

4 November 2016

# 3HR Legal Weekly

## Employment & Corporate

### Employee Share Schemes

Nearly all UK-listed companies offer some form of share schemes to their directors and employees, as do many private companies. The main purpose of using employee share incentive plans is to recruit, retain and motivate employees, as well as providing a useful tool to tie talented employees to the company for a period of time. Some schemes are discretionary, can be made available to selected employees, and if approved by HM Revenue and Customs ("HMRC") can offer favourable tax treatment to both the employer and the employee.

#### Types of Employee Share Schemes

Some employee share schemes are tax advantaged share schemes. Some of these schemes must be offered to all qualifying employees, whilst others allow the board of directors to exercise its discretion when selecting which employees will be offered them. There is also a range of non-tax advantaged share schemes which companies find useful for their flexibility. Non-tax advantaged plans are discretionary in general. We will consider several of the most common types of tax advantaged schemes in this article.

#### Company Share Option Plans (CSOPs)

In a CSOP the company grants the employee an option to purchase shares in the company at some specified time in the future (i.e. in three years' time) at the market value at the date of the grant. If certain conditions are met, gains made upon the exercise of the options will be free from income tax and NICs. A CSOP option is risk-free for employees as they are not required to make any initial financial commitment or even exercise the option in the future. An employee can be granted options with a value of up to £30,000 at the date of the grant provided certain requirements are met.

#### Enterprise Management Incentives (EMI)

EMI schemes are tax advantageous share options and are targeted at small, higher-risk trading companies. A company must be an independent trading company with gross assets of no more than £30 million and no more than 250 employees. Share options with a value of up to £250,000 at the date of the grant may be given to each qualifying employee. The total value of shares over which EMI options are granted by any company cannot exceed £3 million. Provided the exercise price of the option is the market value agreed with HMRC and the options still qualify, no income tax or NICs will be charged when the grant is exercised.

#### Save As You Earn (SAYE)

SAYE option schemes are mostly used by listed companies, although some large private companies may also use them. SAYE schemes have to be offered to all employees, but employees can decide not to take part. Employees enter into a savings contract for three or five years. Payment must be made on a weekly or monthly basis, be for between £5 and £250, and be deducted from salary or wages net of income tax. The option will generally lapse when the employee leaves employment, except the case of death, personal injury, retirement or redundancy, where the option may be exercised within six months. Employers will need to identify how the proposed schemes will affect the employees who participate in each selected plan. Employers will also need to communicate with the employees about the proposals and benefits so that the value of offering any such scheme can be fully appreciated.

Should you require advice on and assistance with employee share schemes, please contact your usual 3HR consultant or Richard Hull at [richard.hull@3hracs.com](mailto:richard.hull@3hracs.com).

**Richard Hull**  
Commercial Solicitor  
E: [richard.hull@3hracs.com](mailto:richard.hull@3hracs.com)



This newsletter is designed to provide general information only. It does not constitute legal or other professional advice and thus should not be relied on. Definitive advice can only be given with full knowledge of all relevant facts. If you would like to discuss any aspect further, please contact us.

3HR Corporate Solicitors Limited is a Solicitors Practice, authorised and regulated by the Solicitors Regulation Authority, No: 597935.  
3HR Benefits Consultancy Limited is authorised and regulated by the Financial Conduct Authority. Firm Reference Number: 556015

The registered office of both 3HR Corporate Solicitors Ltd and 3HR Benefits Consultancy Ltd is New Broad Street House, 35 New Broad Street, London EC2M 1NH. Mainline Tel: 0207 194 8140 Web: [www.3hracs.com](http://www.3hracs.com)