



# Employee Shares and Securities Unit

## Employment-related securities

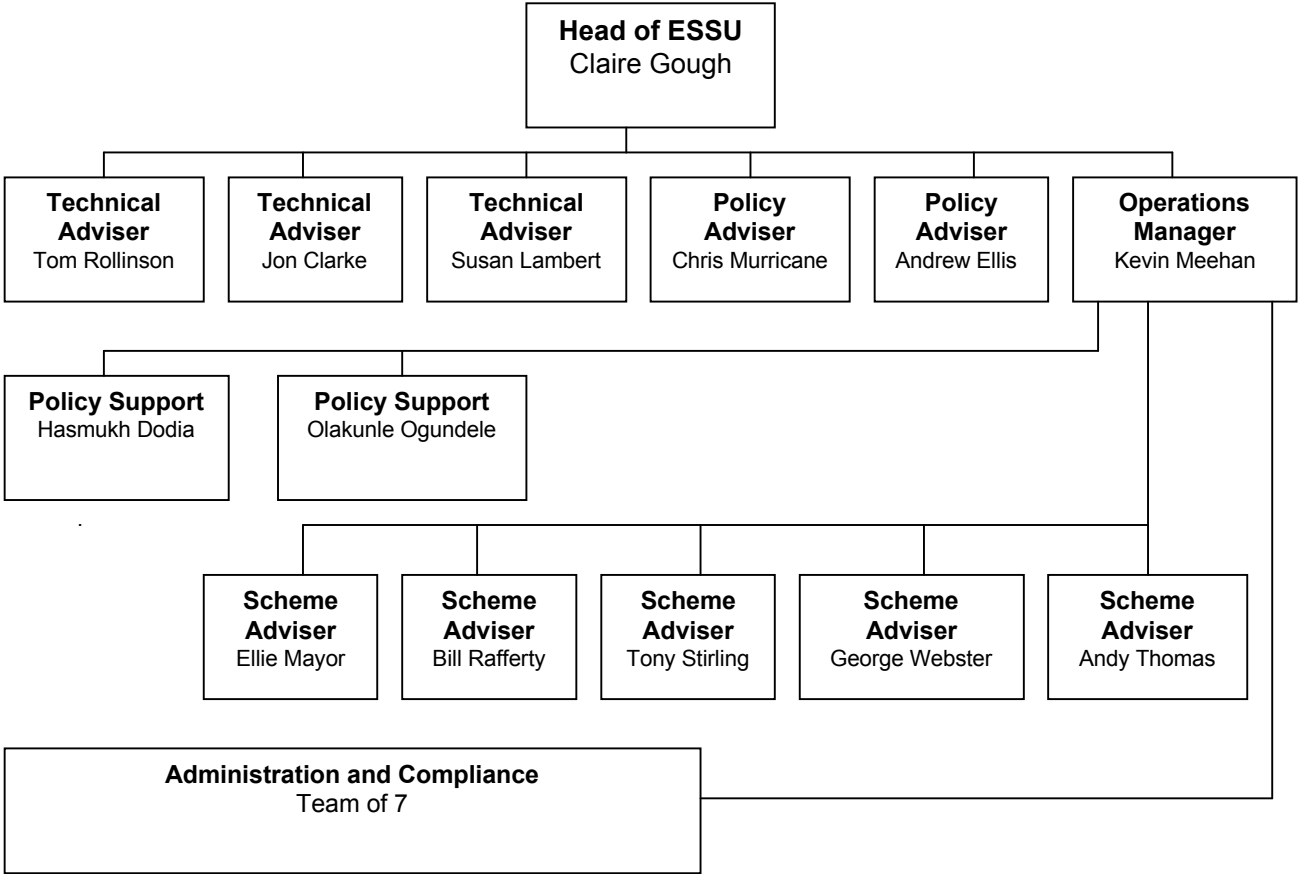
11 November 2009

# Employee Shares and Securities Unit

ESSU has end-to-end responsibility for share schemes, including

- approving CSOP, SIP and SAYE schemes,
- processing scheme returns (including Forms 42),
- dealing with technical enquiries from HMRC tax specialists and
- maintaining the legislation.

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- EBTs are, as their name suggests, trusts established for the benefit of employees of a particular employer. Their 'original' use was primarily as a mechanism for providing share-based incentives to employees.
- This mechanism enabled the company to obtain a deduction against its profits for its contributions to the trust. A tax charge would then arise on the employee when he exercised his options
- This mis-match in timing (an up-front deduction against business profits, but no corresponding tax charge until a later period) attracted the attention of the avoidance industry,

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- Litigation (the case of *Macdonald v Dextra Accessories Ltd and others*) where the House of Lords ruled that these types of scheme didn't work and, in fact, the companies who had contributed to EBTs were not entitled to a deduction against profits until emoluments were paid out to employees.
- Anti-avoidance legislation in Schedule 24 of the Finance Act 2003. This provides that where a person makes an employee benefit contributions, no deduction is allowed against profits until an employment income and NIC charge arises on an employee.
- At the same time, legislation introduced in Schedule 23 of the Finance Act 2003. This entitles an employing company to a deduction against its profits when an employee is granted shares, or exercises options over shares, in his employer.

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- HMT/HMRC have met with EOA several times and we are willing to look at any proposals that might reinstate relief in very limited circumstances
- but not at the expense of opening up avenues for abuse and avoidance which Sch 23/24 FA 2003 put an end to



Thank you

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