

**Approved
SAYE (Save As You Earn)
Share Option Schemes**

***Guidance for
employers and advisers***

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About this guidance

This guidance describes the provisions in **Sections 516, 517 and Schedule 3 of the Income Tax (Earnings and Pensions) Act 2003** relating to approval of SAYE share option schemes by HM Revenue & Customs (HMRC).

References to the relevant legislation are shown at the end of each paragraph. Unless otherwise stated the statutory references in this guidance are to the **Income Tax (Earnings and Pensions) Act 2003**. The abbreviation ITEPA 2003 has been used throughout. References to **ITA 2007** are to the **Income Tax Act 2007**.

Bold print draws attention to certain technical terms which bear a special meaning defined in the text, and they appear in a glossary. The term "employees" includes directors unless the context requires otherwise.

These notes are for guidance only and reflect the tax position at the time of writing. They have no binding force and do not affect any right of appeal.

Separate guidance has been produced for employees and can be found [here](#).

Approved share option schemes

Income tax relief is available for employees who participate in share option schemes approved by HMRC. The costs incurred by companies in setting up approved schemes are also allowable as a deduction in computing the company's profits for corporation tax purposes.

Costs of setting up approved schemes

The costs a company incurs in setting up a share option scheme that HMRC approves are allowable as a deduction in computing the company's profits for corporation tax purposes.

The deduction is allowable for the period of account in which the expenditure is incurred, except where the scheme is approved more than 9 months after the end of that period. In such circumstances the deduction is allowed for the period of account in which approval is given. (Section 84A ICTA 88)

A deduction is not available in any case where options over shares are granted before the scheme has been approved by HMRC.

Specimen rules and documents

A model set of scheme rules designed to meet the requirements for approval is available [here](#). It is intended only as an illustration of the type of framework which companies might wish to adopt.

In addition to a set of rules, a workable scheme will include ancillary documents such as a letter of invitation, an application form, an option certificate and a notice of exercise. Examples are available [here](#). We plan to publish updated examples of ancillary documents shortly. There is scope for varying the scheme rules and documents. Companies should consider their own particular needs carefully and obtain professional advice, if necessary.

Tax Treatment of SAYE share option schemes

No income tax will be chargeable where a share option is granted and exercised in accordance with a **SAYE** share option scheme approved by HMRC under Schedule 3 ITEPA 2003, unless the option is exercised within three years of its being granted by virtue of a provision included in the scheme which permits early exercise where there is a change of control of the company. (Para 37 Sch 3).

The ordinary capital gains tax rules apply to the calculation of gains and losses on the later disposal of shares acquired by the exercise of a share option. Such shares are treated as being acquired at the actual cost to the employee of obtaining them unless they are acquired on the taxable early exercise of an option. (S38(1)(a) TCGA 1992)

In the few circumstances where income tax has been charged on exercise of the option, the shares are treated as though they were acquired for a consideration equal to the **market value** at the date of acquisition, i.e. the date of exercise of the option. (S120(2) and (4) TCGA 1992)

Individual Savings Accounts (ISAs)

Since 6 April 1999 it has been possible for shares acquired from a **SAYE** share option scheme to be transferred directly into a stocks and shares mini ISA or the stocks and shares component of a maxi ISA. No capital gains tax is payable on the transfer into the ISA. Dividends received and capital gains made on shares held in an ISA are free from tax and do not have to be declared to HMRC.

The shares transferred count as a subscription to the ISA equal to the value of the shares at the date of transfer. If no other subscriptions are made in the same tax year shares worth up to

£7,200 can be transferred into the stocks and shares ISA.

The transfer must take place within 90 days of the **exercise date**.

General information on ISAs can be found on the HMRC website at www.HMRC.gov.uk/isa

Savings Scheme

The main feature of an approved **SAYE** share option scheme is that the shares acquired by exercising an option must be paid for out of the proceeds of a special certified SAYE savings arrangement. The options must not normally be exercisable earlier than the time when repayments under the savings scheme become due.

Savings contracts

The **contractual savings arrangements** which may be used in operating **SAYE** share option schemes are those certified by HM Treasury under Section 705 of the Income Tax (Trading and Other Income) Act 2005 and approved by HMRC. These include **SAYE Sharesave schemes** operated by building societies, banks and authorised European savings institutions.

SAYE Sharesave contracts are available to anyone aged 16 years or over who has a right under an approved **SAYE** share option scheme to acquire scheme shares. Before any savings contract can be entered into, the building society, bank or authorised European savings institutions concerned (the **savings body**) must have received from the company which

established the share option scheme a copy of its certificate from HMRC granting approval of that scheme under Schedule 3 ITEPA 2003.

Under the savings contract, the saver agrees to pay to the **savings body** concerned a fixed regular monthly sum of between £5 and £250 over a three year or a five year period. Savings will normally be made by deduction from pay.

At the end of the three or five year period the 36 or 60 contributions are repayable to the participant on application, together with a bonus which will be equal to a specified number of monthly contributions. For the five year contract only, if the repayment is not claimed for a further two years, a larger bonus equal to a greater number of monthly contributions will be paid.

The rates of bonus payable under the Save As You Earn Contractual Sharesave Scheme Prospectus are reviewed each September. From 1 September 2008 the rates of bonus are:

- for the three year savings contract, equal to 2.4 monthly contributions
- for the five year savings contract claimed after five years, equal to 7.0 monthly contributions, and
- for the five year savings contract claimed after seven years, equal to 12.7 monthly contributions.

Details of current rates in force can be found on HM Treasury website at www.hm-treasury.gov.uk

Applications to have the money repaid should be made to the **savings body** concerned.

Simple interest, also known as 'early leavers' rate is currently 3.0% a year, and will be payable on uncompleted contracts repaid between the first and third anniversaries (first and fifth anniversaries for five year savings contracts) of the commencement of savings. If the repayment is taken before the first anniversary or before 12 monthly contributions have been made, no interest will be payable.

If, in the case of the five year savings contracts, repayment is taken between the fifth and seventh anniversaries, compound interest, with monthly rests, currently 3% a year, will be payable on the amount due at the fifth anniversary (including the bonus) for the period between the fifth anniversary and the month in which the repayment takes place.

Any bonus or interest payable is free of UK income tax.

A participant who ceases employment may, by arrangement with the **savings body** concerned, continue to make monthly payments under the SAYE contract by a different method of payment.

Applying for approval of a scheme

Applications for approval of **SAYE** share option schemes under Schedule 3 and all enquiries relating to the scheme approval should be addressed to the [Employee Shares & Securities Unit](#).

Application for approval

An application for approval has to be made in writing by the company setting up the scheme. In the case of a **group scheme** the controlling company makes the application. A **group scheme** is one set up by a company which **controls** one or more other companies covered by the scheme. These other companies are called **constituent companies**. (Para 3 Sch 3)

To seek approval of a scheme, companies have to provide the following information:

- a statement giving the name and registered office of the company setting up the scheme with details of the Tax Offices and the reference numbers under which the company makes its corporation tax returns and its PAYE returns. In the case of a **group scheme** this information will be required for all companies to which the scheme is expressed to extend.
- a statement either confirming that the scheme extends to all companies within the group of which the company which established the scheme is a member, or explaining the grounds on which it is considered that the requirements of Paragraphs 6 to 8 Schedule 3 are satisfied
- a declaration (on company headed paper) by the company that the scheme shares satisfy paragraphs 18-22 of Schedule 3 Income Tax (Earnings and Pensions) Act 2003
- the current Memorandum and Articles of Association, with any amendments, for the company whose shares will be used in the scheme (unless these have been submitted for another approved scheme, in which case only the name and reference number of the approved scheme need be supplied)
- one set of the final scheme rules
- the documents which may be issued to those participating in the scheme. These will include the option certificate and notice of exercise, the letter of invitation, the application form, the Sharesave contract application and, if appropriate, any explanatory booklet prepared
- a declaration that any director's power to veto the transfer of shares will not be used in any way to discriminate against the transfer of shares acquired under the scheme. The declaration should state that the employees participating in the scheme will be told of this declaration
- the resolution adopting the scheme and any resolution making amendments required to obtain approval. It should be certified and state the date of approval of the scheme by the company
- a completed Application Stencil which can be found [here](#).

The statutory requirements which a scheme must meet for it to be approved by HMRC are explained [here](#).

Share option schemes already in operation can be submitted for approval, although they may first need to be amended to comply with the statutory requirements. Options granted before the formal approval of a scheme by HMRC cannot qualify for income tax relief. (S519(1))

HMRC comments on draft documents

A company proposing to seek approval of a share option scheme may wish to obtain an informal opinion in advance of a formal application for approval. The Employee Shares and Securities Unit is prepared to comment informally on draft documents and, if necessary, to hold discussions on particular points of difficulty.

Any queries concerned solely with the certified **SAYE savings arrangement** should be addressed to any local office of the building society or bank which has agreed to operate such schemes.

Any queries concerning the valuation of shares in share option schemes should be made to [Shares and Assets Valuation](#). All enquiries to Shares and Assets Valuation should quote the company registration number (CRN). There is further information on share valuations [here](#).

Approval refused

If a company's application for approval is refused, there is a right of appeal to the Special Commissioners within 30 days of the date of the refusal. (Para 41 Sch 3)

Share Valuations

The **market value** (MV) of shares has the same meaning as in Part VIII TCGA 1992.

For shares included in the London Stock Exchange Daily Official List (this does not include AIM or other junior markets in London) or other Recognised Stock Exchange the scheme rules will define MV by reference to quotations derived from the Daily Official List or equivalent published source.

The MV of unquoted shares (that is, shares not fully listed on a recognised investment or stock exchange) will normally be negotiated between the company whose shares are used in the scheme and HMRC Shares and Assets Valuation (SAV) on each occasion before the relevant options are granted (unquoted shares include shares dealt in on AIM and other junior London markets)

Shares listed on AIM or other junior London markets will always require prior agreement of SAV to determine MV, however in some instances they may be able to agree a methodology for determining MV in order to avoid making application on each and every occasion of grant. Scheme rules must also include the statutory definition in these circumstances as well as the proposed methodology subject to prior SAV agreement. Prior agreement of SAV will always be required to any changes to the methodology for determining MV.

The scheme rules may allow for the MV of unquoted shares to be determined by reference to published prices on a Recognised Investment Exchange, subject to agreement of this basis with SAV, similar to that for AIM.

The information required by SAV to enable a value to be negotiated includes

- a copy of the company's accounts for the last three financial years ending before the date on which the value is required (unless these have already been sent to SAV), and any subsequent interim statement or declaration of interim dividend for the company's current financial year
- a copy of the scheme rules
- an estimate of the value placed on the shares with a brief explanation of how it was arrived at, and
- details of any recent arms' length transactions in the shares (including the date on which each occurred, the number of shares sold and the price paid for each share).

The address and telephone number of SAV is [here](#).

General Requirements for approval

The share option scheme must allow employees to be granted options to acquire shares which satisfy the legislative requirements. (Para 17(2) Sch 3)

The options granted under the scheme must not be transferable, except that if a participant dies, the options may pass into the estate. (Para 29 Sch 3)

The scheme must not contain features which are neither essential nor reasonably incidental to the purpose of providing for employees benefits in the nature of rights to acquire shares. For example, a provision allowing the payment of cash instead of the issue of shares following option exercise would not satisfy this condition. (Para 5 Sch 3)

Shares must be paid for with monies not exceeding the amount of the repayments, including any interest or bonus made to them under a certified **SAYE savings arrangement** which has been approved by HMRC for this specific purpose. (Para 24 Sch 3)

Repayments under the **SAYE savings arrangement** may be taken as including or not including a bonus but the question of what is to be included must be determined at the time the options under the scheme are granted.

The time at which the repayments are due, that is the **bonus date**, must be taken as either

- the earliest date on which a bonus is payable i.e.
 - three years for a three year savings contract
 - five years for a five year savings contract, or
- the earliest date on which the maximum bonus is payable
 - seven years. (Para 30(4) Sch 3)

Contributions made by a participant to the **SAYE savings arrangement** must be sufficient to secure, as nearly as possible, the repayment of an amount equal to the sum required to pay for as many shares as the option gives the right to acquire. Total contributions made by one participant to savings schemes linked to approved **SAYE share option schemes** must not, in aggregate, exceed £250 per month. (Para 25 Sch 3)

Eligibility to participate

The scheme must permit participation at any given time by everyone who

- is then an employee, or a full time director of the company which has established the scheme or, in the case of a **group scheme**, of a **constituent company**, and
- has been such at all times during a qualifying period. Any qualifying period imposed must not exceed five years and it ends on the date of grant of the option, and
- has earnings which are chargeable to tax under Section 15 in respect of the office or employment. (Para 6(2) Sch 3). Scheme rules may limit participation to only those employees who are ordinarily resident in the UK.

An individual will be treated as a **full time director** if he normally devotes at least 25 hours per week (excluding meal breaks) to the duties of the office. For the purpose of this test a director may aggregate the hours he works for all **constituent companies in a group scheme**.

Participation refers to both the grant of options to acquire shares and the exercise of those options. However, an eligible director or employee can choose not to participate.

The company which has established the scheme has discretion to permit participation by

- part-time directors
- employees or directors who have worked for it, or for a **constituent company**, for less than the qualifying period, and
- directors or employees whose earnings are not chargeable under Section 15.

All participants satisfying these conditions must be eligible to participate on 'similar terms', and everyone who does participate must do so on 'similar terms'. This means not only the share price and the circumstances in which the options can be exercised, but also the number of shares for which each option is granted. The fact that the number of shares may vary in accordance with such criteria as level of remuneration or length of service will not be regarded as infringing the requirement that participation is on similar terms. (Para 7 Sch 3)

The circumstances in which options may be exercised after cessation of employment are explained below. Except in these circumstances, a person must not be eligible to participate (that is, to obtain or exercise options) in a scheme at any time unless he or she is then a director or employee of the company which has established the scheme, or of a **constituent company** in the case of a **group scheme**. (Para 10 Sch 3)

A person must not be allowed to obtain or exercise options under the scheme at any time if he or she has, or has had within the preceding 12 months, a **material interest** in a **close company**

- whose shares may be acquired on the exercise of rights obtained under the scheme, or
- which has **control** of such a company or is a **member of a consortium** which owns such a company.

Material Interest

- **Material interest** is defined in Paragraph 12 Schedule 3.
- In deciding whether or not someone has a **material interest**, the definition of **associate** in Section 417(3) ICTA 1988 is modified where the scheme is a **group scheme**.
- The definition of **close company** in Section 414 and 415 ICTA 1988 is widened. (Para 11(4) Sch 3)
- **Control** is defined in Section 719 of ITEPA 2003 (s995 ITA 2007)
- The meaning of **member of a consortium** is set out in Paragraph 48 Schedule 3.
- The shares which an individual (or an **associate**) may acquire on the exercise of a share option are counted in calculating whether or not he or she has a **material interest**. (Para 13 Sch 3)

Example

An individual already holds 200 out of a company's 1000 issued shares and is granted an option over 55 further shares.

If the option, should it be exercised, must be met by the issue of new shares, then the individual's interest becomes 255 out of 1055 which is less than 25% so does not constitute a **material interest**.

If, however, the exercise of the option is to be met by the transfer of existing shares, the interest would be 255 out of 1000 which exceeds 25%, so would constitute a **material interest**. In that event, the option cannot be exercised unless the employee sells five of the shares (or 20 new shares are issued to other people) and waits 12 months.

Shares which would be issued on the exercise of options held by anyone other than the option holder whose interest is being calculated (or an **associate**) are not added to the shares in which the interest must not exceed 25%.

Information required after approval

Alterations to a scheme

If a scheme is amended after it has received formal approval, the amendment does not have to be approved by HMRC, unless the amendment is to a *key feature* of the plan.

Key features are those that are necessary to meet the statutory requirements for approval in Schedule 3. Where an alteration to a key feature is made, it does not take effect until it has been approved by HMRC. If an alteration is made to a key feature in an approved scheme without prior approval by HMRC, the scheme may lose its approval.

Changes to parts of the scheme that are not key features, for example a change to the name of the company, do not require prior approval. However, the company will need to supply a copy of the amended rules to HMRC after the change has been made. If HMRC refuses to approve an alteration to a scheme, the company has the right of appeal to the Special Commissioners within 30 days of the date of the refusal. (Para 44 Sch 3)

Annual returns of information (Form 34)

HMRC has the power to call for information necessary for the administration of the approved share option legislation, including that necessary to determine any individual's tax liability. However, it still remains the responsibility of participants to include in their own tax returns, where required, details of share acquisitions, capital gains and amounts liable to income tax. (Para 45 Sch 3)

Companies operating approved schemes are required to make an annual return to the Employee Shares & Securities Unit (ESSU). The return will include particulars of the grants of options to acquire shares and individual details of share allotments and transfers of shares on the exercise of such options.

A copy of the annual return is available [here](#).

ESSU may also, at intervals, ask for further information about the operation of the scheme, for example evidence that the shares which form the subject of the options continue to satisfy the requirements of Paragraphs 18 to 22 Schedule 3 .

Approval withdrawn

Approval may be withdrawn from a scheme at any time if a disqualifying event occurs (Para 42 Sch 3), for example if

- any of the conditions necessary for approval cease to be satisfied, or
- there is an alteration to a key feature without prior approval from HMRC, or
- the company which has established the scheme fails to provide the information requested by HMRC as set out above

The withdrawal can be effective from the time the conditions necessary for approval cease to be satisfied, or from a later specified date. (Para 42(1) Sch 3)

There is a right of appeal to the Special Commissioners against withdrawal of approval. (Para 44 Sch 3)

Exercise of options

Subject to the exceptions in the following paragraphs, the general requirements of ITEPA 2003 are that options granted under an approved **SAYE** share option scheme must not be capable of being exercised before the **bonus date** nor more than six months after it. (Para 30 Sch 3)

If a person who has been granted options to acquire shares dies before the bonus date, the scheme must provide for those options to be exercisable within the 12 months following the date of death. If the death occurs within the six months period following the **bonus date**, the scheme must provide for the options to be exercisable only within the 12 months following the **bonus date**. (Para 32 Sch 3)

If a person who has been granted options to acquire shares ceases to hold the eligible office or employment the scheme **must** provide for those options to be exercisable within the six months following cessation if it is due to:

- injury
- disability
- redundancy (within the meaning of the Employment Rights Act 1996)
- retirement on reaching a particular age which has been specified in the rules of the approved scheme as the **specified age**, or
- retirement on reaching any other age at which, in accordance with the terms of the contract of employment, the employee is bound to retire. (Para 34(2) Sch 3).

Where a person reaches the **specified age** but the employment continues, the scheme **must** also provide that an option may be exercised at any time within six months of that date. (Para 33 Sch 3)

The **specified age** is an age which **must** be specified in the scheme rules. It must be an age which is not less than 60, nor more than 75, and the same for men and women. (Para 31 Sch 3)

If a person who has been granted options to acquire shares ceases to hold the eligible office or employment in circumstances other than those listed above and the options have been held for **less** than three years prior to the date of cessation, then the scheme **must** provide for the rights to lapse. (Para 34(4) Sch 3)

If the options have been held for **more** than three years the scheme **may** either:

- allow them to be exercised within the six months following that date or
- provide for the options to lapse

For the purpose of the scheme, a person shall not be treated as ceasing to hold an eligible office or employment until he or she ceases to hold an office or employment in the company

which has established the scheme, or in any company controlled by that company or in any **associated company**. (Para 35(3) Sch 3)

Associated company is defined in Section 416(2) to (6) ICTA 1988, so for this purpose does not include a company with which any connection was severed up to 12 months previously. (Para 47(2) Sch 3)

A person shall not be treated as ceasing to hold the eligible office or employment if the employing company has ceased to be a **participating company** in the scheme.

Change of Control

The scheme **may** also provide for the following:

- If any person obtains **control** of a company, whose shares are scheme shares, as a result of making
 - a general offer to acquire the whole of the issued **ordinary share capital** of the company on condition that if it is satisfied the person making the offer will have **control** of the company, or
 - a general offer to acquire all the shares in the company which are of the same class as the scheme shares

options granted under the scheme to acquire shares in the company may be exercised within six months of the time when the person making the offer has obtained **control** of the company, and any condition subject to which the offer is made has been satisfied. (Para 37(2) Sch 3)

- If, under Part 26 of the Companies Act 2006 (previously Section 425 Companies Act (CA) 1985 or Article 418 Companies (Northern Ireland) Order 1986, the Court sanctions a compromise or arrangement proposed for the purposes of, or in connection with, a plan for reconstructing a company whose shares are scheme shares, or its amalgamation with any other company or companies, options granted under the scheme to acquire shares in the company may be exercised within six months of the Court sanctioning the compromise or arrangement. (Para 37(4) Sch 3)
- If any person becomes bound or entitled under Sections 979 to 982 of the Companies Act 2006 (previously Sections 428 to 430 CA 1985 or Articles 421 to 423 Companies (Northern Ireland) Order 1986) to acquire shares in a company whose shares are scheme shares, options granted under the scheme to acquire shares in the company may be exercised at any time when that person remains so bound or entitled. (Para 37(6) Sch 3)
- If a company whose shares are scheme shares passes a resolution for voluntary winding up, options granted under a scheme to acquire shares in the company may be exercised within six months of the passing of the resolution.
- If, at the **bonus date**, a person who has been granted options under the scheme holds an office or employment in a company which is not a **constituent company** but is
 - an **associated company** of the grantor, or

- a company of which the grantor has **control**

those options may be exercised within six months of the **bonus date**.

- If a person ceases to hold an eligible office or employment because
 - that office or employment is in a company of which the grantor ceases to have **control**, or
 - that office or employment relates to a business or part of a business which is transferred to a person who is neither an **associated company** of the grantor nor a company of which the grantor has **control**

options under the scheme held by that person may be exercised within six months of cessation. (Para 34(5) Sch 3)

For the purposes of this paragraph a person shall be deemed to have obtained **control** of a company if he or she and others acting in concert have together obtained **control** of it. (Para 47(2) Sch 3)

Price at which shares may be acquired

The price at which shares may be acquired on the exercise of options (the **exercise price**) must be stated at the time the options are granted. It must not be less than 80% of the **market value** of shares of the same class at that time, or at any earlier time or times agreed in writing between ESSU and the company which established the scheme. (Para 28 Sch 3)

HMRC will not normally agree to an earlier time or times for valuation which fall more than 30 days before the date the options are granted (or 42 days if applications for options have to be scaled down). If the average **market value** over a period is taken, then the first day of that period must commence no more than 30 days (42 days if scaling down is required) before the date of grant.

Market value is determined in the same way as for capital gains tax. (Part VIII TCGA 1992)

To take account of any variation in the share capital of which the scheme shares form a part, the scheme may provide for adjustments to the

- **exercise price**, and/or
- number of shares, and/or
- the description (but not class) of shares subject to the option (Para 28(3) Sch 3)

Such a provision must state that HMRC must give its approval before the adjustment is made (Para 28(4) Sch 3)

If the company whose shares are used is being floated between the time for valuation and the date options are granted, special considerations may apply. ESSU should be consulted if this is to occur.

If the price at which the shares may be acquired on the exercise of the option rights has not been determined exactly in accordance with the rules of the approved scheme, that option will not qualify for relief from income tax. (S516)

Scheme shares

Share option schemes approved under Schedule 3 ITEPA 2003 must only allow the acquisition of **shares** which satisfy the legal conditions set out below. (Para 18 Sch 3)

Each reference to **shares** includes a reference to stock.

The **shares** must form part of the **ordinary share capital** of

- the company which has established the scheme or
- a company which has **control** of that company or
- a company which is, or has **control** of, a company which is a **member of a consortium** owning either
 - the company which has established the scheme, or
 - a company having **control** of that company. (Para 18 Sch 3)

Ordinary share capital is defined in Section 989 of ITA 2007.

The scheme shares must be one of the following

- shares of a class quoted on a **recognised stock exchange**
- shares in a company which is not under the **control** of another company
- shares in a company which is under the **control** of a company whose shares are quoted on a **recognised stock exchange** (other than a company which is, or would be if resident in the UK, a **close company** within the meaning of Section 414 ICTA 1988). (Para 19 Sch 3)

Recognised stock exchange is defined in Section 1005 ITA 2007. Shares dealt on AIM or other junior London markets will not qualify as quoted on a **recognised stock exchange**.

The scheme shares must be:

- fully paid up,
- not redeemable, and
- not subject to any restrictions other than restrictions which apply to all shares of the same class. (Para 21(1) Sch 3)

The only exception is that shares may be subject to a restriction which is imposed by the company's articles and requires all shares held by directors and employees to be disposed of when they leave the company and subsequently when the shares are acquired as a result of options exercised after directors and employees have left the company or by personal representatives. The disposal must be by way of sale for money on the terms laid down by the articles for the disposal of all shares of the same class. (Para 21(2) and (3) Sch 3)

In deciding if scheme shares which are acquired by any participant are subject to any restriction, any contract, agreement, arrangement or condition shall be regarded as a restriction, if it

- restricts freedom to dispose of
 - the shares or
 - any interest in the shares, or
 - the proceeds from the sale of the shares
- restricts freedom to exercise any right conferred by the shares
- would cause any disadvantage to the participant, or any **connected person**, if shares were disposed of or any right conferred by them was exercised. (Para 12(4) Sch 3). Sections 993 and 994 ITA 2007 defines when two people are **connected**.

Any provision similar in purpose and effect to the Model Code set out in the Listing Rules published by the London Stock Exchange will not be a restriction for the purposes of this paragraph. (Para 12(5) Sch 3)

The period between option exercise and allotment of shares must not exceed 30 days. Any longer period will be regarded as imposing restrictions on the shares.

Except where the scheme shares are in a company whose **ordinary share capital** consists of shares of one class only, the majority of the issued shares of the same class as the scheme shares must either be **employee-control shares** or open market shares. (Para 22 Sch 3)

Open market shares are those not held by:

- people who acquired their shares as a result of a right conferred on them or an opportunity given to them as directors or employees of the company which has established the scheme or of any other company and not as a result of an offer to the public
- trustees holding shares on behalf of people who acquired their beneficial interest in the shares mentioned above, and
- in a case where shares are not quoted on a **recognised stock exchange** but are shares in a company which is under the **control** of another company whose shares are quoted, companies which have **control** of the company whose shares are in question or of which that company is an **associated company** (Para 22(2) Sch 3)

Shares in a company are **employee-control shares** if the people holding those shares are, as a result of holding those shares, together able to **control** the company and they are or have been employees or directors of the company or of a company under its **control**. (Para 22(2) sch 3)

Exchange of options on a change of control

The scheme may contain provisions to permit an option holder to exchange ('rollover') approved options in certain circumstances:

- If any person obtains **control** of a company, whose shares are scheme shares, as a result of making
 - a general offer to acquire the whole of the issued **ordinary share capital** of the company on condition that if it is satisfied the person making the offer will have **control** of the company, or
 - a general offer to acquire all the shares in the company which are of the same class as the scheme shares
- If, under Part 26 of the Companies Act 2006 (previously Section 425 Companies Act (CA) 1985 or Article 418 Companies (Northern Ireland) Order 1986), the Court sanctions a compromise or arrangement proposed for the purposes of, or in connection with, a plan for reconstructing a company whose shares are scheme shares, or its amalgamation with any other company or companies
- If any person becomes bound or entitled under Sections 979 to 982 of the Companies Act 2006 (previously Sections 428 to 430 CA 1985 or Articles 421 to 423 Companies (Northern Ireland) Order 1986) to acquire shares in a company whose shares are scheme shares.

The new options, relating to shares in the new controlling company which satisfy the requirements of Paragraphs 18 to 22 Schedule 3, must be exercisable in the same manner as the old options. The value and aggregate **exercise price** of the new options on acquisition must be exactly the same as the value and aggregate **exercise price** of the old option on disposal. (Para 39 Sch 3)

Some terms explained

Associate

For the purposes of the material interest tests, associate means

- any relative or partner of that person (spouse or civil partner, ancestor or lineal descendant)
- the trustee or trustees of any settlement of which the participant is or was the settlor
- where the participant is "interested in" any shares which are subject to any trust, the trustee or trustees of that settlement are his associates.

Associated company

An associated company is defined in Section 416 ICTA 1988 and can include a company with which connection was severed up to 12 months previously

Bonus date

The bonus date is the date on which repayments under the SAYE savings arrangement are due.

Close company

A close company is one controlled by five or fewer participators, or by participators who are directors (S414 ICTA 1988)

Connected persons

Connected persons are defined in Sections 993 and 994 ITA 2007.

Constituent company

Companies controlled by another company, and participating companies in a group scheme set up by that company are known as constituent companies.

Certified SAYE savings arrangement

A certified SAYE savings arrangement is defined at Section 705 of ITTOIA 2005.

Control

Control is defined in Section 719 ITEPA 2003 (s995 ITA 2007)

Employee-control shares

Shares in a company are employee-control shares if the persons holding those shares are, as a result of holding those shares, together able to control the company and those persons are or have been employees or directors of the company or of a company under its control.

Exercise price

The price at which shares may be acquired on the exercise of an option.

Full-time director

An individual will be treated as a full-time director if he or she normally devotes at least 25 hours per week (excluding meal breaks) to the duties of the office. For the purpose of this test a director may aggregate the hours he or she works for all constituent companies in a group scheme.

Group scheme

A group scheme is one set up by a company which controls one or more other companies covered by the scheme. These other companies are called constituent companies.

Market value

Market value of shares has the same meaning as in Part VIII of the Taxation of Chargeable Gains Act 1992.

Material interest

Material interest in the share capital means the beneficial ownership of, or the ability to control, directly or indirectly, more than 25% of the ordinary share capital of the company.

Material interest in the assets of a company means possession of, or an entitlement to acquire such rights as would, in the event of the winding up of the company give an entitlement to receive more than 25% of assets available for distribution.

Member of a consortium

A company is a member of a consortium owning another company if it is one of a number of companies which between them beneficially own not less than 75% of the other company's ordinary share capital, and each individually beneficially owns not less than 5% of that share capital.

Ordinary share capital

Ordinary share capital is defined in Section 989 ITA 2007.

Recognised stock exchange

Recognised stock exchange is defined in Section 1005 ITA 2007. Shares dealt on AIM or other junior London markets will not qualify.

Savings body

A building society, bank or authorised European savings institution that is authorised to operate a certified SAYE savings contract.

SAYE share option schemes (also referred to as Savings related and Sharesave)

A tax advantaged scheme for all employees and directors. Participants save up to £250 per month to acquire shares at the end of a 3, 5 or 7 year period. Shares are acquired upon exercise of an option which is funded from the proceeds of a special certified SAYE savings arrangement. The certified SAYE savings arrangements are operated by banks, building societies and European savings institutions, certified by HM Treasury under Section 705 ITTOIA 2005, and approved by HMRC.

Specified age

An age at which an option can be exercised, specified in the scheme rules, which must be the same for men and women. It must not be less than 60 nor greater than 75.

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