Cooley

Year-End Reporting for Equity Incentive Plans With UK Participants Due July 6

May 30, 2019

This alert serves as a reminder of the need for year-end reporting to the UK tax authorities (HMRC) with respect to options and other equity incentive awards granted to, and share acquisitions by, UK employees which occurred between April 6, 2018, and April 5, 2019. The requirements are relevant to both UK and US companies.

Annual returns must be submitted by midnight (UK) time on Saturday, July 6, 2019, via the HMRC Employment Related Securities (ERS) online service. Companies must have:

- registered to use the service;
- registered each plan or arrangement; and
- self-certified any UK tax advantaged plans.

If you have not yet registered to use the ERS online service, you should do so before June 27, 2019, as registration may take several days.

There are consequences and financial penalties for non-compliance.

Online filing of annual returns in relation to UK tax-advantaged and non-tax advantaged plans or arrangements

The requirements catch all options and equity incentive awards granted to, and shares acquired by, UK employees by reason of their employment, they also catch the cancellation of existing equity incentive awards and certain other events. Reporting may also be required in respect of non-UK resident employees who carry out work duties in the UK.

The requirements apply to both UK and non-UK companies.

A separate online return must be filed for each registered **UK tax-advantaged plan** (EMI, CSOP, SAYE or SIP) by the July 6, 2019 deadline. A failure to register a tax-advantaged plan in time will affect the tax treatment of future participants (and additionally, in the case of CSOPs, current participants). You must also notify HMRC if you have amended a key feature of a tax-advantaged CSOP, SAYE or SIP, and state whether the amendment has caused the plan to cease to meet the legislative requirements.

For non tax-advantaged plans or arrangements, you can choose whether to file separate returns for each arrangement, or a single return covering them all. The returns will contain details of any share options that have been granted and exercised, as well as any other reportable events in relation to employment-related securities.

View ERS annual return templates and associated HMRC guidance.

Penalties for non-compliance

Failure to file these annual returns on time will result in an automatic penalty of £100 per registration, and any benefits from tax-advantaged plans may be lost. Additional penalties will arise where submissions remain outstanding by October 6, 2019 (an additional £300), January 6, 2020 (a further £300), and March 6, 2020 (an additional £10 per day). Please note that you must file nil returns for all inactive plans until you have told HMRC that the plan has ceased.

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