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Corporate reorganisations and employee share plans

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Contents

Corporate reorganisations and employee share plans

1. Introduction

This memorandum accompanies a presentation by Graeme Nuttall, Managing Director of Equity Incentives Limited and Tax Partner in Field Fisher Waterhouse. Equity Incentives Limited is an incorporated legal practice wholly owned by Field Fisher Waterhouse and is regulated by the Law Society and authorised by the Financial Services Authority. The presentation is made as part of a two day IIR Seminar on "Tax planning for corporate reorganisations and M & A" on 17 and 18 September 2002 at the Kensington Hilton, London.

This memorandum uses the expression "reorganisation" to encompass the full range of UK corporate reorganisations including takeovers and mergers. The expression "plans" is used to describe the full range of UK employee equity incentive arrangements whether involving shares or share options, whether tax advantaged or unapproved and in whatever form. This memorandum does not provide comprehensive advice on all commercial, legal, accounting and tax aspects of corporate reorganisations and employee share plans. This memorandum should not be relied on as a substitute for advice in particular circumstances.

2. Preliminary investigations

It is important, as always, to have a full understanding of the relevant background facts:

2.1 What plans exist?

Table 1 – Categories of employee share plan

Tax advantaged	*Unapproved*
Share Incentive Plan (SIP)	Unapproved share plan
Enterprise Management Incentives (EMI) Company Share Option Plan (CSOP) Save As You Earn/Sharesave (SAYE)	Unapproved share option plan
Qualifying Employee Share Ownership Trust (QUEST) Profit Sharing Trust (PST)	Employee Benefit Trust (EBT)

Table 2 – Key differences in categories of plan

Tax advantaged	*Unapproved*
Prior approval from Inland Revenue	
Must follow set rules	Flexible
Tax benefits for employee and employer	No additional tax benefits

Equity incentive arrangements involving share options present more complications in reorganisations than share plans. Optionholders are not yet shareholders and, as a general rule, they will have to take some form of action if they are to benefit from the reorganisation. As well as identifying the type of plan involved there will be other permutations to take into account (e.g. the date of grant of options, the conditions attaching to awards etc.).

2.2 What type of reorganisation is planned?

In addition to understanding how the proposed reorganisation will take effect from a commercial point of view, it is important to interpret how the reorganisation fits in with any reorganisation definitions in plan documents and in the relevant tax legislation. Appendix 1 sets out the standard takeover and liquidation rules in a CSOP. Appendix 2 sets out various statutory references used in tax advantaged plans.

Inland Revenue Manuals (Golden Nugget 1)

General offer has its normal meaning

ESS 15028.

"There is no statutory definition of a "general offer", so the phrase must be given its normal meaning – there must be an "offer" and it must be "general". These features will not be satisfied if the acquiring company obtains control by acquiring holdings of shares privately from selected shareholders, possibly at different times and at different prices. The essential features are that the acquiring company makes an offer, on precisely the same terms, to all the shareholders of the relevant class or classes".

2.3 Due diligence

An investigation into the plans of a target company is an increasingly vital part of any due diligence exercise. Full details are needed of each plan and of all existing and intended awards under the plan. Particular concerns for an acquirer are: -

(a) how many additional shares will be issued if subsisting options are exercised to the full extent possible;

(b) what benefits could arise to employees from the disposal of shares held in EBTs;

(c) are there significant tax costs falling on the target company (e.g. employer's national insurance contributions ("NICs") on the exercise of share options);

Table 3 - Avoiding NICs for employers on "readily convertible asset" share option exercises

1.	Exercise a tax advantaged option (some EMI exceptions);
2.	Exercise an option granted before 6 April 1999;
3.	Exercise an option granted from 6 April 1999 to 19 May 2000 where an election was made by 10 August 2001 to cap liability under the Social Security Contributions (Share Options) Act 2001;
4.	Exercise an option under which the optionholder has agreed to meet the employer's NICS liability (paragraph 3B Schedule 1 Social Security Contributions and Benefits Act 1992).

(d) have the plans been properly established and managed;

(e) are effective arrangements in place to meet PAYE obligations under the plan, (e.g. is there a risk that section 144A Taxes Act 1988 will apply?), and;

Table 4 – Avoiding PAYE on "readily convertible asset" share option exercises

1.	Exercise a tax advantaged option (some EMI exceptions);
2.	Exercise an unapproved option granted before 27 November 1996.

(f) how future proof are the plans (e.g. how are EBT "Beneficiaries" and plan "Eligible Employees" and "Scheme Shares" defined etc.)?

> *Extract from the House of Commons Debate on the Employee Share Schemes Bill*
>
> "Having asked for the provision … to be removed from the Bill I will continue actively to consider whether there are other ways of extending the share incentive plan to trust and employee owned companies who wish to use the plan as conventional companies do, in ways that preserve the aims of improved productivity and do not allow scope for abuse."
>
> 18 January 2002, Paymaster General

2.4 Should plans operate as normal prior to the reorganisation?

Rule 21 of the Takeover Code (restrictions on frustrating action) prohibits the board of directors of an offeree company from, among other things, granting options in respect of any unissued shares either during the course of an offer or even before the date of an offer, if the offeree has reason to believe that a bona fide offer may be imminent. Options may be granted with shareholders' approval but the notice convening the meeting must disclose the offer or anticipated offer. Note 7 to Rule 21.1 states that the Takeover Panel will give consent to proceed without shareholders' approval if "the offeree company proposes to grant options over shares, the timing and level of which are in accordance with its normal practice under an established share option scheme".

3. Planning the reorganisation

3.1 HR implications

It is helpful to have an understanding of the Human Resource (HR) implications of the proposed reorganisation. The reorganisation might be an intrinsic part of achieving a plan's objectives or it may represent an obstacle or, indeed, complete rejection of such objectives.

Example A - Distributions from an EBT following a takeover windfall

Following a management – employee buy out of a specialist retail company, a significant proportion of its equity was held in an EBT. Changing market conditions led to the sale of the company to an international retailer. A material capital gain was realised by the trustees of the EBT. The trustees of the EBT had to adopt a suitable distribution policy, which rewarded staff whilst ensuring business was not disrupted during and after the change of ownership.

3.2 Impact on the overall benefits package

In addition to considering the impact of the reorganisation on employee share plans, there will inevitably be cash based incentive schemes and other aspects of remuneration packages to be reviewed.

Example B – Railtrack loyalty bonuses

Ernst & Young, the administrator of Railtrack made arrangements to lock staff in to the company with bonus promises of between 25%-50% of base salary. Payments are to be made in tranches. (The Times, 10 September 2002).

3.3 Commercial pitfalls

In many cases the reorganisation will not have been anticipated at the time awards were made and so there is great scope for the reorganisation to have an adverse effect on participants in plans or for the plans to cause problems in achieving the proposed reorganisation.

Example C - Loss of benefit on early SAYE option exercise

The purchase price of shares acquired on the exercise of an SAYE option can come only from repayments and interest paid under the related savings contract. If an option is exercised early a participant cannot make additional contributions under the savings contract so as to buy the full number of shares under option. The participant will lose the benefit of any gain on a proportionate number of the shares under option.

There is also a related practical problem. Employees are likely to continue to contribute to their savings contract until the reorganisation takes effect. The precise number of shares that could be bought on the exercise of SAYE options will therefore not be known when planning the reorganisation.

Example D – Minority shareholding in a subsidiary

There could be a mismatch between the compulsory acquisition provisions in sections 428 to 430F Companies Act 1985 and the early lapse provisions in a plan's rules. The plan rules could, for example, provide for options to lapse six months after the option has become exercisable following a takeover or other such early exercise event. This would not correlate with the two-month period within which section 429 notices must be given. An optionholder could choose to exercise an option outside the two-month period and become a minority shareholder in what would otherwise be a wholly owned subsidiary.

Example E - Takeover without a general offer

If the arrangements for a change of control of a private company do not involve a general offer then the early exercise provisions in share option plans may not operate, which in turn will mean the usual early lapse provisions will probably not apply. The continued existence of options, with perhaps some held by former employees or shareholders, might not be welcomed by the new controlling shareholder.

3.4 Commercial opportunities

A reorganisation might present an opportunity to introduce new or enhanced equity incentives for employees. There may be an opportunity to exploit a relatively low valuation for a company's shares before the reorganisation. The prospect of a short-term realisation event or increase in value provides a strong incentive to employees.

A group of companies making "spin-offs" should consider carefully the opportunities available to benefit both employees of the "spun out" business and also, possibly, those who remain behind but have nevertheless contributed to the "spun out" business. A subsidiary of a listed company may, for example, put in place approved plans (but not EMI tax advantaged options).

Example F - Employee share ownership as a succession solution

As an alternative to a trade sale or flotation the owners of some private companies prefer to solve succession problems by transferring ownership directly or indirectly to employees. The Employee Share Schemes Bill, when it comes into force in April 2003, will provide upfront corporation tax relief for a company's contributions to a SIP to finance the purchase of shares from individual shareholders.

3.5 Tax pitfalls

The structure or timing of the reorganisation may create unexpected tax charges or impose tax liabilities at a time when the participant is not ready to finance those liabilities.

Example G - Income tax on the early exercise of SAYE options

If an SAYE option is exercised within three years of the date of grant by reason of the reorganisation, then instead of a tax-free exercise an SAYE option holder will have to pay income tax.

Example H - Income tax on the early exercise of CSOP options

If there is to be no charge to income tax on the exercise of a CSOP option then the exercise must be made at a time when the CSOP retains Inland Revenue approval, not earlier than three nor later than 10 years after the option was granted and not earlier than three years following the latest previous exercise by the participant of an option (obtained under that CSOP or any other CSOP) which enjoyed relief from income tax.

The reorganisation may cause an income tax charge because of the timing of the exercise (e.g. within three years of a previous tax free exercise) or because the reorganisation results in the loss of Inland Revenue approval for the CSOP (e.g. a takeover by a company that is not listed on a recognised stock exchange).

Example I - Introducing restrictions on employee shares

In a private company reorganisation it may be preferable commercially for restrictions to be imposed on employee shareholders (e.g. forfeiture provisions) by means of a shareholders' agreement. Care must be taken, however, to avoid a tax charge under the conditional acquisition of shares regime (section 140A Taxes Act 1988). The most useful exemption from this regime requires the restriction to be contained in the articles of association of the company and consist of a requirement for the employee "to offer the shares for sale or transfer them if he ceases to be an officer or employee of the company or of one or more group companies or of any group company" (section 140C(3) Taxes 1988).

Example J -Tax on exercise of unapproved options

The holder of an unapproved option will be reconciled to the payment of income tax, NICs and the operation of PAYE on the exercise of the option. The optionholder may also have agreed to pay any employer NICs (11.8% from 6 April 2002). The assumption made by the employee is that in the event of a takeover, there would be cash available to help finance both the exercise of the share option and the payment of tax. The reorganisation may, however, be one that does not generate cash for the optionholder. This would be the case if there were a takeover by a private company on a share for share exchange basis. Matters may be made worse if there is an element of deferred consideration. The optionholder would then face a difficult decision as to whether or not to exercise the option and participate in the takeover.

There are other possible tax pitfalls (e.g. the reorganisation might involve a disqualifying event for EMI option purposes).

3.6 Tax planning

It should be possible to avoid or mitigate tax pitfalls through careful planning. There may also be opportunities to achieve enhanced tax savings. In the case of options a particularly useful facility is the ability to rollover options.

Example K – Tax-free exercise of an approved option followed by CGT planning

The reorganisation may occur at a time or in circumstances which permit the tax-free exercise of tax advantaged options. The participant can therefore acquire shares tax-free and take steps to mitigate any capital gains tax ("CGT") liability that would arise on a sale of those shares. This could be through the use of the CGT annual exemption (£7,700, 2002-03 tax year) and the transfer of shares to a spouse to take advantage of the spouse's annual exemption and, possibly, lower rate of CGT. There may be capital losses to set against any otherwise taxable gains. If an EMI option has been exercised then business assets taper relief will be calculated from the date of grant of the EMI option. In respect of disposals after 5 April 2002, if the EMI option has been held for at least two complete years, then a higher rate taxpayer would pay CGT at an effective rate of only 10%. An individual who has not achieved the maximum rate of taper relief and who will hold an office or employment with the acquiring company could exchange his shares for shares in the acquiring company and hold those new shares until maximum taper relief is achieved (Para 6 Schedule A1 Taxation of Chargeable Gains Act 1992 ("TCGA 1992").

Example L - Approved option rollover

There is a facility to rollover approved options when a company whose shares are being used in an approved plan is taken over by another company whose shares satisfy the statutory scheme shares requirements. It is important that the new rights are "equivalent" to the old rights. Equivalent is not defined in the legislation but paragraph 15(3) Schedule 9 Taxes Act 1988 provides that the new rights will not be equivalent unless four tests are satisfied (nature of the shares, the exercise provisions, the number of shares and the price). Rollover of an approved option will enable the optionholder to avoid a taxable exercise of that option and permit the optionholder to wait until a tax-free exercise is possible.

Appendix 3 sets out particular nuggets of information on the rollover of approved share options, as extracted from the Inland Revenue Employee Share Schemes Manual.

There is a similar facility available for the rollover of EMI options (Part VIII of Schedule 14, Finance Act 2000). The new option must qualify as a "replacement option" by satisfying various requirements similar to those that had to be met when granting the old option (but excluding the £30 million gross assets test).

Example M – Unapproved option rollover

It is possible to rollover unapproved options into new unapproved options. An optionholder may wish to do this to avoid financing the exercise of the option (including the payment of tax) or from an investment point of view (the full value of the option and not its net of tax value will be available for rollover into a new option). Care must be taken to ensure that the relevant tax reliefs apply. In many cases instead of an option rollover, there is, instead, a release of the existing option and then, as a separate transaction, the grant of a new replacement option. A capital gains tax problem on the rollover of unapproved options was addressed in relation to transactions after 27 November 1995 by the introduction of section 327A TCGA 1992.

The key tax reliefs for unapproved option rollovers are section 136 Taxes Act 1988 (provisions supplementary to section 135), section 237A TCGA 1992 and Part IX Social Security (Contributions) Regulations 2001 (SI 2001/1004).

3.7 Identifying choices available to participants

In a takeover the acquiring company is usually anxious to ensure the continued co-operation of participants in share plans and so the acquirer is likely to want to solve any problems and seize any commercial or tax planning opportunities. If the reorganisation is subject to the Takeover Code then, in any event, the acquirer will be under an obligation to make an "appropriate offer or proposal" to optionholders (Rule 15 of the Takeover Code (appropriate offer for convertibles etc)). Equality of treatment is required.

A plan's rules will usually identify circumstances in which the early exercise of an option or release of shares is permitted. Various categories of reorganisation as defined for SAYE purposes have established themselves as a standard set of circumstances for the early exercise of options generally (see Appendices 1 & 2)).

Table 5 – Main choices for optionholders on a takeover

A.	Exercise the option if already exercisable and accept the takeover offer.
B.	Exercise the option after an early exercise event (if possible) and accept the takeover offer.
C.	Release the option for cash (if cash cancellation is offered).
D.	Rollover the option (if permitted).
E.	Do not exercise the option and (usually) allow it to lapse.
In addition "top-up" payments might be made in some circumstances (e.g. to compensate for a loss of benefits on the early exercise of an option – see Example C above) or supplementary options granted.	

3.8 Getting the balance right

Those involved in structuring the reorganisation will need to weigh up the various commercial and tax priorities.

There are, for example, various commercial and tax factors to assess when a participant chooses between an option exercise and a cash cancellation payment (and on the part of the acquirer in deciding whether or not to offer a cash cancellation payment).

3.9 Pre-reorganisation amendments to an existing plan's rules

As part of preparing for a reorganisation it may be necessary to make amendments to the rules of a plan, and possibly, in relation to private companies to amend the articles of association of the company and any shareholders' agreement. It may be necessary, for example, to change the early exercise provisions in a plan's rules to permit early exercise or to change the articles to ensure that any shares issued pursuant to options must be sold on a change of control of the company (e.g. "drag-along provisions"). The introduction of a cash cancellation provision in an approved plan would lead to the loss of Inland Revenue approval for that plan.

There is limited scope to alter the terms of an existing approved share option without losing Inland Revenue approved status (IRC v Eurocopy [1991] STC 707 and IRC v Reed International Plc [1995] STC 889).

Example N - Adjustment to permit early exercise before scheme of arrangement

An existing SAYE plan will only permit the early exercise of an option if the Court has sanctioned a compromise or arrangement. Optionholders with already exercisable options could be permitted to exercise those options tax-free. The SAYE plan could then be amended to permit the early exercise of options after shareholders have approved the scheme of arrangement but before the Court sanctions the scheme of arrangement. Such amendment should result in the withdrawal of Inland Revenue approval.

3.10 Pre-reorganisation option exercises

Some plans include provisions that anticipate reorganisations (e.g. "on receipt of an offer by the Board of Directors for the Company…"). Optionholders will need to be informed at the appropriate time if they have an early exercise opportunity before a reorganisation.

3.11 Impact on performance conditions

The Association of British Insurers Guidelines for Share Incentive Schemes (February 2002) provides the following guidance on change of control provisions: -

"**11 Change of Control Provisions –**

11.2 11.1 The rules of schemes should state that there will be no automatic waiving of performance conditions either in the event of a change of control or where subsisting options and rewards are "rolled-over" in the event of any capital reconstruction, and/or in the event of early termination of the participant's employment.

11.3 In the event of change of control, share incentive awards should vest on a pro-rata basis i.e. taking into account the vesting period that has elapsed at the time of change of control, though making due allowance for the reduction in value resulting from truncation of the life of the option".

Notwithstanding the above guidance, many plans provide for performance conditions to fall away on the occurrence of defined reorganisation events. In some circumstances, directors may wish to make use of any powers they have to vary or waive performance conditions to take into account the reorganisation.

3.12 Consulting trustees

Many companies now have an employee trust as part of their equity incentive arrangements. The reorganisation must be considered from the trustees' point of view. The trustees should reassess how best to achieve their objectives.

An acquiring company may want the trustees to use shares held in a trust to satisfy existing options.

There may be a mismatch between the choices available to the trustees as shareholders with the choices available to optionholders (e.g. the trustees may have to decide what to do before optionholders).

3.13 International considerations

If other jurisdictions are involved in the reorganisation then all the above issues will obviously need to be addressed in respect of each territory concerned.

4. Implementation

The choices available to participants under plans must be explained and appropriate administrative arrangements made. This will typically involve the distribution of a detailed letter or circular to participants and organising supplementary employee briefings.

If the Takeover Code applies then under Rule 15:

(a) the board of the offeree company must obtain competent independent advice on the offer or proposal and the substance of such advice must be made known to the optionholders, together with the board's views on the offer or proposal, and;

(b) whenever practicable, the offer or proposal made to optionholders should be sent at the same time as the main offer document is posted to shareholders.

5. Tidying up

5.1 Tax compliance

In the case of an approved plan any changes to the plan documents (including shareholders' agreements and the memorandum and articles of association) should be reported to the Inland Revenue and confirmation obtained that the changes do not prejudice Inland Revenue approval of the plan.

Employees and the companies concerned must make all appropriate returns of information to the Inland Revenue (e.g. section 136(6) Taxes Act 1988).

5.2 Winding up redundant EBTs

Another task following a reorganisation may be to wind up an EBT that is now redundant because its purpose has been achieved or it does not fit in with the new structure (e.g. the class of beneficiaries does not extend to employees of the new parent company).

5.3 Compensation payments

There is case law authority that certain types of compensation payment may avoid tax as either an emolument or benefit-in-kind (Wilcock v Eve [1995] STC 18). Mr Eve's tax-free £10,000 ex-gratia payment to compensate him for the loss of benefit under a SAYE plan was, however, made in the year after the reorganisation and by the former parent company of the subsidiary that employed Mr Eve.

5.4 Making adjustments to awards

If there has been a variation of share capital as defined in a plan's rules then the necessary adjustments to existing awards should be made (see, for example, Rule 8 in Appendix 1).

Example O - Consolidation of shares

There is an existing option over one hundred 1p ordinary shares at an exercise price of £10 per share (i.e. a total exercise price £1,000).

If every one hundred 1p ordinary shares were consolidated into single new £1 ordinary shares then the option would be varied to become an option to buy a single £1 ordinary share at an exercise price of £1,000.

6. Conclusions

6.1 Employee incentive objectives

The employee incentive objectives of share plans should be remembered when planning the reorganisation. Appendix 4 contains the latest results from the UK Employee Ownership Index.

6.2 Flexibility versus certainty

When introducing an employee share plan there is a balance to achieve between certainty and flexibility in the event of a reorganisation.

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Appendix 1

Extract from Inland Revenue Model Rules for a Company Share Option Plan (IR 102)

"7. Takeovers And Liquidations

7.1 If any person obtains Control of the Company as a result of making

i. a general offer to acquire the whole of the issued share capital of the Company which is made on a condition such that if it is satisfied the person making the offer will have Control of the Company or;

ii. a general offer to acquire all the shares in the Company which are of the same class as the Shares;

then any Subsisting Option may subject to Rule 7.4 below be exercised within six months of the time when the person making the offer has obtained Control of the Company and any condition subject to which the offer is made has been satisfied.

7.2 If under [Section 425 of the Companies Act 1985 or Article 418 of the Companies (Northern Ireland) Order 1986]8 the Court sanctions a compromise or arrangement proposed for the purposes of or in connection with a scheme for the reconstruction of the Company or its amalgamation with any other company or companies, any Subsisting Option may subject to Rule 7.4 below be exercised within six months of the Court sanctioning the compromise or arrangement.

7.3 If any person becomes bound or entitled to acquire shares in the company under [Section 428 to 430 of the said Act of 1985 or Articles 421 to 423 of the said Order of 1986][8] any Subsisting Option may subject to Rule 7.4 below be exercised at any time when that person remains so bound or entitled.

7.4 If as a result of the events specified in Rules 7.1 or 7.2 a company has obtained Control of the Company, or if a company has become bound or entitled as mentioned in Rule 7.3, the Option Holder may, by agreement with that other company (the "Acquiring Company"), within the Appropriate Period, release each Subsisting Option (the "Old Option") for an option (the"New Option") which satisfies the conditions that it: -

i. is over shares in the Acquiring Company or some other company falling within paragraph (b) or paragraph (c) of Paragraph 10, Schedule 9 which satisfy the conditions specified in Paragraphs 10 to 14 inclusive of Schedule 9;

ii. is a right to acquire such number of such shares as has on acquisition of the New Option an aggregate Market Value equal to the aggregate Market Value of the shares subject to the Old Option on its release;

NOTE 8 The provision appropriate to the Company should be inserted.

iii has a subscription price per share such that the aggregate price payable on the complete exercise equals the aggregate price which would have been payable on complete exercise of the Old Option and;

iv. is otherwise identical in terms to the Old Option.

The New Option shall, for all other purposes of this scheme, be treated as having been acquired at the same time as the Old Option.

Where any New Options are granted pursuant to this clause 7.4, Rules 4.3, 6,7, 8, 9, 10.1 and 10.3 to 10.6 shall, in relation to the New Options, be construed as if references to the Company and to the Shares were references to the Acquiring Company or, as the case may be, to the other company to whose shares the New Options relate, and to the shares in that other company, but references to Participating Company shall continue to be construed as if references to the Company were references to [..][NOTE 9].

7.5 If the Company passes a resolution for voluntary winding up, any Subsisting Option may be exercised within six months of the passing of the resolution.

7.6 For the purposes of this Rule 7, other than Rule 7.4, a person shall be deemed to have obtained Control of a Company if he and others acting in concert with him have together obtained Control of it.

7.7 The exercise of an Option pursuant to the preceding provisions of this Rule 7 shall be subject to the provisions of Rule 9 below.

7.8 Where in accordance with Rule 7.4 Subsisting Options are released and New Options granted the New Options shall not be exercisable in accordance with Rule 7.1, 7.2, and 7.3 above by virtue of the event by reason of which the New Options were granted.

8. Variation Of Share Capital

In the event of any variation of the share capital of the Company by way of capitalisation or rights issue, consolidation, subdivision or reduction of capital or otherwise, the number of Shares subject to any Option and the Subscription Price for each of those Shares shall be adjusted in such manner as the Auditors confirm in writing to be fair and reasonable provided that: -

i. the aggregate amount payable on the exercise of an Option in full is not increased;

ii. the Subscription Price for a Share is not reduced below its nominal value;

iii. no adjustment shall be made without the prior approval of the Board of Inland Revenue and;

iv following the adjustment the Shares continue to satisfy the conditions specified in paragraphs 10 to 14 inclusive of Schedule 9".

NOTE 9 Insert the name of the Company.

Appendix 2

Examples of company reorganisation categories in tax advantaged plans

Category (please refer to statutory provision for full definition)	Type of plan	Reference (to Schedules 9 and 10 in Taxes Act 1988, and to Schedules 8 and 14 in Finance Act 2000 unless otherwise stated)
General offer	SAYE	Paras 15(1)(a), 21(1)(a) & (2), Schedule 9
	CSOP	Para 15(1)(a), Schedule 9
	EMI	Para 59(2)(a), Schedule 14
Scheme of arrangement	SAYE	Paras 15(1)(b) and 21(1)(b), Schedule 9
	CSOP	Para 15(1)(b), Schedule 9
	EMI	Para 59(2)(b), Schedule 14
Compulsory acquisition	SAYE	Paras 15(1)(c) and 21(1)(c), Schedule 9
	CSOP	Para 15(1)(c), Schedule 9
	EMI	Para 59 (2)(c), Schedule 14
Voluntary winding up	SAYE	Paras 21(1)(d), Schedule 9
Sale of subsidiary	SAYE	Paras 21(1)(e)(i), Schedule 9
Sale of business	SAYE	Paras 21(1)(e)(ii), Schedule 9
Qualifying exchange of shares	EMI	Para 59(2)(d), Schedule 14
Variation of share capital	SAYE	Para 25, Schedule 9
	CSOP	Para 29(7), Schedule 9

Share exchange	PST QUEST	Para 1(1)(a), Schedule 10 Section 69(9)(a) and Para 8(a) Schedule 5, Finance Act 1989
Compromise, arrangement or scheme	PST	Para 1(1)(b), Schedule 10
Cash general offer	PST	Para 1(1)(c), Schedule 10
Qualifying Corporate Bond (QCB) offer	PST	Para 1(1)(cc), Schedule 10
Company reconstruction	PST SIP	Para 5, Schedule 10 Para 115, Schedule 8
Relevant QCB transaction	PST	Para 5A, Schedule 10
Capital receipts Rights issue	PST SIP	Para 4, Schedule 10 Para 116, Schedule 8
Becoming a 51% subsidiary	EMI	Paras 47(1)(a)(i) and 48, Schedule 14
Coming under the control of another company	EMI	Paras 47 (1)(a)(ii) and 48, Schedule 14
Ceasing to meet the trading activities requirement	EMI	Para 47(1)(b), Schedule 14
Alteration to the share capital	EMI	Paras 47(1)(e) and 49, Schedule 14
Conversion of shares	EMI	Paras 47(1)(f) and 50, Schedule 14
Reorganisation	QUEST	Section 69(9)(b) and Para 8(b) Schedule 5, Finance Act 1989
Change of control	SIP	Para 87(2)(d), Schedule 8

Appendix 3

Inland Revenue Golden Nuggets on approved option rollovers

Inland Revenue Manuals Golden Nugget 2

The acquiring company does not need an approved plan to effect a rollover

ESS 15007.

"The effect of the provisions is that…

– the original share option scheme remains in being, continuing to be operated by the "grantor" company (the company which established the original scheme) which is still responsible for completing the annual returns for the scheme…

There is no need for the acquiring company to have an approved scheme of its own."

Inland Revenue Manuals Golden Nugget 3

The takeover must be of the company whose shares are used in the plan

ESS 15029.

"ICTA 1988, 9 Sch 15(1)(a) does not apply if the takeover is of a company that controls the company whose shares are used in the scheme, rather than of the latter company itself."

ESS 15030.

"ICTA 1988, 9 Sch 15(1)(a) does not apply if the takeover is of the company that established the scheme (referred to in ICTA 1988, 9 Sch 1 as the "grantor" company, although it need not actually grant the options itself), if the shares used in the scheme are those of another company."

Inland Revenue Manuals Golden Nugget 4 Successive rollovers are possible ESS 15031. “It is possible to have more than one rollover, provided the scheme rules are suitably drafted to cater for a change in the company whose shares are scheme shares following each successive rollover.”
Inland Revenue Manuals Golden Nugget 5 Rollovers are only allowed on specified events in UK company law ESS 15036. “References in scheme rules to rollover being triggered by events under other UK legislation which may have a similar effect to CA 1985, s 425 (e.g. IA 1986, s 110) are not acceptable.”
Inland Revenue Manuals Golden Nugget 6 Rollovers be allowed on comparable events under overseas law ESS 15037. “References in scheme rules to rollover being triggered by events under overseas legislation which is similar to CA 1985, s 425 may be acceptable - but only if the overseas legislation is very closely comparable to CA 1985, s 425.”

Inland Revenue Manuals Golden Nugget 7

Selective and partial rollovers are possible under a CSOP

ESS 15046.

"Selective rollover (permitting only some option-holders to exchange their options)

– in Discretionary schemes, is acceptable if that is all the acquiring company consents to

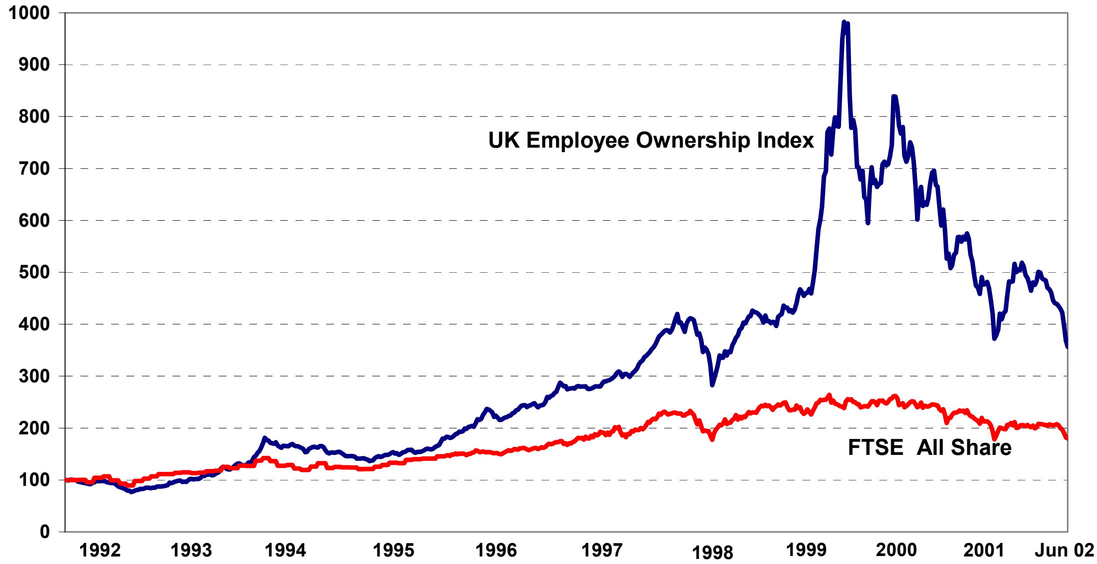
– in Savings-Related schemes, is not acceptable as it would not satisfy the similar terms participation requirements (ICTA 1988, 9 Sch 26)."

ESS 15047.

"Partial rollover (with the balance being exercised or surrendered) is acceptable in Discretionary schemes if the scheme rules permit it."

Appendix 4

Employee Ownership Index, 1992 – June 2002



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