Revenue Approved SAYE Schemes

Revenue Approved SAYE Schemes are a tax efficient way of granting share options to employees.

SAYE Schemes operate by way of the grant of an option to acquire shares, usually in the parent company of the group. These options can be granted at a discount of up to 25% of the market value at the time the option is granted. Options can be granted with a 3, 5 or 7 year term. At the same time as the option is granted, each employee enters into a savings contract with a Revenue approved savings carrier to save an amount between €12 and €500 per month over a period of three or five years. At the end of the savings period, the proceeds from the savings contract are used to fund the exercise of the option. The number of shares under option is determined by reference to the total amount of money which the employee will obtain on repayment of the savings contract. Generally, employees may exercise their options within six months of the end of the relevant savings period.

SAYE Schemes are established for employees of the company which set up the scheme, but can be extended to subsidiaries of that company.

Eligibility

- All employees and full time directors of the participating companies must be eligible to participate in the Scheme.
- It is possible to specify a qualifying service period of up to three years.
- All participants must participate on "similar terms". The similar terms requirement covers not only the share price, but also the circumstances in which the options can be exercised and the number of shares over which the option is granted.

Tax treatment

- There is no income tax on the grant of an option under an approved SAYE share option scheme.
- There is also no income tax on exercise, provided the option is not exercised before the third anniversary of the date the option was granted (there are exceptions for cessation of employment in certain circumstances). However, the Universal Social Charge (USC) and employee PRSI are payable on exercise.
- There may be a liability to capital gains tax on a subsequent disposal of the shares, calculated by reference to the excess of the sale proceeds over the option price paid. The employee benefits as the difference between the proceeds of sale and the option price (which may be significantly discounted) is only taxed at the capital gains tax rate of 33%.
- Employees' savings are paid from net income. However, interest or bonus payments received from the savings carrier are exempt from income tax.
- From the company's perspective, the cost of establishing and administering a Revenue approved SAYE Scheme are deductible for corporation tax purposes.

Scheme shares

- The shares over which options are granted are generally shares in the ultimate parent company itself. While it is preferable for liquidity that the shares are quoted on a recognised stock exchange, this is not strictly necessary.

- It is possible to source the shares delivered from an employee benefit trust.

Exit provisions

In general, participants will continue to save and retain their rights for the requisite period and may then choose whether or not to exercise their options within six months of the bonus date at the end of the savings period.

However, there may be exceptions:

- It is possible for a participant to leave the Scheme early and if so, they will be entitled to their savings in addition to any interest due under the terms of the savings contract but the option will lapse.
- If a participant dies before the bonus date, the relevant options may be exercised within a specified time frame.
- If a participant ceases their office or employment with the company due to injury, disability, redundancy or retirement (at an age specified by the company in the Scheme), they may exercise their rights within six months of their departure. Participants who reach the specified retirement age but remain in employment may exercise within 6 months of reaching the specified age.
- If a participant resigns their employment with the company in circumstances which do not qualify for special treatment, and their rights have been held for less than three years, the option will lapse. However, if the rights have been held for in excess of three years, the Scheme may allow those rights to be exercised within six months of the cessation of employment.

Requirements for establishing a Revenue approved SAYE Share Option Scheme

The process for approval of an SAYE Scheme takes up to 12 weeks. It is necessary to obtain Revenue approval of the Scheme documentation (e.g. Scheme Rules, Letter of Invitation to Participants, Application Form, Employee Booklet etc). It is also necessary to involve an approved savings carrier and the savings contract will also have to be Revenue approved. The group structure will need to be considered in order to identify the appropriate shares over which options may be granted.

The Memorandum and Articles of Association of the company whose shares will be utilised must be submitted to the Revenue together with a declaration from an officer of the company confirming that the Scheme shares meet certain criteria set out in legislation.Savings carriers should be approached as early as possible to ensure all those arrangements are in place in a timely manner.

Summary of benefits to employer and employee

Employer

- All costs associated with the establishment and running of a Revenue approved SAYE Share Option Scheme are tax deductible for the Irish establishing company.
- There is no employer PRSI on gains realised by participants at exercise.
- Engenders loyalty amongst staff resulting in low staff turnover and increased productivity.
- Investment by employees into the employing group of companies displays a high degree of trust.
- The awards are largely self-funded i.e. the employee's savings will fund the option price and the company can issue new shares in satisfaction of the awards.

Employee

- There is potential for employees to buy shares in the company at a significant discount in a tax efficient manner.
- Interest and bonus payments received under the Savings Contract are tax free.
- There is no risk to the participants as they do not have to use their savings to exercise the option.
- Increases interest and greater involvement in the fortunes of the employer company and in a broader sense in the group shares.

Services provided by A&L Goodbody

- We offer a full suite of legal, regulatory and tax advisory services for SAYE schemes, including:
- Scheme establishment/design, and drafting all relevant documentation, including scheme rules, employee documents 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 options granted under an SAYE scheme, or have an impact on participants e.g. mergers, disposals and workforce integration or redundancy programmes.

We can also assist with employee communications e.g. presentations to staff in connection with an offer or at maturity of options granted under an SAYE scheme. We can also advise companies on ways to make an existing SAYE scheme work better for the company, to improve take-up or streamline administration processes.

Summary

SAYE schemes are a risk-free way for employees to save regularly with the added benefit of an option to buy company shares, often at a significant discount and free of income tax, at the end of the savings period. They are also attractive for employers as a retention tool and broad-based employee benefit that does not involve a significant cash outlay, particularly if newly issued shares are used to satisfy awards. Given the current prominence being given at a political level to the concept of wider 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 SAYE scheme, despite some limitations, is an attractive tool for many employers.

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