Deloitte.

Global Reward Update

Ireland

PAYE withholding on share options

**November 2023**

MAKING AN IMPACT THAT MATTERS since 1845

## Headlines

- It is currently a self-assessment obligation for individuals to report and pay the taxes arising on any share option exercise to the Irish Revenue.
- For all gains arising from share option exercises after 1 January 2024, it will be the employer's responsibility to withhold and pay taxes (including income tax, USC, and employee PRSI) to Revenue via Pay-As-You-Earn ("PAYE")[1].
- This change will align the reporting and withholding position for share options to most other types of employee share awards in Ireland where PAYE withholding is already applicable.

## What has changed

The gain arising on the exercise of a share option is subject to income tax, Universal Social Charge ("USC"), and employee Pay Related Social Insurance ("PRSI")[2].

It is currently a self-assessment obligation of the employee to remit these taxes to Revenue within 30 days of exercise. This should be accompanied by a Form RTSO1, which reports the taxable gain. Employees must also submit a Form 11 income tax return by 31 October following the year of exercise.

The recent Finance (No.2) Bill 2023 is set to introduce PAYE withholding on all share option gains arising on or after 1 January 2024 and it will therefore become the employer's responsibility to withhold and pay the income tax, USC and employee PRSI to Revenue. This applies to both existing and new share option grants.

Share option gains where shares are acquired on the exercise of an option will be considered notional payments. On this basis, under the PAYE regulations, an employer must report share option gains:

- on or before the exercise of the option; or
- if no actual cash emoluments paid on that day, on the earlier of the next pay date after the exercise of the option and 31 December of the year in which the option is exercised.

Employers will also be required to submit a Form RSS1 to Revenue by 31 March following the end of each tax year, to report all share option grants, exercises, releases, or transfers in the year (as is currently the case).

## Deloitte's view

This is a significant change for employers and there is very limited time to get processes in place to ensure withholding is applied.

While this may be a welcome change for employees, as it will remove the administrative burden from them, there are several considerations for employers including:

- The need to establish a process to withhold the required taxes on the exercise of the option within the timelines prescribed by the PAYE legislation. This includes awards delivered under an Employee Share Purchase Plan (ESPP) if that plan has been taxed as a share option.

  As there is employee choice as to the timing of the exercise of an option, the reporting requirement may be challenging for any share options exercised towards the end of a tax year as PAYE must be withheld by the earlier of (i) the next pay day, and (ii) 31 December. A bonus payroll run may be required.

- Communicating the change to employees to ensure they are aware of the new withholding requirement and the removal of their personal obligations in respect of the exercise of the share options.

  This may be particularly confusing in 2024, as employees will continue to have self-assessment reporting obligations in respect of options exercised in 2023 (e.g., the Form 11 due by 31 October 2024 for any 2023 exercises), but there will be no self-assessment obligations in respect of any share option exercises in 2024.

- For globally mobile employees only part of the gain on exercise of the option may be subject to tax in Ireland. Employers will need to establish a process to determine the amount subject to tax and whether the option gain is subject to employee PRSI or exempt.

- For private companies allowing options to be exercised when there is no liquidity for the shares (e.g. before an 'exit event'), consideration will need to be given to (i) how the employee taxes are funded, and (ii) the market value of the shares on exercise.

## Who to contact

If you would like to discuss this further, or have any questions, please speak to your usual Deloitte contact or any of the contacts listed below:

**Colin Forbes**
Partner – Tax and Legal IE Dublin
cforbes@deloitte.ie

**Sarah Conry**
Director – Tax and Legal IE Dublin
sconry@deloitte.ie

**Niall Dunleavy**
Senior Manager – Tax and Legal IE Dublin
nidunleavy@deloitte.ie

[1] Subject to Finance (No.2) Bill 2023 being signed into law, which is expected in late December.

[2] Generally speaking, employer PRSI does not apply to share-based remuneration, and this remains unchanged.