



# MOORE

## TAXATION OF SHARE OPTIONS

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### CONTENTS

What are share options?

What are the tax implications?

How the tax is calculated

What happens when I dispose of the shares?

Revenue's increased scrutiny

What can Moore offer you or your staff?

### INTRODUCTION

Ireland remains one of the top locations globally for doing business given its favourable tax regime and highly skilled workforce. For many years, this has resulted in the world's largest multinational enterprises ("MNEs") establishing operations in Ireland. As the employment landscape in Ireland changes, employers are always considering alternative means to attract and retain staff. One benefit which we are now seeing more and more, especially within large sized MNEs and tech start-ups, is the granting of share options to employees or enrolment within various share schemes such as Employee Stock Purchase Plans ("ESPPs").

Providing such an incentive to an employee can be a highly motivational tool and a valuable perk from the employee's perspective. However, in our experience we find employees do not fully understand the tax implications and obligations of being in receipt of such remuneration. This article considers the common issues that employees encounter on share options and the associated tax obligations.

### What are share options?

A share option provides an employee the right to buy a share in their employer's company (or group parent company) in the future but at a predetermined fixed price. The employee can choose to 'exercise' the option in order to acquire the shares in their employer at the predetermined fixed price. This normally occurs on the passing of a certain time period under the option agreement.

The benefit for the employee of acquiring the shares arises where the share price has increased in excess of the predetermined fixed price on the initial receipt of the option. Employees exercising share options are therefore typically in a position to acquire shares at below market value. The benefit for the employer of awarding share options is the incentive for employees to grow the value of the company and remain with their employer until such options can be exercised.

## What are the tax implications?

The receipt of share options from an employer can have a number of tax implications for the employee. It is important to note that it is the responsibility of the employee to ensure tax obligations associated with share options are satisfied.

The most common type of share options granted to employees are considered “short options”. These options must be exercised within 7 years of the grant date. There is no immediate tax due on grant of such options. However, where exercised, Income tax, Universal Social Charge (“USC”) and PRSI are chargeable on the difference between the predetermined fixed price and the market value of the shares at the date of purchase. The employee must prepare and submit a Form RTSO1 to Revenue and ensure all liabilities are paid in full within 30 days of exercising the option to avoid interest and penalties.

Where a share option is capable of being exercised for a period of more than 7 years in the future, there may be tax obligations at the time of grant.

## How the tax is calculated

In 2019, an individual subject to ‘marginal rates of tax’ is granted options to purchase 1,000 shares in his/her employer ‘Tech Limited’ in 2022 for €5 per share. In 2022, the individual elects to exercise the options when the market value of the shares is €15 per share. The taxable value on exercise is €10,000 i.e. the difference between the amount paid and the value of the shares acquired.

-Income Tax	€10,000 @ 40% = €4,000
-Universal Social Charge	€10,000 @ 8% = €800
-Pay Related Social Insurance	€10,000 @ 4% = <u>€400</u>

**Total Liability = €5,200**

## What happens when I dispose of the shares?

It is common practice for employees who have been granted share options to “exercise and sell” the share option on the same day. This results in the employee exercising the share option and immediately selling the shares to realise the value of the shares. Therefore, the

shares are usually acquired and disposed of at the same price and no Capital Gains Tax (“CGT”) implications would generally arise.

Where an employee exercises the option but decides to hold the shares for a period of time, this may result in exposure to CGT should the share value appreciate between the date of exercise and the date of disposal. The employee must ensure the relevant tax liabilities are paid on time and the subsequent return filed with Revenue to avoid interest and penalties.

## Revenue’s increased scrutiny

We have recently seen some very high profile cases of Revenue reviewing the operation of share option schemes within the tech sector. As part of these reviews, the compliance of many taxpayers has come under scrutiny. This highlights Revenue’s awareness of the popularity of this form of benefit and their focus to ensure compliance at all levels of the associated schemes. Therefore, it is as important as ever for the relevant taxpayers to be compliant with the tax obligations associated with share options.

Where the tax associated with the granting of share options is not paid when it is due, Revenue may apply interest and penalties. If we take the above example again and assume the tax is paid one year after it is due, the following liabilities may arise:

-Income Tax	€10,000 @ 40% = €4,000
-Universal Social Charge	€10,000 @ 8% = €800
-Pay Related Social Insurance	€10,000 @ 4% = <u>€400</u>
-Original Liability	= €5,200
-Interest 365 days @ 0.0219% (8% p.a.)	= €416
-Potential Penalty @ 10% (qualifying disclosure)	= <u>€562</u>

**Total amount payable = €6,178**

## What can Moore offer you or your staff?

At Moore, we assist a number of clients, both employers and employees, in respect of share options and associated transactions. We have advised on the establishment of various share schemes tailored for

individual employers and employees and are exclusively engaged as preferred advisers to large MNEs to assist their employees on the tax obligations arising from share options.

We provide a comprehensive service to employees in receipt of share options including:

- personal one to one consultations,
- reminder e-mails in advance of filing deadlines,
- preparation of tax calculations,
- submission of the relevant tax returns, and
- payment of liabilities on behalf of taxpayers.

We have established an efficient process to cater for our client's needs which allows us to provide a highly effective all-inclusive tax compliance service to clients in a cost effective manner.

If this is something you believe may be of interest to you or your staff please feel free to contact us and we can provide any additional information you may require.

Please see contact information below.

## ABOUT MOORE IRELAND

### Contact Information

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