

UK Tax-Advantaged Stock Plans

April 2014

Brave New World: Self-Certification of UK Tax-Advantaged Stock Plans

In our March update we brought you news of changes in the administration of UK tax-advantaged stock plans. Further details of these new rules were announced in the recent UK fiscal statement, known as the "Budget", and the new regime took effect from 6 April 2014. The new rules apply to all existing and new "tax-advantaged" (previously "approved") stock plans, including the Share Incentive Plan ("SIP") and the Save-As-You-Earn share option plan ("SAYE") (both of which can be used as part of a global s.423 Employee Stock Purchase Plan), and the Company Share Option Plan ("CSOP") (the UK equivalent to an ISO). There are also additional changes affecting non-tax advantaged stock plans.

What should I be doing now?

From 6 April 2014 (the start of the 2014/15 UK tax year), corporations are required to "self-certify" their UK tax-advantaged stock plans online. This applies both to existing plans as well as any new plans. Annual returns for the current and future tax years (for both tax-advantaged and non-tax-advantaged plans) will also need to be submitted online. Further detail is set out below:

Self-certification of UK tax-advantaged stock plans

- New UK tax-advantaged stock plans no longer require the prior approval of HM Revenue & Customs ("HMRC"). Instead, corporations must register new UK tax-advantaged stock plans online with HMRC and confirm that:
 - the requirements of the relevant legislation are met in relation to the plan; and
 - if the declaration is given after the time the plan is first operated, those requirements were met in relation to the first awards/option grants and have been met in relation to the plan at all times since then.
- The deadline for such "self-certification" is 6 July after the end of the UK tax year in which the new plan is first operated.
- Existing tax-advantaged stock plans must be registered with HMRC and "self-certified" by 6 July 2015. The practical implications of this are:
 - corporations must self-certify that the requirements of the relevant legislation are met in relation to the plan and that those requirements have been met at all times since 6 April 2014;
 - there are still a number of issues to be addressed and further guidance is expected from HMRC to clarify the position with regard to self-certifying existing plans. HMRC may have approved a plan with provisions that are not in line with the revised legislation, or HMRC's current guidance or interpretation of the legislation. It is expected that HMRC guidance will confirm that a corporation can self-certify any such UK tax-advantaged stock plans without needing to make changes. This is helped in part by the legislation, which gives automatic effect in existing previously-approved plans to a number of legislative changes, including the automatic removal of any provision requiring HMRC's approval or agreement (except where it is still required by the legislation); and

- HMRC has suggested a timetable for a staged approach to registration and self-certification based on a corporation's place in the alphabet. We expect that a large number of corporations (with names beginning with A to E) falling within the first period in that timetable will wait before taking action due to the uncertainties referred to above.

- Changes to "key features" and any variation of share capital affecting SAYE or CSOP plans made after 6 April 2014 must also be notified to HMRC, together with confirmation that the alteration or variation has not caused the requirements of the relevant legislation to be breached.

Online registration and filing

In order to be able to "self-certify" its UK tax-advantaged stock plans, a corporation must register its plans online with HMRC. As noted above, annual returns for all UK stock plans – i.e. both tax-advantaged and non-tax-advantaged plans – will also move online for 2014/2015 and future tax years. Corporations also, therefore, need to register all UK stock plans for this purpose (although they will not have to "self-certify" non-tax-advantaged plans). The effect of this is:

- Corporations should ensure they are set up for online registration and filing. This will operate through the system for other more general tax withholdings, known as "PAYE online". Corporations should also check that the appropriate people have access to the system, including authorising access for agents. Corporations themselves must register their stock plans with HMRC but agents can assist with online filings, such as annual returns.
- The first online annual returns (for UK tax year 2014/2015) will be due by 6 July 2015, so corporations must register plans before that date.



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What other changes should I be aware of?

The increases in the limits for both SAYE (up to £500 per month from £250) and SIP (up to £3,600 (previously £3,000) of Free Shares and £1,800 (previously £1,500) of Partnership Shares per tax year) took effect from 6 April 2014.

Other changes announced as part of the Budget and arising out of the much publicised Office of Tax Simplification review of the UK's tax-advantaged stock plans are also now in force.

Corporations should consider the revised legislation and guidance (when it is published) to determine whether any changes to their existing UK tax-advantaged stock plans will be required (or would be desirable). If UK tax-advantaged stock plans were not updated to reflect changes made by Finance Act 2013, we recommend corporations consider whether such changes are now appropriate so they can be adopted at the same time (later this year).

Briefly, the additional changes announced for UK tax-advantaged stock plans include:

- the introduction of a new purpose test: the purpose of the plan must be to give employees a continuing stake in the corporation by providing benefits only in accordance with the relevant legislation, and must not provide participants with a cash alternative to shares. This applies to any new UK tax-advantaged stock plans established, and to any existing UK tax-advantaged stock plans if a change is made to a "key feature" of such a plan, on or after 6 April 2014;
- allowing a corporation to include provisions in its SIP requiring a SIP participant to sell Partnership Shares or Dividend Shares in specified circumstances for a consideration at least equal to the amount applied in acquiring the shares on behalf of the participant or, if lower, the market value of the shares at the time they are offered for sale;
- specifying the terms which must be stated when a CSOP option is granted and notified to an optionholder as soon as practicable following grant;
- if SAYE and CSOP plans permit the exercise of options granted on or after 6 April 2014 following the optionholder's death, fixing the exercise period at 12 months (further guidance is expected to clarify the interaction between this and certain other provisions);
- the introduction of provisions allowing corporations to permit tax-advantaged exercise of SAYE and CSOP options within a period of 20 days before a change of control, or 20 days after a change of control, as a result of which the corporation's shares cease to meet the required conditions set out in the legislation;
- in relation to a tax-advantaged exercise of SAYE and CSOP options before the third anniversary of grant after certain specified corporate events, extending the list of events to include a shareholder-approved reorganisation of a non-UK corporation's share capital. A change is also made to permit options to be "rolled over" in such circumstances; and
- changes to the equivalency and valuation requirements for a "roll over" of SAYE and CSOP options and a variation of share capital affecting SAYE and CSOP options.

Conclusion

With so much change taking place, particularly to the administration and compliance obligations in respect of UK tax-advantaged stock plans, it is inevitable that some uncertainty remains. We are waiting for additional guidance to be published by HMRC to be able to understand further the changes and the implications for corporations and administrators of UK tax-advantaged stock plans. We expect there to be a continued dialogue with HMRC, accompanied by a series of further updates, before it is fully understood what is required. We hope this will be a collaborative process with corporations, administrators, advisers and HMRC working together to ensure the best outcome.

Corporations operating UK tax-advantaged stock plans should ensure that they keep up-to-date with the UK legislative changes, related HMRC guidance and reporting requirements to ensure that financial penalties are avoided and that the tax-advantaged status of their plan is retained.

We will issue a further update once HMRC's guidance has been published.

Update

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If you would like us to help you, or to discuss this in more detail, please contact one of the following:



Matthew Findley
Partner

T: +44 (0)207 490 6554
M: +44 (0)7500 102 039
E: matthew.findley@pinsentmasons.com



Lynette Jacobs
Partner

T: +44 (0)161 250 0198
M: +44 (0)7717 488467
E: lynette.jacobs@pinsentmasons.com



Judith Greaves
Consultant

T: +44 (0)113 294 5232
M: +44 (0)7767 224098
E: judith.greaves@pinsentmasons.com



Karen Davidson
Legal Director

T: +44 (0)141 567 8535
M: +44 (0)7738 892122
E: karen.davidson@pinsentmasons.com



Suzannah Crookes
Legal Director

T: +44 (0)113 294 5233
M: +44 (0)7585 996328
E: suzannah.crookes@pinsentmasons.com

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