



Ireland – Share Options Update – Internationally Mobile Employees*

June 2007

The Revenue Commissioners have just published the long awaited Statement of Practice (SOP) in relation to the tax treatment of share options granted to internationally mobile employees. The changes announced have relevance where your organisation has individuals on inbound assignments to Ireland and for Irish employees going on outbound assignments. The changes could have an impact on the overall cost of assignments and follow on from the recently announced relaxation in the VAT treatment relating to the secondment of certain staff to Ireland.¹

The Irish Revenue's SOP follows the interpretation outlined in the earlier OECD reports and thus brings the proposed Irish tax treatment broadly in line with international practice. The detailed provisions are somewhat complex but the main points are summarised below.

There are two particular changes arising from the publication of the SOP. Firstly, clarification on the manner in which income tax relief will be available where the exercise of an option gives rise to an income tax charge both in Ireland and an overseas location i.e. double taxation relief. Secondly, a move to impose an Irish income tax charge on overseas options granted before an assignee moves to, or indeed returns to, Ireland.

Practice to date – imported options

In the past, where an overseas employee moved to Ireland on assignment, the Irish Revenue did not seek to impose a charge to income tax on exercise of imported share

options. This treatment applied provided the option had been granted while the individual was not tax resident in Ireland and the option was not connected with an Irish employment.

The move to impose an income tax charge on imported options was flagged in the Finance Act 2005. However, it only became effective following the recent signing of a Ministerial Order. The change has effect in relation to rights obtained on or after 5 April 2007.

So what is the tax treatment of share options?

In the case of market value options a charge to Irish income tax generally only arises on the exercise of the share option. The option holder must pay the income tax due within 30 days following the date of exercise and at the same time report the exercise to the Irish Revenue by way of a Form RTSO1. Failure to pay the tax on time will give rise to interest charges.

¹ See PwC Employment Tax Bulletin, March 2007

[Does the exercise of a share option give rise to any other obligations for the employee?](#)

The exercise of a share option will also bring the employee within the self-assessment system for tax purposes. This means the employee is required to file an Irish tax return for the year of exercise on time and meet any preliminary tax requirements which might also arise. Currently no liabilities to social security (PRSI) or health levy arise on exercise.

[Are there reporting requirements for the employer?](#)

As a general rule, the grant or exercise of a share option gives rise to an annual reporting requirement for the employer. A Form SO2 for the year to 31 December must be filed with the Irish Revenue by the following 31 March. For example the Form SO2 for 2006 should have been filed by 31 March 2007.

[What is the tax position on the sale of the option shares?](#)

Any gain on the option shares from the point of exercise to the time of sale is regarded as a capital gain. Thus on disposal of the option shares, where the individual is either resident or ordinarily resident in Ireland, there may be an additional liability to capital gains tax (CGT), with associated tax payment and filing obligations for the individual.

Practice on or after 5 April 2007

[Individuals coming to Ireland on assignment](#)

In relation to options granted on or after 5 April 2007, a charge to Irish income tax may now arise on the exercise of imported options. Essentially, if the duties of the overseas employment are exercised in Ireland such that the associated employment income is taxable here, then a charge to Irish income tax is likely to arise on exercise of the imported options. This is a significant change from the practice to date.

Subject to the provisions of the relevant Double Taxation Agreement (DTA), the charge to Irish income tax on exercise will generally be limited to the proportion of the option gain which relates to Irish work days over the vesting period. This is the period between the date of grant and the date on which the option first becomes exercisable.

If part of the gain which is taxable in Ireland is also liable to income tax in a DTA country, then in general Ireland will give a measure of double taxation relief in respect of income tax paid in the other country.

If there is no DTA with the other country, then in practice the Irish Revenue will allow a deduction (rather than a credit) for the overseas income tax in computing the gain liable to Irish income tax.

[Note: From January 2006, as a result of the curtailment in the remittance basis of taxation for non-Irish domiciled individuals working in Ireland under foreign employment contracts, the previous exclusion from a charge to income tax on the exercise of options is significantly restricted].

[Individuals leaving Ireland on assignment](#)

In relation to options granted to employees whilst resident in Ireland, a charge to Irish income tax will continue to arise even where the options are exercised after becoming non-resident for Irish tax purposes.

Subject to the terms of the relevant DTA, the charge to Irish income tax may be limited to the proportion of the option gain which relates to Irish work days over the vesting period as outlined above.

If part of the gain which is taxable in Ireland is also liable to income tax in a DTA host country, then in general it is expected that the host country will give a measure of double taxation relief in respect of the income tax paid in Ireland.

Capital gains tax base cost where option taxed overseas

Individuals might sell option shares while resident or ordinarily resident in Ireland where the earlier option gain on exercise was taxable overseas. As the Irish tax relates to the capital gain on sale, historically there has been a mismatch in relation to double taxation relief in these scenarios.

In a positive development, the Irish Revenue have now confirmed that where the option gain on exercise was charged to income tax in a DTA country, then on a subsequent sale of the shares while resident or ordinarily resident in Ireland the amount charged to tax in the DTA country may be treated as part of the acquisition costs for Irish CGT purposes.

Furthermore, the Irish Revenue have stated that double taxation relief, as outlined in the SOP, applies to share options exercised on or after 1 January 2004.

Double taxation relief and Form RTSO1

In calculating the Irish income tax payable on exercise of the option (which is payable within 30 days following exercise), it is now permissible to factor in any appropriate relief which may be available under a relevant DTA. However, as interest charges arise on the late payment or underpayment of the tax, it is advisable to take a prudent approach as regards any measure of double taxation relief which may be available in Ireland.

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The information provided is for general guidance only. The taxation of share options for internationally mobile employees is a particularly complex area involving multi jurisdictions and the interaction of relevant Double Taxation Agreements. There may also be social security implications in certain jurisdictions. The facts of each case need to be considered separately and professional advice is recommended before embarking on any specific course of action.

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