

# Approved SAYE share option schemes

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A savings-related, or save as you earn (SAYE), share option scheme is an all-employee share scheme under which a company grants options over shares to its employees. Separately, the SAYE scheme is linked to a formal savings contract between employee participants and a third party financial institution. At the end of the savings period, typically three or five years, employees have sufficient capital to fund the exercise of the options and thus acquire the underlying shares.

Normally, when an employee exercises a share option, a charge to income tax will arise based on the excess of the value of the shares over the option price. This tax charge arises at exercise regardless of whether the employee retains the shares. However, favourable tax treatment is available for options granted under a Revenue approved SAYE scheme.

## Revenue approved SAYE schemes

Options granted through an SAYE scheme which has been approved by the Revenue Commissioners will not be liable to income tax on grant or exercise. Consequently, an employee can exercise an option without crystallising a tax charge, provided the option is not exercised before the third anniversary of grant. The costs of establishing an approved SAYE scheme are deductible in computing the company's profits for corporation tax purposes. The main features of the legislation governing Revenue approved SAYE schemes are set out below.

## Constitution

An SAYE scheme is governed by written rules which must be approved in advance by the Revenue Commissioners. These rules must comply with formal Irish legislation such that careful drafting is required. In the case of quoted companies, the rules will normally be approved by

shareholders at a general meeting and will also need to comply with relevant institutional investor guidelines. The timing of the implementation of an SAYE scheme will therefore need careful consideration.

## Eligibility

An approved SAYE scheme must be open to all employees and full-time directors of the company which established the scheme and such subsidiaries as are designated as "participating subsidiaries". It is possible to include a minimum service requirement for participants, though this cannot exceed three years. All employees eligible to participate must do so on similar terms. This covers the option price and the circumstances in which the option may be exercised. The number of shares available to employees may vary by reference to salary levels, length of service or other similar objective criteria acceptable to the Revenue.



### Savings contracts

All eligible employees who wish to participate must enter into a savings contract, with an approved savings carrier, to make either 36 or 60 monthly savings contributions. The minimum savings requirement is €12 per month. The maximum individual savings contribution cannot exceed €500 per month. The savings are deducted from net income each month, i.e. after tax and PRSI. Any interest or bonus payable through the savings contract at maturity will be exempt from tax and will not be subject to deposit interest retention tax (DIRT).

### Savings carriers and bonus

Companies wishing to implement an SAYE scheme will need to engage the services of an approved savings carrier. Most Irish banks and building societies are authorised and any EU Institution can be approved.

The savings carrier pays a bonus to all employees with savings contracts at the end of the savings period that is tax-free in the hands of the employee. The bonus is set by the savings carrier but is subject to a maximum limit set by Revenue of 2, 6 or 12.5 times the monthly contribution for 3, 5 or 7 year contracts respectively.

There is a current maximum interest rate of 2% for savings under certified contractual savings schemes. Heretofore, this rate has proved inadequate to fund the maximum bonus rates payable under SAYE schemes. Recent Revenue opinion on this matter however suggests that a higher interest rate may be entertained.

### Grant of options

Each employee joining the SAYE scheme will be granted an option to acquire shares in the company, at a price per share fixed by the directors at the time of grant. The option price may be at full market value or at a discount of up to 25% of market value.

### Number of shares subject to option

Each option granted must be over such number of shares as have an aggregate option price, as discounted, not exceeding the total monthly contributions together with any interest or bonus payable on maturity under the savings contract. Thus, the number of shares subject to the option will be determined at the time of grant and will be directly proportional to the level of savings to which the employee commits.

### Timing of grant

In the case of quoted companies, options may normally only be granted within certain periods, e.g. following the announcement of results for any period, the date on which the scheme, or any amendments thereto, receives Revenue approval, or the introduction of relevant alterations to the Tax Acts or the savings contract.

### Scaling down

The company may set a limit on the number of shares to be made available for any invitation. In the event that applications for options exceed the number of shares available, the directors may scale down applications for all participants on a pro rata basis.

### Exercise of options

An option may be exercised in whole or in part, but can only be exercised by the person to whom it was granted or by their personal representatives. An SAYE option must not be transferable.

Options may normally be exercised only within six months of the third, fifth or seventh anniversary of the starting date of the relevant savings contract, depending on the period permitted by the directors at the time of grant. An option not so exercised will normally lapse. The scheme rules may provide that a former employee may exercise an option within six months of leaving, but generally only in certain limited circumstances.

### Capital gains tax

Following the exercise of an option an employee may decide to sell some or all of the shares so acquired. In this event a charge to capital gains tax (CGT) may arise on the excess of the net sale proceeds over the actual option price. Any such gain will be liable to CGT, currently at 25%. If not utilised elsewhere, an employee's €1,270 annual CGT exemption can be offset against the gain. It is possible, by selling tranches of shares each year, to reduce the overall liability to CGT.

### Corporate reporting

With effect from the 2008 tax year, a statutory corporate filing requirement applies to SAYE schemes. By 31 March following the end of the tax year in question, companies must now submit their completed Form SRSO1.

### Our services

At PricewaterhouseCoopers, in association with our correspondent law firm, Landwell, we can provide a comprehensive range of services to assist you in the implementation of any share scheme.

The services available include evaluating your needs and designing the appropriate scheme, drafting the necessary documentation which will govern the operation of the scheme, together with the necessary resolutions and notices for shareholders. We will manage the Revenue and institutional investor approvals, as required. We also offer assistance with employee communications, filing obligations and the ongoing administration of your employee share schemes.

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The information provided is for general guidance only. No action should be taken without obtaining specific advice relevant to your business needs.