All-employee share schemes during the Coronavirus pandemic UPDATED (02.07.20)

At the beginning of April, the QCA's Share Schemes Expert Group put together a note in order to help you navigate the pandemic in relation to all-employee share schemes, which explained the range of possibilities available to companies operating Save As You Earn plans (SAYE) and Share Incentive Plans (SIP).

Following the release of HMRC's Employment Related Securities Bulletin (ERS bulletin) and the publication of the amended Finance Bill, the Share Schemes Expert Group would like to issue an update on the note. In addition to covering SAYE and SIP as per the previous note, the new note also explains the range of possibilities regarding Company Share Option Plans (CSOP) and Enterprise Management Incentive (EMI).

Company Share Option Plans

Do options remain qualifying for furloughed employees?

Yes – for employees and full-time directors, who were granted options before the coronavirus pandemic and are now furloughed, the options will remain qualifying on the basis they were full-time directors and qualifying employees at the time of grant.

Enterprise Management Incentive

Is being furloughed a disqualifying event?

No – the amended Finance Bill proposes a new clause with an exception to the working time requirement. That would mean there is no disqualifying event if an individual being furloughed, taking leave, or working reduced hours as a result of the coronavirus pandemic, provided that individual otherwise remains an eligible employee.

How have the granting of options been affected following valuations?

When there is a requirement to agree an appropriate valuation with HMRC, the value is usually held for 90 days if there are no significant changes.

However, as a result of the coronavirus, there may be delays in granting options within the 90-day period. As long as there has been no change that may affect an appropriate valuation then:

- Any EMI valuation agreement letters already issued, where the 90 days expires after the 1 March 2020, can be automatically treated as being extended by a period of 30 days; and
- Any new EMI valuation agreement letter issued on or after 1 March 2020 will be valid for 120 days.

Save As You Earn

Can employees change the amounts they contribute?

No – participating employees cannot change the amount of monthly contributions paid into their savings contract.

Can employees 'pause' the amounts they contribute?

Yes – participating employees can instruct their employer to stop taking contributions from their salary. Employees who are unable to contribute because they are furloughed or on unpaid leave are already able to cease contributions for up to 12 months without causing the savings contract to be cancelled. However, HMRC have confirmed that they will allow contributions to be postponed for a longer period where the additional months are missed due to the coronavirus. HMRC updated the Specimen SAYE Prospectus from 10 June 2020 to show that monthly contributions can be postponed longer than 12 months due to the coronavirus.

If an employee postpones their contributions, this will put back the 3- or 5-year maturity date by the total number of months missed, including any additional months missed as a result of the impact of the coronavirus so the overall contribution remains the same. This may cause the maturity of the option to fall within a future closed period. It could also mean the employee has to wait longer before they can participate in any new SAYE invitation offered by the company.

Can employees withdraw their savings?

Yes – employees can withdraw their savings at any time, but if they do so before their SAYE option matures, then their option will lapse and cease to be exercisable.

Can employees who are 'furloughed' under the Government's Coronavirus Job Retention Scheme continue to participate in the SAYE?

Yes – furloughed employees are still employees for the purposes of SAYE and their participation should be unaffected.

In addition, HMRC have confirmed that payments of CJRS to employees furloughed during the coronavirus pandemic can constitute a salary and SAYE contributions can continue to be deducted from CJRS payments.

Share Incentive Plan

Can employees change and/or 'pause' the amounts they contribute?

For SIP participants buying partnership shares on a monthly basis, they can at any time:

- change the amounts they contribute; or
- stop and re-start deductions from their salary at any time.

However, participants will not be allowed to make up missed deductions from their salary if they stop due to the coronavirus. Despite this, companies can offer a ‘lump sum’ or ‘top-up’ feature which can provide employees with flexibility as to payments.

Instructions to amend, stop and re-start deductions will typically have to be processed by the company within a 30-day period (you should check your Partnership Share Agreements for more detailed provisions around timings).

The £1,800 annual limit or, if lower, 10 per cent of salary must be continuously assessed by the company, so if an employee’s salary and/or working hours are reduced, it may be necessary for deductions under the Partnership Share Agreement to also be reduced. The excess should be paid back to the employee through payroll to collect PAYE and NICs.

Can a company terminate the SIP?

If a company wishes to end a SIP, it must issue a Plan Termination Notice in accordance with the legislation. Once the notice has been issued:

- all share purchases cease
- the SIP Trustee must transfer to participants all the shares it holds on their behalf:
    - by transfer to the participant's own share dealing accounts; or
    - by selling the shares on behalf of the participant.

This must be within three months of receiving the notice, or, if later, the first date on which shares can be removed from the SIP without incurring an income tax and NICs charge, unless otherwise agreed with the participants.

Can employees who are 'furloughed' under the Government's Coronavirus Job Retention Scheme continue to participate in the SIP?

Yes – furloughed employees are still employees for the purposes of the SIP and their participation in the SIP should be unaffected. Payments of CJRS to employees furloughed during the coronavirus pandemic can constitute a salary and SIP contributions can continue to be deducted from CJRS payments. Where furloughed employees continue to make contributions under a SIP partnership share agreement, additional care may be needed by the employer when calculating the appropriate CJRS claim, to ensure that the relevant NIC saving is reflected in the CJRS claim amount.

We hope you find this guide useful, but please note that it is for general information purposes only and is not a substitute for specific legal advice in relation to the operation of your share plans.

Best wishes,

Share Schemes Expert Group, QCA