a new right to acquire shares, and so will not be a qualifying exercise of EMI options. Where the discretion allows for only the partial exercise of awards, the remainder of the award can also be disqualified and lose tax relief as a result of this use of discretion.

In practice this can arise on transactions where there is a sale of shares with no full change of control of the company, such as a partial exit, secondary sale transaction or internal realisation event.

We recommend any employers considering using the discretionary powers included in their EMI plan rules to accelerate exercise of EMI options take advice on this point, before the exercise of any EMI options.

United Kingdom: Capital gains tax for non-UK domiciled individuals exchanging shares

Changes have been announced in the UK Autumn Statement 2022 in connection with UK resident but non-UK domiciled individuals who receive shares (or other securities) in a non-UK incorporated company (that would be close if incorporated in the UK) in exchange for shares (or other securities) in a UK incorporated close company which qualify for "paper for paper" capital gains tax treatment on the exchange. For example, such an exchange could take place on sale of the non-UK incorporated company where part of the share value is rolled/exchanged for shares in a UK incorporated company.

The non-UK incorporated company will now be deemed to have a UK situs for the purposes of income tax and capital gains tax. This means that income and gains arising in respect of the non-UK shares or securities (such as on later disposal) will be taxed in the same way as if they were situated in the UK (i.e., taxable in the UK regardless of any remittance basis claim). This means the remittance basis for non-UK domiciled individuals will not apply to income and gains from these shares or securities.

An election may be made to opt out of these provisions, by treating the original exchange as a chargeable capital gains disposal of the UK shares/securities.

Broadly, these provisions will apply to individuals who meet certain conditions, including owning or controlling more than 5% of the ordinary share capital of a company and/or being able to receive more than 5% of the amounts distributed by the company or paid on a winding-up.

This change is to be effective to exchanges on or after 17 November 2022.

We recommend any individuals planning to dispose of shares/securities in a non-UK incorporated company in exchange for shares/securities in a UK incorporated close company, should take specific tax advice in relation to their circumstances before undertaking such an exchange.

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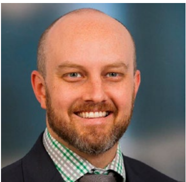

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