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C H A N C E

Briefing note

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Global Incentives News

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

EU: New data protection regime for 2017-2018

A new EU Regulation and Directive are set to replace the existing Data Protection Directive from 2018. The Regulation will increase the compliance burden on data processors operating employee share plans (e.g. requiring them to maintain detailed records of their processing activities) and will raise the potential financial penalties for non-compliance. The Regulation will also require organisations to obtain employees' specific consent to data processing, as a legal requirement. The rules will apply directly across EU member states from two years after the Regulation is formally adopted in early 2016.

EU/US: ECJ revokes safe-harbour for EEA-US data transfers

Following its recent decision in Maximillian Schrems, the ECJ no longer recognises US organisations as providing "adequate protection" for personal data. It held that US organisations could not guarantee a level of protection equivalent to that guaranteed within the EU due to the extensive surveillance powers available to US government entities, and revoked the safe-harbour previously available for data transfers to the US. Accordingly, US companies operating share plans in Europe will now be required to obtain employee consent for transfers of data from the EEA to the US.

France: New tax benefits for free share awards

The long-awaited Macron law has introduced new tax advantages for both employers offering free shares and for employees. The employer's social security contribution payable on free shares has been cut from 30 to 20 per cent, and will now only be due when the free shares vest (and not on grant). The employees' social security contribution of 10% has been abolished. The vesting period for free shares has been halved from 2 years to 1 year (for a combined vesting and holding period of not less than two years). In some circumstances, employees will be entitled to a reduction in the tax payable on the gain made on acquisition of the free shares. The tax deduction available will depend on how long the employee holds the free shares - a 50% deduction is available after a 2 year holding period and a 65% deduction after an 8 year holding period.

France: New withholding tax requirement from 2018

A new Pay-As-You-Earn (PAYE) system is expected to be introduced from 1 January 2018. Full details of how the PAYE system will work are expected to be published in the near future. The legislation should be put before the French Parliament in October 2016. The PAYE system will require French employers to calculate and pay any income tax payable but French tax payers will still be required to file an annual tax return.

Luxembourg: New share plan reporting obligations

Additional reporting obligations have been introduced with effect from 1 January 2016. The requirements cover both new and existing share plans and apply to all Luxembourg-based employers, including branches or subsidiaries of foreign companies. For existing share plans, the employer should file a list of participants in the plan with the local withholding tax office as soon as possible, along with a copy of the plan rules and any other documents setting out the terms of the plan. When setting up a new plan, the same filings should be made two months in advance.

Russia: New data localisation law comes into force

The Data Localisation Law came into force on 1 September 2015 and requires entities that collect personal data from Russian citizens to store that data in Russia (subject to certain exceptions). The law applies generally to all personal data, including data gathered in connection with employee share plans. Non-binding guidance from the Russian Ministry of Communications clarifies that the law will not normally apply to non-residents of Russia, including foreign businesses. In practice, this means that if a foreign parent company or service provider processes the personal data of Russian citizens in connection with an employee share plan, it will generally not be required to store that personal data in Russia. However, a Russian-based subsidiary processing the same personal data may be required to store the data in Russia depending on the circumstances.

South Africa: Supreme Court of Appeal confirms tax treatment of deferred delivery schemes

In a much anticipated judgement on the taxation of deferred delivery share schemes (DDSS), the Supreme Court of Appeal unanimously rejected allegations from the South African Revenue Service (SARS) that a DDSS was subject to various conditions or alternatively that it was a simulation or "sham". Helpfully, the court also confirmed the long-held view of many tax practitioners (and until recently, SARS itself) that under South African tax legislation, an option will only incur a tax charge upon exercise.

Information provided by ENSafrica. Please click here for the full article.

South Africa: Davis Tax Committee recommends revisions to the taxation of trusts

The Davis Tax Committee published an interim report in July that recommended (amongst other things) a number of changes to the taxation of trusts. If implemented the changes may have an impact on both existing and future incentive schemes making use of trusts.

Information provided by ENSafrica. Please click here for the full article.

South Africa: Increased rights for fixed-term and part-time employees

The South African Labour Relations Act has been updated to strengthen the rights of fixed-term and part-time employees who earn on or below the specified earnings threshold (currently R 205,433.30 per annum). A fixed-term employee whose annual pay is below the earnings threshold will now automatically be considered a "permanent" employee after three months' employment unless the employer can justify why his employment should be considered temporary. All permanent employees performing the same work must receive equally favourable treatment, including pay and benefits. The amended Act also provides that after three months' employment, part-time employees who do not exceed the earnings threshold must not be treated less favourably than full-time employees performing the same work (i.e. the part-time employees must be paid at an equivalent hourly rate).

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