



EMPLOYMENT, PENSIONS AND EMPLOYEE BENEFITS

Share Remuneration in Private Companies: From Start-Ups To SMEs

by **Gillian Dully**

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If a start-up or a Small to Medium Enterprise (SME) is considering setting up a share scheme or employee incentive arrangement so that it can attract and retain key talent, there are various types of schemes available.

The type and size of the business will influence the suitability of a particular type of incentive arrangement. A review of the schemes available for start-ups and SMEs is set out below.

Types of Schemes

Revenue approved share scheme arrangements (e.g. Save As You Earn Schemes and Approved Profit Sharing Schemes) are tax efficient, but they are generally unsuitable for start-ups or SMEs, because these schemes must be made available to all employees on similar terms. Unapproved schemes do not generally require Revenue approval or equality of treatment of employees and are more flexible for start-ups and SMEs.

KEEP Share Options

The Key Employees Engagement Programme (KEEP) is a newly introduced tax advantageous share option incentive arrangement for SMEs.

Qualifying SMEs may grant KEEP share options to key employees. There is no charge to taxation on the grant of a KEEP share option. Income tax is not payable on the exercise of an option which is a major advantage to KEEP. Capital Gains Tax (CGT) will be charged when the employee disposes of the shares acquired on the exercise of the share option.

There are a number of very restrictive conditions that must be satisfied under the KEEP programme which may impact on KEEP's effectiveness for SMEs. Various interested parties are seeking amendments to the current KEEP regime as part of the Budget 2019 process and we await developments in this regard.

Other Unapproved Share Option Schemes

An employer may grant options to acquire shares under an unapproved share option scheme. Generally, income tax becomes payable shortly after the exercise of share options on the difference between the market value at the exercise date and the option price paid on exercise. CGT may also apply on the disposal of shares acquired on the exercise of a share option. A private company might consider granting both KEEP options and non-KEEP options to maximise the levels of awards of share scheme remuneration to its key employees.

Restricted, Clogged or Forfeitable Shares

An employer may award employees free or discounted shares up front and income tax and USC are payable based on the market value of such shares. CGT may arise on the disposal of the shares. Where such shares contain genuine restrictions on the sale or transfer then the taxable value of those shares may be abated by up to a maximum of 60% for restrictions of in excess of five years. If the shares are subsequently forfeited the employee may be entitled to a rebate of tax paid.

Growth or Flowering Shares

An employer may issue shares to employees with limited rights attaching to such shares at the date of issue. The shares will only grow into more valuable shares when certain specified events occur. A business might be able to structure growth or flowering shares so as to minimise income tax arising on the issue of the shares and ensure CGT treatment on the subsequent disposal only.

Phantom Share Schemes and Long Term Incentive Plans

There are a wide range of employee incentive arrangements that an employer can establish, which do not involve the issue of shares to an employee. These arrangements are essentially a form of bonus arrangement for employees. They are not generally tax efficient, but they are flexible for employers and avoid the issue of shares to employees in the private company.

If you are interested in obtaining more information regarding KEEP or share schemes generally please contact Gillian Dully at gdully@lkshields.ie.

Gillian advises on all legal aspects of share plans and employee incentives. She has considerable experience in advising on the structuring of share incentive and bonus schemes for Irish and international clients. Gillian regularly drafts scheme documentation governing new established incentive arrangements taking into account the company's structure, business environment, future commercial goals and categories of employees. She advises on existing incentive schemes and the amendment and restructuring of such arrangements to deal with matters arising during the lifetime of the scheme. She has extensive experience in advising on the treatment of share options and other employee benefits in many high profile takeovers and mergers and acquisitions. In addition, she advises on a range of general corporate and commercial matters with a particular emphasis on pensions law.

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