REGIONAL SHARE PLANS EVENT

Edinburgh - 8 November 2018
Hilton - Carlton

Discretionary Share Plans Policy and Practice

Employee Engagement

Tax Update

Financial Wellbeing

and more....

YBS SHARE PLANS

Nigel Watson, Partner

Karen Davidson, Partner

BRODIES LLP

Discretionary Share Plans Policy and Practice

Being flexible

In the old days of operating a discretionary share plan, the plan rules did almost all of the heavy lifting. They were the go-to reference point, they were the contractual nexus between the Company and the employee. Historically of course there was no requirement to have a holding period, there was no malus and clawback, there was no directors' policy report, there were few discretions. These days, your plan rules need to be adaptable and flexible – they cannot be too rigid. At Brodies we maintain that a good set of discretionary plan rules are essentially a series of staging posts, signposts, for what a Company can do rather than what is definitively the case.

- And nothing illustrates this better than the interplay with the directors' remuneration policy which all main market PLC's are required to have. Our plan rules now deliberately reference the role the policy report plays in determining how share plans operate

- Further examples of how you can have a flexible grant policy as part of your plan rules include the operation of Buyout Awards and granting out-of-cycle awards in exceptional circumstances.

Holding periods

There are two main ways to structure a holding period: either as extended vesting periods where essentially a three-year award runs on for a further two years; or the award vests after three years and the net of tax number of vested shares are then retained for two years. If the latter then invariably the shares are held by a nominee (and the nominee agreement will do a lot of the heavy lifting as to applicable terms during the holding period).

- When designing your holding periods you need to think about when it will apply, how it will apply and what it would apply to, e.g. dividend equivalents.

Malus and clawback

The main concepts and triggers now well established but increasingly we are seeing more bespoke triggers to reflect particular concerns relevant to the company / sector / industry. For example if you are in the oil and gas sector you may want a health and safety trigger. And operating your malus and clawback policy requires a very careful application of how you operate discretion within that policy, which takes us to the Daniels v Lloyds Bank case.

Discretionary Share Plans Policy and Practice continued

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Daniels v Lloyds Bank

LTIP awards were granted by Lloyds Bank to Eric Daniels, the former CEO. The Lloyds Remco had determined that the LTIP performance conditions had been satisfied. The Remco then amended the LTIP to include a malus clause, i.e. to introduce a retrospective discretionary power to adjust awards downwards. The Board then applied the malus clause on the grounds of reputational damage. The Court gave judgment against Lloyds on numerous grounds and, by way of obiter, concluded that the discretion to exercise the malus power was not lawful.

The Daniels case offers some interesting insights into how the courts might interpret plan rules and how they might deal with disputes relating to share awards – none more so than the exercise of discretions. The Daniels case examined the discretionary power to trigger the malus provision but if you think about it, there is a whole ecosystem of discretions in a typical discretionary share plan (hence the name discretionary share plan). For example, just taking a leaver situation, there are lots of intermingling and overlapping discretions and many have practical / everyday relevance.

New UK Corporate Governance Code

And discretions are going to play a much greater role in making reward structures effective. The revised governance code explicitly draws attention to the use of discretions to override formulaic outcomes.

Conclusion

Discretionary share plan rules are moving away from being overly prescriptive towards something looser, something that is operationally more pragmatic. And this is important because there can be a real disconnect between policy formulation and policy in practice. Increasingly the operational glue, the substance that binds your share plan web of policies together, will be the use of discretions – provided they are exercised correctly.

Employee Engagement
Nucleus Financial - case study

Emma Oberholzer,
Head of people operations

Nucleus Financial have a Share Incentive Plan (SIP) administered by YBS Share Plans (YBSSP) and launched their SIP in 2018. We have worked together to simplify the documentation and make it more engaging. This is how we do it:

Communication

- Deliver clear and consistent messaging aligned to Nucleus Financials tone of voice
- Simple and engaging communications to reduce the queries raised
- Regular communications throughout the invitation period
- Straightforward guidance on how to apply

Promotion

- On site employee presentations
- Video of employee presentation available for those who could not make the on-site presentations
- Weekly drop in sessions - this was an open forum for colleagues to ask questions to gain a better understanding of the plan.

What's next?

- Constantly review communications to ensure it stays relevant and easy to understand
- Employee survey to understand what else we can improve
- Aim to double take up over the next year with regular promotion of the SIP

YBS SHARE PLANS

Employee Engagement
Kier Group plc - case study

Darren Smith,
YBS Share Plans

Ian Bird, Partner

Secondsight
Part of the Foster Denovo Group

Kier have Sharesave, SIP and Discretionary Share Plans all administered by YBS Share Plans (YBSSP) and in the last two years, we have worked together to simplify the documentation and make it more engaging. This is how we do it:

- Meet with Key Stakeholders from both YBSSP and Kier - if you can meet up at the start we can ensure we have the same goals and the right people in place to achieve them.
- Review previous results - analyse who didn't join, is it different between gender, age, locations, job role etc. If we know who joined and didn't join we can target the relevant people.
- Feedback from employees – vital we listen to employees, why do they not join, do we need education, do we need to relate it to the cost of a coffee a week due to affordability, do we need to simplify
- Feedback from peers – view research from your provider, ProShare or contacts you have at other companies, it will not just be you struggling with engagement at certain levels
- Work together – in order to engage employees you and your provider need to work together, it can't be one sided, it needs promoting internally too.

So what did we update?

- Separating the SIP and Sharesave mailing as too complicated. Sharesave stayed annually but SIP became 'evergreen', allowing anyone to join at any time
- Introduction of 'Benefit of the month', SIP in May and Sharesave in October
- Annual Roadshows with a section on Share Plans, including a flyer for all benefits
- Introduction of animations and share calculators
- Sharesave infographic explaining Sharesave on first page of brochure – really simple
- SIP interactive brochure – held online and able to navigate to different topics including links to animations and calculators
- Introduction of Managers briefing packs to help at location level
- Analytics on financial education website hits – this shows increased engagement during the 'Benefit of the month', quadrupling the number of monthly joiners for SIP.
The Sharesave saw a 20% increase in take up.

Employee Engagement
Kier Group plc - case study continued

Darren Smith,
YBS Share Plans

Ian Bird, Partner

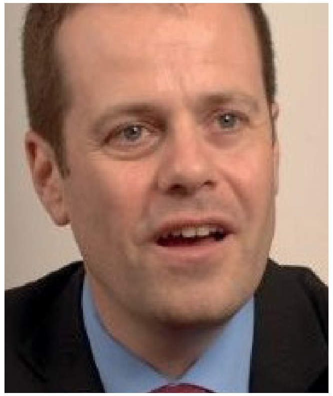
What's next?

- Online only applications to reduce costs so budget can be used on all year round promotional items
- Further research, challenge each location to increase website usage, email campaign
- All the above has resulted in a ProShare submission and recent confirmation that Kier are nominated for an Award at this year's ProShare Awards.

Introducing the Financial Wellness Score

- It has been well documented that more people than ever are struggling with their finances and suffering with some form of financial worry or stress. Which means this may also be the case for some of your employees. Of course, the worries employees are facing can take different forms; including, debt issues, budgeting worries, saving for a house, how to protect their savings / ensure these pass to the right people in the event of death, or whether they can afford to retire. But one thing that appears certain is whatever the financial position, some of your people may need help when it comes to their financial wellbeing
- Secondsight introduced an 8 question survey which is designed to help employees focus on their day-to-day financial state, and the steps needed to improve their situation. It works with your employees first taking a short financial wellness survey, this will provide your employees with a confidential report on their current financial health
- The report offers guidance on the steps they could take to improve their level of financial health and as a by-product reduce financial stress levels. In return, you will receive an employer report with anonymised employee data, helping you to understand and identify your employee's needs and wants, helping you to design the optimum employee wellbeing programme.

YBS SHARE PLANS



John Tilotson, Director

Deloitte.

Tax Update

Net Settlement?

- Changes to IFRS 2, effective for accounting periods starting on or after 1 January 2018 result in net settled share awards being accounted for as equity settled rather than part cash and part equity settled. This removes the P&L volatility associated with cash settlement and ensures consistency across all companies
- This change can reduce the corporation tax deduction that may be claimed for net settled share awards
- HMRC have agreed a structure to enable companies to net-settle and to still claim a full statutory corporation tax deduction on the award (irrespective of the accounting) which removes any complications in claiming that CT deduction.

SAYE?

- From 1 September 2018, SAYE participants can postpone the payment of monthly contributions for up to 12 months. Where a participant fails to contribute on the date of the thirteenth monthly payment this is treated as giving notice to stop contributions permanently. Temporary postponement will put back the 3 or 5 year maturity date and the right to exercise the option by up to 12 months. It can also impact the extent to which a participant takes part in a future SAYE savings contract.

Entrepreneurs' relief?

- The Chancellor announced two new tests to be satisfied with immediate effect to qualify for Entrepreneurs' Relief in the November Budget. These new tests require the individual to have at least a 5% interest in both the net assets of the company and of the distributable profits. These are in addition to the previous tests of 5% of both total nominal value and of votes. Complications can arise where a business has preference shares in issue.
- The period of time over which these conditions must be met has also been increased from 12 months to 24 months for share disposals on or after 5 April 2019.

Financial Wellbeing
Virgin Active - case study

Karl Cummins

SALARY FINANCE

What do Salary Finance do?

The presentation explained what Salary Finance do, with examples of how an employee's Financial Wellbeing can be improved with the availability of low interest loans and a savings product to make it easier for employees to start saving.

What are the key features?

- Zero cost to the company to launch Financial Wellbeing with Salary Finance
- No risk or liability to the employer
- BT, Sainsbury's, Next, Mitie, Metro Bank and Virgin are just some of the companies they work with
- Making a huge difference to employees both at home and at work
- Access to financial education, useful tools to encourage good habits, borrowing, savings products
- Increase productivity and retention

Virgin Active Case Study - Background

- Young workforce
- National Living Wage
- Seeing an increase in mental health illness
- Saw a Salary Finance presentation at an event

Virgin Active's reasons for partnering with Salary Finance

- The Hays case study resonated
- No risk – easy implementation
- Responsible purpose linked with financial education
- Helped 100% of applicants – Signposting debt registered charities
- Internal approval to launch Savings – true debt to savings

YBS SHARE PLANS

Like to know more?

Louise Drake
National Sales Manager

Direct Line: 01274 263 101
Mobile: 07810 636 276
Email: lndrake@ybs.co.uk

Beverley Johnson
Lead Business Development Manager

Mobile: 077896 17790
Email: bajohnson@ybs.co.uk

Ainsley Melaugh
Lead Business Development Manager

Mobile: 07768 542 626
Email: azmelaugh@ybs.co.uk

Michelle Merola
Lead Business Development Manager

Mobile: 07734 459 980
Email: mmerola@ybs.co.uk

Darren Smith
Corporate Relationships Manager

Direct Line: 01274 472 226
Mobile: 07736 551 270
Email: dsmith2@ybs.co.uk

Cathy Browne
Senior Manager Client Relationships

Direct Line: 01274 263 103
Mobile: 07831 359 609
Email: chbrowne@ybs.co.uk

Michael Taylor
Senior Manager Client Relationships

Direct Line: 01274 263 108
Mobile: 07770 643 524
Email: mjtaylor@ybs.co.uk

Adrian Baxter
Lead Relationship Manager

Direct Line: 01274 263 112
Email: azbaxter@ybs.co.uk

Paul Bowen
Lead Relationship Manager

Direct Line: 01274 263 110
Email: pzbowen@ybs.co.uk

Thank you

If you have any questions about any of the topics, please feel free to get in touch using the contact details provided.

Thank you for joining us and we look forward to seeing you again soon.

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