In Focus

Tax on Share Incentives – Quick Reference Guide

Introduction

A number of significant changes to the taxation of share incentives were made in 2011. This quick reference guide sets out basic tax treatment for different types of share award based on the position as at January 2012.

Share Awards – Free/Discounted Shares

- **Tax charge**: Income Tax and USC is payable on the value of the shares received when the employee becomes entitled to them (less any price paid).
- **Employee Social Security**: Employee's PRSI arises on the receipt of free/discounted shares.
- **Employer Social Security**: Employer's PRSI does not apply to share based remuneration.
- **Withholding/Payment**: Employers must withhold income tax, USC and PRSI through payroll. The net value of any shares awarded is to be treated as notional pay at the time the shares are given to the employee. If the liability exceeds the employee's pay, the employer is obliged to account for and remit the total tax and PRSI due on the combined actual and notional pay with the relevant monthly P30 return. The tax must be recouped from the employee in full by 31 March of the following tax year, or the employee will be deemed to have received a further benefit. Where there is a delay between vesting and settlement of awards, Revenue may accept tax payment by reference to the earlier of (i) settlement and (ii) sixty days from vesting. However, all tax for shares vesting in a tax year must be paid by the last P30 filing date for the particular year and employees who cease service must pay their tax on cessation of employment.
- **Reporting**: Income Tax, USC and PRSI are to be remitted by the employer with the relevant monthly P30 return. The employer is also obliged to file a return annually with Revenue detailing shares that are received by employees (i.e. this will be at vesting of a conditional share award) (Form RSS1). This return must be filed by 31 March after the end of the relevant tax year.

Share Options

- **Tax Charge**: There is no tax at grant of an unapproved share option, provided it is granted at market value or has a life of less than seven years. Income Tax and USC are imposed on exercise of an option on the difference between the market value at exercise and the option price payable.
- **Employee Social Security**: Employee's PRSI arises on exercise of an option. The employer should account for employee's PRSI on share option gains at exercise where the option holder is a current employee and should make relevant deductions through payroll. For former employees PRSI will be payable by the individual via the PRSI Special Collections Unit (until a different mechanism for payment is established).
- **Employer Social Security**: Employer's PRSI does not apply to share based awards.
- **Withholding/Payment**: Employers must withhold PRSI only (in respect of current employees). The employee must pay the income tax and USC which are due within thirty days of the date of exercise. Income tax is paid at the marginal rate (unless agreed in advance with Revenue that the lower 20% rate applies). Payment is made by the employee under the RTSO procedure and form RTSO1 must be filed. Gains made on exercise of unapproved share options are not chargeable to the 3% USC surcharge (i.e. the 10% rate does not apply).
- **Reporting**: As well as filing Form RTSO1, the employee should include details of options exercised on an annual self-assessment tax return. The employer must file an annual return with Revenue regarding options granted and exercised (Form RSS1). This form must be filed by 31 March after the end of the relevant tax year.

Approved Profit Sharing Schemes (APSS)

- **Tax charge**: USC is payable on the value of shares appropriated to an employee under an APSS (both bonus and salary forgone funds) even though such shares are generally free of income tax. Salary used to pay USC is itself taxable.
- **Employee Social Security**: Employee's PRSI is payable on the value of shares appropriated to an employee under an APSS (both bonus and salary foregone funds).
- **Employer Social Security**: Employer's PRSI does not apply to share based awards.
- **Withholding/Payment**: Any USC and PRSI arising should be collected by the employer through payroll at the time the appropriation is made. USC and PRSI on salary foregone may either be deducted at the time the salary is foregone or at the time of appropriation, provided in either case USC and PRSI is paid on the full value of the shares that are appropriated.
- **Reporting**: The Trustees of an APSS are obliged to file an annual return with the Revenue Commissioners regarding the Scheme (Form ESS1 due by 31 March of the following tax year).

Revenue Approved Sharesave (SAYE) Schemes

- **Tax charge**: USC will arise on the gain realised on the exercise of Revenue Approved SAYE options, even though such options are generally free of income tax.
- **Employee Social Security**: Employee's PRSI arises on the exercise of an SAYE option.
- **Employer Social Security**: Employer's PRSI does not apply to share based awards.
- **Withholding/Payment**: The employer is liable to deduct and pay USC and employee's PRSI through the payroll system when options are exercised by current employees. If the employee exercising the option is a former employee, USC and PRSI are payable by the participant under the normal self-assessment system.
- **Reporting**: Employers are obliged to file an annual return with Revenue regarding options granted and exercised under an SAYE Scheme, (Form SRS01 due by 31 March of the following tax year).

SUMMARY OF TAX PAYMENT PROVISIONS

	FREE/ DISCOUNTED SHARES	UNAPPROVED OPTIONS	REVENUE APPROVED PROFIT SHARING SCHEME (APSS)	REVENUE APPROVED SAYE SCHEME
INCOME TAX	Collected through payroll	Employee pays through RTSO procedure	Not applicable if shares held for 3 years	Generally not applicable if option exercised 3 years after grant under approved plan
UNIVERSAL SOCIAL CHARGE (USC)	Collected through payroll	Employee pays through RTSO procedure	Collected on appropriation through payroll	Collected through payroll an exercise for current employees
EMPLOYEE PRSI	Collected through payroll	Collected through payroll on exercise for current employees	Collected on appropriation through payroll	Collected through payroll on exercise for current employees
EMPLOYER PRSI	Not applicable	Not applicable	Not applicable	Not applicable
REPORTING	Employer: Usual Payroll Reporting Form RSS1	Employer: Usual payroll reporting re employee PRSI Form RSS1 Employee: RTSO1 Annual self-assessment return	Employer: Usual payroll reporting re USC/employee PRSI Trustees: ESS1	Employer: Usual payroll reporting re USC/employee PRSI Form SRSO1

Notes

Note 1: The above summary applies for 2012. Different rules applied in prior years, e.g. PRSI grandfathering in 2011.

Note 2: The information provided in the summary and table is intended as a general summary only as at January 2012 and does not constitute tax advice. Specific advice should be obtained regarding any particular share award and the related tax treatment as required. The summary and table also assume that employees are at all times domiciled, resident and ordinarily resident in Ireland for tax purposes and that the awards relate solely to an Irish employment.

Note 3: For the purposes of this summary and table it is assumed that all share based remuneration referred to relates to shares in an employer company or its parent.