

Andrew Ellis  
Savings and Share Schemes Team  
Room G53, 100 Parliament Street  
London SW1A 2BQ

[shareschemes@hmrc.gsi.gov.uk](mailto:shareschemes@hmrc.gsi.gov.uk)

20 September 2012

Dear Mr Ellis,

**HMRC's consultation on the Office of Tax Simplification's report on tax advantaged employee share schemes**

***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.

In addition, we have surveyed our corporate members on the share schemes their companies use and have represented those responses. A third of our corporate members responded. Of these respondents, 59% operate CSOPs, 34% SAYEs, 13% SIPs and 44% EMI Schemes. A significant 83% of respondents said they would be concerned if CSOPs were withdrawn as HMRC approved plans. Further feedback from the survey is included in paragraph 28.

***Response***

**1. Which, if any, features of SIP, SAYE or CSOP require further clarity or additional guidance to be available, in order to enable self-certification of schemes?**

The Consultation Document does not put forward any proposals for a system of self-certification. This is disappointing and it is difficult to comment effectively in general terms. However, our members have found it relatively easy to operate the system for the establishment of EMI schemes, with notification and the opportunity for HMRC to raise queries and for companies and their advisers to obtain both formal and informal (by telephone) guidance from the Small Companies' Enterprise Centre.

We acknowledge that where there is self-certification there will be areas of uncertainty so that Companies wanting to establish a scheme and their advisers would wish for certainty. In particular, there are current areas of uncertainty relating to a company's discretion in connection with leavers exercising options and also relating to cross border issues.

The Quoted Companies Alliance is the independent membership organisation that champions the interests of small to mid-size quoted companies.

Guidance in the form of the HMRC Manuals has improved dramatically in recent years but reliance on Manuals alone can be difficult especially for non-specialists, such as directors of companies. The difficulties include being aware of the range of HMRC materials available, the structure of the Manuals, the bulk of the material, the fact that they represent the view of HMRC which is not necessarily correct in law and that parts of the Manuals may be changed without warning or be out of date.

**2. What practical issues could self-certification present for businesses? Examples include the time at which self-certification should take place, and who can be responsible for self-certification of a scheme?**

By setting up a SIP, CSOP or SAYE Scheme a company is creating a legal document and a legal relationship with employees, other corporate members of the Group and in some cases trustees and administrators. If a company embarks on such a scheme without professional support and advice then, unless HMRC provides a step by step, definitive guide, such a company would have practical difficulties researching procedures and legal and statutory requirements. Where schemes have been individually approved by HMRC some support or at least guidance on such matters could have been given by the Share Schemes team at HMRC but this would only relate to tax matters not to legal or accounting issues. This means that companies will continue to seek professional advice as companies tend to at present, for example to ensure articles of association are suitably amended.

One practical benefit with self-certification is the speed of introduction, removal of the need for dual approval (outline and formal) and the consequent administration issues and frustrating delays for clients.

Responsibility for the self-certification would have to fall on the company, probably operated through the Board or Remuneration Committee or a nominated Board member. Currently the company is required to make declarations, for example that the shares to be used comply with the statutory requirements. This responsibility, in terms of compliance with legislation, might be given to the adviser, however, the adviser will always need to caveat that certification is based on information provided to the adviser by the company.

**3. What safeguards will be appropriate to protect businesses and employees, and provide them with certainty in relation to the tax treatment of their arrangements?**

Under the current approval system a company will obtain certainty as to the tax treatment only at the time of obtaining the original approval. Thereafter, changes to the scheme rules, the articles of association or shareholders' agreements or shareholdings of individuals, might create a change in the tax treatment. In other words, at present there is limited certainty of future treatment.

The market value of a share still requires agreement, except for shares listed on a recognised stock exchange, and therefore the Company will have a safeguard in respect of valuation.

There might be three approaches:

- (a) The introduction of an enquiry period so that if HMRC does not make any enquiry within a specified period, say one year, the status as at grant cannot be challenged. Clearly if there are subsequent changes there would need to be notification as with the current arrangements.
- (b) Additionally, the current approval checklists might be made thorough so that if a company complies carefully with this then it can have confidence that individual participants will obtain relief.

- (c) Our view is that the introduction of a standard set of rules by HMRC, as has been done in the past, would be inappropriate. Whilst it might give confidence to anyone adopting that exact format, such standard rules might not be appropriate, legally or practically, for many companies and other aspects, e.g. the articles of association, might be non-compliant preventing approved status in any event.

**4. Will any system of advance assurance or clearance be required, taking into account the desirability of avoiding lengthy and complex approval processes?**

Advance assurance on new or unusual topics would be useful. For example if there is an unusual share structure or unusual arrangements. It is hoped that recommendations regarding the restrictions on shares would be adopted thus eliminating one area that makes the approval process currently lengthy and complex. However, a company issuing shares to an employee outside a CSOP or SAYE in this situation might like, but has not been able to obtain, formally, similar assurance for example for the purposes of Part 7, Chapter 2.

**5. How should the necessary information requirements operate?**

The concern here is to relieve companies of the burden of the approval system without imposing additional compliance. Companies make annual returns at present so that enhancing the information requirement to include, say, an annual certification that the scheme still qualifies, details of changes to articles or share rights, amendments affecting existing share rights could be achieved with limited additional cost to companies. A form of notification of the establishment of the scheme might be considered but we agree individual grant details at the time if the grant would be impractical in light of the vast numbers of participants in some schemes.

**6. What will be the impact of self-certification in terms of one-off or on-going costs/savings for businesses?**

Companies will have cost savings on the set up derived from reduced administrative time needed to deal with the different stages of the approval process and costs associated with co-ordinating shareholder or other approval of schemes, restrictions on timing of grants due to close periods or compliance with other corporate governance principles and the two stages of approval. In addition there will be savings in regularly approving changes to the paperwork or intranet systems for participants.

Further, it can be expected that professional advisers' fees will be reduced. However, if the simplifications, e.g. relating to restrictions on shares, are not adopted then company may need additional help from professional advisers with a consequent cost.

**In relation to the OTS's recommendations concerning prescriptive rules regarding operation of schemes (paragraphs 2.8 – 2.9):**

- 7. Should the current requirements concerning the provision of information to scheme participants be changed, and if so how?**
- 8. If these requirements were relaxed, what safeguards will be necessary to ensure that [participants receive sufficient, correct and timely information?**
- 9. Are there any other areas in which operational or administrative requirements of the schemes should be updated?**

Participants should continue to have access to the rules of the scheme, details of any amendments and matters relating to the shares such as the articles or shareholder agreements. Most of our members would be expecting to provide such information. Safeguards such as requiring individual participants to receive annual updates, or complete an annual self-assessment return, even if there is no change, would be costly and burdensome for participants and companies.

**10. What would be the impact of any changes proposed, in terms of one-off or ongoing costs/savings for businesses?**

There will be minor cost savings on the operation of existing schemes (e.g. the cost saving of online returns) but a potential cost saving for the creation of new schemes.

**In relation to the OTS’s recommendation concerning the current rules on scheme features not essential or reasonably incidental for the provision of shares or share options to employees (paragraphs 2.10 – 2.13):**

**11. What form would an alternative purpose test or framework take if it was to provide businesses with the appropriate level of certainty in a self-certified environment, while also providing necessary safeguards against abuse or ineffective targeting?**

In light of proposed general anti abuse rules (GAAR) a targeted anti abuse rule (TAAR) should be unnecessary. A general purpose, matching with the Companies Act 2006 definition of an employees’ share scheme (section 1166) such as ‘a scheme for encouraging or facilitating the holding of shares in a company by or for the benefit of employees or former employees’, would work well. Alternatively a purpose matching the EMI test of recruitment and retention might be considered.

**12. What would be the impact of any change proposed, in terms of one-off or on-going costs/savings for businesses?**

No savings or costs identified but companies might improve profitability with effective reward and remuneration arrangements via approved schemes for employees.

**For each of the OTS’s recommendations covered in Chapter 3:**

	<b>13. How far would the change proposed by the OTS simplify the position?</b>	<b>14. What would be the effect of the proposed change – including any potential implementation issues for businesses and individuals?</b>	<b>15. Where appropriate, how would the proposed change operate under self-certified arrangements for SIP, SAYE and CSOP? In particular, would the change make the process of self-certification easier, or create any difficulties?</b>	<b>16. What impact would the proposed change have on businesses and individuals, in terms of one-off or on-going costs/savings?</b>

<b>Retirement age</b>	Give consistency where participants have rights under more than one plan.	Easier administration so that rights under different plans crystallise at the same time.	The company would not need to refer to HMRC but would confirm retirement in the annual return.	If simpler for a company to operate there will be minor administrative savings.
<b>Tax free exercise on cash takeovers</b>	Allows smaller growth companies to consider a SIP without undue penalty where there is a chance of a takeover within 3 years.	More attractive to smaller and medium sized growth companies wanting to incentivise and retain staff.	No change.	Removal of risk of unexpected NIC liability for company on a change of control. Costs relating to the SIP on sale would be reduced assisting the commerciality of the transaction.
<b>Material Interest: SIP or SAYE</b>	Removal of the requirement for a SIP or SAYE reduces the documentation and makes the overall arrangements slightly easier for participants to follow. One less matter for administrators to have to check when issuing invitations to all eligible employees.	Simplified operation of the plan and rules.	Self-certification easier without the need to check share ownership.	Minimal administrative savings.
<b>Material Interest: EMI and CSOP</b>	Consistency makes CSOP more attractive when not possible to qualify for EMI.	Minimal change as infrequently a restriction on CSOP participation.	Makes self - certification easier for a CSOP.	No significant cost saving.
<b>Restrictions on Shares</b>	Consistency makes CSOP more attractive when not possible to qualify for EMI. Makes CSOPs, SAYEs and SIPs	Greater opportunities to encourage cost effective and regulated share participation amongst private companies.	Makes self - certification easier.	Avoids the additional costs of restructuring share capital simply to facilitate an approved share scheme.

	more accessible to private companies with private equity funding.			Increased costs of drawing attention to restrictions and unrestricted and restricted share valuations would be minimal.
<b>Removal of Para 78, Sch 2 ITEPA</b>	No change as provision not used.	Slight simplification of documentation.	Makes self - certification easier.	Minor administration cost saving.
<b>SIP: flexibility to pick the date for determining a share price for an accumulation period</b>	Simplification by giving greater certainty to the individual participant and the company and be easier to communicate to participants.	Companies would be able to make appropriate provision for the acquisition of the shares needed.	No significant change but dates chosen could be notified in the annual return.	Reduction of company's cost where share price is volatile, a practical problem for smaller, often AIM traded shares.
<b>SIP: PAYE for early leavers</b>	Allow SIP administrators to have adequate time to receive notification of a leaver, and get the leavers authority to dispose of the shares (waiting until the end of a close period if appropriate) to obtain the funds required to meet the PAYE liability.	Avoids the difficulties of administering the leaver within the time frame especially where commercial restrictions (e.g. lack of market) apply. Such matters are disincentives for companies that have experienced this when coming to a renewal.	No change.	Reduces the risk of additional costs such as PAYE penalties, for companies where immediate disposal of the shares is not possible or practical.
<b>SIP: dividend reinvestment</b>	Avoids partial exemptions and therefore simplifies administration.	Benefits administration but primarily a simplification for individual participants.	No change.	Minor administrative cost savings.
<b>SAYE: remove 7 year saving</b>	Shorter periods are easier to track and administer. In the era of low interest rates there is no advantage to the participant to	Reduction of administration and slightly shorter Plan rules and explanations for participants.	No change.	Minor administrative cost savings.

	extend the savings period.			
<b>SAYE: payment otherwise than from salary</b>	This might increase administration to ensure that the correct amounts are paid and received but decrease the administration of participants being obliged to leave the scheme.	This would mean that employees temporarily not receiving a salary from a group company would not be disadvantaged.	No change.	Cost neutral.
<b>EMI: extension of period following disqualifying event</b>	An extension to six months would significantly aid the administration of an EMI, typically in a smaller company without a dedicated share scheme administrator. Reviews of qualifying status need only be completed bi-annually, say in conjunction with the final and interim results.	Companies of the size capable of implementing EMI schemes will not have capacity to regularly track the gross assets of the company, number of employees, employment status and in some cases the balance of profit of income streams from different profit centres to know, for example, exactly when a company ceased to qualify. Extending the period allows companies to administer EMIs properly without excessive administrative burdens and allows greater certainty for participants.	Helps with the preparation of annual returns.	Minor administrative cost savings. Savings in national insurance contributions for companies that miss a disqualifying event.

In relation to the OTS's recommendation concerning **SIP, SAYE and CSOP retirement provisions:**

**17. What common rule or principles could be applied to align the retirement provisions for SIP, SAYE and CSOP in a way that would:**

**be fair to all participants;**

**provide certainty for employers and employees; and**

**contain the necessary safeguards to ensure that these provisions only apply to employees who genuinely retire, and not those who leave a business for some other reason?**

Retirement is a concept that is changing and seeking to find a "one size fits all" approach is difficult. We would recommend retirement is defined simply as "ceasing to be employed with the intention of retiring". Retiring could be further defined as ceasing or changing the normal pattern of employment due to age or ill-health.

**18. What impact would this approach have on the number of participants treated as having retired for the purposes of the schemes?**

This would allow retirement to occur when the employee and company consider retirement arises, rather than on an arbitrary date and should increase the number of participants treated as retiring.

**In relation to the OTS's recommendations concerning the use of restricted shares in SIP, SAYE and CSOP (paragraphs 3.17 – 3.20):**

**19. What type of restrictions, in addition to those currently permitted, would businesses apply to shares awarded under SIP, SAYE or CSOP?**

We take the view that restrictions on shares used for a SIP, SAYE or CSOP should be permitted provided participants are notified of the restrictions and the Board confirms such restrictions will not be operated in a discriminatory manner.

More specifically, voting restrictions prior to a change of control; transfer restrictions except to permitted persons or requirements to dispose on cessation of employment with a discretion given to the Board to permit the retention of the shares; any other restrictions where the Board has discretion to waive the restriction in specified events, eg death, hardship should be permitted but it would disproportionately increase the cost of administration of the schemes both for the company and HMRC if only specific types of restrictions were permitted.

**20. What safeguards would be necessary to ensure:**

- **That tax advantages attach only to those shares which allow employees a meaningful stake in the business?**
- **That any restrictions are applied fairly, and in a way that is consistent with the 'all employee' nature of a scheme where appropriate?**
- **That arrangements for transferring restricted shares to an employee do not create significant new burdens or costs, or any risk of abuse?**

We would suggest merely a safeguard that all participants are fully notified of the restrictions compared to other shares of the same or other classes of shares.



**In relation to the proposed removal of paragraph 78 of Schedule 2 to the Income Tax (Earnings and Pensions) Act 2003 (paragraphs 3.21 – 3.23):**

**21. Are there any undesirable impacts that might arise from the removal of this provision?**

No

**In relation to the operation of PAYE for SIP shares that leave a plan early (paragraphs 3.28 – 3.31):**

**22. What practical and timing issues can arise for employers and trustees from the operation of PAYE in relation to shares that leave a SIP early?**

See the response in the Table at paragraph 12.

**23. Which modes of communication do employers and trustees use when contacting participants whose shares leave a SIP early?**

See the response in the Table at paragraph 12.

Where former employees have given up to date details, email and post is possible but often details are up to date preventing adequate communications.

**In relation to the OTS's recommendation that limits on SIP dividend reinvestment be removed (paragraphs 3.32 – 3.35):**

**24. What further evidence is there of the number of SIP participants who would benefit from these proposed changes?**

See the response in the Table at paragraph 12.

**In relation to the OTS's recommendation that the seven year option under SAYE be removed (paragraph 3.36 – 3.39):**

**25. What further evidence is there of the number of SAYE participants who would be affected by this proposed change?**

See the response in the Table at paragraph 12.

**In relation to the OTS's recommendation on contributions to SAYE savings contracts made otherwise than from salary (paragraph 3.40 – 3.42):**

**26. Would the approach proposed by the OTS have any impact on the fulfilment of SAYE contracts? Where possible, views and evidence on the number of employees affected would be welcome.**

See the response in the Table at paragraph 12.

**27. What additions to the exceptions currently permitted in the SAYE rules would businesses and SAYE participants find useful? Where possible, views and evidence on the number of employees affected would be welcome.**

We did not specifically survey our members on this point.

**In relation to the relevance of CSOP (Chapter 4):**

**28. The Government would welcome any new economic evidence on whether the scheme as currently used:**

- **has a positive effect on productivity and economic growth, and**
- **addresses market failures and supports Government objectives in a cost effective and targeted way that justifies support through the tax system.**

As mentioned in our introduction, we have surveyed its corporate members and has represented those responses. A third of our QCA's corporate members responded. Of these respondents, 59% operate CSOPs, 34% SAYEs, 13% SIPs and 44% EMI Schemes. A significant 83% of respondents said they would be concerned if CSOPs were withdrawn as HMRC approved plans. As such we believe it is important that CSOPs retain their benefit's as HMRC approved schemes.

In the survey the following additional comments were made by members, who have asked for anonymity.

- a. 'It is useful for part-time employees who do not meet the definition/requirements for eligible employees under the EMI rules.' Member may be concerned about demotivating or discriminating against part-time staff.
- b. 'This [withdrawal of CSOPs] would have significantly adverse implications for all our staff. The CSOP is a key tool for retaining and motivating staff.'
- c. 'We have had to introduce an EMI because of the cap on CSOP participation.'
- d. 'CSOP is not really designed to reward and encourage the risk takers. Replace it with a more targeted measure which puts employee shareholders in the position of equity shareholders.'
- e. 'We are just that bit too big for EMI. Therefore, CSOP is important to us to encourage Senior Managers to grow our business for the medium to long term.'
- f. [Several comments making this point about the costs of plans.] 'Operating the scheme is straight forward. The main difficulty and cost is setting it up in the first place.'
- g. [Regarding the most difficult aspect of running a scheme.] 'Complexity – would prefer single simple straightforward basis for taxing all share based schemes.'

Non-tax issues were noted by the respondents as problems, such as poor liquidity for participants wishing to sell shares (note impact for payment of PAYE), complying with IFRS 2, consultations with shareholders and the costs of independent advisers to determine suitable performance conditions.

**In relation to the proposal to extend the 'good leaver' circumstances for SAYE and CSOP, so as to match those currently in place for SIP (paragraphs 5.7 – 5.8):**

**29. How far would harmonisation of 'good leaver' circumstances for SIP, SAYE and CSOP achieve simplification?**

Companies frequently operate a series of Plans and an individual may participate in several. It follows that procedures for a good leaver will be simplified reducing administration for the employee and making it easier for the former employee if there is harmonisation.

**30. What impact would the proposed change have on businesses and individuals, in terms of one-off or on-going costs/savings?**

There would be minor procedural and administrative savings on an on-going basis.

**31. What impact would the proposed change have on the number of SAYE and CSOP participants treated as 'good leavers'?**

We consider that the increase in the number of individuals being treated as 'good leavers' would be small in the context of the total number of leavers. However, simplifying the identification of a good leaver avoids difficulties of determining, for example, if a person who is leaving early subject, say, to a compromise agreement, is being made redundant or capable of fitting into any other category.

If you would like to discuss this in more detail, we would be pleased to attend a meeting.

Yours sincerely,



Tim Ward  
Chief Executive

## THE QUOTED COMPANIES ALLIANCE SHARE SCHEMES EXPERT GROUP

Barbara Allen	Stephenson Harwood
Simon Allum	Lewis Silkin
Fiona Bell	Memery Crystal LLP
Martin Benson	Baker Tilly
Danny Blum	Eversheds LLP
Ian Brown	Hewitt New Bridge Street
Anika Chandra	Stephenson Harwood
Stephen Chater	Postlethwaite & Co
Christopher Connors	Charles Russell LLP
Karen Cooper	Osborne Clarke
Jared Cranney	Interior Services Group plc
John Daughtrey	Equiniti
Michael Deeks	Olswang
David Firth	Penna Consulting PLC
Philip Fisher	PKF (UK) LLP
Amanda Flint	Grant Thornton UK LLP
David Fuller	CLS Holdings PLC
Stephen Goldstraw	Manches
Andy Goodman	BDO LLP
Paula Hargaden	Burges Salmon
Daniel Harris	Ernst & Young LLP
Kate Jalbert	The Quoted Companies Alliance
Colin Kendon	Bird & Bird LLP
Michael Landon	MM & K Limited
Nigel Mills	MM & K Limited
Peter Mossop	Sanne Group
Isabel Pooley	CMS Cameron McKenna LLP
Robert Postlethwaite	Postlethwaite & Co
Colum Spillane	Sanne Group
Nicholas Stretch	CMS Cameron McKenna LLP
Jacques Sultan	The Quoted Companies Alliance
Paul Twist	KPMG LLP
Nick Wallis	Smith & Williamson Limited
Tim Ward	The Quoted Companies Alliance