



Key Employee Engagement Programme (KEEP) Questionnaire 2022

17 June 2022





1 Stokes Place
St. Stephen's Green
Dublin 2
D02 DE03

1 Harbourmaster Place
IFSC
Dublin 1
D01 F6F5

Telephone +353 1 410 1000
Fax +353 1 412 1122
Internet www.kpmg.ie



Tom Woods
Head of Tax and Legal
t: +353 1 410 2589
e: tom.woods@kpmg.ie



Colm Rogers
Partner, Tax
t: +353 1 410 2166
e: colm.rogers@kpmg.ie



Thalia O'Toole
Director, Tax
t: +353 1 410 2745
e: thalia.otoole@kpmg.ie

Email: keepconsultation@finance.gov.ie

17 June 2022

Dear Sir / Madam

Key Employee Engagement Programme (KEEP) Questionnaire 2022

KPMG is pleased to respond to the public consultation on the Key Employee Engagement Programme ("KEEP") which is provided for in Section 128F Taxes Consolidation Act (TCA), 1997.

KPMG is the largest provider of business taxation advice in Ireland. Our clients include businesses operating in a wide range of sectors of different sizes and stages of business maturity.

Our feedback to the consultation draws on insights from soundings taken from business owners as well as our own experience of assisting clients to implement KEEP share option schemes.

An attractive and effective KEEP regime would be of significant benefit to the Irish SME sector. We believe that with appropriate changes to the existing KEEP rules, it could significantly assist high potential SMEs to attract and retain key employees.

The contact point for this submission is Thalia O'Toole. Thalia's contact details are: Email: thalia.otoole@kpmg.ie; Direct telephone: (01) 410 2745.

Should you wish to discuss any aspect of the attached submission please do not hesitate to contact us.

Yours faithfully

Tom Woods

Table of contents

Executive Summary	5
Question 1	7
Question 2	8
Question 3	12
Question 4	18
Question 5	19

Executive Summary

KEEP is a focussed share option programme, intended to help SMEs attract and retain talent in a highly competitive labour market. One of KEEP's aims is to help level the playing field between small and large enterprises in terms of the hiring and retention of staff.

While the introduction of KEEP and measures announced in 2019 (most of which are still pending enactment) to improve KEEP were welcome, they did not go far enough. KEEP continues to be too complex, too difficult to administer and fraught with too much operational risk for most SMEs. Most SMEs (the target audience for KEEP) do not possess the financial and tax technical resources necessary to implement KEEP in its current form.

While much attention is focused on how Ireland might best continue to attract international investment, increasing challenges in the international tax landscape serve to re-emphasise the importance of fostering the development and growth of our domestic SME sector. Ireland's tax policy must continue to support domestic entrepreneurship through targeted schemes such as KEEP, amongst others.

The UK's Enterprise Management Incentive (EMI) share option scheme provides an internationally comparable scheme against which to benchmark KEEP. The provisions underlying EMI are considerably more flexible in delivering valuable benefits to employees. The level of participation across UK SMEs is much higher with approximately 4,300 companies participating in the scheme in 2020¹. Given that UK based employers compete for talent with Irish SMEs, providing an internationally competitive Irish KEEP scheme is very important.

KPMG has responded to the five questions raised in this consultation and has made recommendations (covering both policy and technical changes) which we believe would improve the effectiveness of KEEP.

In framing our recommendations, we have addressed the most common reasons raised by our SME clients when deciding not to implement KEEP to incentivise their key employees. We have also considered the wider Irish tax framework of which KEEP is a part. We have suggested changes which we believe should be made to other tax measures to enhance the attractiveness of KEEP and better enable it to meet the policy objectives underpinning its introduction.

Our main recommendations are summarised below.



Increase the tax relief available - amend the Revised Entrepreneur Relief provisions to provide that the 10% CGT rate will apply to a disposal of KEEP shares. Also allow a corporation tax deduction for the difference between the option exercise price and the market value of KEEP shares issued when the option is exercised.

¹ HMRC's Employee Share Scheme statistics [Employee Share Schemes statistics: commentary - GOV.UK - https://www.gov.uk/](https://www.gov.uk/government/statistics/employee-share-schemes-statistics-commentary) (published 24 June 2021)



Amend the annual limit - remove the annual limits that apply to the KEEP options that may be granted to an individual.



Lifetime limit - remove the €300,000 lifetime limit, or alternatively, apply the limit on a rolling basis. Also, exclude lapsed options from the operation of the lifetime limit.



Qualifying groups - remove the non-trading requirement from the “*qualifying holding company*” definition. Amend the “*qualifying group*” to permit ownership of minority shareholdings and joint ventures. Also, remove the restriction that prevents an indirect subsidiary of a qualifying holding company from being considered a “*qualifying company*”.



Qualifying individuals - amend the working time requirement to aggregate the time than an individual works for different companies in a group and to allow non-executive directors to qualify. Amend the “*qualifying individual*” definition to allow the individual work for a non-qualifying company in a qualifying group.



Clarify that CGT treatment will apply on a buyback of KEEP shares - amend the share buyback provisions to provide certainty that CGT treatment will apply on a buyback of KEEP shares.



Valuations - remove the requirement that KEEP options be issued with an exercise price equal to the market value of the shares at the date of grant. Introduce safe harbour provisions to provide a level of assurance that a valuation will not be challenged where the requirements for the safe harbour were met. Confirm that an external valuation of the SME made within two years of the date of grant of a KEEP option may continue to be relied upon.



Penalty for late returns - restructure the penalty for failure to file a KEEP return on time to be a monetary penalty only (i.e., it should not cause outright disqualification of the KEEP options).



Disqualification - provide for a proportionate measure of relief where a disqualification event occurs during the relevant period.

Question 1

What aspects of the current design of KEEP as it operates at present work effectively and why?

In the table below, we have summarised the aspects of the current design of KEEP as it operates at present which work effectively.

Tax rate	<p>Unlike other employee share option awards which attract income tax, USC, PRSI (potentially a combined rate of 52%); KEEP option gains are effectively taxed at the CGT rate of 33% (when the KEEP shares are sold).</p> <p>However, as set out in our response to Question 2, this level of tax benefit may not be sufficiently generous to incentivise uptake.</p>
Timing of taxation	<p>Unlike other employee share option awards where tax is due upon exercise of the option, tax does not become due until the KEEP shares acquired on the exercise of the KEEP option are sold.</p> <p>This is a very important feature of KEEP as it means that share disposal proceeds should be available to fund the discharge of the associated tax liability.</p>

Question 2

What aspects of the current design of KEEP do not work effectively and why?

In the table below, we have summarised the aspects of the current design of KEEP which do not work effectively.

Tax rate	<p>KEEP option gains are effectively taxed at the CGT rate of 33% (when the KEEP shares are sold). However, this level of tax benefit may not be sufficiently generous to incentivise uptake.</p> <p>We recommend that provision be made for KEEP shares to automatically qualify for the 10% CGT Entrepreneur Relief rate once the KEEP options and/or KEEP shares are held for a minimum holding period. We understand from our UK colleagues that the equivalent EMI scheme in the UK operates on that basis. This is perceived to have contributed significantly to the greater level of uptake achieved by the EMI scheme.</p>
Application to groups	<p>The definitions of “<i>qualifying holding company</i>” and “<i>qualifying group</i>” are incompatible with the commercial reality of most SME corporate holding structures. This will impede the uptake of KEEP.</p> <ul style="list-style-type: none">■ Under the rules, a “<i>qualifying holding company</i>” may not carry on a trade. This requirement excludes a lot of SMEs from the opportunity to avail of KEEP. <p>It is very common for holding companies in SME groups to also carry on a trade. Often, an SME will start off with just one company which carries on a trade. The SME will often then expand by acquiring or establishing other trading companies without restructuring the trading operations in the holding company.</p> <ul style="list-style-type: none">■ Remove the restriction that prevents an indirect subsidiary of a “<i>qualifying holding company</i>” from being considered to be a “<i>qualifying company</i>”.

- Under the rules, a qualifying group must not hold shareholdings in companies other than subsidiaries. Therefore, SME groups that enter into joint ventures (50%/50%) or hold a minority interest (less than 50%) in another company are excluded from KEEP.

The maintenance of these restrictions will preclude many SMEs from qualifying for KEEP. Also, as the qualifying conditions must be met throughout the “*relevant period*”, it unduly curtails the commercial flexibility of SMEs to expand by entering into joint ventures or acquiring other companies in stages etc.

Qualifying individuals

The definition of “*qualifying individual*” does not reflect typical working arrangements in a SME group. As a result, KEEP will often be inaccessible to key individuals:

- In practice, the working time of fulltime employees of an SME group may be spread across multiple group companies with the result that the individual may not devote up to 75% of their working time to, or spend a minimum of 20 hours per week working for, any one company in the SME group.
- Furthermore, the individual is required to be an employee or director of a “*qualifying company*”. Where the individual is an employee or director who works for the holding company or their employment contract is with the holding company (which would often be the case for confidentiality reasons), the individual cannot benefit from KEEP as the “*qualifying holding company*” is not considered a “*qualifying company*” as it does not carry on a trade (if it did, it would not be a “*qualifying holding company*”, as set out above).
- Non-executive directors (“NEDs”), who can be hugely influential and whose advice may be critical to the success of a growing SME, are unlikely to be in a position to meet the working time requirements to qualify for KEEP. This is counterproductive as it diminishes the ability of SMEs to access high quality NEDs unless they compensate the NED through salary and fees, which impacts cash resources that could be deployed elsewhere.

Facilitate the buyback of KEEP shares

A lack of an external market for SME shares often means the SME is obliged to buyback the KEEP shares to enable employees to realise the value of their KEEP shares.

At the present time, Section 128F TCA 1997 does not make provision for a buyback of KEEP shares to be deemed to meet the requirements for CGT treatment

to apply on a buyback of KEEP shares under Section 176(1) TCA 1997. Without such a provision, it would be difficult for an individual to qualify for CGT treatment on a buyback of KEEP shares. Furthermore, a provision is required to disapply the application of Section 135(3A) TCA 1997 on the disposal of KEEP shares.

These changes are required to provide employees with KEEP shares a realistic opportunity to realise KEEP shares and benefit from CGT treatment.

Valuation risk

KEEP options must be granted at not less than the market value of the shares on the date of grant while a maximum value of €3 million in shares can be the subject of issued but unexercised KEEP options at the date of grant. In the event that these requirements are not met, then the options are disqualified from KEEP.

The preparation of a formal share valuation can be a costly process and even then, can be the subject of a significant level of subjective judgment.

The risk of a disagreement around the value of the company exposes the SME to a significant level of risk where it issues KEEP shares in the good faith belief that it has met the valuation requirements. Also, the cost associated with obtaining external valuations serves as a barrier to entry for many SMEs.

We recommend that consideration be given to the removal of the requirement that KEEP options be issued with an exercise price equal to the market value of the shares at the time of grant. This would greatly reduce the risk for the SME associated with valuation disagreements. It would also enhance the value of KEEP for participating employees which would make it more attractive.

We understand from our UK colleagues that the equivalent EMI scheme in the UK operates on the basis that options may be issued with an exercise price which is less than the market value of the shares on the date of grant (in that case the discount at grant remains liable to income tax). While this retains a valuation requirement, a company can request advance assurance from HMRC that it has met the valuation condition. This flexibility is perceived to have contributed significantly to the greater level of uptake achieved by the EMI scheme.

Limit on value of KEEP options

Limiting the annual value of KEEP share options for an individual to the lower of their annual emoluments and €100,000 can place an unnecessary burden on an SME's cash resources.

	<p>Given the buoyant employment market, the removal of the annual limit would enhance the ability of SMEs to compete for talent with better resourced companies. It would also provide flexibility for SMEs to provide once off meaningful awards to key talent and key recruits.</p>
<p>Disproportionate penalty for failing to file Form KEEP1 on time</p>	<p>The failure to file a Form KEEP1 by the required deadline results in the SME ceasing to qualify for KEEP. This is disproportionate and would expose the SME to claims by holders of KEEP options. Many SMEs would be unwilling to assume the associated operational risk.</p> <p>In our view, the penalty should be a fixed financial penalty which is aligned with the penalties imposed for failure to file other returns on time.</p>
<p>Binary nature of the qualifying conditions</p>	<p>If a KEEP disqualification event occurs during the relevant period, there is no proportionate measure of relief provided up to the date of disqualification even where, for the majority of the relevant period (the period from date of grant to date of exercise), the options qualified for relief. For example, if the holding company enters into a 50:50 joint venture during the “relevant period” it would disqualify all unexercised KEEP options</p> <p>This is disproportionate and would expose the SME to claims by holders of KEEP options. Many SMEs would be unwilling to assume the associated operational risk or the adverse impact on its commercial flexibility.</p>

Question 3

What do you see as the most important barriers to further take-up of the KEEP, and what is your suggestion for overcoming these constraints?

The current design of KEEP imposes conditions that conflict with the commercial and operational reality of many Irish SMEs. We have set out a number of recommendations below for improvements to the design of the relief.

Increase the value of the tax relief

Deem a disposal of KEEP shares to be eligible for the 10% CGT rate provided for by the Revised Entrepreneur Relief

KEEP option gains are effectively taxed at the CGT rate of 33% (when the KEEP shares are sold). Whilst this treatment is beneficial, the level of tax benefit may not be sufficiently generous to incentivise broad uptake of KEEP.

Currently, an individual who acquires KEEP shares must separately meet the conditions of Revised Entrepreneur Relief to qualify for the 10% CGT rate on a disposal of KEEP shares. In addition, the period during which the KEEP option was in place is not taken into account for the purposes of the Revised Entrepreneur Relief ownership period requirement. This treatment is not aligned with the comparable UK EMI scheme where the option holding period is also taken into account with an individual deemed to automatically qualify for the 10% CGT rate once the holding conditions are met. We understand that this has contributed significantly to the greater level of uptake achieved by the EMI scheme.



We recommend that provision be made for Revised Entrepreneur Relief to apply and that account is taken of the period during which the KEEP option was in place.

Corporation tax deduction

Due to the application of Section 81(2)(n) TCA 1997, a corporation tax deduction can only be claimed in respect of KEEP shares for the difference between the option exercise price and the market value of the KEEP share on the exercise of the KEEP option where the SME incurs expenditure on acquiring the share or where a payment is made to a connected company in connection with the option.

Under the UK's EMI scheme, a corporation tax deduction can also be claimed for the difference between the option exercise price and the market value of the shares when exercised where the company issues shares to meet the option obligation. The introduction of a similar Irish provision would make KEEP more attractive to an employer SME.



We recommend that provision be made to provide for a corporation tax deduction on an issue of shares to meet an exercise of a KEEP option in respect of the difference between the KEEP option exercise price and the market value of the KEEP shares when exercised.

Amend the monetary limits

Remove the annual limit on the amount of KEEP option awards that can be made to an individual

Limiting the annual value of KEEP share options for an individual to the lower of their annual emoluments and €100,000 can place an unnecessary burden on an SME's cash resources as it may lead to the SME having to pay additional cash remuneration.

Given the buoyant employment market, the removal of the annual limit would enhance the ability of SMEs to compete for talent with better resourced companies. It would also provide flexibility for SMEs to provide once off meaningful awards to key talent and key recruits.



The annual value of KEEP shares should not be limited to the lower of the qualifying individual's annual emoluments or €100,000.

Remove the €300,000 lifetime limit, or alternatively, apply the limit on a rolling basis

The total market value of the shares in respect of which KEEP options are granted to an individual by a qualifying company or its qualifying holding company is limited to €300,000 – this operates as a lifetime limit. This limit acts as a barrier to the uptake of the scheme.

As this limit is set by reference to the market value of the underlying shares, the scheme may not be as valuable to high growth SMEs which may experience accelerated growth in the value of their shares such that employees reach the cap very quickly, long before there is an exit event. As a result, such SMEs are restricted from further use of KEEP as a tool to help retain such employees.

Under the UK EMI scheme, the individual is permitted to hold unexercised share options with a total value of up to stg£250,000 in a 3-year period. A rolling €300,000 limit would provide comparable flexibility and enhance the capacity of SMEs to incentivise key employees over the longer term. It would also alleviate any concerns that might arise with respect to our earlier suggestion that the €100,000 limit be removed.



We recommend removal of the €300,000 lifetime limit. Alternatively, the limit should be amended to include a rolling limit applicable to unexercised KEEP share options i.e., a qualifying individual can hold up to €300,000 in unexercised share options in a three-year period.

Exclude lapsed KEEP options from the €300,000 lifetime limit

In certain circumstances, KEEP options may lapse (for example the shares may reduce in value, or a realisation opportunity may not arise). Under the existing rules, lapsed KEEP options are counted for the purposes of the lifetime limit of €300,000.



Subject to the other changes that we have recommended to the €300,000 lifetime limit, we recommend that lapsed options should be excluded for the purposes of the €300,000 lifetime limit.

Valuation of shares

KEEP options must be granted at not less than the market value at the date of grant while the value of issued but unexercised share options at the date of grant cannot exceed €3 million. In the event that these requirements are not met, then the options are disqualified from KEEP.

The risk of a disagreement around the value of the company exposes an SME to a significant level of risk where it issues KEEP shares in good faith on the understanding that it has met the valuation requirements. Also, the cost associated with obtaining external valuations serves as a barrier to entry for many SMEs and even then, may involve a significant level of subjective judgment.

We recommend that consideration be given to the removal of the requirement that KEEP options be issued with an exercise price equal to the market value of the shares at the time of grant. This would greatly reduce the risk for the SME associated with valuation disagreements. It would also provide an opportunity to enhance the value of KEEP options for participating employees which would make them more attractive.

We understand from our UK colleagues that the equivalent EMI scheme permits options to be issued with an exercise price which is lower than the market value of the shares on the date of grant (in that case the discount at grant remains liable to income tax). While this retains a valuation requirement a company may request advance assurance from HMRC that it has met the valuation condition. A similar option could be made available for KEEP. This flexibility is perceived to have contributed to the greater level of uptake achieved by the EMI scheme.

Alternatively, provision should be made for safe harbour provisions which would provide a level of assurance that a valuation will not be challenged where the requirements for the safe harbour were met. This might include making provision for an acceptable “margin of error” or a period of time during which an external valuation could continue to be relied upon.

We recommend removal of the requirement that KEEP options be issued with an exercise price equal to the market value of the shares at the date of grant.



Safe harbour provisions should be introduced which provide a level of assurance that a valuation will not be challenged where the requirements for the safe harbour were met. It should be confirmed that an external valuation of the SME made within two years of the date of grant of a KEEP option may continue to be relied upon.

For the purposes of the EMI scheme in the UK, a company can request advance assurance from HMRC that it has met the valuation condition. A similar option could be made available for KEEP.

Operating through a corporate group

The definitions of “*qualifying holding company*” and “*qualifying group*” are incompatible with the commercial reality of most corporate holding structures. This will impede the uptake of KEEP.

Investment in joint ventures and associates

Under the rules, a qualifying group may not hold shareholdings in companies other than subsidiaries. Therefore, SME groups that enter into joint ventures (50%) or hold a minority interest (less than 50%) in another company are excluded from KEEP.

The maintenance of this restrictions will preclude many SMEs from qualifying for KEEP. In addition, as the qualifying conditions must be met throughout the “*relevant period*”, it unduly curtails the flexibility of SMEs to expand by entering into joint ventures etc.



We recommend that the definitions of “*qualifying holding company*” and “*qualifying group*” be amended to allow for minority shareholdings to be held in other companies.

Non-trading requirement

Under the rules, a qualifying holding company may not carry on a trade. This requirement excludes a lot of SMEs. It is very common for holding companies in SME groups to also carry on a trade. Oftentimes, an SME will start off as just one company which carries on a trade, the SME will often then expand by acquiring or establishing other trading companies, without restructuring the trading operations in the holding company.



We recommend that the definition of “*qualifying holding company*” be amended to remove the non-trading requirement.

Qualifying individual in an SME group

Working time

The KEEP provisions define a ‘*qualifying individual*’ as an individual who, throughout the entirety of the relevant period is an employee or director of a qualifying company and who is required to work at least 20 hours per week or to devote 75% of his or her working time to a qualifying company.

The provisions are designed to fit a scenario where an individual is an employee of, or carries out duties for, a single company. In reality, where the SME is in a corporate group, a key employee may hold the office of director or have a formal contract of employment with one group member but devote their time to several companies across the group.

In addition, the current working time requirements do not take into consideration the difficulty SMEs experience in attracting and retaining talented non-executive directors (NEDs). NEDs can be critical to the success of a growing SME. However, NEDs are unlikely to be in a position to meet the working time requirements to qualify for KEEP. This is counterproductive as it diminishes the ability of SMEs to access high quality NEDs unless they compensate the NED through salary and fees which impacts cash resources.



We recommend that the working time requirement should be applied by reference to “*qualifying group*” rather than a specific company in the group.

We also recommend that the working hours requirement should be removed to facilitate non-executive directors.

Employees of non-qualifying companies

Currently, an employee of a “*qualifying group*” who happens to be an employee of a subsidiary which does not itself carry on a qualifying trade is not considered to be a “*qualifying individual*” and as such cannot benefit from KEEP. This can lead to unequal treatment between employees in the same SME group.

In the UK equivalent of KEEP, an employee of a company carrying on non-qualifying activities can avail of the EMI scheme provided that the company is a qualifying subsidiary of the holding company, and the business of the group consists substantially of the carrying on of qualifying activities.

Also, where an individual works solely for a qualifying holding company, which cannot carry on a trade under the KEEP rules, the individual is not currently considered to be a ‘qualifying individual’ despite being a key employee of the group.



We recommend that the definition of “*qualifying individual*” be amended to provide that the individual must be employed by a member of the “*qualifying group*” rather than a “*qualifying company*”.

Providing liquidity for KEEP shares

A lack of an external market for SME shares can often mean that the SME becomes obliged to buyback the KEEP shares to enable employees to realise value from their KEEP shares.

At the present time, Section 128F TCA 1997 does not make provision for a buyback of KEEP shares to be deemed to meet the requirements for CGT treatment pursuant to Section 176(1) TCA 1997. Without such a provision, it may be difficult for an individual to qualify for CGT treatment on a buyback of KEEP shares. Furthermore, a provision is required to disapply the application of Section 135(3A) TCA 1997 on the disposal of KEEP shares.



We recommend that Section 128F TCA 1997 be amended to provide that the requirements of Section 176(1) TCA 1997 shall be deemed to be satisfied on a buyback of KEEP shares. Furthermore, Section 128F TCA 1997 should be amended to disapply the application of Section 135(3A) TCA 1997 to a buyback of KEEP shares.

Administrative issues

Failure to file Form KEEP1

Section 128F(10) TCA 1997 provides that a company or group shall not be regarded as a qualifying company or, as the case may be, a qualifying group where the relevant Form KEEP1 is not filed by the due date. While we appreciate that employer reporting obligations in relation to KEEP are necessary, the existing

penalty for failure to do so is disproportionate and would expose an SME to claims by holders of KEEP options. Many SMEs would be unwilling to assume the associated operational risk.



We recommend that the penalty should be a fixed financial penalty which is aligned with the penalties imposed for failure to file other returns on time.

Question 4

As is outlined above, there are currently three amendments to the operation of the KEEP scheme which are intended to be commenced shortly. What impact do you expect these changes will have on the take up and operation of the KEEP scheme?

The amendment to the rules to allow existing shares to qualify for use in a KEEP arrangement is welcome. It will reduce the administrative and cost burden for SMEs associated with the issue of new shares.

The other changes are intended to allow companies that operate through a group to qualify for the scheme and to allow employees under part-time / flexible working arrangement or employees that work for multiple group companies to avail of the scheme. However, the rules as currently drafted are not effective. As outlined in our response to Questions 2 and 3, the changes are not fit for purpose as they do not reflect the commercial reality of how SMEs are generally structured. Our recommendations on how to improve the scheme in this regard are outlined in our response to Question 3 above.

Question 5

Do you have further proposals for changes to the operation of KEEP assuming it is extended for a further three year period from the start of 2023? If so, please provide a brief description of these.

An attractive and effective KEEP regime would be of significant benefit to the Irish SME sector. As outlined earlier, there are a number of changes which will need to be made to increase the uptake of KEEP and ensure that its full potential to enable SMEs to attract and retain key talent is achieved. Our proposals for changes are set out in our response to Question 3. In summary, they are as follows:

- ✓ Amend the Revised Entrepreneur Relief provisions to apply the 10% CGT to a disposal of KEEP shares.
- ✓ Allow a corporation tax deduction for the difference between the option exercise price and the market value of the shares issued when the option is exercised.
- ✓ Remove the annual limits that applies to a grant of KEEP options.
- ✓ Increase the €300,000 lifetime limit, or alternatively apply the limit on a rolling basis.
- ✓ Exclude lapsed options from the application of the lifetime limit.
- ✓ Amend the definition of “*qualifying individual*” to provide that individual must be employed by a member of the “*qualifying group*” rather than a “*qualifying company*”.
- ✓ Amend the “*qualifying individual*” definition to allow the individual work for a non-qualifying company in the group.
- ✓ Remove the working time requirement to facilitate non-executive directors.
- ✓ Remove the non-trading requirement from the “*qualifying holding company*” definition.
- ✓ Amend the definition of “*qualifying group*” to permit minority shareholdings and joint ventures.
- ✓ Amend Section 128F TCA 1997 to provide that the requirements of Section 176(1) TCA 1997 shall be deemed to be satisfied on a buyback of KEEP shares to provide certainty that CGT treatment will apply.
- ✓ Provide for a measure of relief where the KEEP conditions are breached mid-way during the option period.
- ✓ Restructure the penalty for failure to file a Form KEEP1 on time to be a fixed financial penalty.
- ✓ Remove the requirement that KEEP options be issued with an exercise price equal to the market value of the shares at the date of grant.
- ✓ Introduce safe harbour provisions to provide a level of assurance that a valuation will not be challenged where the requirements for the safe harbour were met.

- ✓ Confirm that an external valuation of the SME made within two years of the date of grant of a KEEP option may continue to be relied upon.



[kpmg.ie](https://www.kpmg.ie)

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2022 KPMG, an Irish partnership and a member firm of the KPMG global organisation of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

The KPMG name and logo are registered trademarks or trademarks of KPMG International.