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Budget 2017 and the possibility of a more Tax Efficient Share-Based Remuneration System

by **Gillian Dully**

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The Department of Finance (the Department) has published the *Tax Strategy Group's Paper on Taxation of Share Based Remuneration* (the Paper), which outlines potential developments in the taxation of share-based remuneration.

The Tax Strategy Group is not a decision making body and its papers highlight issues and options for consideration in the budgetary process.

Background

The publication of the Paper follows on from recent developments:

- The Department of Finance's public consultation process on the tax treatment of share-based remuneration (the Consultation Process) which closed on 1 July 2016. There were over thirty submissions by interested parties including the Irish ProShare Association (IPSA), the Small Firms Association, the Irish Venture Capital Association, the Irish Tax Institute and IBEC.
- The Government's commitment to explore mechanisms through which SMEs can reward key employees with share options in a tax efficient manner, as outlined in the Programme for Partnership Government in May 2016.
- A review by the Department of Finance in 2015 to consider changes to the tax system to incentivise entrepreneurship more effectively.

Impediments to Tax Efficiency

The Paper outlines some factors which have had a negative impact on the tax efficiency of share-based remuneration, including the application of employee PRSI and USC on share-based remuneration and the recent abolition of various tax reliefs.

Advantages of Employee Financial Participation

The Paper recognises the advantages of employee financial participation and the growing trend in some sectors towards the use of share based remuneration. However, the Paper indicates that consideration must be given as to whether share based remuneration tax supports are an appropriate use of fiscal resources.

Common Themes

The Paper highlights the main themes raised in the Consultation Process:

- Tax becomes payable shortly after the exercise of share options, but generally employees do not

have the resources to fund the tax and exercise price, as there is no market for the shares in an unquoted company.
- Various increases in the rate of CGT from 20% to 33% raises concerns over the viability of Revenue approved share options schemes and restricted share schemes.
- It should be possible to offer APSS and SAYE schemes to key employees only, rather than the current inflexible requirement that such schemes be made available to all employees on similar terms.

Potential Changes to the Taxation of Share Based Remuneration

The Paper identifies possible changes to the tax treatment of share based remuneration:

- Changing existing Revenue approved schemes to permit an element of them to be targeted at key employees only.
- Postponing the tax charge on the acquisition of shares in an unquoted company.
- Reducing the CGT rate for disposals of shares.

The Paper notes that any changes to the current tax regime on share based remuneration must be considered in the context of the EU state aid legislation. Furthermore, the Paper indicates that given the limited fiscal space available for tax measures consideration might be given as to whether existing Revenue approved schemes ought to continue and whether the employer PRSI exemption should be retained.

Detailed Recommendations in Submissions

Submissions on the Consultation Process by various interested parties highlighted the significant disadvantages of the current tax regime and outlined comprehensive recommendations to improve the tax efficiency of share based remuneration.

Budget 2017

We should find out whether the Government proposes to take any action in this area when the Minister for Finance gives his statement on Budget 2017, which is likely to be in October.

The introduction of a more tax efficient share-based remuneration regime would be greatly welcomed and it would be a strong signal that Ireland intends to remain a competitive economy after the recent Brexit vote.

If you are interested in obtaining more information about share incentives generally please contact Gillian Dully at gdully@lkshields.ie.

Gillian is an Associate Solicitor at LK Shields Solicitors and is a member of the IPSA Council. She has considerable experience in the structuring of share incentive schemes and the treatment of share options and other employee benefits in mergers and acquisitions.

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