Incentivising key executives using the new employee shareholder status

A new 'employee shareholder' status takes effect from 1 September 2013. In exchange for giving up certain statutory employment rights, an employee can receive up to £50,000 worth of shares with zero capital gains tax to pay on gains when the shares are sold.

Why might a company want to use employee shareholder shares?
A company could offer employee shares to any employee who gives up specified statutory employment rights. Following the original public consultation in autumn 2012, it was clear that many employers were not comfortable with depriving the general workforce of their specified statutory employment rights. However, for senior executives, employee shareholder shares are more likely to be appropriate because they:

- tend to value their contractual rights more than the specific statutory employment rights – and those contractual rights can be unaffected or even enhanced if the employer wishes
- are often entrepreneurial and wish to benefit from corporate growth as far as possible
- are in a strong position to influence the growth in value of the business (the favourable tax treatment reinforces the incentive effect)
- will usually be making significant capital gains on which they would otherwise be paying capital gains tax.

What employment rights of the employee will be affected?
The employment rights to be released are those on unfair dismissal, statutory redundancy pay, requests for flexible working and time off for training. Furthermore, employee shareholders would have to give additional notice of the date when they want to return from maternity or adoption leave. Importantly, any employee taking up the new employee shareholder status must agree to do so and should receive legal advice from an independent third party.

Other considerations
A pre-award share valuation can be agreed with HM Revenue & Customs giving certainty on tax treatment for companies and participants. Companies can benefit from corporation tax relief on the value of the shares awarded. A special class of shares can also be used to protect existing shareholder interests. Participants cannot pay for their shares although, in some circumstances, the nominal value of the shares may need to be funded by a third party.

How can Grant Thornton help?
Grant Thornton's Equity Reward team can advise businesses on the design, structure and implementation of employee shareholder arrangements and work with experienced employment lawyers to comply with the employment law requirements.

Contact one of our experts for further information:
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Tax treatment of qualifying awards

- There will be no capital gains tax on the subsequent disposal of qualifying shares (valued at up to £50,000 at the date of award) by the employee shareholder.
- The first £2,000 worth of shares awarded to the employee will not suffer an income tax or National Insurance Contributions (NICs) charge. The balance of £48,000 will be subject to income tax and (where applicable) NICs.
- Where employee shareholder shares are combined with a growth share structure, there is potential for significant tax free gains for executives who deliver value to shareholders.