cutting through complexity

Approved profit sharing schemes

What is an APSS?

Under an Approved Profit Sharing Scheme, the usual arrangement is that employees are given the right to convert an otherwise taxable discretionary profit sharing bonus into shares in their employing company or its parent.

Under Revenue practice employees may also apply a percentage of basic gross salary towards the purchase of shares. This is known as "salary forgone". The salary forgone element must be a subsidiary part of the overall scheme. The amount forgone cannot exceed 7.5% of basic salary or the amount of the employer funded bonus, whichever is lower. The salary forgone option must be voluntary rather than compulsory.

There is an overall annual limit on the value of shares which can be appropriated of €12,700 per employee per tax year.

Under an APSS shares are held in trust for a minimum of two years. Where the shares are held for three years no charge to income tax arises.

How do employees benefit?

Employees benefit by receiving a potentially income tax free stake in the company's success through growth in the value of shares. The employer has an opportunity to offer an equity incentive linked to profitability/productivity and to involve the work force in the fortunes of the company.

Must all employees be included?

Yes. All employees and full time directors of the company establishing the scheme, who have been employed for a specified period of no more than three years must be allowed to participate on similar terms.

Shares may be allocated on the basis of length of service, level of basic salary and attendance. It is also possible, with Revenue agreement, to operate different levels of allocation based on the performance of the company, or by reference to individual performance appraisal.

How are schemes structured?

Participating employees accumulate funds from profit sharing bonuses and, if applicable, a percentage of salary. This fund is passed on by the company to trustees of a trust established for the purposes of the scheme. They in turn acquire and hold shares in the company or parent for the benefit of the employees concerned.

Who owns the shares?

The employees are the beneficial owners – the trustees have legal ownership but merely hold them on behalf of the employees. While shares are in the hands of the trustees, the employee can exercise shareholder rights and is entitled to the dividend stream.

What are the tax consequences for employees?

Each participating employee can have a maximum allocation of shares of €12,700 per tax year. The trustees must retain the shares for at least two years. After this two year period, the employee may allow the trustees to continue holding the shares for a further year.

There is no income tax liability on the transfer of ownership to the employee at the end of the three year period. With effect from 1 January 2011 the value of the shares on appropriation to the trust is charged to the Universal Social Charge (USC) at rates up to 7% and employee social security (PRSI) at 4%.

A disposal or transfer into the employee's name between year 2 and 3 will also give rise to an income tax liability at the marginal rate. USC and PRSI charges may also arise.

If the shares are subsequently sold or gifted there will be a CGT exposure.

What about capital gains tax?

A potential CGT liability may arise if an employee disposes of his/her shares at a gain. In calculating the gain, the allowable cost is the market value on the date the shares were allocated to the employee. However, CGT will only apply where capital gains realised in the tax year exceed €1,270.

Gains on the APSS are aggregated with other gains in the tax year. The current rate of CGT is 30%.

Example	Employee invests €2,000 **Marginal Income Tax Rate 41%** **USC 7%** **PRSI 4%**	
Period since allocation	**2-3 years*** **€**	**More than 3 years** **€**
Proceeds	2,000	2,000
Taxable amount	2,000	2,000
Income tax @ 41%	820	-
USC @ 7%	140	140
PRSI	80	80
Effective "Tax" rates	52%	11%
*Trustees must retain shares for first two years		

How is CGT paid?

There are two payment dates:

- For disposals between 1 January and 30 November – 15 December in the tax year
- For disposals between 1 December and 31 December – 31 January in the following tax year.

How are dividends treated?

It is the responsibility of the individual employee to declare details of the dividend and pay the taxes due when making a tax return for the year. Dividends can be liable to foreign withholding taxes and to Irish dividend withholding tax.

Are there reporting requirements?

Yes. The trustees must report annually on 31 March (Form ESS1) to Revenue indicating all share allocations under the scheme and provide information on capital receipts and company reconstructions. They must also keep available complete records of all transactions carried out on behalf of members. The employee must detail acquisitions and disposals of shares and dividends received on his/her annual tax return.

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