GMS Flash Alert

Global Compensation Edition

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Ireland - Update on the KEEP Provisions in Finance Act 2017

Ireland's Finance Act 2017 has been passed into law. However, the Key Employee Engagement Programme ("KEEP") provisions in the Finance Act will not have effect until a Ministerial Order is made.[1]

In our earlier report, GMS *Flash Alert* 2017-163 (10 November 2017), we provided a "deep dive" analysis of the new KEEP provisions that give effect to a new employee share incentive scheme designed to help small and medium enterprises ("SMEs") attract and retain key personnel. Readers may refer to that earlier *Flash Alert* for details of the KEEP measures, which will have effect as the Act contains only a few – be they important – amendments.

The new legislation is due to apply to qualifying options granted to employees during the period 1 January 2018 to 31 December 2023.

In this GMS *Flash Alert*, we will focus on the changes to the legislation that represent an update of our earlier report.

WHY THIS MATTERS

With this new incentive, a "qualifying company" within the SME sector would be allowed to provide "qualifying individuals" with "qualifying share options," as long as certain conditions are met throughout the option holding period.

Moreover, the incentive provides for a saving of 19 percent, based on current tax rates, in the tax payable by an employee on the gain as compared to standard share option gains.

KEEP aims to support SMEs in attracting and retaining key talent by effectively deferring the taxation of gains on employee shares until the sale of the shares.

Finance Act Update to KEEP Provisions Since Inclusion in Finance Bill

Finance Bill

Our earlier coverage[2] provided background to the KEEP proposals, analysis of the KEEP measures in the bill and what they offer, what defines a "qualifying company," defining the SME, what is a qualifying individual and a qualifying share option, amongst other key features. The most important amendment to the bill – which we discuss below – concerns the time at which an SME qualifies under the programme in terms of granting of options.

More Details on the SMEs

One of the limitations of KEEP when the bill was initiated was that the enterprise must continue to be a qualifying SME throughout the period of grant to option exercise. A welcome amendment in the bill, as passed, is that the enterprise will be required to be an SME only at the date of grant. This will mean that as enterprises grow there is no risk that the share options would become disqualified over time. An SME for this purpose is defined as an enterprise which at the date of grant of a share option employs fewer than 250 persons and has an annual turnover not exceeding €50 million and/or an annual balance sheet total not exceeding €43 million. There are also certain reporting requirements the company must comply with to be regarded as a qualifying company.

KPMG NOTE

Includes Engineering and Pharmaceutical Professional Services

The KPMG International member firm in Ireland has made representations to the Department of Finance suggesting that it reconsider the excluded trades and also consider expanding the holding company definition, which we view as very restrictive. There has been a measure of success in that the bill as passed no longer excludes engineering and pharmaceutical professional services.

Next Steps

The new legislation, which is due to apply to qualifying options granted to employees during the period 1 January 2018 to 31 December 2023, now has EU State Aid approval. However a Ministerial Commencement Order is required before the measures can be formally implemented. We are anticipating that such a Commencement Order could be issued later this month.

FOOTNOTES:

1 For text of the Finance Act 2017, click here.

2 Also see, "Taxing Times: Finance Bill 2017 and Current Tax Developments," a publication of the KPMG International member firm in Ireland.

Contact us

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