EMPLOYEE SHARE SCHEMES

CORPORATE LAW

Here when you need us

Stephens Scown®

Which employee share scheme is right for your business?

What are share schemes?

Employee share schemes can be a highly effective and tax efficient method of incentivising employees. Many companies use them as a valuable tool to:

- *Motivate employees, leading to improved productivity*
- *Recruit new talent and retain valuable employees*
- *Reduce employment costs*

There are numerous different types of scheme, depending on what you're trying to achieve. The most common examples include giving shares to employees, giving employees the option to buy shares after a period of time or subject to performance criteria, or a combination of the two.

The main types of employee share schemes usually fall into five categories:

- *Enterprise Management Incentive (EMI)*
- *Company Share Option Plan (CSOP)*
- *Save As You Earn (SAYE)*
- *Share Incentive Plan (SIP)*
- *Employee Ownership Trust (EOT)*

Enterprise Management Incentive (EMI)

EMI options are the most popular tax-advantaged share option plans as there is no income tax or national insurance contributions (NICs) payable on the grant or the exercise of the option. It may also be possible to get business asset disposal relief (formerly entrepreneurs' relief) on the sale, giving a potential tax rate of just 10%.

EMIs are specifically designed for small, higher-risk trading companies. To qualify, companies must:

- *Have gross assets of no more than £30 million*
- *Not be under the control of another company*
- *Have fewer 250 full-time equivalent employees*

For employees to be eligible, they must:

- *Be employed by the company for at least 25 hours a week*
- *Or if less than 25 hours, spend 75% of their working time at the company*
- *Own 30% or less of the share capital*

The options should be capable of being exercised within 10 years of the date of grant, but are otherwise flexible in terms of exercise criteria. This flexibility allows EMI schemes to be used for exit-only arrangements with performance conditions.

An EMI scheme provides further flexibility as options may be granted over different classes of shares. For example, it is possible to grant an EMI option over a separate class of non-voting shares.

Company Share Option Plan (CSOP)

A CSOP is a great way to provide a tax efficient and flexible way to reward selected employees, managers and directors by giving them share options in the company.

Companies self-certify that the HMRC requirements for the scheme are met. They are ideal for smaller family-managed or owner-managed companies as only selected employees need be included.

The main criteria for setting up a CSOP are:

- *The company must be listed on a recognised stock exchange or free from control of another company*
- *The options can be granted by the employer or a parent company*
- *The shares under option must be ordinary share capital*

Options can be granted over shares with a total value of up to £30,000 (market value), rising to £60,000 from April 2023. There is no income tax or NIC payable by the employee on the grant of the option, or on the exercise of option, which can be exercised any time between three and 10 years after they have been granted.

It may be possible to exercise the options before three years without losing the tax-free benefit if the employee leaves due to extenuating circumstances, such as illness or disability.

Save As You Earn (SAYE)

SAYE schemes are another way to grant share options. There are two key elements to these schemes:

- *A saving arrangement*
- *A share option*

The share option can provide a discount of up to 20% on the market value of the shares, at the time it is granted. SAYE option schemes are most often used by listed companies, but larger private companies may also use them.

Participation in the SAYE scheme must be available to all employees. The grant of the share options is subject to the employee entering into an HMRC-certified savings arrangement. This requires the employee to save between £5 and £500 per month for three to five years. The accumulated savings can be withdrawn at the end of the savings period or used to exercise the option and purchase shares.

Share Incentive Plan (SIP)

SIPs allow companies to invite eligible employees to buy shares in the company. The shares are held in an employee benefit trust. It is a flexible scheme allowing all employees to participate and enabling employers to reward strong performance.

Employers can give employees up to £3,000 of shares each year, tax free. Employees can also purchase up to £1,500 of shares from their pre-tax, pre-NIC salary.

The company benefits from corporation tax relief for the costs incurred in providing shares. The plan is limited to £9,000 worth of shares per employee each year.

The trust can function like an internal market for the sale and purchase of shares within a private company and the plan can work alongside discretionary schemes to provide further incentives for staff.

Employee Ownership Trust (EOT)

Shareholders can sell a majority shareholding in the company to an EOT formed by the company. The EOT then holds the shares in trust for the benefit of all employees of the company.

The sale of shares is usually funded by a combination of cash reserves and future profits of the company. The selling shareholders pay 0% capital gains tax on the sale and all employees can benefit by a profit-related bonus of up to £3,600 free of income tax each year.

An EOT can function alongside direct ownership of shares and other share incentive schemes. As such, it can be an effective way to both share the success of the company with all employees, while also providing enhanced performance objectives and rewards for leaders and management.

It's often helpful to talk to us even if you're only exploring your options

EOT at Stephens Scown

Stephens Scown was the first large law firm in the UK to become employee-owned, giving all eligible members of staff an equal share in our profits through our innovative 'Scownership' scheme. Being the first law firm of our size to become employee owned and full members of the Employee Ownership Association, we understand first-hand what it takes to make a successful EO transition and now advise businesses across the UK on the journey to employee ownership.

Non tax-advantaged share schemes

As well as tax efficient employee share schemes, there are a range of non tax-advantaged share schemes available, such as long term incentive plans, joint ownership arrangements, employee benefits trusts, or uncapped share option schemes. We can help you explore whether any of these are more suitable for your own business.

How we can help

Our highly experienced team can advise you on the full range of issues around designing, setting up and operating an employee share scheme, including:

- *Complex share structures*
- *Creating a plan to match your commercial objectives*
- *Designing scheme rules and share option agreements*
- *Drafting the documentation and managing the process*
- *Preparing an explanation of the documents for employees*
- *Preparing board minutes and shareholder resolutions*
- *Liaising with your accountant regarding any valuations of HMRC reporting requirements*

Why Stephens Scown?

Stephens Scown LLP is a regional firm acting across the country for national clients. With over 50 partners and 300 staff we are one of the largest law firms in the region and ranked in the top 150 in the UK.

We have supported many companies through the process of setting up employee share schemes. Our employees are all business owners ourselves due to our innovative 'Scownership' scheme, so we have seen the success that follows when people feel motivated to work hard for a business that they have a stake in.

We have an inclusive and supportive culture, and we live and breathe our values which are reflected in everything we do – from the people we recruit to the way we service our clients.

If you'd like to learn more about employee share schemes and if they might be right for your business, please contact our corporate team on 01392 210700 or email corporate@stephens-scown.co.uk.

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