A very short guide to Joint Share Ownership Plans (JSOP)

The Joint Share Ownership Plan (JSOP) was developed in 2002 by William Franklin and David Pett (the founding Partners of Pett Franklin) and has been widely and successfully used ever since.

BACKGROUND

JSOPs are intended for companies who want to incentivise employees by allowing them to benefit from growth in value of the ordinary shares of the company in much the same way as other shareholders, for whom growth is taxed as a capital gain rather than employment income. JSOPs only deliver value if real growth is achieved, so there is an inherent alignment with shareholder interests.

Unlike some other equity incentives JSOPs do not require complex alterations to company share rights and articles.

HOW DOES A JSOP WORK?

The concept is as follows:

- An employee, together with a third party, the “co-owner” (usually a trust) jointly acquires shares in the company.
- However, the co-owner and the employee each sign a “joint ownership agreement” setting out how the proceeds of sale will be split between then when the shares are eventually sold.
- This will give the employee a right to only participate in value above a hurdle, while the co-owner is entitled to no more than the value at acquisition plus the hurdle if there has been growth in the value of the shares.

JSOP interests can be performance-linked and are normally subject to forfeiture conditions if an employee leaves. The agreement between the co-owners can be designed to restrict voting rights and the rights to receive dividends.

Although the legal structure and taxation is different, economically JSOPs have similarities with growth shares or premium priced options. JSOPs can also be used in conjunction with other share schemes such as CSOPs or unapproved options.

WHAT DOES IT MEAN FOR THE EMPLOYEES?

The employees will be charged to income tax on the value of their JSOP interest at the time they receive it, if they do not pay market value for their interests in jointly owned shares at the start of the JSOP. This can be quite modest as the employee’s JSOP interest only acquires significant value as the company grows in value and its share price rises. The growth in value will then be charged to capital gains tax in the hands of the employee on realisation.

VALUATION METHOD

Valuation is key to ensure a JSOP functions as expected. The valuation methodology for JSOPs was discussed with HMRC by William Franklin from its inception and been applied consistently over many years.

FINALLY

JSOPs are more complex to implement than for example unapproved share options. They require a co-owner, and its acquisition of the shares has to be funded. There are also corporate tax and law issues that need to be addressed.

By its nature, a JSOP is designed to incentivise employees to work towards increasing value in a company. The underlying aim is commercial for both the employer and the employee. JSOPs, as used by our clients, are not designed to facilitate tax avoidance and in particular are not designed to be used for individuals who are not employees. This includes the case of individuals providing services via a personal service company where remuneration is guaranteed for services provided. Pett Franklin is recognised as a leader in share schemes and does not encourage and/or advise individuals or companies in the design and/or implementation of tax avoidance schemes. We are committed to promoting genuine sustained growth for our clients.

How Pett Franklin can help

Pett Franklin is a law firm but its team comprises lawyers and accountants, so it is able to offer a unique service that integrates for share schemes the relevant legal, tax, accounting, valuation and financial modelling advice that is necessary for effective share schemes, and in particular the design and implementation of JSOPs.

If you would like to discuss this further, please contact William Franklin at William.franklin@pettfranklin.com or call 0121 348 7878.