

September 2009

## Share Plans

### Tax-efficient Share Incentives

**We have, at various Roadshows, meetings and client events over the past 5 years or so (!), made mention of the new, and tax-efficient, executive share based incentive plan devised by the Pinsent Masons Share Plans Team and known as a *joint ownership plan*, or ExSOP™.**

HMRC has previously confirmed that an ExSOP™ is not a "discloseable tax avoidance scheme", and we have, in relation to a particular client which sought a "post-transaction ruling" from HMRC, had our analysis of the tax treatment confirmed by HMRC.

Having sought an opinion from the HMRC Solicitor's Office, HMRC has now publicly confirmed\* that they accept our tax analysis of the ExSOP™ and that HMRC will not seek to challenge the tax-efficacy of such arrangements.

As a result of the HMRC announcement, it is likely that such joint ownership plans will now become more popular amongst companies as a mainstream alternative to conventional share option, L-TIP, "flowering share" and other growth-based share incentive plans.

Having first invested in the development of such plans, we have already established ExSOPs™ for a broad range of

companies including fully-listed, AIM-listed, large multi-national private, and smaller independent, as well as private-equity backed companies. In those companies which have since enjoyed substantial growth in value, participants in the plans have benefited from the growth accruing to them being taxed as capital gain, not as employment income. Whilst such new plans are not a panacea, and may not be suitable for every company seeking to establish tax-efficient share incentives, we would now recommend that any independent or private equity backed company operating an L-TIP, deferred share purchase, or share option scheme, look carefully at the ExSOP™ and see if it might indeed be a solution worth considering.

A member of our Share Plans Team would be pleased to spend some time with you to run through the ExSOP™, compare it with other alternatives, and explore whether it might be of benefit to your own company.

\* at a meeting of the Share Plan Lawyers Group in London on 12th January 2009

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**This note does not constitute legal advice. Specific legal advice should be taken before acting on any of the topics covered.**

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