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Equity incentives: News from Capital Strategies on share-based rewards

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Introduction

Government announces change to National Insurance on unapproved share option gains

The Government has today announced in detail how it proposes to address the problem of unpredictable employer NICs on unapproved option gains.

Under the new proposals, employer and employee can - as previously indicated - come to a voluntary agreement, whereby the employee can choose to fund all or part of the employer's NICs. The change will enable such an agreement to be made in relation to any unapproved share option granted on or after 6 April 1999 where a gain has not yet arisen. In practice, however, this will probably only effect future share option grants. In addition - and this is the new element in the Government's proposals - employees will qualify for income tax relief against the National Insurance they pay. For a 40% taxpayer, this will mean an overall tax on unapproved option gains of 47.32%.

In practical terms, companies wishing to take advantage of this will have to get employees to agree formally that they will bear the cost of NIC contributions. This will mean an additional administrative step for many companies, which previously may have unilaterally granted options without requiring employee agreement.

Background

Currently, employers have had to pay National Insurance on the gains arising on the exercise of share options outside an Inland Revenue approved scheme and when the shares or the options are readily convertible into cash. Many companies - some 50 of whom were involved in consultation with the Financial Secretary and helped bring about the changes to the legislation – were concerned about an unpredictable NICs liability on unapproved share options. They argued that companies needed to put a provision in their accounts for an unpredictable NICs liability, leading to accounting difficulties. In addition, companies with volatile share prices were concerned that exposure to this unpredictable liability could endanger their investment strategies and damage their future growth by deterring investors. New start up companies could also find that using funds to pay their NICs charge created cashflow problems.

You can view Inland Revenue press releases at the following website: http://www.inlandrevenue.gov.uk/news/press.htm

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If you want to find out more about using share schemes to incentivise your employees, contact Robert Postlethwaite on (+44) (0) 171 256 8000 or email him on robert.postlethwaite@capitalstrategies.co.uk

For more information about Capital Strategies please visit our website www.capitalstrategies.co.uk.

Incorporates the equity incentives businesses of FIELD FISHER WATERHOUSE and CAPITAL STRATEGIES.

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