

Financial institutions
Energy
Infrastructure, mining and commodities
Transport
Technology and innovation
Life sciences and healthcare

 **NORTON ROSE FULBRIGHT**

All-Employee Share Plans Revisited

Matthew Findley

Partner

Norton Rose Fulbright LLP

24 February 2016



Introduction

- **To what extent are sharesave and SIP more flexible and therefore more attractive in light of recent changes?**
 - Role of the Office of Tax Simplification (“OTS”)
 - Self-certification and online filing
 - Finance Act 2013
 - Finance Act 2014

Executive Summary

- The OTS
 - “...a specific remit to identify areas... that were causing complexity and disproportionate administrative burdens...”
- An opportunity...
 - Taken?
 - Spurned?
- Only one of the three main OTS recommendations related to all-employee plans
- Technical modifications

Finance Act 2013 – Summary of Changes (1)

- **Headline points**

- SIP

- £1,500 dividend reinvestment cap removed

- ✓ SIP participants in high dividend companies

- ✓ No longer need systems to pay “excess” cash dividends

- More choice for employers around accumulation periods

- SAYE

- More flexibility during savings periods – e.g. deductions other than from salary

- Abolition of 7 year contracts

Finance Act 2013 – Summary of Changes (2)

- SIP and SAYE (and CSOP)
 - Retirement rules harmonised
 - “Good leaver” rules extended and harmonised
 - Tax relief on certain takeovers
 - Ability to use “restricted” shares

Finance Act 2013 – Practical Impact (1)

- Many of the changes had automatic effect
- Ask yourself the following questions

SIP	Will your internal policies/procedures correctly identify retirees?	Happy to allow unlimited dividend reinvestment?	If an accumulation period was used, is the original approach still the right approach?
SAYE		Offer more flexibility in relation to deductions other than from salary?	
CSOP			

- Marginal gains

Finance Act 2013 – Practical Impact (2)

- Ability to use restricted shares helpful
- Exit-planning opportunities
- Ownership structures
- Administrative concerns
- Liquidity issues
- Internal markets

Finance Act 2014 – Summary of Changes (1)

- **Headline points**

- SIP and SAYE (and CSOP)

- Self-certification and the removal of the approval process

- SIP

- Increased limits

- Forfeiture of Partnership Shares and Dividend Shares

- SAYE

- Increased savings limit

- Grace periods on takeover

Finance Act 2014 – Practical Impact

- Self-certification and implementation
- Reaction to increased limits
- Other changes were operational

So What's The Answer? (1)

- Listed companies
 - No change
- Unlisted companies
 - Takeover tax relief
 - Use of restricted shares
 - Forfeiture of Partnership Shares and Dividend Shares
- SAYE or SIP – careful consideration required
- Role of advisor

SAYE or SIP?

SAYE	SIP (Partnership Shares and Matching Shares)
<ul style="list-style-type: none"> • Share option: <ul style="list-style-type: none"> – Risk-free (until exercise) – More leverage – No dividends 	<ul style="list-style-type: none"> • Immediate share ownership: • Degree of risk • Risk mitigation <ul style="list-style-type: none"> – Tax relief cushion – Matching shares – Dividends – Flex forfeiture provisions – Flex matching share ratios • Dividends
<ul style="list-style-type: none"> • Encourages saving 	<ul style="list-style-type: none"> • Encourages share ownership
<ul style="list-style-type: none"> • Fixed structure/simple 	<ul style="list-style-type: none"> • Flexible/perceived complexity
<ul style="list-style-type: none"> • Perceived lack of value if underwater 	<ul style="list-style-type: none"> • Always some value

SAYE or SIP?

- There are good reasons for operating an SAYE plan
 - Risk free
 - Easy to communicate
 - Simple to administer
 - Widely understood
- The SIP is (still) seen as more complex

All-Employee Share Plans Revisited

- Finance Act changes were welcome
- Impact depends on nature of company
- Some longstanding issues remain
- Success/popularity of plan likely to be contingent on:
 - Management
 - Perceived cost and complexity
 - Employees
 - Communication and attitudes

The logo consists of a stylized, upward-pointing chevron shape in a gold color, positioned above the first letter of the text.

NORTON ROSE FULBRIGHT

Disclaimer

Norton Rose Fulbright US LLP, Norton Rose Fulbright LLP, Norton Rose Fulbright Australia, Norton Rose Fulbright Canada LLP and Norton Rose Fulbright South Africa Inc are separate legal entities and all of them are members of Norton Rose Fulbright Verein, a Swiss verein. Norton Rose Fulbright Verein helps coordinate the activities of the members but does not itself provide legal services to clients.

References to 'Norton Rose Fulbright', 'the law firm' and 'legal practice' are to one or more of the Norton Rose Fulbright members or to one of their respective affiliates (together 'Norton Rose Fulbright entity/entities'). No individual who is a member, partner, shareholder, director, employee or consultant of, in or to any Norton Rose Fulbright entity (whether or not such individual is described as a 'partner') accepts or assumes responsibility, or has any liability, to any person in respect of this communication. Any reference to a partner or director is to a member, employee or consultant with equivalent standing and qualifications of the relevant Norton Rose Fulbright entity.

The purpose of this communication is to provide general information of a legal nature. It does not contain a full analysis of the law nor does it constitute an opinion of any Norton Rose Fulbright entity on the points of law discussed. You must take specific legal advice on any particular matter which concerns you. If you require any advice or further information, please speak to your usual contact at Norton Rose Fulbright.