IPSA Guide to …

Irish Revenue Approved Savings Related (SAYE) Share Option Scheme

A **Savings-Related, or Save As You Earn (SAYE), Share Option Scheme** is an all-employee share Scheme under which a company grants options over shares to its employees.

There are two elements to an SAYE Scheme

- a formal saving scheme with a qualifying institution for three, five or seven years; and
- a share option Scheme

At the end of the savings period, it is envisaged that employees will have sufficient capital to fund the exercise of the options and thus acquire the underlying shares.

The use of an SAYE Scheme facilitates employee share ownership in an income tax efficient manner subject to legislative and Revenue requirements. Normally, when an employee exercises a share option, a charge to income tax will arise based on the excess of the value of the shares over the option price. The tax charge arises at the time of exercise even when the employee retains the shares. However, favorable tax treatment is available for options granted under a Revenue approved SAYE Scheme. Provided that certain conditions are met, any gains arising on the exercise of the options will be exempt from income tax but will be subject to the USC and employee PRSI.

There is no employers' PRSI on the gain arising on exercise.

Revenue approved SAYE Schemes

Options granted under an SAYE Scheme which has been approved by the Revenue Commissioners will not be liable to income tax on grant or exercise. Consequently, an employee is able to exercise an option without crystallising a tax charge, provided the option is not exercised before the third anniversary of grant. However, the participant will be liable to employee PRSI and the USC.

The costs of establishing and administering an approved SAYE Scheme are deductible in computing the company's profits for corporation tax purposes.

The main features of the legislation governing Revenue approved SAYE Schemes are set out below.

Constitution

An SAYE Scheme is governed by written rules which must be approved in advance by the Revenue Commissioners. In the case of quoted companies, the rules will normally be approved by shareholders at a general meeting and will also need to comply with relevant institutional investor guidelines. The timing of the implementation of an SAYE Scheme will therefore need careful consideration.

Establishing Company

Only a Company can establish an SAYE Scheme. The establishing company is the only company who can grant options under the Scheme.

Where the company establishing the Scheme has control of another company or companies, the Scheme may be extended to all or any of the companies over which it has control. The companies participating in the Scheme are referred to as "participating companies".

Eligibility

Participation in an approved SAYE Scheme must be open to all:

- employees and full-time directors of the company which established the Scheme and such subsidiaries as are designated as "participating subsidiaries"
- who have been such during a qualification period which cannot exceed three years; and
- who are chargeable to income tax under Schedule E.

All employees eligible to participate must be allowed to participate on similar terms. This covers the option price, the circumstances in which the option may be exercised and the number of shares subject to the option. It is possible to vary the number of shares available to employees by reference to salary levels, length of service or other similar objective criteria acceptable to the Revenue, however, this is unusual in an SAYE Scheme.

Calculation of a participant's entitlement to options under an approved SAYE Scheme by reference to the age of the participant or the status (e.g. seniority) or grade of the participant is not permissible.

A Scheme may have one participating company or be a group Scheme in which more than one group company participates. However, a group Scheme will not receive approval if it results in options being granted wholly or mainly to the higher paid employees and directors in the group.

Who is ineligible to participate?

Those not eligible to participate are:

- former employees and directors, or

- persons who within the previous 12 months had a 15% interest in a close company (a close company is one under the control of 5 or fewer participators or of participators who are directors) and
- the close company is the company whose shares may be acquired pursuant to the exercise of the option, or
- the close company has control of the company whose shares may be acquired pursuant to the exercise of the option, or
- the close company is a member of a consortium owning the company whose shares may be acquired pursuant to the exercise of the option.

What are qualifying shares?

Qualifying shares are ordinary shares in the establishing company or in a company which controls the establishing company. The shares may also be ordinary shares in a company which is a member of a consortium or which controls a company which is a member of a consortium owning or controlling the establishing company, provided the company whose shares are to be used beneficially owns at least 15% of the company so owned.

The shares must be:

- quoted on a recognised stock exchange; or
- in a company not under the control of another company or
- in a company under the control of another company whose shares are quoted.

The shares must be fully paid up, not redeemable and not subject to restrictions other than those which attach to all other shares of the same class.

Savings contracts

An approved SAYE Scheme can only operate where there is an associated certified contractual savings scheme. Only qualifying savings institutions (an approved savings carrier) may operate a certified contractual savings scheme.

All eligible employees who wish to participate must enter into a savings contract, with an approved savings carrier, to make either 36 or 60 monthly savings contributions. The minimum savings requirement is €12 per month. The current maximum individual savings contribution cannot exceed €500 per month. Unlike the position for Revenue approved Profit Sharing Schemes, the SAYE savings are deducted from net income, i.e. after income tax, the USC and employee PRSI. Any interest or bonus payable through the savings contract at maturity will be exempt from tax and will not be subject to deposit interest retention tax (DIRT).

Grant of Options

Participation in the Scheme is voluntary.

Each employee joining the SAYE Scheme will be granted an option to acquire shares in the company, at a price per share fixed by the directors at the time of grant. The option price cannot be less than 75% of the market value of the share as at the date of grant.

Number of shares subject to option

The number of shares subject to the option will be determined at the time of grant and will be directly proportional to the level of savings to which the employee commits.

Each option granted must be over the maximum number of whole shares which can be bought at the option price with the expected repayment under the related savings contract.

Timing of grant

In the case of quoted companies, options may normally only be granted within certain periods, e.g. following the announcement by the company of its results for any period; the date on which the Scheme, or any amendments thereto, receive Revenue approval; or the announcement or introduction of any relevant alterations to the Taxes Act or the savings contract.

Scaling Back

The company may set a limit on the number of shares to be made available for any invitation. In the event that applications for options exceed the number of shares available, the directors may scale down applications for all participants on a pro rata basis.

Exercise of options

An option may be exercised in whole or in part but can only be exercised by the person to whom it was granted or by their personal representative(s). An SAYE option must not be transferable.

The Scheme rules must provide for the acquisition of shares on the exercise of the option will be paid for with moneys not exceeding the amount of the repayment from (including any interest or bonus) the SAYE savings scheme.

Options may normally be exercised only within six months of the end of the relevant savings contract. An option not so exercised will normally lapse. The Scheme rules may provide that a former employee may exercise an option within six months of leaving, but generally only in certain limited circumstances.

What happens if a participant dies?

If an SAYE Scheme participant dies before the expiry of their savings contract, the Scheme rules must allow for the exercise of such options within 12 months of the date of death.

What happens if a participant leaves the Company?

If a participant reaches the Specified Age – an age, which is specified in the Rules, between 60 and State Retirement Age (currently aged 66 but changing to aged 67 from 2021) - or leaves the company due to injury, disability or redundancy, the Scheme must allow them to exercise the options with their savings to date within six months of cessation of office or employment.

If a participant ceases to hold the office or employment in circumstances other than those listed above, and the options have been held for more than 3 years then the rules of the Scheme may allow for the options to be exercised within six months of that date.

If the options have been held for less than three years the options will lapse.

Capital gains tax

Following the exercise of an option an employee may decide to sell some or all of the shares so acquired. In this event a charge to capital gains tax (CGT) may arise on the excess of the net sale proceeds over the actual option price. Any such gain will be liable to CGT, currently at a rate of 33%. If not utilised elsewhere, an employee's €1,270 annual CGT exemption can be offset against the gain. It is possible, by selling tranches of shares each year, to reduce the overall liability to CGT. However, participants should note, that there are special rules for identifying which shares have been sold for CGT purposes.

Corporate Reporting

There is a statutory filing obligation on companies operating approved SAYE Schemes. Form SRSO1 must be filed by 31st March following the end of the tax year to which it relates.

What are the requirements for Revenue approval?

The following documents/information will be required by Revenue before approval for an SAYE Scheme is granted:

- a certified copy of the Scheme Rules
- a copy of the Constitution / Memorandum and Articles of Association of the Company whose shares are being used for the purpose of the Scheme;
- a declaration by the Company Secretary of the Company whose shares are being used for the purpose of the Scheme;
- copies of all documents to be issued to participants;

- a copy of the SAYE certified contractual savings Scheme Prospectus and Application Form;
- copies of the signed company resolution approving the Scheme and the resolution nominating participating companies (if any);
- the name and address of the person responsible for submitting the Annual Return of Information; and
- the income tax and corporation tax reference numbers for the company and any participating companies.

No SAYE options can be granted until formal Revenue approval is received for the Scheme.

Where it is proposed that an amendment be made to the Rules of an SAYE Scheme a copy of the signed Resolution detailing the proposed amendment together with a certified copy of the amended Rules must be forwarded to Revenue for approval. The amendment does not take effect until it has been approved by Revenue.

The foregoing reflects current tax rules and Revenue practice which is subject to change. This document is for general guidance only and should not be regarded as a substitute for professional advice. Such advice should always be taken before acting on any of the matters discussed.

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