Company Share Option Plans

- Company Share Option Plans are the traditional method of giving employees a personal interest in the future success of a company;
- Options are granted at their current market value and can be tax-advantaged up to £30,000 per person;
- Options are exercisable after three years but usually only if performance conditions are met.

WHAT IS A COMPANY SHARE OPTION PLAN?

A Company Share Option Plan (**CSOP**) provides for the grant of options to employees (chosen at the discretion of the grantor) to acquire shares at a future date for a price that is fixed from the outset.

"There is a £30,000 limit on the value of shares that an individual can hold as tax-advantaged CSOP options"

It is usual for a CSOP to be structured in two parts the first of which is a tax-advantaged plan that can be used to grant options benefiting from favourable tax treatment. There is a limit on the value of shares that an individual can hold as tax-advantaged CSOP options. This is currently £30,000 and is measured by reference to the market value of shares when the relevant option is granted. Options above this limit are granted under the second part of the plan which is drafted on broadly the same terms as the first but without the restrictions attaching to tax-advantaged plans.

The exercise price per share for a tax-advantaged CSOP option must be not less than its market value at the time of grant. It is usual for all CSOP options to be exercisable only after the third anniversary of the date of grant although earlier exercise is often permitted in specified 'good leaver' circumstances and on a change of control. Generally, a CSOP option can only be exercised if pre-determined performance conditions have been met or following the occurrence of an event, such a sale of the company, in which shareholders also realise cash.

What are the benefits of a tax-advantaged CSOP option?

There is no income tax or liability to National Insurance Contributions (**NICs**) on the grant of a CSOP option, whether tax-advantaged or not.

If a tax-advantaged CSOP option is exercised more than three years after grant there is no liability to income tax or NICs on exercise. Instead, the option holder simply pays capital gains tax on the eventual disposal of the shares (after using any available annual capital gains tax exemption and losses).

If the option is exercised before the third anniversary of the date of grant then (other than in 'good leaver' circumstances or on the occurrence of certain corporate events) it is treated in the same way as a non tax-advantaged option. This means that the employee will be subject to income tax and usually also NICs on the difference between the exercise price and the market value of the shares at the date of exercise. It is possible for a company to require an option holder to meet all or a proportion of any employer NICs that arise in respect of the option.

What does a company need to do in order to establish a CSOP?

There are conditions that need to be met to establish a plan for the grant of tax-advantaged CSOP options. In particular, the company whose shares are to be used must not be controlled by another company unless it, itself, is listed. Although it is possible for directors to receive tax-advantaged CSOP options they can only do so if they are 'full-time' which means working 25 hours per week excluding meal breaks. Non tax-advantaged options are not subject to such restrictions and therefore provide greater flexibility.

"Non tax-advantaged options provide greater flexibility"

Board resolutions will, and shareholder and/or banking approvals may, be required to establish a CSOP. The company must also register both parts of the plan with HM Revenue & Customs (**HMRC**) online and, in the case of the tax-advantaged part, certify that it meets the relevant statutory conditions. Annual online returns in respect of both parts of the plan must be filed with HMRC.

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