

May 2012

# Share Schemes: Transactional Support

## A specialist service for lawyers and other advisers involved with corporate transactions.

Due diligence of employee share schemes can be a difficult area for the corporate or general tax lawyer. It requires specialist knowledge of employee share schemes, and the potential financial exposure can be substantial.

Who are we?

Pett, Franklin & Co. LLP is a multi-disciplinary law firm which specialises in all aspects of employee share schemes and related remuneration.

We are the principal part of the former tax group at Pinsent Masons. David Pett is author of "Employee Share Schemes", the leading loose leaf textbook on the subject. Dovetailing with your own work on the general tax warranties and indemnities, we can:

- offer a high-quality but cost-effective review of the target company's share scheme affairs;
- identify and quantify potential concerns; and
- suggest practical solutions.

Typical problem areas include:

- **Preserving corporate tax reliefs**  
Employee share schemes in corporate transactions often generate substantial corporate tax reliefs which can be overlooked and, unless the transaction is structured correctly, they can easily be lost..
- **Avoiding penal tax charges**  
Unexpected PAYE liabilities which fall on the company, but which the employee does not reimburse within a statutory time limit, can trigger additional penal tax charges.
- **SIPs: claw-backs and losses of relief**  
Companies and employees can be surprised by the size of tax and NICs claw-backs and lost reliefs if a corporate transaction terminates a SIP earlier than expected.
- **EBTs – surplus shares**  
What happens to unallocated shares held in an EBT?
- **Unusual share schemes**  
The last few years have seen the widespread adoption of unusual share schemes for employees (eg awards over special classes of shares). Do they work and what is the potential exposure if they are challenged by HMRC?
- **Joint Share Ownership Plans**  
One particular scheme involves the concept of joint ownership, which David Pett first developed back in 2002. It has been widely copied by others but, as the originators of joint ownership, we are uniquely well placed to advise if the target company has such a scheme.
- **EMI schemes**  
EMI schemes are very common and can give substantial tax benefits, but they rely on self-certification not approval by HMRC. Was the scheme in the target company correctly set up and can you rely on it?
- **EBTs and Disguised Remuneration**  
The 2011 Disguised Remuneration legislation is intended to stop arrangements whereby companies funded EBTs which then made loans to employees without accounting for income tax and NICs. But what about the many companies that have used such arrangements in the past? If you are involved with a company which has used such an arrangement,

what is the exposure?

- **Last-minute planning opportunities**

Prior to a transaction there may be last-minute planning opportunities which a share scheme review may identify, eg if employees are to receive a cash bonus on completion, maybe this could be structured as an EMI option with significant tax savings.

A 'holistic approach' is often required to the issues produced by a corporate transaction, which Pett, Franklin & Co. LLP is uniquely well placed to provide, with its fully-integrated multi-disciplinary practice which combines law and tax with accounting and share valuation.

Operating from Birmingham, with clients based all over the UK, we offer a City-firm quality of service at regional rates!