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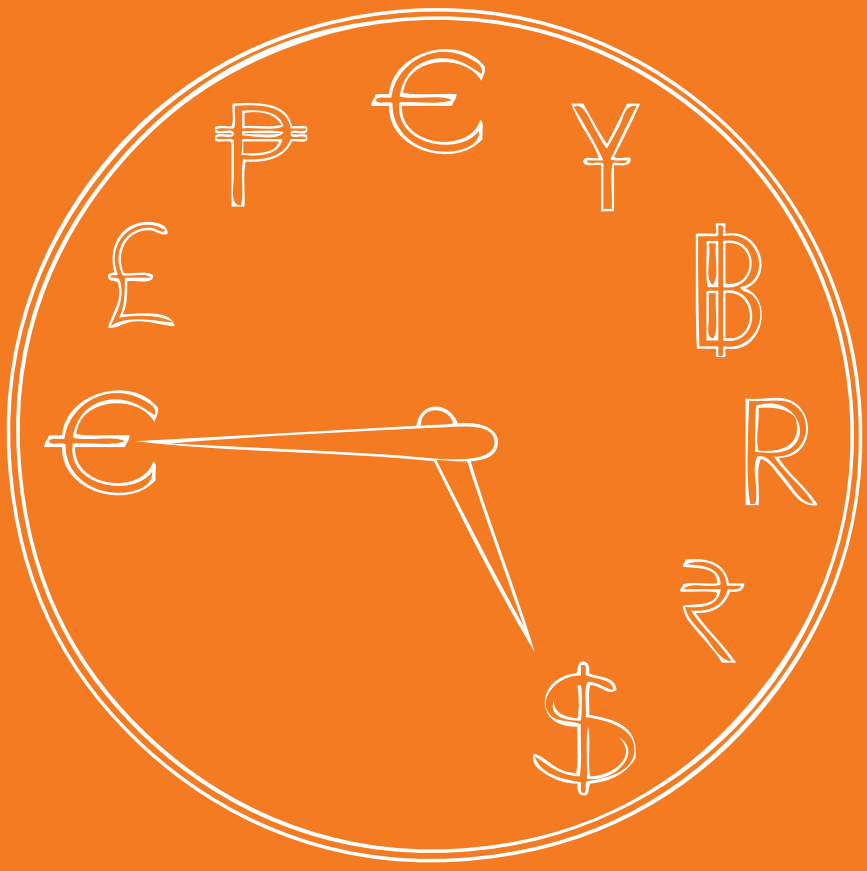
Share Incentives

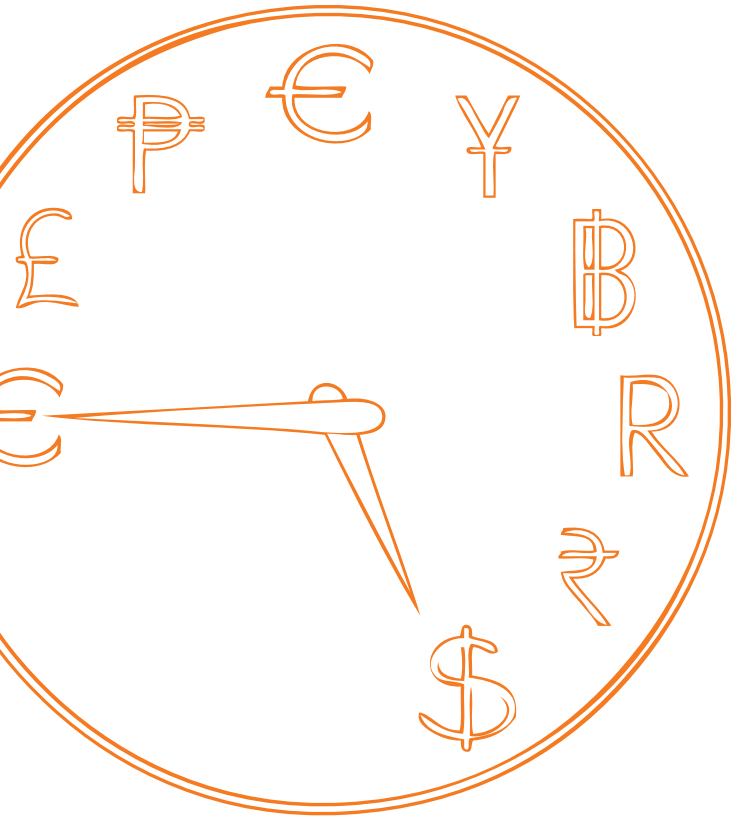


Employment Law & Benefits

Introduction

Share schemes and equity incentives can be a vital tool for any company in attracting, retaining and motivating employees. However, there are many legal and practical aspects to be considered when establishing and maintaining incentive schemes. If a scheme is to be effective, it must be consistent with the business's overall strategy and stage of development. As the strategy evolves or the business grows, existing arrangements should be reviewed to ensure they remain fit for purpose.

There are many types of share based incentives available for both public and private companies. We typically advise clients on the effective structuring, design, implementation and on-going management of schemes. Some common types of arrangements are summarised below, but any arrangement can be tailored to meet your specific needs.



The tax treatment of the different schemes varies. For schemes that are not Revenue-approved, a charge to income tax, the universal social charge (USC) and employee PRSI generally arises. The time at which the charges arise, the value on which tax is due and the payment and filing obligations differ depending on the type of arrangement. Employer PRSI is generally not payable on remuneration provided in the form of shares.

Summary of share schemes and equity incentives

Share schemes in Ireland may be Revenue-approved or unapproved.

- Revenue-approved schemes permit employees to receive a limited amount of shares without a charge to income tax. USC and employee PRSI still apply. Strict conditions have to be met in order to obtain Revenue approval such as the pre-condition that access to the scheme is open to all employees.
- Unapproved schemes offer more flexibility and can be suitable for incentivising key employees.
- We have set out below some key features of both approved and unapproved share and equity incentive schemes.

Types of share or equity incentive scheme

Approved Profit Sharing Scheme (APSS)

- Requires Revenue approval.
- Shares may be allocated to all qualifying employees on similar terms.

Save As You Earn (SAYE)

- Requires Revenue approval.
- Share option scheme where all employees contribute a specified amount to a savings plan for an agreed savings period.
- Savings may be used to fund exercise of options.

Unapproved share options

- Do not require Revenue approval.
- Employee receives a right to acquire shares at a point in time or on a future event (for example, company sale) for a specified exercise price.
- No upfront cost for the employee. Payment of exercise price and tax due (on difference between exercise price and market value) at the time option is exercised.

Share awards/discounted shares

- Do not require Revenue approval.
- Employee receives a right to acquire shares for free or at a discount.
- Provisions for vesting and/or forfeiture of shares may be provided.
- Benefit and tax charge for employee on vesting of award.

Restricted/Clogged Shares

- Do not require Revenue approval.
- Employee acquires shares which are subject to certain restrictions and cannot be sold for a certain period of time (the "clog period").
- Taxes charged on the receipt of the shares but on a reduced taxable value based on the length of the clog period (up to 60% for a clog period of over 5 years).

Restricted Stock Units (RSUs)

- Do not require Revenue approval.
- Employee is granted a right to receive a number of shares or cash to the value of such shares on completion of a vesting period or on a trigger event.
- Tax charge only arises on vesting or on receipt of shares/cash if earlier.

Share Appreciation Rights (SAR)/ Phantom Shares

- Do not require Revenue approval.
- Employee is given a right to receive the cash value (or sometimes shares) between an agreed exercise price and the market value of an agreed number of shares.

Our team

Our multi-disciplinary Share Incentives team has extensive expertise in this area and includes lawyers from our Tax, Employment Law & Benefits and Corporate teams. We advise on and assist in the implementation of both Revenue-approved and unapproved schemes for domestic and international clients.

Our focus is on delivering practical and effective solutions aligned with our clients' strategic objectives. This may involve designing a new scheme or modifying a non-Irish scheme to be appropriate for rewarding Irish based employees.

We provide advice and support in the following areas:

- Designing a scheme
- Drafting the scheme documentation
- Obtaining Revenue approval, if relevant
- Tax advice concerning the design and implementation of schemes
- Implementation and communication of the scheme to employees
- Ongoing administration of the scheme and adapting it in light of changes in law or in the requirements of the business

To find out more about how we can assist you with your employee share incentive arrangements please contact one of the team members shown over leaf.

What others say about us...

Our Corporate team

"high-quality firm"

Legal 500, 2016

Our Employment team

"everything you'd expect from a top firm"

Chambers & Partners Europe, 2016

Our Tax team

"client-focused and commercially pragmatic."

"ability to identify the problems and solve them before they arise."

Chambers & Partners Europe, 2015

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