

Approved Profit Sharing Schemes (APSS)

The APSS is an arrangement approved by the Revenue Commissioners which operates in tandem with an employee trust. It is a way of paying bonuses by awarding shares to employees in the employer's ultimate parent company free of income tax.

The APSS is constituted by a trust deed, a set of rules and various employee documentation. An APSS can be structured in a number of different ways. In its most straightforward form an APSS is structured on the basis that the employer company provides the source of funds for the purchase of shares on behalf of the employees. The funds can be provided by way of an annual discretionary bonus. This bonus amount can be supplemented by the employee who may forego a percentage of gross salary (up to 7.5% of basic salary) to match the employer's contribution for the purchase of shares (this facility is known as salary foregone).

It is also possible to establish an APSS which has a contributory element. In that case participants are required by their employer to purchase shares out of their own after tax resources in order to receive free matching shares funded by the company. The maximum amount of shares purchased by the participant out of those resources can be up to 7.5% of basic salary. Each participant must receive at least one free share for each contributed share. The permission to include a contributory element in an APSS is granted by Revenue on a concessionary basis only.

The monies provided from the sources referred to above are paid to the trustee of the employee trust which then subscribes for or purchases shares in the employer's ultimate parent and holds the shares on behalf of the employees. All the shares must be held for a minimum of 2 years. If the shares are held by the trustee for 3 years they can then be distributed to the beneficiaries entirely free of income tax.

The APSS must be open to all employees on similar terms. Similar terms means either that the value acquired by each employee is the same or that the value attributed to each employee is

calculated on a definable, equitable, transparent and proportionate basis. It is permissible to have a minimum service period of up to 3 years before employees are allowed to participate. The total value of company funded shares and salary foregone shares allocated to each employee in any tax year cannot exceed €12,700.

The format of an APSS is governed by legislation and must be approved by the Revenue Commissioners. The approval process should be factored into any time line for the establishment of a scheme as the process may take up to 12 weeks.

Summary of benefits to employer and employee

Employer

- All costs associated with the establishment and running of an APSS are tax deductible in Ireland for the establishing company.
- No employer's PRSI (currently @ 10.85%) on bonus allocations, matched shares and salary foregone.

- Investment by employees into the company displays high degree of trust.
- Engenders loyalty amongst staff resulting in low staff turnover and increased productivity.

Employee

- All bonus payments, matched shares and salary forgone invested in the Scheme are free of income tax (current marginal rate @ 40%), provided they are held in trust for at least 3 years.
- Potential to supplement bonus funds invested in the Scheme by utilising salary forgone which is calculated using gross salary, thus reducing the employee's income tax liability.
- Potential to provide for a contributory element to the Scheme where employee's after tax funds are matched by company funded shares.
- Regular dividend income for the employee during the life of the Scheme.
- At the end of the 3 year holding period the shares can be released from trust free of income tax.
- If employees leave the company their shares can remain in trust
- for the remainder of the 3 year holding period thus preserving the favourable income tax position.
- Increases interest and greater involvement in the fortunes of the company.

Services provided by A&L Goodbody

Legal services

We offer a full suite of legal, regulatory and tax advisory services for APSSs, including:

- Scheme establishment/design, including advice on existing bonus arrangements or other ways of funding an APSS, to create a basis of entitlement that fits with APSS legislation and guidelines.
- Advice on securities law issues that may arise in connection with APSS offers.
- Drafting all relevant documentation, including Trust Deed and Rules, employee documents, alterations (e.g. supplemental deeds)

and documentation for company board/shareholder approval.

- Liaising with Revenue Commissioners to obtain or maintain approval of scheme and related documents.
- Advice on capital re-organisations e.g. rights issues and the impact on participants and shareholdings.

We are particularly well placed to assist companies in managing corporate transactions or other events that affect the shares held in trust, or have an impact on participants in the APSSs e.g. mergers, disposals and workforce integration or redundancy programmes. We work with many non-EU multinationals to deal with Irish prospectus/regulatory matters as well as with their overseas advisers to deal with non-Irish securities law or other issues that may arise as a result of the operation of an APSS.

Trustee services

A&L Goodbody has a trustee company, Goodbody Trustees Limited, which provides trustee services to clients, and has extensive experience in providing trustee services for a number of APSSs.

Typical trustee responsibilities include oversight of scheme administration, advising company with respect to queries on the trust deed & rules and tax legislation, ensuring that the trust is operated in accordance with Irish trust law, holding trustee meetings to formally allocate shares to participants, preparing and submitting the annual trust tax return for Irish Revenue and liaising with Revenue regarding corporate events and employee communications as necessary.

We are able to act as sole corporate trustee, or co-trustee with company individuals, and we can work alongside in-house or third party administrators based in Ireland or elsewhere.

Administration services

Many companies may find that outsourcing their administration work is more cost effective, particularly with large schemes or those that make frequent share allocations. A&L Goodbody offers bespoke APSS administration services to clients via our own software and we can tailor our service to suit the individual requirements of the company.

Our administration services cover the full range of work arising in the context of an APSS, including liaising with payroll, brokers, participants and trustees to ensure that share purchases and allocations are calculated and carried out in a timely manner in accordance with the tax legislation; dealing with participant instructions on the release of shares at the end of the 3 year period; dealing with dividends to ensure they are calculated and distributed as and when necessary, and maintaining proper records to deal with participant queries as well as annual Revenue reporting obligations.

Our team



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Other advisory services

- We can assist with employee communications e.g. presentations to staff in connection with an offer or a release of shares.
- We can advise companies on ways to make an existing APSS work better for the company e.g. to improve take-up, streamline trust or administration processes or by preparing and negotiating service agreements between a company and its outsourced service providers.

Summary

The continuing popularity of the APSS among Irish and multinational employers is testament to its attractiveness as a tool for wider employee share ownership. Given the current prominence being given at a political level to the concept of employee share ownership, it is possible that other forms of share incentive and profit sharing will gain momentum in due course. In the interim, the APSS, despite some limitations, still has plenty to recommend it.

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