

COMPANY SHARE OPTION PLAN (“CSOP”)

Key Features of the Plan

A CSOP is the traditional method of giving selected executives (and sometimes others) a personal interest in the future success of the company. Under a CSOP, participants are granted options to acquire shares in the company, normally between 3 and 10 years after grant, at an exercise price that is set at the time of grant. For a plan approved by HM Customs & Excise (“HMRC”) this must be at least market value at the date of grant.

Options under a CSOP approved by HMRC enjoy particular taxation advantages. Broadly, there is normally no charge to income tax and National Insurance either on the grant or exercise of an option, and on sale any increase in the value of the shares between the exercise price and the sale proceeds of the shares will normally be subject to capital gains tax (CGT). (For 2008/09 the first £9,600 of capital gains are tax free and gains above this are charged at 18%).

To qualify for HMRC approval, the rules of a CSOP must meet prescribed statutory requirements and there are limits both on the value of the options which may be granted and on participation. These include:

- i. the aggregate market value of shares which may be held under option at any one time by any employee under all discretionary HMRC approved plans is limited to a fixed amount (currently £30,000) calculated at the respective dates of grant;
- ii. whilst it is possible for part-time employees to participate in a CSOP it is only open to “full time” directors, defined as those who devote at least 25 hours per week to the duties of the office; and
- iii. an employee may not participate if the company is a close company for tax purposes and if the employee, together with his associates, has an interest in more than 10% of the shares in the company.

Obtaining HMRC approval is a two stage process. The first involves the draft rules of the scheme and ancillary documentation being submitted to HMRC for confirmation that they are in a form which is capable of formal approval. Following the adoption of the scheme by the Company, the documentation can then be submitted to HMRC in final form for formal approval. Approved options cannot be granted until formal approval in writing is received from HMRC. This process normally takes 4 to 6 weeks from the date of the original submission of the draft rules.

Typically, options outside the £30,000 limit are granted under a separate section of the plan rules not approved by HMRC.



Performance Conditions

The exercise of options may be made conditional on the satisfaction of performance criteria. In private companies, exercise is often dependent upon achieving an objective such as a flotation or a trade sale. Listed companies will normally follow the guidance published by the ABI and other similar bodies.

HM Revenue & Customs Share Schemes Returns

There are some important deadlines looming for companies which operate share schemes. In brief:

- by 6 July in each tax year, all companies are required to submit to HM Revenue & Customs (“HMRC”), annual returns in respect of HMRC approved schemes operated during the previous tax year; and
- by 6 July in each tax year, all companies are required to submit to HMRC a Form 42 if “reportable events” have arisen during the previous tax year.

Online filing

Companies now have the opportunity to file certain share scheme returns online. To use this facility, companies must be registered for the PAYE Online - Internet Service.

The important point to note is that ***HMRC will no longer issue paper returns to companies***. Instead, it will issue notices to file share scheme returns to those companies which are known to it. Unapproved arrangements will still have to be reported without any prompting from HMRC.

Companies are encouraged to file returns online but may continue to file paper returns if they wish to do so. The deadline for submitting returns is the same whether the return is filed online or by paper. Companies can obtain paper copies of the annual returns by printing a copy from HMRC’s website.

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