

Andrew Ellis
HMRC
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London
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11 February 2013

Dear Sirs,

Draft Finance Bill 2013 - Tax advantaged employee share schemes: Office of Tax Simplification recommendations

Introduction

We are the Quoted Companies Alliance, the independent membership organisation that champions the interests of small to mid-size quoted companies. Their individual market capitalisations tend to be below £500m.

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

The Quoted Companies Alliance Share Schemes Expert Group has examined your proposals and advised on this response. A list of members of the expert group is at Appendix A.

Response

Overall, we welcome the Government's decision to simplify tax advantaged employee share schemes in the Finance Bill 2013. It is clear that the Government has listened and taken action on number of points raised by the Office of Tax Simplification

We have some specific comments on the draft legislation in this area:

Company Share Option Plan (CSOP)

We welcome the Government's decision to retain the CSOP. As mentioned in our response to HMRC's consultation in September 2012, we surveyed our corporate members and a significant number (83%) of respondents said they would be concerned if CSOPs were withdrawn as HMRC approved plans.

We propose that there are more changes that could be made to the CSOP to make it more flexible, for example:

- Allowing options to be granted at a discount or at nil cost (while, like for EMI, only giving income tax relief for increases in value after the grant date)

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- Allowing tax-exempt exercise within 3 years. (This should not cost much to the Exchequer, as the gains will be lower if exercise is earlier. It would also mean that all of the early exercise provisions, for leavers and company events, could be left out.)

Part 1 (retirement)

Clause 16

We would query whether or not the changes in relation to retirement will apply to SAYE and CSOP options granted before Royal Assent? It is clear that the definition for SIP forfeiture does change for shares awarded before then.

Part 2 (good leavers and cash takeovers)

General comments

We have been advised that the changes proposed do not closely dovetail with how takeovers operate in practice, including on timescale and also because they do not include schemes of arrangement. We are also unsure about the rationale for excluding share or other takeovers. Additionally we believe the proposed change can be more simply provided for by cross-referring an exemption from tax to the relevant existing provisions rather than the extensive drafting that has been proposed.

Clause 23(4)

Again, we would query whether this change will affect SAYE options granted before Royal Assent?

Part 3 (material interest)

Clause 40

Again, we would query whether an employee who was granted a SAYE option before Royal Assent (and therefore had no material interest at grant), but acquires a material interest before exercise, will be permitted to exercise?

Part 4 (restricted shares)

Clause 54

The SIP rules will be automatically amended to allow for restricted shares to be subject to awards from the date of Royal Assent. Companies will still be able to award free shares and matching shares which are subject to forfeiture – as well as with other restrictions. We would query whether partnership and free share agreements will also be automatically amended or whether new agreements will need to be made with participants?

If you would like to discuss any of these issues in more detail, we would be happy to attend a meeting.

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Yours faithfully,

A handwritten signature in blue ink, appearing to read 'TW', is positioned below the closing text.

Tim Ward

Chief Executive

Quoted Companies Alliance Share Schemes Expert Group

Nicholas Stretch (Chairman)	CMS Cameron McKenna LLP
Fiona Bell (Deputy Chairman)	RM2 Partnership Limited
Barbara Allen	Stephenson Harwood
Simon Allum	Lewis Silkin
Martin Benson	Baker Tilly
Danny Blum	Eversheds LLP
Stephen Chater /Robert Postlethwaite	Postlethwaite & Co
Christopher Connors	Charles Russell LLP
Karen Cooper	Osborne Clarke
Jared Cranney	Interior Services Group plc
Vanessa Cundy Cooper	KPMG LLP
John Daughtrey	Equiniti
Michael Deeks	Olswang
Matthew Findley	Pinsent Masons LLP
David Firth	Penna Consulting PLC
Philip Fisher	PKF (UK) LLP
Amanda Flint	Grant Thornton UK LLP
David Fuller	CLS Holdings PLC
Andy Goodman	BDO LLP
Paula Hargaden	Burges Salmon
Daniel Harris	Ernst & Young LLP
Colin Kendon	Bird & Bird LLP
Michael Landon/Nigel Mills	MM & K Limited
Peter Mossop/Collum Spillane	Sanne Group
Nick Wallis	Smith & Williamson Limited