SLAUGHTER AND MAY

Incentives Bulletin

June 2018

Welcome to the June edition of our Incentives Bulletin, updating you on the latest developments in remuneration and shares schemes. This month, we provide an update on HMRC's guidance in respect of disguised remuneration settlement terms and consider the full case decision of the European Commission in respect of state aid for EMI options. We take a look at new draft legislation requiring companies to report CEO pay ratios and conclude with a timeline of key dates in employee incentives coming up in the near future.

Disguised remuneration: HMRC updates guidance

Summary and key practice point: HMRC will continue to allow taxpayers who took part in a disguised remuneration arrangement to register an interest in settling their tax affairs. The original 31 May 2018 registration deadline has been dropped, but HMRC continues to require the provision of all necessary information by 30 September 2018. The updated guidance 'Disguised remuneration: settling your tax affairs' suggests that this deadline is not absolute but if the information is provided after 30 September 2018, it may be too late to reach a settlement before the new loan charge arises on 5 April 2019.

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More detailed analysis/commentary:

- On 1 June 2018, HMRC announced that it will continue to allow taxpayers who took part in a disguised remuneration arrangement to register an interest in settling their tax affairs.
- The settlement opportunity was originally announced on 7 November 2017, and followed HMRC's success in the Supreme Court in the *Rangers* case (RFC 2012 Plc (in liquidation) (formerly The Rangers Football Club Plc) v Advocate General for Scotland [2017] UKSC45). The settlement opportunity relates to income tax, employee and employer NICs, capital gains tax, inheritance tax and corporation tax arising from disguised remuneration schemes. Liabilities arising under the schemes can be settled by employers, employees or contractors.

- At the time of announcing the new settlement opportunity, HMRC set a deadline of 31 May 2018 for taxpayers to register. The 31 May 2018 deadline has now been removed. However, the guidance states taxpayers wishing to settle liabilities in connection with disguised remuneration schemes on favourable terms should register their interest with HMRC as soon as possible.
- The new settlement opportunity would appear to be a last chance for users of disguised remuneration arrangements to wind those arrangements up and settle past and future liabilities. Advisers will need to carefully weigh up the difference between income tax and NICs and a possible corporation tax deduction at historic rates under the settlement terms, and the tax charge that will arise on 5 April 2019 to determine whether it is more cost effective for companies with outstanding disguised remuneration loan arrangements to settle or wait until the 2019 loan charge arises.
- If it is more cost effective to to settle under the settlement opportunity, advisers and taxpayers should note that HMRC continues to require the provision of all necessary information by 30 September 2018. However, although the updated guidance suggests that this deadline is not absolute, HMRC warns taxpayers that, if the information is provided after 30 September 2018, it may be too late to agree settlement terms before the loan charge arises on 5 April 2019.

EC publishes full EMI State aid decision letter

Summary and key practice point: As reported in the May edition of our Incentives Bulletin, on 15 May the European Commission (EC) announced that it had granted state aid approval for the continuance of the UK's Enterprise Management Incentive (EMI) scheme. The EC has now published its full case decision.

More detailed analysis/commentary: The full decision re-confirms the eligibility requirements relating to EMI schemes and the five year period for the approval (subject to Brexit – see further below).

The decision letter also states that the UK authorities will implement at the earliest opportunity the necessary legislative changes to give effect to a new requirement to publish the following information in respect of awarded aid exceeding EUR 500,000:

- the identity of the granting authority;
- aid granted to the eligible SME;
- the date of granting;
- the form and amount of aid granted to eligible employees per eligible SME;
- the region in which the eligible SME is located; and
- the principal economic sector in which the eligible SME has its activities.

Unfortunately, the decision does not provide any further certainty in regard to whether options granted between 11pm on 6 April and 15 May 2018 will fall within the scope of the new clearance. However, it could be inferred from the final decision letter that the approval commenced on 6 April 2018. This is because the final decision letter states that the approval expires on 6 April 2023, and the approval is normally valid for 5 years. Nonetheless, a full statement or confirmation on this particular point from HMRC/HM Treasury is still awaited.

The EC states that the approval will expire on Brexit (which is expected to take place at 11pm on 29 March 2019). If the latest decision should automatically become UK domestic law under the European Union (Withdrawal) Bill, it may need to be immediately amended to in order to extend its expiry date.

Draft secondary legislation requires companies to report CEO pay gap

Summary: On 10 June 2018, the government published the draft Companies (Miscellaneous Reporting) Regulations 2018, which will require quoted companies with more than 250 UK employees to report annually on the ratio of CEO pay to the average pay of their UK workforce.

More detailed analysis/commentary: The government announced a package of corporate governance reforms in August 2017 in response to its Green Paper on corporate governance. This draft legislation forms part of the package of those reforms.

The purpose of the new reporting requirements is to build confidence in the way that large private and quoted companies are run and to seek to increase boardroom accountability.

The draft regulations were laid before Parliament on 11 June 2018 and, subject to Parliamentary approval, the Companies (Miscellaneous Reporting) Regulations 2018 will require:

- annual reporting on pay ratios of CEO pay to the average pay of the UK workforce, together with an explanation of any reduction or increase in the relevant financial year's pay ratios compared to the pay ratios of the preceding financial year (if applicable) and the reasons for such change.
- large public and private companies to explain how their directors comply with the duty to have regard to employee and other stakeholders' interests (a company is treated as large for this purpose if it is outside the scope of the small or medium-sized accounting regimes).
- large private companies to report on their corporate governance arrangements (a company is treated as large for this purpose if it has either more than 2,000 employees, or a turnover of more than £200m and a balance sheet total of more than £2bn).
- listed companies to show what effect an increase in share prices will have on executive pay.

The regulations will apply to companies with accounting periods beginning on or after 1 January 2019, meaning that companies will start including additional information, including pay ratios, in their directors' remuneration reports from 2020.

On 4 June 2018, the House of Commons Library published a **briefing paper** on corporate governance reform. The briefing paper provides an overview of the reforms proposed under these draft regulations, as well as an overview of the corporate governance framework in the UK, including the history of the UK corporate governance code and the interaction of the UKCG Code with directors' duties under the Companies Act 2006. The government has also published FAQs relating to the new corporate governance reporting requirements in this draft secondary legislation.

Finance Bill 2019 draft legislation

In a written ministerial statement on 11 June 2018, the Financial Secretary to the Treasury announced that the government will publish draft clauses for Finance (No3) Bill on 6 July 2018. This draft legislation will be accompanied by explanatory notes, tax information and impact notes, responses to consultations and other supporting documents. The government will introduce Finance (No 3) Bill following the Autumn Budget.

Horizon scanning

What key dates and developments in employee incentives should be on your radar?

Summer 2018	FRC to publish revisions to UK Corporate Governance Code
4th July 2018	Deadline for HM Revenue & Customs to issue follower notices based on the Supreme Court decision in the Rangers case
6th July 2018	Deadline for submission of share schemes annual returns using the ERS online filing system
6th July 2018	Government to publish draft legislation for Finance Bill 2019
28th September 2018	AIM listed companies to specify which corporate governance code they comply with, and provide 'comply or explain' information
30th September 2018	Deadline for submitting information to HM Revenue & Customs under disguised remuneration settlement opportunity
1st January 2019	Revised UK Corporate Governance Code due to take effect Associated legislation due to come into force - including to require listed companies to report annually the ratio of CEO pay to the average pay of their UK workforce
29th March 2019	European Union (Withdrawal) Bill due to take effect
4th April 2019	Gender pay gap reporting deadline

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