SLAUGHTER AND MAY

Incentives Bulletin

August 2018

Welcome to the August edition of our Incentives Bulletin, updating you on the latest developments in remuneration and shares schemes. This month, we summarise HMRC's latest guidance on disguised remuneration, provide some detail on three recent reports on executive pay and consider the recently published Business, Energy and Industrial Strategy Committee's report on gender pay gap reporting. We conclude with a timeline of key dates in employee incentives coming up in the near future.

Disguised remuneration: HMRC update

Summary and key practice point: Further to our June 2018 Bulletin, on 30 July 2018, HMRC published Spotlight 44 on disguised remuneration schemes affected by the loan charge. HMRC's guidance covers how to settle use of a disguised remuneration scheme before the loan charge arises (which will be on 5 April 2019).

Also, on 1 August 2018, HMRC published a webinar on disguised remuneration settlement calculations, which may be useful for those seeking settlement. Those seeking to settle should provide required information to HMRC by 30 September 2018.

Should you be in any doubt as to how the loan charge might affect you, please get in touch with your usual Slaughter and May contact.

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More detailed analysis/commentary:

- HMRC has made it clear that, despite what some promoters or agents may be advising, any disguised remuneration scheme with amounts still outstanding will fall within the scope of the loan charge; the loan charge has broad application.
- Therefore, those planning to restructure loans may find that HMRC challenge those arrangements.
- HMRC has also stated that the only way to avoid the loan charge is to settle before the charge takes effect, and to repay all loans in full.
- It may be beneficial for those with outstanding loans to seek settlement with HMRC. This is because, if a loan is outstanding when the charge takes affect, the individual whose loan it is will have to pay income tax on the value of the loan in the tax year 2018/19. Therefore, that

individual will only benefit from this year's personal allowance, and may end up paying more tax than if they had settled.

- Furthermore, the guidance suggests that HMRC are willing to work out repayment plans for those seeking to settle.
- Generally, the exclusions in the legislation should prevent awards made under most share schemes being caught by the loan charge. However, some arrangements that involve employees acquiring shares from Employee Benefit Trusts on deferred payment terms may be caught. These types of schemes were common in private companies (where the intention was to allow employees to acquire shares on a capital rather than income basis).

Executive pay reports

Summary and key practice point: Deloitte, the Chartered Management Institute (CMI), and the High Pay Centre and the Chartered Institute of Personnel and Development (HPC/CIPD), have each published data on executive pay. In a nutshell:

- CEO pay rose in 2017, but pay at the largest companies has fallen slightly.
- Shareholders remain interested in executive remuneration, with increased numbers voting against remuneration reports in this year's AGM season.
- Executive gender pay gaps were found to be significant in 2017, and the CMI have called for this to change.

More detailed analysis/commentary:

FTSE 100 CEO median pay rose 11% from 2016 to 2017, and in 2017 stood at £3.93m per year. The mean pay ratio between FTSE 100 CEOs and their employees also increased from 128:1 to 145:1.

The majority of CEO pay came from variable pay (base pay falling by 4% to 16% of total pay in 2017), and more than 33% of FTSE 100 CEOs received no increase in basic pay in 2017. Long-term incentive plans made up an additional 8% of total pay for the year (at 56%). Despite these increases, Deloitte have reported that median CEO pay levels in the biggest 30 companies actually fell slightly.

The HPC/CIPD report makes a number of recommendations. These include:

- that companies should report on pay ratios between CEOs and their employees now rather than waiting until the reporting becomes a legal requirement in 2019;
- that companies should review their remuneration reports with the aim of reducing complexity and length;
- that remuneration committees should assess employees' (including executives') performance by both financial and non-financial measures, such as reinforcing organisational and cultural values (e.g. training and development); and
- suggesting that there should be alignment throughout an organisation as to how employees are remunerated (i.e, pay practices should be consistent).

Executive pay remains a hot topic at AGMs. 22% of the UK's top 30 companies by size had less than 80% support for their remuneration reports in the 2018 AGM season, compared to 6% in 2017. This highlights shareholder focus on executive pay.

The CMI research suggests that there is a significant gender pay gap on FTSE 100 company boards. The mean pay of male CEOs was over double that of women in 2017. Moreover, female finance directors were found to earn 45% less than male finance directors. Interestingly, base CEO salaries of men and women only differed by 11.6%. This increases to over 35% when bonuses are included, and to over 74% when long-term incentive plans are included.

The CMI have recommended greater transparency on total pay, and for objectives to be set to eliminate the gender pay gap on boards.

Business, Energy and Industrial Strategy Committee on gender pay gap reporting

Summary and key practice point: On 2 August 2018, the House of Commons Business, Energy and Industrial Strategy Committee published its report on gender pay gap reporting (as well as a summary). The report focused on the adequacy and effectiveness of the gender pay gap reporting requirements, and on how businesses must take measures to reduce and eliminate this gap.

The report states that gender pay gaps of over 40% are not uncommon in some sectors, and that 78% of organisations have reported a gender pay gap in favour of men. The report also finds that the UK has one of the highest gender pay gaps in Europe. For this reason, amongst others, the report makes various recommendations, including a call on the government to widen the reporting obligation to organisations with 50 employees or more (rather than the current 250).

We will monitor the Government's response to the Committee's recommendations and highlight any possible legislative changes in future editions of the Bulletin.

More detailed analysis/commentary:

Some of the specific recommendations made were:

- to broaden the scope of the reporting obligation (from 2020) to organisations with 50 employees or more (rather than the current level of 250);
- to require organisations to provide narrative reporting to sit alongside their statistics, and to provide an action plan setting out how pay gaps are being, and will be, addressed, including objectives and targets;
- to ensure the Government provides specific fines for non-compliance with the reporting obligations;
- to include both part-time and full-time worker statistics;
- to amend the reporting requirements so that bonus calculations are provided on a pro-rata basis;

- for the Government to consult upon reporting pay gap data in respect of disability and ethnicity, with the aim of introducing any such requirements for 2020;
- for company boards to introduce KPIs when deciding on pay, with the aim of reducing and eliminating pay gaps;
- for remuneration committees, in reporting on pay policy, to explain how a commitment to reducing the pay gap is being reflected in their decision-making;
- for the Financial Reporting Council's proposals for a revised Stewardship Code to reference ensuring gender diversity is reflected throughout the organisation, especially on the board; and
- for the Financial Reporting Council to monitor reporting on gender diversity and the pay gap in annual reports.

Horizon scanning

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

31st August 2018	Consultation on the draft provisions for the Finance Bill 2019 closes
1st September 2018	SAYE option holders will be able to take a one-year savings holiday, without the need for companies to amend plan rules
7th September 2018	Consultation closes on Wates Corporate Governance Principles for large private companies
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
31st December 2018	Applications for postponing the disguised remuneration loan charge to be made by this date
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) Act 2018 to take effect
4th April 2019	Gender pay gap reporting deadline

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