

SHARE INCENTIVE PLANS

Presented by Rashree Chhatrisha

9 June 2009

MM & K Limited
No 1 Bengal Court
Birchin Lane
London
EC3V 9DD
Tel: 020 7283 7200
Fax: 020 7283 4119

www.mm-k.com

TRAINING



Types of Plan

- ❑ Option Plans (CSOPs, EMI, SAYE)
- ❑ LTIPs (conditional & restricted share awards etc.)
- ❑ Share Purchase Plans (“SIPs”)

TRAINING

Company Share Option Plans “CSOPs”

- ❑ Selected participants are granted rights to acquire shares
- ❑ Approved or unapproved
- ❑ Performance targets
- ❑ Exercise Price
- ❑ Frequency of grants

TRAINING

Enterprise Management Incentive (“EMI”) Plans

- ❑ EMI legislation amended by FA 2008
- ❑ EMI options must be over shares in an independent trading company, which has gross assets not exceeding £30 million at the time the options are granted
- ❑ Company limit: subject to a total share value of £3 million under EMI options to all employees.
- ❑ EMI eligibility limited to companies with fewer than 250 full-time employees (or part-time equivalent).
- ❑ Also, shipbuilding, coal and steel production are to be added to the list of excluded activities.
- ❑ Employee Limit: market value of up to £120,000.
- ❑ No income tax or National Insurance either on the grant or (assuming it was granted at market value) on the exercise of the option.

TRAINING

Savings-Related Share Option Plans

- ❑ Must be open to all employees, including part-time employees, subject to service requirements which must not exceed 5 years.
- ❑ Employees enter into savings contracts for 3 or 5 years and are simultaneously granted options based on total anticipated savings (which may include interest and bonus).
- ❑ The proceeds from the savings contract when it matures fund the option price, which is normally discounted by up to 20% of the market value of the shares at the date of invitation or grant.
- ❑ SAYE schemes are approved by HMRC.
- ❑ The option holder does not pay income tax on the grant or the exercise of the option but may suffer a charge to capital gains tax when the shares are sold.
- ❑ The new rates which are effective from 17 February 2009 are in your notes.

TRAINING

LTIPs

- ❑ Conditional Share Awards
- ❑ Restricted Share Awards
- ❑ Deferred Bonus Share Plans
- ❑ Bonus Matching Plan
- ❑ Jointly Owned Equity (JOE)

TRAINING

Share Purchase Plans

Share Incentive Plan

- ❑ Partnership Shares
- ❑ Matching Shares
- ❑ Free Shares
- ❑ Dividend Shares

TRAINING

Share Purchase Plans cont.

	Free shares	Partnership shares	Matching shares	Dividend shares
Tax on award	None	None - tax relief for salary used to buy shares	None	None
Tax on removal of shares from plan within 3 years of award	On market value when taken out	On market value when taken out	On market value when taken out	Original dividend taxable but in year when shares taken out of Plan
Tax on removal between 3 and 5 years of award	On lower of value at award & value on removal from Plan	On lower of salary used to buy shares & value on removal from Plan	On lower of value at award & value on removal from Plan	None
Tax on removal after five years	None	None	None	None
CGT on removal -any time	None	None	None	None

TRAINING

Other issues

- Age Discrimination
 - Unlawful for companies to treat their employees differently on the grounds of age;
 - Plan rules need to be reviewed so that they comply with The Employment Equality (Age) Regulations 2006 (the "Age Regulations")
- Accounting issues
- CGT - there is a single CGT rate of 18% on disposals of shares

TRAINING

Budget 2009

- The tax changes announced in the 2009 Budget should cause many companies to look again at the tax advantages of employee share schemes.
- Effective from April 2010, income tax will rise to a top rate of income tax to 50 per cent. (on income above £150,000) and personal allowances will be reduced by £1 for every £2 of income above £100,000.
- In light of this tax regime, employers have a compelling motive to structure incentives in the form of capital gain - taxed at 18% or less - rather than income.
- Several share based employee incentive schemes meet this need, including the Enterprise Management Incentive and Approved Company Share Option Plan.

TRAINING

Managing remuneration in the current climate

- Across the world, banks are being compelled to restructure executive remuneration. In October 2008, the UK Government said there should be no cash bonuses for board members of banks in which it had taken shares.
- In the USA, on 4 February 2009, President Obama announced that senior executives of companies receiving federal bailout money would have their pay capped at \$500,000 under a revised financial compensation plan. Pay in excess of \$500,000 must be in restricted stock, which can only vest after the recipient of the bailout funds repays its debt to the US Government, with interest.
- MM&K suggest:
 - A freeze on base salary;
 - Selecting and setting bonus measures for 2009 - increasing focus on critical measures (cash flow, sales growth, cost reduction);
 - LTIPS - executives are disenchanted with shares
 - A cash based LTI programme may be more appropriate;
 - Review performance measures and reduce the percentage level of award

TRAINING

ABI Guidelines - 1

- ❑ The National Association of Pension Funds (NAPF) has updated its Corporate Governance Policy and Voting Guidelines urging investors to adopt a "stronger stance" on companies' application of the Combined Code. (Feb 2009).
- ❑ On the 19th of September 2008, the ABI reissued its guidelines on executive pay without any changes from the previous year.
- ❑ Executive remuneration - guidance from the ABI and FSA
- ❑ The ABI says its statements on remuneration policies "remain relevant at this time". In the context of much economic volatility, unchanged guidelines should be welcomed by remuneration committees, which have a challenging time ahead of them.

TRAINING

ABI Guidelines - 2

Main points:

- Salary increases and bonus potential increases ("uplifts") will be scrutinised.
- Succession and retention arrangements, especially without performance conditions, are rarely to be considered appropriate.
- The consultation process for incentive plans should not be rushed and should involve full disclosure.
- If a company's share price has fallen dramatically, this should be taken into account when deciding grant policy. In this case, investors may deem unchanged levels of awards from share incentive plans as taking advantage of such fall. Investors may consider this to be a policy of awards for failure.

TRAINING

International share plans - 1

- Not ordinarily resident employees (SIP and SAYE)
 - Companies who offer SIP or SAYE and whose scheme rules refer to section 15 of ITEPA
 - A change to plan rules required if a company has employees who are resident but not ordinarily resident in the UK and it does not wish them to participate.

TRAINING

International share plans - 2

- ❑ The FA 2008 has introduced new rules to the taxation of non-UK ordinarily resident and non-domiciled employees;
- ❑ Individuals who are resident, but not ordinarily resident, in the United Kingdom will, in respect of shares and options acquired on or after 6 April, 2008, be taxed in the same way as individuals who are ordinarily resident in the United Kingdom.
- ❑ New measures will increase the occasions when internationally mobile employees will be subject to UK income tax and NICs in respect of their share awards after they leave the UK.

TRAINING

International share plans - 3

- ❑ EU Prospectus Directive: New "light touch" approach
- ❑ Local tax issues
- ❑ complex maze of legal, regulatory and administrative requirements
- ❑ Transfer Pricing
- ❑ Administration and Communication

TRAINING

SHARE INCENTIVE PLANS

Presented by

Rashree Chhatrisha
MM & K Limited

authorised and regulated
by the Financial Services Authority

MM & K Limited
No 1 Bengal Court
Birchin Lane
London
EC3V 9DD
Tel: 020 7283 7200
Fax: 020 7283 4119
www.mm-k.com

TRAINING

