michelmores

Guide to employee share incentivisation

michelmores.com

Introduction

A happy, settled and motivated workforce is the result of many different initiatives in a business, and incentivisation by way of share ownership is one of these. Many employers find that attracting good talent and keeping it takes more than competitive pay and standard benefits. Incentivisation by way of an option to acquire shares is a popular way of standing out, but choosing and implementing an appropriate incentivisation scheme requires some planning.

To help, we have set out in this document a brief, high-level overview of the different incentive schemes and our expert advisers can assist with a deeper dive into how these may work in your business.

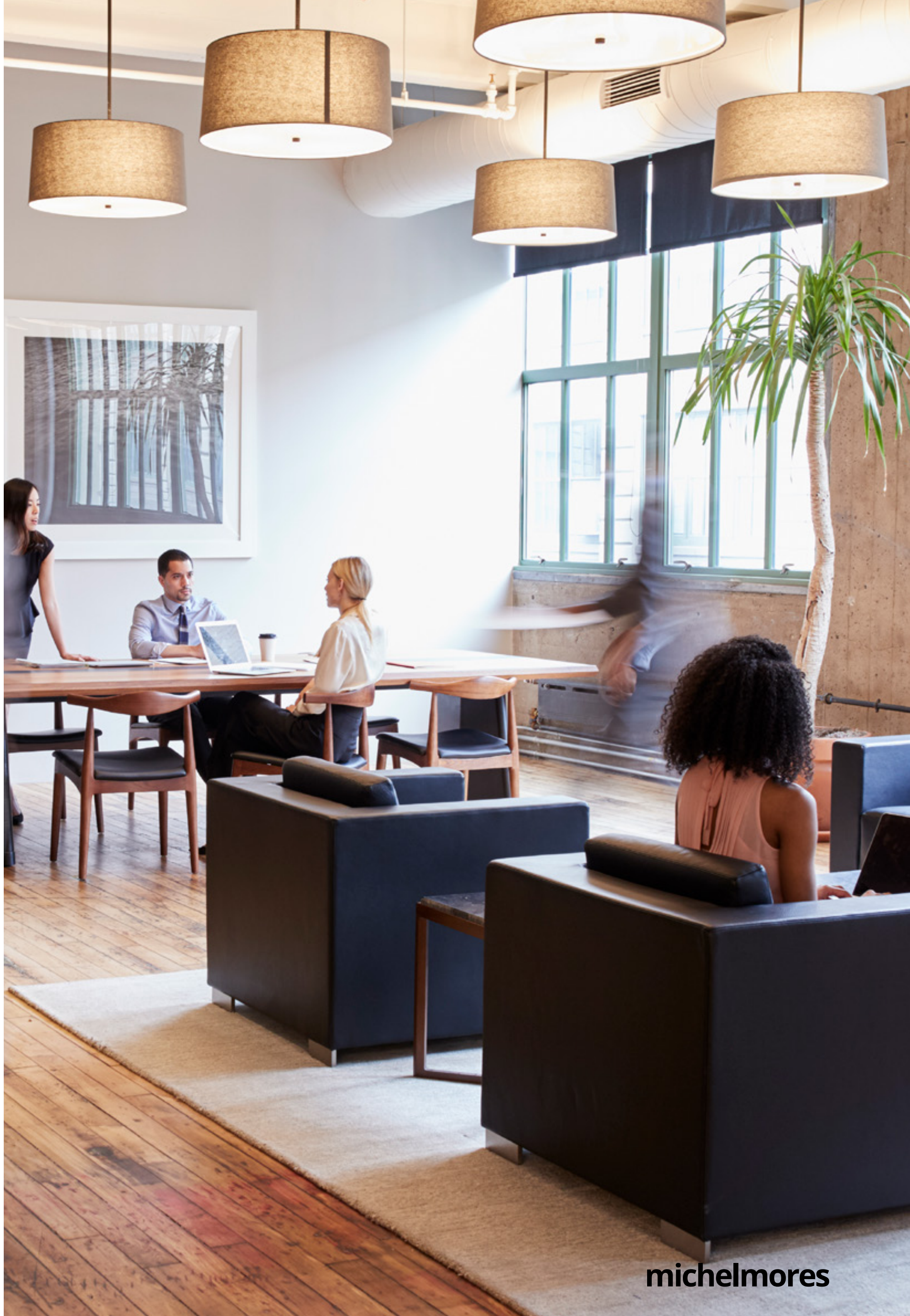
Tax advantaged option arrangements

Enterprise Management Incentive Scheme (EMI)

Considered the most popular of the tax advantaged schemes, it delivers flexibility within a legislative framework and, if all the legislative requirements are met, guarantees capital treatment for employees when they sell their shares. Because the tax benefits are so advantageous, certain requirements **must** be met for the employer to qualify to grant EMI options and for the employee to benefit. It is worth taking the time initially to check all the eligibility criteria.

Advantages	Disadvantages
• Allows for flexibility of design by allowing for options which can be exercised on a liquidity event only (sale, listing) or on the meeting of certain time limits and/or performance/ exercise criteria.	• If the employer has a corporate shareholder owning more than 50% of its shares, then options can only be granted over shares in the shareholder company, not in the employer.
• It does not have to be offered to all employees.	• Options are not available to part-time employees, NEDs or consultants.
• Can be exercised immediately but consider how this will interact with Business Asset Disposal Relief (**BADR**).	• Whilst an advantage later on, securing an agreed valuation for the option shares from HMRC adds several weeks to the set-up timetable.
• Options can be granted to a value of £250,000 per employee over a 3-year period. This is higher than any other tax advantaged scheme. But see £3 million limitation.	• An employer may not have more than £3m worth of shares subject to unexercised options at any time.

For more information click <u>here</u>



Tax advantaged option arrangements

Company Share Option Plan (CSOP)

This scheme also delivers tax advantages in the same way as the EMI scheme does, but the flexibility is lost to some extent because:

- the value of shares over which options can be granted is only £60,000 (as opposed to the £250k offered by EMI options)
- to benefit from the tax advantages, the options must be held for 3 years and to qualify for BADR, the shares must comply in full with the BADR requirements, unlike EMI options which enjoy reduced eligibility for BADR.

For more information click **here**

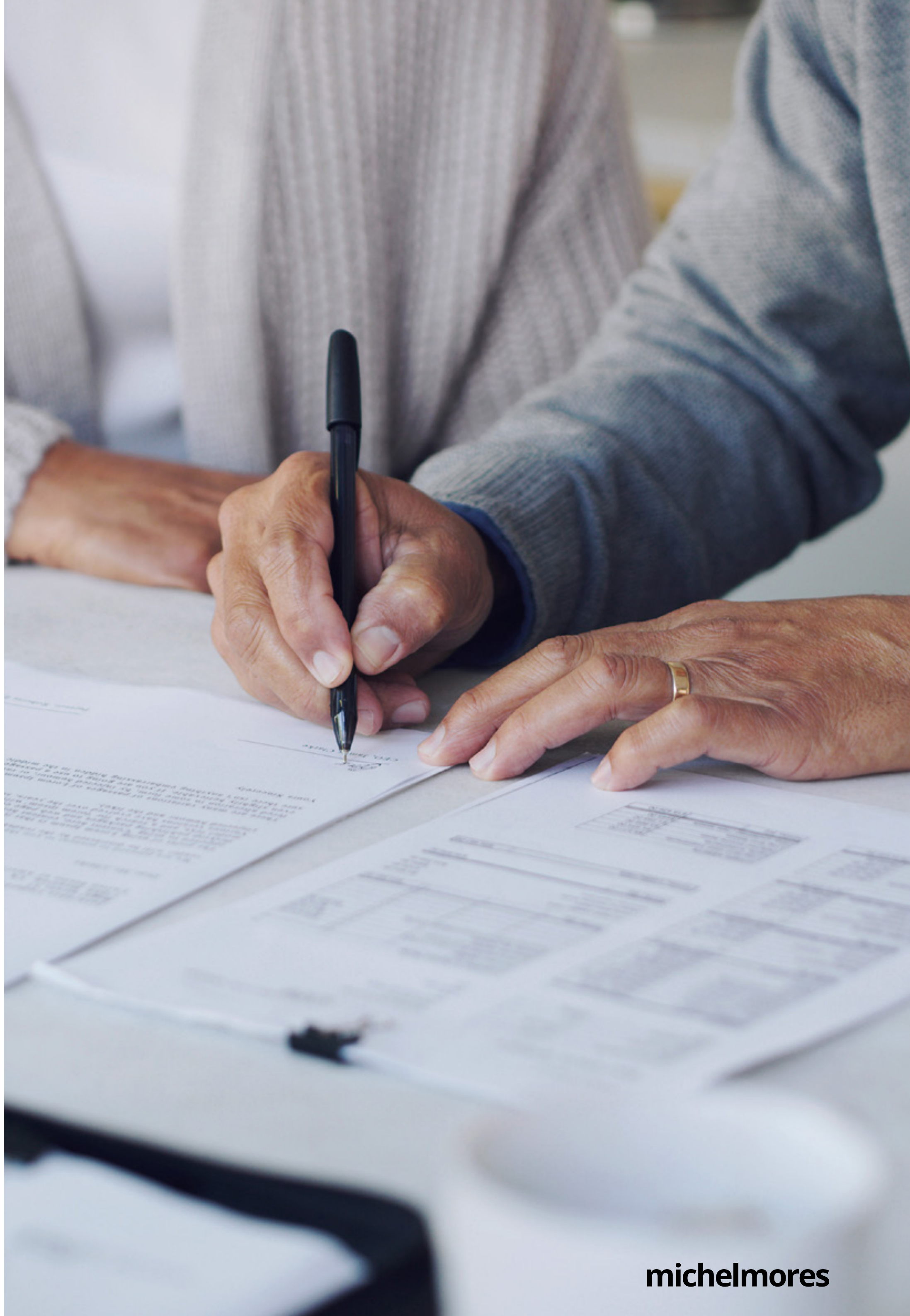
Save as you earn or savings related share option schemes

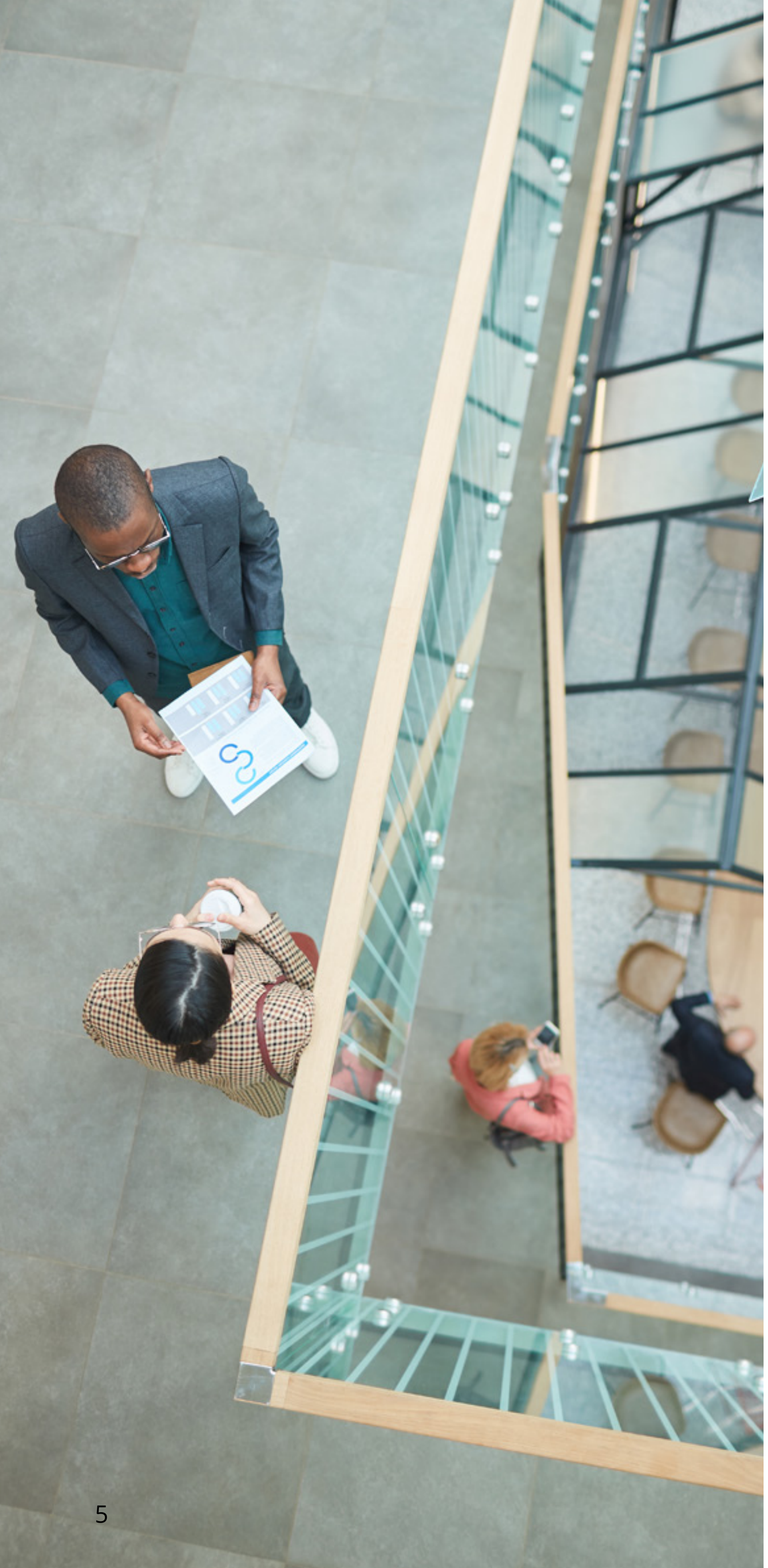
This scheme provides favourable tax treatment where employee share options are linked to save-as-you-earn contracts entered into by the option holders.

The amount payable for shares on the exercise of an option may not exceed the proceeds of the savings contract. The options are normally exercisable only within a period of up to six months after the end of three or five years from the date of the first savings contribution.

This is an all-employee scheme and so provides an employer with less discretion in that regard. However, it is possible to use this scheme alongside an EMI scheme, for example, to widen the group of employees an employer wants to incentivise.

For more information click **here**





Tax advantaged option arrangements

Share Incentive Plan (SIP)

This tax advantaged share incentive is more administratively intense. It must be run through an employee benefit trust which must be UK resident. It is another all-employee scheme and its main features are:

- free shares to the value of £3,600 can be delivered to employees annually
- pre-tax money up to £1,800 can be used to invest in partnership shares
- where an employee invests in partnership shares, the employer can “match” those shares by providing additional tax free shares on any ratio but not to exceed 2:1.

For more information click **here**

Employee Ownership Trust (EOT)

An EOT is a particular type of employee benefit trust which enables a company to become owned by its employees. The driver behind the introduction of EOTs in 2014 was to encourage businesses to facilitate wider employee ownership (similar to the classic John Lewis model under which employees hold a share in the company).

EOTs can be set up by existing owners of a company or be used as part of an exit or succession planning strategy. The main tax advantages are:

- the sale of a controlling interest in the company is entirely free from capital gains tax
- bonuses paid to an employee of a company owned by an EOT are exempt from income tax (but not national insurance) up to £3,600 per employee per year
- the sale of shares to the EOT will not give rise to any inheritance tax issues provided that the legislation is followed

A trust must be established which brings in a layer of complexity and underlines that this solution is intended to be a long-term one for the benefit of the employer/company.

For more information click **here**

Non-Tax advantaged option arrangements

Unapproved Share Option Plans

"Unapproved" is a term used to describe the fact that these options do not have any tax advantages to them and have no special tax regime governing them.

As a result, within the bounds of company law, these options are very flexible and can be made subject to any number of conditions and requirements.

Note though that where these plans are used for employees, unless the options are exercised early, most if not all of the gain made on the value of the shares will be subject to income tax and employer and employee national insurance contributions.

For more information click **here**

Nil/Partly paid shares

Here a company issues shares to an employee at the current market value of the shares, but the subscription price is left outstanding and is payable on deferred terms. No income tax or NICs arise on acquisition of the shares. The obligation to pay the purchase price is left outstanding until a future date, for example on a sale or listing of the company when the employee will have the funds to pay for the shares.

Because the subscription monies for the shares are unpaid, from a tax point of view, this is considered to be a notional loan in the hands of the employee. An annual income tax charge (and employer's NIC charge) arises on the notional interest on the outstanding subscription price. The notional interest benefit is reported on the individual's P11D for each relevant tax year and the income tax is payable through the individual's self - assessment income tax return. Class 1A National Insurance will also be payable by the company.

The growth in the shares is subject to capital gains tax only.

For more information click **here**

Growth Shares

Growth shares are a separate class of share issued in the capital of the company and which only carries rights to share in the future, increased value of the business. Growth shares are often used where an EMI scheme will not be available as a solution and are typically used for the management of a company.

The principle behind growth shares is very simple: the current value of a business is calculated, and the growth shares only carry rights to participate in capital to the extent the growth in value exceeds the current value. Growth share schemes are very flexible, and the rights attaching to the share class (and when they are triggered) can be tailored accordingly.

Unlike share option schemes, growth share schemes allow shares to be issued to participating shareholders on day 1. Growth shares usually only have low value because, if they were sold at that point, the shares would not entitle the holder to receive any proceeds. The benefit of this is that the full market value of the growth shares will be affordable for potential shareholders. Paying full market value will mitigate a possible exposure to employee tax.

For more information click **here**

Contact us

enquiries@michelmores.com
+44 (0) 333 004 3456
michelmores.com

Bristol

10 Victoria Street
Bristol
BS1 6BN

DX 7832 Bristol
+44 (0) 117 906 9300

Cheltenham

Eagle Tower
Montpellier Drive
Cheltenham
GL50 1TA

+44 (0) 330 175 8240

Exeter

Woodwater House
Pynes Hill
Exeter
EX2 5WR

DX 135608 Exeter 16
+44 (0) 333 004 3456

London

100 Liverpool Street
London
EC2M 2AT

DX 63 London Chancery Lane
+44 (0) 207 659 7660