Approved Profit Sharing Scheme (APSS)

Why implement an APSS?

The APSS has proved an attractive means of allowing employees to participate in the success of the company. The scheme allows employers to offer tax effective incentives which are linked to an employee's productivity.

Advantages of an APSS

- There is no income tax payable by the employee.
- No employer PRSI is payable.
- A qualifying discretionary bonus can be applied as the employer contribution resulting in no additional costs for an employer.

How does it operate?

A trust is created to acquire and hold shares, for the participating employees, in the employing company or parent company. The trust can be funded by:

- The employer;
- Employees discretionary profit sharing bonuses where relevant conditions are satisfied; and
- If applicable, a certain percentage of salary.

Under the APSS the shares are held in trust for a minimum of two years. After that time, participating employees can dispose of the shares subject to income tax. Alternatively, shares disposed of after three years will be exempt from income tax, although capital gains tax may apply.

What are the conditions of the scheme?

Participation in the scheme must be open at any time to any employee/full time director who has been such an employee/director at all times during a qualifying period (not exceeding three years). All employees/directors must be allowed to participate on similar terms.

Shares may be allocated on the basis of length of service or level of basic salary. With Revenue agreement it is possible to allocate shares based on company performance/individual performance appraisal schemes.

The scheme shares must be ordinary shares fully paid up and not redeemable, and must also be:

- Of a class quoted on a Stock Exchange;
- In a company not under the control of another company; or
- in a subsidiary of a company quoted on a Stock Exchange.

The maximum value of shares that may be issued each year to each employee is €12,700.

What are the taxation implications for the employee?

At allocation

The employee is subject to PRSI and USC on the market value of the shares at the date of allocation.

The employer is obliged to withhold the USC and employee PRSI through payroll.

Dividends paid post allocation

Any dividends paid in respect of allocated shares are assessable to income tax under normal rules. Under self-assessment, the employee is obliged to declare this income on their annual tax return.

At release date

Provided the conditions are satisfied, the employee will not be liable to income tax, or USC at the release date (3 years from allocation).

The employee will also not be liable to a PRSI charge.

Transfer before release date

A disposal or transfer into the employee's name between year two and three will give rise to an income tax liability. Income tax will be due on the lesser of:

- the market value of the shares at date of allocation to the employee; or
- the sales proceeds.

Example:
Employee uses €5,000 of a qualifying discretionary bonus for the purposes of an APSS. Assume marginal income tax rate of 40%.

	Disposal of shares Finance Act 2016	
Periods since allocation	2 to 3 years	More than 3 years
Taxable Amount	5,000	5,000
Income Tax @ 40%	2,000	–
USC @ 5%	250	250
Employee PRSI	200	200
Employer PRSI	–	–

USC and PRSI are payable on allocation of the shares and are payable through payroll. The example assumes that the individual's gross income subject to the USC will not exceed the 5% threshold of €70,044.

By comparison, if the employee was paid a cash bonus of €5,000 the tax payable would be as follows:

Income Tax @ 40%	€2000
USC @ 5%	€250
Employee PRSI @ 4%	€200
Employer PRSI @ 10.75%	€538

At sale
At sale the employee will be subject to capital gains tax (currently 33%) on the difference between the sales proceeds and the market value of the shares at allocation.

The employee must also file an annual return declaring the disposals for that tax year.

Date of disposal	Date CGT payable
1 January to 30 November in the tax year	15 December in the tax year
1 December to 31 December in the tax year	31 January of following year

What are the tax implications for the employer?

An employer can claim a corporation tax deduction for contributions to the trust and the cost of establishing the scheme.

A cash bonus is liable to employer PRSI of 10.75%. A discretionary bonus qualifying for the purposes of an APSS up to the annual limit (€12,700) is not.

The trust will have the following reporting obligations:

- Form ESS1 – used to declare share allocations. This must be filed by 31 March following the end of the year in which the shares are allocated or within 30 days of request by the Revenue.
- Form 1 – Declaration of Trust income and capital gains.

Salary Sacrifice
Under anti avoidance legislation, any amount of remuneration due to an employee which is "sacrificed" in exchange for a tax free benefit will continue to be liable to PAYE/PRSI/USC. The APSS is one of the few exceptions to this rule permitted by Revenue. It is, therefore, a very tax efficient approach for both employers and employees. Provided all the conditions are satisfied, employees can "sacrifice" existing salary/bonus and the acquisition of the shares can be funded in this way, at no additional cost to the employer.

How can we help?

The APSS must be approved by Revenue. We can assist in drafting all of the documentation relating to the APSS. We can make all submissions to Revenue including obtaining pre-approval of the plan terms to guarantee Revenue approval of the final draft plan.

We can assist with all Revenue reporting obligations.

Contacts

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