

## Share Plans in Private Companies

### A BRIEF GUIDE TO THE CONSIDERATIONS WHICH GO INTO SETTING UP A SHARE PLAN IN A PRIVATE COMPANY:

- know why you're implementing a share plan
- understand how share plans can be linked to continued service with the company as well as its performance
- understand the implications of share dilution and whether or not shareholder consent is required
- decide on the maximum percentage of shares to be set aside for employees and what is "normal"
- understand the difference between outright share awards and share options
- decide what type of share class is appropriate for employees as well as the rights and restrictions attaching to the same
- if the share plan is intended to facilitate a succession strategy, shareholder exit, MBI, MBO or IPO, understand the use of employee benefit trusts (EBTs) as an internal market or warehousing facility
- if the share plan is being implemented pre-IPO, understand the disclosure requirements which will need to be made as part of the IPO process and what the implications are under the dilution and dealing guidelines that are set out by investor and regulatory bodies once the IPO has completed
- know the tax treatment for both the company and the employee when making share awards and understand the company's tax withholdings responsibilities
- understand what tax-advantageous share plans are available to both the company and the employee as you would be mad not to make use of them
- if the company has a global footprint, consider whether overseas employees are to receive the same or similar offer as UK employees and understand the local tax, legal and compliance issues as well as how this impacts on the design of the share plan
- understand what, if any, implications there are for the company's articles of association and any shareholder or investor agreements and what changes should be made
- understand what Board and shareholder resolutions will be required to implement a share plan
- understand how the shares are to be valued for tax purposes and how this can be agreed with HMRC
- understand what needs to be done to comply with HMRC's registration requirements and when and how annual returns need to be filed with HMRC in relation to the share plan
- understand what the accounting treatment will be if you do not prepare your accounts under the Financial Reporting Standard for Smaller Entities
- understand what the tax position is on maturity and what reliefs are available against corporation tax
- understand who within, and which advisors outside, the company need to know about awards made under a share plan in order that the company's register of members is properly updated and that the company's accounts are properly prepared
- understand what the implications are for share plan administration and whether more than just a spreadsheet will be required