Commission on Taxation & Welfare
An Coimisiún um Chánachas ⁊ Leas

Briefing Paper

Share-based remuneration

CONFIDENTAL AND NOT FOR WIDER CIRCULATION For discussion	
Subject	**Share-based remuneration**
Author	Commission on Taxation and Welfare Secretariat
Version	Final
Date	7 January 2022

Key points

This paper provides an introduction to the taxation of share-based remuneration. Employers often provide shares for free or at a discounted price to their employees as an alternative form of remuneration. The design and structure of share-based reward schemes offered by employers can vary from company to company. This paper provides an overview of employee share plans in Ireland, describing common features of these schemes as well as their associated tax treatment.

The purpose of this paper is to give an overview of how share awards are taxed in Ireland and to facilitate a discussion by the Commission on reforms it feels may be required, if any. The following questions are also suggested for consideration:

- Should the method of collecting and reporting tax on share option exercise gains be brought in line with other forms of employee remuneration (i.e. brought within the PAYE system of tax deduction)?
- What are the Commission's views on the employer PRSI exemption for share-based remuneration and should this be considered for reform?

Table of Contents

1. Overview of share schemes

Employers commonly use shares in companies as a mechanism for rewarding, incentivising and retaining employees. The shares may be given to employees under formal employee share plans that will have a formal written set of rules, or they may be given to employees under informal arrangements such as one-off awards of shares or grants of share options.

Compared to listed companies, private companies tend to offer share plans less often as there is not always a ready market for employees to sell shares on, plus they can be difficult and costly to value. Some private companies set up plans in anticipation of going public, or they may establish an internal market for their shares, for example, by setting up an employee benefit trust to purchase shares from employees and to then recycle those shares for other employees. Start-ups and SMEs may not have the same cash resources as larger and more established firms to offer high salaries, so the ability to offer shares that may have a significant future value can compensate for lower pay at an earlier stage.

In most cases the employer has control and flexibility over the terms and rules of the employee share scheme. Typically the employer will attach certain vesting conditions before the employee can receive the shares. Common vesting conditions include the passage of a specified period of time and/or the achievement of certain performance targets (by the individual or at corporate level). Scheme rules will generally contain provisions outlining an employee's entitlement to participate in the share plan if they leave the company, including "good leaver" or "bad leaver" provisions.

Depending on the company, a different class of shares may be awarded to employees compared to those held by the main company owners, usually so as to not dilute their control over the company. This could take the form of different voting rights, dividend entitlements, rights on a winding-up, etc. attached to that class of shares. Companies can also choose who is eligible to participate in the share scheme. For example, a share scheme may only be made available to senior level executives or directors as part of their remuneration package. Irish subsidiaries of foreign owned multinationals that are implementing a global employee share plan may need to conform with scheme rules set out by the parent company. In some cases the employer's share plan will follow requirements set out in Irish tax legislation in order for employees to qualify for income tax relief on receipt of the shares.

1.1 Data on employee share plans in Ireland

Share-based remuneration is a component of many company reward structures. They are used to motivate and retain staff, allowing them to participate in growing the value of the company. Including a vesting period also ties in the employee to the company for a longer period. Share schemes are particularly attractive to employers based in Ireland as an alternative to cash-based bonuses or awards, given the employer PRSI exemption available.

Taxable employee share awards are normally reported to Revenue under payroll reporting obligations. The PAYE employer payroll submission requires that taxable share awards are separately identified (using a "share-based remuneration" marker). PAYE data from 2019 and 2020 shows:

- The taxable value of share awards reported under PAYE in 2020 was over €1.2 billion, rising from €943 million in 2019. This continues the trend seen over the last number of years, where the level of employee share awards is increasing.
- Over 50,000 employees were remunerated through shares in 2020, an increase of over 10,000 on 2019. Employees who received taxable shares represent less than 2% of all employees registered in Ireland in 2019 and 2020.[1]
- These employees worked in a relatively small number of enterprises (0.4% of all employers registered with Revenue), in 664 and 682 employer companies in 2019 and 2020 respectively.
- Approximately one fifth of employees in these enterprises are remunerated through shares, in addition to their salary and other benefits. The proportion of total employee remuneration that share-based remuneration represents varies from person to person and from company to company.

Table 1 **Employees receiving taxable share-based remuneration, 2019 and 2020**

Year	Employees in receipt of taxable share-based remuneration (and as % of employees in availing enterprises)	Number of employers offering share awards (and as % of all employers)	Value of share-based remuneration
2019	39,300 (18%)	664 (0.4%)	€943,513,790
2020	50,600 (22%)	682 (0.4%)	€1,200,442,416

Source: PAYE data from Revenue[2]
Note: This table only includes data from share schemes that are taxable via PAYE. It does not include other types of share awards, for example, under the approved schemes or under share option schemes. These are reported separately (i.e. not under the "share-based remuneration" marker in PAYE data).

Employee share plans are offered by SMEs and large-sized enterprises alike. Employers in the *Information and Communication*, *Manufacturing* and *Financial and Insurance Activities* sectors together account for over half of employers whose employees are remunerated through shares.

[1] The total number of employers registered with Revenue in 2019 and 2020 was 181,000 and 180,159 respectively. The total number of employees registered with Revenue in 2019 and 2020 was 2,969,120 and 2,939,975 respectively.
[2] All share-based remuneration data in this paper, unless otherwise stated, has been provided to the Secretariat directly from the Revenue Statistics Branch, or is available from Revenue's website.

Table 2 **Number of employers reporting taxable share-based remuneration in payroll, by firm size and sector**

Size (based on number of employees)	2019	2020
Micro (1-10)	117	107
Small (11-49)	174	186
Medium (50-99)	97	103
Medium and Large (100-499)	178	178
Large (500+)	98	108
	664	**682**
Sector (based on NACE code)	**2019**	**2020**
Information and Communication	136	137
Manufacturing	116	123
Financial and Insurance Activities	111	118
Wholesale and retail trade/Repair of motor vehicles and motorcycles	100	104
Professional scientific and technical activities	91	99
Administrative and support service activities	45	45
Transportation and Storage	23	11
Accommodation and food service activities	11	10
Real estate activities	10	10
Other	21	25
	664	**682**

Source: PAYE data from Revenue
Note: A Large enterprise is one that has 250+ employees.
This table only includes data from share schemes that are taxable via PAYE. It does not include other types of share awards, for example, under the approved schemes or under share option schemes. These are reported separately (i.e. not under the "share-based remuneration" marker in PAYE data).

In the case of share option schemes, these are not taxed via the PAYE system and instead the employee must self-assess the income tax due. An approximate average of 5,000 individuals have reported share option exercises to Revenue in the last three years, and the total gains on exercise are tentatively estimated at €245 million in 2019 and €400 million in 2020 (*there are gaps in the data available on share options, discussed further in section 2.3 of this paper*). Employers must separately file an annual return to Revenue where they have granted share options to their employees, or have had employees who exercised options during the year. Unfortunately Revenue have not been able to provide data to the Secretariat from this employer return. It is believed that share option schemes have become less common than other types of share schemes in recent years.

In addition, many employers offer tax efficient share schemes to their employees. These grant income tax relief to employees on acquisition of the shares, where the share plan complies with a number of legislative requirements. Share plans that provide income tax relief include the Approved Profit

Sharing Scheme (APSS) and the Save As You Earn (SAYE) share option scheme. These are known as "approved schemes", as they must be approved by Revenue in advance of implementation.

Approximately 32,400 individuals received shares under an APSS in 2019. There are nearly 400 APSS' registered with Revenue, although not all of these schemes are active (some are historical schemes that no longer offer new shares to employees, but the schemes have not been deregistered). Of the 219 APSS returns (Form ESS1) filed with Revenue in 2019, 157 of these reported that shares were delivered to employees, referred to as "share appropriations". Just under 7.6 million shares were appropriated to employees, with those shares worth nearly €168 million. The estimated Exchequer cost of the income tax relief given to employees on appropriation was approximately €49.5 million.

In the case of Save As You Earn share option scheme, approximately 1,200 employees exercised SAYE options in 2019 and in 2020. Nearly 100 SAYE schemes are registered with Revenue, although many of these are dormant. There were 35 and 37 SAYE returns (Form SRSO1) filed in 2019 and 2020 respectively, reporting share option gains of €4.5 million and €6.6 million. The estimated Exchequer cost of the income tax relief given to employees on exercise of SAYE options in 2019 was approximately €1.4 million.

The Key Employee Engagement Programme (KEEP) was launched in 2018 and offers income tax, USC and PRSI relief on exercise of qualifying share options. This scheme does not require Revenue approval before implementation. To date uptake of this scheme has been low, with some ten companies granting share options in 2018 to under 100 employees, rising to 30 employers granting options to just over 180 employees in 2019. Very few schemes have reported employees who have exercised options yet. A number of Finance Act 2019 amendments to KEEP, to encourage uptake of the scheme, are awaiting State Aid approval. The details of KEEP were previously described in the Secretariat paper "*Policy objectives for supporting SMEs and entrepreneurs*" (Meeting 8).

It is of note that some employers may offer more than one type of share scheme within a company, with certain employees allowed to participate in multiple schemes concurrently.

Table 3 **Overview of employee share schemes in Ireland, 2019**

Type of share award	Number of returns filed by employer/trustee (Note 1)	Number of employees receiving shares (including at exercise of an option)	Value of shares reported (Note 2)
Unapproved share options	*Data not available*	4,933	€245,607,913
KEEP share options	27	0	€0
SAYE share options	35	1,196	€4,522,603

APSS shares	219	32,400	€167,917,748
Other forms of share-based remuneration (reported through PAYE)	664	39,300	€943,513,790
Total	**945**	**77,829**	**€1,361,562,054**

Source: Revenue

Note 1: *Data is not readily available on the total number of share schemes in Ireland. Certain group schemes may be available to more than one company in that group, and other companies may have multiple share schemes. The number of returns filed is the next best approximation available. In the case of share awards reported through PAYE, this figure represents the total number of employers who had employee share plans during the year.*

Note 2: *For employer reporting purposes, it is the taxable value, or the amount relieved from income tax, that is mainly reported. This does not represent the total market value of the shares, as in some instances the employee is obliged to pay some consideration to acquire those shares (market value of shares less consideration paid = taxable value) .*
The unapproved share option figure is a Secretariat estimate of the total chargeable gains on exercise, based on RTSO1 data.

1.2 Life cycle of share awards

When referring to share-based remuneration, certain terminology is commonly used to describe the life cycle of the share award.

- **Date of grant** – This is the day the employer grants the award to the employee i.e. they give a promise that on completion of a vesting period the employee will receive a number of shares (or in some cases cash to the value of such shares).
- **Vesting period** – This is the period of time between the date of grant of the shares and the date on which the vesting conditions are satisfied. Vesting periods are usually satisfied by the passage of time (i.e. end of a stated period of time from the grant date) or by the individual's performance or by the achievement of corporate goals.
- **Vesting date** – The date on which vesting conditions are satisfied. With most types of share schemes this is the date on which beneficial ownership of the shares transfers to the employee. This is normally the date that triggers a liability to tax (where the employee receives the shares for free or at a discount).[3] In one respect this compares more favourably to the taxation of share awards in certain other countries, where a tax charge can arise at the date of grant.

If a share award is granted in the form of a share option, additional events and terminology apply:

[3] If the shares pass to the employee at a date earlier than the vesting date, then the income tax charge will arise on that earlier settlement date. The date the liability arises is important in determining the valuation date for the purpose of establishing the taxable amount. It also determines the foreign currency conversion date in the case of shares valued in a foreign currency.

- A **share option** is a type of award where the employer grants an employee an option to purchase company shares in the future at a predetermined price (the "**option price**"). Typically the option price is set equal to the share's market value on the date of grant or at a pre-determined discount percentage of the share price on a future date.
- As with other types of share awards, the option will typically not become exercisable until after a number of vesting conditions have been satisfied. The employee is not obliged to exercise the option in the future and could choose to let the option lapse, if for example, the market value of the shares had decreased below the option price that had been set (i.e. they're "underwater").
- **Exercise period** – Once the share award has vested, an employer may specify a window of time in which the option can be exercised. If the individual does not exercise the option to acquire shares during this period then the option will lapse.
- **Exercise date** – This is the date on which the employee exercises his/her option to buy the shares. This is typically the date beneficial ownership of the shares transfers to the individual and if so, this triggers a liability to tax (where the employee acquires the shares for consideration less than their market value).

2. Taxation of share schemes

In general, income tax, USC and employee PRSI will be chargeable on shares acquired by employees by virtue of their employment, where the shares are acquired free of charge or at a discounted price. The difference between the market value of the shares and the consideration (if any) given by the employee will be subject to tax. If instead the employee has paid the full market value for shares received then there is no income tax charge on acquisition of those shares.

Employer PRSI does not apply to share-based remuneration.

Most share based awards are taxed through the PAYE system of tax deduction. However, share options are taxed under self-assessment, with the employee responsible for pay and file obligations.

Example 1 – RSU

An employee is granted 1,000 restricted stock units (RSUs) by his employer on 1 January 2018. The company requires that the employee must remain employed by the company for three years, after which he will receive 1,000 company shares for free.

On 1 January 2021 the RSUs vest and the employee receives 1,000 shares worth €5,000.

The employee has received free shares and their €5,000 value is treated as taxable income on which the employee must pay income tax, USC and employee PRSI at marginal rates. The share award is taxed through the PAYE system i.e. the employer is responsible for collecting the tax for remittance to Revenue and reporting the award.

Example 2 – Share option

An employee is granted share options by his employer on 1 January 2018. The option price is set at €3 per share. The company requires that the employee must remain employed by the company for three years, after which he can exercise his option to buy up to 1,000 company shares at €3 per share.

On 1 January 2021 the options vest when the shares' market value is €5 per share. The employee exercises his option on 1 January 2021 and purchases 1,000 shares for €3,000.

The employee has acquired shares worth €5,000 at a discount. The €2,000 gain on exercise is treated as taxable income on which the employee must pay income tax, USC and employee PRSI at marginal rates. The share option is taxed through self-assessment i.e. the employee must pay the tax directly to Revenue and file a return.

When an employer gives a cash award to an employee, the tax on that award is simply withheld by the employer from the payment and the employee receives a net after-tax cash amount. In the case of share awards, the tax liability may be funded through deductions from other cash payments in that payroll run, or the employer may fund the tax liability upfront and recoup this from the employee over the next pay period(s).[4] Alternatively, the employer and employee may agree a "sell to cover" arrangement, whereby the employer will sell some or all of the shares on the employee's behalf in order to fund the tax liability. The employer will then give the employee the net shares or net proceeds from the sale.

Certain types of share schemes receive favourable tax treatment. These include: [5]

- The **Approved Profit Sharing Scheme (APSS)** and **Save As You Earn (SAYE)** share option scheme. Where a scheme is approved by Revenue, income tax relief is given to employees on appropriation of the shares (APSS) or exercising their option (SAYE). A number of conditions

[4] If tax paid on account by the employer is not fully recouped from the employee by 31 March of the following tax year, the employee will be treated as having received a further taxable benefit equivalent to the un-recouped income tax, USC and PRSI, which the employer must operate PAYE on.

[5] Further information is available on Revenue's website, at the following links: approved schemes, KEEP, restricted shares.

are set out in legislation governing these schemes, including a requirement that the scheme must be offered on similar terms to all employees who meet minimum eligibility criteria. This means companies cannot choose to give tax relieved share awards to only a small cohort of employees or directors. The awards are exempt from income tax but remain liable to USC and employee PRSI.

  - Under an APSS, a trust is used to acquire and hold shares for participating employees for a minimum of two years. After that time, participating employees can dispose of shares but will be subject to income tax. Alternatively if the shares are held for three years, the shares will not attract an income tax charge. Employers can allocate shares up to a maximum annual limit of €12,700.
  - SAYE employee share schemes are comprised of i) a Save As You Earn certified contractual savings scheme and ii) an approved saving related share option scheme. Under this scheme, a company grants options over shares to its employees/directors. Separately, the participants will have a formal savings contract with a third party financial institution for normally a three, five or seven year savings period. Individuals can save between €12 and €500 per month. At the end of the savings period, the employees and directors can exercise their right/option to acquire shares in the company and must pay for this out of the proceeds of their SAYE savings. The gain on exercise is relieved from income tax .

- The **Key Employee Engagement Programme (KEEP)**. This is a share option scheme available to SMEs, which if it complies with certain requirements means the employees can exercise the share option without an income tax, USC or employee PRSI charge arising.

- **Restricted shares** (section 128D TCA 1997). This is also known as the "Clog Scheme". The tax liability on shares acquired under this scheme (including shares acquired through exercising an option) is reduced if the employee is restricted from disposing of their shares for a specified period. Under the terms of a written agreement, the shares are held in a trust established by the employer for the benefit of the employee for a specified period of at least one year.

  - The amount chargeable to tax is abated by between 10% and 60% depending on the period of restriction (10% abatement if shares are restricted for one year, 20% abatement if held for two years, etc., up to a 50% abatement if restricted for five years and a 60% abatement if the shares are restricted for more than five years).

- As employees are restricted from selling their shares after acquisition, any income tax liability at vest/exercise must be funded from other resources. Restricted share schemes are typically only provided to senior executives or directors.
- Data is not currently available on the number of restricted share schemes, or the Exchequer cost of the relief. A new employer return to Revenue (for the 2020 tax year) requests details of restricted share schemes, but data from this return is not yet available to the Secretariat.

In general terms, the Revenue approved schemes and KEEP allow the value of the benefit received by an employee to be taxed as a chargeable gain when the shares are disposed of rather than as taxable income at the time that the option is granted or shares acquired.

2.1 Restricted stock units and other share awards

The plan rules and name of employee share schemes will vary from company to company. An employer could refer to their share awards as, for example, restricted stock units (RSUs), performance shares, restricted shares[6], LTIPs (long-term incentive plan awards) or any one of a number of other names. In general the scheme will provide that the employer grants/promises to give their employee a number of shares at a future point in time. Depending on the scheme the employee may or may not have to give monetary consideration to acquire those shares. In some instances the share awards will all vest at the end of a defined period, or a portion of shares may vest in tranches annually, or ownership of the shares may transfer immediately with no vesting period.

Shares or other securities acquired by an employee or director by reason of the employment or office are considered perquisites[7] and these are generally subject to income tax, USC and employee PRSI. Employers are obliged to operate the PAYE system of tax deduction. Employees are not considered "chargeable persons" as a result of receiving the share award and are not obliged to file an income tax return, unless they have other sources of non-PAYE income, or sell the shares acquired.

[6] In Irish tax legislation "restricted shares" refers specifically to awards under section 128D TCA 1997. However, some company share plans may refer to their awards as "restricted shares" without meaning the awards qualify for income tax relief under section 128D.
[7] The terms perquisites ("perks") and benefits are often used interchangeably. A perquisite is generally defined as something that is money or money's worth or that which can be turned into pecuniary account (i.e. readily convertible into money/cash). In comparison, a benefit- in-kind (BIK) is something which an employee has the use of without having ownership of the asset e.g. having the use of a company car.

2.2 Cash-settled awards

Some employee benefit plans offer cash payments to employees based on the value of company shares. In theory this can act as a motivation for staff to contribute to the growth of the company (i.e. driving its share value) without diluting equity. The method of calculating the cash sum will vary depending on the scheme. The payment may equal the value of the underlying shares on a particular date, or any increase in their value over a set period of time. Examples of such awards include stock appreciation rights (SARs), phantom shares and cash-settled restricted stock units (RSUs).

The new employer return to Revenue on share-based remuneration requests details of share-based but cash-settled awards. Data from this return is not yet available to the Secretariat.

Where an award is cash-settled, the cash payment is treated as normal pay and the employer must deduct income tax, USC and employee PRSI under the PAYE system. The employer PRSI exemption for share-based remuneration does not apply to cash-settled awards. This can sometimes be an area of error by employers in terms of tax/PRSI compliance.

Some share-based schemes entitle employees to cash payments equivalent to dividends accruing to the underlying shares. These dividend equivalents are taxable emoluments of the employment and are subject to normal payroll deductions.

Example 3 – Cash-settled vs share-settled RSU

An employee is granted 1,000 restricted stock units (RSUs) by her employer on 1 January 2018. Following a three year vesting period, the employee will either receive 1,000 company shares for free (share-settled RSU), or, she can opt to receive a cash payment equal to the value of 1,000 company shares on the vesting date (cash-settled RSU).

On 1 January 2021 the RSUs vest when the market value per share is €5.

If the employee opts to receive shares worth €5,000, the employer will not have an employer PRSI liability on the award. If the employee instead opts to receive a cash payment of €5,000, the award will be subject to employer PRSI. The employee’s liability to income tax, USC and employee PRSI remains the same under both options and the employer must operate PAYE in both cases.

2.3 Share options

Unlike all other forms of employee remuneration where the employer must operate PAYE, employees who exercise share options are considered chargeable persons and they must pay and file under self-assessment. These are often referred to as “unapproved” share options, to distinguish them from a now abolished tax relief which concerned “approved share options” and share options provided under the SAYE or KEEP tax relief schemes.

The taxing point for share options is normally at the exercise date.[8] Individuals are obliged to pay income tax at the higher rate (40%), which is referred to as “relevant tax on share options (RTSO)”, USC at 8% and employee PRSI at 4%. They must also complete a Form RTSO1[9] and submit this to Revenue along with payment of tax within 30 days of exercise. Individuals who are standard rate taxpayers, or whose final USC liability will be at a lower rate of USC may apply in advance for Revenue approval to pay RTSO at lower rates. Otherwise 52% tax must be paid on the exercise gain. The individual must also report the exercise in an income tax return at year end (Form 11). The USC surcharge does not apply to share option gains. RTSO does not represent a final liability on share options, as the availability of tax credits, reliefs or double taxation relief via the year-end tax return may reduce the final liability payable.

RTSO is not a separate tax but simply an accelerated payment of income tax. Tax legislation however provides for a higher 0.0322% rate of interest on late payment or underpayment of relevant tax, compared to the normal interest rate of 0.0219% for income tax. Both rates of interest used to be aligned, but decreases in the interest rate for income tax in the years 2005 and 2009 were not applied for RTSO.

Employers separately report all grants and exercises of shares options by its employees during the year in an annual return to Revenue (Form RSS1). The information on the RSS1 is used by Revenue to follow up with non-compliance by individuals with their RTSO or income tax return obligations. Similarly the information reported by individuals is also used to verify compliance by their employers.

In theory, the number of individuals who complete a Form RTSO1, the number of individuals declaring a share option gain on a Form 11 and the number of employees with exercises reported on the Form RSS1 for a particular year should broadly match. Data provided by Revenue shows this is not the case, which suggests a level of non-compliance by taxpayers with their reporting obligations. Table 4

[8] If the option is capable of being exercised more than seven years after the date of grant (called a “long option”), tax may arise on the date of grant on the difference between the option price and the market value at the date of grant. If the option price is set at market value on the date of grant then no tax arises at the date of grant.
[9] The Form RTSO1 is a one page form and a copy is available at the link here.

illustrates the difference between what was reported by employees on the RTSO1, due to be filed 30 days after exercise, compared to what was reported in tax returns at the end of the year.

Some of the variance may be partially explained by the fact that:

- agents cannot report RTSO paid on Revenue's Online Service (ROS) on behalf of clients, instead recording payments of relevant tax on share options as income tax, and
- the RTSO1 requests the total gain on exercise of the option, however some individuals may only be liable to tax on a proportion of the exercise gain. This may be the case for international assignees who have been granted options in respect of an employment partially carried out in Ireland and partially in another country, who are permitted to apportion the gain for Irish tax purposes. In those cases the full gain on exercise may be reported in the RTSO1 but recalculated at year end to take account of days worked abroad. Typically such gains are apportioned by reference to Irish workdays throughout the vesting period.

This however would not explain all of the variance and Revenue carry out projects to verify compliance with share option tax obligations.

Table 4 **Share option data reported by individuals, according to data from the Form RTSO1 and Form 11**

	Number of individuals who exercised a share option		Total share option gains on exercise (€)		Total RTSO paid (€)	
Source	**RTSO1**	**Form 11**	**RTSO1 (*Secretariat estimate*)****	**Form 11**	**RTSO1**	**Form 11**
2018	5,022	3,797	204,879,367	95,656,756	106,537,271	4,915,533
2019	4,933	4,743	245,607,913	219,632,582	127,716,115	104,694,737
2020	5,178	*	400,336,265	*	208,174,858	*

** Data not yet available for 2020 income tax returns (filing due date in Q4 2021)*
*** Data on the total chargeable gains reported on Form RTSO1 is not available to the Secretariat from Revenue. The figures used in this column are based on the assumption that the RTSO paid represents 52% of the total gain. All other figures have been provided by Revenue.*

The taxation of share options under self-assessment is an anomaly within the income tax code, compared to all other forms of employee remuneration which are taxed via the PAYE system. Furthermore, the higher rate of interest on late payment of RTSO is higher than that charged on income tax generally.

This treatment also differs from the method of collecting tax on share options exercised under the SAYE scheme. No income tax charge is due on the exercise of SAYE options however USC and employee PRSI is collected by the employer through payroll under the PAYE system of tax deduction.

The method of collecting income tax on share options varies depending on the jurisdiction (many countries also offer tax favoured schemes in which case no tax is due). The US, Germany, France, Sweden and Belgium are among countries where the employer is generally obliged to withhold employee taxes related to share options. In the UK the employer is obliged to operate PAYE if the share option is a "readily convertible asset" (i.e. easy to sell for cash, as is the case with listed shares), otherwise self-assessment applies. Australia generally requires that the employee self-assesses share option gains.

2.4 Sale of shares

There are two taxable events for employee share awards. Firstly, there is an income tax event on acquisition of the shares from the employer (where they are received for free or at a discount) and secondly, on a subsequent disposal of those shares.

Individuals are liable to CGT on gains that exceed €1,270 on the disposal of assets, including shares. The chargeable gain is generally calculated as the difference between the sales proceeds and the market value of the shares at acquisition.[10] When an employee acquires shares they will usually be subject to income tax. If those shares are sold on the same day as vesting/exercise (a "same-day sale") or very soon after, there will typically be little to no uplift in the share value meaning no CGT liability will arise on the disposal. If a disposal of shares acquired via an employee share plan gives rise to a chargeable gain then the individual must report this disposal to Revenue and self-assess the CGT owed.

2.5 Cross-border workers

The taxation of employment income is relatively straightforward when an employee is resident and working only in one country. The tax position can become more complex when an international element is added, and can vary depending on the individual's tax residence position and where duties of the employment are carried out.

---

[10] There are special rules for calculating CGT when shares have been acquired on different dates, through a bonus or rights issue or the shares are of a different class.
In the case of share options, the base cost for CGT will generally be the market value of the shares at the date of exercise. If the share acquired were new shares, the base cost will be sum of: the cost (if any) of the share option, the option price paid on exercise and the amount charged to income tax on exercise of the share option.

In the case of share options, any gain on exercise usually can be apportioned based on Irish workdays throughout the vesting period, where the individual has worked in both Ireland and a jurisdiction with which we have a double taxation agreement. This is in line with the OECD approach to the taxation of share options.[11]

The position is different for restricted stock units (RSUs). These awards are treated as normal employment income and since 2018 the statutory basis of assessment has been the “receipts basis”. This means the income is fully taxed on the amount received by the employee in a particular calendar year. RSUs are fully taxable if they vest at a time when the holder is Irish tax resident, without any apportionment by reference to any part of the vesting period during which the holder was resident elsewhere. If the RSUs vest and the holder is no longer Irish resident, the RSUs are not taxable in Ireland, regardless of the fact that the holder may have been resident in Ireland at the time of the grant and during the vesting period.

In comparison, some countries may tax RSUs on an apportionment / earnings basis, by reference to residence or where employment duties are carried out over the vesting period. This variance of rules may result in double taxation (in which case a double tax credit may be claimed at year end, or in real-time through payroll depending on circumstances), or double non-taxation in two jurisdictions.

It is intended that a future paper by the Secretariat will cover international aspects of the taxation of employment income in more detail.

3. Employer PRSI exemption

Historically share-based remuneration was not subject to employee or employer PRSI.

The 2009 Commission on Taxation recommended that the PRSI base should be broadened and that share-based remuneration, including share options and the APSS and SAYE schemes, should be subject to PRSI. The Commission noted that share-based remuneration is a form of income and that its PRSI treatment should therefore mirror the treatment of other employment income. It argued charging PRSI would remove the bias in the system in favour of share-based remuneration rather than cash remuneration and work to preserve the PRSI base. The Commission’s report made reference to an OECD study in 2005 that Ireland was one of seven countries surveyed that did not charge employee

[11] The taxation of share options for international assignees can be complex. Revenue guidance is available on the various scenarios that can apply – see Chapter 3 of the Share Scheme Tax and Duty Manuals.

or employer social insurance contributions on share option gains, compared to 19 other OECD countries that did.[12]

The base on which both employee and employer PRSI is charged was expanded by Budget 2011 to include share-based remuneration. This measure was introduced alongside a number of other income tax reforms and base broadening measures, against the backdrop of the financial crisis. In May 2011 as part of the Jobs Initiative however, it was announced that the employer element of PRSI on share-based remuneration was to be abolished retrospectively, with effect from 1 January 2011. The decision to have an employer PRSI charge was reversed due to concerns over increasing the cost of doing business in Ireland and the potential negative effect on employment levels and future investment decisions. It was noted by the Minister for Finance that businesses were operating under strict budgetary control in the economic climate at the time and that increasing their costs would be unwise.[13]

The Social Welfare Consolidation Act 2005[14] provides the statutory basis for the employer PRSI exemption. It specifically exempts shares acquired under unapproved share option schemes, restricted shares and the APSS and SAYE schemes. In the case of employee shares that are taxed under the PAYE system, the shares must be issued in the company in which the employee or director holds his or her office or employment, or a company which has control of that company. In other words, if the shares acquired under the plan are not in the individual's employer company or a parent company, the employer must pay employer PRSI on the share awards.

3.1 International treatment

Jurisdictions differ in their treatment of share awards from the perspective of employer social security contributions. Similarly, the point of taxation and social security may differ (a charge may arise at grant, vest, exercise or sale depending on circumstances), or no charge may arise if the share scheme is subject to relief (often referred to as "tax-favoured" or "tax-advantaged" schemes). In other cases the tax and social security treatment will differ depending on whether the share award is classified as employment income or not.

[12] OECD, The Taxation of Employee Stock Options, 2006.
[13] Minister for Finance, Jobs Initiative Statement, May 2011
[14] Available at the link here.

Countries that do generally charge employer social security contributions on share awards include France, Belgium, Germany, the Netherlands, Sweden and Norway. Countries that do not have employer social security contributions on share awards include New Zealand, Finland and Australia.[15] Employer social insurance may apply to share awards in the UK depending on circumstances. The UK also has a provision where the employer may pass some or all of the employer's liability to the employee by agreement or joint election, if approved by HMRC[16]. In these circumstances employer's national insurance contributions met by the employee is a deductible amount for income tax purposes but is not deductible in calculating the national insurance contributions due.

The 2009 Commission on Taxation recommended the introduction of employer and employee PRSI on share awards. It noted at the time that Ireland along with six other countries provided an exemption from both employer and employee social security contributions on share option gains where 19 other OECD countries did not provide such an exemption.[17] The countries surveyed that did not charge any employee or employer social insurance on share option gains were Hungary, Japan, New Zealand, Poland, Portugal and Slovakia. Latest data[18] suggests that only Slovakia has changed their regime to one that charges employer and employee social security.[19]

3.2 Estimate cost of employer PRSI exemption

The cost of the employer PRSI exemption for share-based remuneration is not published as part of Revenue or Department of Finance tax expenditure figures. Providing an accurate costing would require a review of the PRSI status of each individual in receipt of share awards, as well as combining data from several different returns to Revenue. A tentative estimate can be calculated based on the value of share awards reported by employers as follows:

Table 5 **Estimate of employer PRSI exemption cost in 2019 and 2020**

Type of share award	Taxable value of shares acquired / gain on exercise of option	
	2019	2020
Unapproved share options	€245,607,913	€400,336,265
KEEP share options	€0	Data not available
SAYE share options	€4,522,603	€6,631,049

[15] Thomasreuters.com
[16] www.gov.uk
[17] Commission on Taxation - Commission on Taxation Report 2009
[18] bdo.com, dlapiperintelligence.com
[19] bakermckenzie.com

APSS shares	€167,917,748	Data not yet available
Other forms of share-based remuneration (reported through PAYE)	€943,513,790	€1,200,442,416
All share awards	**€1,361,562,054**	**€1,607,409,730**
Employer PRSI saving	@10.95% = **€149,091,045**	@11.05% = **€177,618,775**

Secretariat calculations based on Revenue data
This is a tentative estimate based on available information. Some employees' earnings may be low enough that a lower rate of employer PRSI applies, or some individuals may be socially insured in another jurisdiction. Further, some international assignees posted abroad may not have an Irish tax liability on share awards, but will pay PRSI through the Special Collections System.
The unapproved share option gain figures are Secretariat estimates based on the assumption that RTSO amounts reported on the Form RTSO1 represent 52% of the total gain on exercise.

The data available suggests that the employer PRSI exemption cost the State approximately €149 million in 2019, rising to €177 million in 2020.

The value of share awards reported to Revenue through payroll for January to May 2021 was €744 million. At an employer PRSI rate of 11.05% this means social insurance contributions forgone for this five month period in 2021 are approximately €82 million (before any other types of share schemes are taken into account).

To put this into context, the Secretariat paper "Tax Expenditure Data" (Meeting 10) listed the top 23 tax expenditures in terms of cost to the State in 2019. If the revenue forgone from the employer PRSI exemption on share-based remuneration was included in this list, it would sit in 14th place, after CAT Agricultural Relief (€159 million) and before allowable expenses for personal tax (€115 million). The cost of the employer PRSI exemption is also higher than the estimated full year cost of a 2% change in the 33% CGT rate (€84 million) or a 1% change in the 9% reduced rate of VAT (€99 million), based on Revenue's Ready Reckoner.[20]

4. Conclusion

This paper gave an introduction to the common types of employee share schemes in Ireland and how they are treated for tax purposes.

The following questions are suggested as potential areas of discussion by the Commission:

[20] Available at the link here.

- Is the current tax treatment of various share schemes appropriate or is there any area that should be considered for further examination?
- Should the method of collecting tax on share option exercise gains be brought in line with other forms of employee remuneration (i.e. brought within the PAYE system of tax deduction)?
- Regarding the employer PRSI exemption for share-based remuneration:
    - Is the original policy rationale still appropriate?
    - Is this exemption equitable when compared to the treatment of employers who remunerate their employees with cash?
    - Does the Commission have a view on whether the relief should be endorsed, modified (e.g. subject to a monetary cap or progressivity in rates) or abolished (potentially on a phased basis)?
    - If the Commission believes the employer PRSI exemption should be modified or abolished, should there be a difference in the treatment for start-ups / SMEs (e.g. five year start-up exemption)?