Shared parental leave

What does it mean for your tax-advantaged employee share plans and salary sacrifice schemes?

The Shared Parental Leave (SPL) regulations came into force in December 2014. From April 2015, companies will need to ensure that they have a SPL policy in place. Employees will be entitled to SPL and Statutory Shared Parental Pay (SSPP) if:

- Their baby is due on or after 5 April 2015; or
- They adopt a child on or after 5 April 2015.

Under SPL, eligible mothers and fathers will have the right to share up to 52 weeks' leave to care for their child and up to 37 weeks' SSPP.

Parents can take SPL and receive SSPP if a mother’s (or primary adopter’s) entitlement to statutory maternity (or adoption) leave or statutory maternity pay (SMP) (or statutory adoption pay (SAP)) is curtailed so that the child's other parent (or adoptive parent) may share the balance of the leave or pay period. Parents can choose how much of the SPL each of them will take (after any period of compulsory maternity leave) and can take SPL in up to three separate blocks.

SSPP is due at the lower of the prescribed rate (currently £138.18 a week) and 90% of the average weekly earnings of the person claiming SSPP. This is the same as SMP or SAP except that during the first six weeks of leave, SMP or SAP is paid at 90% of whatever the employee earns, with no maximum.

As currently happens during statutory maternity, paternity and adoption leave, an employee taking SPL will be entitled to the terms and conditions of employment which would have applied had they not been on SPL (except for the terms relating to remuneration, i.e. sums payable to the employee by way of wages or salary).

Therefore, employees who participate in employee share plans or salary sacrifice arrangements will continue to be eligible during a period of SPL. The treatment of existing share plan options/awards or salary sacrifice arrangements during a period of SPL will depend on the terms of the schemes under which they were granted or provided.
What you need to know

While a move to SPL is likely to be beneficial for families, such policies will require extra care on the part of HR departments and payroll to ensure the smooth running of employee share plans or salary sacrifice arrangements.

Share Incentive Plan (SIP)

While a participant continues to be paid during SPL, their contributions to a SIP may continue as normal (unless the participant instructs contributions to stop). As participant's contributions must not exceed 10% of gross pay (a figure which is likely to change if extended periods of SPL are taken), HR must monitor this to ensure deductions take account of any lower earnings during SPL. Employees who do not want to make monthly contributions while on SPL may give notice to suspend their contributions during the period of SPL. Where a participant goes on unpaid SPL, contributions to a SIP must stop.

Participants who qualify for free shares will continue to be eligible to receive awards as normal during SPL.

Save-As-You-Earn (SAYE) scheme

Under a SAYE scheme, participants have three choices during a period of SPL:

- Employees can continue to pay into the scheme (but may need to contact the scheme administrator to do so).
- Employees are able to suspend their contributions for up to six months:
  - If more than six payments are missed, their account will automatically be closed and any savings will be refunded to them.
  - If an employee hasn't missed more than six payments, their deductions will automatically resume when they return to work and the scheme maturity date will be extended.
- Employees may choose to cancel their savings contract and request a return of their contributions.

Where a SAYE scheme opens while an employee is on SPL, and they are eligible, they must be invited to join as normal.

Enterprise Management Incentive (EMI)

An employee can continue to hold and receive EMI options while on SPL. This is because employees on SPL continue to meet the working time requirements. However, employees on SPL do not count towards the 250 full-time employee test.

Being on SPL should have no impact on the normal rules as to when an EMI option can be exercised or the tax treatment applying to such options.
Company Share Option Plan (CSOP)

An employee can continue to hold and receive CSOP options while on SPL. Employees on SPL should be treated as continuing employees and being on SPL should have no impact on the normal rules as to when a CSOP option can be exercised or the tax treatment applying to such options.

Salary sacrifice schemes

It is possible for an employee to remove themselves from salary sacrifice schemes as a birth/adoption would normally qualify as a ‘lifestyle change’. However, as mentioned above, employees are still entitled to the terms and conditions of their employment while they are taking SPL. Employers should be aware that, in the same way as when employees are entitled to other statutory payments, e.g. SMP, SAP or Sick Pay, amounts paid to employees cannot be reduced by a salary sacrifice below the statutory minimum.

Typically, two approaches are taken by employers to avoid this issue:

- The employer bears the cost of the amount salary sacrificed on behalf of the employee while they are on SPL, funded by a contingency fund from contributions to the salary sacrifice scheme by all employees; or
- The employer ‘pauses’ the employee's payment, and either;
  - the employee surrenders the entire amount salary sacrificed while on SPL when they return to work; or
  - the salary sacrifice agreement is extended so that the monthly cost to the employee remains the same, and the amount is collected over a longer period.

What you need to do

No changes should be needed to the rules of tax-advantaged employee share plans or salary sacrifice schemes as a result of the introduction of an SPL policy. However, you may want to:

- Prepare new employee communications to explain what will happen to share plan entitlements and salary sacrifice arrangements where an employee goes on SPL.
- Provide additional support to HR or share plan managers so that they can answer questions from employees in relation to SPL and their employee share plan entitlements.
- Ensure there are sufficient controls in place to capture employees taking SPL in blocks who take part in a salary sacrifice scheme.
- Ensure that the current payroll system can manage employees who take SPL.
How EY can help

Our team of share scheme and salary sacrifice specialists are able to help with all aspects of employee communications to respond to the introduction of SPL.

We are also able to help with any plan or scheme reviews, the design and implementation of new plans and schemes, as well as stakeholder communications. We can assist in the calculation of tax withholding from share schemes allowing organisations to apply complex tax withholding rules to share awards through an automated quality assured end to end process.

Further information

For further information, please contact one of the following or your usual EY contact:

Giles Capon gcapon@uk.ey.com 0117 981 2073
Ian Thomas ithomas@uk.ey.com 01582 643331
Isobel Evans ievans@uk.ey.com 020 7951 3113
Ceri Ross cross3@uk.ey.com 020 7951 4572
Jon Braid jbraid@uk.ey.com 020 7951 1744