

Who Shares Wins

In the current economic climate, employers must achieve savings in their businesses, whilst also seeking to retain and motivate key members of staff. In this edition of Who Shares Wins we consider two ways in which this can be achieved: increasingly popular unapproved salary sacrifice arrangements and the approved Save As You Earn (SAYE) scheme.

What is salary sacrifice?

Salary sacrifice takes place where an employee gives up the right to part of the cash remuneration due under his or her contract of employment. This is done in return for the employer's agreement to provide the employee with some other form of (non-cash) benefit. In order to do this, the employee's terms and conditions of employment must be varied by mutual consent, in relation to remuneration.

The principal reason for salary sacrifice is the significant cost to all businesses of tax and national insurance contributions (**NICs**) on salary and other benefits in kind. Salary sacrifice involves taking advantage of the exemptions from tax and/or NICs on certain benefits. Arrangements which are genuinely designed to make use of these exemptions will not be regarded by HM Revenue & Customs as tax avoidance. In fact, HMRC even gives guidance on its website as to how salary sacrifice works. Examples of the type of benefits which can be used are as follows:

- An employer contributing to a registered pension (where, as the scheme is approved, the employer's contribution will not be a chargeable benefit)
- Work place nurseries – these are exempt from tax and NICs
- Childcare vouchers
- Other employer provided childcare
- Certain travel arrangements
- Company cars

The tax and NICs saving can be split between employer and employee in whatever way you wish. These arrangements should result in actual cash savings on a year on year basis, producing significant benefits over a sustained period.

The necessary changes required to implement a successful salary sacrifice scheme will involve a number of management and communications issues. We can help you effectively and smoothly to introduce salary sacrifice arrangements, potentially achieving annualised savings of thousands of pounds.

Why choose a SAYE Option Scheme?

A SAYE scheme – also known as a sharesave scheme or savings related share option scheme – is a type of **employee share scheme** which allows each of your employees to use the proceeds of a savings arrangement to fund the exercise price of an option over shares in their employer company. SAYE is tax-favoured and approved by HMRC.

Share options can be granted either by you as the employer or by a parent company. If the participating employee chooses at any time not to exercise the SAYE option, savings will be paid back to the employee along with any bonus or interest which has accrued. A SAYE scheme is therefore risk-free for the participating employee until the point of exercise.

The SAYE option's exercise price is fixed when the option is granted but the option shares may be offered to employees at a discount of up to 20% below market value. The employee takes out a linked savings arrangement with a bank or building society to save an amount sufficient to fund the option exercise price. Participating employees can then save up to £250 per month, generally by deduction from pay.

SAYE options are normally exercisable after three, five or seven years. The number of shares is then calculated by reference to the expected proceeds of the savings arrangement at the end of the period chosen by the participating employee at the outset. Options normally lapse on leaving employment, although early exercise may be permitted in certain circumstances.

Tax Treatment

Participating employees can use the accumulated tax-free savings and any tax-free bonus to fund the exercise of the option or they can simply elect to have their savings and bonus paid out in cash, tax-free. The increase in the market value of the shares from the date of grant to the date of exercise is income-tax free. Any subsequent disposal of the shares will attract capital gains tax in the normal way. PAYE and national insurance contributions will, however, not normally be payable.

In addition, the company granting the option benefits from corporation tax relief on the scheme set-up costs.

Changes to SAYE effective from 29 May 2009

The 2009 Budget made certain changes effective from 29 May 2009 to the administration of the savings arrangements linked to SAYE option schemes. These included the following:

- Responsibility for setting and changing savings contract bonus rates and authorising savings providers will pass from HM Treasury to HMRC, and new bonus rates are now in place;
- The minimum notice period for changes in SAYE bonus rates will be reduced from 28 days to 15 days;
- HMRC will be able to specify that savings contracts may be entered into under the old rates, within a certain period after the change becomes effective. This will be done in the notice of the changes to savings providers.

Should you wish to discuss any aspect of salary sacrifice arrangements or SAYE option schemes with us, please do not hesitate to contact **James McVeigh** on **020 7242 3191**

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