

[5.5.11] Share Options & Other Rights

Reviewed March 2015

See also Tax Instruction [Part 05-05-06](#) - Share Options granted to Directors or Other Employees

1. Introduction

This memo outlines the tax treatment of share options and employee share purchase plans (ESPP)

2. Share Options

2.1 Charge to income tax under section 128, Taxes Consolidation Act, 1997

A share option arises when a company grants to its employees or directors a right to acquire shares in it or certain other companies at a pre-determined price.

Income tax is charged under Schedule E (in respect of rights granted on or after 6 April 1986), on any gain that arises when the right is exercised, assigned or released. In the majority of cases the charge to income tax will arise when the option to acquire the shares at the pre-determined price is exercised by the employee (the employee actually acquires the shares). It is not usual for an option to be assigned or released.

There are two types of options, 'short options' which must be exercised within seven years from the date they are granted and 'long options' which can be exercised later than seven years from the date they are granted.

2.2 Short Options

In the case of 'short options' there is only one charge to income tax, which arises at the date of exercise. The amount of the gain chargeable to income tax on the exercise of a 'short option' is the excess of the market value of the shares at the time of exercise over the cost of acquisition of the shares plus the 'price paid for the option' if any. The reference to the 'price paid for the option' relates to any price the employee is obliged to pay for the option at the date the option is granted. This is usually a nominal amount.

Example

The terms under which the option was granted confirm that it must be exercised before 1/12/2014.

The grant date was 6/5/2011. Therefore this is a short option.

Date Option granted	6/5/2011
Exercise Price	€2.00 per share
Market Value at 6/5/2011	€2.00 per share
Number of Shares	500
Date Option Exercised	10/5/2014
Market Value at that date	€5.00 per share

Income Tax

2011

Nil – No income tax at the date of grant as it is a short option.

2014

€5.00 less €2.00 = €3.00 per share

Total charge €3.00 X 500 = €1,500 at individuals marginal rate of tax.

If the individual's marginal rate of income tax is 20% the income tax due is €300.

If the individual's marginal rate of income tax is 41% the income tax due is €615.

2.3 Long Options

In the case of a 'long option' an income tax charge may arise on the date the option is granted. The amount chargeable to income tax at that date is the difference between the market value of the share at the time the option is granted and the consideration for which the share may be acquired (the exercise price). There will also be a charge to income tax at the date of exercise of this option. The amount of the gain chargeable to income tax on the exercise of a 'long option' is the excess of the market value of the shares at the time of exercise over the cost of acquisition of the shares plus the price paid for the option if any. Any income tax charged on the grant of the option is deductible from any income tax, which is subsequently charged when the right is exercised, assigned or released.

Example

The terms of the option allow for exercise until 5/5/2014 therefore it is a 'long option' as it may be exercised more than seven years after grant, the grant date being 6/5/2004.

Date Option granted	6/5/2004
Exercise Price	€5.00 per share
Market Value at 6/5/2004	€5.50 per share
Number of Shares	1000
Date Option Exercised	4/5/2014
Market Value at that date	€10.00 per share

Income Tax

2004

€5.50 less €5.00 = €0.50 per share

Income tax due €0.50 X 1000 = €500 at individuals marginal rate of tax

If the individual's marginal rate of income tax is 20% the income tax due is €100.

If the individual's marginal rate of income tax is 42% the income tax due is €210.

2014

€10.00 less €5.00 = €5.00 per share

€5.00 X 1000 = €5,000

If the individual's marginal rate of income tax is 20% the income tax due is €1,000.

If the individual's marginal rate of income tax is 41% the income tax due is €2,050.

As set out above any income tax charged on the grant of the option is deductible from any income tax, which is subsequently charged when the right is exercised, assigned or released. In this instance the individual would receive a deduction for either €100 or €210 from the liability to income tax in 2014.

2.4 Year of charge

The charge to *income tax* arises for the year of assessment in which the share option is exercised, assigned or released and also, in the case of a 'long option' for the year of assessment in which granted. The 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 [see paragraph 4 below].

3. Charge to income tax is under the self-assessment system

Persons in receipt of share option gains are chargeable persons under self-assessment in respect of any gains arising to them from the exercise, assignment or release of 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 Taxes Consolidation Act, 1997*, which permits an Inspector to exclude a person from the obligation to make a return. Where this occurs the person is advised by notice in writing of the exclusion and the notice will specify the length of the exclusion. This exclusion does not extend to removing the obligation to make a return where a person has a liability to capital gains tax for a chargeable period.

4. 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 other assets.

5. Employee Share Purchase Plans (ESPP)

In addition to share option schemes many companies, particularly subsidiaries or branches of US corporations, also operate Employee Share Purchase Plans. An Employee Share Purchase Plan enables the employees of the company to purchase shares in the company or its parent company at a discount, through deductions from the employee's net salary or wages.

The discount allowed is normally 15% of the market value of the shares on either the first or last day of the offer period whichever is the lower. The offer period is normally six months.

Example

If the shares are trading at US\$65 at the beginning of the six month offer period on the Stock Exchange and trading at US\$72 at the end of the six month offer period the shares can be purchased at 85 % of US\$65 (US\$55.25 per share). The charge to income tax will be US\$72 less US\$55.25 per share. In this instance the amount charged to income tax is more than 15% of the market value of the shares at the date of purchase.

5.1 How does the plan operate?

The plan operates as follows:

- The company makes an offer under the plan to employees.
- Generally there will be a maximum percentage of salary that can be invested in the plan.
- The employee decides how much net salary or wages they wish to contribute to the plan.
- The employee contributes the same amount each month for the six-month period, which is retained by the company, usually in a non-interest bearing account.
- At the end of the six months the contributions are used to purchase shares for the employee.

5.2 Charge to Income Tax under section 112, Taxes Consolidation Act, 1997

The discount allowed by the company is chargeable to income tax under Schedule E as a perquisite or profit derived from the office or employment (section 112 TCA 1997). The amount chargeable to

income tax is the difference between the market value of the shares, when the shares are purchased on behalf of the employee and the amount paid by the employee for those shares.

5.3 Charge to Income Tax under section 128, Taxes Consolidation Act, 1997

As set out at paragraph 5.2 the charge to income normally arises under section 112 TCA 1997. However some of the plans are drafted in a manner that would make them share option plans chargeable to income tax under section 128 TCA 1997.

To establish whether the charge to income tax arises under section 112 or 128 TCA 1997 it will be necessary to review the plan.

13.4 PRSI and USC

The amount chargeable to income tax is reckonable for PRSI and USC.