Chapter 3 - Unapproved Share Options

This document should be read in conjunction with sections 128, 128B and Chapter 4 of Part 42 of the Taxes Consolidation Act 1997

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3.1 Introduction

Broadly, this manual sets out the tax treatment of rights obtained by directors and employees to acquire:

a. shares by way of a share option mechanism - otherwise than through a Revenue approved savings-related share options scheme (SAYE) or a preferential scheme such as the Key Employee Engagement Programme ("KEEP"), or

b. assets other than shares.

3.1.1 Rights to acquire shares

When a company grants a share option to an employee/director, they are given the right to acquire a pre-determined number of shares at a pre-determined price for a pre-determined period. Such option schemes are commonly referred to as "unapproved share option schemes".

Where a company grants a share option to an employee/director, it will generally issue documentation covering the following:

- the number of shares that the employee/director can acquire,
- the price that the employee/director has to pay for the shares ("option price"),
- the dates from which, and by which the employee/director may exercise his or her option ("exercise period"), and
- the conditions regarding the right to exercise the option, which may include good leaver and/or bad leaver provisions.

The "date of exercise" is the date at which the employee/director takes up his or her right to acquire shares.

The shares may be at no cost to the employee/director (nil option) or at a pre-determined price that the employer has set.

In some cases, the employee/director may have to pay something for the option itself, but the terms and conditions will be set by the employer.

3.1.2 Rights to acquire assets other than shares

A company may wish to incentivise their employees or directors by granting them an option to acquire assets, other than shares, within a specific period of time. For instance, they may enter into an option agreement under which an employee/director may acquire a property at a pre-determined price within a set period of time.

The type of asset and the term and conditions of the agreement will be set by the employer.

If the employee or director chooses to exercise the option, the asset will be acquired at the agreed option price.

3.2 Summary of Tax Treatment of Rights to Acquire Shares or Other Assets

Grant of options	**Tax at grant**	No [1]
	Responsibility for collecting tax	N/A
	Employee reporting	No
	Employer reporting	Yes - form RSS1 must be filed by 31 March following year of grant
Exercise of options	**Tax at exercise**	Yes Gains realised up to 31 December 2023: employee must pay tax within 30 days of exercise - USC & PRSI at marginal rates [2]. Gains realised on/after 1 January 2024: employer must operate tax via the PAYE system on gains realised.
	Employee reporting	In respect of gains realised on/before 31 December 2023 - employee must complete form RTSO1 within 30 days of exercise and must file an Income Tax Return for year of exercise by 31 October of the following year.
	Employer reporting	Yes – form RSS1 must be filed by 31 March of the following year.

[1] Assumes options are not capable of being exercised more than seven years following the date of grant.

[2] For gains realised before 1 January 2024, marginal rates of income tax and USC must apply, unless the taxpayer applies for and receives prior approval to apply tax at the standard rate of income tax and a lower USC rate. For gains realised on or after 1 January 2024, employers will use the rates provided in the relevant Revenue Payroll Notification of that individual.

Disposal of shares/other assets	**Tax at sale**	Yes – charge to capital gains tax (CGT) on any gain realised [3]
	Responsibility for payment of tax	Employee
	Employee reporting	Yes – an individual 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 individual 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

[3] Must pay any CGT 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.

3.3 Charge to Tax

3.3.1 Scope of section 128 TCA 1997

Where an employee/director, by reason of his or her employment or office, obtains a right to acquire shares via a "share option" or any other asset(s) in any company, legislation provides for a charge to income tax. Specifically, section 128 TCA 1997 applies to any right granted to an employee/director by reason of his or her employment or office to acquire any asset, including shares in any company.

A charge under section 128 TCA 1997 also arises where:

- a right is granted by reason of an employee/director's employment or office or which is assigned to him or her by another person, or

- a right is granted to an employee/director before the commencement of his or her employment or office or after the cessation of his or her employment or office where it is acquired by reason of the employment or office. For example, an employee may be granted share options as an inducement to take up employment.

3.3.2 Schedule E Charge

The charge to tax under section 128 TCA 1997 applies to employees/directors who are chargeable to tax under Schedule D or Schedule E in respect of the emoluments of his or her employment or office.

Under section 128 TCA 1997 an individual is liable to income tax under Schedule E in respect of any gain arising on the exercise, assignment, or release of a right obtained by that person where—

(a) the right has been obtained by reason of that person's employment or office (whether or not a right is obtained by reason of a person's employment or office is a question of fact); and

(b) section 71(3) TCA 1997 (i.e., the remittance basis of taxation) does not apply to the profits or gains from the relevant employment or office under which the right is or was granted. See Tax and Duty Manual (TDM) Part 05-01-21A on the Revenue website for more information on the remittance basis of taxation.

The amount of the gain as computed is chargeable under Schedule E in the year in which the right is exercised, assigned, or released.

3.3.3 Non-Residents

With effect from 5 April 2007, section 128 TCA 1997 also applies to cases where the employee/director is not resident in the State when the right is granted. See Section 3.9 for more information regarding residence and share options.

3.4 Tax Treatment of Rights to Acquire Shares or Other Assets

3.4.1 Grant of Options

The date of grant is the date at which the employee/director is granted the right to acquire shares or other assets in the future. This is a right which the employee may or may not choose to take up in the future.

There are two types of options for income tax purposes:

(a) a 'short option' - which must be exercised within seven years from the date it is granted; and

(b) a 'long option' - which can be exercised more than seven years from the date it is granted.

Generally speaking, the most common form of options granted by employers are short options.

3.4.1.1 Taxation of Short Options at Date of Grant

Where an option is not capable of being exercised more than seven years after the date on which it is granted (i.e., a short option), no charge to income tax arises on the date that the right is granted.

3.4.1.2 Taxation of Long Options at Date of Grant

Where an option is capable of being exercised more than seven years after it is granted (i.e., a long option), a charge to income tax may arise on both:

(a) the grant of the option - where the option price is less than the market value of the shares or the asset at the date of grant; and
(b) the exercise, assignment, or release of the option.

Credit is given for any income tax charged on the grant of the option against the income tax due on the exercise, assignment, or release of the option.

The amount of the gain chargeable to income tax on the grant of a long option is the difference between:

(a) the market value of the asset/share(s) at the date the option is granted; and
(b) the consideration for which the asset/share(s) may be obtained on the exercise of the option (i.e. the exercise price). If this consideration is variable the least amount of the consideration should be taken into account.

In practice, where an employee/director is granted a long option, the option price will, generally speaking, be equal to the market value of the shares/assets at the date of grant, and consequently no income tax charge would arise at the date of grant.

Example 1 – grant of long option
Orla was granted share options on 6 May 2023, under the terms of which the share option may be exercised anytime up to 6 May 2032. This is a 'long option' as it is capable of being exercised more than seven years after the date of grant.

Date share option granted	6 May 2023
Exercise price	€5.00 per share
Market value at 6 May 2023	€5.50 per share
Number of shares	1,000
Value of shares at date of grant	€5,500
Less option price payable on exercise	€5,000
Income gain	€500 [4]

The total gain subject to income tax at the date of grant is €500 (€0.50 per share x 1,000 shares).

If the individual's marginal rate of tax is 20%, then the income tax due is €100. If the individual's marginal rate of tax is 40%, then the income tax charge is €200.

A credit for the tax charged on the grant of the option will be available for offset against any income tax charged on the subsequent exercise, assignment, or release of the share option.

3.4.2 Exercise of Options

Income tax is chargeable under Schedule E on any gain realised on the exercise, assignment or release of an option obtained by a person as an employee/director.

The amount of the gain chargeable on the exercise of both **short and long options** is the difference between:

(a) the market value of the asset/share(s) at the date of acquisition; and
(b) the aggregate amount or value of the consideration, if any, given for the asset/share(s) and for the grant of the option.

For the purposes of (b), consideration does not include the performance by the employee/director of his or her duties in or in connection with his or her employment or office and only one deduction may be allowed in respect of any consideration given for the grant of an option.

In the case of **long options**, credit is given for any income tax charged on the grant of the option against any income tax due on the exercise, assignment, or release of the long option.

The amount chargeable to income tax is reckonable income for PRSI and USC purposes.

[4] PRSI and USC ignored for the purposes of this example.

Example 2 – exercise of short option
Thomas was granted share options on 6 May 2023, under the terms of which the share options must be exercised before 1 December 2026. This is a 'short option' as it must be exercised within seven years of the date of grant.

Date share option granted	6 May 2023
Exercise price	€2.00 per share
Market value at 6 May 2023	€2.00 per share
Number of shares	500
Date share option exercised	10 March 2024
Market value at 10 March 2024	€5.00 per share

There is no charge to income tax at the date of grant as the option is a 'short' option.

Thomas exercises his option on 5 July 2024 (the date of exercise). The taxable gain at the date of exercise is calculated as follows:

Market value of shares at date of exercise (€5.00 per share)	€2,500
Less option price paid (€2.00 per share)	€1,000
Income gain (€3 per share)	€1,500

As the gain is exercised after 1 January 2024, Thomas' employer has an obligation to remit the tax to Revenue at the rate of tax specified in his current Revenue Payroll Notification (RPN). Refer to Section 3.8 for further details on the payment of tax on gains realised on or after 1 January 2024.

Example 3 – exercise of long option

Orla was granted share options on 6 May 2022, under the terms of which the share options may be exercised anytime up to 6 May 2030 (i.e., more than seven years after the date of grant). This is a 'long option'. Orla exercised all of her share options on 4 May 2023.

Date share option granted	6 May 2022
Exercise price	€5.00 per share
Market value at 6 May 2022	€5.50 per share
Number of shares	1,000
Date share option exercised	4 May 2023
Market value at 4 May 2023	€10.00 per share

The total gain subject to income tax at the **date of grant** is €500 (1,000 shares x (€5.50 - €5.00)).

- Assuming the individual's marginal rate of tax is 40%, then the income tax due at grant is €200.

At the **date of exercise** on 4 May 2023, the taxable gain is calculated as follows:

Value of shares at date of exercise	€10,000
Less option price paid on exercise	€5,000
Income gain (€5 per share)	€5,000

The total gain subject to income tax at the date of exercise in 2023 is €5,000 (€5.00 per share x 1,000 shares).

However, Orla is entitled to a credit for any income tax charged on the grant of the share option on a subsequent exercise of the option.

The net income tax at the date of exercise in May 2023 is calculated as follows:

Income tax due on gain (gain x marginal rate of 40%)	€2,000
Less income tax paid at grant	€200
Income tax payable at exercise	€1,800

To note, USC and PRSI have been ignored for the purpose of this example but would apply.

Orla is a chargeable person for the 2023 year of assessment. As a result, she must pay the income tax, USC and PRSI within 30 days of exercise accompanied by a Form RTSO1. She must also file an Income Tax Return for the 2023 tax year by 31 October 2024.

Example 4 – exercise of an option to acquire an asset other than shares

In March 2020, John entered into an option agreement with his employer by which at the end of a 5-year period he could exercise the option to acquire a property currently owned by his employer. The option price agreed was €300,000, which was the market value of the property on the date of grant. In March 2024, John acquired the property for the agreed price. On the date of exercise, the market value of the property was €350,000. The taxable gain is calculated as follows:

Value of property at date of exercise	€350,000
Less option price paid on exercise	€300,000
Income gain payable at exercise	€50,000

As the gain is realised after 1 January 2024, John's employer is obliged to remit the tax on the gain via payroll. Refer to Section 3.6 for further details on how to pay tax on gains realised on or after 1 January 2024.

To note, USC and PRSI have been ignored for the purpose of this example but would apply.

3.4.3 Assignment or Release of Options

The amount of the gain chargeable to income tax on the assignment or release of an option is the difference between:

(a) the amount or value of the consideration for the assignment or release; and
(b) the amount or value of any consideration given, if any, for the grant of the option.

For the purposes of (b), consideration does not include the performance by the employee/director of his or her duties in or in connection with his or her employment or office and only one deduction may be allowed in respect of any consideration given for the grant of an option.

If a cash payment is received by an employee/director on the release of an option, this should be subject to PAYE and PRSI in the normal manner through the payroll.

Example 5 – release of option

Isobel was granted share options on 6 May 2022, under the terms of which the share options must be exercised before 10 December 2024. Details of the option were as follows:

Date share options granted	6 May 2022
Exercise price	€2.00 per share
Market value at 6 May 2022	€2.00 per share
Number of shares	500

On 1 December 2023, by agreement Isobel released her options for a consideration of €3.00 for each share over which she held options.

The €1,500 amount of cash consideration is chargeable under Schedule E. Her employer must operate income tax, USC and PRSI through payroll in the normal manner.

3.4.4 Exchange of Options

Where an employee/director surrenders (by way of assignment or release) an option obtained by reason of his or her employment or office in exchange, or partly in exchange, for a new option, special rules apply.

Where options are exchanged, the new option and the old option are looked at as one for the purpose of a charge to income tax under section 128 TCA 1997. No charge to tax arises on the exchange of the options.

For the purposes of calculating a gain, if any, arising from the exercise of the new option, the value of the old option is not treated as part of the acquisition cost of the new option, but account must be taken of any consideration given for the grant of the old option to the extent that it has not been offset at the time of its assignment or release by any consideration other than the receipt of the new option.

These rules also apply where exchanged options are acquired by means of a series of transactions.

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These special rules do not prevent a charge arising under section 128 TCA 1997 on the exercise of the original right, where, for example, as part of a scheme or arrangement, the purpose or one of the main purposes of which is the avoidance of tax, it is the original right and not the new right that is exercised, and the employee/director benefits directly or indirectly from the exercise of the original right.

3.4.5 Other Tax Scenarios

3.4.5.1 Cashless Exercise

A 'cashless exercise' is broadly the term given to an exercise of options whereby the employee/director does not provide any cash to exercise the option and acquire the shares but rather requests the company sell the shares (or a sufficient number) in order to finance the original exercise and the tax liability on the gain realised on the exercise of the share option. This is also referred to as a "same day sale". Notwithstanding that the exercise may be described as a 'cashless exercise', the tax charge and position does not change. In addition to the tax charge on exercise, the employee/director will also need to consider any capital gains tax (CGT) implications of subsequently selling the shares.

Example 6 – cashless exercise

Ian was granted share options on 6 May 2022, under the terms of which the share options must be exercised before 1 December 2025. This is a 'short option' as it must be exercised within seven years of the date of grant.

On 6 January 2024, Ian exercised his options and instructed his employer to sell the required number of shares to cover the tax liability, and he agreed to pay for his shares out of the proceeds of the sale.

Date share option granted	6 May 2022
Exercise price	€2.00 per share
Market value at 6 May 2022	€2.00 per share
Number of shares	500
Date share option exercised	6 January 2024
Market value at 6 January 2024	€5.00 per share

There is no charge to tax at the date of grant as the option is a 'short' option.

At the date of exercise, the taxable gain is calculated as follows:

Value of each share at date of exercise of the option	€5.00
Less option price paid on exercise	€2.00
Gain realised on the exercise of the share option	€3.00 per share

The total gain subject to tax at the date of exercise is €1,500 (€3.00 per share x 500 shares). Assuming that Ian is a marginal rate taxpayer, an income tax liability of €600 will arise. USC and PRSI also applies but have ignored for the purposes of this example.

As the option is exercised after 1 January 2024, Ian's employer has an obligation to account for and remit the income tax, USC and PRSI to Revenue via the payroll.

As noted above, Ian's employer will need to immediately (following the exercise) sell enough shares to release enough cash for Ian to cover the income tax liability of €600. As the market value of the shares on the date of exercise is €5 per share, Ian's employer will need to sell 120 shares in order to cover the income tax liability (600/5 = 120) and an additional 200 shares to cover the cost of the shares, which is €1,000 (500 x €2 per share).

Ian will also need to consider the capital gains tax treatment on the disposal of his shares. See Section 3.8 for further information regarding the CGT treatment.

3.4.5.2 Commission Expenses

Any commission or deductions incurred by the employee or the director as a result of a "sell-to-buy" mechanism or any other arrangement are not deductible expenses for the purpose of calculating the chargeable income tax gain arising on the exercise, assignment or release of a right chargeable under section 128 TCA 1997.

3.4.5.3 Gain Realised by Someone Other than the Employee/Director

There is an anti-avoidance provision in the legislation (section 128(6) TCA 1997) to prevent arrangements being put in place for someone other than the employee/ director to realise the gain and thereby avoid the charge to income tax.

A charge to tax under section 128(6) TCA 1997 also applies in the case of a gain realised by virtue of a right obtained by reason of an employee/director's employment or office even though the gain is realised by a person other than the employee/director in the following circumstances:

i. where the right is granted to that other person,
ii. where the right was granted to the employee/director but subsequently transferred at less than the arm's length price, or
iii. where the right was granted to the employee/director but subsequently transferred, to someone who is a connected person at the time the gain is realised, or
iv. where the employee/director benefits directly or indirectly from the exercise, assignment, or release of the right by the other person.

A gain realised by another person includes a gain realised on the exercise of a right by the employee/director, where it is exercised by the employee/director as nominee or bare trustee, or otherwise on behalf of the other person.

In the case of an assignment of a right, the gain realised must be reduced by the amount of any gain realised by the previous holder on the assignment of a right.

3.4.5.4 Bankruptcy

Where an employee/director is divested of a right following his or her bankruptcy or is otherwise divested of the right by operation of law, he or she is not chargeable to tax in respect of a gain realised by some other person from the exercise of the right. Instead, the other person is chargeable to income tax under Case IV of Schedule D on any gain realised. The amount of the gain is computed in the same way as it would have been if the employee/director had exercised the option.

3.4.5.5 Death of Option Holder

Where the holder of a share option dies and the rules of the share option scheme allow the personal representatives to exercise the share option and acquire the shares over which the option was held, any gain realised on the exercise of the option should be calculated in the normal manner in respect of the deceased person and the relevant assessments made on the personal representatives in their capacity as personal representatives of the deceased person.

3.4.5.6 Foreign Exchange

If the exercise price of a share option is denominated in a currency other than euro, the Central Bank of Ireland exchange rate applying to the currency of the other country on the day of the exercise, assignment or release of the option must be used to calculate the gain arising on the exercise, assignment, or release of the share option.

3.4.5.7 Impact on Pension Plan

Any amount of the gain on the exercise, assignment, or release of a share option, assessable to income tax can be taken into account to calculate age related percentage limits for a pension plan.

3.5 Payment of Tax on Gains Realised Prior to 1 January 2024

3.5.1 Overview

Where an employee/director exercises a share option he or she must pay what is referred to as "Relevant Tax on Share Options" (RTSO) in respect of any income tax due on any gain realised on the exercise of the share option.

Where the exercise of a share option occurs prior to 1 January 2024, RTSO is payable within 30 days of the option being exercised and is outside the PAYE collection system. The employee/director is responsible for making this payment to the Collector General.

The **Form RTSO1** must be used for the purpose of making an RTSO payment to the Collector General within 30 days of the date of exercise. Form RTSO1 is available on the Revenue website.

Where an individual considers that his or her income from all sources for the year of assessment will be chargeable at the standard rate of income tax, the individual may apply in writing to Revenue (through MyAccount or to the Revenue office dealing with the taxpayer's affairs) for approval to pay RTSO at the standard rate of income tax. This approval must be obtained by the individual in advance of making the payment of RTSO. If this approval has not been given, income tax at the marginal rate must be remitted.

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Example 7 – payment of RTSO on gains realised prior to 1 January 2024

On 10 July 2020, Michael was granted an option to acquire 10,000 shares at €3 per share. The terms under which the share option was granted confirm that it must be exercised before 5 May 2024. Michael exercised the share option on 1 March 2023. The market value of the shares at that date was €5 per share. Michael is a marginal rate taxpayer.

Market value of shares at 01/03/2023	€50,000
Option price (i.e. price paid by Michael)	(€30,000)
Gain on exercise of share option	€20,000
Amount of RTSO due (€20,000 at 40%)	€8,000
Employee PRSI due (€20,000 at 4%)	€800
USC due (€20,000 at 8%)	€1,600

The latest date for the payment of the RTSO (income tax, PRSI and USC) by the employee to Revenue is 30 March 2023.

3.5.2 Payment of USC and PRSI

As noted above, the Universal Social Charge (USC) and PRSI must be calculated and included with the amount of RTSO and the total entered on Form RTSO1.

The formula used in section 128B(2) is adapted to charge USC at its highest rate unless the individual satisfies Revenue that he or she will actually be chargeable at a lower rate of USC and obtains advance approval for payment at a lower rate.

By virtue of section 531AN(2A), the gain on the exercise of share options is not included in the calculation of relevant income for the purposes of the 3% USC surcharge.

Employee PRSI is to be paid at the rate applicable to the PRSI Class that applies to the individual for the particular tax year.

3.5.3 Late Payment of RTSO

The normal provisions relating to assessments, appeals, collection and recovery of Income Tax apply also to the assessment, collection, and recovery of RTSO.

Where RTSO is paid late, there is provision for the imposition of **interest at 0.0219** per cent per day or part of a day (from 1 January 2023). The rate that applied prior to this was 0.0322 per cent per day or part of a day. Interest is payable from the date when the RTSO becomes due and payable until the actual date of payment.

3.5.4 Penalties

Finance Act 2022 introduced a technical amendment to Schedule 29 TCA 1997, which provides for the imposition of a penalty for the non-filing of a return or for the deliberate, careless, fraudulent or negligent filing of an incorrect return. Where a form RTSO1 return has not been filed there is provision for the imposition of a penalty of €3,000. Where an incorrect return has been filed there is provision for the imposition of penalties up to €5,000.

3.5.5 Self-Assessment

Individuals who exercised share options before 1 January 2024 are taxable under Schedule E and are ‘chargeable persons’ by virtue of section 128(2) and (2A) TCA 1997. Employees liable to pay RTSO must submit an Income Tax Return for the year of exercise, containing details of all share option gains in a tax year, by 31 October following the year in which the gains are realised. To note, an Income Tax return must be filed for the relevant year in addition to the form RTSO1.

Although not common, there is however an exception where the person has been exempt from the requirement to make a return by reason of a notice given by Revenue under section 959N TCA 1997. Where this occurs, the person is advised by

notice in writing of the exclusion and the notice will specify the length of the exclusion. This exclusion however does not extend to removing the obligation to make a return where a person has a liability to capital gains tax for a chargeable period.

3.5.6 Late Filing Surcharge

The late filing surcharge provided by section 1084 TCA 1997 applies where the Income Tax Return is not submitted by the relevant due date for the relevant tax year even where all the person's other income is solely within PAYE.

3.5.7 Preliminary Tax

RTSO is separate and distinct from preliminary tax and, therefore, is not considered for the purposes of—

(a) determining the amount of preliminary tax payable for the relevant year of assessment.
(b) the calculation of the margin of error regarding preliminary tax paid in respect of a year of assessment in which the share option is exercised; and
(c) determining whether the preliminary tax 90%, 100% or 105% rule has been satisfied in relation to the payment of preliminary tax.

The RTSO paid may, however, be used to satisfy the individual's overall liability for the tax year (i.e. it can be credited against the individual's final liability including the liability relating to the gain on the exercise of the share option).

More detailed information on preliminary tax is contained in Tax and Duty Manual Part 41-00-13 - 'Preliminary Tax Paying the Right Amount of Tax on Time', which is available on Revenue's website.

3.6 Payment of Tax on Gains Realised On or After 1 January 2024

3.6.1 Overview

Significant changes were introduced in Finance Act 2023 that resulted in moving the responsibility for the payment of tax in respect of options exercised on or after 1 January 2024, from the individual to his or her employer. As a result, this aligns the treatment to that applicable to other forms of share-based remuneration.

The provisions of Chapter 4 of Part 42 TCA 1997 will therefore apply to gains realised on or after 1 January 2024 on foot of the exercise, assignment or release of a right to acquire shares or assets which are chargeable to tax under section 128 TCA 1997 (irrespective of when such a right was granted). Thus, by virtue of the Finance Act 2023 changes, the gain realised is a notional payment by the employer, who will be responsible for remitting the income tax, USC and PRSI via the PAYE system.

In addition, employees or directors who realise a gain on or after 1 January 2024 will no longer be regarded as chargeable persons purely because of exercising, assigning or releasing that right.

Where an individual subsequently disposes of the shares, including the disposal of shares under a "sell-to-buy" arrangement with their employer, they continue to have an obligation to file a return with details of the disposal and to pay any capital gains tax due on the disposal.

3.6.2 Calculation of the Chargeable Income Gain

It is important to note that the calculation of the chargeable income gain has not changed as a result of the Finance Act 2023 changes, the main difference is however that this is accounted for through the payroll as opposed to by the individual, as referenced above. Employers should calculate the chargeable gain in accordance with the provisions of section 128(4) TCA 1997.

Refer to Section 3.4 for the specific tax treatment of short and long options on their date of grant, exercise, assignment or release.

Supporting documentation should be available to demonstrate the basis of the market value used.

As already referenced above, any commission or deductions incurred by the employee as a result of a "sell-to-buy" mechanism or any other arrangement are not deductible expenses for the purpose of calculating the chargeable income tax gain arising on the exercise, assignment or release of a right chargeable under section 128 TCA 1997.

3.6.3 Operation of Payroll by the Employer

For payroll purposes the employer should report and account for the tax (IT, USC and PRSI) regarding share options under the correct heading for share-based remuneration. This is very important so as to avoid any unnecessary contact by Revenue, which could arise if reported under the other taxable benefits heading, as in such circumstances the payroll submission will not align to the share scheme return submitted by the employer.

3.6.4 Withholding of Tax by the Employer

Any gain realised on or after 1 January 2024 upon the exercise, assignment or release of a right to acquire shares or other assets chargeable under s128 TCA 1997 is a notional payment by the employer under s985A(1)(d) TCA 1997.

As such, all the relevant provisions of Chapter 4 of Part 42, the Employment Regulations 2018 and the Universal Social Charge Regulations 2018 as amended, will apply.

As with any other notional payment, in order to determine how to withhold funds from their employees, employers should give consideration as to whether actual emoluments are also paid at the time the notional payment is made, i.e., on date of exercise, assignment or release of an option.

3.6.4.1 Insufficient funds

If the employee is in receipt of emoluments on the date the notional payment is made or if the emoluments payable on their next pay date, if applicable, are insufficient to cover the tax liability, employers may-

- withhold shares from the employee to fund the acquisition of the shares and the tax due on the event (see Section 3.4.5.1 for further details),
- request the amount of tax payable from the employee, or
- pay for the tax liability on the gain realised (see Section 3.6.4.2 below for further details).

In any case, employers are obliged to remit to Revenue the IT, USC and PRSI due on the gain even if they are unable to withhold the full amount due from the individual's emoluments.

3.6.4.2 Employer Pays for the Tax Liability on the Gain Realised

If in order to meet their withholding obligations, the employer pays for the tax liability on the gain realised; their employee or director must make good to the employer.

Refer to the Employer's Guide to PAYE for further details on how to deal with cases where the employer pays for the tax incurred by an employee or director.

3.6.4.3 Gain Realised by a Former Employee

An individual may decide to exercise an option at a time when he or she is no longer an employee of the company, assuming the scheme permits for this type of situation. The gain arising is a notional payment by the employer and should be treated as a post cessation payment.

For further details on how to deal with post cessation payments under the PAYE system, refer to Section 8.9 of the Employer's PAYE Guide to PAYE.

3.6.5 Late Payment of Tax and Penalties

The provisions of Chapter 4 of Part 42 of the TCA and the Regulations made under this chapter in relation to penalties and interest for late payment of tax will apply.

Refer to Chapter 18 of the Employer's Guide to PAYE for further details on the payment of payroll taxes, including interest on late payment of tax by the employer, which is currently applied at a daily rate of **0.0274%**.

3.7 Employer Reporting

3.7.1 Annual Return

There is an obligation on companies to electronically 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. Self-assessment principles apply to the making of a return. The relevant information must be filed online using the return Form RSS1, Return of Share Options and Other Rights.

Information on filing the return is available on the Instructions & Explanatory tab of the Form RSS1, available on the Revenue website. In addition, comprehensive guidance on the filing of share scheme returns can be found in TDM Share Scheme Reporting - Chapter 15.

This return is due on or before **31 March** in the year following the year in which the options were so granted, assigned, released, or exercised, as the case may be.

Section 128 requires the following information be provided to Revenue when filing the Form RSS1:

- share options and other rights granted, including options granted where the employee/director subsequently ceases employment in the same year and the options will not be exercised at a future date.
- 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.

3.8 Capital Gains Tax

3.8.1 General

An employee/director who acquires shares or other assets by the exercise of a right is chargeable to capital gains tax (CGT) on any chargeable gain realised on the subsequent disposal of those shares or assets.

Broadly, capital gains tax is calculated on the difference between the sale proceeds of an asset and the acquisition costs of the asset. This section explains what acquisitions costs should be taken into account for capital gains tax purposes where the asset being disposed of is a share(s) acquired on the exercise of a share option and some related issues.

Indexation, where applicable, is available by reference to the date the expenditure is incurred. In the case of a benefit charged to income tax, that date may be taken to be the date the tax is paid[5].

[5] Indexation no longer applies to acquisitions on or after 1 January 2003. For disposals made on or after 1 January 2003 indexation relief will only apply for the period of ownership of the asset up to 31 December 2002.

In ascertaining the rate of CGT to be applied to the chargeable gain on a disposal of such shares, the period of ownership of the shares begins on the date the shares were actually acquired, and not the date of the granting of the option.

3.8.2 Acquisition Costs where Shares are Newly Issued Shares

Where a company grants share options to an employee/director, it may be necessary for the company to issue new shares to satisfy the option granted.

In these circumstances, regardless of the date when the options are exercised and the shares acquired, the cost of acquisition is the sum of the following-

(a) the cost (if any) of the share option,
(b) the price paid for the shares on the exercise of the share option, and
(c) the amount charged to income tax under section 128 TCA 1997 on the exercise of the share option.

Example 8 – disposal of newly issued shares

On 1 January 2022, Deirdre by virtue of her employment was granted share options under an unapproved share option scheme. On 1 January 2024, when the market value of the shares is €15,000, Deirdre exercises her option and acquires newly issued shares for the option price of €10,000. Deirdre immediately sells the shares for €15,000.

Calculation of chargeable gain

Disposal proceeds		€15,000
Less costs of acquisition:		
(a) Cost of option	NIL	
(b) Price paid for the share options	€10,000	
(c) Amount charged to income tax under section 128 TCA 1997 (€15,000 - €10,000)	€5,000	€15,000
Chargeable Gain for CGT		NIL

3.8.3 Acquisition Costs where the Shares are Already in Existence

Where the shares are already in existence at the date of exercise of a share option, the cost of acquisition is the market value of the shares at the date of exercise.

Where the shares are already in existence at the time of exercise of a share option, the cost of acquisition is the sum of the following-

- the price paid for the shares on exercise of the share option, and
- the amount charged to income tax under section 128 TCA 1997 on the exercise of the share option.

Example 9 – disposal of shares already in existence

On 1 January 2022 Edward, by virtue of his employment, was granted share options under an unapproved share option scheme. On 1 January 2024, when the market value of the shares is €15,000, Edward exercised his option and acquired shares which were already in existence for the option price of €10,000. On 1 March 2024, Edward sold the shares for €18,000.

Calculation of chargeable gain

Disposal proceeds	€18,000
Less costs of acquisition:	
Market Value of shares at time of acquisition	€15,000
Chargeable Gain	€3,000

The amount chargeable to income tax under section 128 TCA 1997 of €5,000 (€15,000 - €10,000) is not a cost of acquisition and, therefore, cannot be added to the market value of the shares.

3.8.4 Identification of Shares

An employee/director may acquire shares of the same class on the exercise of share options at different dates. The normal rules apply in relation to the identification of such shares for the purposes of capital gains tax.

Where a person holds shares of the same class which have been acquired at different dates, the shares acquired at the earlier time are deemed to be disposed of first (i.e. FIFO -'first in first out' rule applies).

The FIFO rules are modified in any case where shares of the same class are bought and sold within a period of four weeks. Where shares are sold within four weeks of acquisition the shares sold are identified with the shares acquired within that period. Furthermore, where a loss accrues on the disposal of shares and shares of the same class are acquired within a four-week period, the loss is not available for offset against any other gains arising. Instead, the loss is only available for set off against any gain that might arise on the subsequent disposal of the shares so acquired. This provision does not apply where there is a gain on the disposal.

3.9 International Aspects – Share Options

3.9.1 General

The tax treatment of Irish resident individuals who have been granted share options under Irish share option schemes is relatively straightforward. However, the position becomes more complex once an international element is introduced.

The purpose of 3.9 is to provide general guidance on specific issues arising where share option income gains are within the charge to Irish tax and also within the charge to tax in a foreign jurisdiction.

While each case must be examined on its own merits and circumstances, Revenue's general approach is to follow -

(i) the Irish domestic tax legislation as regards the Irish tax implications arising from share options; and
(ii) OECD recommendations vis a vis double taxation relief taking account of the content of the relevant Double Taxation Agreement(s) (hereafter referred to as DTAs) appropriate to each particular case.

To note, a range of examples are available in Section 3.10.

3.9.2 Interpretation of Relevant Provisions of Irish DTAs based on OECD Model Tax Convention

In June 2004, the OECD Committee of Fiscal Affairs approved the principles in the OECD report on cross-border issues arising from stock option plans. The additions to the Commentary to the OECD Model Tax Convention were incorporated in the 2005 update to the Model Tax Convention (and the subsequent 2017 update).

This instruction follows the interpretation proposed in the OECD report and deals with provisions in Irish DTAs relating to the taxation of income from employments, directorships, and capital gains (normally Articles 15, 16 and 13 respectively) that follow the text in the current OECD Model Tax Convention, which is the case with most Irish DTAs.

3.9.3 Income from Employment Article of DTAs

3.9.3.1 Employment Income

Article 15 of the OECD Model Tax Convention deals with the Taxation of Income from Employment and covers "salaries, wages and other similar remuneration". Following the OECD recommendations referred to above, income from share options is included within this definition when the share options are granted, either directly or indirectly, as part of an employee remuneration package.

Gains accruing to an employee from the grant and subsequent holding of share options up to the date they are exercised, assigned, or released will be considered as income from employment covered by the Income from Employment article.

Under the Income from Employment articles of Irish DTAs which mirror Article 15 of the OECD Model Tax Convention, the State of residence of the employee may tax gains arising from share options if, at the date when such gains arise (normally either at date of grant or at date of exercise, assignment, or release of the share options), the employee is a resident of that State for the purposes of the DTA.

The article permits the other (source) State to also tax such income to the extent the relevant employment in respect of which the share options were granted was exercised in that State (subject however to the limitation in paragraph 2 of Article 15).

Where both States have taxing rights under the article and both tax the same element of income or gains, the Elimination of Double Taxation Articles in the DTA will require the State of residence of the taxpayer to relieve double taxation. In the case of Ireland, this is achieved through the credit method, by crediting the source State's tax against the Irish tax on the same income or gain. The credit for the foreign tax paid against Irish tax cannot exceed the Irish tax due on that same income or gain.

3.9.3.2 Period of Employment for which Share Options have been Granted

Where an employee, in the course of an employment, has moved between Ireland and another DTA country in the period between the date of grant and the date of exercise, assignment or release of the share options, it will be necessary to ascertain the period of employment that the share options are remunerating. This information is required:

- in order to allocate source taxation rights under the **Income from Employment** article of the relevant DTA; and
- for calculating foreign tax that may be allowed as a credit under the **Elimination of Double Taxation** article.

For example, an Irish resident individual may be granted share options by an employer before being assigned to work and becoming resident in a country with which Ireland has a DTA. Under the **Income from Employment** article of the DTA, Ireland may only tax the income gain arising to the extent that it relates to employment duties exercised in the State. The share scheme documentation should clearly set out the period of employment to which the share options relate.

For example, where a specific period must pass before a share option becomes exercisable (vesting period), the share option will be considered referable to the vesting period.

In this way, share options can form part of a company's reward policy and are often used to incentivise employees.

Once all conditions attaching to the grant of the share option have been satisfied, the option is deemed to have vested. Once the share option has vested, the employee may exercise the share option. However, blocking periods must also be considered. A blocking period is merely a period of time following the share option vest (and is not subject to forfeiture) during which the option cannot be exercised.

Blocking periods are disregarded for the purposes of attributing option income under the Employment Article of a DTA.

In determining any apportioned amount of income gain, the number of working days spent in each country during the employment period for which the options were granted should be included.

3.9.3.3 Share Option Granted when Resident of Ireland and Exercised when Resident of a DTA country

If an Irish-resident employee is granted a share option in respect of an employment exercised in Ireland and, after becoming non-resident, exercises, assigns or releases that share option, Ireland will retain a taxing right under section 128 TCA 1997 in relation to that event.

This is subject, where appropriate, to double taxation relief. If the employee has become a resident of a country with which Ireland has a DTA, then under the Income from Employment article Ireland may only tax the gain to the extent that employment duties are exercised in the State during the vesting period.

With effect from 1 January 2024, the employer is required to tax the option gain through the PAYE system. Please refer to section 3.9.7 below.

3.9.3.4 Share Options Granted to an Employee while a Resident of a DTA Country and Part of Referable Employment Exercised in Ireland

The charge to income tax under section 128 TCA 1997 on the exercise of a share option applies, irrespective of the fact that it was granted at a time when the individual:

(a) was not resident in the State for tax purposes; and
(b) his or her income was not within the charge to Irish tax.

In this regard, individuals who were granted share options prior to arrival will be chargeable to tax to the extent that the income gain relates to a period of employment exercised in the State.

This is subject to any relief for double taxation. Where DTA relief applies, Ireland relieves any double taxation by crediting the source State's tax against the Irish tax

on the same income or gain. The credit for the foreign tax paid against Irish tax cannot exceed the Irish tax due on that same income or gain.

With effect from 1 January 2024, the employer is required to tax the option gain through the PAYE system.

3.9.3.5 Non-Resident Individuals with an Irish Employment who Do Not Exercise Any Duties of the Employment in the State

Revenue will not seek to impose the charge to income tax under section 128 TCA 1997 in respect of the exercise, assignment, or release of share options under an unapproved share option scheme where -

(a) the date of grant of the share option is at a time when -
- the individual is non-resident;
- the emoluments from the individual's employment were not within the charge to tax in the State under or Schedule E (or, if within the charge, are relieved from Irish tax under the terms of a DTA); and

(b) none of the duties of the employment or office are referable to the grant of the option are exercised in the State.

3.9.3.6 Share Options Granted in respect of an Irish Employment but Part of the Period of Employment for which the Share Option was Granted was Exercised in a Non-DTA Country

If the share option is granted in respect of an Irish employment, Ireland has taxing rights on the entire benefit derived from the exercise of the share option. As there is no DTA with the other country, Ireland's right to tax is not restricted.

In circumstances where the gain from the exercise of a share option is chargeable to income tax in Ireland and also in a country with which Ireland does not have a DTA, then a deduction (rather than a credit) may be given in respect of foreign tax paid when computing the Irish tax, but only where the foreign tax is not refundable.

With effect from 1 January 2024, the employer is required to tax the option gain through the PAYE system.

3.9.4 Directors' Fees Article

Director's fees and other similar payments are dealt with in Article 16 of the OECD Model Tax Convention.

Directors' fees and other similar payments derived by a resident of a contracting State in his or her capacity as a member of the board of directors of a company, which is a resident of the other contracting State, may be taxed in that other State.

An income gain arising to a director in respect of share options exercised, assigned, or released is regarded as income arising in his or her capacity as a board member of the relevant company.

In this way, once the company in which the individual is a director is a resident of the State, any income gain arising in respect of such options is taxable in the State. In this way the income arising from the holding of an Irish office remains within the charge to tax.

However, where share options are granted under the terms of the employment contract to an executive director (i.e., an employee who is also a board member), then to the extent any relief is due under the DTA, the Employment Article will apply.

As with all DTAs, it is important to review the specific article dealing with Director's fees to determine whether there is any deviation from the OECD Model Tax Convention. The Director's Fees article of the Ireland/US DTA differs from the OECD Model Tax Convention. Where fees are derived by a US resident director of an Irish resident company, Ireland may only tax the fees to the extent that they relate to board meetings held outside of the US. The fees attributable to board meetings held in the US will be taxable only in the US. Accordingly, where part of a gain from the exercise, assignment, or release of share options in an Irish resident company by a US resident director relates to US board meetings, Ireland may not tax this part of the gain.

With effect from 1 January 2024, the employer is required to tax the option gain through the PAYE system.

3.9.5 Capital Gains Tax (CGT) on Disposal of Shares Acquired

Any gain arising in respect of a disposal of shares acquired by way of exercise is regarded as a capital gain for DTA purposes. Capital gains are dealt with in Article 13 of the OECD Model Tax Convention.

Where the relevant DTA follows the Model Convention, the state of residence of the individual has exclusive taxing rights in respect of the capital gains arising from the disposal of shares (provided the shares disposed of are not connected with a permanent establishment in the other State nor derive the greater part of their value from immovable property in the other State).

Therefore, where the DTA mirrors the Model Convention, any capital gain arising in respect of share disposals will generally only be taxed in the State in which the individual is a resident of for the purposes of the DTA.

3.9.6 Interaction of RTSO and Double Taxation Relief prior to 1 January 2024

Where an individual is in a position to calculate the amount of Irish income tax due on the exercise of the share option and is satisfied that he or she is entitled to double taxation relief in Ireland on the exercise of the share option, the amount of the relevant tax on share options (RTSO) payable can reflect the double taxation relief.

In circumstances where the amount of RTSO is less than the amount that should have been paid, interest will arise from the due date of payment of the RTSO.

3.9.7 Application of Double Taxation Relief on or after 1 January 2024

The provisions of Chapter 4 of Part 42 TCA 1997 apply to income gains realised on or after 1 January 2024 on foot of the exercise, assignment or release of a right chargeable to tax under section 128 TCA 1997.

The chargeable gain is a notional payment by the employer who is responsible for remitting the income tax, USC and PRSI to Revenue according to the provisions of Chapter 4 of Part 42 of the TCA 1997 and the relevant Regulations.

In the case of an Irish resident taxpayer, where the same portion of a gain is taxable in Ireland and a DTA territory under the terms of a DTA, then Ireland will generally relieve double taxation through the credit method, by crediting the other territory's tax against the Irish tax on the same portion of the gain.

Although it is not anticipated that many cases will arise, but where the same portion of the gain is taxable through the Irish PAYE system as well as an equivalent real-time payroll withholding tax mechanism in a DTA territory, then relief may, depending on the specific facts and circumstances be available on application to Revenue. See Tax and Duty Manual Part 42-04-62 – Credit for Double Deduction for further information regarding the applicable circumstances and conditions.

3.10 International Aspects - Examples

Example 10

Income tax treatment where an employee is granted share options whilst a resident of Ireland and exercises same whilst a resident of a DTA country

Facts

- Tom was tax resident in Ireland in 2020 and 2021. He was also considered **resident of** Ireland for the purposes of the DTA in those years.
- During 2020 and 2021, he was employed in Ireland by an Irish subsidiary of a multinational company.
- On 1 January 2020, he was granted an option to acquire 10,000 shares in the parent company at an option price of €1 per share.
- Under the share plan rules, Tom's right to exercise the share option was conditional upon him remaining in employment for 3 years, i.e., to 31 December 2023.
- On 1 January 2022, Tom permanently transferred to a company affiliated with his employing company and in a DTA state. He was considered **resident** *of* that DTA territory from that date.
- At 31 December 2022, the share options vested meaning that Tom acquired an entitlement to exercise the share options. However, the share scheme rules specified that such options could only be exercised during the period 1 January 2024 to 31 December 2025.
- On 1 January 2024, Tom exercised his share options, the market value at which date was €7 per share.
- On 1 March 2025, Tom sold his shares at which date the market value was €8 per share.

Tom	Irish tax resident	Resident of a DTA country	Period of relevant employment
2020	Grant (1/1/20)		
2021			
2022		Permanent transfer (1/1/22)	Right vested (31/12/22)
2023			
2024		Exercise (1/1/2024)	
2025			Disposal (1/3/2025)

The share option was granted in respect of an employment period of three years (780 working days[6]) of which –

- Two years (520 working days) were spent in Ireland;
- One year (260 working days) was spent outside Ireland but in a DTA country

Charge to income tax under Irish domestic tax legislation

Market value of shares at date of exercise (€7 x 10,000)	€70,000
Less option price (€1 x 10,000)	€10,000
Income gain	€60,000

Charge to Irish income tax after double taxation relief

Where the terms of a double taxation agreement (DTA) confine the charge to income tax to the period(s) of employment exercised in Ireland, the taxable gain of €60,000 is apportioned as follows -

$$\text{Taxable amount } 60{,}000 \times \frac{520 \text{ days}}{780 \text{ days}} = €40{,}000$$

Therefore, in line with Article 15 of the Model Convention, Ireland may tax the amount of Tom's remuneration that is attributable to the exercise of his duties in Ireland. Remuneration includes share option income. The income gain is therefore apportioned by reference to Irish duties performed during the vesting period. The fact that Tom's employer implemented a blocking period is not relevant to the apportionment.

As the gain occurs after 1 January 2024, Tom's employer is obliged to tax the gain through the PAYE system. Where his employer is satisfied the necessary conditions are met, his employer may apportion the income gain for PAYE purposes by reference to the Irish workdays during the vesting period, i.e., 520 workdays.

Accordingly, Tom's employer may operate PAYE on the relevant portion of the gain subject to tax i.e. €40,000 in this example.

[6] Assume there are 260 working days in a year

Capital Gains Tax

The capital gain on a subsequent disposal of shares acquired by Tom on exercise of the share option would not generally be taxable in Ireland if at the date of the disposal Tom was neither resident in Ireland nor ordinarily resident in Ireland.

Apart from the territorial limitations of Irish Capital Gains Tax[7], generally the sole taxing right will be granted to the State of residence of the individual under the DTA. For the purposes of the DTA, the gain on the disposal of the shares is a capital gain covered by Article 13 (Capital Gains). As Tom was not resident or ordinarily resident in Ireland and was a resident of the DTA country at the date of disposal of the shares, that country has the sole taxing right on the capital gain.

[7] An individual who is neither resident nor ordinarily resident in the state for a year of assessment is not liable to tax on gains arising from a disposal of shares in that year, except where those shares are unquoted shares deriving their value or the greater part of their value from land, buildings, minerals and related exploration rights in the State or the Continental Shelf.

Example 11

Share options granted to an employee whilst a resident of a DTA country and exercised whilst resident in the State

Facts

- Patrick is a resident of a DTA country;
- On 1 January 2020, he was granted an option to acquire 10,000 shares in the parent company at a price of €1 per share;
- Under the terms of the share option plan, the right to exercise the share option was conditional upon Patrick remaining in the employment of the group until 31 December 2023;
- The share option could be exercised between 1 January 2024 and 31 December 2024;
- On 1 January 2021, Patrick arrived in Ireland under the terms of an international assignment with his employer;
- On 31 December 2024, Patrick exercised his option to acquire the shares. The market value of the shares at that date was €7 each;
- On 1 February 2025, Patrick sold the shares. The market value of the shares at that date was €8 each.

Patrick	Irish tax resident	Resident of a DTA country	Period of relevant employment
2020		Grant (1/1/20)	
2021	Permanent transfer (1/1/21)		
2022			
2023			Right vested (31/12/23)
2024	Exercise (31/12/24)		
2025			Disposal (1/2/25)

The share option was granted for a period of employment covering four years (1,040 working days) of which:

- three years (780 working days) were spent in Ireland;
- one year (260 working days) was spent outside of Ireland but in a DTA country.

Charge to income tax under Irish domestic tax legislation

Market value of share at date of exercise (€7 x 10,000)	€70,000
Less Option Price (€1 x 10,000)	€10,000
Taxable Income Gain	€60,000

Charge to Irish income tax after Double taxation relief

As the share option was granted before Patrick became resident in Ireland and the only connection with Ireland was the exercise (in part) of the relevant employment in Ireland, Ireland may only tax the part of the gain that is referable to the exercise of the relevant employment in Ireland.

Accordingly, as three-quarters of the period of relevant employment was exercised in Ireland, Ireland may tax three-quarters of the benefit derived from the exercise of the share option (i.e. €60,000 X 3/4 = 45,000).

As the gain occurs after 1 January 2024, Patrick's employer is obliged to tax the gain through the PAYE system. Where his employer is satisfied the necessary conditions are met, his employer may apportion the income gain for PAYE purposes by reference to the period of relevant employment that was exercised in Ireland (i.e., €60,000 ¾ = €45,000).

Ireland will generally give double taxation relief in respect of any tax paid in a DTA country in respect of this €45,000.

Capital Gains Tax

As a resident of Ireland at the date of disposal of the shares, Patrick is liable to capital gains tax on the gain from the disposal. Under section 128(10) TCA 1997, the amount chargeable to tax under section 128 TCA 1997 will be treated as consideration paid by the person acquiring the shares.

Ignoring indexation, the Irish capital gains tax liability is as follows:

If new shares issued on the exercise of the share option

Sale proceeds (€8 x 10,000)		€80,000
Less		
Actual cost	€10,000	
Gain chargeable to income tax in Ireland	€45,000	
Gain chargeable to income tax in a DTA country (see Note)	€15,000	€70,000
Gain for capital gains tax purposes		€10,000

Note - Revenue is prepared to allow the amount chargeable to income tax in a DTA country as part of the base cost for capital gains tax purposes. This is provided that the aggregate of the gains chargeable to income tax does not exceed an amount equal to the full amount that would be chargeable in Ireland if all of the gain on the exercise, assignment or release of the share option is referable to duties of the employment or office exercised here. Evidence of the amounts chargeable in the DTA country should be retained by the individual should Revenue request same in support of base cost.

If existing shares issued on the exercise of the share option

Sale proceeds (€8 x 10,000)	€80,000
Less Market value of the shares at acquisition	€70,000
Gain for capital gains tax purposes	€10,000

Note - above examples assume that the CGT personal exemption has been otherwise utilised, and that indexation relief is not applicable.

Example 12

Share options granted in respect of an Irish employment but part of the period of employment for which the share option was granted was exercised in a non-DTA country

Facts

- On 1 January 2020, Mary was Irish resident and employed in the State;
- On that date, she was granted an option to acquire 10,000 shares in the company at a price of €2 per share;
- Under the terms of the share option plan, the right to exercise the share option was conditional on Mary remaining in the employment of the group until 31 December 2023;
- On 1 January 2022, Mary transferred to an affiliate company in a non-DTA country (and became a resident of that country from that date);
- On 1 January 2024, Mary exercised her right to acquire the share option, at which time the shares were worth €7 each. The charge in the non DTA country on the exercise of the share option was €12,500.

Mary	Irish tax resident	Resident of a non-DTA country	Period of relevant employment
2020	Grant (1/1/20)		
2021			
2022		Posted (1/1/22)	
2023			Right vested (31/12/23)
2024		Exercise (1/1/24)	

The share option was granted for a period of employment covering four years of which:

- two years were spent in Ireland;
- two years were spent outside of Ireland in a non-DTA country.

Charge to income tax under Irish domestic tax legislation

Market value of share at date of exercise (€7 x 10,000)	€70,000
Less Option Price (€2 x 10,000)	€20,000
Taxable Income Gain	€50,000

As the share option was granted in respect of an Irish employment, Ireland has taxing rights on the entire income derived from the exercise of the share option.

As the gain occurs after 1 January 2024, Mary's employer is obliged to tax the gain through the PAYE system.

Example 13 - Long Option - Credit where charge to income tax imposed at Date of Grant

Facts

- On 1 January 2020, Helen was resident in Ireland and employed in the State by an Irish subsidiary of a multinational company;
- On that date, she was granted an option to acquire 10,000 shares in the company at a price of €1 per share;
- The share option was capable of being exercised until 1 January 2029 (a long option);
- The market value of the shares at the date of grant was €1.50 per share;
- Under the terms of the share option plan, the right to exercise the share option was conditional on Helen remaining in the employment of the group until 31 December 2022;
- The share option could not be exercised until 31 December 2023 at the earliest;
- On 1 January 2022, Helen transferred to an affiliate company in a DTA country (and became a resident of that country from that date);
- On 1 January 2024, Helen exercised her right to acquire the share option, at which time the shares were worth €7 each;
- On 1 March 2025, Helen sold the shares, at which time were worth €8.

Helen	Irish tax resident	Resident of a DTA country	Period of relevant employment
2020	Grant (1/1/20)		
2021			
2022		Transferred (1/1/22)	
2023			Right vested (31/12/23)
2024		Exercise (1/1/24)	
2025			Disposal (1/03/25)

The share option was granted for a period of employment covering three years (780 workdays) of which -

- two years (520 working days) were spent in Ireland;
- one year (260 working days) was spent outside of Ireland in a DTA country.

Charge to income tax under Irish domestic tax legislation

Where the share option is capable of being exercised more than 7 years after the share option has been granted (this is known as a 'long option'), the charge to income tax may be imposed on both-

- the grant of the share option; and
- the exercise, assignment, or release of the share option,

with a credit given for the charge on the grant of the share option against the income tax due on the exercise, assignment, or release of the share option.

As a resident of Ireland at the date of grant of the share option, Ireland will tax Helen at that date on the benefit she derived on the grant of the share option. Article 15 of the DTA (Income from Employment) imposes no limitation on the right of Ireland to tax its residents in respect of employment income considered under its tax laws as derived at that time.

Charge at date of grant of the share option

Market value of share at date of grant (€1.50 x 10,000)	€15,000
Less Option Price (€1 x 10,000)	€10,000
Taxable Gain	€5,000
Tax due (@40% rate of income tax)	€2,000

Income tax due at date of exercise of the share option

In this case, an income tax charge also arises in Ireland on the date of exercise of the share option. Under Article 15 of the DTA, Ireland may tax remuneration derived by a resident of the DTA country from the exercise of an employment in Ireland.

Market value of share at date of exercise (€7 x 10,000)	€70,000
Less Option Price (€1 x 10,000)	€10,000
Taxable Income Gain	€60,000

Charge to Irish income tax after Double taxation relief

As Helen worked only two years in Ireland, the taxable gain of €60,000 is reduced to:

Taxable amount €60,000 X 520 days/780 days = €40,000

As the option is exercised after 1 January 2024, Helen's employer is obliged to tax the gain through the PAYE system. The income gain is apportioned for PAYE purposes by reference to the Irish workdays during the vesting period. i.e., 520 workdays. Accordingly, Helen's employer may, where they are satisfied the required conditions are met, restrict the operation of PAYE to an amount of €40,000 and credit may be provided for the income tax (i.e., €2,000) charged at the date of grant.

Capital Gains Tax

For the purposes of the Ireland/Country D DTA, the gain on the disposal of the shares is a capital gain covered by Article 13 (Capital Gains). As Helen was neither resident nor ordinarily resident in the State at the time of the disposal, she is chargeable only in respect of gains made on the disposal of specified assets. Such assets include unquoted shares deriving their value or the greater part of their value from land, buildings, minerals and related exploration rights in the State or the Continental Shelf. The shares disposed of by Helen are not specified assets, meaning no liability to Irish CGT arises.