

[5.5.8] Share Options & Other Rights

Tax Treatment

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1. Introduction

Where a director or employee, by reason of his/her office or employment, obtains a right to acquire shares ("share option") or any other asset(s) in any company the legislation provides for income tax and capital gains tax consequences.

The charge to income tax is under Schedule E and it applies to any gain arising on the exercise, assignment or release of a right or option (and also on any gain arising on the grant of a "long option or right") by an individual on or after 6 April 1986 as a director of a company or as an employee.

A "long option or right" is an option or right which is capable of being exercised more than 7 years after the grant date.

Any shares or other assets acquired by the exercise of a share option or other right **are chargeable to capital gains tax** on the subsequent disposal of those shares or assets.

This instruction outlines:

- the scope of the legislation [*section 128 TCA 1997*] in relation to share options and other rights
- the charge to income tax and capital gains tax, and
- the information return requirements.

2. Scope of the legislation

Section 128 Taxes Consolidation Act 1997 applies to any right obtained by a person as a director of a company or as an employee. The section defines "right" as a right to acquire any asset or assets including shares in any company. "Shares" is defined as including stock and securities.

A person is regarded as acquiring a right as a director of a company or as an employee if, by reason of his/her office or employment, it is granted to him/her or to another person who assigns the right to him/her.

Section 128 applies notwithstanding that the right may be granted either before the director or employee commenced to hold the office or employment or after he/she ceased to hold the office or employment. However, the section does not apply to a right obtained by reason of a foreign office or employment the

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income from which is taxable on a remittance basis under Section 71(3) on the director / employee.

In effect, the legislation applies to options to acquire shares (i.e., share options) and other rights to acquire shares or assets granted to directors and employees by reason of their office or employment.

3. Charge to Income Tax

The *charge to income tax* arises for the tax year in which the share option or other right is exercised, assigned or released and also, in the case of “long options or rights” for the tax year in which granted.

Section 128A made provision for an individual to elect to defer payment of the income tax payable on the gain arising on the exercise of a share option where the option was exercised between 6 April 2000 and 28 March 2003 (date of passing of Finance Act 2003). The payment could not be deferred on the assignment or the release of an option.

The time limits for this deferral under section 128A have expired and there is currently no provision to defer the income tax due on the exercise of a share option.

4. The amount of the gain chargeable to income tax is:

4.1 Share Options or Rights Exercised

- market value of the shares or other assets (the subject of the option or right) at the date of their acquisition
- less
- aggregate of the value of the consideration given for the shares or other assets and the price (if any) paid for the grant of the option or right.

4.2 Share options or rights assigned or released

- consideration received for assignment or release
- less
- price (if any) paid for grant of the option or right.

4.3 Long Options or Rights

Where the exercising of a share option or right can be delayed for more than seven years a tax charge arises also for the tax year in which granted. The amount chargeable is:

- market value of the shares or other rights (the subject of the option or right) at the date the option or right is granted

less

- option price (if any) at which the shares or other assets may be acquired on the exercise of the option or right. [If the option price is variable the lowest possible option price is taken.]

In addition, tax is charged when the share option or right is exercised, assigned or released.

Any tax chargeable on the grant can be deducted from any tax subsequently chargeable on the exercise, assignment or release of the option or right.

Section 128(2A) TCA puts beyond doubt that persons in receipt of share options are chargeable to tax under self-assessment in respect of the gain arising to them from share options – except where the person has been exempted from the requirement to make a return by reason of a notice given under section 959N TCA 1997.

5. Charge to Capital Gains Tax

An individual who acquires any shares or other assets by the exercise of a share option or other right is chargeable to capital gains tax on any chargeable gain realised on the subsequent disposal of those shares or assets.

The capital gains tax is due on the difference between:

- (a) the sale price of the shares; and
- (b) the acquisition cost of the shares.

The acquisition cost of the shares for CGT purposes is calculated as follows:

Where the shares are issued on the exercise of the option:

Regardless of when the options are exercised the cost of acquisition is the sum of the following:

- the cost (if any) of the option,
- the price paid for shares on exercise of the option, and
- the amount charged to income tax on the exercise of the option.

Where the shares are already in existence at the time of exercise of the option and:

- a) the **options are exercised before 12/12/2002**, the cost of acquisition is the sum of the following:
 - the cost (if any) of the option,

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- the price paid for shares on exercise of the option, and
- the amount charged to income tax on the exercise of the option,

or

- b) the **options are exercised on or after 12/12/2002**, the cost of acquisition is the market value of the shares at the time of exercise.

6. Information Returns

Section 128 requires that persons must provide particulars to Revenue in respect of:

- share options and other rights granted, assigned or released, and
- shares allotted and assets transferred in pursuance of a share option or other right to acquire shares or assets.

Self-assessment principles apply to the making of a return. ***Form RSS1 – Share Options and Other Rights*** is the form provided for the return of particulars under section 128. The deadline for the making of such returns is 31 March after the end of the year of assessment in which the grant, assignment, etc. took place.

Section 128(12) TCA provides that returns are also required from the Irish employer where the share options are granted by a non-resident company.

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