

Ireland Update: Welcome Changes to the Key Employee Engagement Programme

The Key Employee Engagement Programme ("KEEP") was amended in the most recent Irish Finance Act, which came into operation from 1 January 2023 ("Finance Act 2022"). These welcome changes should see an increase in its uptake which, until this point, has been relatively low as the rules underpinning KEEP were complex and did not always align with the commercial reality of how small and medium-sized enterprises ("SMEs") operate.

KEEP and its Advantages

KEEP is a tax efficient share option scheme for SMEs and start-up businesses which is designed to support and incentivise SMEs in their efforts to attract and retain key employees. SMEs can be at a disadvantage when hiring skilled workers as they have to compete with salaries and benefits offered by larger companies and KEEP is a welcome addition to the SME toolbox.

In general, where an employee or director exercises a share option, they are subject to income tax on the difference between the market value of the shares acquired and any price paid for those shares. Employees and directors can face difficulties in funding the tax liability where they do not immediately dispose of the shares received on exercise of the option.

Under the KEEP scheme, no tax charge arises when the KEEP compliant share options are exercised by an employee. A capital gains tax ("CGT") liability will arise when the employee actually disposes of the shares. This provides the employee with an advantage in that it taxes all value in the option at CGT rather than at income tax rates and defers taxation until the

point of share sale at which point they can fund their tax liability using the proceeds of sale.

General KEEP Terms

KEEP is available for qualifying share options granted between 1 January 2018 and 31 December 2025. Generally, the options cannot be exercised within 12 months of the date of grant of the option, and they must be exercised within 10 years.

The value of shares over which KEEP share options can be granted to any one employee or director is limited to:

- €100,000 in any year of assessment;
- €300,000 in all years of assessment; or
- 100% of the annual emoluments of the individual in the year in which the qualifying option is granted.

Qualifying companies include companies which have been incorporated in Ireland, the EEA or the UK and which are tax resident in Ireland (as well as companies which are resident in another EEA State or the UK and carry on business in Ireland through a branch or agency).

Finance Act 2022 Amendments

The Finance Act 2022 gives effect to certain enhancements of the KEEP scheme.

One headline change is that companies operating through a group structure may now qualify for the KEEP scheme. Previously, the KEEP scheme was available to holding companies which held shares in a single

subsidiary. The new grouping provisions provide greater flexibility. This allows the creation of qualifying groups which contain subsidiaries that are not qualifying companies for KEEP purposes.

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.

Certain additional enhancements are subject to a Ministerial Commencement Order. While not in force immediately, the enhancements should ultimately come into force and 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. Given the practical challenges faced by SMEs in undertaking the potentially complex exercise of valuing shares, this would be a welcome change and would give participants greater margin in ensuring the value of options granted does not exceed permissible limits.

How the Maples Group Can Help

For further information, please reach out to your usual Maples Group contact or any of the persons listed below.

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