CLIFFORD CHANCE

Global Share Plans News – November 2011

GLOBAL SHARE PLANS NEWS

Welcome to Global Share Plans News!

Clifford Chance's Employee Benefits team is delighted to welcome you to this edition of Global Share Plans News. Global Share Plans News aims to keep you up-to-date on developments relevant for operating employee share plans around the globe.

Clifford Chance's Employee Benefits team is a market leader in international share plans and incentives advice with a global team of over 100 lawyers dedicated to this area.

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IRELAND

Changes to the social insurance regime

What do you need to know?

There have been changes to both the employer and employee Pay-Related Social Insurance ("**PRSI**") regime in Ireland. The rules have changed several times since the beginning of this year but the current position is:

- from 1 January 2011, employee PRSI applies at a rate of 4% to share-based remuneration but the Irish Government has announced a limited exemption for some existing arrangements;
- the exemption is due to apply to share based remuneration granted under a written agreement between employer and employee before 1 January 2011 (e.g. an option certificate) where the underlying shares are received on or before 31 December 2011;
- changes to the legislation to bring the exemption into force are expected but have not yet been made. In the meantime, accepted practice is that employee PRSI is not payable where the exemption would apply once it is in force;
- in other cases, the employer must withhold the employee PRSI amounts due (although it is expected that employers will be relieved of the obligation to withhold employee PRSI amounts due from former employees);
- helpfully for employers, an exemption from employer PRSI applies to all share based remuneration.

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What do you need to do?

- Check whether you have withheld employee PRSI since 1 January 2011 on your share based remuneration. You should be able to offset what you have paid against other PRSI liabilities in due course.

- Consider reminding employees who have vested options that they are likely to face a PRSI charge if they exercise those options and shares are delivered after 31 December 2011.

- Be prepared to withhold employee PRSI on all awards from 1 January 2012.

- Check that you are not currently paying employer PRSI on share based remuneration.

We will keep you updated on further changes.

SOUTH AFRICA

Employee share plan prospectus exemption extended to non-South African companies

What do you need to know?

To offer shares to employees in South Africa, you need to make sure that you comply with prospectus and registration requirements. In South Africa, as in many countries, there is a prospectus exemption for offers of shares to employees. Previously, the employee share plan exemption only applied to offers by South African companies, but the scope of the exemption has been extended to offers to employees of shares in non-South African companies.

The exemption does not apply automatically and a company that wants to rely on the exemption must meet certain requirements, including:

- nominating a compliance officer for the employee share plan who is responsible for the administration of the plan, making various filings with the South African authorities and who is accountable to the directors of the company; and

- stating in the parent company's annual report and accounts the number of shares that it has allotted globally during the financial year under the plan.

What do you need to do?

If you would like further information about the requirements for relying on the share plan exemption, please get in touch with us.

If relying on the exemption is not attractive for you because of the compliance requirements, there are alternative ways forward that mean it should still be possible to offer your employee share plan in South Africa. To learn more, please contact us.

EU PROSPECTUS DIRECTIVE

Health warning language for share plan offers in the Netherlands

What do you need to know?

From 1 January 2012, mandatory "health warning" language will need to be included in offer/marketing materials (e.g. employee share plan booklets) where companies make offers of shares in the Netherlands and want to rely on the prospectus exemption for offers made to fewer than 100 individuals per member state (to be increased to 150 individuals by 1 July 2012) or the exclusion where the consideration for the offer over a period of 12 months is less than Euro 2.5 million across the EU (to be increased to Euro 5 million by 1 July 2012).

The "health warning" language is not required for offers relying on the employee share plans exemption which is available to companies which have securities admitted to trading on a regulated market in the EU.

What do you need to do?

If you will be granting share plan awards to employees in the Netherlands on or after 1 January 2012, please get in touch. We can confirm whether the "health warning" requirement applies to your plan and, if it does, help amend your employee communications to include appropriate "health warning" wording.

RUSSIA

New rules governing the offer of foreign securities

What do you need to know?

The securities law and prospectus requirements in Russia have made it difficult to operate share plans in Russia for some years.

The basic rule is that shares in foreign companies may only be offered to "qualified investors" in Russia. Particularly for all-employee plans, a lot of employees will not meet the qualified investor test. New rules have come into force to allow Russian employees who are not qualified investors to acquire shares in foreign companies if the shares fall within the Russian Federal Service for Financial Markets (the "**RFSFM**") definition of "securities".

Although this sounds like good news for employee share plans, offering shares to employees may still be a problem in practice as there is a risk that employee share plan awards would not fall within the definition of "securities" in the new rules. As a result, they could still be subject to the provisions of the old law and only be granted to qualified investors.

The RFSFM, the body responsible for applying and interpreting the new rules, has yet to provide any guidance on the new rules.

What do you need to do?

Some non-Russian companies have decided to accept the risks and offer share awards to employees. For other companies, the risks are not acceptable and they have decided to structure their incentives to avoid the rules completely. Given the uncertainty around the new rules, companies wanting to incentivise employees in Russia should consider offering awards structured as discretionary bonuses (rather than awards linked to shares or out-and-out phantoms) pending more guidance from the RFSFM. Please contact us if you would like more information.

We will keep you updated on further changes.

We want to hear from you

We want Global Share Plans News to provide you with the information most relevant to your share plans.

- Are you interested in offering shares to employees in a particular jurisdiction and want to know if this would be difficult?
- Is there a type of plan your competitors are operating internationally which you would like to find out more about?

Do please get in touch and let us know the issues that you want to hear more about.

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