Employee share plan reporting 2018/19

Employers have an annual obligation to report notifiable events that occur in connection with employment-related securities. Employers must be confident not only that the information provided in the annual returns is complete and correct, but that it is consistent with their payroll and corporation tax compliance positions.

What are the notifiable events?

In summary, employers have an annual obligation to report any of the following events that occur in relation to their employees during the tax year:

— Grants of rights to acquire shares or other securities (e.g. options or long-term incentive plan awards);

— Acquisitions of shares or other securities; and/or

— The lifting of restrictions (such as a risk of forfeiture) from shares or other securities.

These obligations extend to certain other reportable events involving shares or other securities which are acquired, or treated as having been acquired, by reason of employment. They apply regardless of where the issuing company is incorporated, resident or listed.

Events that occur outside a formal employee share plan, such as an acquisition of shares or grant of options during a change of control or other transaction, can also give rise to reporting obligations.

Separate reporting obligations arise in relation to non-tax-advantaged arrangements, and each type of UK tax-advantaged employee share plan (note that plans which attract non-UK tax advantages, such as US qualified employee stock purchase plans, will be 'non-tax advantaged' for reporting purposes).

Reporting in relation to awards held by Internationally Mobile Employees (IMEs) can present particular challenges.

For non-tax-advantaged arrangements, no reporting obligations should arise in relation to awards held by IMEs who were not-UK resident and had no UK duties both (i) on the date of grant; and (ii) throughout the vesting period of the relevant award.

However, share based awards should be reported where the IME had UK duties at any point in time over the award's vesting period.

Why is this important?

Registration

New UK tax-advantaged Save As You Earn (SAYE) plans, Company Share Option Plans (CSOPs) and Share Incentive Plans (SIPs) established during 2018/19 **must** be registered with HMRC's Online Services **before 7 July 2019.**

Each grant of tax-advantaged Enterprise Management Incentive (EMI) options must be reported to HMRC within 92 days, meaning new EMI plans must be registered with HMRC within 92 days of the first grant of options.

Unless the employer has a reasonable excuse, late registration of a new SAYE plan, CSOP or SIP means that the plan will only qualify for income tax relief from 6 April 2019. This means that awards granted in 2018/19 would not qualify for tax relief (i.e. they would be treated as non-tax advantaged awards, as would late notified EMI option grants).

Reporting

HMRC uses information provided in the annual returns to identify any errors in:

— PAYE and NIC operated on share based awards;

— Corporation tax relief claimed in relation to employee share acquisitions; and/or

— Employees' self-assessment filings.

Employers must therefore be confident not only that the information provided in the annual returns is complete and correct, but that it is consistent with their payroll and corporation tax compliance positions.

Special care should be taken reporting share awards held by IMEs, where the reporting, payroll and corporation tax requirements might not perfectly align.

Completing the annual share plan returns is a good opportunity to confirm that the payroll compliance is accurate and, in particular, that PAYE due on share awards has been made good in full by employees to prevent additional 'tax on tax' charges arising.

Penalties

An automatic penalty of £100 per plan registration will arise in relation to a late submission.

Additional penalties arise where submissions remain outstanding by 6 October 2019 (an additional £300) and 6 January 2020 (a further £300).

Further penalties of £10 per day can be imposed if a return has not been submitted by 6 April 2020.

A penalty of up to £5,000 can be imposed in respect of material inaccuracies in returns which are careless, or which are not corrected without delay.

What do employers need to do?

Year-end employee share plan reporting involves three key tasks:

— Registering new plans (or other arrangements) established during 2018/19 via HMRC's Online Services;

— Certifying that certain tax advantaged plans meet the conditions to attract tax relief; and

— Submitting the required annual returns detailing reportable transactions, or 'nil' returns where no reportable events occurred.

Each new SAYE, CSOP, SIP and EMI plan must be registered individually.

Other plans (including overseas plans with UK participants) may be registered individually or included under a single registration.

Certain events that occur outside a formal employee share plan, such as an ad-hoc acquisition of shares or grant of an option on a change of control or other transaction, can also give rise to reporting obligations and might need to be registered as a 'plan'.

What are the practical steps?

Employers should consider taking the following steps in preparation for completing their share plan returns:

— Check whether any new reportable arrangements were established in 2018/19 and complete the registration process – ideally this should be started in April or May to allow for potential delays;

— Confirm whether changes were made to existing SAYE, CSOP, SIP or EMI plans in 2018/19 and, if so, whether these affect their qualifying status;

— Understand how the plans operate, for example:

  - If a plan provides for both 'Restricted Stock Units' and 'Restricted Stock Awards', is the distinction understood?
  - Is it clear which employees have been granted which type of award – where is this data held and is it robust?
  - Are shares acquired subject to restrictions (this is common in some private company and continental European plans)?
  - Are awards 'cash cancelled' or 'net settled' (do employees acquire cash, rather than shares, in respect of all or part of the award – for example in relation to the payroll withholding due)?

— Review the reportable events and understand which stakeholders in the business (e.g. human resources, payroll, tax, legal, company secretarial) hold the relevant information – is the data accessible and robust for reporting purposes, particularly in relation to IMEs?

How can KPMG help?

KPMG can assist employers to complete and submit plan returns, review their payroll and corporation tax compliance processes for employee share plans and confirm tax advantaged plans' qualifying status.

Please contact us if you would like to discuss your employee share plan compliance obligations, and how KPMG can assist you to meet these.

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