ICAEW
REPRESENTATION 79/23

NON-DISCRETIONARY TAX-ADVANTAGED SHARE SCHEMES (SAYE AND SIP)

Issued 22 August 2023

ICAEW welcomes the opportunity to comment on the Non-discretionary tax-advantaged share schemes call for evidence published by HM Treasury on 5 May 2023 which focuses on save as you earn (SAYE) and share incentive plans (SIP), a copy of which is available from this link.

For questions on this response please contact us at representations@icaew.com quoting REP 79/23.

SAYE and SIP schemes continue to meet their original objectives but take-up has diminished in recent years. The amounts that can be invested have not taken account of inflation so the schemes are not of interest to the highest earners, which for employers increases the per-employee set-up and administration costs.

Ways to increase take-up might include:

- Increasing the investment limits
- Simpler administration
- Removing penalties for early leavers

The requirement broadly to offer similar share rights to all employees also means that it is unlikely to be used by smaller companies that need a more tailored approach.

Consider adapting the French offer *"intéressement et participation"* which has a closer connection between individual performance and company health.

These recommendations need to be considered in the context of the changing nature of the UK's labour market in which the growth of the gig economy, zero-hours contracts and increasingly transient employments are resulting in a significant number of workers who will never be able to participate in either scheme in a meaningful way.

This response of 22 August 2023 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, the ICAEW Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business. ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark the tax system and changes to it, are summarised in Appendix 1.

ICAEW is a world-leading professional body established under a Royal Charter to serve the public interest. In pursuit of its vision of a world of strong economies, ICAEW works with governments, regulators and businesses and it leads, connects, supports and regulates more than 166,000 chartered accountant members in over 146 countries. ICAEW members work in all types of private and public organisations, including public practice firms, and are trained to provide clarity and rigour and apply the highest professional, technical and ethical standards.

KEY POINTS

1. SAYE and SIP schemes are basically sound and continue to meet their original objectives but take-up has diminished in recent years. This has arisen because the amounts that can be invested have not risen to take account of inflation so the schemes are not of interest to the highest earners and overall and per employee costs of administering the schemes have increased.
2. Ways to increase take-up might include:
   a. Simpler administration – SIPs are almost always associated with really big companies who have the expertise to set up and operate the schemes.
   b. Increasing the investment limits, which have not risen since the original incentive levels were set. This needs to take account of inflation which has undermined the extent to which these schemes incentivise employees and diminished schemes' cost-effectiveness.
   c. Removing the penalty for early leavers (to take into account research showing that the average tenure of employees is five years).
3. The requirement broadly to offer similar share rights to all employees also means that it is unlikely to be used by smaller companies that need a more tailored approach.
4. Consideration might be given to adapting the French offer of "*intéressement et participation*" under which bonuses are linked to company performance which gives a closer connection between individual performance and company health.
5. However, whilst the above recommendations may help to reverse the waning of employer and employee enthusiasm for the schemes, this has to be considered in the context of the changing nature of the UK's labour market, in which the growth of the gig economy and zero-hours contracts, and increasingly transient employments under which the concept of a job for life has almost disappeared, are resulting in an significant number of workers who will never be able to participate in either scheme in a meaningful way.

GENERAL COMMENTS

6. The call for evidence focuses on non-discretionary tax-advantaged employee share schemes, namely save as you earn (SAYE) and share incentive plans (SIP). The objective of these schemes is to motivate employees by helping them to obtain a stake in their employer company in fiscally advantageous ways, thereby aligning employer and employee interests in the growth of the employer company.
7. It is noted in the call for evidence document that participation in SAYE by companies and employees and the initial value of SIP shares being awarded or purchased by employees have declined in recent years and the number of companies operating SIP has plateaued.
8. We consider that both SIP and SAYE are sound schemes. However, it is probably fair to say that they are perceived as complex and difficult to understand by both employers and employees. There may be (unjustified) concerns over additional reporting requirements by those who are used to simple taxation via PAYE.
9. Putting money aside in savings can be a challenge for low-income earners, and incentives offered via share ownership are unlikely to encourage retention compared to a larger salary offered elsewhere. In an inflationary environment with increasing pressure on the cost of living, cash now will always be preferred to a future potential reward.
10. Employers may also find implementing the schemes complex. For example, the need to create a body of trustees and register on the trust registration service add a layer of additional compliance costs. The decline in interest in recent years may also stem from a

combination of market saturation, and the economic climate coupled with covid-19 when the need to keep the business afloat has been paramount, which, where employers have such schemes, has led to a reduction in the marketing by employers to their employees and a consequent lack of employee awareness.

11. Whilst both schemes are sound, if participation is to increase a greater understanding amongst employees needs to be developed. Simplification of the compliance requirements may also encourage more employers to offer the schemes, although we would note that HMRC already offers simplified system of self-certification and provides model plans and trust documents, which are welcome.

12. One of the fundamental challenges to increasing the take-up of such schemes is the changing nature of the UK's labour market. The increase in the gig economy and of zero-hours contracts means that there is a significant portion of the labour market who will never be able to participate in either scheme in a meaningful way. Secondly, and probably most importantly, is the transient nature of employment. The concept of a "job for life" has almost disappeared – research by life insurance firm LV= indicates that, on average, a UK employee will change employer every five years.

13. To increase take up we suggest that consideration be given to the following (please see answer to Q11 for more detail):

    a. Increasing the investment limits, which have not increased since the original incentive levels were set. While the costs of setting up and operating the schemes have increased for employers, neither SAYE nor SIP schemes are of interest to the "top earners", who are the people that most companies most want to incentivise. A SIP will only be set up if the commercial benefit from keeping/ incentivising the second and third tier employees covers the cost of the scheme. However, over time, inflation has undermined the extent to which these schemes incentivise employees, and the consequential diminution of take up has increased the cost per participating employee of setting up and running these schemes.

    b. Simplifying administration would probably help to boost take up, especially by smaller companies. SIPs are almost always associated with really big companies. That is probably because of the need to use a trust and administration burdens such as annual returns and self-certification. The larger companies are likely to be the ones with sufficiently sizeable HR / Reward / Legal teams who have the bandwidth to setup and operate the schemes.

    c. Removing the penalty for early leavers of SAYE. This is especially important given the average tenure of employees being five years. We welcome the recent increase to the SAYE tax free bonus.

    d. The requirement broadly to offer similar share rights to all employees also means that it is unlikely to be used by smaller companies that need a more tailored approach.

    e. The French offer of "*intéressement et participation*" under which bonuses are linked to company performance gives a closer connection between individual performance and company health.

14. We recommend that any changes to the schemes should comply with our *Ten Tenets for a Better Tax system* by which we benchmark the tax system and changes to it (summarised in Appendix 1).

ANSWERS TO SPECIFIC QUESTIONS

Box 3.A Respondent's profile:

Question 1. If you are a business owner or manager, what is your business activity, when was your company created, where is it based and how many employees do you have?

15. We are responding as a professional body – please see Q2.

Question 2. If you are responding on behalf of a representative body or think tank, please briefly describe the body, its objectives, and its members.

16. Please see the two paragraphs above describing who we are.

Question 3. Does your company offer an employee share scheme? If so, which one?

17. We are responding as a professional body which is not a company.

Box 3.B Effectiveness and suitability:

Question 4. To what extent do you agree/disagree that SAYE and SIP are fulfilling their policy objectives?

18. We agree that SAYE and SIP fulfil the objectives cited in para 3.2, subject to the restraints discouraging take-up covered in our Key Points, General Comments and answers to other questions.

Question 5. If you offer SAYE or SIP to your employees, why did you choose to do so? If you are responding as a representative body, please specify your members' main reasons for offering SAYE or SIP to their employees.

19. SIPs are often used as a way of providing all employees with a tax-efficient annual bonus.
20. It is a way of ensuring that all employees are able to "own" part of their employing company and thereby increase their loyalty.

Question 6. If you have chosen to offer only SIP or SAYE, what were the deciding factors of choosing one over the other? What do you see as the advantages of one over the other?

21. Not applicable as we are answering as a professional body which is not a company.

Box 3.C Company and employee participation:

Question 7. The number of companies using SAYE and SIP has not increased in recent years. In your view, what barriers exist that may impact a company's decision to offer an employee share scheme? These could be barriers related to specific schemes or wider concerns.

22. The absence of growth in recent years may be because of market saturation or because ensuring the business survived the covid-19 pandemic (during which employees might have been furloughed instead of working) has taken priority.
23. The expense of setting up these schemes acts as a barrier, added to which they need to be reported on the trust registration service which may cost £500 in fees (see also answer to Q13).
24. We suspect that the relative complexity of the schemes in relation to their value has made directors less interested in promoting schemes that for themselves have a relatively small impact.

Question 8. The number of employees using SAYE or SIP has declined in recent years, what do you think has caused that decline? Do you have evidence to support this?

25. It may be that the number of employees of employers who offer these schemes has diminished. The covid-19 pandemic, with employees on furlough, is likely to have affected numbers.

26. Employers who offer these schemes may not have publicised them to employees as well as previously, perhaps for the reasons cited in our answer to the previous question.

27. Recent years have seen a lot of volatility in the stock markets. Certain sectors, for example hospitality, have been impacted to such an extent that it would be unlikely that new participants would be tempted to risk their money on uncertain/ unstable growth.

Question 9. What proportion of employees participate in the share scheme(s) your company offers?

28. Not applicable as we are not a company.

Question 10. In your view, what are the reasons your employees give for choosing to participate in the scheme? If you are responding as a representative body, please specify what you think are the main reasons employees choose to participate in a share scheme.

29. We believe that employees value the ability to be able to afford to invest and the fiscal advantages of the schemes.

30. SAYE schemes can offer a truly engaging way of making all employees feel part of the business. The schemes offer even lower-paid employees a chance to participate in an increase in value of their shareholding.

Question 11. What changes, if any, would increase participation amongst employees or change the way your company uses or offers the schemes?

31. The recent increases in interest rates have prompted the government to change the bonus rate formula (Employment Related Securities Bulletin 51 (May 2023)) which should help to increase take up.

32. Aside from the fact that it is confusing, the SAYE bonus rate is reduced by two-thirds for early leavers. Given that we are in a time of economic uncertainly, we suggest that the penalty for early leavers is removed. This may help to encourage people to “dabble” with a SAYE in the short- term before making a larger commitment.

33. France offers “*intéressement et participation*” which is an egalitarian approach of profit sharing. Bonuses are linked to company performance rather than a Treasury-set formula that is reliant on bank interest rates. The result is a closer connection between individual performance and company health. Would something like that help increase retention?

34. The SAYE is linked to share options. For the average employee the idea of dabbling in a stock market with things like options is bewildering. Making participation in the stock market easier may help with uptake.

35. Increasing the investment limits to take account of inflation would help encourage employers to set up these schemes and employees to join.

36. SAYE and SIP schemes are of no interest to the “top earners” (who are the people that most companies most want to incentivise) as the upper limits on investment have not been increased. This means that SIPs will be set up only if the commercial benefit of keeping/ incentivising second and third tier employees will cover the cost of the scheme.

37. This contrasts with enterprise management incentives (EMI) where the company sets up the scheme to retain and incentivise its key high earner employees and then second and third tier employees effectively get a free ride on the scheme as the cost to add employees after the scheme has been set up is modest so many more employees get to benefit.

38. Simplifying administration may also be a way to increase participation by smaller companies. Currently, SIPs are almost always associated with really big companies which have the necessary expertise (see answer to Q13), because inter alia of the need to use a trust and handle the administration burdens of annual returns and self-certification.

39. The requirement broadly to offer similar share rights to all employees also means that it is unlikely to be used by smaller companies that need a more tailored approach..

Question 12. In your view, is awareness of the benefits of SAYE and SIP low? How could the government and other groups raise awareness?

40. Articles in the national press and social media about the benefits of such schemes would help to raise awareness, and perhaps this would encourage employees to ask their employers to offer such schemes. Information provided by formal/ government channels should also include simple, practical examples of how beneficial these schemes can be (as well as making it clear that share prices can go down as well as up).

Box 3.D SAYE and SIP rules and flexibility:

Question 13. In your view, how easy or difficult is it to operate or administer SAYE and SIP? Please explain your answer and specify any ways in which the schemes could be simplified.

41. These schemes are inherently complex to set-up and administer. Large employers, with in-house specialists, would usually require input from their HR/ Reward, Legal, Tax, Finance, Payroll, Company Secretarial and Communications teams to establish and operate these schemes. It is unlikely that small employers would have such teams or individuals with sufficient breadth of knowledge and experience to undertake the work effectively.

42. Accordingly, many employers feel the need to obtain external advice when setting up and running share schemes. However, we understand that, like payroll, advisers' profit margins for advice on these schemes is relatively low. This situation may discourage advisers from proactively recommending them to employers. Tax advisers who are not authorised to give investment advice would not be able to comment on whether an employee should join a scheme. It would be worth considering commissioning some research into the market and what steps might be taken to encourage take-up.

43. We would also note the accounting problem referred to the OTS final report on tax advantaged share schemes published on 6 March 2012 at para 6.17:

    "The cancellation of a SAYE contract by an employee is not treated as failure of a vesting condition and therefore the employer must continue to reflect the fair value of the option as a charge to the profit and loss account. The charge is accelerated to the current accounting period as a result of the cancellation of the contract. If an employee is granted a new SAYE option to replace the one cancelled the employer has to make an accounting charge for the new option as well. This is making companies reluctant to offer SAYE schemes, so employees lose out.".

Question 14. Do you feel SAYE and SIP offer enough flexibility to adapt to individual companies' circumstances? If not, please state why.

44. International employers prefer remuneration schemes that can be used world-wide. SAYE and SIP whilst tax advantageous in the UK may give rise to unexpected tax liabilities in overseas tax jurisdictions.

45. The all-employee nature of SIPs means that employers often require additional arrangements for their senior employees. In some cases, it has been known for senior management to refuse to implement a SIP scheme because it is an additional administrative burden to undertake alongside the share/option scheme provided to the senior management.

Question 15. Does your company make use of the current flexibility within the scheme rules? Do they vary the terms on which the employees participate? If so, in what ways?

46. Not applicable as we are answering as a professional body.

Box 3.E Lower income earners:

Question 16. Does participation in SAYE or SIP amongst employees vary according to remuneration? If so, in what ways?

47. Lower paid employees are less able to afford or want to reduce their take home pay even for a potential long-term advantage.

Question 17. In your view, does employee motivation or the reasons for participating in a share scheme vary according to different levels of remuneration? If so, in what ways?

48. There are a number of motivations governing someone's decision whether or not to participate, but for a lower income employee affordability will be a high priority.

Question 18. If you are a company or a scheme user, does your company currently make use of the flexibility of the rules and vary the terms on which your employees participate according to remuneration?

49. Not applicable as we are responding as a professional body.

Question 19. In your view, are SAYE and SIP appropriately targeted towards lower- and middle-income earners?

50. They are probably sufficiently targeted. The key policy question is whether and to what extent government wants to subsidise employees who work for companies over those who work for other organisations.

Question 20. In your view, what barriers exist that might prevent lower income earners from participating in an employee share scheme?

51. As wall as affordability, for which please see our answers to the other questions in this "Box", lower income employees are likely to be less financially aware than those in more managerial positions and will need more targeted assistance to help them understand what is involved.

Box 3.F Other incentives:

Question 21. What other performance incentives does your company offer? How do these compare to SAYE and SIP?

52. Not applicable as we are responding as a professional body.

Question 22. In your view, how are SAYE and SIP valued by employees compared to other forms of remuneration or incentive?

53. Different employees place different values on different forms of remuneration – some prefer cash, others prefer benefits-in-kind of a tangible nature, others benefits with an environmental, social and corporate governance (ESG) advantage, and yet others like share incentive schemes.

Question 23. Would your company have granted options or awards to employees outside of SAYE or SIP in the absence of those schemes?

54. Not applicable as we are responding as a professional body.

Question 24. Is there any other information you would like to share with us in relation to these schemes?

55. Please see above.

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see https://goo.gl/x6UjJ5).