MAPLES GROUP

UPDATE

Ireland Update: Share Option Tax Implications for Employees

It has recently been reported that the Revenue Commissioners of Ireland ("Revenue") have collected close to €12 million in unpaid tax on share schemes[1]. The collection appears to relate to share awards, and follows from reports last year that Revenue was investigating share option schemes[2].

Typically, when employers provide their employees with shares or other rewards, the employer is obliged to account for tax under the Irish Revenue payroll ("PAYE") system. However, in the case of share options, the employee is required to account for tax. Many employees are either not aware of, or not compliant with, the personal tax liabilities they incur on exercise of share options.

In this guide, we review some tax and practical implications for employees receiving share options.

Share Option Schemes

An employee share option scheme is usually open to a number of employees of a company (the ″Option Scheme″). Employees are granted an option to acquire shares in that company at a future date at a strike price. The employees could also be required to pay an amount to the company for the actual grant of the option.

On exercise of the option, the employee pays the strike price and is granted the relevant number of shares. Ordinarily, there is no restriction on the employee's ability to sell or dispose of the shares once the option has been exercised. There can of course be restrictions which would limit transfer to certain classes of person or require consent to the sale.

Tax Implications of the Option Scheme for the Employees

Grant

There is no charge to Irish income tax on the grant of an option which is exercisable within seven years of the date of grant of the option (a ″short option″).

An option exercisable more than seven years after the date of its grant (a "long option") gives rise to a taxable benefit in kind on grant valued on the difference between the market value of the shares at the date the option is granted and the price at which the shares can be acquired by the employee on exercise of the option.

Exercise

Although there will be no charge to tax on the grant of a short option, income tax, the universal social charge ("USC") and employee's PRSI will be payable on the exercise of the option.

There are specific schemes, most notably the KEEP share option scheme, where this does not apply. In the case of KEEP, no tax arises on exercise.

For non-KEEP options, income tax is payable at rates of 20% or 40%, USC is payable at rates of 2% to 11% and employees' PRSI is payable at a rate of 4%. The tax is payable on the difference between the price paid for the grant

[1] Revenue crackdown on company share schemes nets €11.8m in unpaid tax - Independent.ie

[2] Revenue to chase down unpaid tax on share option scheme awards - Independent.ie

and / or exercise of the option and the market value of the shares at the date of exercise.

The income tax, PRSI and USC due on exercise is not collected through the PAYE system. Instead the employee is liable to account for the tax (referred to as "relevant tax on share options" in this context) through the self-assessment system within 30 days of exercise.

Sale

If the employee sells the shares he has acquired on exercise of the option, then any chargeable gain made on that disposal will be subject to Irish capital gains tax (current rate is 33%). The base cost of the shares for the purposes of capital gains tax is taken to be the market value of the shares at the date of exercise of the option (i.e. the market value which was used for the purposes of calculating the income tax charge).

Administrative Implications of the Scheme

The employee must file an RTSO1 form and pay the income tax and USC due within 30 days of the exercise of the share option.

Revenue is provided with information on the exercise of share options. The employer company must deliver certain particulars to Revenue on the grant of share options to employees by way of the new form RSS1. This form must be filed with Irish Revenue by 31 March in the year of assessment following the year in which the grant is made.

Practical Points

Employers should, whenever they become aware of options being exercised, notify employees of their obligations to account for tax within 30 days. In instances where a liquidity event, such as a sale, are not present, employees will have to fund the tax out of their own resources.

Specific care should be taken when KEEP share options are exercised. There are a number of technical conditions which must be satisfied in order to benefit from the KEEP option tax treatment. These may not be matters which the employees are aware of, or in control of. Obviously, if the options are not compliant with the KEEP tax provisions, then employees may face an unexpected tax liability on exercise.

As the tax arises by reference to the market value of shares, on the date of exercise, the question of valuation becomes pronounced. There may be competing valuations, outside a sale scenario, which may impact the amount of tax at stake. Revenue is known to take a keen interest in share valuations, in particular when different valuations are used by individual employees.

The Revenue Commissioners of Ireland is encouraging those who believe they may not have complied with tax obligations owing pursuant to share options to disclose this. Maples Group is currently assisting a number of clients in settlement of tax disputes associated with such obligations. In many cases, professional advice can assist in mitigating penalties and publication in the tax defaulters list.

How Maples Group Can Help

If you require assistance or have any queries in relation to your share options, please reach out to your usual Maples Group contact or any of the persons listed below.

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