



Inland

# Revenue

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Mr N Stevens

**Date** 6 January 2004

**Our Ref** Investors Chronicle Correspondence

**Your Ref**

Dear Mr Stevens

**Approved share option schemes and adjustments allowed to take account of variations in share capital of which the shares form a part**

Further to our telephone conversation on 5th January 2004 I thought it would be helpful to summarise our conversation and set out the general position relating to the rules for approved share option schemes, where variations in share capital occur.

Prior to the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) being introduced the legislation relating to this matter could be found in paragraphs 25 and 29 Schedule 9 of the Income and Corporation Taxes Act 1988 (ICTA). Paragraph 25 of Schedule 9 of ICTA applied to a savings-related share option scheme (a "SAYE" option scheme) and paragraph 29 of Schedule 9 ICTA to share option schemes other than SAYE schemes ("Company Share Option Plans (CSOP)"). These paragraphs allowed such schemes to provide for the price at which shares may be acquired under them to be varied so far as is necessary to take account of variations in the share capital of which the shares form a part.

In practice, however, if there is a variation of the share capital, it may not just be the price that needs to be varied. In reality, the number and description of the shares to be acquired may also be affected. This had been recognised in practice by the Inland Revenue's published guidance material. Notes to the Income Tax (Earnings and Pensions) Bill as introduced in the House of Commons on 5th December 2002 at Change 169 covered this point. The Notes explain the rewrite of the legislation would allow an option scheme to provide for the number and description of the shares also to be varied so far as necessary

to take account of a variation in the share capital of which the shares form a part. Rewritten Paragraph 25 of Schedule 9 of ICTA (SAYE schemes) can now be found at paragraph 28 of Schedule 3 ITEPA and paragraph 29 of Schedule 9 ICTA (CSOPs) can be found at paragraph 22 of Schedule 4 ITEPA.

Para 22(3) and 22(4) of Schedule 4 ITEPA says

“(3) The scheme may provide for one or more of the following –

- (a) the price at which shares may be acquired by the exercise of a share option granted under the scheme,
- (b) the number of shares which may be so acquired,
- (c) the description of shares which may be so acquired,

to be varied so far as necessary to take account of a variation in the share capital of which the shares form part.

(4) But the scheme must provide that no such variation is to be made without the prior approval of the Inland Revenue.”

\* Please note although the description of shares may be varied the “class” of share may not.

The Notes to the Income Tax (Earnings and Pensions) Bill as introduced in the House of Commons on 5th December 2002 at Change 169 made it clear that the change to the legislation affected administrative matters only (and then only in principle and not in practice). As I confirmed in our conversation there has been no change in practice, ITEPA simply seeks to add clarity to the position.

The general principle is that the “adjustment” following a variation in share capital, should be one which ensures the value of the share option reflects what it would have been had the new share structure been in place when the options were first granted.

I hope this letter helpfully summarises what we discussed.

Yours sincerely

Inland Revenue  
Share Schemes Policy Adviser