MAPLES GROUP

UPDATE

Ireland Update: Keeping on Top of Your KEEP Obligations

What is KEEP?

The Key Employee Engagement Programme ("KEEP") is a tax efficient share option scheme for small and medium-sized enterprises ("SMEs") and start-up businesses which is designed to support SMEs in their efforts to attract and retain key employees. SMEs can be at a disadvantage when competing with larger companies and KEEP provides some scope for smaller innovation driven enterprises to compete for top talent.

In general, where an employee or director exercises a share option, they are subject to income tax on the difference between the market value of the shares acquired and any price paid for those shares. Employees and directors can face difficulties in funding the tax liability where they do not immediately dispose of the shares received on exercise of the option.

Under the KEEP scheme, no tax charge arises when the KEEP-compliant share options are exercised by an option holder. A capital gains tax ("CGT") liability will arise when the option holder actually disposes of the shares. This provides the employee with an advantage in that it taxes all value in the option at CGT rather than at income tax rates and defers taxation until the point of share sale at which point the option holder can fund its tax liability using the proceeds of sale.

KEEP Conditions

KEEP is available for 'qualifying share options' granted by 'qualifying companies'.

A number of qualifying conditions must be met in order for the share options to be deemed qualifying share options. For example, share options cannot be exercised within 12 months of the date of the grant of the option, and they must be exercised within 10 years. In addition, the value of shares over which KEEP share options can be granted to any one employee or director is limited.

Aside from being a SME, a qualifying company must also meet a number of conditions, such as being an unquoted company incorporated and resident in Ireland, or resident in another EEA jurisdiction and it must carry on trading activities which are taxable in Ireland through a branch or agency.

In order for option holders to qualify for KEEP treatment and benefit from its significant tax advantages, the share option granted must continue to be a qualifying share option and the company granting the options must remain a qualifying company until such point as the option shares are exercised.

KEEP Obligations

Qualifying companies which grant qualifying share options must furnish the Revenue Commissioners ("Revenue") with relevant details of the grant of the qualifying share options in the form prescribed by Revenue (KEEP1) no later than 31 March in the year of assessment following the year the options are granted.

Once the qualifying company submits the KEEP1 return, it will be processed by Revenue and, where required, the automatic reporting of data to the European Commission in accordance with EU State Aid rules will take place.

Failure to comply with these obligations will result in the relevant company not being regarded as a qualifying company with consequent implications for the tax treatment of the relevant options.

What's Happening in Practice?

We are aware of a number of cases where qualifying companies (who have diligently adhered to the KEEP conditions) have erroneously failed to file the relevant Form KEEP1 with Revenue and as a result, have potentially lost the benefit of KEEP treatment to the detriment of their employees and directors.

Accordingly, it is essential that companies seeking to qualify for KEEP treatment, keep accurate records of share option grants and exercises, and report them to Revenue in a timely manner.

How the Maples Group Can Help

If you require assistance or for further information, please reach out to your usual Maples Group contact or any of the persons listed below.

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