SLAUGHTER AND MAY

Incentives Bulletin

October 2018

Welcome to the October edition of our Incentives Bulletin, updating you on the latest developments in remuneration and share schemes. This month, we provide some detail on Labour's plans for large companies to give up to 10% of their shares to Inclusive Ownership Funds for employees, highlight two lead appeals being heard against HMRC PAYE assessments of growth share ownership plans and note that football referees were not employees for tax purposes, in a recent tax case. We conclude with a timeline of key dates in employee incentives coming up in the near future.

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Labour has announced proposals for large companies to give up to 10% of their shares to Inclusive Ownership Funds for employees

Summary and key practice point: Labour has announced proposals to introduce Inclusive Ownership Funds.

Companies with 250 or more employees would give from 1% to a maximum of 10% of their shares to the fund, which would be run by a trustee board of employees. Each employee would receive dividends to a maximum value of £500 per year. Representatives of the fund would have voting rights, like other shareholders.

Any money remaining after the £500-per-employee cap would be paid into a public services and welfare fund.

The plan would lead to increased employee share ownership, but it will also bring increased costs to employers.

More detailed analysis/commentary:

John McDonnell, the Shadow Chancellor, has announced Labour's proposals to introduce Inclusive Ownership Funds.

The funds would allow employees to have greater say over how the company is run, and it would give them a financial stake in the business, up to a £500 additional income cap per employee per year.

The proposal that amounts over £500 be paid to the Government has been attacked as being an additional tax on corporates which pay material dividends. The proposal would also apply only to quoted UK companies – so potentially giving an advantage to unquoted companies and non-UK corporations.

The plan follows on from the proposals by Labour to increase employee representation on the boards of large companies. Jeremy Corbyn has called for at least one-third of directors of companies with a workforce of 250 or more to be employees (with a minimum of two employee directors on each board). These directors would be members of recognised trade unions, and would be paid the same amount as the other directors on the board.

The new UK Corporate Governance Code, which is due to come into effect in January 2019, has already taken some steps to encourage employee engagement in how large companies are run by introducing a statement of engagement with employees, but the new Labour plans go much further.

First-tier Tribunal to hear appeals against HMRC PAYE assessments of growth share ownership plans (“GSOPs”) involving contracts for difference

Summary and key practice point: The First-tier Tribunal will hear two lead cases in relation to appeals against HMRC’s assessment of PAYE on GSOPs, based on contracts for difference.

This will be of interest to companies who have previously operated this type of GSOP. HMRC has taken a firm view that GSOPs constructed in this way do not work, and that any payment made to the employee by the employer when the contract for difference matures should be taxable as employment income, and not under the Capital Gains Tax (“**CGT**”) regime.

More detailed analysis/commentary:

The particular plans subject to these appeals involved contracts for difference or a similar concept, where the amount paid to the employee at the maturity of the contract was said to be taxable under the CGT regime, rather than as employment income.

HMRC’s Spotlight 28, which was published in February 2016, showed HMRC’s firm view against this type of plan. HMRC stated that the amount payable to the employee at the maturity of the contract would be subject to income tax and National Insurance contributions via PAYE, and will not be taxable in the CGT regime. Employers have been told that, if they wish to avoid litigation, they can pay the outstanding employment taxes and any interest accrued.

There have been appeals against the PAYE assessments that HMRC issued over these GSOPs, and two lead cases will be heard by the First-tier Tribunal.

See *Jones Bros Ruthin (Civil Engineering) Co Ltd, Britannia Hotels Ltd & Others v HMRC* [2018] UKFTT 0500 (TC) (30 July 2018)

Referees were not employees for tax purposes

Summary and key practice point: The First-tier Tribunal held in *Professional Game Match Officials Limited v HMRC* (30 August 2018) that a group of part-time football referees were not employees, for tax purposes, of the body overseeing the management and administration of refereeing.

The case shows the importance of employment status in determining how remuneration is taxed.

More detailed analysis/commentary:

HMRC had issued determinations for tax and Class 1 NICs on the basis that the company was the employer of the referees who were employed under a contract of service. The company appealed, arguing that the referees were self-employed, and in any event there was no contract between it and the referees, only match-by-match arrangements. The Tribunal allowed the appeal and held that the referees were not employees for tax purposes.

The decision confirms the approach that tax tribunals take to employment status: focusing primarily on contractual provisions between the parties, whilst being prepared to depart from them where they do not reflect the reality of the relationship between the parties.

Horizon scanning

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

29th October 2018	The Autumn Budget to take place
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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