A&L Goodbody

Overview of Equity Awards via Clog

A restricted share “clog” arrangement provides a tax efficient means of rewarding employees by applying certain sales restrictions to their shares. The key features are:

RESTRICTED SHARES (CLOG)	
Eligibility	Any employee or director may be selected and participation is entirely at company’s discretion.
Type and Source of Shares	■ May be shares in employer or company that controls employer.
Structure	■ Company and employee enter into a written contract to restrict disposal of shares for a specified period of years. The restriction must apply from the date on which the employee actually becomes entitled to shares. ■ The clogged shares must be held in an EEA resident trust. ■ The trust is the legal owner of the shares but the employee is beneficial owner of the shares from day 1, with voting, dividend rights etc. ■ The contract must be for bone fide commercial reasons.
Trustee	Will need to select corporate trustee and/or individuals resident in EEA. Goodbody Trustees Limited (ALG trustee company) can offer this service.
Basis of Entitlement	■ Company can determine entitlements and can differentiate between employees. ■ There is no overall cap or upper limit on the value of a restricted share award.
Share Retention Period	Shares must be restricted for at least one year. A sliding scale applies so that an abatement of 10% per year of restriction applies, up to a maximum 60% for a restriction of over 5 years.
Taxation	■ Reduces, but does not eliminate, income tax, USC and PRSI charges on free or discounted shares by reducing taxable value of shares acquired. ■ No further income-based tax charges arise at the end of the clog period. ■ CGT may be payable on sale. ■ Can be coupled with other types of share incentive to reduce the tax charge on those awards e.g. on RSUs at vesting or share options on exercise. This requires the clog to apply beyond the vesting/exercise date i.e. shares will be tied up for a longer period. ■ Cash flow for participant should be factored into the suitability of the award, particularly for high-value awards as a reduced up-front tax liability remains but shares cannot be sold at that time e.g. does the participant have other cash (e.g. bonus) to fund taxes.

For more information

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