KEEP YOUR DREAM TEAM

Attracting and retaining talent in this notoriously challenging sector

Retaining talent has long been a key challenge for employers in the bars and restaurants sector. Across all levels, high staff turnover is cited as one of the main reasons for lower productivity. Employers can often find themselves trapped in a cycle of poor staff retention, reliance on non-permanent staff and, as a result, higher costs of continual training and re-training.

Appropriate employee incentive arrangements are seen as a key tool in trying to combat this issue, both for senior management and more junior employees. The most appropriate type of arrangement will depend on, amongst other things, how the shares in the company are owned be it family/privately owned, private equity backed or listed.

Exit-based schemes for senior management

- "*Exit-based*" incentive schemes are frequently established for senior management in private companies where the owners are planning to exit their investment within the short to medium term (in particular private equity investments). These schemes can be very effective at aligning the interests of management with the main investor, and thereby provide an important incentive and retention tool. Typically, exit-based incentives will be structured as either a share option scheme or a growth share scheme.
- An option scheme will typically be structured so that management will only be able to realise value by exercising their options at the time of the exit. Options will be subject to "*good*" and "*bad*" leaver provisions and often the achievement of personal performance conditions.
- Standard share options are inefficient from a tax perspective — income tax and National Insurance would be due when the options are exercised. However, some companies may also be able to grant tax efficient options, either under an enterprise management incentives scheme (**EMI**) or company share option plan (**CSOP**). EMI and CSOP options can enjoy capital gains rather than income tax treatment for all or part of any gain.
- Where a tax efficient option plan is not possible, growth shares can be an attractive alternative from a tax perspective. Under these type of arrangements, management would acquire a special class of shares which give them the ability to realise value on an exit if the equity value of the company has increased above a specified hurdle amount. If structured appropriately, managers can enjoy capital gains rather than income tax treatment for such shares. Growth shares are also typically subject to good or bad leaver provisions.

"They're very responsive and able to provide practical solutions to complex problems"

CHAMBERS UK

Shorter term incentives for senior management

- For private companies that do not have an exit in their business plan, different forms of incentive will be required to keep management with the business and fully motivated. The simplest type of arrangement would be a cash or 'phantom' scheme which pays out in accordance with a vesting schedule subject to company or personal performance. However, not only does this involve a cash cost to the business, it is also tax inefficient for the managers.
- EMI options and growth shares may be available, but the key issue is how the company is going to deliver value to management once their shares or share options have vested. Companies may do this by using some form of internal market, whereby employees are given opportunities to sell shares back to the company, other employees or an employee benefit trust.

Junior/mid-level employees

- For junior/mid-level employees, share based schemes are unlikely to impact retention so employers will often use performance-based cash bonus schemes. Employers operate these schemes in such a way that the risk of any potential "holiday pay" claims are minimised and that the requirements in respect of the national minimum wage are still satisfied.
- However, for companies looking to improve engagement with the wider employee population and promote an ownership culture, the broad-based rollout of a share-based scheme can be a very effective tool. Although this could be an all-employee EMI plan, giving employees actual ownership of shares can send an even more powerful message. The scheme administration does not need to be overly burdensome — using a specifically tailored class of shares, and an employee benefit trust to hold the shares on employees' behalf, can make them a viable alternative for companies.
- For companies too large to operate an EMI plan, tax advantaged alternatives are "*Save as You Earn*" or "*Share Incentive Plans*"

How we can help

- Our team can assist on all aspects of the design, implementation and documentation of employee incentive arrangements.
- We have recently advised on the employee incentive arrangements for a number of UK bar and restaurant businesses including **Admiral Taverns**, **Cirrus Inns**, **Red's True Barbecue** and **The City Pub Group**.

Who to contact

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