IRELAND EMPLOYEE BENEFITS
SHARE INCENTIVE SCHEMES

MAY 2013

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1 Introduction

1.1 Share incentive schemes

Employee share incentive schemes provide an effective means of rewarding employees by offering tax savings on the acquisition of company shares. They also encourage employee loyalty and participation through long-term equity incentive awards.

There are benefits to both the employer and employee with the introduction of a share incentive scheme. In particular, schemes offer a variety of advantages as follows:

(a) A share scheme is a cost-effective method of rewarding and motivating key staff. Offering employees a stake in the business (or parent company of the business) is a less expensive and more realistic alternative to giving cash bonuses or pay rises in the current climate.

(b) Share schemes are a useful employee retention tool. The offer of a deferred reward encourages loyalty to the company and can increase productivity amongst employees.

(c) Share schemes offer a means of involving employees in the success / performance of a business.

(d) The costs of setting up and operating share schemes are deductible for corporation tax purposes. No employer social insurance (PRSI) is payable on share-based benefits offered to staff although employee PRSI may be payable.

(e) There can be significant tax savings for employees and employers depending on the type of scheme used.

(f) Share schemes can help underpin the financial performance of a business or set the groundwork for an exit strategy.

(g) There are significant advantages of offering shares as remuneration in a 'bear' market (ie, the theory of offering shares at a relatively low market value with scope for greater returns as the economy improves).

1.2 Types of share incentive schemes

The following are some of the main types of employee share incentive schemes which can be implemented in Ireland, many of which offer significant tax advantages, and which are discussed in detail in this paper:

- Unapproved Share Option Schemes
- "Save As You Earn" Share Option Schemes (SAYE)
- Approved Profit Sharing Schemes (APSS)
- Employee Share Ownership Trusts (ESOT)
- Restricted Stock Schemes / Share Clog Schemes
- Partly Paid Shares Schemes
- Phantom Option Schemes

1.3 **How we can help**

Our highly specialised Employee Benefits and Tax Groups can provide both general and specific advice in relation to:

(a) Establishing new or restructuring existing equity-based employee incentivisation packages, specifically, advising in relation to both approved and unapproved schemes.

(b) Devising and implementing the most tax-efficient schemes for different categories of employee within a business.

(c) Advising on legal issues arising from corporate restructurings, mergers and acquisitions such as they relate to employee share schemes.

(d) Advising on the tax and securities law implications arising from establishing and administering share schemes in Ireland.

(e) Ongoing advice in relation to administration issues / dispute resolution.

(f) Advising on imminent or recent changes in the law or applicable tax regime.

2 Share / stock option schemes

The purpose of a share option scheme is to provide eligible employees with the opportunity to participate in the world-wide growth and profitability of a company. Typically, a share option scheme works as follows:

(a) Each eligible employee is granted options to acquire shares in the employer company at a certain price, which can be at a discount to the market value of the shares on the date that the options are granted.

(b) Each eligible employee to whom a share option has been granted is required to exercise that share option within a specified period (typically up to seven years) from the date of grant of the option.

(c) Upon exercise of the option, the employee acquires shares in the company in return, where applicable, for payment of consideration equal to the price specified in the option granted to him. Typically, share options are not exercised until there is a market for the shares, eg, on a flotation, trade sale, etc. In such circumstances, on exercise of the option the employee can sell the shares immediately to clear any borrowings used to fund the exercise of the option and any tax liability arising (a ‘cashless exercise’).

(d) Provisions can be included in the scheme to prevent the employee from selling the shares acquired before a specified date or event.

3 Recent changes

There have been a number of relatively recent changes to the taxation regime applicable to stock option schemes in Ireland. Up until 24 November 2010, Irish social insurance contributions (pay related social insurance (“**PRSI**”) at rates up to 4% for Irish employees and

10.75% for employers) and an employee health levy (4% / 5%) did not apply to stock option schemes. However, from 24 November 2010, changes to the tax regime now mean that Irish employee social insurance contributions will now apply to these stock option schemes. The government had also initially sought to apply employer PRSI to such schemes but they have since rowed back from this position. Thus, no employer PRSI charge will arise in respect of stock option schemes.

In addition, from 1 January 2011 a new Universal Social Charge ("**USC**") at rates of up to 7% (which encompasses and replaces the previous income levy and health levy charges), has applied on taxable events in relation to stock options together with employee PRSI (where the options are granted to Irish employees). The application of such charges will represent a substantial increase in the cost of providing these schemes in future.

From 1 January 2012 the charge to employee PRSI applies to all options exercised. A grandfathering provision had applied in 2011 only in respect of options granted before 1 January 2011.

An Irish employee or an employee within the charge to tax in Ireland on stock option gains receiving and / or exercising stock options is responsible for payment of income tax, PRSI and USC themselves, on a self-assessment basis and there are strict time limits within which the tax must be paid. Prior to 1 July 2012, the obligation fell upon the employer to operate the employee PRSI charge. However, social welfare legislation has amended this position with the result that the employee is now the accountable person with respect to all taxes and charges upon a gain arising on the exercise, assignment or release of stock options.

4 Unapproved share option schemes

The concept of "approved" share option schemes was abolished in Ireland with effect from 24 November 2010. However, even when the legislation provided for "approved" share option schemes, "unapproved" share option scheme proved a more popular choice among employers because of the flexibility afforded by such schemes. All companies are eligible to issue unapproved options and Revenue approval is not required, with the company selecting the employees to whom options will be offered. Where an international group wishes to roll out its existing stock option plan in Ireland, this will normally take the form of an "unapproved" share option scheme.

4.1 Principal features

- May be implemented by any company.
- Does not have to be offered to all employees.
- No tax liability if the option is not exercised.
- Revenue approval is not required.
- Income tax, employee PRSI and USC payable on gain made on exercise, assignment or release of option.
- Employee PRSI and USC payable on any occasion on which income tax applies.
- CGT payable on additional gains on disposal of the shares.

4.2 **Operation of the scheme**

Under an "unapproved" share option scheme, the company has total discretion to select the individuals who will receive options and to establish the terms and conditions applicable to the options, including the option exercise price.

4.3 **Tax consequences**

4.3.1 *Income tax on grant*

Where an option granted to an employee is exercisable within seven years of the date of grant, no charge to income tax, employee PRSI or USC arises on the grant of the option.

Where the option granted can be exercised later than seven years after its grant (a 'long option'), Revenue reserve the right to treat the grant of the option as giving rise to a benefit in kind valued at 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. As such, income tax, employee PRSI and USC will apply to the grant of long options on this difference. In order to avoid such a charge to income tax, it is therefore recommended that the option price for the shares should match the market value of the shares at the date on which the option is granted if the option exercise period exceeds seven years.

4.3.2 *Income tax on exercise, assignment or release*

When the option is exercised, assigned or released, income tax, employee PRSI and USC arises on the difference between the option price and the market price at the date of exercise (see example below). This is payable by the option holder within 30 days (see 4.4 below). In the event that a long option is exercised, which was taxed on grant, a credit is available for any tax paid at the time the option is granted.

4.3.3 *CGT*

CGT at a rate of 33% (from 6 December 2012) will be charged at the date of disposal of the shares on any gain arising between the acquisition of the shares and the disposal of the shares. The gain equals the proceeds on disposal of the shares less the market value of the shares on the date of exercise (ie, the consideration paid for the shares, together with the share option gain which was subject to income tax on exercise), subject to the annual exemption of €1,270 per person.

4.4 **Due date for income tax, PRSI and USC**

Income tax, PRSI and USC is payable by the employee within 30 days from the date the option was exercised. A Form RTSO1 must be submitted to Revenue along with the payment due. It is important to note that it is the individual employee who must pay the tax due and include the details in his / her income tax return. Failure to pay the relevant taxes and charges by the due date will give rise to daily interest charges from the due date of payment until the liability is paid.

4.5 **Issues for the company**

As noted above, from 1 July 2012, the obligation to pay all taxes and charges rests with the employee. Therefore, the employer no longer accounts for employee PRSI through payroll.

A deduction for the costs incurred by a company in establishing an "unapproved" share option scheme is in practice allowed in computing the taxable profits of a company. The basis for claiming the deduction is that the costs fall within the statutory provision, which permits a deduction for any expenses that are incurred wholly and exclusively for the purposes of the trade carried on by the company.

A company granting share options to an employee is required to give particulars in writing to Revenue on Form RSS1 where any of the following events occur:

(a) the granting of a share option in respect of which tax may become chargeable;

(b) the allotment of any shares or transfer of any asset in pursuance of any option or right;

(c) the payment of any consideration for the assignment or release, in whole or in part, of any such option or right; and

(d) the receipt of written notice of the assignment of any such option or right.

The relevant return must be made not later than 31 March in the year following the year in which any of the above events take place.

Additionally, legislation provides for penalties for failure to make the return specified above, or for the making of a false return, or aiding the making of a false return.

4.6 Example

Options granted at €1 per share for 2,000 shares.		*Option must be exercised within 7 years of grant*
Option price (year 1)	€ 2,000	*No charge to tax at grant of option*
Exercise of options		
Market value when exercised (year 3)	€ 5,000	*(€2.50 per share)*
Gain	€ 3,000	
Income tax @ 41%	€ 1,230	
Employee PRSI @ 4%	€ 120	
USC @ 7% (assumed)	€ 210	
Total taxes and charges	€ 1,560	
Net benefit for employee	€ 1,440	
Shares sold (year 5)	€ 9,000	*(€4.50 per share)*
Deduct deemed cost	€ 5,000	
Gain	€ 4,000	
Deduct CGT annual exemption	€ 1,270	
Gain	€ 2,730	
CGT @ 33%	€ 900.90	

5 “Save as you earn” (SAYE) share option schemes

5.1 Principal features

- Must be open to all employees employed for a minimum period not exceeding 3 years set by the employer. Differentiation on the basis of service, salary or similar factors only is permissible.
- Up to €500 maximum per month can be saved out of after tax income. The minimum saving is €12 per month.
- No income tax when the option is exercised but now within the charge to employee PRSI and USC.
- No income tax on any interest or bonus on the savings.
- Employee PRSI will apply.
- Revenue approval is required.
- No obligation to buy shares.
- A yearly return must be filed.

5.2 Operation of the scheme

SAYE schemes have two separate elements, a share option scheme and a savings scheme. When an employee enters into an SAYE scheme he / she contracts to save a fixed amount monthly out of his / her net pay (€12 min, €500 max) for a set period of three, five or seven years. The employee is granted an option to buy shares in the company on the basis of the amount he / she agrees to save. The share option gives the employee the right to buy shares at a future date (when the savings contract is finished) at an agreed price. This price may be at a discount of up to 25% of the market value on the day the option is granted.

The employee has several alternatives:

(a) To use the amount saved to buy some or all of the shares covered by the option,

(b) To take the amount saved in a lump sum, or

(c) To continue investing the proceeds.

The general aim of an SAYE scheme is to help the employee to exercise options without having to borrow. This tends to result in more employees holding on to their shares rather than selling immediately.

5.3 Tax consequences

Under an SAYE scheme, no income tax is chargeable on the exercise of the option unless it is exercised within three years of the date of grant (ie, before the shortest possible savings contract has finished). Also, the approved contractual savings scheme has tax benefits, as the interest plus the bonus, if any, if used in conjunction with the option scheme, may be paid free of income tax and deposit interest retention tax (DIRT). Employee PRSI and USC are chargeable on the exercise of the option.

A CGT liability may arise (at a rate of 33%) on gains arising on the subsequent disposal of the shares.

5.4 Issues for the company

Public and private companies may establish these schemes but the options in a private company must be over shares in a company not under the control of another private company.

The shares must be fully paid up, non redeemable and not subject to any restrictions other than restrictions which attach to all shares of the same class. A restriction can be included in the articles of association whereby employees or directors on ceasing to be an employee / director must sell their shares.

The option may be granted at a discount of up to 25% of the market price on the date of grant.

All employees and directors (full-time) must be eligible to participate on similar terms, with eligibility to participate subject to a minimum qualifying period of up to 3 years service.

Individuals who own more than 15% of the share capital of the company concerned may not participate in the scheme.

Companies will receive a tax deduction, subject to certain limits, for any costs incurred by them in setting up the scheme and providing the shares.

From 1 January 2009, companies operating SAYE schemes are obliged to automatically file returns of information each year in respect of the scheme on a Form SRSO1. Revenue may withdraw approval of a scheme where a company fails to make a return.

5.5 Example

Employee saves €100 per month for 3 years.

Total savings	€ 3,600	
Interest and bonus	€ 300	
Market value of share at start	€ 4	
Option Price	€ 3	*(25% discount)*
Employee can purchase 1,300 shares		*(€3,600 + €300 ÷ 3)*
Market value of share after 3 years	€ 7	

No income tax on difference between option price and market price. However, PRSI @ 4% and USC @ 7% (assumed) will apply to the difference of €1,300, resulting in tax of €143 falling due.

Employee sells 1,300 shares immediately after purchase.

Sales proceeds	€ 9,100	*(1,300 x €7)*
Less cost	€ 3,900	
	€ 5,200	
Deduct CGT annual exemption	€ 1,270	
Taxable gain	€ 3,930	
CGT @ 33%	€ 1,296.90	

6 Approved profit sharing schemes (APSS)

6.1 Principal features

- Must be open on similar terms to all employees who have been employed for a minimum period set by the employer, not exceeding 3 years. Differentiation based on service, salary or similar factors only is permissible.
- Profit sharing bonus converted into shares.
- Shares are held in trust for minimum of 2 years.
- No income tax liability if the trust holds the shares for 3 years, however from 1 January 2011 employee PRSI and USC applies and CGT may apply on gains made on future disposal.
- Maximum allocation per employee is €12,700 worth of shares in any tax year.
- Revenue approval is required.
- Shares must be ordinary, fully paid up, non-redeemable ordinary shares in the employer company or parent company.
- A yearly return must be filed.

6.2 Operation of the scheme

Under an APSS, employees are given the right to convert a profit sharing bonus into shares in the company or its parent. An employee may also voluntarily apply a percentage of his / her basic gross salary towards the purchase of shares. This is called "salary foregone" and this amount cannot exceed 7.5% of basic salary or 100% of the employer funded bonus, whichever is lower.

Alternatively, an employee may buy shares from his / her own salary. This is called a "Contributory Scheme" and the same 7.5% restriction applies as above. The trustees must be Irish resident and appointed under a trust deed which governs the scheme. The trustees acquire and hold shares on behalf of the employees (who remain the beneficial owners of the shares thereby remaining entitled to exercise shareholder control and obtain the dividend stream) for a minimum of two years. After this period the employees, if they choose, may allow the trustees to continue holding the shares on their behalf for an additional year.

For the trustees to acquire shares under an APSS the shares must be fully paid up, non-redeemable, ordinary shares not subject to restrictions other than a restriction in respect of the disposal of shares on leaving the company. This restriction on disposal generally only applies to private companies.

The company may pay dividends to the trustees on the shares they hold and this money is then distributed amongst the scheme participants pro rata to their shareholdings.

6.3 Tax consequences

Shares must be held in the trust for a minimum of two years and, if the shares are held for three years before being sold, they are received free of income tax (otherwise, income tax is charged at 100% of the value of the shares at the date of assignment). However, the share awards will be subject to employee PRSI and USC.

Special rules apply where employment ceases due to death, retirement or disability. However, CGT may apply when the shares are disposed of (see example below).

If new shares are issued to existing participants in place of the original shares, due to a company reconstruction, the new shares are generally treated for tax purposes as if they were the previous shares.

6.4 Issues for the company

Nearly all companies, regardless of whether they are public or private or where their parent company is based, qualify for an APSS. Practical difficulties in relation to valuation and providing a ready market for the shares can arise for private companies. Companies can, subject to restrictions and conditions, buy back their own shares. The scheme can also provide a market for the shares.

Companies will receive a tax deduction subject to certain limits, for any costs incurred by them in setting up the scheme and providing the shares.

Both full and part-time employees and full-time directors must be allowed to participate in the scheme on similar terms. Participation may be subject to a minimum qualifying period of service of up to three years. An employee may not participate if he / she owns more than 15% of the share capital of the company concerned and it is a “close” company. Shares may be allocated on the basis of length of service, level of basic salary and attendance. Different levels of allocation for different business units within a company based on performance criteria are possible, subject to Revenue approval.

The maximum allocation per person per year is €12,700. This €12,700 can in certain circumstances in one year only be increased to €38,100 where shares are appropriated to the APSS from an Employee Share Ownership Trust. The shares must have been held in the Employee Share Ownership Trust for a period of at least 10 years. From 31 January 2008, Revenue has discretion to reduce this 10 year period.

6.5 Issues for the trust

The trustees must report to Revenue all share allocations under the scheme and provide information on capital receipts and company reconstructions. Records of all transactions carried out on behalf of the members must be recorded by the trustees.

From 1 January 2009, the trustees of an APSS are obliged to automatically file returns of information each year in respect of the scheme on a Form ESS1. Failure to make this return could lead to the loss of Revenue approval for the scheme.

6.6 Example

Transfer of shares from APSS to employee

	Transferred to employee after 2 Years	Transferred to employee after 3 Years
Value	€ 6,000	€ 6,000
Taxable amount	€ 6,000	€ 6,000
Income tax @ 41%	€ 2,460	Nil
PRSI @ 4%	€ 240	€ 240
USC @ 7% (assumed)	€ 420	€ 420

Total taxes and charges	€ 3,120	€ 660
Net benefit for employee	€ 2,880	€ 5,340

Disposal of shares by employee

Sales proceeds	€ 10,000
Less cost	€ 6,000
	€ 4,000
Less annual allowance	€ 1,270
Net gain	€ 2,730
CGT @ 33%	€ 900.90

7 Employee share ownership trusts (ESOT)

7.1 Principal features

- Company contributes or lends money to the trust for the benefit of employees.
- All employees must be eligible to participate, subject to a minimum employment period.
- Shares or sums transferred to employees at the same time must be on similar terms.
- Shares may be transferred to an APSS with no tax consequences.
- No tax benefits for employees unless used in conjunction with an APSS.
- USC is chargeable on the scheme. However, a USC exemption has been granted in respect of shares held in an ESOT approved by Revenue prior to 1 January 2011.
- Employee PRSI applies.
- Revenue approval is required.
- A yearly return must be filed.

7.2 Operation of the ESOT

Under an ESOT, the company passes funds to the trustees (who must be Irish resident) who in turn use these funds for purposes which qualify for the scheme. These include:

(a) Acquisition of shares and debentures in the company;

(b) Trust expenses;

(c) Payment of sums to a beneficiary;

(d) Repayment of borrowings and interest thereon; or

(e) Transfer of shares and debentures to the trustees of an APSS.

The trustees (minimum of three) are governed and appointed by a trust deed.

7.3 Tax consequences for the employee

Employees will be liable to income tax, employee PRSI and USC on payments out of the trust unless the shares are transferred to an APSS, in which case the employee will get the tax treatment attributable to the APSS.

7.4 Tax consequences for the trust

The ESOT can be subject to income tax, surcharge and CGT, and is subject to the rules of the self assessment system. However, dividend payments received by the ESOT will be free of income tax if used for qualifying purposes within a certain period.

Disposals of shares by the ESOT are liable to CGT (33%) unless the disposals are to the trustees of an APSS or used to repay borrowings.

7.5 Issues for the company

A company setting up an ESOT must not be under the control of another company (ie, it must be the parent company that founds the ESOT). However, all employees of all group companies may participate in this ESOT. The parent company may set up different ESOTs for different group companies to enable different terms to be applied as between group companies. The shares must be ordinary, fully paid up, non-redeemable shares.

All employees and directors (who work at least 20 hours per week) of the company or a group company are eligible to be beneficiaries of an ESOT scheme. Former employees and directors are eligible for up to 18 months after cessation of employment, subject to a number of conditions.

There is no employer PRSI liability on the distribution of shares. Employer PRSI may be chargeable when cash is distributed to employees by the ESOT.

A corporation tax deduction is available for the costs involved in the establishment of an approved ESOT.

From 1 January 2009, companies operating an ESOT are obliged to automatically file returns of information each year in respect of the scheme on a Form ESOT1. Revenue may withdraw approval of a scheme where a company fails to make a return.

8 Restricted stock schemes / share clog schemes

8.1 Principal features

- Employee given shares with restrictions on sale.
- Shares usually held in trust.
- Income tax liability reduced as shares are restricted.
- Employee PRSI and USC apply.
- Can be offered to employees on a selective basis.
- CGT may be payable on any additional gain.

8.2 Operation of the scheme

Under this type of scheme, the employee is given shares in the company which are subject to a restriction on disposal for a fixed period (the “clog” period). During this period the shares may not be sold, assigned, charged, transferred or pledged as security for loans and a written contract must be entered into to this effect. The employer will place the restricted shares in a trust for the benefit of the employees.

These schemes are used to retain key individuals within a company by virtue of the clog period and often a cash bonus is converted into a shareholding in the company or its parent under a share clog scheme.

The scheme generally involves the formation of a trust to hold the shares for the clog period after which the employee is entitled to dispose of his / her shares.

8.3 Tax consequences

Employees are liable to income tax at the time of receipt of the shares on the amount of undervalue at which the employee acquired the shares (the market value of the shares less any consideration paid by the employee) but depending on the clog period. From 20 November 2008, the value of the shares is reduced for tax purposes as follows:

Clog period abatement

Period of restriction	**%**
One year	10
Two years	20
Three years	30
Four years	40
Five years	50
Over five years	60

There may be a CGT liability on any additional gain made on the disposal of shares (see example below).

8.4 Issues for the company

The shares do not have to be offered to all employees.

The set up and administration costs of the scheme are allowed for corporation tax purposes.

The employer must report, by way of delivery to Revenue of a Form RSS1, that restricted shares have been awarded to employees, that the shares have been forfeited or that the shares have been disposed of prior to the end of the clog period.

Additionally, legislation provides for penalties for failure to make a return, or for the making of a false return in respect of the award or forfeiting of restricted shares, or aiding the making of a false return.

8.5 **Example**

Employee given shares worth €3,000 subject to clog period of 5 years and 6 months

Subscription price	Nil	
Market value	€ 3,000	
Clog period	5 years & 6 months	

Income Tax

Market value	€ 3,000	
Less price paid	Nil	
Benefit	€ 3,000	
Abatement (60%)	€ 1,800	
Net benefit (before tax)	€ 1,200	*(CGT base cost)*
Income tax @ 41%	€ 492	
Employee PRSI @ 4%	€ 48	
USC @ 7% (assumed)	€ 84	
Net benefit (after tax)	€ 576	

Employee sells shares after 5 years and 6 months

Sales proceeds	€ 7,000	*(for example)*
Less cost (taxable amount)	€ 1,200	
Gain	€ 5,800	
Less annual allowance	€ 1,270	
Net gain	€ 4,530	
CGT at 33%	€ 1,494.90	

9 Partly-paid share schemes

9.1 Principal features

- Shares issued to employees at market value.
- Only a nominal amount of the full value is paid upon issue.
- Does not have to be open to all employees.
- Annual income tax consequences for employee.
- Employee PRSI applies.
- USC is chargeable on the scheme.
- Revenue approval is not required.

9.2 Operation of the scheme

The company issues shares (not options) to the employee. The employee pays only part of the present market value, eg, nominal value, with the balance of the share purchase price left outstanding as a future liability of the employee to the company. The principal advantage is that the employee acquires immediate ownership of the shares and thus has a greater involvement in the company without having to pay for the shares fully at the time of receipt.

Unlike share options, most of the gain on the sale of the shares is subject to CGT. It should be noted that the employee has a legally enforceable liability to pay the outstanding balance of the share price.

9.3 Tax consequences

The outstanding amount of the purchase price is treated as a notional loan to the employee. Therefore, the employee must pay income tax, employee PRSI and USC on the notional interest on this loan (current interest rate deemed to be 12.5% from 1 January 2009).

When the shares are sold, CGT will be chargeable on the difference between the market value when the shares were purchased and the sales proceeds.

9.4 Issues for the company

Most companies are able to issue partly-paid shares and Revenue approval is not required.

The company may select which employees are to be offered the shares.

The employer must report, by way of delivery to Revenue of a Form RSS1, that shares have been awarded to employees.

9.5 Example

Employee purchases 1,000 shares with a market value of €5 per share.

Employee pays nominal value of €1 per share only, totalling €1,000.

Yearly Income Tax charge of:

Amount outstanding on shares	€ 4,000
Deemed interest @ 12.5% per year	€ 500
Income Tax @ 41%	€ 205
PRSI @ 4%	€ 20
USC @ 7% (assumed)	€ 35
Total taxes and charges	€ 260
Net benefit for employee	€ 240

Share disposal after 2 years

Market value	€ 12,000	*(€ 12 per share)*
Less price paid in subscription	€ 1,000	
Less outstanding amount paid	€ 4,000	*(paid prior to disposal)*
Gain	€ 7,000	
Less annual allowance	€ 1,270	
Net Gain	€ 5,730	
CGT at 33%	€ 1,890.90	
Net benefit for employee	€ 5,109.10	

10 Phantom option schemes

10.1 Principal features

- Bonus payments "track" the value in the company's shares.
- No shares are actually issued to employees.
- Income tax payable when the bonus is received (ie, when the notional shares are "sold").
- Employer and employee PRSI applies.
- USC is chargeable.
- Revenue approval is not required.

10.2 Operation of the scheme

This is a bonus arrangement linked to increases in the value of a company's shares. The employee is awarded a number of notional (ie, non-existent) shares at present market value. He / she is given the right to "sell" the notional shares at a future date, and then will receive a cash bonus equal to the increase in share value since the date they were granted.

10.3 Tax consequences

Income tax does not arise until the cash bonus is actually received by the employee. As it is cash, the company will deduct the appropriate amount of tax from it, via payroll.

10.4 Issues for the company

The bonus payments are deductible for corporation tax purposes. The company may have to provide for accruals of unpaid bonuses in its profit & loss account.

The company does not have to actually issue any shares and the scheme does not require Revenue approval. However, careful consideration needs to be given to the issue of making an open-ended financial commitment of this nature, as the company's share value could rise to a level that exceeds its ability to pay the related bonus. An alternative performance measure to share value could be used, such as earnings per share or profits.

10.5 Example

Employee awarded 1,000 "notional shares" at present market value of €1 per share. This is not a taxable event.

Share value rises to €3.50 per share after 3 years at which time the employee is given the right to "sell" the notional shares and receive a cash bonus of €3,500 from the company.

Value of notional shares / cash bonus	€ 3,500
Income tax @ 41%	€ 1,435
Employee PRSI @ 4%	€ 140
USC @ 7% (assumed)	€ 245
Total taxes and charges	€ 1,820
Net proceeds to employee	€ 1,680
Employer's PRSI @ 10.75%	€ 376.25

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