



Getting share incentives right Rob Jennings

Welcome & Introduction

-  UK taxation of conditional share awards
-  US social security – changes and impact
-  Employment related securities annual return – 2024/25
-  HMRC activity

UK taxation of conditional share awards

What charging provision applies?

Awards are 'rights to acquire securities' (Chapter 5)

Awards are not 'rights to acquire securities' (S62)

- When determining which provision applies, need to consider
 - Are the awards defined as being a 'right to acquire securities'?
 - What accounting treatment applies?
 - Is the intention/practice to settle in shares? Is there a cash alternative?
- HMRC has reiterated that the tax position is dependent on facts and circumstances (ERSM110025)

While the **income tax** treatment is similar under Chapter 5 and S62, there are significant differences in the NIC treatment, the calculation of CGT base cost, the application of the remittance basis and deductibility for Corporation Tax purposes. Reporting on the UK Employment Related Securities annual return is also different

National Insurance

- **Chapter 5** – NIC apportionment – NIC applies to UK insured period only
- **S62** – NIC on 100% of earnings if UK insured when earnings received
- **NIC elections** can only be made if award is taxed under Chapter 5

CGT base cost

- **Chapter 5** – base cost equal to amount liable to UK income tax – CGT may be due on shares disposed of to settle UK PAYE (but FTCs may be available) plus impact on share pooling – at a minimum a reporting issue and may give rise to additional UK tax
- **S62** – base cost equal to market value of shares on acquisition

Remittance basis

- **Chapter 5** – share award evaluated separately from earnings – overseas workday relief will be lost entirely if UK shares (subject to change from April 2025)
- **S62** – in principle, share related income aggregated with all other general earnings

Corporation tax

- **Chapter 5** – Potential CT deduction on full gain if employee resident on grant of award, otherwise apportionment likely
- **S62** – CT deduction on an apportioned basis only

US social security (FICA and Medicare) – changes and impact

What was previous FICA position share awards?



- No specific regulations in US tax code as to sourcing of FICA for compensation earned over multi-year period both inside and outside the US
- In many cases, companies thought it reasonable to levy US social taxes on an all or nothing basis - and not to apportion for FICA purposes for internationally mobile employees
- Although lack of actual legal provisions, this was broadly accepted position

What changed following 2023 CCA decision?



- IRS published a Chief Counsel Advice (CCA) in 2023 providing guidelines on FICA position for outbound US citizens/residents on Restricted Stock awards (RSU)
- **New IRS position:**
 - FICA is due on US source wages even if individual is not US employee upon vest of RSU
 - Allocation method used to determine amounts subject to FICA is similar to income tax **sourcing** rules

US social security (FICA and Medicare) – changes and impact

What is the impact of this US change in position for UK Global Mobility population?

Guidelines

- The CCA relates to a specific tax payer and fact pattern and does not have precedential value as such
- The law has not changed but expectation is that technical analysis in CCA will be considered by local IRS agent when assessing a taxpayer FICA positions
- Deloitte US view – in the event of an audit, any approach that does not follow the CCA may be subject to challenge

Considerations

- Although it concerns US social security, this might have a substantial impact on UK Global Mobility given the high level of movement between US and UK
- CCA only refers to RSU so question remains if guidelines can also be applied to other forms of share awards and/or cash awards
- CCA only mentions outbound employees. However, Deloitte US now think it supportable to apportion US FICA for employees moving in to the US
- Impact of totalization agreements is unclear

Actions

- Mapping current positions taken on FICA for share and cash awards earned over multi-year period
- Mapping impacted Global Mobility population from UK / Global perspective
- Seek specific advice to understand risks and take appropriate positions

Employment related securities annual return – 2024/25

No change for the current tax year – yet...

What?

Employment Related Securities (ERS) return – **annual employer reporting obligation** whereby transactions involving shares, securities and options are reported to HMRC. This includes vesting (delivery) and/or exercise of share settled awards.

When?

ERS return must be filed online with HMRC by 6th July following the end of the relevant tax year (i.e. July 6th 2025 for UK tax year 2024/25).



Considerations?

- Correct upfront **registration** of new share plans or amendments to existing plans with HMRC
- **Data gathering** – identify internal stakeholders (HR, payroll, legal, tax,...) and start well in advance collecting the relevant information required to complete the ERS return
- **Data review** – identify reportable share transactions, identify relevant population and in particular International Mobile Employees (sourcing period)
- Make sure ERS is accurate and **in line with PAYE/NIC records** and keep all back-up documentation

HMRC activity

A very modest uptick in HMRC activity

Why?

We have seen a modest increase in HMRC audit activity.

No set approach

- In one case, HMRC asked a generic list of questions about the plans operated by a company.
- In another case, HMRC asked about specific transactions reported on ERS returns and asked for back up documentation – plan rules and award documents, payslips, apportionment calculations etc



Actions

Need to ensure that robust systems and processes are in place for payroll reporting and share plan annual returns (whether in the UK and/or other locations)

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