Covid-19 impact on share plans and employee trust owned companies

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Introduction

There is no doubt that Covid-19 has significantly impacted businesses across the United Kingdom and globally. Whilst some businesses are seeing huge increases in demand, others are struggling to survive in this new world.

Share ownership might not be top of the business critical agenda right now, but here are some points to keep in mind for companies that have employee share plans, whether selective or broad based, or are employee trust owned.

As always, please contact us if you need further information or if your particular issue is not addressed.

Furloughed employees

It is important that furloughed employees are not disadvantaged more than necessary and so businesses should consider what impact furloughing may have on employees' participation in company share plans. As ever, clear and timely communication is critical.

Share Incentive Plan (SIP)

Employees may feel that in the current environment they cannot afford to make contributions to acquire Partnership Shares. Your SIP will allow employees to stop and re-start deductions and you may wish to provide some guidance on the issue. This is especially true if you are currently in an accumulation period. Employees will want to understand whether, if they continue to contribute, they will acquire shares at the market value at the start or end of the accumulation period and what happens if they stop and re-start deductions.

Save As You Earn (SAYE)

An employee with an SAYE option may choose to carry on saving, take a saving holiday of up to 12 months or withdraw their savings and let their option lapse. Again, it may be worthwhile communicating those choices to employees. Although financial advice cannot be given, it is worth noting that share prices have been very volatile recently. Options that are underwater may well come back into the money in the short term. As savings can be withdrawn at any point, it may be worth waiting and seeing what happens to share prices rather than removing savings and causing options to lapse.

Enterprise management incentive (EMI) options

EMI is the only tax-advantaged arrangement which, on the face of it, may disadvantage option holders who are furloughed. This is due to the working time requirements of the legislation which usually operate to take options out of the tax-advantaged regime if employees, broadly, cease to commit 25 hours a week or 75% of their working time to their employer. However urgent representations have been made to HM Revenue & Customs (HMRC) on this point and it is assumed that a pragmatic approach will be taken. HMRC is expected to provide an update on its approach to this issue in the coming weeks.

If you are furloughing employees who have been granted EMI options, it may be worth checking with us whether we can speak to HMRC on your behalf to confirm that the options will not be affected.

Employees who are taking parental leave, for example, to care for children should fall within existing statutory exceptions.

Employee trust owned companies

Employee trust owned companies, like other businesses, will be grappling with difficult issues regarding their employees during the current crisis and beyond.

Just as other companies will turn to their shareholders for support and advice, employee trust owned companies should as a minimum keep the trustee of their employee trust informed. We have a separate guide for the directors of the trustee company on their duties as trustee during these uncertain times. The guide is available by contacting any member of the Employee Ownership Solutions team.

Where the company has employees on the board of the trustee, thought will need to be given to whether those employees can be furloughed. Whilst it is clear that employees can remain on company boards at the time they are furloughed and can perform statutory obligations, they should not be providing services to their employer or a company linked or associated to their employer. There would be a concern that significant time commitment to the trustee board might breach this test. While a trustee board might be quorate without their employee representative, now is arguably a time when that representation is needed more than ever.

Keeping employees incentivised

Again communication is the key here and the time might not be currently right to launch new share plans or grant additional awards.

Some questions which may be worth considering are:

- If you have not operated your SAYE plan or SIP for a while could you do so now? One advantage of lower market values is that employees may benefit from higher growth over the life of the option or acquire shares at a reduced price to previous offerings. Options and shares may be one way in which you can reward your employees for their support in this period.

- If you don't operate your SIP or SAYE in your normal annual cycle might you be able to operate it later in the year instead? Do you have an 'exceptional circumstances' clause and can you use it?

- If you have a SIP, employees may want to withdraw their shares and sell them. Are you ready to deal with requests? Do your employees understand what they can withdraw and the tax implications of doing so now?

- If you are currently struggling with cash flow might some people (non-executive directors, for example) take payment in shares?

- If you are a private company operating an internal market, do you need to suspend the market? If your market is open are you happy with the price on which the market is operating? Obtaining accurate and meaningful share valuations during such an uncertain period will be difficult.

- Salary sacrifice: will you need to ask employees to give up some of their earnings to ease constraints on cash flow? If so, could you offer them an equity based award to compensate them for the salary that they have sacrificed? Have you considered how best to structure this salary for equity swap from a tax perspective?

- Will performance targets attaching to long term incentive awards need to be reviewed and rebased?

- To assist with the granting of EMI share options during the covid-19 crisis, HMRC has extended the period for which new valuations are valid from 90 to 120 days.

Contact details

For further information on these and related topics, including a copy of the guide on trustee directors' duties, please contact any member of the Employee Ownership Solutions team:

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