KPMG

GMS Flash Alert

Global Compensation Edition

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Ireland - Fresh Guidance for Revenue-Approved Profit Sharing Schemes

The Irish tax authority ("Revenue") recently issued updated guidance regarding the process to file the annual information return for the Revenue-Approved Profit Sharing Scheme ("APSS").[1]

It is worthwhile bearing in mind the following compliance matters:

1. Form ESS1 - trustees must return details of certain events and transactions in shares held by the APSS trust.

2. Approval of the scheme may be withdrawn where the trustee fails to make a timely return.

Revenue is in the process of migrating all share scheme returns of information from paper format to online. This is in line with the process for the Forms RSS1 and KEEP1 (see GMS *Flash Alert* 2019-189 (19 December 2019)). The ESS1 return is now available within the share scheme reporting section of Revenue Online Services ("ROS"). The due date for filing the ESS1 return is usually on or before 31 March in the following year. However, to facilitate the transition for the tax year 2019 only **the due date to file the Form ESS1 in respect of the 2019 tax year is 30 June 2020**.

WHY THIS MATTERS

For prior years, trustees filed a paper form ESS1 with Revenue. From now on, in order to file the ESS1 through ROS for 2019, it will be necessary to make sure that the trust established for the purpose of the APSS is registered for income tax for 2019. The 2019 ESS1 will be filed on ROS using the trust's tax registration number.

Trustees need to make sure that they have allowed enough time to complete the registration procedure, or that they give their tax agents enough time to register them for SSR, in advance of the 30 June deadline. Trustees are reminded that this is an additional step to file the 2019 returns when compared to prior years.

More on Registration of APSS Trusts and ESS1 Returns

Revenue is reminding trustees that the requirement to register the trust established for the purposes of an APSS is not a new requirement. However, it is worth noting that many APSS trusts will not be registered for taxation as the trustee would not have had a tax liability, considering that the trustee would typically have appropriated shares in a timely manner post-acquisition, and thus would not have had an income tax or capital gains tax liability.

For those trusts already in existence, but which have not been previously registered, registration should be made immediately.

Once the trust is registered for income tax, it is necessary for the trust to register for the share scheme reporting obligation in ROS. This is a "one off" registration required for the trust to be able to access the ESS1 return. Revenue's Share Scheme Manual dealing with the Share Scheme Reporting Obligation provides a guide on how to effect this registration.

The ESS1 filing deadline for 2019 has been extended from 31 March 2020 to **30 June 2020**. A paper ESS1 return for 2019 will not be available.

Revenue also is reminding the trustees of an APSS that they are under the same taxation obligations as any other trustees of any other trust. This means that the trustees are also required to make an annual return of any income or gains arising to the trust on Form 1 on or before 31 October of the following tax year.

KPMG NOTE

In contrast with prior years' compliance steps, now there are additional steps to file the 2019 returns.

Trustees will need to build in enough time to complete registration prior to the filing/reporting deadline.

Additional Details – Tax Agents

Tax agents can register their clients for SSR upon receipt of a signed agent link authorisation from their client. The agent link can be uploaded to ROS when the SSR registration application is being completed.

KPMG NOTE

KEEP1

As outlined in GMS *Flash Alert* 2019-019 (6 February 2019), compliance with the due date for filing the employer return Form KEEP1 in relation to the tax-favoured qualifying Key Employee Engagement Programme options is also extremely important. Failure to comply with this mandatory filing obligation will result in the company not being regarded as a qualifying company for KEEP and the tax-favoured treatment being lost for their employees. In the cases of Revenue-approved schemes (such as the APSS above, employee share ownership trusts ("ESOT"), and save-as-you-earn share option schemes ("SAYE"), Revenue approval of the scheme can be withdrawn.

FOOTNOTE:

1 Revenue Commissioners December 11 updated guidance for the online filing procedures for the returns of share options form (RSS1) and the key employee engagement program form (KEEP1). See Revenue eBrief No. 209/19.

For more details on KEEP and share scheme reporting, see our earlier reports in the following issues of GMS *Flash Alert*: 2019-189 (19 December 2019) 2019-143 (13 September 2019), 2019-019 (6 February 2019), 2018-018 (25 January 2018), and 2018-011 (17 January 2018), and 2017-163 (10 November 2017)**.**

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