



Performance Share Plans

- Performance Share Plans offer executives the opportunity to acquire shares in a company by reference to its success measured against performance targets;
- Participants are granted options at an exercise price set at nil or nominal value;
- Options are exercisable after three years subject to the satisfaction of performance conditions.

WHAT IS A PERFORMANCE SHARE PLAN?

A Performance Share Plan (**PSP**) is the term often used for arrangements that give executive directors and senior employees an opportunity to acquire free shares at a future date dependent on the satisfaction of performance criteria.

It is usual to structure PSP awards as non tax-advantaged share options with an exercise price of nil or a nominal amount. The plan rules will, however, generally be drafted to enable the grant of awards in a variety of other ways such as those that vest automatically without the need to exercise them. This gives a company the flexibility sometimes needed when using the plan in different jurisdictions.

However they are structured, PSP awards will only vest if performance conditions are met. These are usually measured over a period of at least three years and it is increasingly common for vested awards to be subject to an additional two-year holding period.

"fewer shares are needed to deliver the same incentive as an option with a more substantial exercise price "

What are the advantages of a PSP over a market value option plan?

The shares under a PSP are acquired for free (or for payment of a nominal amount) which means that fewer shares are needed to deliver the same incentive as an option with a more substantial exercise price. This, in turn, reduces the number of shares required to be purchased or issued by the company. Also, options with a higher exercise price tend to lose or gain value largely as a result of market movements. In contrast, a PSP delivers value by reference to the satisfaction of performance conditions which can be drafted to meet the company's own remuneration objectives. The conditions can be personal or corporate or a combination of the two, however, investors in quoted companies require them to be linked to the performance of the company, usually measured against an index or a peer group.

TRAVERS SMITH

What is the tax treatment of a PSP?

There is no liability to tax or National Insurance Contributions when a PSP award is granted, however, such charges will arise when shares are acquired pursuant to the award. Any future growth in value should benefit from capital gains tax treatment.

What does the company need to do in order to establish a PSP?

It is often advisable to establish an employee benefit trust (**EBT**) to operate in conjunction with a PSP. This allows shares to be transferred to employees at no cost as a company cannot issue shares for less than their nominal value. If a company does not want to establish an EBT it can consider using treasury shares for its employee share schemes. Such shares will, however, count towards the dilution limits prescribed by some institutional investor committee guidelines.

Board resolutions will and/or shareholder and banking approvals may be required in order to establish a PSP and to fund an EBT. The PSP must be registered online with HM Revenue & Customs following which the company must file annual online returns in respect of the plan.

"It is often advisable to establish an employee benefit trust to operate in conjunction with a PSP"

FOR FURTHER INFORMATION ABOUT PERFORMANCE SHARE PLANS PLEASE CONTACT

10 Snow Hill
London EC1A 2AL
T: +44 (0) 20 7295 3000
F: +44 (0) 20 7295 3500
www.traverssmith.com



Mahesh Varia

Partner

E: mahesh.varia@traverssmith.com
T: +44 (0) 20 7295 3382



Elissavet Grout

Senior Counsel

E: elissavet.grout@traverssmith.com
T: +44 (0) 20 7295 3439

THE INFORMATION CONTAINED IN THIS GUIDE IS BASED ON INFORMATION AVAILABLE AT THE TIME OF PUBLICATION. READERS SHOULD ALWAYS OBTAIN PROFESSIONAL ADVICE BEFORE TAKING ANY ACTION.

Travers Smith LLP is a limited liability partnership registered in England and Wales under number OC 336962 and is regulated and authorised by the Solicitors Regulation Authority. The word "partner" is used to refer to a member of Travers Smith LLP. A list of the members of Travers Smith LLP is open to inspection at our registered office and principal place of business: 10 Snow Hill, London, EC1A 2AL.