



EMPLOYEE INCENTIVES AND BREXIT: AN UPDATE

Many companies have asked us over the last 18 months about what Brexit would mean for their employee incentives and share plans. Now that the EU/UK Trade and Co-operation Agreement has been agreed, it's a good time to take stock, and it should be good news for the vast majority of companies as far as incentives are concerned.

Broadly speaking, there is little immediate change to the operation of incentives. There are steps that are worth considering at this point to make sure your participant documents are in good shape but no amendments or changes in operation should be needed to incentive plans themselves in the short term.

The main headline points are:

- **Changes to plan documents**

There is understandably little appetite to amend historical documents (such as plan rules) to reflect legislative changes and we do not think this is needed. It does though make sense for any new grant documents, new plan rules or employee communications to be reviewed and amended as required. For example, companies will want to make it clear that where UK law diverges from EU law in the future, then any references to EU legislation will be interpreted as meaning the UK's equivalent laws.

- **General Data Protection Regulation**

The transfer of data from the EU to UK remains the main open issue under GDPR as far as incentive plans are concerned. As a third country, the UK will need to demonstrate that it has an "adequate" framework for personal data protection for these purposes and the European Commission will need to give an adequacy decision. This has not happened yet. The Trade and Co-operation Agreement now allows for a 4 month grace period on this issue (which can be extended to 6 months). The hope is that this period will allow for an adequacy decision or other solution to the issue.

- **Prospectus Regulation**

A number of amendments were made running up to the end of transition to make sure that the Prospectus Regulation 'works' following transition. The prospectus exemptions relied on to date to offer share plans in the UK will, helpfully, continue to be available.

- **Market Abuse Regulation**

No immediate impact arising directly as a result of Brexit for incentives, although 'UK MAR' may be reviewed in future. Note however that 'EU MAR' has now been updated to reflect minor changes to timings on RNS notifications. These changes will be made to 'UK MAR' when the Financial Services Bill 2019-21 is enacted (changes to take effect 2 months after that enactment).

- **Cross border social security issues**

The Trade and Co-operation Agreement sets out a protocol for social security co-operation in the EU/UK which is relevant for companies with internationally mobile employees. It maintains the principle that only one state's legislation for social security applies at a time so that, for example, someone working in the UK and in an EU member state, should only pay social security in one country and not in both. This broadly preserves the status quo for the time being. EU member states must 'opt in' to the protocol by the end of January 2021.

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