

[17.1.4] Employee Share Schemes

Finance Act 1998

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Finance Act 1998 & 2002 Changes

Section 511A & Schedule 12 of the Taxes Consolidation Act, 1997 relates to approved profit sharing schemes (APSS) and employee share ownership trusts (ESOTs).

The section provides for the following:

- Subject to certain conditions being satisfied, a participant in an APSS will be absolved, in relation to an appropriation of shares (made on or after the date of the passing of the *Finance Act 1998*) which have been transferred to the APSS by a Revenue approved ESOT, from the requirement to hold those shares for a period of 3 years in order to qualify for the tax relief in respect of those shares. The conditions in question are:
 - Immediately prior to the transfer of the shares from the ESOT to the APSS, the shares were held in the ESOT for at least 3 years
- and**
- The participant was a beneficiary of the ESOT for the full 3 year period ending on the date of appropriation of the shares.

Where these conditions are met, the participant will be able to dispose of his or her shares without any income tax implications immediately he or she receives them through the APSS.

- The trustees of a Revenue approved ESOT are exempt from Income Tax on share dividends received by it on or after the passing of the *Finance Act 1998*, if and to the extent that the income is spent by the trustees within a qualifying period for one or more qualifying purposes. The trustees will, however, not be entitled to any tax credit in relation to these exempt dividends.
- Previously, an ESOT had to be set up by a founding company and must extend to all companies which that company controls. This latter condition was relaxed, in relation to ESOTs approved on or after the date of the passing of the *Finance Act 1998*, to allow the founding company the option of selecting the companies it wants to include in the ESOT. This change aligned the ESOT legislation with the existing APSS legislation.

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- In future, an APSS or an ESOT may not be approved by Revenue unless they are satisfied that it is not intended solely to confer benefits on the directors and higher paid employees of a group of companies. In addition, Revenue may not approve an APSS if they consider that there are features in the scheme which would act as a disincentive to employees of the company to participate in the scheme.
- The condition that, subject to service requirements, all employees of a company must be beneficiaries of an ESOT is being confined to those employees chargeable to tax under Schedule E i.e. basically Irish resident employees within PAYE. However, a company may at its discretion include other employees e.g. foreign based employees.

The criteria for the “material interest test” under which an employee could be debarred as a beneficiary of an ESOT was eased. In future, the provision which disregards, for the purposes of that test, a trust set up for the benefit of directors and employees of a company as an associate of an employee, will also apply where such a trust includes former employees of the company.