GMS Flash Alert

Global Compensation Edition

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United Kingdom – SAYE Employee Share Plans and Capital Gains Tax Changes

A U.K. tax-advantaged Save As You Earn (SAYE or 'sharesave') plan is a key part of many companies' total employee reward packages. International groups can implement SAYE as a stand-alone employee share plan, or as a U.K. sub-plan to a comparable non-U.K. plan (e.g., a U.S. qualified Employee Stock Purchase Plan or an Irish-approved SAYE plan).

Income tax relief on the acquisition of shares at a discounted strike price, and the availability of an annual exemption to shelter disposals from Capital Gains Tax (CGT) mean SAYE plans let many U.K. employees participate, tax-free, in the shareholder value they create. This enhances SAYE options' commercial value to employers as effective employee incentives.

However, from 6 April 2023 (the U.K. tax year runs from 6 April to 5 April), an individual's CGT annual exemption will be reduced from GBP 12,300 to GBP 6,000. From 6 April 2024, the individual CGT annual exemption will be fixed at GBP 3,000.[1]

This *GMS Flash Alert* sets out certain steps that international groups can consider to help ensure that SAYE plans continue to deliver for their U.K. workforces and businesses.

WHY THIS MATTERS

The reduction in the CGT annual exemption means more U.K. employees are likely to pay CGT when they sell shares acquired under an SAYE plan. For affected employees, a CGT liability could create personal tax filing obligations for the first time.

Reductions in the CGT annual exemption could therefore make SAYE options financially and administratively less attractive to employees. For the employer, this has the potential to reduce the value of an SAYE plan as an effective employee incentive.

How U.K. SAYE Plans Work

Under a U.K. SAYE plan, participants are granted options over shares in their employer (or its parent company) and enter into a linked three-year or five-year savings contract. The number of shares an employee can acquire is based on their total savings (employees can save up to GBP 500 each month from post-tax salary) and the option strike price, which can be set at a discount of up to 20 percent of the share price on the date of grant.

At the end of the savings contract, employees can either use their savings and any tax-free interest or 'bonus' (see below) to buy the shares under option, or retain the cash (e.g., if the share value falls below the option strike price). No income tax or employee's or employer's social security charges arise on the exercise of SAYE options on or after the third anniversary of their grant date (or on earlier exercises in certain take over and 'good leaver' circumstances).

When SAYE shares are sold, the employee's CGT liability is based on the difference between the disposal proceeds and the price paid for the relevant shares, less any unutilised CGT annual exemption available.

KPMG INSIGHTS

The interest or 'bonus' rate for SAYE savings contracts has been zero since 2014. Therefore, without a positive bonus rate, the savings contract only provides upside potential if the SAYE option is exercised and shares are acquired. However, a revision to the bonus-rate-mechanism calculation is due. The U.K. Treasury might publish information on this following the U.K. Budget on 15 March 2023.

How Reductions in the CGT Annual Exemption Could Affect SAYE Option-holders

Based on the CGT annual exemption for 2022/23, employees who qualify for income tax relief on exercise of their options, and who have no other taxable capital gains, can realise a profit of up to GBP 12,300 on a sale of SAYE shares without paying any tax.

The CGT annual exemption was expected to remain frozen until 5 April 2026,[2] but will now reduce to GBP 6,000 for 2023/24, and to GBP 3,000 for 2024/25 and subsequent U.K. tax years.

This means that from 6 April 2023, employees whose taxable profit when they sell SAYE shares exceeds the new lower annual exemption will pay more tax than they would in comparable circumstances in prior years. This could affect employees' perceptions of the financial benefit of participating in an SAYE plan. Additionally, as individuals must calculate, report, and pay any CGT due themselves, some affected employees will need to deal directly with the U.K. tax authorities (HMRC) and the self-assessment personal-tax filing regime for the first time. This could raise administrative barriers to future participation in SAYE plans.

An adverse employee perception to how these changes could affect participation in an SAYE plan might reduce the benefit that employers receive from offering SAYE options as employee incentives.

KPMG INSIGHTS: ARE THERE STILL ADVANTAGES?

Despite reductions in the CGT annual exemption, SAYE options will continue to offer considerable tax advantages to employees who qualify for income tax relief on exercise. For example, for employees with total taxable income and capital gains of less than the U.K. higher-rate threshold (currently GBP 50,270), even if the entire gain realised on the

KPMG INSIGHTS: ARE THERE STILL ADVANTAGES? continued:

exercise of an SAYE option is subject to CGT on sale of the shares, the relevant tax should be due at 10 percent on disposal; compared with combined income tax and employee's social security at 32 percent (or, potentially, more for Scottish taxpayers) on acquisition had the shares been acquired under a non-tax-advantaged plan.

Employers should therefore consider what action they could take to communicate the impact of these CGT changes to employees, and make sure that the continued benefits of participating in an SAYE plan are understood.

General Steps Employers Can Consider

In order that SAYE options continue to deliver value to their workforces and businesses, employers that operate SAYE plans could consider how they might:

- reduce the impact that new or increased tax charges for participants might have on the plan's effectiveness as part of their employee value proposition;
- manage communications effectively so that all employees understand what these changes might mean for them and how SAYE participation will continue to benefit them;
- update plan FAQ documents and refresh employee communications; and
- support employees with unfamiliar CGT liabilities who might look to the employer's payroll, reward, and HR teams or plan administrator for assistance.

KPMG INSIGHTS: A DEEPER DIVE INTO POSSIBLE NEXT STEPS

Specific actions might include communicating the impact of the CGT changes through reward platforms so employees remain clear on how they will benefit from SAYE options, and providing general guidance, or specific professional support, with calculating and reporting CGT liabilities (e.g., by making sure employees understand when and how they could use HMRC's specific CGT service, rather than register to file a full self-assessment tax return).

Employers could also consider assessing how changes to their share plan offering could mitigate employees' potential CGT exposures. These might include introducing or increasing share awards under a tax-advantaged Share Incentive Plan (a specific type of U.K. tax-advantaged employee share acquisition plan), which can deliver tax-free disposals of shares regardless of the CGT annual exemption; or facilitating the transfer of SAYE shares to employees' stocks and shares ISAs (a type of U.K. tax-efficient personal investment account), which could remove any CGT exposure completely if done within the relevant time limit.

FOOTNOTES:

1 HMRC Policy Paper, 'Capital Gains Tax: Annual Exempt Amount' (21 November 2022).

2 See HMRC Policy Paper, 'Capital Gains Tax: Annual Exempt Amount' (21 November 2022) under 'current law'.

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