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19 July 2021

Re: Irish ProShare Association (IPSA) – Budget Submission

Dear Minister,

IPSA is a not for profit organisation which advocates for employee share ownership and we wish to make a budget submission on behalf of our members.

Our submission focuses on:

- 1 Save As You Earn (**SAYE**) scheme - the withdrawal of Ulster Bank from the Irish market leaves the scheme in a precarious position, with no Irish-licensed bank acting as a 'savings carrier' to facilitate the scheme.
 - 2 The Key Employee Engagement Program (**KEEP**), and its lack of usability. As the Covid-19 crisis continues to affect Irish SMEs, the ability to offer equity in a tax efficient manner to staff is an invaluable tool in helping these struggling businesses survive, but KEEP needs some straightforward amendments in order to make its use viable.
 - 3 Recommended amendments to (a) the Companies Act 2014 and Chapter 9 of the Taxes Consolidation Act (“TCA”) to facilitate share buy-backs in Irish companies and (b) Section 128 of the TCA to so that options can only be taxed at exercise instead of both grant and exercise for long options. These changes will make share schemes more user friendly.
- 1 **SAYE – No Savings Carrier**
SAYE scheme – new Irish-licensed savings carrier required
 - 1.1 Currently Ulster Bank is the only Irish-licensed bank acting as a 'savings carrier' facilitating new savings accounts for the SAYE scheme. SAYE allows employees at all levels of a company to share in the success of the business they work for. The withdrawal of Ulster Bank from Ireland leaves great uncertainty surrounding the future of the scheme, and potentially deprives employees of the chance to avail of, and benefit from SAYE. Without a contractual savings carrier, SAYE schemes will fall away and not be capable of implementation in Ireland.

- 1.2 Our understanding is that Ulster Bank currently has around 6,000 SAYE account holders with savings valued at approximately €20m. Currently, it is not even clear to us if Ulster Bank will remain in the Irish market long enough to see out the existing SAYE savings contracts it has on its books. It is not yet clear how Ulster Bank intends to deal with its obligations to these savers. Clarity and certainty are required on this issue, for existing account holders, and employees hoping to avail of the scheme in the future. Unless another Irish lender commits to facilitating SAYE savers, then this important, Revenue-backed share scheme will no longer be viable. Companies who wish to reward their employees for the financial success they have helped to create, will have one less tax-efficient option available to them.
- 1.3 Late last year, a Ministerial Order was introduced to enable Yorkshire Building Society and Barclays Bank to run out their legacy schemes in existence in Ireland at the point of Brexit. However, both banks are no longer facilitating new SAYE schemes in Ireland. There are roughly 10,000 Irish workers holding SAYE company share scheme savings accounts at YBS or Barclays. The extension of this SAYE Ministerial Order in the interim period to cover Ulster Bank's parent, NatWest, may be a temporary option worth exploring. This would enable Ulster Bank/NatWest to protect corporate scheme arrangements and employee SAYE options at the point of Ulster Bank's exit. This will not, however, provide long term certainty to the SAYE scheme. Given that the purpose of this scheme is to provide long term financial certainty and a means of future earning to employees, this is a wholly unsatisfactory situation. With regard to Ulster Bank exiting the Irish market and in the event they are able to do so without an alternative banking institution taking on this function, we have formally requested the Revenue Commissioners approve a blanket approach to early exercises to protect existing SAYE savers and their right to exercise options on a pro-rata basis. Ideally, this will not be required on the basis a solution is found to maintain the longevity of SAYE in Ireland, however as a backup for the worst-case scenario this is important to the Irish corporate utilising SAYE and their employees. To date we have not received a response.
- 1.4 Another alternative to facilitate SAYE would be to either facilitate savings via one of the State savings schemes or allow employing companies hold the funds on behalf of employees if another "qualifying savings institution" in accordance with Section 519 C TCA is not prepared to support Irish SAYE.
- 1.5 We have discussed the position of IBEC as well as many of our members who currently run an SAYE and we have various corporate members who can provide further detail on how the loss of SAYE will impact their business if you wish to receive this.

2 **KEEP SCHEME – REFORM NEEDED**

Current KEEP scheme - too complicated for its target audience

- 2.1 The lack of usability as well as ambiguity associated with certain aspects of KEEP is a contributing factor to the poor uptake of the scheme nationwide. It is clear that significant reform is needed to make KEEP easily understood and implemented by SME's, which can be used to assist in the recovery of businesses around Ireland following the Covid-19 crisis.
- 2.2 Irrespective of 2.1 above , there is a lack of clarity around the fact that the legislation (some subject to a Ministerial Order) gives conditions for a "qualifying company" and for a "qualifying group" but is

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Honorary President: George Tuthill Council: Eleanor Cunningham (Vice-chair), Stephanie Bowe, Liam Doyle, Louise Drake, Gillian Dully, Daryl Hanberry, Gemma Jacobsen, Fiona MacGregor, Clare McDonald, Liam Murray, Sean Quill, Keavy Ryan. IPSA Secretary Stephen Gillick. Registered Office: 6 – 9 Trinity Street, Dublin 2

not clear about if you must follow the rules for a group just because the qualifying company is in a group. It is not clear as to whether a single company within a group could qualify for KEEP on a standalone basis. It is an ambiguous area of the legislation such as this that deters SMEs from using KEEP, and which also leads to a lack of confidence among legal and accountancy services in advising companies on the use of KEEP. The legislation needs to be simplified, and in doing so would improve participation with the KEEP scheme, which is more important now than ever given the COVID-19 crisis.

Costs associated with establishment

- 2.3 The complexity of the legislation means that the costs associated with implementing KEEP are a deterrent to companies who cannot afford to engage with large corporate legal and professional service providers to advise them of their ability to qualify for KEEP. The scheme needs to be simplified so that high street solicitor and accounting firms can implement it for their local clients, or indeed the SME themselves could implement it if they wished.
- 2.4 Another concern is that should a company make a minor error in determining market value or Revenue disagree with their valuation to any extent, the share options and thus the employee will no longer qualify for KEEP. This is unduly harsh for the target SME audience and differs from other schemes. In addition to revisiting the legislation we suggest that guidance should be published around how companies can implement and continue to use the KEEP scheme in a cost-effective manner.

Definition of "qualifying individual"

- 2.5 KEEP has a requirement that anyone participating be a "*qualifying individual*" and one of the criteria is working hours. Our members' view is that KEEP should be open to all employees and that the working hour's limitation should be removed completely. In speaking with SME representatives and our members, we are aware that many SMEs typically employ part time employees as the cost of wages for full time employees is prohibitive for them. The topic of working hours has become an even more prevalent area for concern for SMEs because of the impact of COVID-19. As outlined above, many employees have been laid off while others are still facing an uncertain future with reduced working hours. The removal of the working hour's requirement would increase confidence with the scheme and no doubt encourage uptake of it.

3 OTHER RECOMMENDED LEGISLATIVE AMENDMENTS TO MAKE SHARE SCHEMES MORE USER-FRIENDLY

3.1 Share Buy-Backs – Companies Act 2014 Amendment ***Recommend amendments to ease the use of buy-backs***

- 3.2 Often private companies are reluctant to implement an employee share scheme because of the challenges associated with buying back shares if an employee wants to realise the value of their shares. In the UK, Part 18 of the CA 2006 was amended in 2013 and further again in 2015, relaxing certain statutory requirements that would otherwise apply when undertaking a share buyback. In respect of buybacks for the purposes of, or pursuant to an employees' share scheme. This allowed a private company to purchase its own shares off-market with cash up to a specified amount in a

financial year. It also gave greater options to UK companies. Shares can now be paid for after purchase, or in instalments, or both. A simplified process was also introduced for buying back shares out of capital involving a special resolution supported by a solvency statement.

- 3.3 This gave greater scope to UK private limited companies to employ share buy-back schemes. Companies in the UK can now make off-market purchases of its own shares, where the purchase is for the purposes of an employees' share scheme. Instead of a contract, the buyback can simply be made under a general authority given by the shareholders.

Companies Act 2014 and Chapter 9 Taxes Consolidation Act- amendment needed

- 3.4 We would strongly encourage that an amendment be made to the Companies Act 2014, to allow for similar scope for share buybacks in private limited companies in Ireland, and the English model is a solution which could be easily implemented. For private limited companies that are not listed, an internal market for such companies' shares would be created, allowing companies to buy back shares from employees with greater ease and efficiency.
- 3.5 Private companies and their employee shareholders are at a disadvantage to listed companies and their employees in that there is typically no liquidity in the company's shares other than on a sale of the company to a third party. This means the private company is often required to buy back its shares to create liquidity for employees or at a minimum to deal with exiting employee shareholders. Company buy back of its own shares typically can be regarded as an income distribution rather than a capital event such that the [employee] shareholder is taxed at marginal rates as high as 52%. This compares to an {employee} shareholder of a listed company where CGT applies of 33%. This is a significant issue and deterrent for such companies and its's employees in affording their employees equity participation. Where this taxation treatment applies the intended taxation treatment of KEEP (to tax only on disposal of the shares and as a capital gain) is completely nullified. We ask again that Chapter 9 and where relevant Chapter 2 Part 6 of the TCA be reviewed in light of employee share participation and share schemes for example but not limited to (i) provide a carve out for such employees and schemes and (ii) to facilitate such schemes (be it shares or options) as an acceptable "benefit of trade test" .

Section 128 (5)- Taxes Consolidation Act 1997 (TCA) – Long options taxation at grant

- 3.6 Most multinational companies typically grant options with a 10-year life span. However, the provisions of section 128 TCA specify that where a share option is capable of being exercised more than 7 years after it is granted (i.e. a long option) a charge to income tax may arise on both the grant of the share option and the exercise be it that any tax on grant is accounted for to reduce the tax on exercise. Ireland is very much an outlier in seeking to tax at grant. We would recommend that subsection (5) be deleted. We suggest this which would assist greatly in employee understanding of the taxation of share options and ease the application and administration of share options in Ireland.

Conclusion

We are also calling for support to be shown for the SAYE scheme, by working to replace the departing Ulster Bank as the sole Irish-licensed bank acting as savings carrier to SAYE or introduce an alternative medium for savings.

SAYE's are used mostly by larger companies. We also need to show support for SME's. Irish SMEs have endured a tough and testing past year. We are calling for clarity and the simplification of legislation surrounding the KEEP scheme to assist them in their recovery.

Finally, additional support to offer greater flexibility when implementing a share scheme would involve simplifying the buy-back provisions under Irish company law and the related taxation treatment in the TCA, and the removal of the taxation of long options at grant.

We appreciate your time in considering our submission above and look forward to engaging with you to address any questions or clarifications you may have.

Yours sincerely,



Gemma Jacobsen
Vice Chair, Irish ProShare Association