

Unapproved Share Options



General Features

The broad structure of an unapproved share option plan is identical to the approved Company Share Option Plan or CSOP (see fact sheet on CSOPs). Accordingly, options are granted to individuals who are selected to participate. The option price is usually the market value of the shares under option.

The plan will also contain provisions regarding exercise of options following the third anniversary of grant, early exercise in certain circumstances (redundancy, injury etc), the adjustment of options in the context of variations of share capital and amendments to the plan. **Unapproved share options** are normally granted where the employee has already received his full allowance of approved options; i.e. the plan is used to 'top-up' the CSOP.

Eligibility

Discretion is given to the company as to which employees are eligible to participate in the plan and be granted options.

Advantages of an Unapproved Share Option Plan

There are two main advantages of an unapproved plan:

- Flexibility
- Number of shares that can be placed under option in respect of any one participant.

Flexibility

An approved plan must, of course, comply with the legislation in order to obtain HM Revenue & Customs approval. The legislation restricts the types of shares that can be placed under option (broadly the legislation requires shares to be part of the ordinary share capital of a company that is either listed or not controlled by any other company. Shares must also be fully paid up, not redeemable and not subject to any restrictions other than restrictions which apply to all shares of the same class).

These restrictions may make it very difficult for private companies to establish approved option plans because, for example, the company may ultimately be controlled by another company or the articles of association contain restrictions that do not fall within the exemptions in the legislation.

Extent of Participation

Under an approved plan options with a value (currently) of up to £30,000 may be granted. Given that such option plans are primarily designed to provide benefits to directors and senior employees this limit may mean that an appropriate level of incentive cannot be provided.

Companies will often establish an unapproved plan, in addition to the approved plan to provide benefits in excess of the £30,000 limit.

Taxation – Disadvantages of an Unapproved Share Option Plan

Unapproved plans will not attract the tax advantages of an approved plan, since they are not approved by HM Revenue & Customs. Accordingly, an unapproved plan will be taxed as follows:

On grant

No income tax is charged, provided the option cannot be exercised more than 10 years after grant.

On exercise

Income Tax will be payable on the difference between the option price and the market value on the day of exercise. Employees' and employers' National Insurance is also payable. By agreement or election, an employee can agree to pay the employers' NIC charge on exercise. Any amount paid is taken into account when calculating the income tax charge.

On sale of shares

Capital Gains Tax (CGT) will be payable on the difference between the market value of the shares at the date of exercise and the sale proceeds.

Dividends

As only options are held, there are no dividend payments until the shares are received on the exercise of the option.



Benefits Associated in Operating a Unapproved Share Option Plan

Employer:

An Unapproved Share Option is flexible and offers the company the opportunity to benefit directors and senior employees more extensively than an approved CSOP. A corporate tax deduction is available on the receipt of shares by participants.

Employees:

Employees can be provided with benefits in excess of the £30,000 limit under the approved CSOP.

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