UPDATE

Ireland Update: Management Equity Incentive Plans – Key Considerations

Employers looking for alternative ways to ensure key employees are incentivised to perform and grow value in the business should consider equity plans.

Equity plans can assist in attracting, motivating and retaining staff which are some of the critical challenges many businesses face.

Often, these arrangements require little day-to-day administration and can contribute to company performance due to alignment of interests between employees and employer.

Equity Incentives

Equity incentives usually fall within one of four broad categories:

- Revenue-approved share options and plans;
- Unapproved share options;
- "Phantom" equity schemes; or
- Direct shareholdings.

Determining the Type of Plan

The key factors for determining what type of plan is appropriate for a business are:

- Aligning desired business objectives with outcomes from the plan (e.g. growth in company profits vs growth in equity value);
- Seniority of personnel involved; and
- Desired tax outcomes.

Choosing the Correct Plan

Many companies will operate a number of plans to incentivise different cohorts of employees towards different goals.

The following table sets out an overview of the main forms of plans used by private companies with Irish employees. However, this list is not exhaustive and plans can be created to address a variety of desired outcomes.

Revenue-approved share options and plans are not addressed in this update given very limited circumstances in which they have proven attractive to private companies.

Given the tax impact on many of the plans mentioned below, ensuring appropriate advice and certainty on supporting market value of the shares at date of award is likely to be critical.

Plan Type	Key Terms	Tax Outcomes	Key Commercial Outcomes
Unapproved Share Option Plan	Participants granted options to acquire company shares Exercise price may be less than market value or (effectively) nil Common to include conditions that participants remain in employment to benefit from options	Tax on exercise and on ultimate sale On exercise – income tax (including employee PRSI and USC, but not employer PRSI) on difference between exercise price and market value on date of exercise On sale of shares – CGT on any increase in value above market value of the shares on date of exercise	Encourages contribution to growth in equity value Often used to incentivise employees towards some form of exit event (e.g. trade sale or IPO)
KEEP	Company must be an SME to qualify Similar to share option plan, however: • Exercise price must not be less than market value on date of award • Value of option must not exceed: - €100,000 in any one year of assessment - €300,000 in all years of assessment, or 100% of the qualifying individual's annual emoluments in the year of assessment • To date, there has been a relatively low take up under KEEP, likely due to the restrictive conditions which must be satisfied impacting on KEEP's effectiveness. However,	Tax on ultimate sale only CGT on increase in value of the shares above exercise price	Encourages contribution to growth in equity value Often used to incentivise employees towards some form of exit event (e.g. trade sale or IPO) Mostly availed of by companies which have not raised significant capital or at an early stage of development

	improvements[1] enacted under the Finance Act 2022 will no doubt encourage take up of KEEP by SMEs		
Growth / Flowering Shares	Awards of shares with no or minimal current value, value accrues once certain targets are achieved Plans are highly bespoke and tend to be used for senior personnel in companies where significant value has already been created	Intended to achieve tax on ultimate sale of shares only CGT on sale of shares No income tax on grant provided no or minimal value at that date	Incentivises growth in equity value and achievement of other defined targets
Restricted Shares / Share Clog Scheme	Shares issued on terms which restrict transfer of shares for a minimum period (1–5 years) Care should be taken to ensure any transfer provisions applicable on cessation of employment do not infringe these restrictions which would result in claw-back of tax Shares must be held by a trustee Typically used for more senior / key personnel	Tax on grant or award of shares and on ultimate sale Income tax (including employee PRSI and USC) on market value on date of grant Market value is abated (up to 60%) by reference to the duration of the "clog" / restriction on share transfer CGT on sale of shares	Enables employees to receive shares without paying income tax on full market value on date of award Incentivises growth in equity value

Staff Retention

One common objective among all plans is staff retention. For this reason, many plans will contain detailed and specific terms on how shares or options are to be treated in the event of leaving employment. These terms should balance company culture and objectives and, for that reason, require thought and advice on appropriate terms, in particular crafting terms which do not create incentives for employees to leave employment in certain scenarios or receive value where they have acted to the detriment of the company.

[1] One headline change is that companies operating through a group structure may now qualify for the KEEP scheme. Other positive changes include the extension of the definition of "qualifying individual" to include certain part-time employees and the ability to issue KEEP options over existing shares, as opposed to newly issued shares. Furthermore, CGT treatment will now be permitted on the buy-back of KEEP shares by the company from the employee provided that certain conditions are satisfied. Additional enhancements requiring a ministerial commencement order are not yet in force but include an increase in the market value of the unexercised qualifying share options that companies can issue under the KEEP scheme from €3 million to €6 million. This is welcome given the practical challenges faced by SMEs in undertaking the potentially complex exercise of valuing shares.

In addition, there may be tax considerations associated with vesting of shares or forfeiture of shares on leaving employment. These considerations are particularly relevant in the case of growth share plans and grants of restricted shares.

Private Equity Portfolio Companies

In companies backed by private equity investors, plans are often specifically tailored to align employees' actions with the investor's economic outcomes and key business metrics including ESG targets. These plans may be based on some of the plans described within this update or be specifically tailored to the key objectives of the investor.

As with any of the other plans described herein, obtaining professional advice on appropriate structure and tax considerations at the outset is critical.

Other Considerations / Nominee Arrangements

In addition to considering the correct type of plan for employees and structuring for employee departure, all plans and equity awards should be implemented in a way that is suitable for the shareholding structure of the company.

In particular, if participants have relatively small equity stakes in the company, a trustee or nominee structure should be considered. This will reduce the number of parties required to sign various documents when the company is involved in any kind of activity requiring shareholder involvement (from matters as simple as changing the company name, to taking in additional investment, trade sale or corporate reorganisation).

These arrangements should be set up in a way that enables the nominee to take all actions on behalf of the parties for whom it holds shares.

These arrangements are particularly important where employees who have left employment are entitled to retain an equity stake.

How the Maples Group Can Help

The team at Maples Group is experienced in advising on structuring and implementing tailored plans for a wide variety of clients. If you are interested in further information on this topic, please reach out to your usual Maples Group contact or any of the persons listed below.

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