Share Based Remuneration

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Employers can offer many different share schemes to their employees or directors, often as a way of rewarding employees and encouraging loyalty and participation in a tax efficient manner.

Possible schemes include:

- Free or Discounted Shares
- Restricted share schemes (clog schemes)
- Share option schemes
- Key Employee Engagement Programme (KEEP)
- Flowering share schemes
- Forfeitable share schemes
- Convertible share schemes
- Restricted Stock Units (RSUs)
- Save As You Earn (SAYE) Schemes
- Approved Profit Sharing Schemes

These schemes have varying terms, conditions, and tax treatment.

This guide is a brief outline of each of the above schemes and is based on relevant legislation and administrative guidance in force at 1 January 2023. It does not cover the schemes exhaustively but is intended to answer some of the important and broad ranging questions that may arise. When specific issues occur in practice, it will be necessary to refer to the laws and regulations of Ireland and to obtain appropriate accounting, tax and legal advice.

Free or Discounted Shares

An employer may provide shares free of charge or at a discounted price to an employee / director.

Income tax, USC and PRSI will be due on the free or discounted shares based on the difference between the market value of the shares and the amount paid by the employee for the shares. The employer will collect the income tax, USC and PRSI under the PAYE system.

Capital Gains Tax (hereafter referred to as "CGT") is payable on the future disposal of the shares. CGT will be charged on the difference between the disposal proceeds and the market value of the shares at the time of acquisition.

Restricted Share Schemes

Employees/directors can be granted shares which are subject to a restriction (clog) on the right to dispose of those shares. The shares will be held in a trust established by the employer for the duration of the "clog period"..

The grant of the shares is subject to income tax, USC, and PRSI assessed on the difference between the share purchase price and the market value of the shares. However, the clog on the disposal reduces the amount chargeable to income tax, USC, and PRSI by a certain percentage depending on the length of the "clog period", as set out in the following table.

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

The "clog period" must be at least 12 months.

If the original restriction on the disposal of the shares is later removed or varied, the income tax, USC, and PRSI must be adjusted to take account of the actual period the restriction was in place. Essentially there will be a clawback of the reduction to collect the additional income tax, USC and PRSI due, based on the revised period of restriction or no restriction.The base cost for the shares on their subsequent disposal for CGT purposes will be the price paid for the shares plus the amount charged to income tax, USC, and PRSI.

There are limited exceptions, which allow a disposal during the "clog period" including the death of an employee and the employee receiving an offer for their shares upon a merger or acquisition of the company.

The restricted share scheme rules do not apply to shares acquired by a director or employee under certain share schemes such as an Approved Profit Sharing Scheme (APSS) or a Save as You Earn Scheme.

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 employees/directors in a company by tying their remuneration to the company's performance and hence the share price.

Income tax (at the marginal rate of 52% including income tax, USC, and PRSI) 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 income tax is known as "Relevant Tax on Share Options (RTSO)" and is payable within 30 days of an option being exercised and, as it is outside the PAYE system, the employee or director is responsible for making this payment to the Collector General along with submission of the Form RTSO1.

In certain cases, it may be possible to carry out a 'cashless exercise' or 'same day sale'. This occurs where a director or employee does not provide any cash to exercise the option and acquire the shares but requests the company sell the shares in order to finance the original exercise and the income tax liability on the gain realised on exercising the share option. CGT implications will need to be considered when carrying out a same day sale.

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. Broadly, CGT is charged on the difference between the disposal proceeds and the purchase price paid plus the amount chargeable to income tax, USC and PRSI on the grant or exercise of the option, (this will equal the market value of the shares at the date of exercise) and, where appropriate, the cost of the option itself.

Key Employee Engagement Programme (KEEP)

KEEP is a tax efficient share based remuneration incentive to assist SMEs attract and retain key employees/directors. The scheme applies to qualifying share options granted until the end of 2025. Any gains realised on the exercise of qualifying share options granted by a qualifying company are fully exempt from income tax, USC and PRSI. The gain is subject to CGT on a subsequent disposal of the shares.

Certain conditions must be satisfied for the company and the employee/director to be considered “qualifying” for the purposes of a KEEP Scheme.

Broadly, a company will be a qualifying company if:
- it is incorporated in Ireland or in another EEA State or the UK and tax resident in Ireland; or,
- it is resident in another EEA State or the UK and carries on a business in Ireland through a branch or agency.

The company must be an “SME” per the European Commission definition[1], and be an unquoted company throughout the period beginning on the date the share option is granted and ending on the date the share option is exercised. The company must exist wholly or mainly for the purpose of carrying on a “qualifying trade”.

A qualifying individual is broadly an employee/director who, throughout the period beginning on the date the share option is granted and ending on the date the share option is exercised, works full time in the qualifying company. The employee/director, must also, throughout the same period, devote substantially the whole of their time to the service of the qualifying company and spend a minimum of 30 hours per week working for the company.

The shares acquired on exercise of the option must be new ordinary fully paid up shares in the company. The share option price must not be less than the market value of the same class of shares at the date of grant and must not be exercised within 12 months from the date of grant or more than 10 years from the date of grant. At the date of grant, the total market value of issued but unexercised qualifying share options of the company is subject to a limit of €6 million.

Flowering Shares /Growth Shares

Growth shares (also known as ‘hurdle’, ‘ratchets ‘or ‘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 any 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. The hurdle is established by the employer when issuing the shares and it can refer to company performance, individual performance and any leaver provisions outlined. This gives the employee/director an added incentive to perform effectively for the company and facilitate growth. Once the hurdle has been met, the shares have an agreed value, which can be fixed or variable.

As valuing shares in an unquoted company is contingent on many variables, Revenue expect that companies use a method compliant with accounting standards and that they retain records of how the valuation was established.

Where the shares have a marketable value at the date of allotment and are not purchased by the employee/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. The base cost of the shares is the initial market value of the shares at the date the employee/director received them.

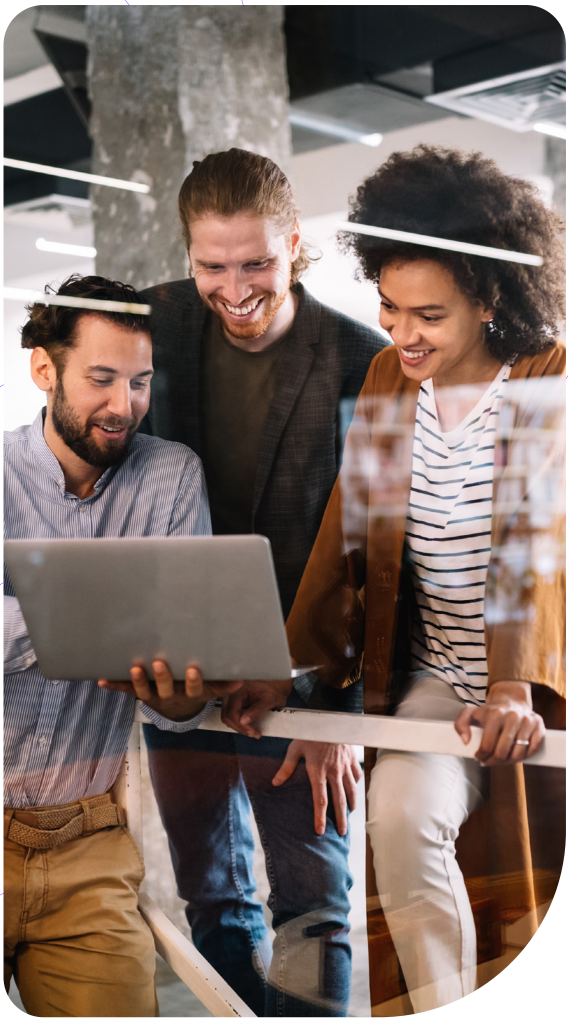
Forfeitable Shares

Forfeitable shares are shares issued subject to the condition that they may be forfeited in the future, on the occurrence of certain events. They are commonly used as part of a long-term incentive plan. 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/director. This contract must contain the bona fide commercial reasons why the shares can be forfeited. A common reason for forfeiture is the employee/director ceasing to be employed by the company.

Income tax, USC, and PRSI will arise on the acquisition of the shares for below market value. If the shares are forfeited, the 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 tax paid and any such claim 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 by the employee/director for the shares less any amount recovered on a subsequent forfeiture.

1 Fewer than 250 employees and an annual turnover not exceeding € 50 million or a balance sheet total not exceeding € 43 million



Restricted Stock Units (RSU)

A RSU is a grant (or promise) to an employee/director that, upon completion of a 'vesting period', they will receive a number of shares or cash to the value of such shares.

The vesting period is the period of time between the date of grant of the shares and the date on which the vesting conditions have been satisfied.

RSUs are subject to income tax, USC and PRSI through the PAYE system. The charge to tax arises on the following;

- On the date of vesting (rather than grant date) of the RSU; or
- Where the shares or cash pass to the employee/director on a date prior to the date of vesting.

CGT is payable on a future disposal of the shares. CGT will be charged on the difference between disposal proceeds and the market value of the shares at date of vesting.

Convertible Securities

Convertible Securities are a type of share, bond or stock that can be converted into a different description/form or into money or money's worth.

Income tax, USC and PRSI, will arise to the employee/director on the acquisition of the securities, if the market value exceeds the price paid. The entitlement to convert the securities is ignored when calculating the tax charge.

A further gain liable to income tax, USC and PRSI may arise when a chargeable event occurs. The types of chargeable events are:

- conversion to another security;
- release of the entitlement to convert;
- disposal prior to conversion; and
- receipt of a benefit connected to your entitlement to work (example: compensation received on the loss of the entitlement).

For CGT purposes any amount(s) subject to income tax, USC and PRSI, can be added to the share's acquisition cost, in order to calculate the gain or loss on disposal.

Save As You Earn (SAYE) Schemes

This scheme grants options over shares to its employees and full-time directors. Separately, it allows employees/directors to save part of their after tax salary and enter into a savings contract over a three, five or seven year period. At the end of this period, the employee/director can use their savings to exercise their option to purchase shares in their employer company. All employees and directors employed for a minimum period must be eligible to participate in the scheme on similar terms. The SAYE scheme requires prior Revenue approval.

The minimum savings amount is €12 per month and the maximum is €500 per month. The share option can be set at a discount of 25% of the market value of the shares at the beginning of the savings period. The amount saved must be sufficient to buy the shares at the option price set by the employer.

Any gains on the exercise of the options will be exempt from income tax but USC and PRSI will still be due. If the employee exercises the option less than 3 years after grant, in certain circumstances, the gain on exercise would be subject to RTSO. Exercising the option is not compulsory. The employee can choose to take back their savings (preferable if the market value at the date of exercise is less than the option price).

CGT may apply to the subsequent sale of any shares acquired under the scheme.

If an 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.

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. The APSS scheme requires prior Revenue approval.

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. USC and PRSI is due on the amount exempt from income tax. After the shares are issued, they must be held in a trust for a period of retention (normally two years). If the employee/director sells the shares after the retention period but before the release date (three years from the grant), income tax is charged at 100% of the value of the shares at the date of appropriation. There are exceptions to this for cessation of employment (due to injury, disability or redundancy) and upon the death of the participant employee. 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 where the disposal proceeds exceed the value of shares at appropriation.

Participation must be open to every employee and full-time director who satisfies the qualifying period (not more than three years) and is subject to PAYE in Ireland. Employee in this context includes full-time, part-time and temporary employees. Participation may be open to part-time directors and employees/directors who do not meet the three year period; have left the company in the previous 18 months; or are not subject to PAYE in Ireland (if a PAYE Exclusion Order is in place).

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 (a company controlled by 5 or fewer participators).

The trust must be registered for income tax.

Employer and Employee Returns

There are reporting obligations for employers who operate share schemes for their employees. In certain circumstances, trustees may also have a filing obligation. Penalties for failure to make returns may apply.

The standard filing deadline for such share schemes is 31 March following the year in which the activity arose.

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

Type of Share/ Award	**Employer/ trustee** (where applicable) **Reporting Obligations**	**Employer Filing Deadline**	**Employee/director reporting obligation**
Restricted Shares	Form ESA	31 March in year following grant/ disposal/forfeiture	Annual income tax return by 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 Annual income tax return by 31 October in year following assessment **
KEEP	Form KEEP1	31 March in year following grant/ exercise/sale	Annual income tax return by 31 October in year following assessment **
Growth/ Flowering Shares	Form ESA	31 March in year following grant	N/A **
Forfeitable Shares	Form ESA	31 March in year following grant/ forfeiture	N/A **
Convertible Shares	Form ESA	31 March in year following grant/ conversion	Annual income tax return by 31 October in year following assessment **
Restricted Stock Units	Form ESA	31 March in year following grant*/ vest	N/A **
Employee Share Purchase Plans	Form ESA Form RSS1 (if share options)	31 March in year following grant	N/A **
SAYE	SRSO1	31 March in year following allocation	Form RTSO1 within 30 days of exercise, if option exercised within 3 years Annual income tax return by 31 October in year following assessment **
APPS	Form ESS1	31 March in year following grant/ sale	Annual income tax return by 31 October in year following assessment **

*Reporting of RSUs under the "Grant Details" section of the form is currently optional.

**An employee must file a return by 31 October following year of assessment in a year in which there was a disposal and a gain, Form CG1 (Not self-assessed) or Form 11 (Self- Assessed)

How Grant Thornton Can Help

At Grant Thornton, our specialist 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, restructuring an existing scheme, or your obligations in relation to existing schemes, please do not hesitate to contact us.

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