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Global Reward Update – Wrap up

April 2022

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.

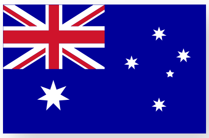
We hope this summary is useful, and if you have any questions please do get in touch with your usual Deloitte contact or any of the Incentives partners listed on the final page.

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

We realise that companies with employees in **Ukraine, Russia and Belarus** are currently facing many challenges as a result of the conflict in Ukraine, and want to provide a brief comment on the delivery of incentives. Some employers may be finding it difficult to have certainty about the location of employees or how long they have spent in certain jurisdictions, as they may have been displaced due to the conflict.

Furthermore, some may be considering the practicalities of delivering incentives due to the evolving position of sanctions and other restrictions. There have been some proposed income tax changes in **Russia** that we expect may impact equity arrangements and we will publish a Global Reward Update once details have been confirmed. On that basis, should you have any upcoming equity activity in Russia, please feel free to reach out if you would like to discuss the latest positions and how they may impact your company.

Global tax updates



Australia: Changes to deferred income tax point for ESS

We were happy to see that the Australian government's proposal to remove cessation of employment as an early income tax point for Employee Share Schemes (ESS) has now received Royal Assent.

The revised tax treatment will apply to all ESS awards granted (or not yet taxed) from 1 July 2022 onwards. Background information regarding this change can be found in our update from June 2021 (here is a link) and Global Wrap Up Update from December 2021 (here is a link).

If you have not done so already, **we recommend** employers consider the impact of this change on the practical operation of their ESS plans, in particular the communication of cash or share delivery alternatives for Australian participants.

Canada: Delay to additional trust reporting requirements

The implementation of additional reporting requirements for non-resident trusts, which were outlined in our Global Reward Update back in 2018 (here is a link), have been delayed until the end of this year. The update is anticipated to apply for all trust tax years ending after 30th December 2022.

Under the proposed legislation, every trust required to file a T3 return must disclose information which includes the name, address, date of birth, jurisdiction of residence and taxpayer identification number for each trustee, beneficiary and settlor of the trust. The proposed legislation also expanded the range of trusts required to file returns and imposed significant financial penalties in the event of non-compliance.

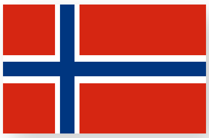
If you have not done so already, **we recommend** employers consider gathering the requisite information and keeping it on file, as well as ensuring that, at a minimum, copies of trust indentures are on file.

China: Extension of preferential tax policies

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

This includes an extension of the preferential tax treatment available for Chinese resident taxpayers receiving equity incentive income. This preferential treatment and the existing eligibility requirements, will continue until the end of 2022.

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.



Norway: Guidance provided regarding Employee Share Schemes taxation

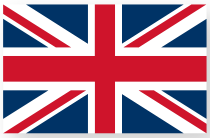
The Norwegian Directorate of Taxes have issued two interpretative statements providing guidance on the Kruse Smith judgment. The statements considered (1) whether capital gains on shares acquired by employees could be taxed as salary income, and (2) whether a reduction in the purchase price could be regarded as a loan rather than a taxable discount. Based on the two statements issued, our view is that it will become more challenging to use and support the Kruse Smith model, and therefore the conventional capital gains and taxable discount approaches are more defensible. For more information please see the article here.

We recommend employers consider if this clarification impacts their current tax treatment of equity received by employees in Norway.

Singapore: Proposed increase in the top marginal income tax rate schemes taxation

Singapore's Minister for Finance has proposed an increase in the top marginal income tax rate from 22% to 24%, effective from 1 January 2023 (generally Singapore taxes on incentive income chargeable in the 2023 year will be payable in the 2024 year of assessment). This highest marginal income tax rate is expected to apply to resident individuals with chargeable income exceeding SGD 1 million. Non-resident individuals will be taxed at the higher of (i) a flat rate of 15% or (ii) the new progressive resident tax rates.

Employers may wish to consider if this increased highest marginal income tax rate is a factor for employees deciding between using the 'tracking option' or being subject to the deemed exercise rules, when leaving Singapore permanently or ceasing employment with a local entity. Employees subject to deemed exercise pay income taxes at the point of departure, instead of the incentive tax point which is likely to be later.

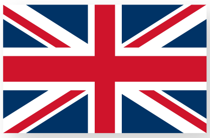


United Kingdom: Rate changes and intention to review CSOP

The UK spring statement confirmed the National Insurance Contributions (NIC) rate changes previously announced will apply from 6 July 2022 as planned, but with an increase to the primary threshold and the Class 4 lower profits limits to mitigate the impact on lower earners.

Plans were also announced to reduce the basic rate of income tax (other than dividends) from 20% to 19% with effect from the 2024/25 tax year. For Scottish taxpayers, the proposed change in income tax rates will only be applicable to savings income (other than dividends).

The UK government's review of the Enterprise Management Incentive (EMI) scheme has concluded that the current scheme remains effective and appropriately targeted. However, it will consider if the Company Share Option Plan (CSOP) should be reformed to support companies as they grow beyond the scope of EMI. It is not clear whether the UK government intends to publish a report of its review or the expanded scope of the EMI review and, if it does, when these will be published. **We will keep this area under review and issue further updates as more information is released**



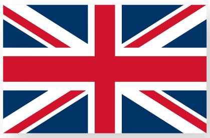
United Kingdom: Extended share valuation period

HMRC have extended the period for which an agreed valuation of unquoted shares will remain valid for the purposes of grants under a tax-advantaged share scheme from 90 days to 120 days.

We recommend employers agree a valuation of unquoted shares with HMRC before:

- the grant of Enterprise Management Incentive (EMI) options;
- the grant of options under a Company Share Option Plan (CSOP) or Save As You Earn (SAYE) share option scheme; or
- the award of shares under a Share Incentive Plan (SIP).

As unquoted companies may need time to manage the administration of share scheme awards, the extension to 120 days is helpful. However, companies should note that a valuation agreement cannot be relied upon if there is a substantial change in the company's circumstances or market situation during the 120-day period.



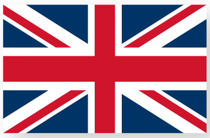
United Kingdom: Valuation guidance for SIP

HMRC have issued new guidance on valuing shares acquired under Share Incentive Plans (SIP). The key amendment to the guidance is to allow the following approaches for determining the market value of partnership shares:

- Where shares are purchased on one day only in a single purchase, the actual amount paid for the shares acquired can be used as the market value, and
- Where shares are purchased on one day only but in multiple trades, the average of the actual amounts paid for the shares acquired can be used as the market value.

Please use this link to access the guidance.

We recommend employers operating SIPs discuss with their administrator whether to use either of these approaches to valuing partnership shares, and consider whether any updates are needed to plan documentation or communications.



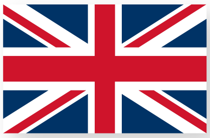
United Kingdom: End of the COVID-19 easements for EMI and SAYE

HMRC have ended the EMI and SAYE easements that were announced in June and July 2020 in response to the coronavirus (COVID-19) pandemic.

Easements were introduced for EMI to help participants unable to meet the working time requirement because of reasons connected to COVID-19. Where a participant was on furlough, reduced working hours or unpaid leave, this could be regarded as good working time for the purposes of the working time requirements. From 6 April 2022, the EMI easement is no longer available.

The SAYE easements created an extended savings contribution holiday, which allowed participants who were furloughed or on unpaid leave due to COVID-19 to pause their monthly contributions for a longer period than normal, where those additional months are missed due to coronavirus (employees can generally delay monthly contributions by up to 12 occasions in total). Any temporary postponement of contributions would have delayed the 3 or 5 year maturity date by the total number of months missed, including any additional months missed as a result of coronavirus. It is expected that very few individuals would now be eligible for this easement, although anyone who is eligible will still be able to access the easement if their savings contract was in place before 6 April 2022. Any savings contracts entered into from 6 April 2022 will be subject to a new prospectus and the EMI easement would not be available.

As SAYE participants may have a variety of maturity dates and six month option exercise windows, **we recommend** employers work with their administrators to carefully monitor the impact of participants who have missed SAYE contributions and consider the impact on when those individuals will be able to exercise their options.



United Kingdom: Growth securities case law

Jones Bros Ruthin (Civil Engineering) Co Ltd and another v HMRC [2022] UKFTT26 (TC)

The First-tier Tribunal has determined that awards made under a growth securities ownership plan (GSOP) were earnings from employment, and not "employment-related securities" for tax purposes.

HMRC argued that the GSOP was a marketed scheme intended to remunerate participants in a way that avoided income tax and NICs. GSOP awards were structured to fall within the definition of "contracts for differences or contracts similar to contracts for differences" (CFDs), which would mean they would be treated as restricted securities. The awards were acquired for a low initial market value and section 431 elections were made on acquisition so that the growth in value would be subject to capital gains tax. HMRC argued that the CFD structure was a disguised and artificially contrived method of paying money to participants.

The tribunal heard expert evidence on the typical commercial structure and terms of CFDs. It held that the GSOP award structure lacked the fundamental features necessary for CFDs, including exposure to downside risk and a connection with the fluctuation in value of the underlying asset. The predominant purpose for using the structure was to obtain a tax benefit.

The tribunal found that the purpose of the GSOP scheme was to pay cash bonuses that were not subject to income tax. It held that the payments should be treated as earnings from employment and so taxed when paid.

The case demonstrates that HMRC will focus on substance over form, when considering the effectiveness of remuneration arrangements. It also reiterates the importance of structuring incentive arrangements with genuine commercial purpose and illustrates that schemes implemented in the past (which may previously have been considered acceptable) may not withstand HMRC scrutiny in the current tax climate. **Please contact us** if you would like our as istance considering how this case law may impact your incentive arrangements.

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