Postlethwaite
EMPLOYEE OWNERSHIP LAWYERS

Unapproved Share Options or Non-tax-advantaged Options and Long Term Incentive Plans

An overview of share options without tax advantages, typically called unapproved share options (or non-approved options) and sometimes long term incentive plans

Like all other forms of share option, an unapproved share option is a right to acquire shares from a future date at a fixed price. The fixed price is commonly the value of the shares at the date the option is granted, the object being to provide a reward for the option holder based on future growth in share value.

However, the price is sometimes set at nil or a nominal amount, so if the option is exercised the option holder simply calls for the shares to be transferred to him for no or only a very small payment. Options with a nil exercise price or similar arrangements are often called ***Long Term Incentive Plans (LTIPs)***.LTIPs are often coupled with performance targets, so the option may only be exercised if the company (or part of its business) improves performance to a specified level.

"Unapproved" simply means that it hasn't received the approval of HM Revenue and Customs for option holders to benefit from any tax breaks.

How does it work?

Unlike CSOP, EMI or SAYE options, any option gains (the amount by which the value of the shares on exercise exceeds the price paid to exercise the option) are normally subject to income tax (and often National Insurance (NI)) when the option is exercised.

When is tax due on unapproved share options?

Income tax and employee NI will often be collected under PAYE, following option exercise. However, where the shares are not readily convertible into cash, so only income tax (and not NI) is due, the employee who has exercised the option must declare the gain in a self-assessment tax return for the tax year in which the option is exercised.

Can we choose which of our employees participate?

Yes, you can choose any employee or executive director to participate.

Are there any limits?

It isn't subject to any Revenue limits.

Can my company have an unapproved plan or LTIP?

Almost certainly.

In this table we attach our own ratings for unapproved share options for tax efficiency, ease of setting up and overall incentive and reward value:

Ground Floor, 9 Staple Inn, London WC1V 7QH
T 020 3818 9420 E info@postlethwaiteco.com W www.postlethwaiteco.com

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Non-tax-advantaged Options or Long Term Incentive Plans

TAX EFFICIENCY (INDIVIDUAL)	TAX EFFICIENCY (COMPANY)	EASE OF SETTING UP	OVERALL INCENTIVE AND REWARD VALUE
★☆☆☆☆ No IT or NICs for certain “good leavers” or if option is held for at least three years. CGT on sale of shares.	★★★☆☆ CT deduction on option gains. No NICs if options held for at least three years.	★★★★★ Must be registered with HMRC and self-certified.	★★☆☆☆ Simple to explain, no risk, not tax efficient.

Other issues

Can be difficult if company sold for shares, earnout, or deferred consideration.

If you would like to explore how an employee share scheme might be introduced in your company, please contact us for an initial discussion.

We are happy to meet at our offices without charge or commitment and will be very pleased to hear from you.

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