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A Quarterly Look at Incentive and Compensation Issues Around the World

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In this issue

Important Changes to Employee Share Plans in UK

Jeremy Glover
Partner – London
Tax, Benefits & Wealth Planning

Companies with employees in the UK will need to consider a number of tax changes proposed under the draft Finance Bill 2013, which has just been published. A number of very exciting changes will make it much more attractive to offer employee share plan participation in the UK.

The following changes will be made:

- Certain companies will be able to grant share options subject to an effective 10 percent tax rate
- UK-approved share plans will be simplified and available to many more companies
- Employees will be able to waive certain employment law rights in exchange for tax relief for new shares

A potential 10 percent tax rate for employees of smaller companies In the UK, capital gains are subject to capital gains tax (CGT) at rates that depend on the employee's marginal income tax rates (18 percent or 28 percent). Currently, employee shareholders who hold at least 5 percent of the capital of the company for at least 12 months may be entitled to Entrepreneurs' Relief, such that the effective CGT rate is only 10 percent.

Usually, because of the 5 percent requirement, Entrepreneurs' Relief is only really available to senior employees. The new legislation will extend Entrepreneurs' Relief to employees acquiring shares on the exercise of EMI options even if they do not hold 5 percent of the company's shares. Further, the 12-month holding period will run from grant of the EMI option and not exercise.

The relief extension will apply to eligible shares acquired on or after 6 April 2012, and disposed of on or after 6 April 2013.

Opportunity – This is a huge opportunity for employers that qualify under the EMI regime. EMI options are already extremely tax effective, but now they are essential where companies are seeking to allow employees to acquire shares. Employees with existing EMI options may wish to postpone any sale of their shares until after 6 April 2013 to take advantage of the extended relief.

Opportunity
Companies should consider anew whether to implement UK-approved share plans. Approved option plans are often considerably cheaper than other share plan arrangements since gains made by employees are normally free of income tax and National Insurance Contributions (NICs), and instead are only subject to CGT at lower rates.

Simplification of UK-approved share plans The Finance Bill 2013 makes a number of improvements to UK-approved share plans:

1. Many more companies will be able to use their shares for approved share plans from 6 April 2013. This includes Company Share Option Plans (CSOPs), Save-As-You-Earn Plans (SAYE) and Share Incentive Plans (SIPs). Companies with restrictions on their shares (i.e. most private companies) used to struggle to get approval because of legislative requirements as to the shares that could be used. Now, companies will be able to use almost any shares for their approved plans. This means that many more companies will qualify for approved plans.

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Important Changes to Employee Share Plans in UK

2. Employees with "material interests" in company shares (25 percent) may now participate in SAYE and SIPs, although the material interest threshold will still apply to CSOPs (at a higher percentage of 30 percent).
3. Certain good-leaver provisions will be harmonised and extended. In particular, options will be able to be exercised free of income tax and NICs within six months following a change of control or transfer of business. This will be good news for employees who might otherwise lose the tax relief because their employer company/business has been sold.
4. EMI options may be exercised for a period of 90 days rather than the current 40 days following a disqualifying event (such as a change of control to a corporate buyer or termination of employment).

New Employee Shareholder CGT exemption The Finance Bill 2013 will include new relief for shares subscribed by an employee on or after 6 April 2013 if he or she agrees to adopt the proposed new "employee shareholder" status and lose some employment law protection, such as certain rights to claim unfair dismissal. The first £2,000 worth of shares are expected to be free of income tax and NICs, and there will be a full CGT exemption for up to £50,000 worth of shares.

Sophie Borenstein
Partner – Paris
Tax, Benefits & Wealth Planning

Significant Changes to Stock Options and RSUs (free shares) in France

Currently the acquisitions gains realised on stock options and on RSUs may benefit from a flat taxation of 18 percent, 30 percent or 40 percent, depending on the gain realised and the holding period.

The draft of the French Finance bill for 2013 modifies completely the taxation of the acquisition gain. Although the proposal should be finalized and discussed before the French Senate before the end of the year, the modification, as already adopted by the French National Assembly December 14, 2012, should have a huge impact on the taxation of stock options and RSUs granted as from September 28, 2012.

The draft of the bill proposes to replace the flat taxation of these acquisition gains by the application, on the gain, of the income tax progressive rates (knowing that a new bracket of 45 percent has been created for the portion of net taxable income exceeding €150,000 per year and per person). The family quotient system will remain applicable for shares held for more than four years.

In addition, the capital gains on the sale of the related shares would also be subject to progressive rates of the income tax. However, the capital gains would benefit from a specific allowance, depending on the holding period with a maximum allowance of 40 percent (20 percent between two and four years of holding; 30 percent between four and six years of holding; and 40 percent after six years of holding).

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Significant Changes to Stock Optoins and RSUs in France

Besides, from the social standpoint, such gains would be subject to the supplementary social security contribution (CSG) applicable to compensation income (instead of the CSG on investment income). Such CSG would be partially deductible from the taxable income for 5.1 percent. The specific employer's and employee's contributions will remain applicable.

Craig P. Tanner
Partner – San Francisco
Tax, Benefits & Wealth Planning

Year-End Global Stock Plan Reporting Requirements

The regulatory requirements for global stock plans seem to increase every year. In many countries, either the issuing company or the local subsidiary is responsible for submitting tax, securities and/or currency exchange reports annually. Below is a list of common annual reporting requirements.

December 31

China – SAFE Annual Quota If your company has completed the registration requirements necessary to administer employee stock plans in China, the annual quota report for the upcoming year is due. The report will be filed by the designated agent for the stock plans in China.

January 15

Thailand – Annual Securities Report Annual report by companies that offer stock options to employees in Thailand is due. The companies must report option activity to the Thai SEC within 15 days of the "closing date of sale." For reporting purposes, the closing date of sale for options is the last day of each calendar year (i.e., Dec. 31) in which the stock awards vest.

January 31

Malaysia – Tax Report (Form BT/ESOS/2005) Annual report of RSU share distributions, option exercises, and stock purchases that took place in the prior calendar year.

Philippines – Securities Report Annual report for companies that rely on a securities exemption under section 10.2 of the Philippines Securities Code. (The Philippines' SEC does not specify a filing date for the report; however, we recommend that the filing be made no later than the end of January each year for the prior calendar year.)

United States – Tax Report Annual information statement report for employees with ISO exercises and/or ESPP share transfers.

France – Annual Salary Statement (Form DADS) Annual salary statement with information about share activity for tax qualified options and RSUs, as well as non-qualified stock awards.

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Year-End Global Stock Plan Reporting Requirements

February 28

United States – Tax Report Information statements concerning ISPs and ESPPs on IRS Forms 3921 and 3922 due for paper filers (for electronic filers, including companies with 250 or more returns, the filing deadline is March 31).

March 1

France – Tax-Qualified Options – Exercise and Share Holding Report Statement to the applicable employees and tax administration office on tax-qualified option exercise activity; and the sale or transfer of shares in violation of the option holding period.

France – Tax-Qualified RSUs – Vesting and Share Holding Report Statement to the applicable employees and tax administration office on vesting of tax-qualified RSUs for the prior calendar year; and the sale or transfer of RSU shares in violation of the holding period.

March 31

Vietnam – Exchange Control Report Annual disclosure by companies that have obtained approval from the State Bank of Vietnam (SBV) to offer stock awards. The report should include information about (a) option exercises, (b) RSU vesting events, and (c) amounts paid to employees through the stock awards during the past fiscal year.

Ireland – Stock Award Activity Report Irish employers must file an annual report on all stock award vesting during the prior year.

Israel – Tax Report Annual report of all stock award activity. The local trustee for the stock plans may make this filing for the company.

United States – Tax Report Information statements on IRS Forms 3921 and 3922 due for electronic fliers (required for companies with 250 or more returns).

Recent Happenings

ShareComp 2012 Recap

Reed Smith is a founding sponsor of ShareComp, a virtual conference for the share-based compensation industry. On December 12, 2012, the live event for ShareComp 2012 was held. During the live event, several presentations on the best practices for designing, implementing, and managing share-based compensation programs were scheduled. **Jeremy Glover** from our London office spoke about the cutting-edge developments for equity in the new regulatory environment in the UK.

Access to the archived materials and presentations from ShareComp 2012 is available to Reed Smith's clients and friends for the next 12 months. If you would like access to these materials and presentations, please contact us and we will provide you with the registration information.