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Global Incentives News May 2015

Clifford Chance Global Incentive News keeps you up-to-date on employee share plan and incentives developments around the globe.

AUSTRALIA: Change to tax treatment of options

New rules are expected to come into force on 1 July 2015, for options granted on or after that date, which will change the time when options are taxed. Until now employees have been taxed when share options vest, rather than when they are exercised. This can mean that employees have a tax charge before they receive the shares in their option.

Under the new rules options will be taxed on exercise or if the shares are subject to restrictions on transfer, when those restrictions are lifted. There are also two "long stop" taxation points, being the 15th anniversary of the date of grant (if options have not been exercised by then) or on ceasing employment where an employee leaves the employer but keeps his options, even if he cannot exercise them at that time.

The way in which options are valued is also expected to change with the new valuation method expect to be more favourable to employees.

AUSTRALIA: New Class Order reduces compliance burden on companies operating employee incentive schemes

As you may be aware, the Australian Securities and Investment Commission (ASIC) adopted a new Class Order in October 2014 intended to reduce the administrative burden on companies operating employee incentive schemes. Under the new Class Order companies no longer have to file all employee documents with ASIC within seven days of offer to employees. Instead, they must notify ASIC within one month of making the first offer of shares to employees under an incentive scheme and only need to make a subsequent notification if the existing documentation changes substantially or on launching a new scheme. Our experience to date is that many companies are taking advantage of the new Class Order to reduce the need for ongoing filings.

FRANCE: Proposed changes to taxation of tax-favourable share plans

The French Parliament is considering legislation that would reduce the tax and social security charges for qualifying share plans approved by shareholders since 1 January 2015. The main changes proposed are:

- decreasing employer social security contributions from 30% to 20% and changing the payment date so that contributions are only payable on delivery of shares rather than on grant;
- replacing the employee social surtax on grant with social security contributions due on capital gains; and
- reducing the combined vesting and holding period required for tax relief from four years to two years.

IRELAND: E-filing introduced for annual share option reporting

A new electronic filing system has been introduced to replace the Form RSS1. For tax year 2014 onwards, employers must report the grant or exercise of share options via the e-filing system no later than 31 March in the year following grant or exercise. Employers must register with the Irish Revenue's online filing system to use e-filing.

Share-based remuneration that automatically delivers shares at a given time will continue to be dealt with via normal payroll reporting, and does not need to be reported online.

Information provided by A&L Goodbody. Please click here for their full briefing: A&L Goodbody

NETHERLANDS: 20% cap on bonuses for financial services employees

Legislation in the Netherlands has been passed which restricts payments that may be made to employees of financial institutions. Bonuses for these employees cannot exceed 20% of salary and restrictions have also been placed on the payment of retention bonuses, severance payments and guaranteed bonuses. In addition, malus and clawback provisions must apply to all staff working for Netherlands financial institutions.

All remuneration paid to employees of financial institutions will be subject to the new rules from 1 January 2016.

RUSSIA: Additional remuneration regulations for financial services employees

Changes to the regulation of remuneration for employees in Russian banking and credit institutions came into force on 1 January 2015. Institutions with total assets over RUB 50 million must establish a remuneration committee and disclose their remuneration structure, including fixed and variable remuneration and total amounts paid. At least 40% of total remuneration awarded to senior executives whose decisions influence the institution's risk profile must be linked to performance and deferred for at least three years. The Central Bank of Russia has the right to audit and evaluate each institution's remuneration policy.

SPAIN: Change to conditions for employee share tax exemption

An exemption from tax is available for the first EUR 12,000 of shares received by an employee, provided certain conditions are met. The main conditions are that the offer must be made to current employees and they must hold the shares for at least 3 years. From 1 January 2015, offers must be made available to all employees of the company on the same terms rather than to all employees in the same grade/level. All other conditions for the exemption remain unchanged.

ESTONIA: Non-resident directors of companies now subject to Estonian tax

Non-resident directors of Estonian companies will be subject to income tax in Estonia under new rules introduced for 2015 if they undertake work that benefits an Estonian company. Where income tax is due it should be paid by the foreign parent company (which can register in Estonia as an employer) or by an authorised Estonian company. If tax is not withheld by the employer, it must be paid by the director through self-assessment by 31 March each year.

PHILIPPINES: Stamp tax due on grant of share awards

Following a recent change in law, stamp tax is now due on the grant of share awards or options at a rate of PHP 0.75/PHP 200 on the par value of the shares under award. The grant of the awards must be reported to the Bureau of Internal Revenue within 30 days of grant and before the 10th day of the month following the month of vesting.

It is expected that this new stamp tax will only apply to awards granted by Philippine companies. However, where the cost of share awards is recharged by a foreign parent company to the local Philippine company, there is a risk that the Philippine tax authorities may regard the local employer as having granted the awards and so stamp tax may be due.

Contacts

Sonia Gilbert
+44 20 7006 2041

Liz Pierson
+44 20 7006 2817