An Roinn Airgeadais
Department of Finance

# Consultation on Ireland’s Taxation of Share-based Remuneration

December 2023

## Appendix I: Overview of Share Schemes

This appendix provides a brief overview of Revenue approved and unapproved share schemes. Revenue provides detailed guidance on scheme listed on the Revenue website.

**Unapproved schemes**

**Unapproved Share Options**

*Section 128 Taxes Consolidation Act 1997.*

A share option is a right granted to an employee or director to acquire shares in the employer company or its parent company at some point in the future. The option price is fixed on the day the option is granted.

There are two types of share options:

- Short options - capable of being exercised within 7 years of grant. No charge to Income Tax arises on the date that the right is granted.
- Long options - capable of being exercised more than 7 years after grant. A charge to Income Tax may arise on both the grant of the share option and the exercise, assignment, or release of the share option.

Employees or directors must pay Income Tax, USC and PRSI on any gain realised on the exercise, assignment or release of share options. After enactment of Finance (No. 2) Bill 2023, tax on gains realised after 1 January 2024 will be collected by the employer via payroll.

In the case of mobile workers who receive share options, any gain on exercise can normally be apportioned based on Irish workdays throughout the vesting period, where the employee has worked in both Ireland and a Jurisdiction with which Ireland has a double taxation agreement. This is in line with OECD recommendations regarding the taxation of share options.

## Restricted Stock Units (RSUs)

*Section 112 Taxes Consolidation Act 1997.*

A RSU is a grant or promise to an employee/director to the effect that, on completion of a “vesting period”, he/she will receive a number of shares or cash to the value of such shares.

On the date of vesting, the RSU can be share-settled or cash-settled.

Employees or directors who are Irish tax resident on the date of vesting are chargeable to Income Tax, USC and PRSI on the market value of these shares.

## Restricted shares

*Sections 112, 128 and 128D Taxes Consolidation Act 1997.*

These are shares, including shares acquired on the exercise of an option, where at the time of acquisition there is a clog or restriction on the disposal of those shares.

Subject to certain conditions the beneficiary is entitled to an abatement of the chargeable income gain which ranges between 10% and 60%, depending on the period of the restriction.

The amount chargeable to tax is the difference between the market value of the shares on the date of acquisition and the price paid (if any). The amount chargeable to income tax may be reduced by taking account of the abatement.

Employee or directors are chargeable to Income Tax, USC and PRSI on this amount.

## Discounted, free, partly paid shares

*Sections 112, 122 and 122A Taxes Consolidation Act 1997.*

These are shares which the employees or directors acquire for free, or at a discounted price on the allotment of the shares.

Income Tax, USC and employee’s PRSI is due on the difference between the price paid (if any) for the shares and the market value of these shares on the date they are acquired. If they are acquired at no cost to the employee or director, tax is due on the full market value.

## Employee Share Purchase Plans

*Sections 112 and 128 Taxes Consolidation Act 1997.*

Employee Share Purchase Plans are usually seen in branches or subsidiaries of United States corporations.

Generally under such plans, employees or directors can acquire shares either directly or on exercise of an option at a 15% discount, through deductions from their net salary or wages.

Employees or directors are chargeable to Income Tax, USC and PRSI on the amount of the discount, which is the difference between the market value of the shares at the time they are purchased and the amount paid.

## Phantom shares and stock appreciation rights

*Sections 112 and 128 Taxes Consolidation Act 1997.*

These are employee benefit plans that offer cash payments to employees or directors based on the value of the shares in a company. These may include the award of:

- Phantom shares – employees or directors are awarded a notional quantity of shares for a set period with a right to certain cash payments. This cash payment may be based on the increase in value of the shares over that period or on the market value of the actual shares at the date of redemption.

- Stock appreciation rights (SARs) – employees or directors are granted an option over a notional number of shares for a notional price. At date of exercise, employees or directors receive a compensation equal to the increase in value of the nominal shares since the date the option was granted. This compensation can be in shares or a cash payment.

Employees or directors are chargeable to Income Tax, USC and PRSI on the cash amounts. These cash payments are not exempt from employer's PRSI.

## Convertible securities

*Section 128C Taxes Consolidation Act 1997.*

These are securities acquired by employees or directors which are convertible into securities of another description or into money/money's worth.

Employees and directors are chargeable to Income Tax, USC and PRSI on the acquisition of a convertible security. The amount of tax due depends on how the convertible security is treated. Employees or directors are also chargeable to Income Tax, USC and PRSI on the occurrence of a chargeable event.

## Growth shares

*Section 112 Taxes Consolidation Act 1997.*

Generally growth shares are new shares issued by a company which entitle the holder to capital growth generated by the future growth of the business above its current value. These shares are issued at a day one value (usually a nominal value).

Once the agreed level of growth is achieved (referred to as the "hurdle") the shares will have the agreed value.

Employees or directors are chargeable to Income Tax, USC and PRSI on the market value if the shares awarded are free shares, or on the value of the discount if the shares awarded are discounted shares. If the shares have a nil value at the date of the award, then no tax arises.

### Key employment engagement programme (KEEP)

*Section 128F Taxes Consolidation Act 1997.*

This is a focused share option programme introduced in 2018 to incentivise employee retention by SMEs and is a notified State aid scheme.

Employees or directors are not chargeable to Income Tax, USC or PRSI on any gain realised on the exercise of the options, but are chargeable to Capital Gains Tax on disposal of the shares.

### Forfeitable shares

*Section 128E Taxes Consolidation Act 1997.*

Shares are awarded to employees or directors, but may be subject to forfeiture if specified targets are not met, or if employment ceases.

Income Tax, USC and employee's PRSI is due on the difference between the price paid (if any) for the shares and the market value of these shares on the date they are acquired. If they are acquired at no cost to the employee or director, tax is due on the full market value.

Tax is chargeable on the date that the shares are awarded. Revenue will repay any Income Tax and USC deducted if the shares are later forfeited. The Department of Social Protection are responsible for any PRSI repayments.

## Approved Schemes

### Approved Profit-Sharing Schemes (APSS)

*Sections 509 to 518, and Schedule 11 Taxes Consolidation Act 1997.*

A company may appropriate shares to its employees or directors who, subject to certain conditions, are exempt from an Income Tax charge on the share appropriation. Under this scheme, they may be allocated shares up to a maximum annual limit of €12,700.

A trust is required to acquire and hold the shares for the participating employees for a minimum of two years. If shares are disposed of after two years but before three years have elapsed, an Income Tax charge will arise.

Employees or directors are chargeable to USC and PRSI on the value of the shares when they are appropriated.

### Employee Share Ownership Trusts (ESOT)

*Section 519 and Schedule 12 Taxes Consolidation Act 1997.*

Under this scheme, a trust is established by a company for the purposes of placing shares in the hands of employees or directors. The trust can source funds from sources other than the employer, and can borrow, earn dividends and hold shares for up to 20 years prior to appropriation.

An ESOT is normally established in tandem with an APSS, so that shares can be appropriated in the same tax efficient manner as an APSS.

**Save As You Earn Schemes (SAYE)**

*Sections 519A to 519C and Schedules 12A and 12B Taxes Consolidation Act 1997.*

Under this scheme a company may grant share options to employees or directors at up to 25% discount. At the same time the employee enters into a savings contract with the savings contractually held by an approved third-party financial institution for a 3, 5 or 7 year-savings period. The employer will deduct the savings from the employee's net salary and place this with the approved savings carrier. At the end of the savings period, the participant may exercise the option to acquire shares or receive a return of their funds if they do not wish to acquire the shares or withdraw their funds.

Employees or directors are chargeable to USC and PRSI on the exercise of shares at the end of the savings period.