Chapter 12 – Save As You Earn Schemes (SAYE)

This document should be read in conjunction with sections 519A to 519C and Schedules 12A and 12B of the Taxes Consolidation Act 1997

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12.1 Introduction

This chapter sets out how save as you earn schemes (SAYE) operate and their general tax treatment.

There are two elements to a scheme:

(a) a save as you earn certified contractual savings scheme, and
(b) an approved saving related share option scheme.

The legislation on SAYE and certified contractual savings schemes can be found in sections 519A to 519C TCA 1997 and Schedules 12A and 12B TCA 1997.

Under this employee share scheme, a company grants options over shares to its employees and full-time directors. Separately, the participants will have a formal savings contract with a third party financial institution for normally a three, five or seven year savings period. At the end of the savings period, the employees and directors can exercise their right/option to acquire shares in the company and must pay for this out of the proceeds of their SAYE certified contractual savings scheme. Provided certain conditions are met, any gains arising on the exercise of the options will be exempt from income tax. The Universal Social Charge (USC) and employee Pay Related Social Insurance (PRSI) will still be chargeable.

12.2 Conditions for Approval

The scheme must be approved by Revenue in accordance with Schedule 12A, Taxes Consolidation Act 1997 (see section 12.3).

12.2.1 Main Features of the Scheme

Establishing the scheme

- Prior Revenue approval is required in order to set up a savings related share option scheme.
- The company must engage the services of an approved savings carrier.
- The costs of establishing an approved SAYE scheme are deductible in computing the company's profits for corporation tax purposes.

Grant of right/option

- Participation in the scheme is voluntary. The scheme must be made available to all employees and full-time directors at the same time, on similar terms (subject to a maximum service requirement of three years).
- The employer will grant a right to purchase shares at a fixed price, known as the option price, at a particular future time. The option price may be at the market value or at a discount of up to 25% of the market value of the shares at the date of grant of the option.
- Shares acquired by exercising the right must be paid for out of the proceeds of a save as you earn certified contractual savings scheme.

Savings scheme

- Employees will save with a qualifying institution under a SAYE contractual savings scheme, for a period of three, five or seven years.
- The employer will deduct the savings amount from the employees' net salary, and place the savings on deposit with an approved bank or savings institution.
- The maximum monthly savings allowable is €500 and the minimum amount is €12. The monthly contribution is fixed at the start of the contract and cannot be changed.

- Monthly contributions must be sufficient to secure (as near as possible) repayment of an amount equal to the amount required to pay for as many shares as the individual has the right to acquire.
- Any interest or bonus paid on these savings at maturity will be exempt from income tax. Deposit Interest Retention Tax (DIRT), where relevant will not be deductible from any interest or bonus paid.
- The rights must not normally be exercisable earlier than the time repayments under the SAYE certified contractual savings scheme become due.

Exercise

- Provided there are sufficient savings available, at the end of the savings period participants in the scheme (option holders) can exercise their option and buy the shares at the option price.
- Exercise is not compulsory. If a participant chooses not to exercise their option (i.e. if the options are allowed to lapse) they can take their savings back from the qualifying institution. This would normally happen if options are “under water” i.e. the market value of the shares at the date of exercise is less than the option price.
- If the options are exercised, any gain arising will be exempt from income tax. Relief is not due where the right is exercised within 3 years of the date the right is obtained (with some limited exceptions). There is no exemption from USC or PRSI.

Disposal of shares acquired

- If shares acquired under a save as you earn scheme are subsequently sold capital gains tax (CGT) may be due.

12.2.2 Summary of Tax Treatment of SAYE Share Options

Grant of SAYE options	**Tax at grant**	No
	Responsibility for payment of tax	N/A
	Employee reporting	No
	Employer reporting	Yes - form SRSO1 must be filed by 31 March following year of grant
Exercise of SAYE options	**Tax at exercise**	No charge to income tax. Charge to USC and Employee PRSI on any gain realised.
	Responsibility for payment of tax	Employer
	Employee reporting	No
	Employer reporting	Yes - form SRSO1 must be filed by 31 March following year of exercise AND normal PAYE reporting applies for month of exercise
Disposal of shares	**Tax at sale**	Yes – charge to capital gains tax (CGT) on any gain realised [1]
	Responsibility for payment of tax	Employee
	Employee reporting	Yes – employee must file CGT return by 31 October following the year of disposal
	Employer reporting	No

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

12.3 Approval of Schemes

12.3.1 Applications for Approval

The only exception to submitting technical queries through the RTS will be where companies are proposing to establish and operate specific share schemes requiring approval (see also Tax and Duty Manuals (TDM) APSS, and ESOT). In such circumstances, case specific queries prior to application can be sent to Revenue. All such queries and scheme applications should be sent to the Employee Share Scheme Section of Revenue – see below details.

Employee Share Scheme Section,
Personal Taxes Policy & Legislation Division,
New Stamping Building,
Dublin Castle,
Dublin 2.

Alternatively, an email address is available - shareschemesection@revenue.ie. Revenue does not recommend sending personal or confidential information to this email address as it is not secure. TDM Part 37-00-36 – My Enquiries should be used as an alternative, in respect of personal/confidential data.

12.3.2 Applying for Approval of a Scheme

Revenue will accept queries on particular technical issues where clear guidance is not available on the Revenue website (including TDMs). Such case specific queries can be submitted to Revenue for consideration in advance of making the submission for scheme approval.

The following information should be provided in relation to an application for approval of a scheme:

- a certified copy of the rules of the scheme,
- a copy of the Constitution/Memorandum and Articles of Association of the company whose shares are being used for the purposes of the scheme,
- a declaration on company headed paper signed by the company secretary that the shares to be used in the scheme satisfy the requirements of paragraphs 11-15 of Schedule 12A, Taxes Consolidation Act 1997, with a statement as to how the requirements of paragraphs 11 and 12 are met.

- where the company concerned is a member of a group of companies, confirmation must be provided that the scheme does not and would not have the effect of conferring benefits wholly or mainly on directors of companies in the group or on those employees of companies in the group who are in receipt of higher or the highest levels of remuneration. This statement can be included on the company secretary declaration,

- copies of all documents that will be issued to participants in the scheme i.e. Letter of Invitation, Application Form, Option Certificate, Notice of Exercise of Option, Employee Booklet etc.,

- a copy of save as you earn certified contractual savings scheme Prospectus and Application Form,

- a copy of the signed company resolution establishing the scheme,

- a copy of the signed company resolution nominating the participating companies,

- the name and address of the person who will be responsible for submitting the annual Return of Information,

- the corporation tax reference number for the company and any participating companies, and

- where a relevant body (trust or company) is to be used to purchase and retain the shares for the scheme, a copy of the trust document or Constitution/Memorandum and Articles of Association for the company concerned as appropriate.

Where Revenue is satisfied that the rules and ancillary documentation are capable of approval, the applicant company will be notified of this in writing.

12.3.3 Approval of Alterations to Schemes

It may be necessary from time to time for a company to make amendments to the rules of a SAYE scheme.

Approval of a scheme will cease automatically if an alteration is made to the scheme, unless the alteration has been approved by Revenue.

A copy of the signed Board Resolution setting out details of the proposed alteration should be sent to Revenue for approval together with a certified copy of the amended rules.

The amendments do not take effect until they have been approved by Revenue (Paragraph 4(2) of Schedule 12A TCA 1997).

12.3.4 Withdrawal of Approval

Revenue has the power to withdraw approval of a scheme in the following circumstances:

- where there is, with respect to the operation of the scheme, any contravention of the scheme rules,
- where any of the conditions that are required to be met in relation to the shares used for the purposes of the scheme cease to be met,
- where any of the conditions that are required to be met in relation to the eligibility of employees and directors to participate in the scheme cease to be met,
- where any of the conditions that are required to be met in relation to the granting and exercising of options cease to be met,
- where the company fails to provide information requested by Revenue under Paragraph 6 of Schedule 12A TCA 1997, or information which is required to be delivered under Paragraph 6A of Schedule 12A TCA 1997.

The withdrawal of approval is effective from the date of withdrawal unless Revenue specify a later date. Any options granted before the date of withdrawal of approval but exercised after that date should be treated as if there was no withdrawal of approval.

12.3.5 Right of Appeal

A company has a right to appeal to the Appeal Commissioners where it is aggrieved by:

- Revenue's refusal to approve a SAYE scheme.
- Revenue's refusal to approve an alteration to a SAYE scheme.
- The withdrawal of approval of a SAYE scheme.
- Revenue's refusal to decide that a condition subject to which approval was given is satisfied.

Further information on appeals can be found in the TDM Tax & Duty Appeals Manual on the Revenue website.

12.4 Establishing Company and Participating Companies

12.4.1 Establishing Company

Only a company can operate an SAYE scheme. An unincorporated body, for example, a friendly society or a co-operative, cannot operate such a scheme. The establishing company is called the Grantor and is the only company who can grant options to directors and employees under the scheme. See section 12.4.4 which deals with Group Schemes.

12.4.2 Participating Companies

Where the company establishing the scheme has control of another company or companies ("control" within the meaning of section 432 TCA 1997), the scheme may be extended to all or any of the companies over which it has control. A scheme of this kind is called a group scheme and the companies participating in the scheme are called "participating companies".

12.4.3 Extension of Scheme to Include Additional Companies

Where a group scheme is being extended to include additional participating companies, the relevant Board Resolution nominating the additional companies must be submitted to Revenue for approval.

12.4.4 Group Scheme Established by Foreign Parent Company

A foreign parent company establishing a scheme to include its Irish subsidiaries, can seek approval for such a scheme where the parent company has control over the Irish subsidiaries.

12.4.5 Companies Leaving the Scheme

Where a participating company in a group scheme ceases to be under the control of the establishing company it can no longer be part of a group scheme. The relevant Board Resolution excluding the participating company must be submitted to Revenue for approval. Depending on the rules of the scheme, participants may be able to exercise their options.

12.4.6 Costs of Establishing a Scheme

Section 519B TCA 1997 states that the costs incurred by a company in establishing an approved SAYE scheme (and under which no employee/director has obtained options prior to the approval) are allowable as a deduction for corporation tax purposes.
The deduction is allowable for the accounting period in which the expenditure is incurred, except where the scheme is approved more than 9 months after the end of that period. In such circumstances, the deduction is allowable for the accounting period in which approval is granted.

12.4.7 Costs Incurred where Relevant Body Involved

It is possible for a company to set up a “relevant body”, i.e. a trust or subsidiary company that exists for the purpose of acquiring and holding shares to satisfy the options granted under an approved SAYE scheme. In these circumstances, a corporation tax deduction is not allowable in respect of any expenditure incurred by the company to enable the trust or subsidiary to acquire shares for the purposes of the SAYE scheme.

12.5 General Conditions

There are a number of general conditions that must be satisfied before Revenue will approve a SAYE scheme.

12.5.1 Non-Essential Features

The scheme must not contain any features which are neither essential nor reasonably incidental to the purpose of providing employees and directors with benefits in the nature of options to acquire shares.

12.5.2 No Discouraging Features

The scheme must not contain any features which have the effect of discouraging employees from participating in the scheme.

12.5.3 Requirement Regarding a Group Scheme

Where the company setting up a scheme has control of another company or companies, the scheme may be extended to all or any of the companies over which it has control. A scheme of this kind is called a group scheme. A participating company in a group scheme is the company which established the scheme or a company over which the company has control and to which the scheme extends.

Where the company setting up the scheme is a member of a group of companies, the scheme must not have the effect of conferring benefits wholly or mainly on directors of companies in the group or on those employees of companies in the group who are in receipt of higher or the highest levels of remuneration.

12.5.4 Non-Transferability of Options

Options obtained under an approved SAYE scheme must not be transferable, except where a participant dies, when the options may pass into the estate of the deceased.

12.5.5 Funding of Acquisition of Shares

Shares acquired on the exercise of options granted under an approved SAYE scheme must be paid for with monies not exceeding the amount of the repayments, including any interest or bonus made under a SAYE certified contractual savings scheme.

In this regard, contributions made by a participant of an approved SAYE scheme to an SAYE certified contractual savings scheme must be sufficient to secure (as near as possible), the repayment of an amount equal to the sum required to pay for as many shares as the option gives the individual the right to acquire.

Repayments under a certified contractual savings scheme may be taken as including or not including a bonus but the question of what is to be included must be determined at the time the options under the scheme are obtained.

The time at which the repayments are due (i.e. the bonus date) must be taken as either the earliest date on which a bonus is payable (3/5 years) or, the earliest date on which the maximum bonus is payable (7 years).

12.6 Conditions Regarding Eligible Employees

The legislation on approved SAYE schemes provides that participation in such a scheme must be open to all "eligible employees" and there are certain employees who cannot participate.

12.6.1 Who Must be Allowed to Participate

Participation in an approved SAYE scheme must be open at any time to every person who:

- is an employee or full-time director of the company or participating company in the case of a group scheme;
- has been such an employee or full-time director during a qualifying period not exceeding 3 years; and
- is chargeable to income tax in respect of that office or employment under Schedule E.

Participation refers to both the obtaining of options to acquire shares and the exercise of those options.

Reference to an employee includes full-time, part-time and temporary employees.

A "full-time" director is a director who is required to devote substantially the whole of his/her time to the service of the company.

12.6.2 Who Cannot Participate

The scheme must not allow an individual to participate (i.e. obtain or exercise share options) if at any time, or at any time within the previous twelve months, such individual had a material interest in a close company which is either the company whose shares may be acquired pursuant to the exercise of the rights obtained under the scheme, or a company having control of that company, or is a member of a consortium which owns that company. An individual has a "material interest" in a company if he or she, either on his or her own or with any one or more of his or her associates, or if any associate of his or hers with or without any such other associates, is the beneficial owner of, or is able, directly or through the medium of other companies or by any other indirect means, to control more than 15% of the ordinary share capital of the company.

The reference in the following paragraph to the shares attributable to an individual are to be taken into account for the material interest test in determining whether an individual's rights to acquire shares exceeds a particular percentage of the company's ordinary share capital.

If shares attributed to an individual consist of or include shares over which that individual has a right to acquire, and the circumstances are such that if the right was exercised, the shares acquired would be new shares which the company has to issue in the event of exercise of the right then, for the purposes of determining, prior to the exercise of that right, whether the shares attributed to the individual exceeds a particular percentage of the ordinary share capital, such ordinary share capital is to be increased by the number of new shares referred to above.

12.6.3 Qualifying Period

An approved SAYE scheme may contain a rule that to be eligible to participate, directors and employees must have a minimum period of service with the company at the date of grant of the option (grant date). If such a qualifying period is set, it cannot exceed 3 years.

12.6.4 Death of Employee

If an eligible employee has been granted options by the company but dies before he or she commences to save in the certified contractual savings scheme associated with the approved SAYE scheme, the personal representatives of the deceased person do not have the choice to save and exercise in the future. Where savings have commenced the personal representatives can exercise the options.

If a participant who obtained options to acquire shares dies before the bonus date, the approved SAYE scheme must provide for the exercise of such options within the 12 months following the date of death.

If the death occurs within 6 months of the bonus date, the scheme must provide for the exercise of such options within the 12 months following the bonus date.

12.6.5 Employees and Directors Serving Notice

If an employee or director has given or received notice and they are still in the employment on the grant date and meet the other eligibility conditions, they must be allowed to participate in the approved SAYE scheme and be granted options where they apply for participation. It is not permissible to exclude them.

However, depending on the rules of the approved SAYE scheme, they may or may not be in a position to exercise the options. They may however save for the full savings period and receive the bonus tax-free.

12.7 Basis of Entitlement and Similar Terms and Related Matters

12.7.1 Introduction

All eligible employees and directors must be allowed to participate in an approved SAYE scheme on "similar terms".

The expression similar terms covers not only the share price and the circumstances in which options can be exercised, but also the number of shares over which options are granted. The fact that the number of shares may vary in accordance with criteria such as the level of remuneration or the length of service will not be regarded as meaning that the participants are not eligible to participate on similar terms. The question as to whether a scheme is open to all participants on similar terms can only be fully determined by reference to the rules of the particular scheme. The basis of entitlement must be clearly set out in the rules of the scheme.

12.7.2 Examples of Similar Terms

The following are some examples of how a participants' entitlement under an approved SAYE scheme may be calculated:

- All eligible employees are granted options over the same number of shares.
- All eligible employees are granted options based on years' service.
- All eligible employees are granted options based on their salary.

If options are granted based on an employee's level of remuneration, these must relate to basic remuneration. Any fluctuating emoluments must be excluded i.e. overtime, bonuses, payments of allowances for working abroad etc. Shift premium payments are treated as part of basic salary for this purpose.

In practice, the normal procedure is that the establishing company will allow the eligible employee to save any amount up to the maximum of €500 per month, subject to the minimum of €12 per month being saved and options are granted on that basis.

12.7.3 Age, Status (Seniority) or Grade

Calculation of a participant's entitlement to options under an approved SAYE scheme by reference to the age of the participant or the status (e.g. seniority) or grade of the participant is not permissible.

12.7.4 Documentation to be Given to Participants

When granting options under an approved SAYE scheme, the company must give the following documentation to all eligible employees/directors:

Letter of Invitation

This letter will invite all eligible directors and employees to participate in the forthcoming grant of options. It will usually state when the employee must apply by and the proposed grant date. The option price may also be stated.

Application Form

This is the form all eligible directors and employees who wish to participate in the scheme, must complete. The form will give the different options available for the particular grant (3 years, 5 years, 7 years). It is usually combined with the Application Form to open a savings account with the qualifying savings institution, where eligible directors and employees sign up to save a certain amount each month with such an institution.

Employee Booklet

This should provide a general guide to eligible directors and employees of how the scheme will operate and should also set out the terms and conditions of the scheme.

Option Certificate

After the options have been granted the company must give each participant an option certificate setting out details of the number of options granted, the grant date and when the options will mature. It must also state that options may not be transferred, assigned or charged prior to the date of exercise.

12.7.5 Scaling Back

If a company operating an approved SAYE scheme receives applications for options over an aggregate number of shares which exceeds the number of shares available, the scheme may provide (on approval by Revenue) for some of the following steps to take place to eliminate the excess:

- Each election for the maximum bonus (paid on maturity of a 7-year scheme) may be reduced to an election for the 5-year bonus.
- Each election for the 5-year bonus or 3-year bonus may be reduced to an election for no bonus.
- All elections in excess of €12 may be reduced pro rata to the extent necessary.

12.8 Conditions Regarding Exercise of Options

12.8.1 Introduction

There are a number of conditions that must be satisfied in relation to the exercise of options granted under an approved SAYE scheme.

12.8.2 Funding Acquisition of Shares

The approved SAYE scheme must provide for the acquisition of shares on the exercise of a share option granted under the scheme to be paid for with moneys not exceeding the amount of repayments made and any interest or bonus paid under a SAYE certified contractual savings scheme.

12.8.3 Exercise of Options and Bonus Date

Subject to the exception outlined in Section 12.8.4, the options obtained under a SAYE scheme must not be capable of being exercised later than 6 months after the bonus date.

Subject to the exceptions outlined in Sections 12.8.4 to 12.8.11, the options obtained under a SAYE scheme must not be capable of being exercised before the bonus date.

The bonus date is the date on which repayments under the SAYE certified contractual savings scheme are due to be paid.

At the time the options are obtained, the participant must decide whether or not repayments to be used to buy the shares should include the bonus and if repayments are to include the bonus, whether it is to be the maximum bonus or any other bonus payable.

12.8.4 Exercise of Options on Death of Participant

If a participant who obtained options to acquire shares dies before the bonus date, the approved SAYE scheme must provide for the exercise of such options within the 12 months following the date of death. See Section 12.6.4 for further information.

12.8.5 Exercise of Options on Cessation of Employment in Certain Circumstances

If a participant who has obtained options to acquire shares ceases to hold the office or employment due to any of the following, the approved SAYE scheme must provide for the exercise of such options within 6 months of the date of cessation of office or employment-

- Injury or disability or redundancy (within the meaning of Redundancy Payments Act, 1967 to 2014).

- On reaching the "Specified Age". A specified age must be stated in the rules of the scheme and this must be between 60 and pensionable age within the meaning of section 2 of the Social Welfare Consolidation Act 2005. If there is more than one contractual age of retirement in a company it is permissible to state a range of ages in the scheme rules. For example 'age 60 or any other age at which an employee or director is bound to retire under the terms of his/her contract of employment provided it is not less than 60 and not more than pensionable age'.

12.8.6 Exercise of Options on Cessation of Employment in Other Cases

If a participant who has obtained options to acquire shares ceases to hold the office or employment in circumstances other than those listed in Section 12.8.5 and the options have been held for more than 3 years prior to the date of cessation, the rules of the SAYE scheme may allow the options to be exercised within the 6 months following that date (where the scheme permits exercise in these circumstances the events allowed for exercise must apply to all participants).

If the options have been held for less than 3 years the scheme must provide for the options to lapse.

12.8.7 Exercise of Options after Reaching the Specified Age

If a participant continues to work after reaching the specified age the scheme must provide that that person may exercise his or her options within 6 months of reaching this age.

12.8.8 Exercise of Options where there is a Change in Control of Company

An approved SAYE scheme may provide for the following - If any person obtains control of a company, whose shares include scheme shares, as a result of making:

- a general offer to acquire the whole of the issued ordinary share capital of the company which is made on a condition such that if it is satisfied the person making the offer will have control of the company, or
- a general offer to acquire all the shares in the company which are the same class as the scheme shares,

then the approved SAYE scheme may provide that options obtained under the scheme to acquire shares in the company may be exercised within 6 months of the time when the person making the offer has obtained control of the company, and any condition subject to which the offer is made, has been satisfied.

12.8.9 Exercise of Options in the Event of a Reconstruction or Amalgamation of Company

An approved SAYE scheme may provide that if under section 453 of the Companies Act 2014, the court sanctions a compromise or arrangement proposed for the purposes of, or in connection with, a plan for reconstructing a company whose shares are scheme shares, or its amalgamation with any other company or companies, the scheme may provide that options obtained under the scheme to acquire shares in the company may be exercised within 6 months of the court sanctioning the compromise or arrangement.

12.8.10 Exercise of Options where there is a Voluntary Winding Up of Company

An approved SAYE scheme may provide that if a company whose shares are scheme shares passes a resolution for voluntary winding up, that options obtained under the scheme to acquire shares in the company may be exercised within 6 months of the passing of the resolution.

12.8.11 Exercise of Options where there is Cessation of Control or Transfer of Business

If a participant ceases to hold an eligible office or employment because:

- the office or employment is in a company of which the grantor ceases to have control, or
- the office or employment relates to a business or part of a business which is transferred to a person who is neither an associated company of the grantor nor company of which the grantor has control,

rights under the scheme may be exercised within 6 months of cessation.

If participants do not wish to exercise their options they can make arrangements with the savings carrier to continue making payments directly to the institution until the end of the term of their savings contract in order to receive their bonus.

12.8.12 Exercise of Options where there is a Change of Employment within Group of Companies

An approved SAYE scheme may provide that, where at the bonus date, a participant having obtained options under the scheme holds an office or employment in a company which is not a participating company but which is an associated company of the grantor, or a company of which the grantor has control, those options may be exercised within 6 months of the bonus date.

12.8.13 Period of Exercise

Where an approved SAYE scheme provides for the exercise of options in any of the circumstances set out in sections 12.8.11 to 12.8.12 the rules of the scheme may specify a shorter period than the maximum period of 6 months.

12.8.14 First Exercisable Event

Where any of the early exercise events outlined in the preceding paragraphs occur, the period of exercise commences from the first exercisable event. For example, where a participant leaves employment as a result of injury or disability, the participant has to exercise his or her options within six months of the date of leaving.

If at the end of month 2 of that 6-month period there were to be a change in control of the company the participant would then have 4 months left to exercise.

12.8.15 Options Lapsing

If an approved SAYE scheme does not provide for the exercise of options in the circumstances outlined in sections 12.8.5 to 12.8.11 and one of the events occurs the options must lapse and cannot be exercised.

12.9 Conditions Regarding Shares

12.9.1 Introduction

To ensure that the options over shares acquired by the participants in an approved SAYE scheme are ordinary shares with ordinary rights attaching to them, the legislation provides that only certain types of shares may be used for the purposes of a scheme.

12.9.2 Types of Shares that May Be Used

The shares must form part of the ordinary share capital of:

- the company which has established the approved SAYE scheme,
- a company which has control of the company concerned,
- a company which either is or has control of a company which
    - is a member of a consortium owning either the company concerned or a company having control of that company, and
    - beneficially owns not less than 15% of the ordinary share capital of the company so owned.

12.9.3 Further Conditions Regarding Shares

The shares must be:

- shares of a class quoted on a recognised stock exchange,
- shares in a company not under the control of another company, or
- shares in a company under the control of a company (other than a company which is, or if resident in the State would be, a close company (within the meaning of section 430 TCA 1997) whose shares are quoted on a recognised stock exchange.

The shares must be:

- fully paid up,
- not redeemable, and
- not subject to any restrictions other than restrictions which attach to all shares of the same class or permitted restrictions.

12.9.4 Permitted Restrictions

The shares may be subject to a restriction imposed by the company’s articles of association which requires all shares held by employees/ directors of the company or any other company of which it has control to be disposed of:

- when they leave the company; and
- subsequent to acquisition by way of share option exercise after the employee/director has left the company or by their personal representatives.

The disposal must be by way of sale for money and on terms specified in the articles of association. The same terms for disposal must apply to all shares of the same class.

In deciding if scheme shares that are or are to be acquired by any participant are subject to any restriction, any contract, agreement, arrangement or condition shall be regarded as a restriction, if it:

- restricts freedom to dispose of
    - the shares;
    - any interest in the shares; or
    - the proceeds from the sale of the shares.
- restricts freedom to exercise any right conferred by the shares; or
- would cause any disadvantage to the participant, or any connected person, if shares were disposed of or any right conferred by them was exercised.

12.9.5 Requirement Regarding the Majority of Shares

Except where the scheme shares are in a company whose ordinary share capital consists of shares of one class only, the majority of the issued shares of the same class must be held by persons other than:

- persons who acquired their shares in pursuance of a right conferred on them or an opportunity afforded to them as an employee/director of the company concerned, or any other company and not in pursuance of an offer to the public (e.g. shares acquired through an approved SAYE scheme);
- trustees holding shares on behalf of persons who acquired their beneficial interests in the shares in pursuance of such a right or opportunity as is mentioned above (e.g. shares held by the trustees of an approved profit sharing scheme);
- companies which have control of the company whose shares are in question or of which that company is an associated company, where the shares are not quoted on a recognised stock exchange but are shares in a company which is

under the control of a company whose shares are quoted on a recognised stock exchange.

12.9.6 Valuation of Unquoted Shares

The value of a shareholding in an unquoted company depends on many factors. For example, the value may 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.

12.9.7 Share Price

The price at which shares may be acquired on the exercise of options obtained under a SAYE scheme must:

- be stated at the time the options are granted; and
- not be manifestly less than 75% of the market value of the shares of the same class at the grant date of the option.

12.9.8 Variation in Share Price

An approved SAYE scheme may provide for such variation of the share price as may be necessary to take account of any variation in the share capital of which the scheme shares form part, provided the revised subscription price is not less than 75% of the market value of the shares.

12.10 Exchanges of Options

12.10.1 Introduction

It is possible that between the date options are obtained under an approved SAYE scheme and the date such options become exercisable, that the company whose shares are being used for the purpose of the scheme is taken over. The legislation allows for the exchange of the old options held for new options in certain circumstances.

12.10.2 Circumstances in which Exchange of Options is permitted

An approved SAYE scheme may contain provisions to permit a participant (option holder) to exchange options for new options in the following circumstances:

(a) Where the acquiring company obtains control of the company whose shares are being used for the purposes of an approved SAYE scheme following a general offer to acquire the whole of one or more classes of the company's shares;

(b) Where the acquiring company obtains control of a company whose shares are being used for the purposes of an approved SAYE scheme in pursuance of a compromise or arrangement sanctioned by the Court under the Companies Act 2014; or

(c) Where the acquiring company becomes bound or entitled under the Companies Act 2014 to acquire shares in a company whose shares are being used for the purposes of an approved SAYE scheme.

12.10.3 Exchange of Options

Where an approved SAYE scheme makes provision for the exchange of options in the circumstances outlined above, the scheme must provide for the participant to release his or her old options for new options within the "appropriate period". The appropriate period depends on which of the three circumstances apply.

In the case of 12.10.2 (a) it is a period of 6 months commencing when control has been obtained and when any condition attaching to the offer is satisfied.

In the case of 12.10.2 (b) it is a period of 6 months commencing when the court sanctions the compromise or arrangement.

In the case of 12.10.3 (c) it is the period during which the acquiring company remains bound or entitled.

12.10.4 New Options

The new options over shares in the takeover company must be equivalent to the old options. The options over shares in the new company will only be regarded as equivalent to the options over shares in the old company if the following is satisfied:

- the shares to which the options relate satisfy the conditions specified in paragraphs 11 to 15 of Schedule 12A (Section 12.9.3);
- the new options will be exercisable in the same manner as the old options;
- the total market value of the shares over which the old options were granted is equal to the total market value of the new options over the shares in the new company; and
- the new options have an option price such that the total amount payable on the exercise of the new options equals the total amount that would have been payable on exercise of the old options.

For all purposes of the approved SAYE scheme, the new options are regarded as acquired at the same time as the old options.

12.10.5 Shares in the Takeover Company

The shares in the acquiring company over which the new options are held must satisfy the requirements of paragraphs 11 to 15 Schedule 12A TCA 1997. The necessary declarations must be submitted to Revenue (see Section 12.3.3).

12.11 Return Filing Requirements

12.11.1 Employee's Filing Requirements

If an employee exercises an option under an SAYE scheme less than 3 years after they were granted as a result of one of the circumstances listed in 11.6 above, the options would automatically become unauthorised/unapproved and, as a result come within the self-assessment regime. The form RTSO 1 must be completed and submitted to the Collector General within 30 days of exercise along with the relevant tax, USC and PRSI. The employee will be regarded as a chargeable person and is required to submit an Income Tax Return to Revenue by 31 October in the year following the year when the options were exercised.

Any dividends paid in respect of shares received on the exercise of an option are subject to income tax, USC and PRSI and the employee must declare this income on his/her annual Income Tax Return.

When shares are disposed of the employee will be subject to capital gains tax on the difference between the sales proceeds and the option price. Details of disposals must be included on the annual Income Tax Return. For disposals between 1 January and 30 November in a tax year, the capital gains tax must be paid on or before 15 December in the tax year. For disposals in December in a tax year, the capital gains tax must be paid on or before 31 January in the following tax year.

12.11.2 Employer's Filing Requirements

The employer must file a Form SRSO1 by **31 March** of the year following the grant/exercise of the share options under a SAYE scheme or within 30 days of a request by Revenue.

The Form SRSO 1 is available for downloading from the Revenue website. Completed returns should be submitted to the Employee Share Schemes Section (see Section 12.3.1).

The employer must also include the PRSI and USC due in the Relevant Payroll Notification and pay the Collector General by the payment date for the relevant month.

Revenue approval of a scheme may be withdrawn for failure to comply with the reporting obligations.

12.12 Certified Contractual Savings Scheme and Related Matters

12.12.1 Introduction

An approved SAYE scheme can only operate where there is an associated certified contractual savings scheme.

12.12.2 Certified Contractual Savings Scheme

A contractual savings scheme must be certified by Revenue before it can be used in conjunction with a SAYE scheme. Revenue must have regard to specifications laid down by the Minister for Finance. The specifications are available from the Department of Finance.

The specifications cover matters such as the description of individuals who may enter into contracts; the contributions to be paid by individuals; the rates of interest to be paid on savings; bonuses to be paid on savings; and sums to be repaid to individuals.

A certified contractual savings scheme must only be used in conjunction with an approved SAYE scheme.

12.12.3 Qualifying Savings Institutions

Only qualifying savings institutions may operate a certified contractual savings scheme. A qualifying savings institution is one which falls into any one of the following categories:

- All banks who have been granted a licence under section 9 of the Central Bank Act 1971;
- All banks who have been granted a similar licence under the law of an EEA State;
- Building Societies;
- Trustee Savings Bank;
- Post Office Savings Bank;
- Credit Unions; and
- Other financial institutions prescribed by an order of the Minister for Finance.

By virtue of being prescribed by the Minister, Barclays Bank UK PLC and Yorkshire Building Society retained their qualifying savings institutions status, for the purposes of SAYE schemes - see Statutory Instrument No. 357 of 2020.