**KEEP - Key Employee Engagement Programme**

*By Kevin O’KELLY – IAFP Ireland – May 2019*

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In his Budget 2018 statement the Minister for Finance announced the introduction of a new tax-advantaged share scheme known as the *Key Employee Engagement Programme* (KEEP). The scheme was formally enacted on 14 January 2018.

KEEP recognises that share-based remuneration can play an important role in rewarding key employees at all stages of a businesses’ development and it can significantly reduce fixed labour costs and free up business cash-flow. In this context, the KEEP scheme is a tax-advantaged share scheme, intended to allow Irish employers to compete with the share option schemes used by large multi-national employers to attract and retain employees. The main benefit of the schemes that the multi-national companies use is that employees can quickly convert their shares into cash by selling them.

This is not possible for shares held in private Irish companies, so KEEP compensates for this by providing a scheme that allows employees to realise their shares and pay capital gains tax at 33%, rather than income tax of up to 52%. The scheme is intended to benefit key employees and their employers. It is aimed at small growing companies to help them recruit and retain employees. It has a significant number of tax advantages for employees and employers.

**Tax reliefs**

There are a number of conditions to be met to qualify for the generous tax reliefs:

* There is no income tax on a grant of a qualifying share option
* There is no income tax or employee PRSI liability on exercise if qualifying share options were granted between 1 January 2018 and 31 December 2023
* The employee will only pay Capital Gains Tax (CGT) on the ultimate disposal of the shares
* The value of shares acquired by key employees under the KEEP incentive will also be exempt from employer PRSI contributions, in accordance with the current regime applying to share-based reward.

**Qualifying employee**

In general, an employee is considered a *qualifying individual* if her/his employment or directorship with a qualifying company is capable of lasting at least 12 months from the dates on which the qualifying share option is granted.

An individual will cease to be a qualifying individual if he/she, together with connected persons, acquires, whether directly or indirectly, more than 15% of the ordinary share capital of the qualifying company. This means company owners are excluded from KEEP.

With respect to individuals leaving employment or office of the qualifying company, they will still be in a position to avail of relief under the KEEP incentive if the exercise of the qualifying share options occurs within 90 days of the individual ceasing to be in employment or office.

**Qualifying enterprise**

To be eligible to grant share options under this scheme, a company must be a *qualifying company*, which means that it must:

* Be incorporated and resident in Ireland, or resident in an EEA State and carrying on business in Ireland through a branch or an agency
* Exist wholly or mainly for the purpose of carrying on a *qualifying trade* on a commercial basis with a view to making a profit
* Be a micro, small or medium-sized enterprise (SME) within the meaning of the Annex to Commission Recommendation 2003/361/EC – with between 10 and 250 employees and a turnover of between €2 million and €50 million
* Be an unquoted company none of whose shares, stock or debentures are listed in the official list of a stock exchange or quoted on an unlisted securities market of a stock exchange other than on the Enterprise Securities Market of the Irish Stock Exchange or on any similar or corresponding stock exchange in an EEA country or country with which Ireland has a double taxation agreement
* Not be regarded as a company in difficulty for the purposes of EC Commission Guidelines on State Aid
* Not issue qualifying share options of the company with a market value exceeding €3 million.

A company which directly holds the entire issued share capital of a qualifying company may also grant options to its employees and directors under KEEP. However, a key requirement is that the company must be involved in a *qualifying trade*. In general, this involves any business, with the exception of the following *excluded activities*:

* Adventures or concerns in the nature of trade
* Dealing in commodities or futures in shares, securities or other financial assets
* Financial services
* Professional services companies
* Dealing in or developing land
* Building and construction
* Forestry
* Operations carried out in the coal industry or in the steel and shipbuilding sectors.

**Qualifying share option**

A *qualifying share option* means a right granted to an employee or director of a qualifying company to purchase a predetermined number of shares at a predetermined price, by reason of the individual’s employment or office in the qualifying company.

However, the following conditions apply:

1. Shares which may be acquired by the exercise of the share option are new ordinary fully paid up shares in a qualifying company, which carry no present or future preferential right to dividends or to a company’s assets on its winding up and no present or future preferential right to be redeemed
2. The option price at the date of grant is not less than the market value of the same class of shares at that time
3. There must be a written contract or agreement in place specifying:

* The number and description of the shares that may be acquired by the exercise of the share option
* The option price
* The period during which the share options may be exercised
* The option price at the date of grant is now less than the market value of the same class of shares at that time.

1. The total market value of all shares in respect of which qualifying share options have been granted to an employee or director does not exceed:

* €100,000 in any one year of assessment
* €250,000 in any 3 consecutive years of assessment
* 50% of the annual remuneration of the individual in the year of assessment in which the share option is granted.

1. The share option must be exercised by the qualifying individual during a period of not less than 12 months from the date of grant
2. The shares are in a qualifying company
3. The share option cannot be exercised more than 10 years from the date of grant.

In addition, there is an overall *purpose test* which means that the option must be granted for commercial reasons to recruit or retain an employee and not as part of a scheme or arrangement of which the main purpose (or one of the main purposes) is for tax avoidance.

**Reporting requirements**

Where a qualifying company grant a qualifying share option under KEEP, it will be required to submit a return to the Revenue Commissioners by 31 March of the following year of assessment in a specified format.

In addition, the Revenue Commissioners may require a company which grants KEEP share options to provide information which will allow Revenue to publish the following information on the incentive as it applies to employees/directors:

* The name, address and Companies Registration Office (CRO) number of the company
* The date of exercise of the qualifying share options
* The amount of the tax advantage granted
* Details on the principal activity of the company and the territorial unit (as defined under EC Regulations) in which the company is located.

If the above requirements are not met, the company will cease to be regarded as a *qualifying company”* for the purposes of tax relief.

**Budget 2019**

However, the uptake in the last 12 months has been disappointing as the complexities of the scheme are seen as a disincentive for companies. So, in this context, some improvements were announced in Budget 2019 that are designed to simplify the scheme and improve uptake:

1. Increase the ceiling on maximum annual market value of shares that may be awarded to equal the amount of the salary (up from 50%)
2. Replacement of the three-year limit with a lifetime limit
3. Increase the quantum of share options that can be granted under the scheme from €250,000 to €300,000.