

# EMPLOYEE SHARE SCHEMES

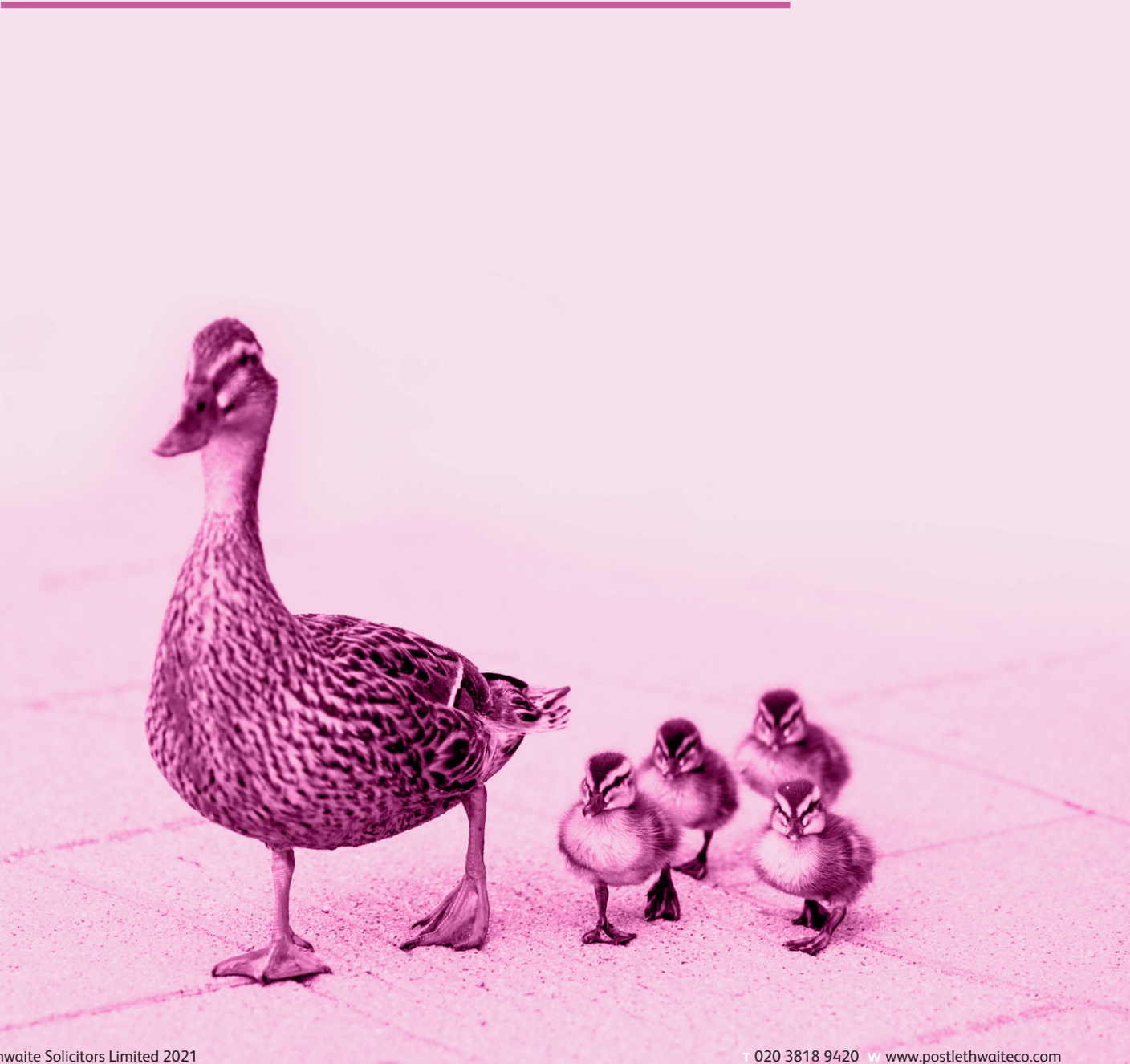
Employees acquiring shares in their company: An overview and comparison of different approaches





Employee share ownership is a powerful way of encouraging employees to think like owners, helping make a business more profitable.

Share schemes can also provide significant tax advantages to companies, employees or both, making them a highly cost-effective way to deliver long term reward.



# ALL-EMPLOYEE SCHEMES

| WAY OF ACQUIRING SHARES         | TAX EFFICIENCY (INDIVIDUAL)   | TAX EFFICIENCY (COMPANY)  | EASE OF SETTING UP                                       | OVERALL INCENTIVE AND REWARD VALUE  | OTHER ISSUES  |
|---------------------------------|---|---|--|---|---|
| Share Incentive Plan (SIP)      | ★★★★★<br>Shares may be purchased out of gross pay. Free shares may be given to participants without IT or NICs. No CGT on sale of shares. | ★★★★★<br>Corporation tax (CT) deduction on value of free shares. No NICs on value of free shares or on value of shares purchased by participants. | ★★★★★<br>Must be registered with HMRC and self-certified | ★★★★★<br>Straightforward to explain, carries risk in relation to shares bought by participants, tax efficient | Some companies excluded. Unlikely to be suitable for companies wishing to target rewards to certain people.                                   |
| Save As You Earn (SAYE) options | ★★★★★<br>No IT or NICs for exercise after bonus date or by certain “good leavers”. CGT on sale of shares.                                 | ★★★★★<br>CT deduction on option gains.  | ★★★★★<br>As above  | ★★★★★<br>Straightforward to explain, no risk, tax efficient   | Some companies excluded. Unlikely to be suitable for companies wishing to target rewards to certain people. Maximum discount of 20% on grant. |

“ Postlethwaite’s initial approach and proposal was by far the highest quality that we encountered... and with reasonable fees. I really appreciate that David put our priorities as a customer above all else.

JOHN BOGHOSSIAN, DIRECTOR OF OPERATIONS, COMPASS PATHWAYS

# SELECTIVE (DISCRETIONARY) SCHEMES

| WAY OF ACQUIRING SHARES               | TAX EFFICIENCY (INDIVIDUAL)  | TAX EFFICIENCY (COMPANY)  | EASE OF SETTING UP  | OVERALL INCENTIVE AND REWARD VALUE   | OTHER ISSUES  |
|---------------------------------------|--|---|---|--|---|
| EMI share options                     | ★★★★★<br>No income tax (IT) or National Insurance (NICs) unless disqualified. CGT on sale of shares, potentially at 10%. | ★★★★★<br>Corporation tax (CT) deduction on option gains. No NICs.                                   | ★★★★★<br>No pre-clearance necessary although option grants must be notified to HMRC | ★★★★★<br>Very simple to explain, no risk, very tax efficient. Limited to £250,000 of shares per person.                    | Limited to smaller independent companies (assets <£30m and <250 employees) carrying out “qualifying activities” |
| Company Share Option Plan (“CSOP”)    | ★★★★<br>No IT or NICs for certain “good leavers” or if options held for at least three years. CGT on sale of shares.     | ★★★<br>CT deduction on option gains. No NICs if options held for at least three years.              | ★★★<br>Must be registered with HMRC and self-certified                              | ★★★★<br>Simple to explain, no risk, tax efficient. Limited to £30,000 of shares per person.                                | Some companies excluded. Options may not be granted at a discount.  |
| Non-tax-advantaged or phantom options | ★★★★★<br>IT and NICs on option gains, due when option is exercised. CGT on any further gains between exercise and sale.  | ★★★★★<br>CT deduction on option gains. NIC liability may be transferred to individual participants. | ★★★★★<br>Option grants must be notified to HMRC after end of tax year               | ★★★★★<br>Simple to explain, no risk, not tax efficient   | Can be difficult if company sold for shares, earnout, or deferred consideration                                 |
| Growth (or hurdle) shares             | ★★★★<br>No IT or NICs if shares purchased for market value. CGT on sale of shares.                                       | ★★<br>No CT deduction if shares purchased for market value. No NICs on same condition.              | ★★<br>Requires change of Articles to create new class of share                      | ★★★<br>Simple to explain, little risk, tax efficient – but its value as a reward will depend on how high the hurdle is set | Valuation questions will arise on receipt of growth shares.   |

# SELECTIVE (DISCRETIONARY) SCHEMES CONTINUED

| WAY OF ACQUIRING SHARES   | TAX EFFICIENCY (INDIVIDUAL)  | TAX EFFICIENCY (COMPANY)  | EASE OF SETTING UP   | OVERALL INCENTIVE AND REWARD VALUE   | OTHER ISSUES   |
|---|--|---|--|--|--|
| Share purchase (including nil-paid shares)                              | ★★★★★<br>No IT or NICs if shares purchased for market value. CGT on sale of shares – but shares must be paid for at some point.              | ★★★★★<br>No CT deduction if shares purchased for market value. No NICs on same condition.   | ★★★★★<br>Usually just subscription letter  | ★★★★★<br>Simple to explain, there is economic risk, but tax efficient                    | Valuation questions may arise. Liability to pay purchase price may be deferred but never eliminated. |
| Restricted shares   | ★<br>ITs and NICs on vesting – but participant and company may elect to pay this upfront. CGT on any further gains between vesting and sale. | ★★★<br>CT deduction on vesting. NICs may be transferred to participant.                     | ★★★★<br>Often operated with an employee trust  | ★★<br>Simple to explain, little risk, not tax efficient                                  | May be structured as nil cost option or conditional share  |
| Joint Ownership (awarding an interest in the growth in value of shares) | ★★★★★<br>No IT or NICs if interest purchased for market value. CGT on sale of shares.  | ★★★★★<br>No CT deduction if interest purchased for market value. No NICs on same condition. | ★★★★★<br>Usually operated with an employee benefit trust. Other documents also required. | ★★★★★<br>A little more complex to explain than other schemes, little risk, tax efficient | There are likely to be valuation questions on receipt of the interest in the shares.                 |

# EMPLOYEE OWNERSHIP TRUSTS

| PURPOSE  | TAX EFFICIENCY (INDIVIDUAL)  | TAX EFFICIENCY (COMPANY)  | EASE OF SETTING UP  | OVERALL INCENTIVE AND REWARD VALUE                                     | OTHER ISSUES   |
|--|--|---|---|--|--|
| Enables a company owner to realise the value of their business | ★★★★★<br>For seller, no CGT on sale of controlling interest in a business to an EOT. For employees, income tax free bonuses. | ★★★★★<br>Bonuses to employees corporation tax deductible. Contributions to trust generally not. | ★★★★★<br>Bespoke trust documents needed and detailed conditions must be satisfied | ★★★★★<br>Can create a powerful platform for further growth and success | Vendor may need to wait for payment of sale proceeds in full |

This guidance is based on our understanding of the position as at August 2021

“...the practical experience, combined with the technical knowledge of David, Judith and the team, has been of enormous value to me and my clients...”  
PATRICK TOLHURST, MANAGING PARTNER, MARLBOROUGH HOUSE PARTNERS

“Postlethwaite are very commercial and practical. Working with them is an excellent experience.”  
CHAMBERS DIRECTORY 2020

# HOW YOU CAN FIND OUT MORE

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for an informal discussion, without cost or commitment.

Or call us on **020 3818 9420**

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# ABOUT US

Postlethwaite is a law firm specialising in employee share schemes and employee ownership. Our clients include private and public companies, accountancy firms, other law firms and individuals. We are happy to work with any size of company, from start ups to more established ventures, and have clients throughout the UK and also overseas.

Please look at our website for more information about different share schemes and some tools to help you understand how they might work:

[www.postlethwaiteco.com](http://www.postlethwaiteco.com)

“They combine a magic circle level of expertise with a more personal service”  
CHAMBERS DIRECTORY 2019



# Postlethwaite

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