

# Tax and legal update

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## 'KEEP' your employees

The Finance Act 2017 introduced a new share based remuneration incentive for unquoted SME companies. The Key Employee Engagement Programme (KEEP) is aimed at assisting SME's to attract and retain key talent.

## Tax saving for employees

Under this scheme an employee may exercise a qualifying share option granted by their employer without incurring an income tax, employee PRSI and USC liability (typically totalling 52%). Tax of up to 52% would have been due on such an exercise prior to the introduction of this scheme. Capital Gains Tax (CGT) currently 33% on the disposal of the shares will apply.

**This incentive will be available for qualifying share options granted between 1 January 2018 and 31 December 2023.**

## Conditions to qualify

Some conditions that must be satisfied by the company include the following:

- be an SME, ie 250 or less employees, annual turnover €50 million or less and/or an annual balance sheet €43 million or less;
- engaged in a trading activity;
- incorporated and resident in Ireland or an European Economic Area (EEA) state;
- the SME must not have shares listed on a stock exchange (excluding the Enterprise Securities Market of the Irish Stock Exchange).

The employee who is granted KEEP share options must:

- be a full time employee or director of the qualifying company; and
- not directly or indirectly control more than 15% of the ordinary share capital.

## Limits

Certain limits apply for both the employee and the SME. The limits per employee are as follows:

- €100,000 in any tax year;
- €250,000 in any three consecutive tax years; and
- 50% of the employee's annual pay in the tax year in which the option is granted.

**For the SME, the total market value of all unexercised qualifying options may not exceed €3 million.**

Whilst the scheme is aimed at assisting SMEs in retaining key employees, it may fall somewhat short, eg the conditions and compliance requirements are quite complex and the financial limits may be low for some start-ups (aggregate €3 million market value of options per SME).

## The company seal

A company seal (the 'seal') is a hand-held pliers like device that embosses a company name on to a document when pressed. The seal must state the exact name of the registered entity as stated on its certificate of incorporation and should not be confused with a rubber ink stamp.

All Irish companies must have a seal, also known as a 'common seal', which should only be used with the authority of the company directors or a committee of its directors. It is important to note that any document to which the seal is affixed to, must be signed by a director and countersigned by a second director or the company secretary, unless the company's constitution states otherwise. The affixing of the seal should be authorised by resolution and recorded in the minutes of each respective board meeting. If a company is in liquidation, voluntarily or otherwise, the liquidator has a statutory power to use the seal wherever necessary.

A company may, if authorised by its constitution, have an official seal for use in any place outside of Ireland, which shall resemble the seal with the addition on its face of the name of every place abroad where it is to be used. Any deed or document to which the official seal is affixed shall bind the company, as if it had been sealed in Ireland and any person (in that place) may be appointed by the company to affix the official seal to a document, on which they are required to confirm the date and place at which the official seal was affixed.

There is no statutory requirement to maintain a register of each time the seal is used, but it is advised that such a register be maintained by any company where its seal is used on a regular basis, where a committee of directors have been appointed or if an official seal of that company is used abroad, if authorised by its constitution.

In practice, we find that the seal is almost always required at very short notice and few can remember when and where it in was last used and who now has it their possession. A seal can be ordered, usually for next day delivery at

a cost approximately €50. There have been cases where large transactions are placed on hold and board meetings are adjourned until the deal is located. It's importance therefore should not be underestimated and company directors should know the whereabouts of their seal at all times.

### **Court of Appeal rule Non Principal Private Residence (NPPR) deduction not available for landlords**

The Non Principal Private Residence (NPPR) charge was a €200 annual charge on non-principal private residences which was payable to the individuals relevant local authority. This charge was abolished in 2013 and replaced by Local Property Tax (LPT).

Revenue have consistently confirmed that this was not a tax deductible expense for landlords. However, in December 2016 the High Court ruled that the NPPR charge should have been a tax deductible expense for landlords when calculating their net rental profit and loss for the relevant tax years.

Revenue challenged this decision to the Court of Appeal. Pending the appeal being determined Revenue provided a facility to allow landlords to file an online notification on their claim to deduct the payment from rental income. Such claims were retained to be processed when the outcome of the appeal was known.

Until the Appeal was decided, Revenue could not amend tax assessments or process repayment claims. The Court of Appeal issued their judgement in favour of Revenue in December 2017. Accordingly, as there is no legal basis for the deduction, landlords who made a notification are not entitled to amend their tax returns to deduct the NPPR charge and these claims will not be

closed. Taxpayers who lodged an online notification do not need to take any further action.

### **Revenue eBriefs**

Revenue issued a significant number of eBriefs in December 2017 and early January 2018 in relation to a wide variety of tax heads and topics. A selection of the most topical eBriefs are outlined below.

#### **Revenue eBrief No. 120/17**

Revenue's Tax and Duty Manual '*What constitutes a trade*' has been updated to provide further guidance as to how Revenue deals with queries with a trading income aspect. The eBrief also advises that, queries concerning the availability of the 12.5% rate of corporation tax are now dealt with at tax district level or via the Revenue technical services facility. The Manual includes a summary of a number of trading opinions issued by Revenue over the past number of years.

#### **Revenue eBrief No. 122/17**

Companies registered with the Companies Registration Office (CRO) are required under Section 882 of the Taxes Consolidation Act (TCA) 1997 to register with Revenue when:

- they start to trade;
- there is a material change in their details; or
- they are required to do so by a notice from a Revenue inspector.

In early December 2017, Revenue issued notices to certain companies registered with the CRO during 2014, 2015 and 2016, requesting a reply, either to request a tax registration or to provide an update regarding the company's trading status.

#### Revenue eBrief No. 124/17

Revenue's Tax and Duty Manual 'Benefit-in-Kind (BIK) private use of company vans' has been updated to provide information in relation to the BIK exemption for electric vehicles which commenced on 1 January 2018. It has also been amended to clarify that 'company vans' refers to all vans provided to an employee by reason of their employment.

#### Revenue eBrief No. 127/17

With effect from 1 January 2018, the statutory basis of assessment for most employment income is the actual amount of income received (paid to the employee), ie the 'receipts basis' of assessment. In effect, the statutory basis of assessment for Schedule E income is aligned with the operation of PAYE.

#### Revenue eBrief No. 01/18

Revenue's Tax and Duty Manual 'Electronic Relevant Contracts Tax (RCT) system' has been updated to reflect the status of payment notifications in instances where the contract has been closed. A principal contractor can make a payment notification for a closed contract up to nine months after the end-date of the contract. If the payment is made more than nine months after the end-date, the principal contractor will need to re-open the contract to submit a payment/post payment notification. Where a contract has been closed for nine months and not re-opened, only unreported payment notifications can be input in respect of that closed contract.

Where a contract has been closed for 18 months or longer and not re-opened, no payment notifications either post payment or unreported, can be input in respect of that closed contract.

#### Revenue eBrief No. 04/18

Revenue's Tax and Duty Manual 'Deduction for expenses in respect of annual membership fees paid to a professional body' has been updated to clarify the circumstances in which membership fees paid to a professional body may be allowed as a deduction under Section 114 TCA 1997.

#### Revenue eBrief No. 06/18

Revenue's Capital Acquisitions Tax (CAT) manual has been amended to clarify that forestry/woodland businesses are not regarded as the making or holding of investments for the purposes of eligibility for business relief.

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