

Bird & Bird

INN GROUP TRAINING

Developments in employee incentives

Colin Kendon,

Partner, Head of Employee Incentives & Benefits

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Today's Presentation

Nuttall Review

Shares for Rights

EMI – FA 2013 and proposed changes in 2014

Approved plans – FA 2013 and proposed changes in 2014

Unapproved plans – FA 2014 changes

Note: Not covering CRD 4, directors remuneration reporting, corporate governance, cases or any other developments!

NUTTALL REVIEW

Published at first annual employee share ownership day in July 2012

Nuttall Review – Own Share Purchases

- Companies Act 2006 (Amendment of Part 18) Regulations 2013 came into force on 30 April 2013
- Amendments made it easier for a company to buy back its own shares for the purposes of an employee share scheme
- Companies can authorise multiple off-market share buy backs by ordinary resolution pursuant to an employees share scheme (s693A CA 2006)
 - General authority, no need to circulate contracts, resolution must state:
 - Maximum number of shares; and
 - Maximum and minimum share price (particular sum or formula but "without reference to any person's discretion or opinion")

Nuttall Review – Own Share Purchases

- Also, permits private companies to:
 - Buy back shares using small amounts of cash (not exceeding the lower of £15,000 or 5% of share capital in any financial year) that does not have to be identified as distributable reserves, where authorised to do so by its articles (s692(1)(b) CA 2006). Note: applies to any buy back not just an employees' share scheme
 - Finance buybacks for the purposes of, or pursuant to, an employees' share scheme out of capital, subject to the signing of a solvency statement and special resolution and provided that the payment out of capital is made no earlier than 5 weeks and no later than 7 weeks after the relevant shares are surrendered (s720A CA 2006)
 - Pay for shares in instalments if for purposes of an employees' share scheme (s691(3) CA 2006)

Nuttall Review – CGT relief for disposal of controlling interest to EBT

- New s236H-P TCGA 1992 for disposals on or after 6 April 2014
- Claimed by person (other than an company) disposing of ordinary share capital to trustees of a settlement
 - Disposal is no gain/ no loss, section 17 TCGA disapplied
- Requirements for relief:
 - Company must be trading company or principal company of a trading group
 - Trust meets the "all-employee benefit" and "limited participation" requirements
 - Trust acquires a controlling interest in the company in the tax year of the disposal

Nuttall Review – CGT relief for disposal of controlling interest to EBT

- All-employee benefit requirement, trust must not allow:
 - Any trust property to be applied other than for the benefit of all "eligible employees" and on "same terms"
 - Trustees to apply the trust fund by creating another trust, or transferring to another settlement
 - Trustees to make any loans to beneficiaries
- Same terms rules allow trustee to:
 - differentiate on pay, length of service or hours worked
 - exclude new starters up to 12 months
 - On a "disqualifying event" trustees are treated as selling and re-acquiring trust shares thereby crystalizing gains
 - Government consulting on deeming provisions to allow existing trusts to qualify

Nuttall Review – relief for bonus payments of up to £3,600

- New s312A-F ITEPA 2003 with effect for payments received on or after 1 October 2014
- Income tax relief on qualifying payments made by indirectly employee-owned companies
- Relief does not extend to class 1 NICs, so these are still payable
- Qualifying bonuses fall within provisions of a qualifying benefit and so a corporation tax deduction is available for contributions to an EBT under sections 1290 to 1296, CTA 2009

Nuttall Review – relief for bonus payments of up to £3,600

- Requirements to qualify for relief include:
 - Employer must be trading company or part of trading group
 - Controlling interest in the company (or in a group, in the principal company) must be held by a qualifying EBT
 - Payments to employees must not exceed £3,600 per tax year
 - Payment must not consist of regular wages or salary, not made by a service company must be made under a scheme in which:
 - All employees must be eligible to participate (other than new starters – up to 12 months)
 - All employees must participate on similar terms (although awards can be differentiated on pay, length of service and hours worked)

Shares for Rights

What is an Employee Shareholder?

- A new employment status that has been available since 1 September 2013
- In exchange for reduced employment rights, Employee Shareholders are gifted shares in the company with an actual market value of at least £2,000 (hence the term "shares for rights")
- First £2,000 worth of shares are free of income tax and NICs
- First £50,000 worth of shares (measured when issued by reference to the unrestricted market value) are exempt from CGT
- Announced at Conservative Party conference on 8th October 2012
- Public consultation by Department of BIS
 - 5 out of 2009 responses were positive!

Legislation

Employment Legislation:

- Growth and Infrastructure Act 2013, section 31 amended the Employment Rights Act 1996 by inserting section 205A

Tax Legislation:

- Finance Act 2013, schedule 23 amended the tax legislation in 4 areas:
 - Income tax (s226A-D ITEPA 2003)
 - CGT (s236A-G TCGA 1992)
 - Corporation tax (amendments to Part 12 CTA 2009)
 - Employment Income (as it relates to benefits)

Key Conditions

- Participants must:
 - Give no consideration for the shares (other than agreeing to surrender their employment rights);
 - Be an employee or about to become one;
 - Be given prescribed information about the statutory employment rights to be surrendered and the rights attaching to the shares (usually set out in an "offer letter");
 - Wait at least 7 days after receipt of independent advice (provided at the reasonable cost of the employer) before entering into an employee shareholder agreement
 - Employees who have a "material interest" (25% of voting rights or, if the company is close, entitlement to 25% of assets on a winding-up) or have had such an interest in the previous 12 months can surrender their rights but do not qualify for tax reliefs

Key Conditions

- The shares:
 - Must be new issue and fully paid up;
 - Must be shares in the employer or *parent undertaking*;
 - May be subject to any vesting / forfeiture conditions;
 - May be any class (so non-voting growth shares are permitted)
- Share valuations may be agreed with HMRC in advance so it is possible to ensure the £2,000 minimum value requirement is satisfied
- Companies can pay up the shares out of distributable reserves (or by capitalising share premium or capital redemption reserves otherwise).
- Shares can be in any company (including subsidiaries)
- Shares may be offered on a discretionary basis

Employment Rights that an Employee Shareholder will not have

- Unfair dismissal rights BUT:
 - Employee retains right not to be unfairly dismissed on grounds of discrimination or health and safety
 - Retains right not to be unfairly dismissed automatically
 - Right not be subject to detriment on grounds of refusing to accept offer to become an employee shareholder
- Right to statutory redundancy pay
- Right to request flexible working, except in the 2 week period after a return from parental leave
- Certain statutory rights to request time off to train
- Will have to give an additional 8 weeks' notice (total of 16) to their employer if they intend to return early from maternity, paternity or adoption leave

Can Statutory Rights be Re-instated?

- Employers can offer a contractual substitute
 - BIS website says: employers can "*choose to offer contractual rights that are more generous than those provided for in statute*".
- Employee shareholders status continues after shares are sold
 - BIS website says: "*If an employee shareholder sells their shares their employment status does not change.*"
- Can an employer and employee can agree to restore full statutory employment rights before shares sold?
 - BIS website says: "*A change of employment status would require a change of employment contract to alter the employment status*".

Income Tax Treatment

- Normal rules apply so:
 - If shares are restricted need to make s431(1) election
- Participants treated as having given £2,000 consideration for the shares but no other consideration
- Income tax usually due on UMV of the shares in excess of £2,000
- PAYE and NIC apply if the shares are readily convertible assets
- Tax is a cash flow issue for participants
 - Consider paying cash bonus from corporation tax savings
- Tax relief for provision of independent advice (s326B ITEPA 2003)
 - Advice limited to "terms and effect" of employee shareholder agreement, tax relief limited to the advice excluding tax and an "explanation of the tax effects" of the employee shareholder agreement

Corporation Tax Relief

- Normal CT relief rules in Part 12 CTA 2009 apply
- Deduction for employer in AP of acquisition on amount assessed to income tax in hands of employees
- First £2,000 of consideration is ignored for these purposes
- Normal conditions apply so no deduction for subsidiary shares unless the parent is listed on a recognised stock exchange
- Deduction also available for cost of providing independent advice

CGT Tax Treatment

- First £50,000 worth of shares (measured by UMV on acquisition) is exempt from CGT on sale
- Relief on *first disposal by employee* of the shares
 - Usual re-organization rules do not apply, new shares do not qualify
 - Exchange is an exempt disposal, base cost equal to value of employee shareholder shares given as consideration for the new ones
- No relief from later income tax charges (such as sales at an over-value)
- Relief continues after cessation of employment (and possibly also after reinstatement of full employment rights!)
- The cap is per company, not per employee shareholder (so possible to have more than one employee shareholder agreement with different but un-associated companies)
- Separate pooling rules (if shares of same class sold on same day employee can choose to identify which type are disposed of)

Relief on Own Share Purchases

- A sale back to the issuing company (for cancellation or to be held in treasury) is exempt from distribution treatment (even if the shares were not held for 5 years) (s385A ITTOIA 2005)
- BUT relief only applies if:
 - Shares are employee shareholder shares; and
 - At the time of disposal the individual is NOT an employee or office-holder
- Sales to company taxed as a distribution otherwise
- Secretary of State has power to restrict terms of buy-back on employee leaving or ceasing to be an employee shareholder but no regulations issued to date and regulations can in any case only apply to agreements whereby the *company* can buy back the shares

Valuation Issues

- Form VAL 232 requires:
 - Articles with proposed amendments marked;
 - Offer letter;
 - Employee shareholder agreement;
 - Other "usual" information such as accounts, details of share issues and transfers etc.
- Value can be agreed in advance but the documents required mean most of the drafting costs have to be incurred before valuation can be requested
- HMRC change of practice on growth shares – may no longer be possible to use an intrinsic value method

Example 1 – Alternative to Options

- Company A is an independent company
- Intends to grant equity awards to 2 managers subject to vesting / forfeiture:
 - One will receive 5% and the other 2.5%
- Create a new class of growth shares which have no rights other than to participate in exit consideration (or distributions on a winding-up) in excess of a threshold
- The threshold can be set so AMV of a 2.5% holding of growth shares is worth £2,000 and a 5% interest is worth £4,000
- Both will be required to make s431 elections and HMRC are likely to agree UMV at a 10% premium to AMV so UMV will be £2,200 and £4,400 respectively

Example 1 – Alternative to Options

	UMV of Shares (£)	Shareholding	Eligible for ESS?	Income tax @40% (£)
Manager 1	4,400	5%	Yes	960
Manager 2	2,200	2.5%	Yes	80
TOTAL	6,600	7.5%		

- The actual market value of the smallest shareholding must be at least £2,000.
- This will create a income tax charge on the 5% shareholding as it has a value of £4,400 but only the value above £2,000 is subject to tax (in this case, 40% of £2,400).
- Company A qualifies for a corporation tax deduction of £6,600. If it pays corporation tax at 20%, the corporation tax saving is £1,320
- Shares can be subject to any vesting/forfeiture conditions so as to replicate options

Worked Example 2 - MBO

- Bidco established to purchase target for £30 million consideration.
- Management paid cash and loan notes in Bidco
- New Holdco established to own 100% of Bidco
- Management due to subscribe for B shares in Holdco for £1 each
- 40 employees acquiring shares worth between £500 and £70,000

Worked Example 2 - MBO

- Completion set for 1 March 2014
- Valuation agreed with HMRC of £ 1 per share
- 25 employees acquiring more than £2k worth of shares
- Employer will send an offer letter to them asking if they wish to sacrifice employment rights for B shares in Holdo
- Those receiving more than £2k worth will pay income tax on the excess above £2k
- Anticipated funding shortfall taken off the purchase price to keep the investor whole

Example 2 - MBO

Number of B Shares	Number issued in exchange for rights	Tax & employees NIC (£)
70,000	50,000	20,160
67,638	50,000	20,160
50,000	50,000	20,160
21,094	21,094	8,019
15,910	15,910	5,842
15,225	15,225	5,555
12,829	12,829	4,548
8,286	8,286	2,640
7,879	7,879	2,469
6,799	6,799	2,016
5,867	5,867	1,624
5,037	5,037	1,276
4,572	4,572	1,080
4,245	4,245	943
3,677	3,677	704
2,756	2,756	318
2,572	2,572	240
2,328	2,328	138
2,172	2,172	72
2,172	2,172	72
2,157	2,157	66

Number of B Shares	Number issued in exchange for rights	Tax & employees NIC (£)
2,108	2,108	45
2,062	2,062	26
2,062	2,062	26
1,666	-	-
1,501	-	-
1,327	-	-
1,257	-	-
1,151	-	-
1,151	-	-
1,151	-	-
1,151	-	-
1,151	-	-
1,151	-	-
1,151	-	-
1,151	-	-
1,012	-	-
1,012	-	-
1,012	-	-
1,012	-	-
861	-	-
500	-	-
-	-	-

Example 3 – Bonus Issue to Existing Shareholders

- Company B is worth £5m, one class of ordinary share in issue held as follows:

	Number of Shares	Shareholding	Eligible for ESS tax relief?
Founder 1	6,000	60%	No
Founder 2	2,000	20%	Yes
Employee 1	500	5%	Yes
Employee 2	500	5%	Yes
Employee 3	500	5%	Yes
Employee 4	250	2.5%	Yes
Consultant	250	2.5%	No
TOTAL	10,000	100%	

Worked Example 3 – Bonus Issue to Existing Shareholders

- Amend the Articles to create new class of growth shares
- No rights other than to participate in exit consideration (or distributions on a winding-up) in excess of threshold
- Eligible shareholders surrender their employment rights in exchange for 100 growth shares for every 1 ordinary share they hold.
- Ineligible shareholders have their shares re-designated as Ordinary A Shares.
- A ordinary shareholders receive bonus issue of 100 growth shares for every Ordinary A Share.
- 99% of future gains are delivered through growth shares – tax free for those employees who surrender their rights

Example 3: Share Capital After Issue of Growth Shares

	Ordinary	Ordinary A	Growth	Voting & Economic	Value of Growth Shares (£)	Income Tax @40%
Founder 1	-	6,000	600,000	60%	48,000	Nil
Founder 2	2,000		200,000	20%	16,000	5,600
Employee 1	500		50,000	5%	4,000	800
Employee 2	500		50,000	5%	4,000	800
Employee 3	500		50,000	5%	4,000	800
Employee 4	250		25,000	2.5%	2,000	Nil
Consultant	-	250	25,000	2.5%	2,000	Nil
TOTAL	3,750	6,250	1,000,000	100%	80,000	

Value of non-voting growth shares: $\text{£}2,000 / 25,000 = \text{£}0.08$ per share.

Total intrinsic value: $1,000,000 \times 0.08 = \text{£}80,000$

Threshold $\text{£}5$ million - $\text{£}80,000 = \text{£}4.92$ million

Corporation tax savings: $\text{£}30,000 \times 20\% = \text{£}6,000$

Enterprise Management Incentive Plans

Changes in FA 2013

Proposed Changes in Finance Bill 2014

EMI Conditions

- Trading company/holding company of a trading group
- Permanent establishment in the UK
- Not under control of another company
- No subsidiaries which are not 51% subsidiaries
- Wholly/mainly carrying on a qualifying trade
- Less than 250 full time equivalent employees in the group
- Gross assets of not more than £30m
- Participants must be employees who work at least 25 hours per week or if less 75% of working time test
- Maximum value of £250,000 (valued at grant) per individual
- Maximum value of £3m (valued at grant) in aggregate

EMI – Tax Treatment

- No tax or NIC on grant
- If option price is equal to or more than market value on grant, no income tax or NIC on exercise
- If option price is discounted on grant, discount on grant subject to income tax on exercise (PAYE and NICs apply if shares RCAs)
- Capital gains tax on sale of option shares
- Corporation tax deduction for spread on exercise (often treated as deferred tax asset on completion for which purchaser may give credit in the purchase price)
- Income tax on increases in value after the date of a disqualifying event unless option exercised within 90 days (as 40) of the event

FA 2013 – Extension of period following disqualifying event

- Period during which options may be exercised with no adverse income tax consequences following a disqualifying event was extended from 40 days to 90 with effect from 17 July 2013
- Plan rules often say options lapse 40 days following cessation of employment
- HMRC have confirmed it is possible to amend EMI plans to extend exercise period following cessation of employment from 40 days to 90 without it being an alteration to a fundamental term amounting to the grant of a new option (*HMRC tenth Employment-Related Shares and Securities Bulletin published 11 September 2013*)

FA 2013 – extension of entrepreneurs' relief to EMI

- Normal ER conditions, in 12 months prior to disposal:
 - Company must be a trading company or holding company of a trading group
 - Individual must be an employee or office-holder and the company must be the individuals "personal company" (5% of ordinary share capital (tested by nominal value) and 5% of voting rights)
- If acquired on exercise of an EMI option for disposals after 6 April 2013:
 - the personal company tests no longer applies;
 - the option must have been granted at least a year prior to disposal of the option shares
- Relaxation of ER only applies to EMI shares not other shares
- Pooling rules altered with effect from 17 July 2013

EMI – Some ER Traps

- If a disqualifying event occurs within 12 months of grant, ER lost (even if the option is exercised within 90 days of the event) (s169I(7Q) TCGA 1992)
 - A change of control is a disqualifying event so ER relaxation will be lost if option granted within 12 months of a sale
 - It is not possible to exchange option shares for Non-QCBs to allow the 12 month period to continue to run (as was the case for business asset taper relief)
 - Consider exchanging options for qualifying options in purchaser (if conditions met) BUT unlikely to be commercially acceptable unless the offer involves shares in purchaser
- If an EMI option qualifies for the ER relaxation (because it was granted more than 12 months previously) it must be exercised within 90 days of a disqualifying event otherwise ER relaxation is lost
- If option shares exchanged and it is not a "qualifying exchange of shares", the ER relaxation will be lost (s169I(7G(a) TCGA 1992) so consider electing to disapply re-organisation treatment (s169Q) TCGA 1992).

FA 2014 – Changes to EMI Plans

- Current paper form (Form EMI 1) must be filed within 92 days of grant to qualify for tax reliefs
- From 6 April 2014, grant of option must be notified electronically
- Employee declaration (as to working time) no longer filed, but instead retained by employer (required to be delivered to HMRC within 7 days if requested)
- Employer to provide copy to the employee

FA 2013 Changes to CSOP / SIP and SAYE Plans

FA 2013 Changes to Approved Plans – Summary

- SIP
 - £1,500 dividend reinvestment cap removed
 - More choice for employers around accumulation periods
- SAYE
 - More flexibility during savings periods
 - Abolition of 7 year contracts
- SIP, SAYE, and CSOP
 - Retirement rules harmonised
 - "good leaver" rules extended and harmonised
 - Tax relief on certain takeovers
 - Ability to use "restricted" shares

FA 2013 Changes – SIP Dividend Reinvestment

- Old position
 - £1,500 limit
 - Carried forward amounts to be reinvested within 3 years
- New position
 - Unrestricted dividend reinvestment, unless company elects to impose a cap
- Took effect automatically on 6 April 2013, no need to amend plan rules
- Implications
 - Most companies don't allow dividend re-investment anyway
 - Dividends tax free for basic rate taxpayers due to 10% tax credit
 - Potential benefit for higher and additional rate taxpayers (especially companies with high dividend yield)
 - No reason to impose a cap

FA 2013 Changes - SIP Accumulation Periods

- Previously participant acquired partnership share at *lower* of MV agreed at beginning of AP or MV at end
- New position since 6 April 2013, employer can choose:
 - As now
 - Fix purchase price as price at the beginning
 - Fix purchase price as price at the end
- No obligation to change
- Implications
 - Most listed companies don't use accumulation periods anyway, partnership shares purchased monthly out of pre-tax salary and likely to continue
 - HMRC have agreed to fix value for 6 months for private companies so SIPs can be operated at no risk
 - Private companies should alter partnership share agreements so price is at beginning of AP so position is more certain

SAYE – Savings Contracts

- Old position
 - 3, 5 or 7 years
 - 5 year savings period; leave for 2 years to earn (historically) higher tax free bonus
 - Bonus currently zero
 - Limited flexibility/lack of clarity around contributions other than from salary
- What has changed
 - 7 year option withdrawn
 - "Prospectus" revised
 - Sabbaticals and secondments – further guidance issued
- Implications
 - Almost unheard of to offer 7 year options anyway
 - Check procedures regarding contributions other than from salary

FA 2013 Changes - SIP/SAYE/CSOP – Retirement (1)

- Previously to qualify for tax relief:
- SIP – withdraw shares on *retirement* on or after reaching specified age of not less than 50 (compulsory requirement)
- SAYE – exercise within 6 months of *retirement* at specified age (60 to 75) or when bound to retire under contract, also early exercise at specified age even if not retiring (compulsory requirement)
- CSOP – exercise within 6 months of *retirement* at specified age of not less than 50 (optional but compulsory to include a specified age even if it had no effect)

FA 2013 Changes - SIP/SAYE/CSOP – Retirement (2)

- Now to qualify for favoured tax treatment:
- SIP – no tax liability on withdrawal of shares by reason of participant's retirement
- SAYE/CSOP – exercise within 6 months of ceasing employment by reason of retirement
- SAYE – removal of right to exercise on reaching specified age without retiring (for options granted after 17 July 2013)
- Retirement not linked to age now, but no legislative definition of retirement. HMRC guidance in ESSU Manuals updated on 11 September 2013 (same for all three plans) says companies should apply "natural meaning" consistently

FA 2013 - SIP/SAYE/CSOP: Good Leaver Rules

- Previously:
 - CSOP / SAYE - no "tax free early exercise on "TUPE" transfer (unless a technical redundancy) or sale of employer company out of group
 - SIP – allowed tax free withdrawal following TUPE transfer / sale of employer out of group
- Now alignment of good leaver circumstances qualifying for tax relief with SIP, good leavers are now: injury, disability, redundancy, retirement, TUPE transfer and sale of employer company out of group
- SAYE - changes automatic for existing options, requirements compulsory for new plans with effect from 17 July 2013
- CSOP – not automatic, amendments to create a new right of exercise require HMRC approval as to a key feature (and may require shareholder approval for listed companies)

FA 2013 Changes - SIP/SAYE/CSOP Tax Relief on Takeovers

- Previously no tax relief
 - Tax relief only available for CSOP / SAYE if exercise took place more than 3 years after grant
- Now:
 - CSOP / SAYE – tax relief for certain cash take-overs
 - SIP – tax relief for removal of shares in connection with certain cash take-overs
- Definition of "general offer" widened to counteract effect of Tailor v HMRC [2103] UKFTT 199 (27 March 2013)

FA 2013 – Changes to SAYE/CSOP and SIP Action Points

- Most changes apply automatically with effect from 17 July 2013
- SIP – private companies should consider altering partnership share agreements
- CSOP / SAYE – consider amending plans to benefit from relief on cash take-overs
- CSOP – consider amendments to add TUPE transfer as a good category of leaver for future option grants (but shareholder approval required for listed companies and HMRC approval required for amendment to key feature)

2014 – INCOMING CHANGES TO APPROVED PLANS

FA 2014 – Qualifying Schemes – Self-Certification

Current Position

- Companies require prior approval from HMRC to implement or make certain amendments to CSOPs, SAYE options schemes and SIPs (known as "approved" schemes)
- If HMRC do not give approval, then the schemes will not qualify for the applicable tax reliefs
- Companies must make an annual return to HMRC for all types of share plan, generally filed by 6 July following the end of the relevant tax year
- Companies must notify HMRC within 92 days of granting EMI options to qualify for tax reliefs

Qualifying Schemes – Self-Certification

Change to "qualifying" schemes

- Finance Bill 2014 will amend the approval process of CSOPs, SAYE and SIPs so that companies will need to self-certify their schemes (so change in terminology to "qualifying" schemes)
- Companies will need to give notice to HMRC. The notice must contain a declaration that:
 - The scheme meets the relevant requirements of Schedule 2 (if SIPs), 3 (if SAYE) or 4 (if CSOP) of ITEPA 2003
 - If the declaration is made after awards have already been made, that the relevant requirements have always been met
- Declaration also required with annual return if a company amends any key feature of the scheme

Qualifying Schemes – Self-Certification

Change to Purpose Test

- Removal of current "essential or reasonably incidental" test
- From 6 April 2014, new test will apply, requiring that:
 - The purpose of the scheme is to provide benefits to employees in the form of share options or shares
 - The scheme must not provide benefits to employees otherwise than in accordance with the relevant schedule of ITEPA. In particular, the scheme must not provide cash to employees as an alternative to shares

Qualifying Schemes – Self-Certification

Deadlines

- For new Qualifying Schemes established on or after 6 April 2014, the notice must be given by 6 July following the end of the tax year in which the first awards were made
 - If deadline is missed, the scheme will only be taken as qualified from the beginning of either the preceding tax year (if notice is given prior to 6 July, or the tax year in which notice is given (if after 6 July)
- For existing Approved Schemes, the company must give notice to HMRC by 6 July 2015
 - If awards have already been made, the declaration must state the scheme has met the relevant requirements since 6 April 2014

Qualifying Schemes – Self-Certification

HMRC has power to enquire into schemes

- HMRC may enquire into a CSOP, SIP or SAYE by giving notice to the company by either:
 - 6 July following the tax in which the deadline falls due
 - If notice to HMRC given late, enquiry period extended to 6 July in second tax year following the relevant tax year
- HMRC may also enquire if a key feature of the scheme has been amended or if it has reasonable grounds for believing the requirements of ITEPA have not been met. Where HMRC have such grounds, they can enquire at any time.
- HMRC must issue closure notice following completion of an enquiry stating whether a penalty will apply

Qualifying Schemes – Self-Certification

Penalty Regime

- One of two penalty regimes apply
- The first is more onerous and applies if HMRC decide the qualifying requirements have not or are not being met and the breach is sufficiently serious
 - The scheme will not be qualifying from date of closure notice
 - Awards made before this date will not be affected...
 - ...but company may be liable to a penalty of up to twice the income tax and NICs not paid by the participant
- Second regime applies where breach is not sufficiently serious.
 - Scheme does not cease to be qualifying – company has 90 days from date of closure notice to ensure scheme qualifies
 - Company may be liable to penalty not exceeding £5,000

Annual Reporting

Requirement to submit online

- Companies will be required (expected from 6 April 2014) to submit their annual report electronically (except where HMRC decide it is appropriate for a return to be submitted in alternative form)
- Not yet clear, but appears online submission requirement will be required from 2015, for tax year 2014/15
- All annual returns (including Form 42) must be filed by 6 July following the end of the tax year

FA 2014 - Other Changes to Tax-Advantaged Share Schemes

- Change in CSOP and SAYE change of control provisions - exercise 7 days either side of a change of control, and makes provision for the exercise of options following a reorganisation of a non-UK company
- Requirement that CSOP options must be exercised within 10 years, terms must be stated at grant, can only be varied as per Schedule 4
- SIP partnership shares may be subject to forfeiture provisions
- SIP and SAYE participation limits increased – contributions to buy partnership shares under a SIP to £1,800 per tax year, free share awards under a SIP to £3,600 per tax year and monthly contributions under a SAYE to £500

FA 2014 - Changes to Unapproved Arrangements

- New provisions for the taxation of employment related securities and securities options held by internationally mobile employees
- Corporation Tax deduction for shares acquired on exercise of options within 90 days of change of control and for non-resident employers
- Legislation to allow rollovers of employment-related securities falling within Chapter 2 of Part 7 of ITEPA. No tax charge on disposal of original securities if certain conditions are met
- Extension of time limit in section 222 of ITEPA from 90 days after tax arises to 90 days after end of tax year in which tax arises for an employee to "make good" income tax on notional payments
- On an acquisition of nil-paid or partly-paid restricted securities, remaining unpaid amount won't be treated as a beneficial loan and taxed accordingly if the purchaser of the shares also takes on liability to pay them up

FA 2014 - Other Relevant Changes

- Increase in de minimis limit for beneficial loans from £5,000 to £10,000
- Changes to relief for interest payments for loans to buy an interest in a close company
- Abolition of stamp duty and SDRT on AIM shares

Thank you

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