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Employee Benefits News January 2014

EMPLOYEE SHARE PLANS AND REMUNERATION CALENDAR WHAT CAN WE EXPECT IN 2014?

Given the raft of tax and regulatory reforms that look certain to continue during 2014, we thought it would be helpful to start the New Year with a calendar of the issues and developments that we are going to be grappling with throughout 2014.

The expected developments are summarised in the calendar below, with further details then set out in the remainder of this special January edition of Employee Benefits News. Unless stated otherwise, the new developments are potentially relevant to all companies in all sectors. We hope you find this 2014 calendar useful!

Please get in touch if you have any questions or would like further details on any of the proposals. We will update you on these new developments during the course of the year in future editions of Employee Benefits News.

JANUARY	(1) **Bonus ratio under CRD 4 implemented** - relevant to banks and certain other institutions in the financial services sector ("Financial Institutions") (2) **EBA consultation on CRD 4 bonus ratio discount rate** closes - relevant to Financial Institutions (3) **FCA final AIFMD guidance on remuneration** expected in early 2014 – relevant to alternative investment fund managers ("AIFMs")
FEBRUARY	(1) **Revised definition of material risk taker** (i.e. "Code Staff" under the Remuneration Code) expected to take effect in early 2014 – relevant to Financial Institutions (2) Technical consultation closes on draft Finance Bill 2014 measures (including proposed introduction of **"self-certification" for approved share plans, mandatory online-filing of share plan returns and changes to unapproved share plans legislation**) (3) **FRC** may issue further consultation on **proposed amendments to the UK Corporate Governance Code** (e.g. in relation to claw-back arrangements) – relevant to listed companies
MARCH	(1) Wednesday 19 March is **2014 Budget Day**! (2) **EBA** expected to publish **final guidelines on CRD 4 bonus ratio discount rate** - relevant to Financial Institutions (3) **EBA** expected to submit **proposed RTS on the classes of instruments under CRD 4** to the European Commission - relevant to Financial Institutions
APRIL	(1) **Self-certification for approved share plans and mandatory online-filing regime for all HMRC returns (approved and unapproved share plans)** expected to commence (2) Exemption threshold for aggregate value of **employment-related beneficial and notional loans** expected to be increased from £5,000 to £10,000 (3) Extension to **section 222 ITEPA ("making-good") deadline** expected to apply (4) Increases to **individual limits under Sharesave and SIP** expected to apply (5) **AIFMD deferral mechanism for "restricted profits"** expected to be introduced – relevant to AIFMs
MAY	
JUNE	Revised **EBA guidelines on remuneration policies and practices under CRD 4** expected in Q2 2014 – relevant to Financial Institutions
JULY	(1) Reform of **tax rules applying to unapproved share plans** – some changes expected to apply from Royal Assent to Finance Bill 2014 (expected to be in July) (2) Transitional period for **compliance with AIFMD** ends – relevant to AIFMs
AUGUST	
SEPTEMBER	Revised tax rules for **options/awards granted to internationally mobile employees** expected to apply
OCTOBER	Any changes to the **UK Corporate Governance Code** are expected to apply to financial years beginning on or after 1 October 2014 – relevant to listed companies
NOVEMBER	
DECEMBER	**Chancellor's Autumn Statement** expected - date TBC

January

(1) **CRD 4 bonus ratio**. The EU has introduced a "bonus cap" under CRD 4, which is to be enforced in the UK by requiring certain Financial Institutions covered by the Remuneration Code to remunerate Code Staff by reference to a set ratio between fixed and variable remuneration. The key aspects of the new rules are as follows: (A) variable remuneration (e.g. bonuses) for Code Staff are capped at 1:1 of fixed remuneration; (B) there is scope for that ratio to be increased to 2:1 where shareholder approval is obtained; and (C) when calculating the ratio between fixed and variable remuneration, the institution may apply a "discount rate" which can be applied to up to 25% of variable remuneration, provided it is paid in instruments that are deferred over a period of at least 5 years (see further (2) below regarding this discount rate). Although the bonus cap applies only to Code Staff, a new definition of "material risk-taker" (i.e. "Code Staff" in the UK), which is likely to widen the net of those caught by the bonus cap), is being introduced. For further details see under February below.

The new bonus cap rules apply in relation to remuneration awarded for services provided or performance from the year 2014 onwards. In September 2013 the Government announced that it had lodged a legal challenge to the bonus cap with the European Court of Justice. However, in the interim, the Prudential Regulation Authority expects all Level 1 and Level 2 firms to apply the bonus ratio.

(2) **CRD 4 bonus ratio discount rate.** On 23 October 2013 the EBA published a consultation paper on draft guidelines setting out the calculation of the discount rate for variable remuneration under the CRD 4 bonus cap. The EBA proposes combining the following factors to calculate the discount rate: the national annual inflation rate, the average interest rate of EU government bonds, a nominal factor to provide for incentives for paying variable remuneration in instruments that are deferred for a period of at least 5 years and a nominal factor to provide for incentives to apply additional retention periods. The consultation period ends on 18 January 2014.

(3) **Alternative Investment Fund Managers Directive – remuneration guidance**. The Alternative Investment Fund Managers Directive (AIFMD) introduced new rules regulating AIFMs, including in relation to remuneration. The AIFMD applies to a number of different types of entity, including private equity funds and hedge funds. In the UK, the provisions generally came into force on 22 July 2013, subject to some transitional provisions which end on 21 July 2014. Firms which were already carrying on the management of AIFs, or providing services as a depository, may have been able to use these transitional provisions. All AIFMs will be required to comply with all relevant AIFMD requirements from 22 July 2014. Under the new regime (which was incorporated into the Financial Conduct Authority's ("FCA") Handbook with effect from 1 January 2014), AIFMs are required to have a remuneration policy applying to senior management, risk takers, control functions and any employees who receive total remuneration taking them into the same remuneration bracket as senior management and risk takers. The policy should cover guaranteed variable remuneration, performance-related pay, a balance between fixed and variable remuneration, remuneration in the form of units or shares in the AIFs, a mandatory deferral period of at least 3-5 years (unless the life cycle of the AIF is shorter) and claw-back provisions. The AIFM remuneration code will apply to the first full performance period after the relevant firm becomes authorised under the new regime. The FCA expects to publish final guidance in early 2014 at the latest "with a view to helping firms develop an appropriate remuneration policy" before the end of the transitional period.

The Government is proposing to introduce a new mechanism into the tax legislation so that an individual who is a partner in an AIFM partnership will not be required to pay tax on profits when they do not have access to them due to a required deferral under the new AIFM remuneration code. For further details see April below.

February

(1) **Material risk-takers under CRD 4.** In December 2013 the EBA published its final draft Regulatory Technical Standards ("RTS") on revised criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile (i.e. these individuals will be Remuneration Code Staff for UK purposes). It is likely that the RTS will have the effect of increasing the number of employees who are categorised as Remuneration Code Staff. Such individuals will be subject to the CRD 4 provisions on remuneration (including the bonus cap referred to above). The RTS were submitted to the EU Commission on 16 December 2013 and will come into force 20 days after publication in the Official Journal. This is expected to be sometime in early 2014. The RTS propose a methodology for identifying staff based on a combination of standard qualitative and quantitative criteria, subject to some potential exclusions for staff identified only according to quantitative criteria.

(2) **Finance Bill 2014**. Draft measures for the Finance Bill 2014 were published on 10 December 2013. A limited consultation on the draft measures (including in relation to the introduction of self-certification for approved share plans, the introduction of online-filing for all HMRC returns for share plans (approved and unapproved), changes to the tax rules for unapproved share plans and a AIFM deferral mechanism for "restricted profits") closes on 4 February 2014. For further details on these proposals please see April below.

(3) **UK Corporate Governance Code**. In October 2013 the Financial Reporting Council ("FRC") published a consultation on whether to amend the UK Corporate Governance Code to address a number of issues relating to executive remuneration. The FRC consulted on three specific proposals: claw-back arrangements; whether non-executives who are also executive directors in other companies should sit on a remuneration committee; and actions companies might take if they fail to obtain a substantial majority in support of a remuneration resolution. The consultation ended on 6 December 2013. If the FRC does ultimately propose any changes, these will be the subject of a further consultation in Q1 2014 and will then apply to financial years beginning on or after 1 October 2014.

March

(1) **Budget Day 2014**. The Chancellor has confirmed that the 2014 Budget will be on Wednesday 19 March. As part of the 2014 Budget announcements it is expected the Government may provide a further update on its current thinking regarding certain proposals from the Office of Tax Simplification as follows:

- that employment-related securities should only be subject to tax/NIC at the point they become "marketable securities" i.e., broadly, when they become capable of sale to a third party. The Government has previously suggested that this idea has "simplification potential" and may include legislation in Finance Bill 2015; and
- the introduction of a special "employee shareholding vehicle", which would be exempt from certain tax provisions.

(2) **CRD 4 bonus ratio discount rate.** As noted in January above, the EBA has published a consultation paper on draft guidelines setting out the calculation of the discount rate for variable remuneration. The EBA is required to publish the final guidelines on the bonus cap discount rate by 31 March 2014.

(4) **CRD 4 classes of instruments**. In July 2013 the EBA published for consultation draft RTS on the classes of instruments that are appropriate to be used for the purposes of variable remuneration under CRD 4. The draft RTS provide that all classes of instruments used for variable remuneration must have sufficient maturity to cater for deferral and retention arrangements in order to reflect each firm's long term interests and incentivise prudent risk-taking by staff. If these instruments are being issued for the sole purpose of variable remuneration, a cap must be set on the distributions which can be paid out. The EBA is due to finalise the draft RTS at the beginning of 2014 and submit the draft RTS to the EU Commission by 31 March 2014.

April

(1) **Self-certification for approved plans/online filing for share plans**. Under a new regime under the Finance Bill 2014, the Government is introducing "self-certification" for all the approved share plans, together with mandatory online-filing for year-end returns for all share plans (including EMI and unapproved plans). For further details of the new regime for share plans please see our December 2013 newsletter.

(2) **Employment-related loans**. Under the Finance Bill 2014, the exemption threshold for the aggregate value of employment-related beneficial and notional loans is to be increased from £5,000 to £10,000 from 6 April 2014.

(3) **Section 222 - "making good"**. The draft measures for the Finance Bill 2014 include legislation to extend the time limit in section 222 ITEPA for an employee to "make good" to the employer tax on certain non-cash payments including shares ("notional payments"). The new time limit will be 90 days after the end of the tax year in which the notional payment is treated as made. The change is expected to apply to notional payments treated as made on or after 6 April 2014.

(4) **Sharesave and SIP Limits**: Under the Finance Bill 2014 the individual limits under Sharesave and SIP are to be increased as follows:

- the monthly savings limit under Sharesave is to be doubled to £500 per month; and
- the limit for SIP free shares is to be increased to £3,600 per year and for SIP partnership shares the limit is to be increased to £1,800 per year.

The changes are expected to apply from 6 April 2014.

(5) **AIFM deferral mechanism for restricted profits.** The Government has published draft legislation for the Finance Bill 2014 which will introduce a mechanism for individual members of AIFM partnerships to allocate certain "restricted" profits to the partnership, if they wish to do so. These are profits that members cannot immediately access because of the requirements of the AIFMD to defer remuneration. Under normal rules for partnerships, individual members are charged to tax on their trading profits as they arise. The legislation will instead impose a tax charge at the additional rate of tax (currently 45%) to be paid by the AIFM partnership. Where the relevant restricted profit later vests in the partner who initially allocated it, this will be treated as taxable income of the partner, with a credit available for the tax already paid by the partnership. If the deferred profit does not vest in the partner who initially allocated it, there is no further tax to pay (but there will be no entitlement to recover the tax paid by the partnership). The legislation is expected to have effect from 6 April 2014.

June

EBA Remuneration Guidelines: The remuneration requirements set out in CRD 3 are supplemented by more detailed guidelines on remuneration policies and practices published by the Committee of European Banking Supervisors (now the EBA). The EBA has indicated that it will review and update these remuneration guidelines in light of the revised requirements set out in CRD 4, once the EBA's RTS in relation to CRD 4 have been adopted by the EU Commission.

July

(1) **Changes to the taxation of unapproved share plans.** The Government confirmed in its 2013 Autumn Statement that it intends to make a number of changes to the taxation of unapproved share plans. Certain changes will come into effect from Royal Assent to FB 2014, which is expected to be in July 2014. Those changes include making certain technical changes to the tax legislation for restricted shares and shares acquired at less than market value and to the rules for a statutory corporation tax deduction in the context of takeovers. Please see our December 2013 newsletter for further details.

(2) As noted in February above, the transitional provisions under the AIFMD directive end on 21 July 2014.

September

Options/awards granted to internationally mobile employees.

The Government is proposing to revise the basis on which internationally mobile employees (IMEs) are subject to UK tax in relation to share options and awards. The proposed new rules have been published in the draft Finance Bill 2014 measures. As currently drafted these changes will apply to awards and options granted on or after 1 September 2014. (There will be grandfathering provisions for shares acquired from 1 September 2014 as a result of the exercise of an option granted before that date). The Government also proposes to amend the statutory corporation tax deduction rules to allow a UK company to claim a tax deduction for options exercised/shares acquired by IMEs which are seconded to it by a non-UK company. Please see our December 2013 newsletter for further details.

October

UK Corporate Governance Code. As noted under February above, any changes made to the UK Corporate Governance Code will apply to financial years beginning on or after 1 October 2014.

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