SLAUGHTER AND MAY/

NEWSLETTER

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INCENTIVES BULLETIN

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Welcome to the October edition of our Incentives Bulletin, updating you on the latest developments in remuneration and share plans. In this Bulletin, we look at the **Upper Tribunal's judgment on when a right to acquire a securities option arises, updateNs to the SAYE guidance, HMRC's research into tax-advantaged share plans and an opinion of the GAAR Advisory Panel.**

UT REVERSES FTT DECISION AND DETERMINES WHEN A RIGHT TO ACQUIRE SECURITIES OPTION ARISES

In *John Charman v HMRC* [2020] the Upper Tribunal (“**UT**”) determined that a right to acquire a securities option arose at the time that the share option was granted, reversing a decision of the First Tier Tribunal (“**FTT**”). The FTT had previously held that the relevant options were not securities options until the employment conditions, which applied to the exercise of the option, had been satisfied. The FTT asserted that until these conditions had been fulfilled the relevant options could not be referred to as a ‘right to acquire securities’. The UT decided that, at the date the options are granted, the contractual rights created by the option documentation amounted to the creation of a ‘right to acquire securities’.

Although the provisions of the Income Tax (Earnings and Pensions) Act 2003 in question have since been amended, the case provides useful confirmation as to when to treat a securities option as ‘being acquired’.

UPDATES TO SAYE GUIDANCE

There has been a minor update to the Employee Tax Advantaged Share Scheme User Manual relating to the temporary postponement of savings contributions as a result of the coronavirus pandemic. The update reflects the position that, from 10 June 2020, employees can delay their SAYE monthly contributions beyond the 12 occasions that the savings contract previously provided for, provided that the employee is unable to continue with the contributions as a result of difficulties posed as a result of the coronavirus pandemic such as being on furlough or unpaid leave.

However, all contributions paused as a result of the coronavirus pandemic must be resumed on notice from HMRC and failure to resume payments will cause the contract to be cancelled.

HMRC PUBLISHES RESEARCH INTO TAX-ADVANTAGED SHARE PLANS

HMRC has recently published research focussing on tax-advantaged share plans, with the aim of identifying how they might be improved from the perspective of employers and employees.

Key findings include that:

- older employees, with greater disposable capital, are more likely to participate in share plans, meaning that there is an intergenerational imbalance;
- poor levels of communication has led to participants' confusion surrounding the benefits of the arrangements offered; and
- SAYE savings arrangements are commonly viewed as inflexible and unattractive, especially given the absence of any bonus.

A number of amendments have been proposed including:

- Increased flexibility for SAYE plans, including possibly reducing the three-year savings period and increasing interest rates, and tax incentives for smaller employers who offer employees free share awards through a HMRC-approved Share Incentive Plan; and
- HMRC to play a larger role in promoting the benefits of tax-advantaged share plans to companies and facilitating better communication surrounding share plans more generally

GAAR ADVISORY PANEL OPINION AND SPOTLIGHT 56

HMRC has published an opinion of the General Anti Abuse Rule ("**GAAR**") Advisory Panel. The opinion draws the conclusion that tax planning designed to avoid employment income tax charges while simultaneously securing a corporation tax deduction was not a reasonable course of action and served no purpose other than to avoid tax.

The background to this opinion relates to an arrangement between a personal services company, a third party acting as trustee of a "remuneration trust" and an individual who was the company's sole director and shareholder. Arrangements were entered into whereby the company funded the trustee to make substantial unsecured loans to the shareholder. The interest on these loans was rolled up and added to the principal amount owed under the loans. The shareholder argued that the contributions to the trust were deductible for corporation tax purposes but the GAAR firmly disagreed describing the arrangement as "contrived and abnormal".

HMRC had also published 'Spotlight 56' which highlights the Panel opinion on these arrangements and offers particular guidance on the above tax avoidance arrangement which aimed to reward a director using loans from a remuneration trust. HMRC has strongly advised companies to refrain from using any similar arrangements to avoid the future costs of investigation and litigation.

This forms part of HMRC's ongoing campaign to counter complex or contrived remuneration arrangements that it sees as abusive.

HORIZON SCANNING

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

31 December 2020	Transitional arrangements under UK-EU withdrawal agreement expected to end unless extended
6 April 2021	Off-payroll working rules (IR35) come into force for the private sector

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