

Company Share Option Plans (CSOPS)

October 2024



Company Share Option Plans (CSOPs)

Exercise within three years of grant

1. Power to exercise within three years of grant **included** in the rules/option agreement – if **not** the exercise will **not** qualify for relief.
2. **Amendment** would be a **change of fundamental terms** and therefore option will **cease to qualify**.
If the amendment to the option is treated as the creation of a new option then:

- a. is there the power to amend the option?
- b. is this only for tax purposes – gain is fully taxable – are the shares RCAs – if not, no PAYE and NIC – self assessment?
- c. if this is treated as a new grant, will need to be reported on the annual ERS return and may need to be reported on an ‘other’ return.

- d. if this is treated as a new option grant, does the company have capacity within its limits to grant a new option, or can it be treated as an amendment of the existing and therefore within the same limits or will it be treated as a regrant.
- e. check the accounting treatment of the amendment or the re-grant scenarios – it may affect the share-based payment charge.

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3. If there is **power to exercise** within three years of grant then

- a. **do the facts properly fit the permitted exercise clauses**
eg is it a redundancy meeting the relevant criteria?
- b. **do any leavers have the right to exercise**
eg within 6 months of leaving/12 months of death – can you locate the leavers – current addresses, etc.?
- c. **Change of control statutory condition**
does it meet all the requirements – cash offer, general offer, etc.?
Can you change the terms of the deal?

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4. Is there power to exercise but with a **discretion**?

The HMRC manual on EMI discretion (ETASSUM54330 onwards)

Updated 2023

CSOP pages (eg ETASSUM44470 onwards)

Not updated since 2015

HMRC's latest comments...

They are

“
continuing to
consider the
CSOP Guidance
”

There is

“
No timeline
”

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Using a discretion?

1. Must be clearly stated
2. Must be applied fairly and reasonably to determine the extent of any exercise
3. Must improve the prevailing rights
4. Consider an overall clause limiting discretions to these principles – too limiting?
5. Subsequently adding a discretion – would have to be narrow to avoid a change to fundamental terms beyond minimal

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5. If exercise is not permitted, is a **rollover** possible?

New shares must qualify

Applies by agreement only – cannot oblige an option holder to rollover.

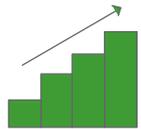


Maybe, but may be obliged to take cash and re-invest either because the rollover does not qualify or because the acquirer wants the employees to hold a specific class of shares.

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6. Performance conditions



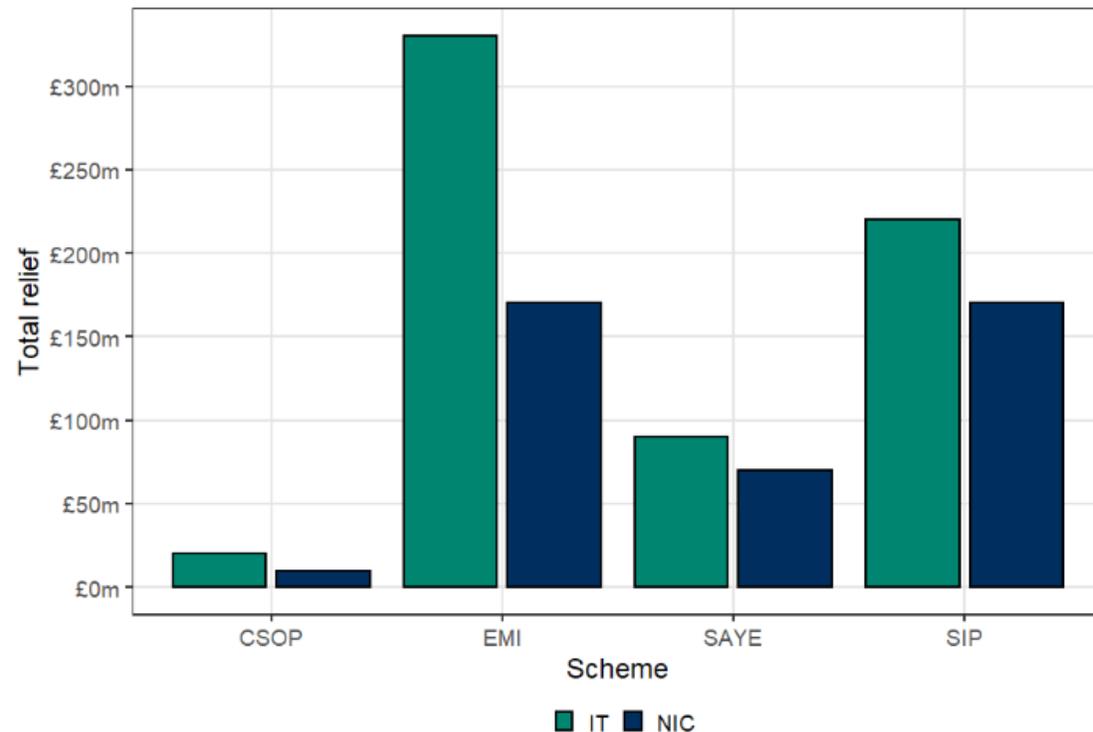
Will they be waived on the event, do they need to be amended, etc? What are the powers to amend? Will there be the exercise of any discretions?

CIR v Burton Group plc (63 TC 191)

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Figure 2: Estimated amount of IT and NIC relief by scheme, tax year ending 2023



THE POWER OF BEING UNDERSTOOD
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RSM UK Legal LLP

25 Farringdon Street
London
EC4A 4AB
United Kingdom
T +44 (0)20 3201 8000
rsmuk.com

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