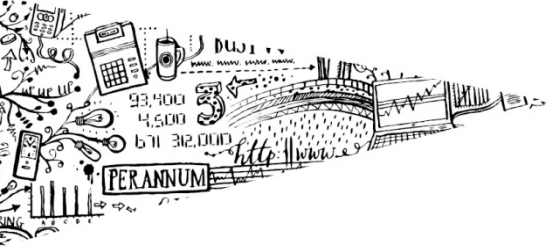


Tax alert Ireland

Issue 10/11



Revenue issue guidance on share schemes

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Background

PAYE and PRSI were extended to benefits provided to employees in the form of shares with effect from 1 January 2011. The extension of PAYE/PRSI and the Universal Social Charge (USC) to equity remuneration gives rise to a number of practical issues. In response to representations made to them by Ernst & Young and professional bodies, the Irish tax authorities have issued guidance in relation to the application of PAYE, PRSI and the USC to share based remuneration.

PAYE on share awards

The eBrief confirms that in general, share awards are to be treated in the same way as other non cash benefits. Therefore, the provisions of Revenue's published guidance on the application of PAYE to benefits-in-kind will be relevant, including the provisions regarding accounting for tax to Revenue and recouping same from employees.

Vesting and delivery of awards and payment of tax

Revenue has confirmed that in the case of awards which are subject to a vesting period before they are delivered to the employee, the tax liability will arise at the vesting date (rather than the date of grant). Shares will be valued by reference to their market value at the vesting date.

Where there is a period between the vesting of a share award and the actual delivery or settlement of the shares, collection and payment of PAYE/PRSI and the USC can be postponed until the date on which the shares are settled, provided that the settlement date is not more than 60 days after the vesting date. Notwithstanding the postponement of the payment, the chargeable date for tax purposes remains the date of vest and it is the value on that date (including foreign currency conversion) which must be used to establish the taxable amount.

USC on share options

In certain circumstances, a higher rate of USC of 10% can apply to non-PAYE income in excess of €100,000. The Revenue guidance confirms that the higher rate will not apply to share option gains. Therefore, the maximum rate of USC on options is 7%.

PRSI on share awards

The eBrief confirms the position set out in earlier guidance, which is that awards made prior to 1 January 2011, but settled on or after that date will not be subject to PRSI, provided the award was evidenced in writing before that date.

PRSI on share options

Gains on unapproved share options will continue to be outside the PAYE system. However, employers will be obliged to account for **PRSI** on such gains. Where an employee is still in employment when an option is exercised, PRSI should be accounted for through the payroll as normal (i.e. treating the gain as a notional payment). However, where recovery of employee contributions is not possible, e.g. where an employee has ceased employment, the employer may account for the employer portion of the PRSI only. The employer will be obliged to inform the PRSI Special Collections Unit (SCU) of the Department of Social Protection of such cases. As a transitional measure, employees will be required to account for their portion of the PRSI to the SCU. It is intended that from 2012, the employee's PRSI will be payable with the RTS01 form, which is used to account for income tax and USC on share options.

Approved Profit Sharing Schemes (APSS)

Shares awarded under a Revenue Approved Profit Sharing Scheme continue to be exempt from income tax. However, USC and PRSI are chargeable on the Initial Market Value (IMV) of shares appropriated. Revenue has confirmed that in cases where employees have entered into a salary foregoing arrangement to fund the purchase of shares, for ease of administration, the USC and PRSI may be deducted from earnings when salary is forgone.

Employers and employees may alternatively fund the payment of the USC and PRSI out of other non-share net earnings. It is not intended that the requirement to fund the payment should impact on the annual limit of €12,700 applicable to Approved Profit Sharing Schemes.

Save As You Earn Schemes (SAYE)

Gains arising on SAYE options are exempt from income tax, but are liable to PRSI and USC, which should be operated through the payroll system on the gains. However, where an individual has ceased employment, the USC will be payable by the employee under the self assessment system. The provisions as set out above in relation to PRSI on other share options will equally apply to SAYE schemes.

Revenue has confirmed that the provisions in the USC legislation which provides for the charging of the USC on both the grant and exercise of options, resulting in a double charge, is unintentional and it will only seek to collect the USC and PRSI on the exercise of an option.

Any bonus/interest is not chargeable to the USC or PRSI even where it is not used to fund the exercise of shares options.

Valuation of shares in unlisted companies

Revenue has stated that they will not provide a valuation service for shares in private companies and that where such shares are awarded to employees, the employer should make a 'best estimate' of the amount of notional pay, using the most appropriate valuation method(s) for the circumstances. In the event of a Revenue audit, the employer should be in a position to demonstrate that all relevant information was evaluated and also provide the reason for choosing the valuation method(s) used together with the detailed workings of the valuation.

Next steps

Employers operating employee share schemes should review their payroll systems to ensure that they are in a position to correctly track and value employee share awards, and to operate and account for PAYE, PRSI and the USC on such awards.

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