BRIEFING

Employee Share Incentive Schemes
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Employers are increasingly looking for methods to retain key talent and reward employees. Employee share incentive schemes which offer a tax saving to both the employer and the employee can be a valuable approach to achieving such objectives. This briefing outlines the different types of tax efficient share incentive schemes currently available in Ireland.

Revenue Approved Schemes

Certain incentive schemes which typically have greater tax efficiency must meet strict conditions and require advance approval from the Revenue Commissioners.

Approved Profit Sharing Schemes (APSS)

An APSS can be used by an employer to provide shares to employees in a tax efficient way. An APSS must be available to all employees who meet certain criteria although the individual allocations can be based on certain criteria which can differ for participants. In addition, an APSS Revenue approved scheme can be used by employees to convert an otherwise taxable discretionary bonus or element of salary into shares in their employing company. Employees may also apply a percentage of basic gross salary towards the purchase of shares, known as salary forgone. There is an annual limit on the value of shares that can be appropriated of €12,700 per tax year. Shares are then held in trust for a minimum of two years and where held in the trust for three years no charge to income tax arises on their allotment to the employee.

TAX CONSEQUENCES

No income tax is payable on the transfer of ownership to the employee at the end of the three year period. USC is payable at appropriation. Capital Gains Tax may arise on the ultimate disposal of the shares by the employee on the difference between the disposal proceeds and the market value of the shares on appropriation.

SOCIAL SECURITY

Employee PRSI is payable at appropriation through payroll. Employer PRSI does not apply.

WITHHOLDING

The employer must withhold USC and Employee PRSI through the payroll system.

REPORTING

Trustees are obliged to file an annual return to the Revenue Commissioners regarding the scheme by 31 March in the following year of assessment.

Save As You Earn (SAYE)

SAYE Share Option Schemes benefit from a favourable tax treatment and allow employers grant employees options over company shares at a discount of up to 25% of the market value of the shares at the beginning of the savings period. Employees must commit to regular monthly savings of between €12 and €500 over a predetermined period of three, five or seven years. The employee is granted an option to buy shares in the company on the basis of the amount they agree to save. The share option gives the employee the right to buy shares at the end of the savings period at an agreed price.

TAX CONSEQUENCES

No income tax is payable on the grant or exercise of the option except where the option is exercised within three years of having been obtained. USC is payable on the gain at exercise. Capital Gains Tax may arise on the ultimate disposal of the shares on the difference between the disposal proceeds and the option price on acquisition.

SOCIAL SECURITY

Employee PRSI is payable on the gain at exercise. Employer PRSI does not apply.

WITHHOLDING

The employer must withhold USC and Employee PRSI through the payroll system when options are exercised.

REPORTING

The employer granting the options must deliver details of options granted or exercised electronically on the Form RSS1 to the Revenue Commissioners by 31 March in the following year of assessment.

Unapproved Schemes

These arrangements do not require Revenue approval and do not require equality of treatment.

Share Options (other than those that qualify for the Key Employee Engagement Programme regime (see details below))

Where an employee receives an unapproved share option, there is no upfront charge to tax on the grant unless it is capable of being exercised more than seven years after it is granted.

TAX CONSEQUENCES
Income tax and USC are payable on the exercise of the option on the difference between the market value at exercise and the option price payable. Capital Gains Tax may arise on the ultimate disposal of the shares by the employee on the difference between the disposal proceeds and the market value of the shares at the date of exercise of the option.

SOCIAL SECURITY
Employee PRSI is payable on the exercise of the option on the difference between the market value at exercise and the option price payable. Employer PRSI does not apply.

WITHHOLDING
The employer does not have to withhold taxes. Income tax, USC and PRSI must be remitted by the employee with the Form RTSO1 within 30 days of exercise.

REPORTING
The employee should include details of options exercised on an annual self-assessment tax return. The employer granting the options must deliver details of options granted, exercised or released electronically on the Form RSS1 to the Revenue Commissioners by 31 March in the following year of assessment.

Key Employee Engagement Programme ("KEEP") Share Option Scheme

Finance Act 2018 announced the introduction of a new share based remuneration scheme for small and medium-sized enterprises (SMEs)[1] that carry on a "qualifying trade[2]". The scheme was formally enacted through

1 A SME for this purpose is an enterprise which employs fewer than 250 employees and which has an annual turnover not exceeding €50 million and/or an annual balance sheet not exceeding €43 million.

2 A "qualifying trade" means a trade other than a trade which is involved in share dealing, financial activities, professional services, dealing in or developing land, building and construction, forestry, coal or ship building.

a ministerial order on 14 January 2018. The KEEP incentive programme is designed to support SMEs in their effort to attract and retain "qualifying individuals" *ie* full time employees or directors of a company who work at least 30 hours per week for the company. The KEEP incentive is available for qualifying share options granted between 1 January 2018 and 31 December 2023, provided that the company is a SME at the time of grant of the options.

The value of shares over which share options can be granted to any one employee is limited to;

- €100,000 in any year of assessment;
- €250,000 in any three years of assessment; and
- 50% of the annual emoluments of the individual in the year in which the option is granted.

The total value of unexercised qualifying share options that can exist per SME is capped @ €3 million.

TAX CONSEQUENCES

Under this KEEP scheme, gains arising to an employee on the exercise of qualifying share options will, provided certain conditions are met, only be subject to capital gains tax when the employee disposes of the shares. This is in contrast to the income tax, USC and employee PRSI which would normally apply on gains arising on the exercise of share options.

SOCIAL SECURITY

No employee or employer PRSI is payable on gains realised on the exercise or disposal of KEEP share incentives.

REPORTING

The employee must return details of any capital gains tax due in their self assessment capital gains tax return. The employer granting the options must deliver details of options granted, exercised or related to Revenue by 31 March in the following year of assessment.

Free or Discounted Share Schemes

Where free or discounted shares are awarded a tax charge arises for the employee but there is however a saving of Employer PRSI.

TAX CONSEQUENCES

Income tax and USC are payable on the fair market value of the shares at the date of acquisition, less the purchase price paid by the employee, if any.

SOCIAL SECURITY

Employee PRSI is payable on the receipt of free/discounted shares on the fair market value of the shares at the date when beneficial ownership is transferred, less the purchase price paid by the employee, if any. Employer PRSI does not apply.

WITHHOLDING

The employer must withhold income tax, USC and Employee PRSI through payroll. The value of any shares awarded, less any price paid, will be treated as notional pay at the time the shares are given to the employee. If the liability exceeds the employee's pay, the employer is obliged to account for and remit the total tax and PRSI due on the actual and notional pay in the monthly P30 return. The tax must then be recouped from the employee or the employee is deemed to have received a further benefit.

REPORTING

Income tax, USC and PRSI are to be remitted by the employer to the Revenue Commissioners in the monthly P30 return. With effect from 2017 the employer's annual return of salary payments (P35) will include details of share based emoluments paid to employees.

Restricted/Forfeitable Shares

Where employees are given discounted or free shares which contain restrictions requiring that the shares must be retained for a fixed period before they can be sold, the taxable value of the shares can be abated. The restriction on disposal must be absolute and for genuine commercial reasons. The permitted abatement is determined by the period of years for which the restriction applies, 10% for a one year restriction, up to maximum of 60% abatement for a restriction of greater than five years. If the restriction is relaxed, an additional tax liability can arise. Where shares are forfeitable the employee will be entitled to a rebate of tax paid. Abatement can also apply to shares granted by way of option.

TAX CONSEQUENCES

Income tax and USC are payable based on the market value of the shares at the outset but may qualify for abatement of taxable value – 10% abatement per year of restriction up to 60% for a restriction of greater than five years. Capital Gains Tax may arise on the disposal of the shares by the employee on the difference between the disposal proceeds and the market value of the shares at date of purchase. Where the value of the shares is abated, the base cost for capital gains tax can in certain circumstances be reduced.

SOCIAL SECURITY

Employee PRSI is payable on the market value of the shares at the outset but may qualify for abatement of taxable value – 10% abatement per year of restriction up to 60% for a restriction of greater than five years. Employer PRSI does not apply.

WITHHOLDING

The employer must withhold income tax, USC and Employee PRSI on restricted share awards through the payroll system.

REPORTING

With effect from 2017 the employer's annual return of salary payments (P35) will include details of share based emoluments paid to employees.

Growth/Flowering Shares

Growth/Flowering share schemes involve the issuance of shares with very limited rights which may grow into more valuable shares on the happening of certain specified events. The advantage of these schemes is that they deliver shares upfront to employees.

TAX CONSEQUENCES

It may be possible to structure such shares in such a way as to minimise the income tax arising on the share issuance at the outset, and to ensure capital gains tax treatment on the ultimate disposal of the shares by the employee.

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