30 Monck Street
London SW1P 2AP
T: +44 (0)20 7340 0550
E: post@ciot.org.uk

Non-Discretionary Tax Advantaged Share Schemes: Call for Evidence

Response by the Chartered Institute of Taxation

1 Executive Summary

1.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the UK for advisers dealing with all aspects of taxation. We are a charity and our primary purpose is to promote education in taxation with a key aim of achieving a more efficient and less complex tax system for all. We draw on the experience of our 19,000 members, and extensive volunteer network, in providing our response.

1.2 The CIOT is responding to the call for evidence seeking views and evidence on the current usage of Save As You Earn (SAYE) and Share Incentive Plan (SIP) arrangements, and whether they are effective in achieving their stated policy objectives.

1.3 The CIOT believes that both SAYE and SIP schemes, generally, fulfil their policy objectives of (i) aligning employee and shareholder interests, (ii) supporting recruitment and retention efforts, and (iii) encouraging financial planning. In this regard we believe that the schemes are effective and suitable, albeit they could be improved.

1.4 We believe that schemes are popular amongst larger, listed companies and their employees. The schemes do not present many barriers to participation, although the 3 and 5 years' holding periods may no longer be suited to a workforce that is much more mobile than it used to be, but the current financial climate may be a contributing factor in the reduction in participation.

1.5 We think that there is an overall complexity to the schemes (more so in respect of SIP schemes where the 4 different types of award which while providing flexibility can cause difficulties in understanding) that does hinder their take up. Simplifying the rules, so they are more consistent across both schemes, reducing holding periods, widening access to different types of employees (such as gig workers and employees of Private Equity (PE)-backed companies) and HMRC providing a full suite of draft documentation for each scheme, could make the schemes more attractive to both businesses and their employees.

1.6 While the 'free shares' option under SIP schemes does incentivise share ownership across all income levels, financial considerations can be a barrier to participation in SAYE schemes and 'partnership shares' in SIP schemes for many employees. Where 'spare' cash can be invested into these schemes then SAYE schemes tend to facilitate a short/medium term savings goal, with the shares usually sold on exercise, rather than incentivise share ownership whereas SIP partnership shares tend to be retained towards longer term financial goals such as retirement etc.

1.7 SIP and SAYE awards can be a powerful way of incentivising workforces as part of an overall remuneration package, which may include in addition to basic cash salary/wages, incentives such as cash bonuses, performance related pay, and benefits-in-kind (taxable and exempt). These schemes form a connection between the workforce and the performance of the company, even where an employee simply cashes in their option at the end of the holding period, and this connection can be a real incentive to perform well and so drive improved results for the company. Widening the availability of these schemes, by simplifying their administration and improving access to wider groups of the workforce should, we believe, be the way forward from this call for evidence.

2 Questions 1 - 3 – Respondent's profile

2.1 ***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?***

2.2 The CIOT is responding as a representative body and, therefore, this question is not relevant to us.

2.3 ***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.***

2.4 **About us**

2.5 The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.

2.6 The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

2.7 The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries.

2.8 Our members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

2.9 Our stated objectives for the tax system include:

- A legislative process that translates policy intentions into statute accurately and effectively, without unintended consequences.
- Greater simplicity and clarity, so people can understand how much tax they should be paying and why.
- Greater certainty, so businesses and individuals can plan ahead with confidence.

- A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented).

- Responsive and competent tax administration, with a minimum of bureaucracy.

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

2.11 The CIOT is responding as a representative body and, therefore, this question is not relevant to us. For clarity, the CIOT is a charity and does not offer any share schemes to its employees.

3 Questions 4 – 6: Effectiveness and suitability

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

3.2 We agree that in many cases SAYE and SIP arrangements can be implemented in a way that fulfils the government's three policy objectives of:

- Aligning employee and shareholder interests
- Supporting recruitment and retention efforts
- Encouraging financial planning.

3.3 This said, we think that there remain some companies that find that, for example, SAYE schemes do not align employee and shareholder interests, as in many cases employees with SAYE awards rarely become shareholders, but instead exercise their awards reactive to movements in share price. However, SAYE schemes do, we believe, help to encourage a savings habit and can be a useful tool towards medium to long term financial goals.

3.4 We understand that all-employee share schemes are common in larger, often quoted, businesses where there is sufficient resource and value to provide to employees. However, the schemes are less common in small and medium-sized businesses (SMEs). This can either be because of the administrative burden of such arrangements, or because the qualifying conditions are not met (see, for example, paragraph 4.5), or simply because the owners of a small business do not wish to dilute their shareholdings.

3.5 We also believe that there is a lack of awareness of these share schemes amongst companies more generally. For example, a recent survey by RSM of middle market businesses found that only 18% of surveyed companies currently offer employee share schemes as a means of attracting or retaining employees. Hence, a greater awareness drive would be one way to increase the number of companies prepared to offer incentives of this type, especially if this was coupled with simplification of the scheme rules.

3.6 ***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.***

3.7 The CIOT is responding as a representative body and, therefore, the question on offering SAYE/SIP to our employees is not relevant to us. This said, we understand from our members that assist in the provision and administration of share schemes, that one of the main reasons many companies offer tax-advantaged share schemes to their employees is the attractive tax incentives and flexibility the schemes offer, particularly the variety of awards possible under a SIP.

3.8 ***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?***

3.9 The CIOT is responding as a representative body and, therefore, this question is not relevant to us. This said, we understand from our members that work in this area that the businesses they support see SIPs as generally a more attractive arrangement from a tax perspective given the potential effective value that can be delivered to participant, for example by using matching shares etc.

3.10 It is worth noting that while SIP arrangements offer greater flexibility, they are also perceived to be more complex because of the different types of awards that can be made under the scheme.

3.11 SAYE arrangements, on the other hand, are perceived to be comparatively more straightforward and simpler to understand, but they do not always encourage employees to become shareholders, as many will exercise their options and sell simultaneously.

4 Questions 7 – 12: Company and employee participation

4.1 ***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.***

4.2 We believe that one of the main barriers to take up of these schemes is the administrative burden of operating them. For example, many companies will need to either appoint one or more persons internally to administer a plan or engage an external administrator/firm.

4.3 In regard to SAYE arrangements, we understand that the cost of engaging a savings provider can be seen as prohibitive.

4.4 The overall complexity of these schemes is also a barrier. For example, a number of documents are required and whilst specimen documentation is provided on HMRC's website, these are not a full suite and so companies will need to obtain professional advice to provide these.

4.5 Additionally, for all tax-advantaged scheme schemes, many companies find that they are prevented from offering schemes due to their ownership structure. For example, as Private Equity (PE) investment has become more prevalent in the UK (which often takes the form of a majority ownership in private companies) the result is that a business with PE investment will not meet the requirement that its shares must be in a company that is not under the control of another company.

4.6 Furthermore, the 3 (SAYE) and 5 (SAYE and SIP) year 'holding periods' are considered by many to be overly complex and can deter companies from offering these schemes.

4.7 In addition, we understand that some company law issues exist with regards to businesses being able to offer these schemes. For example, companies with low or no distributable profits are unable to offer SIP awards (except partnership shares), which can limit their applicability/attractiveness.

4.8 We also think that modern ways of working do not always align with companies looking to offer SIP/SAYE. For example, many gig workers will not be eligible as they are likely to be classified as 'workers' rather than 'employees' and increasingly international groups can mean that UK specific tax advantaged share schemes have less relevance for global groups.

4.9 ***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?***

4.10 We think that one reason for the number of employees using SAYE and SIP arrangements declining may be the relative lack of expendable income across workforces which has changed priorities. For example, the cost of living crisis and inflation.

4.11 Additionally, communication is important when launching share schemes. We understand, anecdotally, the shift toward hybrid working as opposed to office based employees can make it more difficult for employers to effectively communicate to their employees the advantages of a share scheme.

4.12 Furthermore, changes in expectations from sections of the workforce, particularly younger workers, and a trend towards more regular job movement, has we believe reduced the attractiveness of schemes that require service of up to 5 years.

4.13 While it is too early to say, there is anecdotal evidence to suggest that the reduction in the annual exemption for Capital Gains Tax (CGT) (and the reduction in the dividend allowance similarly) has added to the number of participants needing to consider their self-assessment obligations. This can be a significant disincentive and may be another contributing factor for the decline in take up of these schemes.

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

4.15 The CIOT is responding as a representative body and, therefore, this question is not relevant to us.

4.16 ***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.***

4.17 As a representative body, we think that for many employees one of the reasons they choose to participate in these schemes is that they feel like they have a meaningful interest in the business allowing them to benefit from the success financially as their 'shares' increase in value. Even if, for example, they simply cash-in their SAYE option after the 3 or 5 years vesting period.

4.18 Additionally, the ability to save in a tax-advantaged way and having a flexible option to choose how much to save boosts participation. This is because different employees have differing obligations affecting how much they can afford to save/invest, and differing habits as regards what they want to do at the end of the option period. So some will hold onto the shares, for example using them to as savings for retirement etc, whereas others will take immediate returns by selling the shares as soon as they vest or shortly thereafter.

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

4.20 We think that extending the qualifying company definition to include companies under private equity ownership and control would open up participation to a far wider range of companies that are currently excluded under the current rules. Additionally, we suggest removing the 'open market' or 'employee control' conditions from the shares that can be used in a SAYE scheme (to bring it into line with SIP, and the recent changes to CSOP).

4.21 We would also suggest reviewing the underlying rules for both schemes. Consistency and simplicity in the rules, for example, a single holding period of, say, either 2 or 3 years rather than flexible 3 or 5 years could help build greater understanding and, thus, take up of the schemes. In this respect, we suggest reducing the holding period to secure full income tax and NIC relief for acquisitions of partnership, matching and free shares under a SIP from 5 years to 3 years (as is currently the position for SIP dividend shares) or, potentially, to a shorter period given modern working patterns and the potential need to access share-based savings to deal with cost of living pressures – particularly for lower paid employees. Consideration should also be given to a change to the level of discounts available under the SAYE scheme, to re-balance them when compared to the position for SIPs (say, when using 2 for 1 matching).

4.22 Statutory corporation tax relief for employee share acquisitions under a SIP (CTA 2009, Part 11) should be brought into line with the general rules (CTA 2009, Part 12) as a simplification measure.

4.23 A mechanism should be introduced for removing or 'freezing' participants who are seconded abroad to avoid continued participation triggering overseas withholding and reporting issues.

4.24 To assist liquidity (for example, for unlisted or AIM listed company shares) a specific exemption from taxation of a purchase of own shares as a distribution should be introduced (similar to the exemption that was in place for the now defunct employee shareholder regime).

4.25 The rules on eligible employees should be reviewed with a view to broadening the definition of qualifying workers that may participate in these schemes, for example, to include gig workers (see paragraph 4.8 above).

4.26 For companies under the control of an Employee Ownership Trust (EOT), a change in the rules to permit any shares held in a SIP trust to count towards the 51% employee ownership requirement, should be considered.

4.27 We suggest that HMRC offer a full suite of documentation rather than the existing specimen samples as this would make it easier for companies to implement the schemes alongside simplified rules. Additionally, we suggest removing the need to state restrictions in SAYE option agreements (to bring these into line with the recent changes to Enterprise Management Incentives (EMIs)).

4.28 Another, more radical, option might be to consider consolidating the SAYE and SIP schemes into a single share scheme with a single set of simplified rules. This could make it easier for government to promote the advantages of an all-employee share scheme to businesses. It could also make it easier for businesses to implement an all-employee share scheme (especially if simplified rules reduce administrative burdens/costs) and promote awareness/participation amongst employees.

4.29 More generally, and given the reduction in the CGT annual exemption (and reduced dividend allowance) which has drawn more employees into self-assessment, a reduced rate of CGT for shares acquired under a tax-advantaged share scheme, as seen in EMI (10% on first £1m of gains), could be considered. Alternatively, a total CGT exemption, or additional exemption in addition to the normal CGT annual exemption, for shares acquired through SIP or SAYE arrangements might be considered.

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

4.31 We understand that many companies that already offer SIP and SAYE arrangements to their employees continue to do an excellent job of communicating the benefits of these schemes to their employees. However, it would seem to be the case that awareness more broadly is quite low, particularly outside large, listed businesses.

4.32 We think that the government could raise awareness of these schemes amongst employees and companies more generally through publicity campaigns to build on the platform of the UK having one of the most attractive regimes for employee share incentivisation. This could be linked in with some simplifications to the schemes, as suggested above, to make them easier and less costly to implement for businesses and more attractive to participate in for employees.

4.33 We would also suggest a broadening of the qualifying companies would also build awareness in parts of the business community that have always assumed that tax-advantaged share plans are not compatible with their business structures (for example, as noted at paragraphs 3.4 and 4.8 above, in respect of PE owned businesses).

5 Questions 13 – 15: SAYE and SIP rules and flexibility

5.1 ***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.***

5.2 We understand from our members who implement, operate and administer these schemes that many companies find it reasonably straightforward to operate/administer the schemes themselves, and that many others choose to engage external advisors to manage the schemes for them.

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

5.4 We believe that there is a good amount of flexibility within the SIP/SAYE rules, for example, different awards under SIP and flexibility to discount under SAYE, to enable companies to adapt these schemes to suit their particular requirements and circumstances. For example, the SIP partnership shares route does provide the flexibility for employees to invest via either salary and/or bonus sacrifice as appropriate. This said, some companies are unable to make awards of, say, free shares under a SIP because they lack distributable reserves, and currently they would be restricted to making awards under the partnership shares route.

5.5 This said, the definition of qualifying shares/companies has been in existence for many years and we believe should be reviewed and consideration given to broadening the definitions to include other types of company, for example, those under PE control (see paragraph 4.33 above), which was less prevalent when the plans were first introduced.

5.6 Similarly, we think that offering alternatives or relaxing the eligible employees rules to allow companies with less traditional forms of employment, for example, gig workers, to offer these schemes (see paragraph 4.8 above) would provide greater flexibility and increase uptake.

5.7 ***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?***

5.8 The CIOT is responding as a representative body and, therefore, this question is not relevant to us. This said, we understand from our members that work in this area that most companies they deal with offer a fairly consistent structure across awards. We further understand that varying the terms as provided by the scheme rules is quite rare, and for instance performance related free share awards are almost entirely unused, largely due to their perceived complexity.

6 Questions 16 – 20: Lower income earners

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

6.2 We understand that there is evidence that participation may be prohibited for some employees. We also understand that for some employers there is confusion around the interaction of SIP participation and National Minimum Wage (NMW) rules. This said, there are many companies who are able to show a substantial take up within their lower paid workers. We further understand that there is evidence that, rather than remuneration being the sole determining factor in determining participation, age also appears to be a significant driver, with younger employees often less likely to take up the offer to participate when compared to older employees.

6.3 ***Questions 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?***

6.4 We understand that financial considerations are one of the factors that motivate participation/non-participation in these schemes. Hence, while remuneration levels can be a factor, it is not as simple as lower earnings necessarily equates to lower participation, as each employee's financial obligations will be different. A key consideration is whether an employee in their unique personal and financial circumstances has 'spare' income that would enable participation in, for example, a SAYE scheme or to purchase partnership shares in a SIP scheme or sacrifice a bonus etc (noting that, in theory, there should be no remuneration-level barrier to participation where free shares are offered by an employer in a SIP).

6.5 ***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?***

6.6 The CIOT is responding as a representative body and, therefore, this question is not relevant to us.

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

6.8 We believe that SAYE and SIP schemes are appropriately targeted and can offer lower and middle-income earners an opportunity to participate in 'ownership' of the company they work for. The schemes could, however, be made simpler, with shorter retention/vesting periods. We believe this would improve participation as the 'rewards' and 'benefits' of these arrangements would be felt more quickly. It is also worth noting that given award values, for higher-income earners SAYE/SIP arrangements will often make up a much less significant portion of their overall remuneration package.

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

6.10 As noted in response to Question 17, we think it is more a case of financial obligations (and the cost of living crisis and inflation) being a barrier than solely levels of remuneration. NMW rules can, as noted above, also be a barrier.

7 Questions 21 – 24: Other incentives

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

7.2 The CIOT is responding as a representative body and, therefore, this question is not relevant to us.

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

7.4 We believe that SIP and SAYE awards can be extremely powerful ways of incentivising workforces. They can be a valuable part of the overall package offered by an employer (in additional to cash wages and incentives, and benefits-in-kind), and participants will often place great emphasis on those awards. However, the behaviours between the plans do differ – SAYE can often be used as a cash realisation plan (so, in many ways seen similar to a bonus) when share values/prices present a good opportunity, whereas a SIP might be more conducive to long term share ownership.

7.5 ***Questions 23: Would your company have granted options or awards to employees outside of SAYE or SIP in the absence of those schemes?***

7.6 The CIOT is responding as a representative body and, therefore, this question is not relevant to us. This said, we understand from our members that work in this area that many companies that do not qualify for SAYE/SIP schemes will make awards/grant options under non-tax advantaged share scheme arrangements. In some cases, overseas owned businesses who operate tax-advantaged share schemes in other jurisdictions (for example, ESPP in the US) will implement the same structure for UK employees, albeit without any form of tax benefits attached.

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

7.8 We think that one aspect of administration of these schemes that could also be looked at is HMRC's Employment-Related Securities (ERS) online filing service. We understand that there a number of minor software problems with the service (for example, numerical digit restrictions, inability to review and share submissions) and believe that a small amount of investment here could significantly reduce administrative burdens for all. For example, at the moment only the company is able to register for the ERS online service – improving the service to permit agents to register would improve the accuracy and timeliness of submissions. Similarly, a nil return is required where a scheme is closed but this cannot be submitted until after the end of the tax year, which can lead to this requirement being overlooked.

8 Acknowledgement of submission

8.1 We would be grateful if you could acknowledge safe receipt of this submission, and ensure that the Chartered Institute of Taxation is included in the List of Respondents when any outcome of the consultation is published.

The Chartered Institute of Taxation

29 August 2023