Employee Share Incentive Schemes

The inclusion of equity awards as part of a company reward strategy is considered good practice as it ensures that the best interests of employees and shareholders are aligned. There are special tax rules for such awards in Ireland, and the tax treatment of RSU's and Stock Options are considered in further detail below.

Restricted Stock Units "RSU's"

When an RSU is granted to an employee, it is a binding agreement that they will be entitled to receive a number of shares (or cash linked to the value of the company shares) in the future once the specified award conditions have been fulfilled. As well as the time provision (e.g. vest in 3 years from grant date), most RSU's will include conditions related to the financial performance of the company i.e. the awards are contingent on profit/revenue targets being met.

Irish Tax Position

Legal title is not transferred to the employee until vest, so the holders have no voting rights, or right to receive dividends until this point. As such, there is no tax due when the award is granted.

Instead, income tax, Universal Social Charge "USC" and Pay Related Social Insurance "PRSI" become due on vest as follows:

- where the RSU is delivered as shares, tax, USC and PRSI are calculated based on the market value of the shares at vest*
- where cash is received, tax, USC and PRSI are based on the cash amount

RSUs are typically taxed at the employee's marginal rates of tax, USC and PRSI. Please refer to our tax rate card for further information.

*where the employee receives shares rather than cash, employees will typically elect a "sell to cover" i.e. sell sufficient shares to cover the resulting tax and social security liability.

Reporting Obligation

RSU's are considered taxable employment remuneration, and are therefore within the scope of PAYE. The taxes due are therefore withheld, paid and reported by the company through the Real Time Reporting process.

Capital Gains Tax

As highlighted above, in the case of shares, legal title is transferred on vest. When the employee subsequently sells the shares, this is a chargeable disposal, so within the scope of Capital Gains Tax. Any gain is calculated based on the sale proceeds, and the base cost is the value of the award on vest (i.e. the amount subjected to income tax). Please refer to our tax rate card for further information on the applicable CGT rates.

An employee must report the chargeable gain on their annual Tax Return (i.e. Form 11 or Form 12), or the CG1 Form where they would otherwise have no tax return filing requirement.

The reporting deadline is 31 October following the tax year of disposal.

CGT arising in respect of disposals made in the period from 1 January to 30 November is due for payment by 15 December of that year. CGT arising on disposals made in the period from 1 December to 31 December is due for payment by 31 January in the following year.

Cross-border considerations

In Ireland, RSUs are considered taxable where the individual is tax resident of Ireland at the time of vest. If the employee is non-resident, with no taxable services in Ireland, then the awards are not taxable i.e. it is all or nothing.

This approach is a slight deviation from the international norm, and results in some unusual outcomes in some scenarios - in most countries, the share awards are sourced according to where the employee was working during the vesting period (i.e. grant to vest). This is highlighted in the examples below:

Outbound

In the case of outbound employees (irrespective of whether they are employed by an Irish or foreign company), where the award vests during a period of non-residence, then the whole award is outside the scope of Irish tax. A portion of the award will typically be taxable in the host country, however, the portion relating to Irish services will often escape tax provided no taxable Irish workdays post departure.

Inbounds

Conversely, in the case of employees coming to Ireland, 100% of the award will be taxable where the employee is Irish tax resident on the vest date. The portion of the award that is deemed to be earned between grant and the date of arrival will also be taxable in the home country in most instances, resulting in double taxation.

The exception to this is where share awards vest for Irish tax resident but non-domiciled employees, who are working in Ireland for a non-Irish company. Under this scenario, the award may be sourced according to the portion of non-Irish workdays in the year of vest.

Where a double taxation agreement is in place, the Irish Revenue should allow double taxation relief via a Foreign Tax Credit "FTC". Such relief may be grated either by payroll or via the year-end Tax Return. However, note that where relief is provided via payroll, the employee must file a Tax Return by 31 March following the end of the tax year (31 October otherwise), and the employer must provide a breakdown of any FTCs applied by the same date.

Non-Resident Directors

Where a non-resident director of an Irish company receives RSUs, they are fully taxable in Ireland unless relief can be sought via a Double Taxation Agreement.

Share Option Schemes

Under a share option scheme, employees are awarded the option to purchase a pre-determined number of company shares at a pre-determined price (the exercise price) within a defined time period.

There are two types of options for Irish tax purposes:

- Short option – must be exercised within 7 years from the date it is granted
- Long option – can be exercised more than 7 years from the date it is granted

Irish Tax Position

The domestic Irish tax treatment of share options is dependent on the option type, and is summarised below:

Short Option

Grant – there is no charge to income tax at grant in the case of short options

Exercise – the gain on exercise (i.e. the difference between the market value of the shares and the exercise price) is chargeable to income tax, USC and employee PRSI. Tax arising on the exercise of share options is outside the scope of PAYE (see RTSO).

Long Option

Grant – where the exercise price is less than the market value of the shares at grant, the difference is considered employment income, and is subject to income tax, USC and employee PRSI withholding via PAYE.

Exercise - the gain on exercise (i.e. the difference between the market value of the shares and the exercise price) is chargeable to income tax, USC and employee PRSI. Credit is given for any liability payable at grant. Tax arising on the exercise of share options is outside the scope of PAYE (see RTSO).

Relevant Tax on Share Options 'RTSO'

Tax, USC and employee PRSI arising on the exercise of a share options is outside the scope of PAYE in Ireland. Instead, employees must pay Relevant Tax on Share Options 'RTSO'. The RTSO payment must be made within 30 days of the exercise date in conjunction with the submission of the Form RTSO1. Unless advanced approval has been obtained, RTSO is calculated based on the employee's marginal tax rates.

Please refer to the Tax Rate Card for the applicable rates.

Reporting Obligations

Employee

As highlighted above, the employee must complete the RTSO1 form within 30 days of exercising the option (together with the associated payment). The employee must also file a Tax Return by 31 October following the end of the tax year in which the options were exercised.

Employer

The Employer is required to submit the RSS1 form in any year in which an employee is granted or exercises share options. The RSS1 form must be submitted by 31 March following the end of the tax year.

Capital Gains Tax

Capital Gains Tax is payable on the subsequent disposal of the asset. The gain is calculated based on sale proceeds less the cost – the cost typically being the sum of the amount charged to income tax and the exercise price.

Note that where the employee has accumulated shares of the same class over a period of time, there are special identification rules for determining which shares have been disposed of.

Cross-border considerations

The taxation of share options can be complicated in the case of mobile employees, and the gains on exercising share options may be taxable in multiple jurisdictions. The approach for relieving double taxation is dependent on whether Ireland has a Double Taxation Agreement "DTA" with the country.

Country with which Ireland has a DTA

As a general rule, where Ireland has a DTA with the other country in question, then the award can be sourced based on the Irish and foreign work days over the vesting period (i.e. grant date to vest date).

Country with which Ireland does not have a DTA

Where there is no DTA with the other jurisdiction, the gain is generally fully taxable in Ireland. Where the gain is also taxable in the other jurisdiction, a deduction (rather than a credit) is generally allowed in respect of the foreign tax paid in computing the gain taxable in Ireland in order to minimise the impact of double taxation.

Employer PRSI

Note that no employer PRSI is payable in respect of equity awards delivered as shares i.e. RSUs or Share Option Schemes.

Contact us

Olive O'Donoghue
Partner
KPMG in Ireland

t: +353 1 87 050 4359
e: olive.odonoghue@kpmg.ie

Thalia O'Toole
Head of Global Mobility
KPMG in Ireland

t: +353 1 410 2745
e: thalia.otoole@kpmg.ie

As highlighted above, the taxation of equity awards can be complex, particularly in the case of mobile employees. For further detail, please contact Olive, Thalia or your usual KPMG Ireland contact.

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