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Share schemes

There are a number of share incentive arrangements that companies can offer to their employees or directors. These include:

- restricted share schemes (clog schemes);
- share option schemes;
- Key Employee Engagement Programme (KEEP);
- flowering share schemes;
- forfeitable share schemes;
- convertible share schemes;
- Save As You Earn (SAYE) schemes; and
- Approved Profit Sharing Schemes (APSS).

These schemes may vary in terms of complexity and costs. The following is a brief outline of the main benefits for each of the above schemes.

Unapproved schemes

Restricted share schemes (clog schemes) provide a tax efficient means of rewarding employees or directors by granting shares which are subject to a clog on disposal. The shares are subject to restrictions prohibiting their disposal for a specific period.

As the clog restricts the employee's ability to dispose of the shares for a period of time, the employee/director is exposed to any fluctuation in the share price over the period.

The grant of the shares is subject to income tax. However, the restriction or clog on the disposal reduces the amount chargeable to income tax by a certain percentage depending on the length of the clog period, as set out in the following table. The set up and administration costs of the scheme are allowed for corporation tax purposes.

Period of restriction	%
One year	10
Two years	20
Three years	30
Four years	40
Five years	50
Over five years	60

This amount will also be the base cost for the shares on their subsequent disposal for Capital Gains Tax (CGT) purposes.

Share option schemes

Share options entitle the 'holder' the right to buy shares in the company in the future at a fixed price, usually the current value of the shares at the date of grant. The holder can make a profit if the shares increase in value and the option is exercised. Options are often used to retain and motivate selected key staff in a company by tying their remuneration to the share price.

Income tax on the exercise of the option is charged on the difference between the price paid (option price) and the market value at the date of exercise. This tax is known as Relevant Tax on Share Options (RTSO) and is payable to Revenue, along with Universal Social Charge (USC) and employee PRSI, within 30 days of exercise.

If the option is capable of being exercised more than seven years from the date of the grant and is granted at less than market value, Revenue reserve the right to tax the director/employee on the grant of the option.

CGT is payable on a future disposal of the shares, after exercise. CGT is charged on the difference between the disposal proceeds and the purchase price paid plus the amount chargeable to income tax and, where appropriate, the cost of the option itself.

Key Employee Engagement Programme (KEEP)

Introduced in Finance Act 2017, KEEP is a tax efficient share based remuneration incentive for SMEs. It is aimed at assisting SMEs attract and retain key employees or directors. Any gains realised on the exercise of qualifying share options granted by a qualifying company are fully exempt from income tax, USC and PRSI. Tax only arises when the shares are sold. The sale is subject to CGT.

A qualifying company is one which is a micro, small or medium sized company, incorporated in Ireland or the EEA and either Irish tax resident or carrying on a qualifying trade in Ireland through a branch or agency.

Employees are eligible for shares if they are full time employees or directors who hold less than 15% of the company shares. They must be in employment with the company for at least the last 12 months prior to the date the options are granted. They must hold the shares for a minimum of 12 months prior to exercise.

An employer can claim a corporation tax deduction for the cost of establishing the scheme. However, any sum expended by the employer to enable a company/trust to acquire scheme shares will not be allowed for corporation tax purposes.

Flowering shares

Flowering shares are a new class of ordinary shares issued by a company that offer little or no present day value. They entitle the holder to capital generated by the future growth of the company above its current value.

The incentive is based on the company reaching an agreed level of growth known as a hurdle. This gives the employee/director an added incentive to work hard for the company and facilitate growth. Once the hurdle has been met the shares have an agreed value which can be fixed or variable.

Where the shares have a marketable value at the date of allotment and are not purchased by the employee or director at the market value, the employee/director is subject to income tax, USC and PRSI on the benefit received. When the shares are disposed of the increase in share value is taxed at CGT rates.

An employer can claim a corporation tax deduction for the cost of establishing the scheme. However, any sum expended by the employer to enable a company/trust to acquire scheme shares will not be allowed for corporation tax purposes.

Forfeitable shares

Forfeitable shares are shares which are issued subject to the condition that they may be forfeited in the future, on the occurrence of certain events. There is a written contract put in place when the shares are issued, which sets out the conditions on which the employee or director will cease to benefit from the shares and where the shares will be forfeited by the employee or director. This contract must contain the bona fide commercial reasons for why the shares can be forfeited. A common reason for forfeiture is the employee/director ceasing to be employed by the company.

An income tax charge will arise to the employee/director on the acquisition of the shares for below market value. If the shares are forfeited, the income tax charged is reduced to nil and a refund of tax is payable to the employee/director. The employee/director must claim a refund of the income tax paid. The claim for a refund must be made within four years of the forfeit.

For CGT purposes, any loss on the forfeit of shares is limited to the consideration given for the shares less any amount received for the shares.

Costs for establishing the scheme are allowed as a deduction for corporation tax, however costs of funding share issue are not allowable.

Convertible shares

Convertible shares are a special class of shares in a company issued to employees or directors, which have little or no present value, but are capable of converting to ordinary shares in the future.

An income tax charge will arise to the employee/director on the grant of the shares, if the market value exceeds the price paid. The shares are valued based on their market value as if they were not convertible.

The conversion of the shares will also trigger an income tax charge. The treatment depends on the chargeable event:

- conversion to another security;
- release of the entitlement; and
- disposal prior to conversion.

For CGT purposes any amount charged to income tax can be added to the share's base cost, in order to calculate the gain or loss on disposal.

Costs for establishing the scheme are allowed as a deduction for corporation tax, however costs of funding share issue are not allowable.

Revenue approved schemes

Save As You Earn (SAYE) schemes

This scheme allows employees or directors to save part of their after tax salary over a three, five or seven year period. At the end of this period the employee/director can use their savings to purchase shares in their employer company. Membership of this scheme must be made available to all employees and directors. The minimum savings amount is €12 per month and the maximum is €500 per month. The shares can be purchased at a discount of 25% of their market value at the beginning of the three year savings period.

No charge to income tax arises on the purchase of the shares at the discounted price. If a employee/director acquires shares under a SAYE scheme, they can consider putting them into their personal pension plan if the rules allow. The value of the shares will be grossed up at the basic rate of tax like a normal cash contribution to a pension plan.

An employer can claim a corporation tax deduction for the cost of establishing the scheme. Any sum expended by the employer to enable a company/trust to acquire scheme shares will not be allowed for corporation tax purposes.

Approved Profit Sharing Schemes (APSS)

APSS allow employees and directors apply a percentage of their basic salary (max of 7.5%) towards the purchase of shares in their employer company or to convert a profit sharing bonus into shares in their employer company.

Under an APSS, the recipient employee/director is exempt from income tax on the shares received up to an annual limit of €12,700 in a tax year. They are also granted favourable income tax treatment on any growth in the value of the shares. If the employee/director sells the shares within three years of grant, income tax is charged at 100% of the value of the shares at the date of sale. This holding period will not apply where shares are transferred from an Employee Share Ownership Trust (ESOT) to an APSS subject to certain conditions. The disposal of shares will be subject to CGT.

Participation must be open to every full-time employee/director and part-time employee chargeable to tax under Schedule E and who satisfies the qualifying period (not more than three years). Shares may not be allocated to any individual holding a material interest (more than 15% of the ordinary shares) in the company where it is a close company.

The costs of establishing an APSS and any amounts paid by the company to the trustees, subject to certain conditions, are deductible in computing the company's profits for corporation tax purposes.

Employer and employee returns

The table below outlines the reporting obligations of employers and employees/directors in respect of the various share schemes mentioned.

Type of share/ award	Employer obligations	Filing/ payment date	Employee reporting obligation	Filing/ reporting date
Restricted shares	n/a paid through payroll	Through payroll	Annual income tax return	31 October in year following assessment
Share options	Form RSS1*	31 March in year following grant/exercise/ sale	Form RTSO1	Within 30 days of exercise
KEEP	Form KEEP1	31 March in year following	Annual tax return	31 October in year following assessment
Flowering shares	n/a	n/a	n/a	n/a
Forfeitable Shares	Form RSS1*	31 March in year following grant/ assignment/ release	n/a	n/a
Convertible Shares	Form RSS1*	31 March in year following grant/ conversion	Annual income tax return	31 October in year following assessment
SAYE	SRSO1	31 March in year following allocation	Form RTSO1 if option exercised within three years Annual income tax return	Within 30 days of exercise 31 October in year following assessment
APSS	Form ESS1	31 March in year following grant/sale	Annual income tax return	31 October in year following assessment

*All employers are obliged to complete this form where rights are assigned, granted, released or shares are allotted under unapproved share option schemes.

PAYE, PRSI and Universal Social Charge (USC)

All share awards subject to income tax, with the exception of share options (subject to RTSO) are generally subject to the PAYE withholding regime.

How Grant Thornton can help

At Grant Thornton, our dedicated Employer Solutions team have extensive experience in design and implementing remuneration and reward packages for employees.
If you would like to discuss setting up a share scheme or restructuring an existing scheme, please do not hesitate to contact us.

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