Update

Pinsent Masons

UK Tax-Approved Stock Plans

March 2014

Major Changes to UK Tax-Approved Stock Plans – Are You Ready?

The upcoming UK fiscal statement scheduled for 19 March 2014 - known as the "Budget" - will herald further changes to UK tax-approved stock plans. These changes include major revisions to the way in which existing UK tax-approved stock plans are administered by the UK tax authorities. The process for establishing such plans is also about to undergo significant change. Any corporation operating a UK-tax approved stock plan - including as a sub-plan to its global plan - should now familiarise itself with the new rules (known as "self-certification"). This is important in terms of both efficient plan administration and ensuring that appropriate processes are in place to manage these changes in order to avoid the imposition of financial penalties or any risk to the tax-advantaged nature of the plan.

Which UK stock plans will the new rules apply to?

The new rules will apply to all existing and new UK "approved" plans. This includes the Share Incentive Plan ("**SIP**") and Save-As-You-Earn share option plan ("**SAYE**") (both of which can be used as part of a global s.423 Employee Share Purchase Plan) and the Company Share Option Plan ("**CSOP**") (the UK equivalent to an ISO).

What is happening?

The UK has historically made its tax-approved stock plans subject to the prior approval of H.M. Revenue & Customs ("**HMRC**"). It has also required detailed annual paper returns in respect of any such plan for each UK tax year (which runs from 6 April to 5 April).

From 6 April 2014, the way in which such plans are registered and established will change and the annual return process will move online for the 2014/2015 and future tax years. The effect of this will be that:

- Companies must notify HMRC of their tax-approved stock plans and "self-certify" that the plan has met, and continues to meet, the relevant statutory requirements. **This is the case even though the plan will previously have been approved by HMRC. Companies must do this by 6 July 2015**.
- New tax-approved stock plans will be introduced without prior HMRC approval. Companies will instead have to notify HMRC of the plan and "self-certify" by 6 July after the end of the tax year in which the plan is first operated – so by 6 July 2015 for a new plan introduced after 6 April 2014. Changes to "key features" of existing plans will also be made without prior HMRC approval.
- Annual returns will need to be submitted online in conjunction with certain other more general tax withholding ("**PAYE**") filings. This also applies to the return made in respect of non-tax approved plans – known as "Form 42".

How do I comply?

Both the registration of existing and the establishment of new UK tax-approved stock plans and the annual returns will need to be delivered electronically in a manner prescribed by HMRC. Other changes are also proposed to reflect the shift to "self-certification": HMRC has new powers to impose penalties, to determine that a stock plan is no longer to be treated as tax-approved and to make enquiries into the operation of the stock plan. New appeal provisions will also be introduced. These changes will broadly align the provisions for tax-approved stock plans and other employment-related securities, and should ease the administrative burden for those responsible for operating employee stock arrangements.

What else do I need to know?

The UK has introduced a raft of changes to its stock plan legislation over the last 12 months or so, including the welcome increases from 6 April 2014 in the limits for both SAYE (up to £500 per month from £250) and SIP (up to £3,600 of "Free Shares" and £1,800 of "Partnership Shares" per tax year from £3,000 and £1,500 respectively).

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Further changes will be detailed as part of the upcoming Budget. Many of these changes have arisen out of the much publicised Office of Tax Simplification ("**OTS**") review of the UK's tax-approved stock plans and how they might be made more attractive.

What should I be doing now?

Corporations need to be aware of how the proposed changes may impact their UK tax-approved stock plans and keep up-to-date with developments. In particular, companies should:

- put in place processes to register and self-certify both existing and, in time, new tax-approved stock plans after 6 April 2014;
- review their existing plan rules and consider whether changes would be appropriate to reflect the new legislation that has been introduced over the last 12 months or so;
- if so, consider whether, for consistency, any equivalent changes would be appropriate to "unapproved" or "non tax-approved" plans which are operated alongside a tax-approved plan;
- talk to their plan administrators and any other relevant service providers to ensure that systems take account of the changes; and
- review employee documentation and communications. Employee booklets and FAQs, in particular, are likely to require some degree of updating. Some of the changes will apply to existing as well as new awards, and so suitable communication (whether in paper or electronic format) will be required and should be planned and budgeted for.

What's next?

Further detail on the "self-certification" process will be published as part of the UK Budget on 19 March 2014. Further legislative changes arising out of the OTS review are also expected at that time. We will issue an update to this bulletin once we have assessed the impact of the new material.

Conclusion

This is a time of unprecedented change for UK stock plans. While further compliance obligations will not be welcome given the increased compliance burden being placed on equity plans globally, adapting to the UK changes will be critical to the ongoing effectiveness of UK tax-approved stock plans.

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

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