



# SHARE FOCUS

## The Employee Share Schemes Team

The Employee Share Schemes Team brings together all the policy, technical and operational work on the tax and National Insurance treatment of employee shares schemes - this covers share option and share award schemes. A list of members, their responsibilities and contact details are at the end.

We provide policy advice and support to Ministers and colleagues-both in the Revenue and other Government Departments along with technical advice to companies, their advisers and Revenue offices. We also examine and approve the rules of employee share schemes along with giving advice to companies and their advisers on the drafting of scheme documents so that they meet the statutory requirements. During the life of schemes we continue to advise companies on the operation of their schemes.

Throughout 2002/3 our aim is to continue to develop as an outward focused and responsive team - working with and providing an expert service to our customers. We hope Share Focus will form an integral part of this process.

Caroline Rookes

*Welcome to the first edition of Share Focus. Our aim with this publication is to keep you up to date with Inland Revenue developments on share schemes. Specifically we will provide;*

- *Information on new interpretations on technical issues on Share Schemes;*
- *Guidance on practical issues to Advisers, Companies and Scheme Administrators; and*
- *Notice about the work of the Employee Share Schemes Team.*

*You can find further information on our web-site at [www.inlandrevenue.gov.uk/shareschemes](http://www.inlandrevenue.gov.uk/shareschemes)*

*We expect to publish Share Focus as necessary. We would be very interested to hear your views on any of the items in the first edition or on any issues you would like to see in future editions, however please note that this publication is not intended to replace either Tax Bulletin or IR Press Releases.*

*If you or any of your colleagues would prefer to receive Share Focus via email then please contact [malcolm.white@ir.gsi.gov.uk](mailto:malcolm.white@ir.gsi.gov.uk)*

## Practical Issues

Share Focus is aimed primarily at Practitioners, however, we would like the contents of the following article to be brought to the attention of any clients who operate share schemes, approved or otherwise.

### REPORTING REQUIREMENTS

As you are aware Companies are required to provide details of Option grants and exercises as well as Share Acquisitions to the Inland Revenue each year.

Annual returns or requests for information, ("returns") are issued on or as soon as possible after 6th April. Returns for the year ended 5th April 2002 issued on 8th April 2002 must be submitted by **9th July**. However certain types of unapproved returns (requesting details of awards of Conditional or Convertible shares within Sections 140A and 140D ICTA 1988) should have been submitted by **7th May**. Details of these and other reporting requirements can be found on our web-site at: [www.inlandrevenue.gov.uk/shareschemes/non\\_app\\_nics\\_rep\\_req\\_eer.htm](http://www.inlandrevenue.gov.uk/shareschemes/non_app_nics_rep_req_eer.htm)

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Where returns or statutory particulars are not submitted within time, penalties can be imposed under Section 98(1) Taxes Management Act 1970 as follows;

- a maximum of £300 per return when the failure is first declared by the relevant body of Commissioners
- (if the failure continues) a maximum of £60 per return per day until the return is received by the Inland Revenue.

Additionally, for approved schemes, the Inland Revenue can withdraw approval of the scheme. Whilst participants' rights under the all employee schemes are protected any rights obtained under the Company Share Option Plan are not.

## Technical Updates

### COMPANY SHARE OPTION PLANS

#### DIRECTORS DISCRETION

Companies sometimes wish to include in their company share option plan ("CSOP") rules some flexibility for their directors ("director's discretion") to decide on whether an option can be exercised in particular circumstances. Perhaps the most common circumstance is when an employee or director has left the company. The Inland Revenue Share Schemes Practice Notes give guidance on what is and is not acceptable but there still appears to be some confusion.

To assist companies and their practitioners in this area we have looked again at the guidance given and whether this could be made clearer. Our current view is that there is no place in an approved CSOP for directors to have an absolute discretion on whether an option may be exercised if the option holder is to have clearly stated rights to acquire shares.

If, however, the scheme rules provide for the directors to exercise any discretionary power they have only in favour of the employee then this will generally be acceptable in a CSOP. For example, we will accept a provision providing for options to lapse unless the directors exercise their discretion and permit exercise but we will still expect the rules in those circumstances to specify there is a right to exercise. In our view any discretion to be applied fairly and reasonably on the occurrence of specific events or times will not offend the legislation.

#### "CASHLESS EXERCISES"

There has been some discussion recently over what is and is not acceptable in the terms of "cashless exercises" to ensure that they do not fall foul of paragraph 12 of Schedule 9 i.e. they are not considered to be an impermissible restriction on shares. First of all it is important to stress that the name of the 'cashless

Companies should also appreciate that if these returns are not received before 30th September this could create problems for employees who want the Inland Revenue to compute their Self-Assessment liability for the year.

For approved schemes companies must make a return even where there has been no activity - a "Nil" return. For unapproved schemes companies do not have to make a return if there has been no activity but it is helpful if companies let us know that there has been no activity under any unapproved scheme it operates.

If Companies are experiencing difficulties meeting the time limits for submission of returns then they can contact us so we can help resolve any problem areas.

exercise' facility is not important - what matters is the nature of the arrangement. So it might be called "deferred payment", "assurance to pay" or something completely different.

The next point to consider is whether there is a type of "loan arrangement" in place. This could be where the company arranges a bank loan to be made available to the option holder to cover the exercise price. The 'cashless exercise' facility then provides for the shares to be treated as security for the loan and for some or all of the shares to be sold to repay the loan. This type of arrangement would generally trigger the relief afforded under paragraph 13(3) of Schedule 9 and would therefore be acceptable.

Other types of 'cashless exercise' facility may include terms, which do not involve a "loan arrangement". It is these types that have given rise to problems as the terms could be interpreted as placing a restriction on the shares to be acquired, such that paragraph 12 of Schedule 9 ICTA 1988 was not satisfied.

Where the terms of a 'cashless exercise' facility require the option holder, when using the facility, to sell some or all of the shares, and having agreed to use the facility the option holder cannot withdraw from the facility, we believe the shares to be acquired are subject to a restriction.

To be acceptable the 'cashless exercise' facility must be optional and should allow the option holder the choice of whether to sell the shares or settle the facility in some other way.

Any other arrangements or variations should be discussed with the Share Scheme advisers who will advise on whether the arrangements constitute a restriction on shares or whether they fall within the relief afforded by paragraph 13(3) Schedule 9. We may in certain cases need to see the documents setting out the details of the facility before commenting on whether or not it is acceptable.

## SHARE INCENTIVE PLAN

### SALARY

Partnership Shares are purchased with pre-tax deductions of Salary. Paragraph 36(2) of Schedule 8 states that the amount of Partnership Share Money deducted from an employee's Salary must not exceed 10% of Salary and paragraph 36(3) authorises the company to specify lower limits given in paragraph 36(2). Salary has the meaning in paragraph 48 Schedule 8 Finance Act 2000 and generally means earnings subject to PAYE, after deduction of expenses and benefits in kind. We have had a number of requests for the 10% limit to be applied to a lower figure of salary ("basic salary"). This is not acceptable.

However, a link can be established to "basic salary" by adjusting the percentage deduction to be applied to Salary. Paragraph 35(2) allows the amount of the deduction to be varied. For example, an employer may wish to limit the partnership share payments to 10% of "basic salary". This percentage of "basic salary" is then converted to a percentage to be applied to Salary. This works as follows, a participant has Salary of £20,000 but the most the company wants to allow participants to contribute is 10% of "basic salary". If "basic salary" is £10,000 the most a participant can contribute is £1,000. This then equates to 5% of Salary. The partnership share agreement would state that the deduction would not exceed 5% of Salary and show how this

figure has been calculated. A provision could be made in the Partnership Share Agreement that where Salary fluctuates the percentage to be applied to Salary will change to reflect that the amount of the deduction will not exceed the percentage applied to "basic salary".

If this is adopted the company will need to ensure that all the details are contained in the Partnership Share Agreement and that the maximum 10% of Salary can never be exceeded.

### ADMINISTRATION COSTS

We now accept that any costs involved in the sale or transfer, of Plan Shares whether at the request of the participant or not may be passed on to the participant concerned. Apart from those costs, it is not acceptable to pass on any other costs incurred in the administration of the Plan.

If the costs of a sale or transfer are to be passed on to the participant, it is up to the company/trustees to decide how those costs are to be recovered. It is not acceptable for the Plan to provide that the trustees have the authority to sell sufficient shares to cover these costs. Schedule 8 does not allow for the trustees to have such authority, it only allows, at paragraph 73, for the trustees to sell sufficient shares to cover any amounts due under PAYE arising.

## Communication Matters

### RAISING AWARENESS

The last few months have seen the Share Schemes Team actively raising awareness of the new Share Incentive Plan and Enterprise Management Incentives, as well as Company Share Option Plans and SAYE schemes.

The team has had a stand at Employer Talk 2002, which is a series of regional events being staged at venues in all parts of the UK. Although new to some areas of the country, it is well established in others and has been operating with great success since 1997.

This is the third year that the Share Schemes Team has taken part in these events, which have so far been held in Aberdeen, Belfast, Birmingham, Chorley, Glasgow, London, Manchester, Newcastle, Newport and York. Later in the year events will be held in Bournemouth, Brighton and Nottingham. The events are a series of talks supported by exhibition stands, and aimed at employers, payroll agents and accountants.

April saw the team taking a stand at the British Chambers of Commerce Exhibition at the Queen Elizabeth II Conference Centre in London.

All of these events have given the team the opportunity to give on the spot advice and information on share schemes. We are now looking for other suitable events where we can continue to raise awareness on tax advantaged share schemes.

### COMINGS AND GOINGS

Our head of team Caroline Rookes is moving to take over as the Business Director of IR Savings, Pensions, Share Schemes. Her successor is Janice Cross who joins us from the Oil Taxation Office.

After 14 years with the Employee Share Schemes Team Lesley Webb has recently left for sunnier climes. We all hope that both her and her husband Brian have a long and healthy retirement in Somerset. Lesley's replacement is George Webster who joins us from London Large Business Office.

Richard Lambert has also recently retired after seven years in our Policy Support Team. We wish him well with his planned move to Ghana.

## Share Schemes Team (as at 1 July 2002)

Name	Responsibilities	Telephone number (020) 7438+extn
Janice Cross	Head of team	6282
Satpal Panesar	PS to Janice Cross	6529
Liz Welsh	Policy: {SIP, EU issues {Team Leader Policy Support Team	7763
Gary Coombs	Policy: EMI, CSOP, CT, SAYE, APS	8257
Helen Peacock	Policy: NICs, unapproved arrangements, international	7659
Martin Fletcher	Technical: EMI, PRP, CGT, avoidance issues	7801
Michael Staples	Technical: Unapproved arrangements, international	6778
Kevin Meehan	{Technical: All approved plans, Compliance, Service-delivery {Team leader: Scheme Advisers	7803
Dominic Burke	Policy support: NICs & PAYE - SIP, SAYE, unapproved	4339
Hasmukh Dodia	Policy support: NICs & PAYE, CSOP, CT, EMI, QUESTS	7504
Karen Morgan	Policy support: SIP	8345
Sahd Ullah	Policy support: Fast track NIC Elections	8272

### Scheme Advisers

	CSOP	SRS	ESS	QUESTS	SIP	Unapproved/ NIC Elections	Ext.
Ian Armit	H-K	H-K		A-M			4473
Pete Clitheroe			A-I		Yes		7771
Ros Fenton*	N-P	N-P				P-Z	4378
Ann Marsh		A, B					8207
George Parker*	T-Z	T-Z	T-Z				7783
Jon Prothero*	C, D	C, D				A-E	8225
William Rafferty	A, M	M			Yes	F-O	6626
George Webster							6387
Malcolm White*	Q-S	Q-S					8216
Alan Wood	E	E	J-S	N-Z			7897
Seng Yeoh	B, L	L			Yes		6394

Schemes beginning with the letters F and G are currently being split between asterisked advisers

### Scheme Administrators Team

Yvonne Batista			Team Leader				4215
Maggie MacCormick	CSOP	A-E	Unapproved	A-E			6288
Dorothy Campbell	CSOP	P-Z	Unapproved	P-Z			4202
Neil Pawsey	CSOP	F-O	Unapproved	F-O			4227
Clare Bailey	SRS	A-E	ESS A-E	SIP A-E			8479
Judy Candlish	SRS	F-O	ESS F-O	SIP F-O			7231
Eileen Daly	SRS	P-Z	ESS P-Z	SIP P-Z	QUESTS	A-Z	6718