

## UK share plans for non-UK companies – practical and technical challenges

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### Agenda



- Types of plans available
- What types of plans do non-UK companies typically adopt?
- Technical challenges
- Practical challenges
- Bayer's experience of operating UK share plans

## Types of plan available



### Executive/discretionary:

- company share option plan (CSOP)
- unapproved share option plan
- enterprise management incentive plan (EMI)
- long term incentive plan (LTIP)
- share matching plan
- deferred payment plan
- ExSOP™



## Types of plan available



### All-employee:

- savings-related share option scheme (SAYE)
- share incentive plan (SIP)
- all-employee EMI (saver)?
- all-employee CSOP (saver)?
- other?



## Executive share plans (1)



### CSOPs

- market value share options
- HMRC approval process (8 – 12 weeks)
- detailed legal requirements regarding company, shares, plan rules etc
- max value of shares under option £30,000 (at grant)



## Executive share plans (2)



### CSOPs - taxation

- option held for at least 3 years (or exercised within 3 years by “good leaver”):
  - no income tax or NICs on exercise
  - CGT on sale of shares (on difference between market value at grant and sale proceeds)
- option exercised within 3 years:
  - income tax and NICs on exercise (on difference between exercise price and market value at exercise)
  - CGT on sale of shares (on difference between market value at exercise and sale proceeds)
- “good leavers” – timing



## Executive share plans (3)



### Unapproved share options

- market value share options
- over CSOP limit/where don't qualify for CSOP
- straightforward
- taxation:
  - income tax and NICs on exercise (on difference between market value at exercise and exercise price)
  - CGT on sale of shares (on difference between market value at exercise and sale proceeds)



## Executive share plans (4)



### EMIs

- market value, discounted or nil-cost share options
- intended for smaller, high growth companies
- self certify that meet legal requirements
- company:
  - independent
  - subsidiaries
  - UK trade
  - qualifying/excluded activities
  - gross assets < £30 million



## Executive share plans (5)



### EMIs – taxation

Option	Period for tax benefits	Income Tax	NICs	CGT
EMI granted at market value	none, although if option held for 2 years, full CGT taper should be available	no	no	yes on sale of shares – if option held for 2 years, full taper relief may be available (effective rate 10%) – will depend on personal circumstances
EMI granted at discount to market value	none, although if option held for 2 years, full CGT taper should be available	yes on exercise - on difference between exercise price and MV at grant (or exercise, if lower)	yes on exercise - on difference between exercise price and MV at grant (or exercise, if lower)	yes on sale of shares – if option held for 2 years, full taper relief may be available (effective rate 10%) – will depend on personal circumstances
EMI granted at nil-cost	none, although if option held for 2 years, full CGT taper should be available	yes on exercise - on MV at grant (or exercise, if lower)	yes on exercise - on MV at grant (or exercise, if lower)	yes on sale of shares – if option held for 2 years, full taper relief may be available (effective rate 10%) – will depend on personal circumstances



## Executive share plans (6)



### LTIPs/PSP/Conditional Shares

- nil-cost share options or share awards
- unapproved for tax purposes
- participant receives benefit of historic value of shares
- taxation:
  - income tax and NICs on market value at exercise/acquisition of shares
  - CGT on sale of shares (on difference between market value at exercise/acquisition of shares and sale proceeds)
- uses less shares/has lower accounting cost than market value options?



## Executive share plans (7)



### Share matching plans

- participant “pays to play” – typically buys shares out of annual bonus
- holding period
- bonus shares may be “matched” by company
- focus on retention of shares

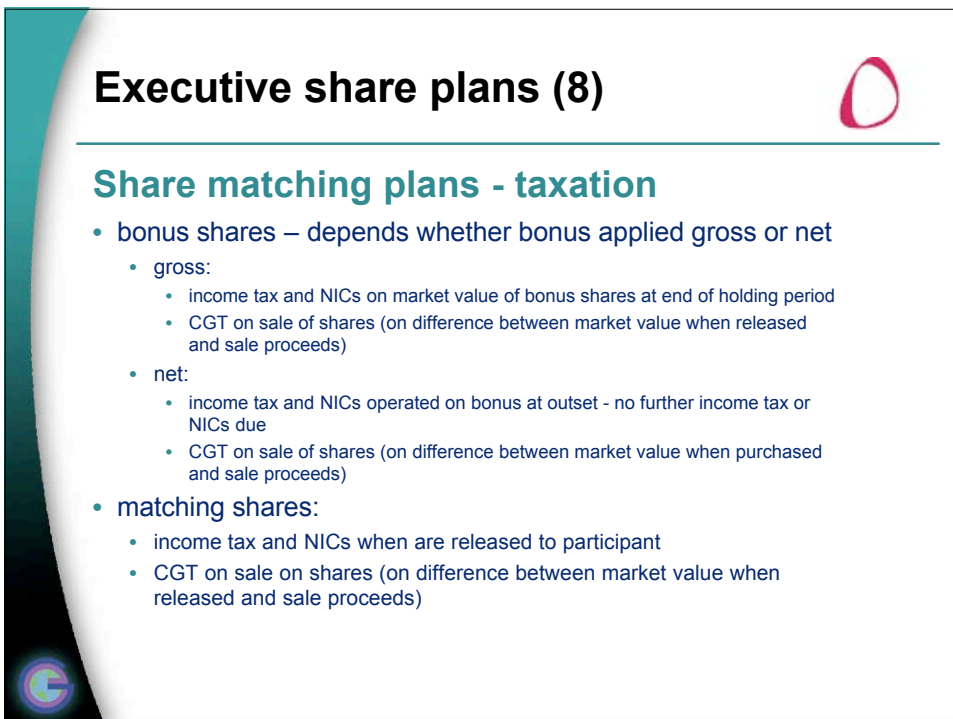


## Executive share plans (8)



### Share matching plans - taxation

- bonus shares – depends whether bonus applied gross or net
  - gross:
    - income tax and NICs on market value of bonus shares at end of holding period
    - CGT on sale of shares (on difference between market value when released and sale proceeds)
  - net:
    - income tax and NICs operated on bonus at outset - no further income tax or NICs due
    - CGT on sale of shares (on difference between market value when purchased and sale proceeds)
- matching shares:
  - income tax and NICs when are released to participant
  - CGT on sale on shares (on difference between market value when released and sale proceeds)



## Executive share plans (9)



### Deferred payment plans

- participant acquires shares up-front
- payment deferred (must be paid before shares sold)
- taxation:
  - annual income tax and NICs on deferred payment amount (beneficial loan - notional interest amount (currently 6.25%) subject to income tax and class 1A NICs each year)
  - CGT on sale of shares - CGT taper clock runs from acquisition of shares
- Companies Act – loans to directors
- commercial risk to participant if shares fall in value



## Executive share plans (10)



### ExSOP™

- discretionary share incentive arrangement developed by Pinsent Masons
- can be used as part of an PSP/LTIP award (historic value under PSP/LTIP, growth in value under ExSOP™)
- can be used as starting bonus or “golden hello”
- taxation:
  - not a disclosable tax avoidance scheme
  - tax analysis agreed with HMRC (in a COP10 ruling)
  - initial acquisition subject to income tax and NICs (insofar as participant does not pay “market value”)
  - CGT on growth in value above initial market value of participant's ExSOP™ interest – CGT taper relief runs from date of acquisition



## All-employee plans (1)



### SAYE

- HMRC approval process (8 – 12 weeks)
- share options linked with savings contract
- options at up to 20% discount to market value
- savings up to £250 per month for 3 or 5 years
- savings contracts for 3, 5 or 7 years – tax free bonus at end of savings period
- savings may (but do not have to) be used to exercise option
- option normally only exercisable within 6 months of end of savings period
- no risk for participant



## All-employee plans (2)



### SAYE taxation

- contributions from net salary
- bonus on savings tax free (interest if withdraw after > 1 year also tax free)
- option held for at least 3 years (or exercised within 3 years by “good leaver”):
  - no income tax or NICs on exercise
  - CGT on sale of shares (on difference between exercise price and sale proceeds)
- option exercised within 3 years by other leaver:
  - income tax (no NICs) on exercise (on difference between exercise price and market value at exercise) paid through self assessment
  - CGT on sale of shares (on difference between market value at exercise and sale proceeds)



## All-employee plans (3)



### SIP

- HMRC approval process
- “menu of choice”:
  - partnership shares (£1,500 per tax year or 10% of salary) – savings from gross salary
  - free shares (£1,500 per tax year)
  - matching shares (up to 2 matching shares for every 1 partnership share)
  - dividend shares (up to £1,500 per tax year)
- UK resident trust
- employee bears risk (as shareholder from outset)
- complicated?



## All-employee plans (4)



### SIP taxation

Shares	Withdrawal before 3rd anniversary	Withdrawal between 3rd and 5th anniversary	Withdrawal after 5th anniversary	Withdrawal before 5th anniversary as "good leaver"	CGT
Partnership Shares	•at any time •income tax and NICs on MV at date of withdrawal	•at any time •income tax and NICs on lower of price paid for shares and MV at date of withdrawal	•at any time •no income tax or NICs	•at any time •no income tax or NICs	•on growth in value after withdrawn from plan
Free Shares	•may be subject to forfeiture •income tax and NICs on MV at date of withdrawal	•will depend on plan rules •income tax and NICs on MV at date of withdrawal	•at any time •no income tax or NICs	•at any time •no income tax or NICs	•on growth in value after withdrawn from plan
Matching Shares	•may be subject to forfeiture •income tax and NICs on MV at date of withdrawal	•will depend on plan rules •income tax and NICs on MV at date of withdrawal	•at any time •no income tax or NICs	•at any time •no income tax or NICs	•on growth in value after withdrawn from plan
Dividend Shares	•at any time •taxed as dividend at date of withdrawal	•at any time •taxed as dividend at date of withdrawal	•at any time •no income tax or NICs	•at any time •no income tax or NICs	•on growth in value after withdrawn from plan



## All-employee plans (5)



### All-employee EMI/CSOP

- EMI/CSOP can be operated on all-employee basis
- written into rules or at discretion of board of directors
- not performance-linked?
- can be linked to savings contract (so similar to SAYE/SIP but with different tax treatment)
- savings from net salary
- interest on savings taxable
- tax treatment of options same as for discretionary EMI/CSOP



## What type of plans are non-UK companies using?




- Executive:
  - CSOP/Unapproved
  - EMI if qualify
  - restricted stock
  - other?
- All-employee:
  - SAYE/SIP
  - other?



## Technical challenges



- Plan structure – global or local focus
  - Shareholding structure
  - Sponsoring company
  - Shareholder/board approvals
  - Delegation of authority for implementation
  - Overseas legal requirements
  - Translations
  - Prospectus Directive?
- 

## Practical challenges



- Company's objectives
  - Project management
    - pre-launch
    - post launch
    - ongoing
    - maturity
  - Timing
  - Communications
    - company/advisers
    - employees
  - Costs
- 

## Bayer AG Headquarters Leverkusen



## Bayer – worldwide overview



Capital stock:  
€ 1.9 billion

Over 350  
companies

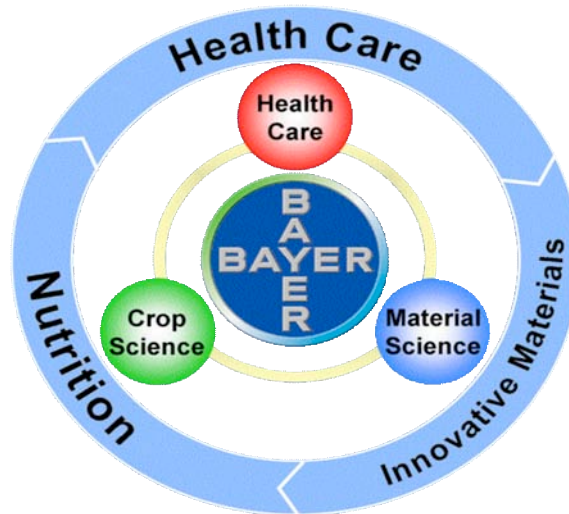


500,000  
stockholders

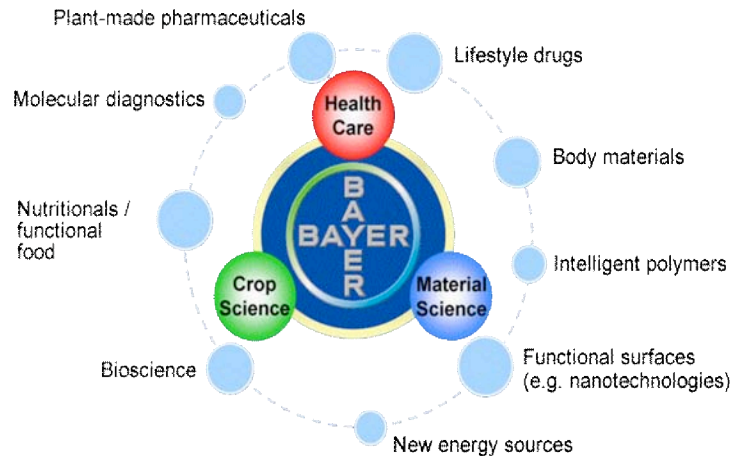
106,000  
employees

5,000  
sales  
products

## The shape of Bayer worldwide

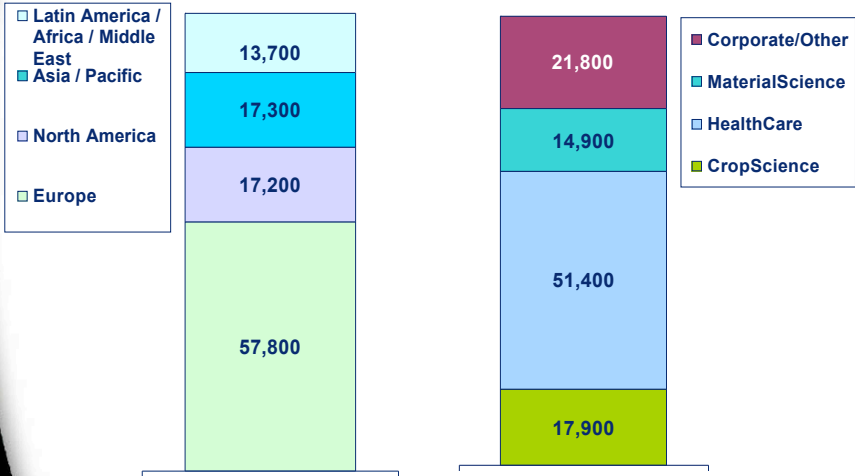


## Bayer worldwide – looking ahead



Bayer's broad portfolio offers an excellent basis for opening up attractive new markets.

# Bayer worldwide - employees



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# Bayer UK & Ireland - business activities



## HealthCare



## MaterialScience

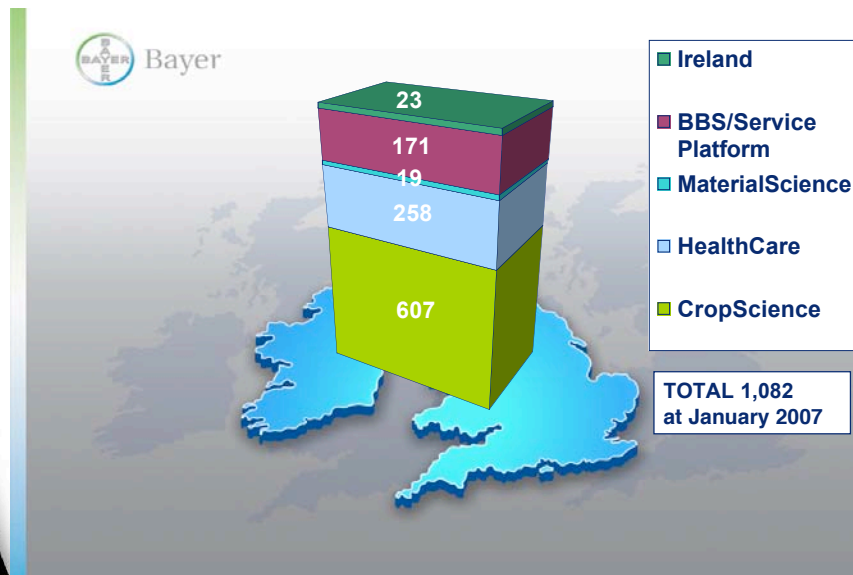


## CropScience



## Business Services

## Bayer UK & Ireland employees



## Bayer – share plans



- Bayer AG:
  - global executive share plans
  - all-employee plan for AG employees
- Local entities – authority delegated to adopt all-employee arrangements
- UK – SIPs adopted by:
  - Bayer plc (launched 2001)
  - Bayer Diagnostics Manufacturing Limited (launched 2001)
  - Bayer CropScience Limited (launched 2003)
  - Bayer UK Limited (launched 2003)
- Reasons for multiple plans
- All SIPs operated on same basis – partnership shares with 1:4 match

## Bayer – UK share plans



### SIPs – practical challenges

- pre launch/launch:
  - Bayer AG approval
  - communications (with AG, employees and plan administrator)
  - project management
- ongoing issues:
  - individual leavers
  - corporate reorganisations
  - corporate divestments
  - communications with continuing employees
  - maturity



## Questions?



Thank you for your participation

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