

Employee Share Schemes

AN OVERVIEW AND COMPARISON
OF DIFFERENT APPROACHES

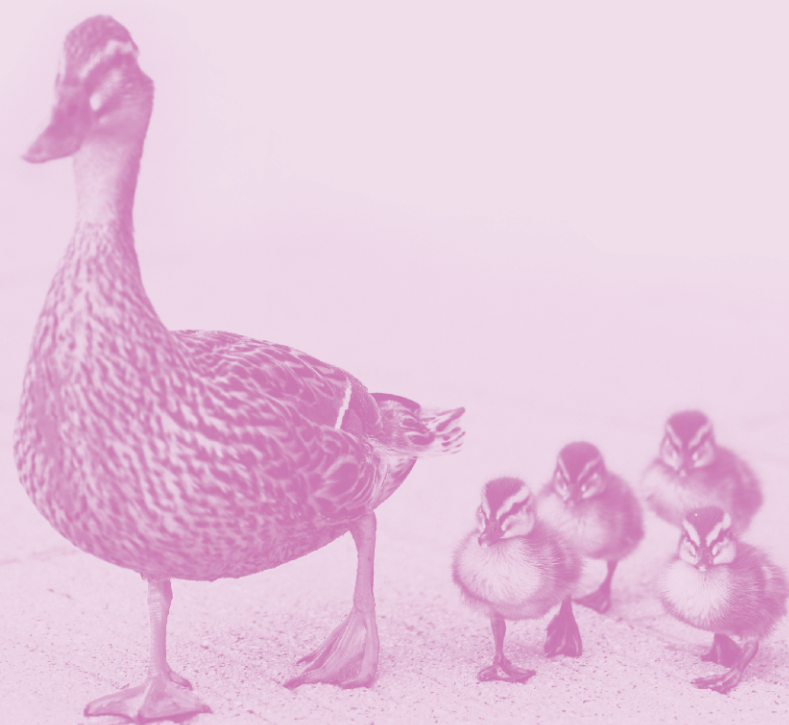


Employee share ownership is a powerful way of encouraging employees to think like owners, helping make a business more profitable.

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.

With over 20+ years of experience, we help hundreds of companies of all sizes from early start-ups to large and established, and from a wide range of sectors with their share schemes.

Therefore you can be sure that when you chose to work with us you are getting an experienced team who will tailor the best share scheme approach for your company and its employees based on what you want to achieve.



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)	★★★★★ 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.	★★★★★ CT deduction on value of free shares. No NICs on value of free shares or on value of shares purchased by participants.	★★★★★ Must be registered with HMRC and self-certified.	★★★★★ 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	★★★★★ No IT or NICs for exercise after bonus date or by certain “good leavers”. CGT on sale of shares.	★★★★★ CT deduction on option gains.	★★★★★ As above.	★★★★★ 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.

GLOSSARY

IC: Income Tax
NICs: National Insurance
CGT: Capital Gains Tax
CT: Corporation Tax

STAR RATING SYSTEM

Rating	Tax efficiency	Set-up	Incentive and reward value
★★★★★	Good	Relatively easy	High
▼	▼	▼	▼
★☆☆☆☆	Poor	Fairly complex	Low

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	★★★★★ No IT or NICs unless disqualified. CGT on sale of shares, potentially at 10%.	★★★★★ CT deduction on option gains. No NICs.	★★★★★ Must be registered with HMRC and option grants notified to HMRC after end of tax year.	★★★★★ 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”)	★★★★★ No IT or NICs for certain “good leavers” or if options 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, tax efficient. Limited to £60,000 of shares per person.	Some companies excluded. Options may not be granted at a discount.
Non-tax-advantaged or phantom options	★★★★★ IT and NICs on option gains, due when option is exercised. CGT on any further gains between exercise and sale.	★★★★★ CT deduction on option gains. NIC liability may be transferred to individual participants.	★★★★★ Must be registered with HMRC and option grants notified to HMRC after end of tax year.	★★★★★ Simple to explain, no risk, not tax efficient.	Can be difficult if company sold for shares, earnout, or deferred consideration.
Growth (or hurdle) shares	★★★★★ No IT or NICs if shares purchased for market value. CGT on sale of shares.	★★★★★ No CT deduction if shares purchased for market value. No NICs on same condition.	★★★★★ Requires change of Articles to create new class of share.	★★★★★ Can be complex to explain, little risk, tax efficient – but its value as a reward will depend on how high the hurdle is set.	Valuation cannot be agreed with HMRC, unlike EMI and CSOP. However, can be combined with EMI or CSOP options.

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)	★★★★★ No IT or NICs if shares purchased for market value. CGT on sale of shares – but shares must be paid for at some point.	★★★★★ No CT deduction if shares purchased for market value. No NICs on same condition.	★★★★★ Usually just subscription letter.	★★★★★ 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	★★★★★ ITs and NICs on vesting – but participant and company may elect to pay this upfront. CGT on any further gains between vesting and sale.	★★★★★ CT deduction on vesting. NICs may be transferred to participant.	★★★★★ Often operated with an employee trust.	★★★★★ Relatively 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)	★★★★★ No IT or NICs if interest purchased for market value. CGT on sale of shares.	★★★★★ No CT deduction if interest purchased for market value. No NICs on same condition.	★★★★★ Usually operated with an employee benefit trust. Other documents also required.	★★★★★ 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.

“ 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

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.	★★★★★ For seller, no CGT on sale of controlling interest in a business to an EOT (although the relief can be clawed back in certain circumstances). For employees, income tax free bonuses.	★★★★★ Bonuses to employees corporation tax deductible. Contributions to trust generally not.	★★★★★ Bespoke trust documents needed and detailed conditions must be satisfied.	★★★★★ 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 November 2024.

“...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

“ We used [Postlethwaite] for an EMI scheme. Excellent to deal with, always very responsive, super knowledgeable and a quick turnaround. Highly recommend. ”

MIKE FAHEY, CO-FOUNDER, GET LUCIDITY

“ The Postlethwaite team are excellent. They deliver sound, pragmatic advice.

CHAMBERS & PARTNERS 2024

Notes



Meet the Postlethwaite team

We are a 100% employee owned boutique legal practice specialising in employee ownership since 2003, with offices in London and Leeds. The firm and its lawyers are top ranked in their area of expertise by Chambers & Partners and Legal 500. You can therefore be sure you're making the right decision when choosing to work with us.

THE SOLICITORS



Robert Postlethwaite
Director

Robert is the company's Founder and is the author of 'The Employee Ownership Manual' written and independently published and has been top tier ranked for 15 years by Chambers & Partners.



David Reuben
Director

David has worked at Postlethwaite since 2010. He is an expert in share schemes and employee ownership transitions. He has been top tier ranked for 13 years by Chambers & Partners.



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For an informal discussion without cost or commitment, call or email us via the details below.

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