

Chapter 9 - Key Employee Engagement Programme (KEEP)

This document should be read in conjunction with section 128F of the Taxes Consolidation Act 1997

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9.1 Introduction

The key employee engagement programme (KEEP) is a focussed share option programme, intended to help SMEs attract and retain talent in a highly competitive labour market. This chapter outlines the tax treatment of share options granted and exercised under the Key Employee Engagement Programme.

Legislation in respect of the KEEP was introduced by the Finance Act 2017 and is contained in section 128F of the Taxes Consolidation Act 1997 (“TCA 1997”).

Finance Act 2018 introduced a change to the definition of a “qualifying share option”, which was subject to approval by the EU Commission and commencement by Ministerial Order. The commencement order has been signed giving effect to the change from 1 January 2019. Further details are set out in [9.3.2](#).

Finance Act 2019 introduced a change to the definition of a “qualifying individual” and further changes to the definition of a “qualifying share option”. Additionally, Finance Act 2019 inserts new definitions for “qualifying group”, “qualifying holding company”, “qualifying subsidiary”, “relevant subsidiary” and deletes section 128F(4) in relation to holding companies. These changes are subject to commencement by Ministerial Order, on approval from the EU Commission. Such approval is currently pending. This manual will be updated with details of the changes when the commencement order is signed.

In accordance with the provisions of section 128 TCA 1997, income tax is generally chargeable on any gain realised by an individual on the exercise of a share option acquired in his or her capacity as an employee or director.

However, gains realised on the exercise of qualifying KEEP options by employees and directors will not be subject to income tax, the Universal Social Charge (USC) or Pay Related Social Insurance (PRSI), where the requirements of section 128F TCA 1997 are satisfied.

Capital Gains Tax will arise on a subsequent disposal of the shares, at which time the sales proceeds will be available to discharge the tax due.

KEEP is applicable in respect of share options granted during the period 1 January 2018 to 31 December 2023.

9.2 Tax Relief under the KEEP

Any income gain realised on the exercise of a qualifying share option granted on or after 1 January 2018 and before 1 January 2024 is exempt from income tax, USC and PRSI. This gain shall not be reckoned in computing income for the purposes of the Income Tax Acts.

In order to qualify for the KEEP, an option must be exercised within 10 years of grant. Therefore, the latest date on which a KEEP option could potentially be exercised is 31 December 2033, assuming the option was granted on the latest possible date of 31 December 2023.

Share options granted on or after 1 January 2024 will not qualify for this tax exemption.

Prior Revenue approval is not required to operate the KEEP. However, the qualifying company is required to make an annual return to Revenue setting out details regarding all options granted, exercised, assigned or released.

In order to qualify for the beneficial tax treatment under section 128F, there are a number of conditions to be satisfied by both the employee/director and the company. In addition, specific requirements and limitations apply in respect of the KEEP options.

9.2.1 Overview of the Main Requirements Pertaining to the Employee/Director, the Company and the Options Granted

| | Requirements |
|-------------------------------|---|
| The employee/director | Must be full time employee/ director (30+ hours per week) of the qualifying company throughout the entirety of the relevant period. |
| | His/her employment/office must be capable of lasting at least 12 months from the date the KEEP options are granted. |
| | He/she can't hold a material interest (15%) in the qualifying company. |
| | He/she must hold the options for 12 months prior to exercise (limited exceptions apply). |
| The qualifying company | Must be - incorporated in the State or in another EEA State or in the United Kingdom and resident in Ireland, or resident in another EEA State or in the United Kingdom and carrying on business in the State through a branch or agency. |
| | Must exist wholly or mainly for the purpose of carrying on a "qualifying trade" on a commercial basis with a view to the realisation of profit. |
| | Must be a micro, small or medium-sized enterprise ("SME") within the meaning of the Annex to Commission Recommendation 2003/361/EC. |
| | Must be an unquoted company none of whose shares, stock or debentures are listed in the official list of a stock exchange or quoted on an unlisted securities market of a stock exchange, other than on the Euronext Growth market operated by the Irish Stock Exchange or on any similar or corresponding stock exchange in an EEA country or in the United Kingdom or a country with which Ireland has a double taxation agreement. |
| | Must not be regarded as a company in difficulty for the purposes of EC Commission Guidelines on State Aid. |
| | Must not issue qualifying share options with a market value exceeding €3,000,000. |
| | |

| | |
|--------------------------|---|
| The share options | The shares which may be acquired by the exercise of the share option must be new ordinary fully paid up shares in a qualifying company. |
| | The share options must be granted at the market value of the same class of shares at the date of grant. |
| | Must be subject to a written contract of agreement setting out the relevant details . |
| | Must be within the maximum permitted limit in terms of overall awards in the year; in all years of assessment; and annual emoluments. |
| | Must not be exercisable within 12 months from the date of grant. |
| | Must not be exercisable more than 10 years from the date of grant. |

9.3 Qualifying Share Option

In order for the KEEP relief to apply, the share options must be considered a qualifying share option.

9.3.1 Qualifying Conditions

Finance Act 2018 introduced changes to the definition of “qualifying share option”. These changes came into operation on 1 January 2019.

The following sets out details of the qualifying conditions applicable prior to commencement of section 11(1)(a) Finance Act 2018. Please refer to 9.3.2 for further information relating to the changes effective following commencement.

In order to be treated as a qualifying share option, the position prior to 1 January 2019 is that all of the conditions below must be satisfied:

- (a) The shares which may be acquired by the exercise of the share option are new ordinary fully paid up shares in a qualifying company, which carry no present or future preferential right to dividends or to a company’s assets on its winding up and no present or future preferential right to be redeemed;
- (b) The share option price at the date of grant is not less than the market value of the same class of shares at the date of grant;
- (c) There must be a written contract or agreement in place setting out:
 - 1) the number and description of shares which may be acquired by exercise of the option,
 - 2) the option price, and
 - 3) the period during which the option(s) may be exercised.
- (d) The total market value of all shares in respect of which qualifying share options have been granted by the company to an employee or director must not exceed—
 - (i) €100,000 in any one year of assessment,
 - (ii) €250,000 in any 3 consecutive years of assessment, or
 - (iii) 50 per cent of the annual emoluments of the qualifying individual in the year of assessment in which the qualifying share option is granted,
- (e) The share option is exercised by the qualifying individual in the relevant period;

- (f) The shares in respect of which the options have been granted must be in a qualifying company; and
- (g) The share options cannot be exercised more than 10 years from the date of grant.

9.3.2 Qualifying Conditions following commencement of section 11(1)(a) Finance Act 2018.

Finance Act 2018 introduced changes to the definition of a “qualifying share option”, (with respect to the conditions set out at (d) of 9.3.1). The commencement order has been signed and gives effect to the following changes.

With effect from 1 January 2019, the total market value of the share options which may be granted to any one employee/director cannot exceed the amounts set out below. The other conditions set out in 9.3.1 still apply.

1. €100,000 in any one year of assessment,
2. €300,000 in **all** years of assessment, or
3. 100% of the qualifying individual’s annual emoluments in the year of assessment in which the qualifying share option is granted.

9.3.3 Market Value of Shares

The share options must be granted at the market value of the same class of shares at the date of grant.

In order for the KEEP relief to apply, the qualifying share options must be granted for bona fide commercial reasons.

The value of a shareholding in an unquoted company depends on many factors. For example, the value will depend on the business sector/industry, the net assets of the business, the profitability of the business and its future prospects in the marketplace. Revenue expects that in valuing the shares the company should use a valuation method which complies with relevant accounting standards. Revenue will **not** provide an opinion regarding company specific share valuations.

9.3.4 Requirement to be 'New' Ordinary Shares

The shares which may be acquired by the exercise of the share option must be new ordinary fully paid up shares in a qualifying company.

Where consideration is given to an employee or director for the release of the qualifying share option e.g. an employee receives a cash payment in exchange for issued but unexercised share options, KEEP relief is not available. The consideration is considered an emolument to which deductions under the PAYE system apply.

Details of consideration paid should also be reported to Revenue using Form RSS1.

For administrative purposes, the company may manage the delivery of shares to employees through a nominee trust arrangement whereby scheme shares are held in trust. In some circumstances, an SME may decide to set aside a small portion of shares in the company as a pool of shares to be made available to key employees as they are recruited by the SME. Where an SME subsequently grants an option to acquire shares already in existence (i.e. following buyback from an employee who has ceased his or her employment with the SME), such shares will not be considered "new" and KEEP relief does **not** apply.

9.4 Qualifying Individual

9.4.1 Meaning

The individual exercising the qualifying share option must at the date of grant of the option and throughout the entirety of the relevant period:

- (a) be a full-time employee/ director of the qualifying company, and
- (b) be required to devote substantially the whole of his or her time to the service of the qualifying company and spend a minimum of 30 hours per week working for the company.

The qualifying individual's employment or office must be capable of lasting at least 12 months from the date the option is granted.

Where an option is assigned by an employee to a third party who in turn exercises the option, KEEP relief will **not** apply. The assignment and subsequent exercise of the option should be dealt with in accordance with Section 128 TCA 1997.

9.5 Material Interest

An employee or director will cease to be a qualifying individual if he or she acquires beneficial ownership of, or the ability to control, directly or indirectly, or through the medium of a connected company or connected companies or by any other indirect means, more than 15% of the ordinary share capital of the qualifying company. This includes shares held in either the employee's or director's own right or together with any connected persons, as defined in section 10 TCA 1997.

The individual must be a qualifying individual throughout the relevant period.

9.5.1 Cessation of Employment or Directorship and Death of Option Holder

Where the company share scheme rules allow for an employee/director to exercise a qualifying share option following the cessation of their office/ employment; the employee/director will continue to be considered a "qualifying individual" for the purposes of KEEP relief provided that such options are exercised within 90 days of the termination of the office or employment.

Where a qualifying individual dies within 12 months of being granted the options, and was therefore unable to exercise the share options, the personal representative(s) may exercise the qualifying options and avail of KEEP relief once the following conditions are met:

- (i) The options must be exercised within 12 months of the date of the qualifying individual's death;
- (ii) The deceased individual was considered a qualifying individual at the date of grant and during the period to the date of death; and
- (iii) The company is considered a qualifying company throughout the relevant period.

9.6 Qualifying Company

In order for a company to be able to grant options over its shares under the KEEP scheme, it must be considered a “qualifying company”. In order to be considered qualifying, the company must meet a number of conditions which are dealt with below.

9.6.1 Incorporation & Residence

The company must be:

- (a) Incorporated in the State or in another EEA State or in the United Kingdom and resident in Ireland; or
- (b) Resident in another EEA State or in the United Kingdom and carrying on business in Ireland through a branch or agency.

9.6.2 Trading Activities

The company must exist wholly or mainly for the purpose of carrying on a “qualifying trade” on a commercial basis with a view to the realisation of profits/gains which are charged to tax under Case I of Schedule D.

A “qualifying trade” involves the carrying on of a trade with the exception of the following “excluded activities”:

- (a) adventures or concerns in the nature of trade, e.g. companies engaged in once-off or speculative transactions,
- (b) dealing in commodities or futures in shares, securities or other financial assets,
- (c) financial activities (see Note 1),
- (d) professional services companies (see Note 2),
- (e) dealing in or developing land,
- (f) building and construction,
- (g) forestry, and
- (h) operations carried out in the coal industry or in the steel and shipbuilding sectors.

Note 1

'Financial activities' are defined in section 489 TCA 1997 and include activities in the provision of financing or refinancing facilities by any means which involves, or has an effect equivalent to, the extension of credit. Part 16 TCA 1997 was replaced in Finance Act 2018 and while the definition of 'financial activities' remains unchanged it is now contained within section 489 TCA 1997.

With regard to the application of "all matters"¹ relating to the extension of credit, it is not the intention to capture companies predominantly engaged in R&D type activities in this particular sector.

Note 2

'Professional services' are:

- (a) services of a medical, dental, optical, aural or veterinary nature,
- (b) services of an architectural, quantity surveying or surveying nature, and related services,
- (c) services of accountancy, auditing, taxation or finance,
- (d) services of a solicitor or barrister and other legal services, and
- (e) geological services.

9.6.3 Company Status throughout any Relevant Period

For the entirety of any relevant period, the company must be an unquoted company none of whose shares, stock or debentures are listed in the official list of a stock exchange or quoted on an unlisted securities market of a stock exchange, other than on the Euronext Growth market operated by the Irish Stock Exchange or on any similar or corresponding stock exchange in an EEA country or in the United Kingdom or country with which Ireland has a double taxation agreement.

Furthermore, for the entirety of any relevant period, the company must not be regarded as a company in difficulty for the purposes of EC Commission Guidelines on State Aid.

¹ "Financial activities" are defined in Section 489 TCA 1997 and mean the provision of, and all matters relating to the provision of, financing or refinancing facilities by any means which involves, or has an effect equivalent to, the extension of credit.

9.6.4 Company Status at the Date of Grant

At the date of grant of the qualifying share option, the company must be a micro, small or medium-sized enterprise ("SME") within the meaning of the Annex to Commission Recommendation 2003/361/EC.

Furthermore, the total market value of the issued but unexercised qualifying share options of the company must not exceed €3,000,000.

9.6.5 Definition of Micro, Small & Medium-sized Enterprises

In general terms, a company will be considered a micro, small or medium sized enterprise where the company employs fewer than 250 employees and its annual turnover/ annual balance sheet does not exceed €50 million and €43 million respectively.

The European Commission have provided [detailed guidelines](#) on these criteria for companies who are unsure if they meet the definition. In summary:

- A **medium**-sized enterprise has less than 250 employees and has an annual turnover not exceeding €50 million or an annual balance sheet total not exceeding €43 million;
- A **small** enterprise has less than 50 employees and has an annual turnover and/or annual balance sheet total not exceeding €10 million;
- A **micro** enterprise has less than 10 employees and has an annual turnover and/or annual balance sheet total not exceeding €2 million.

9.6.6 Holding Companies

A holding company can be considered a qualifying company for the purposes of the KEEP relief. In order to qualify, the holding company's business must consist wholly of the holding of shares in the qualifying company where the shares are directly held and comprised of the entire issued share capital.

This definition intends to limit applicability of relief to companies holding shares in a single subsidiary. It is not the intention to deem companies holding shares in multiple group companies as qualifying for the purposes of the relief.

Section 128F (4) TCA states that for a holding company to be considered qualifying its business must consist "wholly of the holding of shares in a qualifying company". Revenue are prepared to accept that the condition that the business consists wholly of the holding of shares will be met where a holding company holds a bank account used solely for purposes required by holding those shares (e.g. distribution of dividends).

9.7 Relevant Period

9.7.1 Definition

Relevant period is defined as "a period of not less than 12 months beginning on the date a qualifying share option is granted to an employee or director of the qualifying company and ending on the date the share option is exercised by the qualifying individual."

Essentially, the above definition confirms that in order to be considered a qualifying share option, the vesting period must be at least 12 months in length. The period between the date the option was granted and the date that the option is capable of being exercised is known as the vesting period. However, there are certain exceptions to this requirement which are set out in [9.7.2](#).

9.7.2 Relevant period less than 12 months

There are limited circumstances in which share options may be exercised outside of the relevant period, i.e. within the 12-month period from the date of grant.

Such circumstances include the case of certain company reorganisations or sales, or on the death of the option holder.

In this regard, a period of less than 12 months shall be deemed to be a relevant period where, following the grant of a share option, during that period—

- (a) a transaction is entered into pursuant to a compromise, arrangement or scheme applicable to or affecting all the ordinary share capital of the qualifying company,
- (b) a transaction takes place that forms part of a general offer made to holders of shares of the same class as the shares acquired by the director or employee or of shares in the same company and made in the first instance on a condition such that if it is satisfied the person making the offer will have control of that company, or
- (c) the qualifying company allows an issued but unexercised qualifying share option to transfer to an individual's estate on their death, where—
 - (i) the qualifying share option is exercised within 12 months of the individual's death,
 - (ii) the deceased was a qualifying individual up to the date of his or her death, and
 - (iii) the company is a qualifying company throughout the relevant period.

9.8 Capital Gains Tax Treatment

9.8.1 General

KEEP provides for an exemption from income tax, USC and PRSI on any gain realised on the exercise of a qualifying share option. However, the gain will be subject to Capital Gains Tax on a subsequent disposal of the shares.

The qualifying individual is deemed for CGT purposes to have acquired the shares for a consideration equal to the amount paid for their acquisition, notwithstanding section 547(1)(a) TCA 1997. Therefore, the base cost for CGT purposes is the amount paid at the acquisition date.

9.8.2 Interaction with CGT Entrepreneur's Relief

CGT "Entrepreneur's Relief" may be available for the disposal of shares acquired under the KEEP where the shareholder (the employee or director) satisfies the requirements for CGT Entrepreneur's Relief. Further information on Entrepreneur's Relief is available in Tax and Duty Manual [Part 19-06-02b](#) on the Revenue website.

9.9 Illustrative Example of KEEP Relief

The following example compares the income tax and capital gains tax treatment of shares acquired (and disposed of) under a standard Unapproved Scheme and the KEEP.

Facts

- On 10 April 2018 an employee is granted an option to acquire 10,000 shares at €1 per share (which is market value of the shares on that date).
- On the 10 April 2021, the market value of the shares is €3 per share and the employee exercises his/ her option to acquire the 10,000 shares at €1 per share. The employee pays €10,000 for 1,000 shares which are valued at €30,000 on that date. The employee has therefore acquired the shares at a discount of €20,000.
- On the 10 April 2024, the market value of the shares has increased to €4 per share and the employee sells the holding of 10,000 shares for €40,000.
- The employee is a marginal rate taxpayer and has total income of less than €70,044 per annum.
- The employee holds no other shares in the qualifying company.
- It is assumed that there are no changes to tax rates during the years 2018 to 2024.

| Comparative Treatment of Share Option Gains | Non-KEEP Options | KEEP Options |
|--|------------------|---------------|
| | € | € |
| 10/4/2018: Grant of Option | | |
| No tax liability as share option price is equal to the market value on the date of grant | 0 | 0 |
| 10/4/2021: Exercise of Option | | |
| Discount of €20,000 | | |
| Income Tax @ 40% | 8,000 | 0 |
| USC @ 4.5% | 900 | 0 |
| Employee PRSI @ 4% | <u>800</u> | <u>0</u> |
| RTSO payable on exercise of option | 9,700 | 0 |
| 10/4/2024: Sale of Shares | | |
| Consideration Received | 40,000 | 40,000 |
| Consideration paid on acquisition | -10,000 | -10,000 |
| Discount received which was subject to income tax, USC and PRSI | <u>-20,000</u> | <u>0</u> |
| Chargeable gain (ignoring annual exemption) | 10,000 | 30,000 |
| CGT @ 33% | 3,300 | 9,900 |
| Tax Summary: | | |
| Growth in share value | 30,000 | 30,000 |
| Total taxes payable | <u>-13,050</u> | <u>-9,900</u> |
| After Tax Gain | 16,950 | 20,100 |

9.10 Returns of Information

A company will not be regarded as a qualifying company if it fails to comply with certain reporting requirements set out in subsections (7) and (8) of Section 128F TCA 1997.

Finance Act 2018 amended Section 128F (8) TCA 1997 resulting in the information required for State Aid publication purposes being collected via the qualifying company's annual return. Thus, it will no longer be necessary for Revenue to write to individual companies following filing of the annual KEEP1 return to request additional information required for EU State Aid reporting requirements. Once the qualifying company submits the KEEP1 return, it will be processed by Revenue and where required the automatic reporting of data to the European Commission will take place.

9.10.1 Annual Reporting

There is an obligation on every qualifying company to file a return with Revenue for any year in which it grants an option to an employee, or any year in which an option is exercised, transferred or released. This return is known as KEEP1 and must be filed on or before 31 March in the following year.

The KEEP1 return is available on the [Revenue website](#).

The KEEP1 return must be completed offline and then uploaded to ROS. The return contains detailed instructions on how to complete and upload it to ROS. In brief, once the required data has been entered in the return, the user selects the **“Convert to XML”** button to generate the actual return. The user then logs into **My Services** in ROS and clicks on the **“Uploaded forms completed offline”** link in the **File a Return** section. Once the KEEP1 return is selected, it can then be uploaded to ROS.

Section 128F requires that a qualifying company must provide particulars to Revenue in respect of:

- qualifying share options granted,
- shares allotted and assets transferred in pursuance of such a right, and
- consideration given for the assignment or release in whole or in part of such a right or receives notice of the assignment of such a right.

Self-assessment principles apply to the making of a return.

9.10.2 EU State Aid Reporting

As the KEEP falls within State Aid provisions, additional reporting and publication requirements may arise. This is covered in subsection (8) of section 128F which was amended by Finance Act 2018. Please refer to 9.10 Returns of Information for further information. Revenue may publish the following information in relation to all qualifying companies:

- name of the company;
- address of the company;
- companies Registration Office (CRO) number for the company;
- the principal economic sector in which the company operates;
- the region in which the company is located;
- the amount of the tax advantage granted; and
- the date of exercise of the qualifying share options.

9.11 Ceasing to Qualify for KEEP Relief

If any of the qualifying conditions for KEEP relief cease to apply (subject to the limited exceptions outlined earlier), then any subsequent exercise of the share options will be subject to taxation under section 128 TCA 1997. Thus, the former KEEP options will be treated as normal unapproved share options. Income tax, USC and PRSI is due on any income gain arising on exercise of the share options. An individual is obliged to file an RTS01 and pay any RTS0 due within 30 days of exercise. He or she will be considered a chargeable person for income tax purposes and will be required to file an annual return of income in line with the self-assessment provisions. The company would also be required to file an RSS1 return by the 31 March following the year in which the exercise occurred.

There may also be Capital Gains Tax considerations when the shares are subsequently disposed of.

Further information on the treatment of unapproved share options is available in the Share Schemes Tax and Duty Manual (TDM) [Chapter 3](#) of the Share Schemes Manual.

9.12 Employment and Investment Incentive

Where relief applies under KEEP, section 128F TCA 1997 provides that relief cannot also be claimed under the Employment and Investment Incentive (EII).

9.13 Anti-avoidance

To qualify for relief, the share option must be granted for bona fide commercial reasons, the main purpose of which is to recruit and retain employees. It should not be part of a scheme or arrangement the main purpose, or one of the main purposes, of which is the avoidance of tax.

9.14 Revenue Technical Service (RTS)

Revenue recognises that taxpayers and or their agents may need, on occasion where a matter is not fully dealt with in Revenue's published guidance, to make contact to clarify the technical treatment of transactions prior to completing a tax return. All such technical queries should be directed to Revenue through the Revenue Technical Service. Comprehensive guidance notes regarding submitting technical queries through the RTS can be found in TDM [Part 37-00-00a](#)

9.15 Definitions

It is important to be aware of certain definitions contained in section 128F TCA 1997, which are summarised below. The Finance Act 2018 changes, which were subject to Ministerial Commencement Order, are now included in the table below.

| | |
|-----------------------------|---|
| Connected persons | 'Connected persons' shall be construed in accordance with section 10 TCA 1997. |
| Control | 'control' shall be construed in accordance with section 432 TCA 1997. |
| EEA agreement | 'EEA Agreement' means the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by all subsequent amendments to that Agreement. |
| EEA state | 'EEA state' means a state which is a contracting party to the EEA Agreement. |
| Emoluments | 'emoluments' has the same meaning as in section 983 TCA 1997. |
| Excluded activities | 'excluded activities' means— (a) adventures or concerns in the nature of trade, (b) dealing in commodities or futures in shares, securities or other financial assets, (c) financial activities, (d) professional services companies, (e) dealing in or developing land, (f) building and construction, (g) forestry, and (h) operations carried out in the coal industry or in the steel and shipbuilding sectors. |
| Financial activities | 'financial activities' has the same meaning as in section 489 TCA 1997. |
| Market value | 'market value' shall be construed in accordance with section 548 TCA 1997. |
| Option price | 'option price' means a predetermined price at which an employee or director can purchase a share at some time in the future |
| Ordinary | 'ordinary shares' means shares forming part of a company's |

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|------------------------------|---|
| shares | ordinary share capital. |
| Professional services | <p>'professional services' means—</p> <p>(a) services of a medical, dental, optical, aural or veterinary nature,</p> <p>(b) services of an architectural, quantity surveying or surveying nature, and related services,</p> <p>(c) services of accountancy, auditing, taxation or finance,</p> <p>(d) services of a solicitor or barrister and other legal services, and</p> <p>(e) geological services.</p> |
| Qualifying company | <p>'qualifying company' means a company that subsection to Section 10 TCA 1997 -</p> <p>(a) is incorporated in the State or in an EEA state other than the State or in the United Kingdom and is resident in the State, or is resident in an EEA state other than the State or in the United Kingdom and carries on business in the State through a branch or agency,</p> <p>(b) exists wholly or mainly for the purpose of carrying on a qualifying trade on a commercial basis with a view to the realisation of profit, the profits or gains of which are charged to tax under Case I of Schedule D, and</p> <p>(c) throughout the entirety of any relevant period—</p> <p>(i) is an unquoted company none of whose shares, stock or debentures are listed in the official list of a stock exchange, or quoted on an unlisted securities market of a stock exchange other than—</p> <p>(I) on the market known as the Euronext Growth Market operated by the Irish Stock Exchange, or</p> <p>(II) on any similar or corresponding market of the stock exchange—</p> <p>(A) in a territory other than the State with the government of which arrangements having the force of law by virtue of section 826(1) TCA 1997 have been made, or</p> <p>(B) in an EEA state other than the State,</p> <p>(C) in the United Kingdom</p> |

| | |
|--------------------------------|---|
| | <p>and</p> <p>(ii) is not regarded as a company in difficulty for the purposes of the Commission Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty²,</p> <p>and</p> <p>(d) at the date of grant of the qualifying share option –</p> <p>(i) is a micro, small or medium sized enterprise within the meaning of the Annex to Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium sized enterprises, and</p> <p>(ii) the total market value of the issued but unexercised qualifying share options of the company does not exceed €3,000,000.</p> |
| Qualifying individual | <p>‘qualifying individual’, in respect of a qualifying share option, means an individual who throughout the entirety of the relevant period—</p> <p>(a) is a full-time employee or full-time director of the qualifying company, and</p> <p>(b) is required to devote substantially the whole of his or her time to the service of the company, with a minimum requirement for the individual to work at least 30 hours per week for the qualifying company.</p> |
| Qualifying share option | <p>‘qualifying share option’ means a right granted to an employee or director of a qualifying company to purchase a predetermined number of shares at a predetermined price, by reason of the individual’s employment or office in the qualifying company, where—</p> <p>(a) the shares which may be acquired by the exercise of the share option are new ordinary fully paid up shares in a qualifying company, which carry no present or future preferential right to dividends or to a company’s assets on its winding up and no present or future preferential right to be redeemed,</p> <p>(b) the option price at date of grant is not less than the market value of the same class of shares at that time,</p> |

² OJ No. C249,31.7.2014, p.1

³ OJ No. L124, 20.5.2003, p.36

| | |
|-------------------------|--|
| | <p>(c) there is a written contract or agreement in place specifying—</p> <ul style="list-style-type: none"> (i) the number and description of the shares which may be acquired by the exercise of the share option, (ii) the option price, and (iii) the period during which the share options may be exercised, <p>(d) the total market value of all shares, in respect of which qualifying share options have been granted by the qualifying company to an employee or director, does not exceed—</p> <p>Prior to 1 January 2019</p> <ul style="list-style-type: none"> (i) €100,000 in any one year of assessment, (ii) €250,000 in any 3 consecutive years of assessment, or (iii) 50 per cent of the annual emoluments of the qualifying individual in the year of assessment in which the qualifying share option is granted, <p>From 1 January 2019</p> <ul style="list-style-type: none"> (i) €100,000 in any one year of assessment, (ii) €300,000 in all years of assessment, or (iii) 100% of the qualifying individual's annual emoluments in the year of assessment in which the qualifying share option is granted, <p>(e) the share option is exercised by the qualifying individual in the relevant period,</p> <p>(f) the shares are in a qualifying company, and</p> <p>(g) the share option cannot be exercised more than 10 years from the date of grant.</p> |
| Qualifying trade | 'qualifying trade' means trading activities other than excluded activities. |
| Relevant period | 'relevant period' means a period of not less than 12 months beginning on the date a qualifying share option is granted to an employee or director of the qualifying company and ending on the date the share option is exercised by the qualifying individual. |

9.16 Summary of tax treatment of qualifying KEEP share options

| | | |
|---------------------------------|--|---|
| Grant of KEEP options | Tax at grant | No |
| | Responsibility for collecting tax | N/A |
| | Employee reporting | No |
| | Employer reporting | Yes - form KEEP1 must be filed by 31 March following year of grant. |
| Exercise of KEEP options | Tax at exercise | No (exempt from income tax, USC and PRSI). |
| | Responsibility for collecting tax | N/A |
| | Employee reporting | No, however employees who are considered chargeable persons will need to report the acquisition of the shares (from the exercise) in the CGT section of their Form 11 as with any other acquisition of a chargeable asset. |
| | Employer reporting | Yes - form KEEP1 must be filed by 31 March following year of exercise. |
| Disposal of shares | Tax at sale | Yes – charge to capital gains tax (CGT) on any gain realised ⁴ . |
| | Responsibility for collecting tax | Employee |
| | Employee reporting | Yes. An employee must file a return by 31 October in the year after the date of disposal. A return is required even if no tax is due because of reliefs or losses. An employee must file a Form CG1 if not usually required to submit annual tax returns; Form 12 if a PAYE worker or a Form 11 if considered a chargeable person for tax purposes. |
| | Employer reporting | No |

⁴ CGT is due by 15 December for disposals between 1 January and 30 November of the same tax year. Tax is due by 31 January for disposals in the immediately preceding December.

9.17 Examples

Example 1

On 1 January 2018, James is granted an option to acquire 5,000 shares at €1 per share. The market value of the shares on that date is €1 per share. The options can be exercised for up to 10 years from the date of grant.

Tax at date of grant

No tax arises on the grant of the KEEP options as they were granted at market value at that date.

Tax at date of exercise of KEEP options

In 2020, when the shares are worth €4 per share, James exercises the option, taking up his full rights, and pays €5,000 to acquire the shares.

| | |
|-------------------------------------|---------------|
| Market value of shares (5,000 x €4) | €20,000 |
| Price paid on exercise (5,000 x €1) | <u>€5,000</u> |
| Income gain | €15,000 |
| Tax due | Nil |

Provided the requirements of section 128F TCA 1997 are satisfied no income tax arises on the gain of €15,000.

Tax on a subsequent sale of the shares

In 2021, James sells all 5,000 shares. The market value of the shares at the date of sale is €5 per share. A capital gain of €20,000 arises and the capital gains tax due is €6,600.

| | |
|-----------------------------|---------------------|
| Sales proceeds (5,000 x €5) | €25,000 |
| Less cost (5,000 x €1) | €5,000 |
| Chargeable gain | €20,000 |
| CGT due (at 33%) | €6,600 ⁵ |

⁵ Assumes 2018 CGT rate applies; ignores the personal exemption and FIFO.

Example 2

Aisling is a full-time employee with an annual salary of €46,000 in 2018. The maximum value of share options that can be granted to her in 2018 through the KEEP is €23,000. This is equal to 50 per cent of her total annual emoluments for that year.

In 2019, her annual salary is €48,000. The maximum value of share options that can be granted to her in 2019 through KEEP is €48,000. This is equal to 100 per cent of her total annual emoluments for that year. The cumulative value of options granted to her is within the €300,000 limit.

Example 3

Deirdre is a full-time director with an annual salary of €150,000 and director's fees of €60,000 in 2018. The maximum value of share options that can be granted to her under KEEP is €100,000 in the year 2018 (max €100,000 in any tax year).

In 2019, Deirdre's salary and director's fees remain at the 2018 level, therefore she may receive share options of up to €100,000 as the annual limit remains the same in 2019. The cumulative value of options granted to her is within the €300,000 limit.

Example 4

In the tax years 2018 and 2019, Brian was granted KEEP options in respect of new shares valued at €90,000 and €100,000 respectively at the dates of grant. These options remain unexercised in the year 2020.

In the year 2020, the maximum value of shares options that can be granted to him under KEEP is €100,000 (max €100,000 in any one year of assessment).

In the year 2021, the maximum value of share options that can be granted to him under KEEP is €10,000 (max €300,000 in all years of assessment).

Example 5

Enrique is a non-executive director who spends 3 days a month working for the qualifying company. He is not eligible to participate in the KEEP scheme as he is not a full-time employee/ non- executive director.

Example 6

Oliver is a newly appointed executive director who is required to devote substantially the whole of his time to the service of the company and spend a minimum of 30 hours per week working for the qualifying company. His appointment is for a period of two years. He is eligible to participate in the KEEP scheme.

Example 7

Company Y is a qualifying company for KEEP purposes. Mary is an executive director of both Company Y and Company Z who devotes her time equally to the service of each company. As she does not devote substantially the whole of her time to the service of Company Y, she is not eligible to participate in the KEEP scheme.

Example 8

Audrey is a full-time director of company Z and owns 10% of the ordinary share capital. On 1 July 2019 she exercises qualifying KEEP options and acquires an additional 6% shareholding in the company. As she did not hold more than a 15% shareholding in Company Z throughout the relevant period (i.e. from the date of grant up to the time of exercise), she is considered a qualifying individual and will avail of the KEEP exemption on any gain realised at exercise of these options.

Audrey will not however be considered a qualifying individual for any subsequent exercises as she now has beneficial ownership of more than 15% of the ordinary share capital of Company Z.

Example 9

Morgan is a full-time employee of a qualifying company for KEEP purposes. His wife Caroline is a majority shareholder (has a 50% shareholding) in the company. As Caroline is a connected person, Morgan will not be able to benefit from the tax treatment afforded under the KEEP.

Example 10

Eamon has been granted KEEP options by his employer, company AF. Eamon ceases employment with AF on 1 January 2020. He holds unexercised qualifying share options at this date in respect of shares in AF. On 1 February 2020 he commences a new employment with Company BB.

Provided Eamon exercises his qualifying share options by 30 March 2020, he will be deemed a qualifying individual in respect of the period he is not employed by AF (i.e. between 1 January 2020 and the date of exercise).

Example 11

Company X grants qualifying share options to the value of €2 million to its key employees on 1 January 2018. The options are subject to a three-year exercise period. At 1 January 2019, the company wishes to grant additional options to newly recruited key employees.

As the total market value of issued but unexercised qualifying share options of the company cannot exceed €3 million at the date of grant, the maximum value of options that can be granted on 1 January 2019 is €1 million (assuming the market value of the options previously granted has not changed).

Example 12

On 1 January 2018, Stephen by virtue of his employment is granted KEEP share options. On 1 January 2019, when the market value of the shares is €15,000, he exercises his options and acquires newly issued shares for an option price of €12,000. He immediately sells the shares for €15,000.

Calculation of chargeable gain

| | | |
|--|------------|----------------|
| Disposal proceeds | | €15,000 |
| Less costs of acquisition: | | |
| Cost of option at grant | NIL | |
| Price of shares at time of acquisition | €12,000 | |
| Amount charged to income tax under Section 128F TCA 1997 | <u>Nil</u> | <u>€12,000</u> |
| Chargeable Gain (ignoring annual exemption and FIFO) | | €3,000 |

Example 13

Eoin is granted share options in a qualifying company in February 2018. His employer will report the grant in the Form KEEP1 and submit to Revenue by 31 March 2019.

Throughout the relevant period, all qualifying conditions for KEEP have been satisfied. Eoin exercises his KEEP options on 12 July 2021 and qualifies for KEEP tax relief. His employer will report the exercise in the Form KEEP1 and submit to Revenue by 31 March 2022.

Example 14

Katherine is granted share options in a qualifying company in February 2018. Her employer will report the grant in the Form KEEP1 and submit to Revenue by 31 March 2019.

During the relevant period, Katherine significantly reduces her working hours to a part time basis. As she is no longer a full-time employee with a minimum of 30 hours per week, she will cease to be a qualifying individual. Therefore, if and when Katherine exercises her options, she will not be eligible for KEEP tax relief.

Any gain arising on the exercise of the options will be subject to income tax, USC and PRSI. Katherine must pay this tax liability within 30 days of exercise and complete a form RTSO1. She will also be a chargeable person for the year of exercise and must file a return of income. Her employer will report the exercise on the form RSS1 for the year of exercise and is not required to report this on the form KEEP1.