



**The Quoted
Companies Alliance**

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David McDowell Esq
HM Revenue & Customs
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9 February 2011

Dear Mr. McDowell,

HM Revenue & Customs - Disguised Remuneration – Draft Legislation

INTRODUCTION

The Quoted Companies Alliance (QCA) is a not-for-profit membership organisation working for small and mid-cap quoted companies. Their individual market capitalisations tend to be below £500m.

The QCA is a founder member of European**Issuers**, which represents over 9,000 quoted companies in fourteen European countries.

The QCA Share Schemes Committee has examined your proposals and advised on this response. A list of committee members is at Appendix A and we have enclosed the terms of reference of this committee.

RESPONSE

We are writing in response to the Government's proposed legislation on disguised remuneration announced on 9 December 2010.

In line with market practice, many of our members operate employee share plans where employee gains are either fully subject to income tax and NICs in accordance with long-standing norms when employees receive remuneration unconditionally, or are exempt from tax under HMRC approved and EMI arrangements. Many of these arrangements need employee trusts because:

- Companies legitimately do not want to issue new shares, but want to avoid dilution and buy shares in the market to use for their employees which need to be held by a third party (usually an employee trust) between the grant date and vesting of awards
- Employees want security in knowing that shares are available when their awards vest and they are not dependent upon their employing group funding the acquisition at that time
- Companies also want to hedge the cost of their share plans by acquiring shares at favourable times rather than be at the mercy of the share price and market liquidity at the time of vesting
- Where shares are issued to satisfy awards, company law does not enable shares to be provided free of charge directly to employees – the shares have to be provided via an employee trust.

We are aware that employee trusts have formed part of some tax planning arrangements which the Government may wish to stop. However, we are disappointed that the draft legislation is so broadly drafted that many commercial arrangements which give rise to no corporate or individual tax advantage appear to give rise from 6 April 2011 (or in some cases from 9 December 2010) to significant up-front tax charges which employers have little ability to control as the charges can arise due to unilateral action by trustees or other intermediaries, without employer's consent (or possibly even knowledge). We are particularly concerned that employees will be taxed and employers pay National Insurance up front on awards which might subsequently be forfeited, for example because performance or other vesting conditions are not met.

For example:

- Loans to employees where to pay their exercise price or tax which are shortly repaid by employees, or longer-term loans or payment arrangements so that employees can acquire shares
- Cashless exercise arrangements generally, where employees do not provide funds up-front for exercise prices etc, but these are netted off against the sale proceeds of sufficient shares
- Partly-paid share arrangements – both involving the issue of shares and shares already issued – and other arrangements, such as joint share ownership plans, where there is a further point: any hasty inclusion of these within the disguised remuneration arrangements would pre-empt the review of geared growth arrangements which is still ongoing and where employers have not yet had an opportunity to give their comments
- Hedging arrangements (see above)
- Conditional share awards, which do not come within the definition of “employment-related securities options”
- Use of deferred cash awards. While there is an exemption for securities options (albeit loosely drafted) there is no such exemption for deferred cash awards where cash is held in a trust during the deferral period. This is odd as it is public policy in another area to encourage deferral of cash bonuses which may subsequently be “clawed back” if there is significant fall in personal or corporate performance before the cash is paid out to employees. Up-front taxation is likely to discourage use of these design features.

Our members are concerned at the cost implications of the uncertainty surrounding this draft legislation, which is leading to companies as well as their trustees having to take extra advice in the interim (with trustee advice all being billed to companies). Companies are also concerned at the cost implications of inadvertent earmarking by trustees and other third parties, which could lead to companies having significant PAYE and NIC charges (and later section 222 ITEPA charges). Although not strictly within the remit of this committee, some of our members also add that the pension impact of this legislation is such that the UK now stands out as being unable to offer pension alternatives available internationally, which could deter business from the UK.

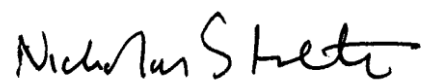
We are aware that a number of professional bodies are reverting to you with requests for meetings and/or with detailed comments on the draft legislation, in many cases reflecting concerns about quite common trustee and other share plan activities which have no tax avoidance aspects to them. We do not propose to supplement this list with a submission of our own, but have instead encouraged our members to make technical points via other bodies' submissions. However, we hope that a satisfactory solution can be reached which is workable for all concerned.

We therefore look forward to an early and full announcement which confirms that legitimate share and cash incentive plans, including those mentioned above, will be exempt from the proposed legislation and that it will instead be targeted more directly at the arrangements to which the Government objects. It would be very helpful if this announcement could be made in advance of the Budget on 23 March, to remove the current uncertainty for employers. We would be happy to work with you on this.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'TWL', enclosed in a light blue rectangular box.

Tim Ward
Chief Executive

A handwritten signature in black ink, appearing to read 'Nicholas Stretch', written in a cursive style.

Nicholas Stretch
Chairman, Share Schemes Committee

QCA Share Schemes Committee

Nicholas Stretch (Chairman)	CMS Cameron McKenna LLP
Fiona Bell (Deputy Chairman)	Memery Crystal LLP
Martin Benson	Baker Tilly
Danny Blum	Eversheds LLP
Chris Browne	KPMG LLP
Sara Cohen	Lewis Silkin
Christopher Connors	Charles Russell LLP
Michael Deeks	Olswang LLP
Amanda Stapleton	Mazars LLP
Jared Cranney	Interior Services Group plc
John Daughtrey	Equiniti
James Dean	Osborne Clarke
David Ellis	BDO LLP
Matthew Findlay	Hewitt New Bridge Street
Philip Fisher	PKF (UK) LLP
Amanda Flint	BDO LLP
Jeremy Glover	Stephenson Harwood
Paula Hargaden	Burges Salmon
Colin Kendon	Bird & Bird
Michael Landon/Nigel Mills	MM & K Limited
Peter Mossop	Sanne Group
Robert Postlethwaite/Stephen Chater	Postlethwaite & Co
Nick Wallis	Smith & Williamson Limited
Kate Jalbert	Quoted Companies Alliance
Tim Ward	Quoted Companies Alliance



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QCA Share Schemes Committee Terms of Reference

Aims and objectives of the Committee:

- To represent small and mid-cap quoted companies in connection with all aspects of equity employee incentive arrangements (and other incentive arrangements where relevant).
 - To ensure that regulations, legislation and guidance from the UK Government and regulators (including the Association of British Insurers), as well as the European Union and Commission, that affect employee equity and other incentive arrangements or structures (including employee trusts) are appropriate for small and mid-cap quoted companies so that they may be operated as intended.
 - To promote employee share ownership amongst employees of small and mid-cap quoted companies.
 - To present a cohesive voice from key advisers and participants in the employee incentive industry, including lawyers, accountants, trustees and remuneration consultants.
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Activities of the Committee:

- Lobby the UK Government, UK regulators, European Union, European Commission and investor representatives on specific legislation, regulations and guidance that may advantage and/or disadvantage small and mid-cap quoted companies.
 - Increase general awareness of specific market issues that may hinder small and mid-cap quoted companies from being able to operate employee equity incentive arrangements.
 - In particular, to represent small and mid-cap quoted companies to HM Revenue & Customs in connection with specific areas of tax legislation.
 - Share knowledge among the various advisers and facilitators in the area of employee equity incentives.
 - Examine specific regulations, legislation and consultation papers for aspects that may be impractical, inconsistent with other regulations, overly bureaucratic and/or unworkable for small and mid-cap quoted companies in connection with employee equity incentive arrangements.
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Specific Lobbying Issues in 2010

- Prospectus Directive and exemption of employee share schemes.
- Simplifying corporation tax relief in connection with employee equity incentive arrangements.

- Discuss appropriate general principles for AIM company share schemes with the ABI.
- Potential changes to the UK taxation regime as a result of the Coalition Government.
- Encourage representatives from at least two new corporates to join the Committee.