Unapproved share options

Equity based remuneration can be an effective way to reward executives for loyalty and contribution while reinforcing commitment to the organisation.

Unapproved share option plans are common among quoted companies and can also be implemented in private companies. Such plans do not require any approval from Revenue and are totally at the discretion of the company, subject to legal/regulatory requirements.

What is an option?

A share option is a right given to an employee to buy a share in the employer company or its parent company at some time in the future. The option price is fixed on the day the option is granted. The employee has the opportunity, if there is growth in the share price, to buy shares at less than market value.

What are unapproved share options?

Under unapproved share option plans, rights/options may be granted to purchase shares. It is possible to provide that the vesting of the option is determined by reference to either a service period or performance criteria. Furthermore, a restriction could be placed on the subsequent disposal of the shares which can be tax efficient if employees wish to hold onto the shares.

What are the advantages of unapproved stock options?

For employers, share option plans allow executives to share in the ownership of the company and to have a real stake in the company's success.

Such plans offer employees the possibility of acquiring shares where the only costs will be the tax liability arising on the difference between the option price and the market value at exercise and the option price. In respect of a private company if the employee has a minority interest, significant discount should apply on the date of exercise so that the tax cost to the employee can be minimised.

The gain on exercise of the share options is not subject to employer PRSI.

What are the tax implications for the employee?

The tax treatment of the share options depends on the period between grant and exercise:

Exercise period within seven years

Income tax, USC and employee PRSI is charged on the date of exercise on the difference between the market value at the date of exercise and the option price.

Exercise period greater than seven years

If the option can be exercised after more than seven years from grant and the option price was at a discount to market value at the date of grant, then a tax charge will arise on grant. Income tax, USC and employee PRSI is charged at grant on the difference between the market value at the date of grant and the option price. If a benefit arises at grant the employer is required to withhold the taxes payable via payroll. Taxes paid on the grant of options can be offset against tax arising on the exercise of those options.

How are the taxes paid?

The employee is obliged to submit a Form RTSO1 to the Revenue together with the tax payable within 30 days of the date of exercise.

If income tax arises at the grant of the options this tax is payable by deduction at source through payroll.

Employees will be subject to USC on the gain arising on the grant and/or exercise of the option. The USC rates applicable are 0.5% to 8% depending on the individual's overall income. The USC is payable on the Form RTSO1. Employees will be subject to PRSI on the gain arising on the grant and/or exercise of the option. The rate applicable is 4% and this is payable on the Form RTSO1. All taxes should be paid at the top rates on the Form RTSO1 unless agreed in writing with Revenue. Therefore, total taxes of 52% (40% plus 8% plus 4%) on the gain on exercise will be payable.

What are the tax implications on sale?

The employee will be liable to capital gains tax on the difference between the market value of the shares at the date of sale and the market value of the shares on the date of exercise. There is an annual exemption of €1,270 per individual. The date for payment of the capital gains tax depends on the date of sale (see table below).

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 employee reporting obligations?
Under the self assessment system an employee must return details of the exercise of options, the option gain and subsequent disposals of the shares acquired on his/her income tax return. The return is due to be filed by 31 October of the year following that in which the income or capital gain arises.

What are the reporting obligations for the employer?
Employers are obliged to report the grant, release, assignment and exercise of options to the Revenue Commissioners. A return of information (Form RSS1) must be filed by 31 March following the end of the relevant tax year.

How can we help?
Employers considering implementing a share option plan need to identify the company objectives and ensure that the plan meets those objectives. Our dedicated compensation and benefits specialists can meet with you to identify the key objectives of a proposed plan, draft a company specific plan and assist in its roll out.

Employers are looking more and more at innovative and effective ways of retaining the best people.

Contacts

For more details on the above please contact:

Daryl Hanberry
Partner
T: +353 1 417 2435
E: dhanberry@deloitte.ie

Sarah Conry
Director
T: +353 1 417 2374
E: sconroy@deloitte.ie

Colin Forbes
Director
T: +353 1 417 2993
E: cforbes@deloitte.ie

Annette Kelly
Director, Global Employer Services
T: +353 1 417 2299
E: annkelly@deloitte.ie

Breda Mullaney
Director, Global Employer Services
T: +353 1 417 3622
E: brmullaney@deloitte.ie

Jonathan Warnes
Director
T: +353 1 417 2477
E: jwarnes@deloitte.ie

deloitte.ie

Deloitte.

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see www.deloitte.com/about for a more detailed description of DTTL and its member firms.

At Deloitte, we make an impact that matters for our clients, our people, our profession, and in the wider society by delivering the solutions and insights they need to address their most complex business challenges. As one of the largest global professional services and consulting networks, with over 244,400 professionals in more than 150 countries, we bring world-class capabilities and high-quality services to our clients. In Ireland, Deloitte has over 2,000 people providing audit, tax, consulting, and corporate finance services to public and private clients spanning multiple industries. Our people have the leadership capabilities, experience, and insight to collaborate with clients so they can move forward with confidence.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the "Deloitte Network") is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.

© 2017 Deloitte. All rights reserved