SLAUGHTER AND MAY

Incentives Bulletin

September 2018

Welcome to the September edition of our Incentives Bulletin, updating you on the latest developments in remuneration and shares schemes. This month, we provide some detail on Glass Lewis and Institutional Shareholder Services encouraging shareholders to vote against pay proposals and remuneration reports, highlight the HMRC updated Save as You Earn (SAYE) prospectus and note that the government has abandoned abolition of Class 2 NICs. We conclude with a timeline of key dates in employee incentives coming up in the near future.

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Glass Lewis and Institutional Shareholder Services encouraging shareholders to vote against remuneration reports

Summary and key practice point: City advisory firms Glass Lewis and Institutional Shareholder Services (ISS) are recommending that investors vote against a number of companies' pay proposals and remuneration reports at their AGMs this September.

We understand that shareholders are being advised to vote against the remuneration reports of Entertainment One and Malin Corporation plc, reject pay proposals at Ryanair, and British Car Auctions (the company behind We Buy Any Car) is expected to face a shareholder rebellion over the remuneration package for its CEO.

Recently, companies have faced increasing anger from investors over excessive executive pay. Theresa May last year ordered the creation of the world's first public register of companies who have ignored shareholder votes and awarded "pay rises to bosses that far outstrip the company's performance".

More detailed analysis/commentary:

- We understand that Glass Lewis and ISS are advising their members to vote against Entertainment One's remuneration report for the second year in a row.

  Glass Lewis criticised the tv and film production company's 'successive significant salary increases' for its chief executive, Darren Throop, while ISS raised concerns about the £7.7m long-term incentive plan (LTIP) award handed to Throop, last year.

The recommendations follow last year's shareholder unrest, where the FTSE-250 listed company faced one of the biggest protest votes in the City. At last year's AGM, 38.2% of voting shareholders voted against the company's remuneration report in an advisory vote and 47.4% of shareholders opposed the company's remuneration policy.

- ISS is advising investors to vote against Malin Corporation plc's remuneration report. ISS states that the awards under the life sciences investment company's LTIP for the CEO and CFO are 'not in line with local market standards', with the awards vesting within less than three years of being granted. We understand the vesting period for the CEO, Adrian Howd, is 23 months under the company's 2015 LTIP. ISS also criticised the terms of the company's executive contracts, which entitle them to severance payments of two years' salary and twice their prior-year bonus, stating that such termination payments should be limited to no more than 12 months' salary, citing the UK Corporate Governance Code.
- Glass Lewis has advised Ryanair shareholders to vote against the low-cost carrier's pay proposals at its AGM on 20 September 2018. Glass Lewis states that the company's pay proposal 'lags behind' generally accepted market practice, with the company 'effectively stripping' shareholders of the ability to evaluate the incentive structure. The advisor groups have also called on investors to vote against the re-election of chairman David Bonderman.
- British Car Auctions, the company behind We Buy Any Car, is expected to face a shareholder rebellion over the remuneration package for its CEO, Avril Palmer-Baunack. Under Palmer-Baunack's current pay deal, agreed four years ago, she is set to receive total remuneration of £29.79m for the year ending 1 April 2018, with £28.68m being awarded under the company's LTIP. Glass Lewis has recommended that shareholders vote against what it says is an 'extremely disproportionate' package. The shareholders' vote on the company's remuneration report is only advisory, meaning that Palmer-Baunack may still receive the full payout.

HMRC updates Save as You Earn (SAYE) prospectus

Summary and key practice point: HMRC has updated the specimen SAYE prospectus with effect from 1 September 2018 to show that employees can delay the payment of monthly contributions on a maximum of twelve occasions over the lifespan of the savings contract. The government first announced its intention at Autumn Budget 2017 to extend the SAYE savings holiday from six to twelve months.

More detailed analysis/commentary:

SAYE option holders are permitted to postpone savings contributions under an SAYE savings contract for up to twelve months with effect from 1 September 2018. The change applies to all SAYE options, whenever granted, without the need for companies to amend plan rules. The twelve month savings holiday is also available to all option holders, not just those on parental leave.

On 1 September 2018, HMRC published a new specimen SAYE savings prospectus which reflects this increased savings holiday.

HMRC has also updated page ETASSUM34140 of its **Employee Tax Advantaged Share Scheme User Manual** to reflect this increase. The guidance also confirms that employees with savings contracts that started before 1 September 2018 can also delay the payment by up to twelve monthly contributions in total, without causing the savings contract to be cancelled prematurely. If the participant fails to make a contribution on the due date for a thirteenth occasion the employee is treated as if he had given notice of intention to stop making contributions permanently.

If companies grant options at the same time each year, an employee's temporary postponement of contributions under an existing savings contract may affect the extent to which they can enter into a new savings contract, and therefore the extent to which they may apply for options under the next offer of options.

Government abandons abolition of Class 2 NICs

Summary and key practice point: The government has decided not to proceed with its plans to abolish Class 2 NICs from 6 April 2019. Originally proposed at Budget 2016 for implementation in April 2018, a one-year delay was announced in November 2017.

Legislation to reform the treatment of termination payments and income from sporting testimonials is still expected to go ahead in a National Insurance Contributions Bill later this year.

More detailed analysis/commentary:

The government announced on 6 September 2018 that it will not proceed with the abolition of Class 2 National Insurance Contributions (NICs) during this parliament.

This change was initially intended to simplify the tax system for the self-employed and was originally proposed at Budget 2016 for implementation in April 2018.

However, the government announced a one-year delay in November 2017 to allow time for the government to engage with interested parties and to consider concerns relating to the impact of the abolition of Class 2 NICs on self-employed individuals with low profits.

The government have since engaged with interested parties and have concluded that it would not be right to proceed during this parliament, given the negative impacts it could have on some of the lowest earners in society.

The government still intends to legislate for reforms to the NICs treatment of termination payments and income from sporting testimonials, which were set out in the draft NICs Bill published on 5 December 2016. These are important changes to ensure the NICs treatment is consistent with the treatment of income tax in previous Finance Acts. Accordingly, legislation in respect of these reforms is still expected to go ahead in a National Insurance Contributions Bill later this year.

Horizon scanning

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

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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Dated September 2018

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