SQUIRE SANDERS

UK BUDGET 2013
SHARE SCHEMES

The Budget has now been delivered and has, broadly, confirmed previous announcements and sought to clarify and update outstanding issues. The headlines may be dominated by the leak of the Budget but there were certainly aspects which will be of interest to employers who operate share schemes and their participating employees.

Entrepreneurs' Relief and EMI

As expected, the availability of the entrepreneurs' relief 10% rate of capital gains tax has been extended to shares acquired through the Enterprise Management Incentives (EMI) scheme. This means that employees who dispose of such shares on or after 6 April 2013 will be entitled to entrepreneurs' relief. For shares acquired through an EMI scheme, there is no minimum 5% holding requirement and the 12-month holding period will start from the date of grant of the option.

These rules will generally apply to disposals of shares which were acquired on the exercise of an EMI option on or after 6 April 2013. There are, however, useful transitional provisions where EMI options have been exercised in the tax year 2012/13.

This is a valuable and generous relief that will be welcomed by EMI option holders and employers alike.

Employee Shareholders

The reforms in respect of "employee shareholders" (where employees give up some of their employment rights in return for free shares in the employer) have been delayed until September 2013. However, we do now have details of an extra tax relief that will apply in addition to the CGT exemption and will apply to the first £50,000 worth of shares received.

It has been confirmed that the first £2,000 worth of shares received will not be subject to income tax or NICs. However, employees receiving more than the minimum value of shares will still face a significant amount of income tax and NICs, which may make the idea of becoming an employee shareholder a lot less appealing. In addition, the question of valuing the shares has not been addressed – this becomes even more important given the £2,000 income tax relief. The legislation has also been revised so that if the company buys back these CGT-exempt shares an income tax charge will not arise.

Simplification of Approved Share Schemes

The government has made some changes to the proposed simplification of approved share schemes. The main changes to the original proposals are:

- Minor changes to the proposed removal of references to specified retirement ages and instead to provide tax advantages if an employee can exercise CSOPs and SAYE options or withdraw SIP shares by reason of retirement.
- The statutory limit on re-investment of cash dividends under SIPs into dividend shares will be replaced by a power for employers to specify their own limit (this comes into effect from 6 April 2013).

Companies operating approved share schemes will need to take detailed advice once the Finance Bill provisions have been published on 28 March 2013.

The government confirmed that it will replace the current HMRC approval system with self-certification of schemes by businesses from 2014 and will publish details of the proposed self-certification process shortly.

Other Future Developments

The government has said that it will consult on a number of recommendations in the report by the Office of Tax Simplification on unapproved employee share schemes. Legislation is promised in future Finance Bills.

The Chancellor mentioned in his statement that the Finance Bill 2014 will introduce a new capital gains tax relief on the sale of a controlling interest of a business into an employee ownership structure. No further details were provided but this a tantalising proposal and worth monitoring.

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