OUR SERVICES

Employee Share Ownership Plans ('ESOP')

Shares offer a way to reward your employees in addition to their basic pay. The shares can be awarded by either a formal scheme with a written set of rules or under an informal once-off basis. It can often be a condition of raising funds from investors that an ESOP is put in place shortly afterwards for the purposes of retaining and attracting key hires to deliver the goals set out in the business plan.

It is important to carefully design your ESOP given that the marginal rate of tax on shares in an employer company is 52% of the value of the shares received.

There are many different types of employee share schemes. They can be Revenue approved or unapproved.

Unapproved schemes

You do not need Revenue approval to operate an unapproved scheme. Examples of unapproved schemes include the following:

- share awards (free shares or discounted shares)
- share options (option to buy shares in the future at a pre-agreed price)
- Employee Share Purchase Plans (ESPP)
- Key Employee Engagement Programme (KEEP)
- Restricted shares

Unapproved schemes (Cont)

- Convertible securities
- Forfeitable shares
- Growth shares (hurdle or flowering shares).

Revenue approved schemes

There are three types of Revenue approved share schemes, which attract a lower rate of tax:

- Approved Profit-Sharing Schemes (APSS)
- Employee Share Ownership Trusts (ESOTs)
- Save As You Earn (SAYE) schemes.

You need Revenue approval to operate any of these schemes and, these days, they are rare in practice.

How share schemes work

You can offer shares or share options to an employee.

Shares: If an employee acquires an immediate shareholding in its employer company at a discount, the difference between market value on that date and price paid is a taxable benefit in kind. **The tax is payable by company**, as the employer, through the PAYE system. It can be recovered from the employee through future payroll.

The taxable value of the shares acquired can be reduced if there are limited rights attaching, if hurdles need to be achieved before they attain any value, or if there is clog on the employee's ability to sell the shares for a period of time.

Share options: are merely an opportunity for the employee to acquire shares in future at a discount on their market value at that future date. They do not get a shareholding upfront.

Tax on the exercise of a share option is based on the market value at the date of exercise minus the exercise price paid by the employee to acquire the shares. **The tax is payable by the employee** within 30 days of exercise so it must be funded from their own resources. As they will usually only have access to those funds in an exit scenario, they are effectively paying 52% tax on the exit event. If some of the sales proceeds are deferred (e.g. an earnout arrangement), they may not have sufficient funds to settle the exercise price and tax, unless the earnout is structured in a particular manner.

The Key Employee Engagement Programme "KEEP" is a tax efficient share option scheme introduced in Finance Act 2017. There is no income tax, PRSI or USC on exercising the qualifying share option and the employee only pays CGT and not income tax on a future sale of the shares, reducing the potential tax from 52% to 33% on an exit opportunity. However, there are several conditions to be met by both the company and the employee for the period from the date of grant to the date the share option is exercised to qualify for the tax relief. If they are not met, 52% tax will be payable on the market value of the shares at the date of exercise.

Taxation: If no tax relief is available, income tax is chargeable on shares or share options acquired by employees free of charge or at a discount price. Share based remuneration is also liable to Universal Social Charge (USC) and employee Pay Related Social Insurance (PRSI), so the marginal rate of tax on a share award is 52%.

Employer PRSI does not apply to share-based remuneration, which is a tax saving of 11.05% for the employer.

Filing requirements: There are several year-end reporting obligations for employers who operate share schemes for their employees. In certain circumstances, trustees have a filing obligation.

The standard filing deadline for such share schemes is 31 March following the year in which the activity arose. For example, returns in respect of 2022 activity are due by 31 March 2023. Penalties for late or failure to make returns may apply.