THE END OF THE LINE FOR HMRC-APPROVED STATUS OF SHARE PLANS

On 6 April 2014 the existing process under which HMRC approves tax-advantaged employee share plans will come to an end. From that date a new online "self-certification" regime will apply.

The plans affected are:

- Company Share Option Plans (CSOPs), otherwise known as "approved" share option schemes;
- Share Incentive Plans (SIPs); and
- Save-as-you-earn (SAYE) schemes, otherwise known as Sharesave or Savings-Related share options.

Given that it will no longer see these plans before they are operated, HMRC is at the same time tightening up the legislation governing these plans in order to prevent abuse of the tax advantages. None of the changes should have any adverse commercial effect as they only reflect existing HMRC policy previously enforced through the approval process.

Other changes are being made to take out some of the quirks in the legislation and make the plans easier to operate in practice, particularly where there is a change in control of the parent company.

There has been a lot of debate as to how the changes to the legislation will affect existing HMRC-approved plans and the summary below sets out our expectation of where HMRC will come out on these issues:

- **Plans that have already been approved by HMRC will not have to amended to comply with the new legislation before 6 April 2014, although these plans should be reviewed (and, if necessary, amended) before they are first operated following that date**. This will usually mean before new awards are made but also applies to some other activities in connection with these plans, such as adjustments to the terms of awards.
- These plans will have to be registered online by 6 July 2015 in order for the 2014/2015 annual returns to be filed electronically. When the plans are registered a declaration of compliance will have to be made covering the period from 6 April 2014. Care is needed with the declaration as it is retrospective (which is why the plans may have to be reviewed well in advance of the declaration being made).
- Particular care will be needed on CSOPs, as the new legislation will, for the first time, set out specific requirements for the content of the employee communication documents. In most cases the majority of the new requirements will be met by the existing employee booklet etc., but it is essential that any additional information required is inserted before the documentation is next used.

The other type of tax-advantaged share awards in the UK, Enterprise Management Incentive (EMI) options, are also affected by the conversion to online filing of returns. However, as EMI options already operate under a self-certification process, the changes will be minimal and confined to the form in which option holders confirm that they qualify to be granted an EMI option.

Companies that also operate share plans that do not benefit from tax advantages (such as most LTIPs) will also be subject to new online administration requirements.

For more details on the administrative implications of the changes please refer to our alert "Employee Share Plans: New Online, Self-Certification and Filing Obligations".

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