



Employee Incentives Team

Equity participation has become an almost expected feature of an employee’s total remuneration package. Companies recognise that offering employees a share in the company they work for can give employees increased motivation and improve productivity.

Taylor Wessing LLP has a dedicated team of employee incentives specialists which can offer a full service to our clients, from the scheme design and documentation to implementation and communication.

Here we outline some of the key incentive arrangements that are available to companies.

What incentive plans can I offer employees?

Broadly, there are two categories of plan that companies can choose from. There are HM Revenue & Customs approved plans which offer generous tax advantages to employees, and plans that are not capable of approval but which offer companies greater flexibility in terms of design and application.

Which plans are capable of HM Revenue & Customs approval?

The plans that are capable of HM Revenue & Customs approval are:

- Enterprise Management Incentives
- Company Share Option Plans
- Share Incentive Plans
- Save as You Earn Schemes

Enterprise Management Incentives (EMI)

EMI options are intended to help smaller companies with growth potential to recruit and retain high calibre employees, and to offer a reward for employees taking a risk by investing their time and their skills in helping their employing company fulfil its potential. Provided that the options are granted at market value (and certain events do not occur) there is no tax or NIC liability at the time of grant or exercise.

The net sale proceeds are subject to capital gains tax but taper relief starts from the date the option was granted. No advance clearance is required from HM Revenue & Customs but there is a notification procedure. There are a number of restrictions on the company that can grant EMI options as well as on the size of an award.

Company Share Option Plans (CSOP)

A CSOP allows a company to select employees or directors to reward. There is no tax on the grant of an approved option and, subject to conditions, there is no tax payable on exercise. However, the limit of approved option grants is £30,000 for each employee. For this reason, a CSOP is often used in conjunction with an unapproved share option plan to allow higher levels of award.

Share Incentive Plans (SIP)

A SIP offers a number of alternatives to help companies tailor the plan to fit in with reward strategies and culture. A SIP can only be operated after it has been approved by HM Revenue & Customs and set up in conjunction with a UK resident trust. Participation must be offered to all employees. The choices of arrangement (which can be offered together or separately) under a SIP are:

- Free shares - Up to £3,000 per annum can be given to employees.
- Partnership shares - Employees can purchase shares with up to £125 of their gross income each month (or £1,500 annually).
- Matching shares - Up to 2 Matching shares can be given to employees to match each Partnership share purchased.
- Dividend shares - Dividends on shares held for employees can be paid directly or reinvested in additional shares (Dividend shares) without incurring a tax charge.
- If an employee keeps shares in the plan for five years there will be no income tax or NIC charge. There may be a tax charge if shares are removed from the plan earlier than the fifth year.

Save as You Earn Schemes (SAYE)

As with the SIP, all employees must be offered an opportunity to participate. There are two parts to an SAYE scheme:

- Employees must enter into a savings plan with a building society or other approved financial institution, and commit to saving a set amount for either three or five years. This amount cannot exceed £250 per month. At the end of the savings period a tax-free bonus is paid representing the accumulated interest. (If offered, an employee can leave the savings for an additional two years and receive an increased bonus.)
- At the outset of the savings period, the company will grant an option to the employee. This may be exercised at the end of the savings period with the proceeds of the savings account.

The employee is not obliged to exercise the option at the end of the savings period. The savings may be returned to the employee instead. In addition, there is no tax when the option is granted, exercised or on the savings.

SAYE schemes are very popular with employees and at the time of the introduction of the SIP there was a concern that SAYE schemes would be abolished. However, representations from companies of all sizes demonstrated the popularity of the SAYE and they remain a frequently used method of incentivising employees.

What is an unapproved plan?

There are many different types of unapproved plans. Although the tax treatment of such arrangements is not as favourable as for approved plans, there is considerably more flexibility available in plan design.

The two most frequently adopted types of unapproved share scheme are:

- an unapproved share option, and
- an award of shares.

Unapproved share option plans

- Frequently used to grant options to employees in excess of the statutory limit that applies to CSOPS or where EMI options cannot be used.
- The terms of the options are set out in the scheme rules and companies may design schemes to reflect their specific requirements.
- Such variations may include staggered vesting schedules, or a requirement to acquire and hold shares as a condition for participation. Corporate or individual performance conditions are frequently imposed as a condition of exercise.
- There is no income tax charge when an unapproved option is granted.
- On exercise, there is a charge to income tax on the difference between the exercise price and the market value at the date of exercise. National Insurance contributions may also be payable on the date of exercise, although it is possible to transfer the cost of the employer's National Insurance contributions to the employee by agreement or by an election approved by HM Revenue & Customs.

Award of shares

- This may involve the acquisition of shares by the employee subject to specific restrictions (including forfeiture, or conversion into worthless deferred shares, on certain specified events, e.g. termination of employment).

- To the extent that the shares are acquired by the employee at a discount to market value there may be a tax, and possibly NIC liability at acquisition or, if the shares are restricted, at acquisition and when the restriction falls away.

- Detailed tax planning is required to ensure the optimum income tax and National Insurance contribution treatment in respect of restricted share awards due to the complex tax regime applying to restricted shares.

How we can help you

Our team of dedicated employee incentives specialists have experience of designing and implementing all of the plans described in this brochure together with all aspects of equity incentive advice (including the creation of employee benefit trusts in support of share option schemes). In addition to drafting the relevant legal documents, we can assist you in design and offer advice on corporate governance and best practice. We can assist you with choosing trustees or other service providers, and help you with communication material. We work closely with the Corporate Tax Group and are ideally placed to offer a full service.

Employee Incentives Team



Peter Jackson

Partner

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Peter Jackson is a partner in the corporate group at Taylor Wessing. Peter specialises in corporation tax and VAT and has a wide range of experience in relation

to the full range of corporate and property transactions including:

- income tax and corporation tax issues relating to employee incentive arrangements, termination settlements etc
- corporate reconstructions and amalgamations and mergers and acquisitions
- inward investment into the UK for the purposes of business start-ups.

Peter is an associate of the Institute of Taxation. He has contributed articles to Taxation magazine and has reviewed tax cases for the Tax Journal.



Ann Casey

Partner

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Ann is a partner in the corporate group at Taylor Wessing and is head of the Employee Incentives Team. Ann specialises in equity incentive arrangements and has particular experience of:

- tax aspects of equity structuring in relation to IPOs
- cross-border issues including inward-bound start-ups
- takeovers, mergers and acquisitions.

Ann also advises on all types of approved and unapproved share plans and structuring involving venture capital and private equity.

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Taylor Wessing has an enviable track record in serving knowledge-based and technology-orientated businesses. A market leader in intellectual property, the firm also has a strong market presence in corporate finance, private equity, real estate finance, inward investment and employee incentives.

A number of the lawyers have science degrees and many have worked in-house and/or been seconded to technology-based companies. The combined strengths of the team, including our knowledge of international intellectual property rights and our extensive international connections, means we are ideally placed to meet the needs of companies in the sector.

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How we can help you

Our team of dedicated employee incentives specialists have experience of designing and implementing all of the plans described in this brochure together with all aspects of equity incentive advice. In addition to drafting the relevant legal documents, we can assist you in design and offer advice on corporate governance and best practice. We can assist you with choosing trustees or other service providers, and help you with communication material. We have the backing of the corporate and tax departments and are ideally placed to offer a full service.

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