KPMG

GMS Flash Alert

Global Compensation Edition

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Ireland - Share Option Taxation from 2024

Ireland's Finance Bill (No.2) of 2023 was published on 19 October 2023, setting out proposed tax measures applicable from 1 January 2024.[1] One significant (and unexpected) amendment provided for in the Bill is an overhaul to the method by which taxes owing in respect of employee share option gains are collected and remitted to the Irish Revenue. From 1 January 2024, the collection method will become a real-time payroll withholding ("PAYE") obligation for the employer.

For further analysis of the Finance Bill, see "Taxing Times - Finance (No.2) Bill 2023 & Current Tax Developments," a publication of the KPMG International member firm in Ireland.

On 14 November, KPMG in Ireland attended an informal meeting with the Irish Revenue to discuss the proposed changes and highlight some practical challenges for employers. Feedback from this initial meeting is provided in this *GMS Flash Alert*.

WHY THIS MATTERS

While the extension of PAYE to share options is broadly a welcome measure from an employee perspective (as it removes the onus from employees to settle their own taxes within 30 days), it is a significant change for employers who may never have operated PAYE on share-based compensation previously.

As Ireland follows OECD principles with regard to sourcing of attributable gains during the vesting period, taxable gains arising on the exercise of an option by a globally-mobile employee will also be in scope of PAYE withholding. Employers will need to be mindful of keeping track of employee share option events for current and former employees as well as globally-mobile employees with a view to calculating taxable gains and making sure relevant details and liabilities due are captured within their real-time PAYE reporting submissions.

The move to the collection of employee liabilities on share option exercises through the PAYE system in such a short timeframe is likely to present several challenges for employers (at least until such time as appropriate processes and procedures have been developed to aid compliance with the new rules). The timeframe of under two months for employers to prepare for this new process is very tight, especially for companies with frequent grants and exercises of share options.

Context

Share options are one of the most common forms of share-based remuneration in Ireland. Currently, gains arising from the exercise, assignment, or release of share options are taxed via the self-assessment system (a system that is known as the Relevant Tax on Share Options or "RTSO" for short). Under the RTSO system, the employee is responsible for settling the Income Tax, the Universal Social Charge (USC), and employee Pay Related Social Insurance (PRSI) due within 30 days of the exercise of the option. In any tax year, where an employee exercises, assigns, or releases his or her share options, the employee is required to file an income tax return under self-assessment. This is due for filling by 31 October following the year in which the shares were exercised, assigned, or released.

Annually, the employer is obliged to file an RSS1 return by 31 March following the calendar tax year to report the grant, exercise, assignment, or release of an option.

Bill in Brief

The Bill provides for a significant overhaul to the current treatment by abolishing the RTSO system. For gains arising in respect of the exercise, assignment, or release of a share option on or after 1 January 2024, employers will now be required to account for the Income Tax, USC, and PRSI due on share option gains through the PAYE system. It should be noted that the employee may still be required to file an income tax return for a relevant tax year.

No changes are currently proposed which alter the obligation to file an annual RSS1 informational return by the employer.

KPMG INSIGHTS

Changes and New Obligations for Employers

Under current real-time reporting, an employer is generally expected to file details of pay, non-cash benefits, and associated payroll liabilities due on or before the payment date. These rules will now apply to share options. It can be possible to report share remuneration in the following payroll return in some cases and there are additional concessions available for RSUs.

- For employers, tracking employee share option events will become even more significant considering they will have to calculate the relevant taxable gain and include details within their real-time PAYE reporting submissions. For globally-mobile employees, the calculation of the taxable gain depends upon a number of factors such as the country of residence at exercise, location of work-days during the vesting period, as well as the application of tax treaty provisions – access to all relevant facts will be important in managing payroll compliance. Employers will also have potential trailing payroll obligations in respect of former employees and directors.

- Employers remain obliged to settle the liabilities due on share remuneration, even where the employee does not have sufficient net salary to fund all relevant payroll deductions. As a result, employers will need to make sure they have adequate provisions in place to calculate the correct option gain and effect a 'sell to cover' mechanism on exercise where required. This broadly involves the immediate sale of a sufficient number of shares purchased by the employee in order to finance the PAYE/PRSI due following exercise. In addition, funding complexities can arise where options are exercised outside of a liquidity event.

Employers should make sure that the necessary processes and controls are in place so that the correct taxable gains are captured via the PAYE system (and in real time).

KPMG INSIGHTS continued:

Informal Feedback from Irish Revenue Meeting

KPMG in Ireland had the opportunity to meet informally with Irish Revenue recently to discuss the new provisions and highlight the short period to roll-out and other practical matters. A number of examples were discussed to demonstrate some of the practical difficulties in meeting real-time reporting obligations such as:

- Possible adjustments needed to existing plan rules to enable sell to cover where not already provided for in plan rules, which will delay timing of implementation of the new regime for some employers.

- Lack of real-time visibility of option exercises at the local Irish subsidiary level where reliant on global reporting of same by the parent to the subsidiary (this often occurs a month or more in arrears).

- Lack of provisions for Irish treaty residents, with doubly-taxed option gains, to obtain automatic real-time foreign tax credits for PAYE purposes. Provision of real-time credit would mirror the current netting off facility under the RTSO regime as well as PAYE treatment of RSUs.

- Application of PAYE withholding for nonresidents must generally be applied at Emergency Tax rates (48 percent) on trailing sourced employment income. A personal entitlement to lower tax bands may, however, exist for that tax year. Facility exists under the current RTSO regime which allows an individual request that his/her RTSO liability be calculated incorporating lower tax bands. A similar facility is requested for PAYE purposes to limit cash-flow issues.

- PAYE obligations for the employer where no liquidity event occurs at time of exercise for employees of private companies and timing of recoupment of payroll liabilities due from the employee.

In general, Irish Revenue was very open to understanding the challenges. They noted that, in their view, existing tax provisions which enable sell to cover by the employer should be sufficient to manage most real-time PAYE reporting concerns, even where plan rules do not provide for same. Other key take-aways from the informal meeting were:

- Irish Revenue confirmed no deferral to the roll-out date will occur.

- There is no current intention to apply an equivalent 60-day PAYE reporting currently available for share-settled RSUs.

- The implications for globally-mobile employees and the availability of real-time credits will need to be considered further.

- Irish Revenue is not expecting this to be a significant new burden for employers citing existing requirement to track share option events for RSS1 reporting purposes, albeit not in real time. Irish Revenue is cognisant that some employers may, however, need help as the new regime is adopted.

- Guidance Material is in preparation but will not be available until late December 2023. Irish Revenue is open to receiving further feedback prior to its release to help ensure relevant elements are included.

KPMG INSIGHTS continued:

Next Steps to Consider

It is clear the changes announced will lead to some payroll compliance challenges for employers in relation to both domestic and globally-mobile employees. KPMG in Ireland will continue to liaise with Irish Revenue so that Revenue Guidance will comprehensively cover the matters identified. While formal Revenue Guidance is pending, employers may wish to consider the following:

- Review current Share Option and Employee Share Purchase Plan ("ESPP") arrangements, so that the taxation and reporting positions are fully understood – this may also be an opportunity to consider whether the current arrangements remain fit for purpose.

- Consider the impact of the new provisions in the context of globally-mobile employees and former employees/directors or those due to leave their roles to understand how payroll will be updated to account for same.

- Identify the stakeholders that will be responsible for providing the information needed for the payroll withholdings and map out relevant processes needed.

- Prepare an employee communication regarding the updates setting out how their share options will now be taxed through payroll and that the responsibility for collection of the relevant liabilities has now shifted to the employer. It should also set out detail in relation to the various ongoing employee responsibilities for filing his/her own tax return under self-assessment.

FOOTNOTE:

1 For Finance Bill 2023, see: https://www.oireachtas.ie/en/bills/bill/2023/70/?tab=bill-text .

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Contact us

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