



Irish Tax Institute Representations Bulletin The Taxation of Share-Based Remuneration

On 7 December 2010, the Minister for Finance presented Budget 2011. Amongst other measures, the Budget introduced significant reform to the taxation of share incentive arrangements. These changes were subsequently implemented by Finance Act 2011 with effect from 1 January 2011.

Yesterday, 7 April Revenue issued [Tax Briefing No. 2 of 2011](#). This contains detailed guidance on the Finance Act 2011 changes to the taxation and PRSI treatment of share-based remuneration. It follows [eBrief 17/11](#) published on 25 March which provided transitional arrangements giving employers additional time to comply with the new USC and PRSI obligations and a “grandfathering” arrangement announced by the Minister for Finance on 14 March in respect of PRSI obligations.

In this note we summarise the key developments in respect of share awards from the Budget 2011 changes up to yesterday’s Tax Briefing.

What Changes were Introduced?

Budget 2011 reformed how share awards are to be taxed and how this tax is to be administered and collected. These changes apply to shares awarded or options exercised on or after 1 January 2011. In summary:

- All share awards will be subject to PRSI (subject to subsequent concession from Department of Finance on “Grandfathering” as detailed below). This will include both Revenue approved schemes and unapproved schemes. With certain limited exceptions the employer will be responsible for returning employer and employee PRSI through the PAYE withholding system.
- The new Universal Social Charge (USC) will be payable by employees on all share awards at rates of up to 7%.
- Income tax and the USC on share awards (except share options) will be collected through the PAYE withholding system.
- The income tax exemption for Approved Share Option Schemes has been abolished. In respect of Approved Profit Sharing Schemes and SAYE schemes the favourable income tax treatment remains (though USC and PRSI will apply).
- Income tax on share option gains will continue to be collected through self assessment via the Relevant Tax on Share Options (RTSO) return within 30 days of the exercise of an option. The USC on share option gains is also to be remitted with the RTSO1.

Institute Representations

The Irish Tax Institute has treated the taxation of share awards as a priority in our representations activity since Budget 2011. We have engaged with the Department of Finance, Revenue and Department of Social Protection officials to express concerns on the new provisions and highlight practical difficulties arising with their administration. The Institute has also played a leading role in the special TALC Subgroup which was established to discuss and resolve the practical and administrative issues arising from the changes.

Output of Representations

1. Grandfathering of Arrangements for PRSI

The Department of Finance published, in March, a notice in relation to the ['grandfathering' of the new PRSI provisions](#). This states that, the charge to PRSI (employer and employee) will not apply where the share based remuneration is the subject of a written agreement entered into before 1 January 2011. The need for grandfathering of the PRSI measures was considered a key issue by the Institute and formed part of all of our representations. For any such agreements entered into prior to Budget 2011, the additional employer PRSI could have represented a significant additional and unbudgeted cost for many companies.

2. Transitional Measures to Allow Time for Implementation

Concerns over uncertainty arising from the Finance Act 2011 measures and the practical difficulties for employers in adapting payroll systems to deal with the changes featured strongly in our representations. As a result of concerns expressed, on 25 March Revenue issued [eBrief 17/11](#) confirming transitional measures that are to apply in relation to the implementation of the Finance Act 2011 changes. The transitional measures mean that interest and penalties will not be charged on outstanding liabilities provided that any such liabilities are settled before the P30 filing date for June, i.e. 14 July (23 July for ROS filers). This concession will apply to:

- Income tax, USC and PRSI on share awards.
- USC and PRSI on the exercise of SAYE share options and appropriations of shares in approved profit sharing schemes.
- PRSI on the exercise of non-SAYE share options.

This transitional arrangement does not include income tax on share option gains which remain under self-assessment and collectible through the RTSO (Relevant Tax on Share Option) return process.

3. Clarification on Practicalities of Application of Tax and PRSI

Yesterday Revenue issued a further and more detailed [Briefing note](#) addressing practical matters discussed at the TALC Subgroup on Share Awards. The Guidance Notes include the following clarifications:

1. Share Awards

- As a result of the Finance Act, employee share awards have been brought within the PAYE system. The net value of any share awards is to be

treated as notional pay at the time the shares are given to the employee. Employers will be responsible for the collection and payment of the income tax, USC and PRSI on these share awards through the PAYE collection system i.e. in the monthly P30. The Guidance Notes contain details on how this tax can be recovered from employees.

- An extended return and payment date may be availed of where there is a delay between the vesting date and the date of settlement of the shares on the employee (e.g. a lock-in period applies). Revenue has confirmed it will accept collection of tax and PRSI at the date the shares are settled rather than the vesting date. This extension will apply up to a limit of 60 days after the vesting date. Therefore the tax and PRSI will be payable with the P30 for the month following the earlier of the settlement date or the 60th day after vesting. If the employee leaves employment before the settlement date then the tax and PRSI will become payable at the time employment ceases.
- In valuing shares in private companies, the employer should use bone fide 'best estimates' using all relevant information available. Each valuation will depend on its circumstances however, where bona fide best estimates are used and documented to show that all reasonable efforts were made to determine the taxable value, then the employer will not be required to make any adjustments at the end of the tax year.

2. Share Options

- Share options remain within self assessment. Income tax in the form of relevant tax on share options (RTSO) will be payable within 30 days of exercise of the option. The USC on share option gains will also be collected through the RTSO.
- The 3% USC surcharge, will not apply to share option gains. A maximum rate of 7% will apply.
- The employer should account for both employer and employee PRSI for employees remaining in employment when the option is exercised. The employee PRSI element should be recouped from the employee before 31 March in the following year to avoid an additional tax charge.
- Where employees have ceased employment prior to the exercise date, the employer can elect to pay employer PRSI only and the employee will be liable to pay the employee PRSI to the PRSI Special Collections Unit.

3. Approved Profit Sharing Schemes (APSS)

- The employer is liable for the deduction and payment of USC and PRSI (APSS are exempt from income tax).
- Salary foregone is not chargeable to USC or PRSI at the time it is foregone. The charge arises on appropriation of shares.

4. Save As You Earn (SAYE) schemes

- Revenue will only seek to charge USC and PRSI on the gain arising on the exercise of an option. SAYE remain exempt from income tax.
- The employer is liable for the deduction and payment of USC through payroll however where the employee exercising the option has ceased to be employed by the company, such former employees will be liable for the USC through the normal self-assessment system.
- The arrangements referred to above for PRSI on Share Options shall also apply for SAYE schemes however where a former employee pays USC

through self assessment then the PRSI should also be under self assessment rather than to the PRSI Special Collections Unit.

- Any bonus or interest earned on the employee's savings is not chargeable to USC or PRSI.

5. Forfeitable Shares

- Where shares are forfeited any income tax, USC and PRSI overpaid will be repaid.

These guidance notes followed extensive discussion and negotiation with Revenue and the Department of Social Protection by the Institute and provide valuable clarification on how the Finance Act 2011 changes are to operate from a practical and administrative perspective. Revenue has to consider a number of additional issues (e.g. taxing rights for international mobile employees and double tax issues) and may add further clarification to these Guidance Notes in due course.