

**A
Guide
to
Approved Share Option Schemes**



3/2/2006

Revenue 

Approved Share Option Schemes

This booklet describes the provisions of Chapter 4, Part 17, Taxes Consolidation Act, 1997 and Schedule 12C as introduced by Finance Act 2001, relating to approved share option schemes and includes amendments up to the Finance Act 2005.

Specimen scheme rules are included in Appendix 1.

Specimen scheme documents are included in Appendix 2.

Specimen annual Return of Information Form is included in Appendix 3.

These notes are for guidance only and reflect the tax position at the time of writing. They should not be taken as overriding the legal provisions or requirements.

Office of the Revenue Commissioners,
Employee Share Scheme Section,
Personal Income Tax Branch,
Direct Taxes Interpretation and International Division,
Stamping Building,
Dublin Castle,
Dublin 2.

Telephone : + 353 1 6475 000
Facsimile : + 353 1 6795 814

Contents

1. Introduction	Page 4.
2. Applying for approval of a scheme	Page 7.
3. Requirements for approval	Page 9.
4. Share Price	Page 14.
5. Take-overs and Mergers	Page 15.
6. Withdrawal of approval	Page 16.
7. Information	Page 17.
Appendix 1. Specimen Scheme Rules	Page 18.
Appendix 2. Specimen Scheme Documents	Page 26.
Appendix 3. Specimen annual Return of Information Form	Page 28.

Chapter 1

Introduction

This chapter sets out the general tax treatment of share options and the reliefs available if rights are granted under approved share option schemes.

1.1 Income Tax treatment of unapproved share options

A share option arises when a company grants to its employees or directors a right to acquire shares in it or certain other companies at a pre-determined price.

Income tax is charged under Schedule E (in respect of rights granted on or after 6 April 1986), on any gain that arises when the right is exercised, assigned or released. The amount of the gain chargeable is the excess of the market value of the shares at the time of exercise, assignment or release, over the cost of acquisition of the shares. Where a right need not be exercised for more than 7 years, an income tax charge will also arise on the date the right is granted. Any income tax so charged on the grant of the right is deductible from any income tax which is subsequently charged when the right is exercised, assigned or released.

1.2 Capital Gains Tax treatment of unapproved share options

The ordinary capital gains tax rules apply to the calculation of gains and losses on the disposal of shares acquired through the exercise of a right.

The cost of the shares for capital gains tax purposes is :

- the cost paid for the shares on the exercise of the right,
- the cost of the right, if any, and
- any amount charged to income tax under Schedule E.

Indexation is available subject to the normal rules, by reference to the date the expenditure is incurred. In the case of an amount charged to income tax under Schedule E that date is the date the tax is paid.

1.3 Approved Share Option Scheme

Income tax relief will be due where the right is granted and exercised in accordance with a share option scheme, approved by the Revenue Commissioners in accordance with Schedule 12C, Taxes Consolidation Act, 1997, unless any of the shares acquired by the exercise of the right, or where section 584, 586 or 587 Taxes Consolidation Act, 1997 applies, the shares received in exchange for the shares so acquired are disposed of within 3 years of the date the right is obtained.

Basically there may be two elements to a scheme :

- (a) an all employee element, which is mandatory, and
- (b) a 'key employee' element, which is optional.

1.3.1 Approved Share Option Scheme for all Employees

A share option scheme qualifying for approval will be a scheme,

- set up by an employer under which all employees and full-time directors are given a right to purchase shares at a price which is not less than the market value of the shares (at the time the right is given), and
- made available to all employees and full-time directors at the same time on similar terms, subject to a maximum service requirement period of three years (see exceptions in paragraph 3.8).

1.3.2 Key Employee Element of a Scheme

A share option scheme with a key employee element qualifying for approval will be a scheme,

- set up by an employer under which key employees and key full-time directors are given a right to purchase shares at a price which is not less than the market value (at the time the right is given), and
- made available to key employees and key directors, (subject to a maximum service requirement period of three years), and
- under which the total number of shares in respect of which rights have been granted to key employees and key directors do not exceed 30 per cent of the total number of shares in respect of which rights have been granted to all employees and directors participating in the scheme in any year of assessment.

1.3.3 Capital Gains Tax treatment of approved Share Option Schemes

The capital gains tax treatment of shares acquired under an approved share option scheme will, in general, follow the rules set out in paragraph 1.2. The base cost for capital gains tax purposes of shares acquired under an approved share option scheme is the actual price paid for the shares at the date of exercise.

1.4 Costs of setting up an approved scheme

The costs incurred by a company on or after 6 April 2001, in establishing an approved share option scheme are allowable as a deduction in computing the company's profits for corporation tax.

The deduction is allowable for the accounting period in which the expenditure is incurred, except where the scheme is approved more than nine months after the end of that period. In such circumstances the deduction is allowable in the accounting period in which approval is given.

- 1.5** A deduction is not available in any case where rights are granted before the scheme has been approved by the Revenue Commissioners.

1.6 Specimen rules and documents

A set of scheme rules designed to meet the requirements for approval is shown in Appendix 1. It is intended only as an illustration of the type of framework which companies might adopt.

A scheme will include, in addition to a set of rules, additional documents such as an Option Certificate, an Employee Booklet, and a Notice of Exercise of Option. Examples of some of these documents are shown in Appendix 2.

Companies should consider their own particular needs carefully and obtain professional advice where necessary.

Chapter 2

Applying for approval of a scheme

- 2.1** All applications for approval of share option schemes and all enquires about approval of schemes should be made to: Office of the Revenue Commissioners, Employee Share Scheme Section, Personal Income Tax Branch, Direct Taxes Interpretation and International Division, Stamping Building, Dublin Castle, Dublin 2.
Telephone : +353 1 6475 000
- 2.2** A company proposing to establish a share option scheme may wish to obtain an opinion on a scheme in advance of a formal application for approval. The Revenue Commissioners will comment on draft documents and, if necessary, discuss points of difficulty.
- 2.3** In the first instance details of the basis on which rights will be granted under the all employee element of the scheme should be submitted together with, in the case of an unquoted company whose shares are to be used for the purposes of the scheme, a copy of the Memorandum and Articles of Association of the company and a copy of any Shareholders Agreements that exist.
- 2.4** The following information should be provided in relation to an application for approval of a scheme :
- a copy of the rules of the scheme (a certified copy of the rules will be required for formal approval),
 - the basis of calculation of entitlement under the “all employee” element of the scheme which must be included in the rules,
 - a copy of the auditors certificate certifying that in his/her opinion the conditions of either or both paragraphs 8 and 9, Schedule 12C, Taxes Consolidation Act, 1997 are satisfied where appropriate (a signed certificate may be required for each year of assessment),
 - a copy of the Memorandum and Articles of Association of the company whose shares are being used for the purposes of the scheme,
 - where the shares to be used for the scheme are in an unquoted company a copy of the Shareholders Agreement for the company, if one exists,
 - a declaration that the shares to be used in the scheme satisfy the requirements of paragraphs 11 – 16 of Schedule 12C, Taxes Consolidation Act, 1997, with a statement as to how the requirements of paragraphs 12 and 13 are met. The declaration should be on company headed paper and be signed by the company secretary of the company whose shares are to be used,
 - where the company concerned is a member of a group of companies, confirmation 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,
 - copies of all documents that will be issued to participants in the scheme i.e. Option Certificate, Notice of Exercise of Option, Employee Booklet etc.,
 - a copy of the company resolution establishing the scheme,

- a copy of the company resolution nominating the participating companies,
- the name and address of the person by whom the annual Return of Information will be made,
- the income tax and/or corporation tax reference numbers 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 Memorandum and Articles of Association for the company concerned as appropriate.

2.5 If a company's application for approval is refused there is a right of appeal to the Appeal Commissioners.

Chapter 3

Requirements for approval

3.1 The conditions that have to be satisfied by an approved scheme can be classified as follows

- general conditions
- conditions relating to the participants
- conditions relating to the exercise of rights
- conditions relating to the shares
- conditions relating to rights exercised on or after 15 February 2001

General conditions

3.2 The share option scheme must allow employees to obtain rights to acquire shares which satisfy the conditions described in paragraphs 3.14 and 3.15.

3.3 The rights obtained under the scheme must not be transferable. However, if a participant dies, the rights may be exercised within one year after the date of that person's death (see paragraph 3.12).

3.4 The scheme must not contain features which are neither essential nor reasonably incidental to the purpose of providing for employees and directors benefits in the nature of rights to acquire shares. It must not contain any feature which would have the effect of discouraging employees or directors from participating in the scheme.

3.5 If a company setting up the 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. This type of scheme 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 the higher or highest level of remuneration.

Conditions relating to the participants

3.6 Participation in the scheme must be open, at any time, to every person who

- is an employee or a full-time director of the company which has established the scheme or, in the case of a group scheme, a participating company, and
- has been such an employee or director at all times during a qualifying period not exceeding three years ending at that time, and
- is chargeable to tax under Schedule E in respect of his/her office or employment.

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

“Full-time director” is a director who is required to devote substantially the whole of his time to the service of the company.

3.7 All participants satisfying the conditions of the preceding paragraph must be eligible to participate on similar terms, and all persons who do participate (including those nominated to participate) must do so on similar terms (see exceptions in paragraph 3.8 below). The expression similar terms covers not only the share price and the circumstances in which the rights can be exercised but also the number of shares for which the rights are granted. The fact that the number of shares may vary in accordance with criteria such as 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.

3.8 For the purposes of paragraph 3.7, the fact that the rights to be obtained by persons participating in a scheme vary or are different

(i) in the year of assessment in which they commence to hold the office or employment by virtue of which they are entitled to participate in the scheme, or

(ii) a person is not entitled to receive rights within a stated period (stated in the rules of the scheme) of his or her normal retirement date,

shall not be regarded as meaning that they are not eligible to participate in the scheme on similar terms.

3.9 Where the ‘key employee’ element is included in a scheme, the scheme may allow for key employees and key directors to obtain rights under the scheme which do not satisfy the general rule of similar terms.

The conditions applicable in relation to the key employees or key directors in any year of assessment, are:-

(a) the total number of shares over which rights are granted to key employees and key directors cannot exceed 30 per cent of the overall number of shares over which rights have been granted under the terms of the scheme, and

(b) any individual receiving rights under the key employee element of a scheme in a year of assessment cannot benefit under the ‘all employee’ element of a scheme in the same year of assessment.

3.10 Whilst all qualifying directors and employees must be eligible to participate under the approved scheme, participation in the scheme is voluntary and there is nothing to prevent such individuals choosing not to participate.

3.11 The scheme must not allow an individual to participate 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. For the purposes of the scheme a person will have a material interest in a company if he/she owns 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 an exercise of the right then, for the purposes of determining, prior to the exercise of that right, whether the shares attributed to the individual exceed 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.

Conditions relating to the exercise of rights

3.12 If a person who obtained rights to acquire shares dies, the scheme may provide for the exercise of such rights, by the personal representative of such person, within one year after the date of that persons death.

3.13 If a person who obtained rights to acquire shares ceases to be employed by the company or any participating company, the scheme may provide for the exercise of such rights.

Conditions relating to the shares

3.14 The scheme shares shall form part of the ordinary share capital of

- (a) the company which established the scheme, or
- (b) a company which has control of the company establishing the scheme, or
- (c) a company which either is, or has control of, a company which
 - (i) is a member of a consortium which owns either the company which established the scheme or a company having control of that company, and
 - (ii) beneficially owns not less than 15 per cent of the ordinary share capital of the company so owned.

Scheme shares shall be

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

In addition the shares must be

- (a) fully paid up,
- (b) not redeemable, and
- (c) not subject to any restriction other than restrictions which attach to all shares of the same class.

The shares may be subject to a restriction imposed by the company's Articles of Association which requires all shares held by directors or employees of the company or of any other company of which it has control to be disposed of when they leave the company and

subsequently when shares are acquired as a result of rights exercised after directors and employees have 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 which are acquired or are to be acquired by any participant are subject to any restriction then 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,
- would cause any disadvantage to the participant, or any Connected Person, if shares were disposed of or any right conferred by them was exercised.

Any provisions similar in purpose and effect to the provisions of the Model Code set out in the Listing rules of the Irish Stock Exchange will not be regarded as a restriction for the purposes of this paragraph.

“Connected Persons” has the meaning assigned to it in section 10, Taxes Consolidation Act, 1997.

3.15 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 a director or employee of the company establishing the scheme or any other company and not as a result of an offer to the public
- 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
- in a case where shares are not quoted on a recognised Stock Exchange but are shares in a company which is under the control of another company whose shares are quoted on a recognised Stock Exchange, companies which have control of the company whose shares are in question or of which that company is an associated company,

Conditions relating to rights exercised on or after 15 February 2001

3.16 Where a share option scheme is approved by the Revenue Commissioners and prior to such approval

- an individual had obtained under the scheme a right which, if at the time that right was granted and exercised, the scheme would have been capable of approval had the provisions of section 519D and Schedule 12C, Taxes Consolidation Act, 1997, been in force, at those times, and
- that right was exercised on or after 15 February 2001, and

- the scheme was approved by the Revenue Commissioners on or before 31 December 2001,

then that right shall be treated as having being obtained under an approved scheme.

3.17 Approval Refused

If a company's application for approval is refused, there is a right of appeal to the Appeal Commissioners. Notice of appeal must be given in writing to the Revenue Commissioners, within thirty days of the date on which the company is notified of the Revenue Commissioners decision.

Chapter 4

Share Price

4.1 The price at which shares may be acquired by the exercise of a right obtained under the scheme

(a) must be stated at the time the right is obtained, and

(b) must not be manifestly less than the market value of the shares of the same class at that time or, if the Revenue Commissioners and the company which has established the scheme agree in writing, at such earlier time or times as may be provided for in the agreement (within 30 days of the grant of the right),

but the scheme may provide for such variation of the 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 the market value of the shares.

4.2 If the shares to be used in the scheme are not quoted on a recognised stock exchange the market value of the shares must be agreed with the Revenue Commissioners before the grant of rights. The following information should be submitted to enable the Revenue Commissioners agree a valuation

- a copy of the company accounts for the last three financial years ending prior to the date of grant and any subsequent interim statement or declaration of interim dividend for the company's current financial year,
- an estimate of the value placed on the shares with a brief explanation of how it is arrived at,
- details of any recent arm's length transactions in the shares, and
- the number of shares over which rights are to be granted at the relevant date of grant and the number of participants who will participate in the scheme on that occasion.

Chapter 5

Take-overs and Mergers

5.1 Approved schemes may contain provisions to permit an option holder to exchange approved rights in certain circumstances, if another company obtains control of the company whose shares are being used in the approved scheme, or becomes bound or entitled under section 204, of the Companies Act, 1963, to acquire such shares, or obtains control of a company whose shares are scheme shares in pursuance of a compromise or arrangement sanctioned by the Court under section 201, of the Companies Act, 1963.

The new rights, relating to shares in the new controlling company, which satisfy the requirements of paragraphs 12 to 16, Schedule 12C, Taxes Consolidation Act, 1997, (see paragraphs 3.14 and 3.15) must be capable of being exercised in the same manner as the old rights. The value and aggregate subscription price of the new right on acquisition must be exactly the same as the value and aggregate subscription price of the old right on disposal.

For the purposes of section 519D and Schedule 12C, Taxes Consolidation Act, 1997 and for the purposes of the continued application of the provisions of the scheme the new rights shall be regarded as acquired at the same time as the old rights.

Chapter 6

Withdrawal of approval

- 6.1** The Revenue Commissioners may withdraw their approval of a share option scheme where any of the requirements of Schedule 12C, Taxes Consolidation Act, 1997, cease to be complied with or where the grantor fails to provide information as requested by the Revenue Commissioners.
- 6.2** If rights obtained before the withdrawal of approval are exercised after withdrawal, the tax relief available by virtue of section 519D(3), Taxes Consolidation Act, 1997, shall continue to apply as if the scheme was still approved.
- 6.3** An unapproved alteration of an approved scheme will invalidate the approval with effect from the date of the alteration.
- 6.4** Where the Revenue Commissioners refuse to approve a scheme, refuse to approve an alteration to a scheme, withdraw approval of a scheme or refuse to decide that a condition subject to which approval was given is satisfied there is a right of appeal to the Appeal Commissioners.

Notice of appeal must be given in writing to the Revenue Commissioners within thirty days of the date on which the company is notified of the Revenue Commissioners decision. The appeal will be heard by the Appeal Commissioners as if it were an appeal against an assessment to income tax and all the provisions of the Income Tax Acts relating to such an appeal will apply, with any necessary modifications.

Chapter 7

Information

- 7.1** The Revenue Commissioners may by notice in writing require a person to furnish them, within 30 days, such information as they consider necessary to enable them to determine whether to approve a scheme or to withdraw approval of a scheme, to determine a participants liability to tax under a scheme, or to enable them administer the scheme, and any alteration of the terms of a scheme.
- 7.2** At the end of each year of assessment an auditors certificate certifying that in his/her opinion paragraphs 8 and 9 of Schedule 12C, Taxes Consolidation Act, 1997, are complied with, will be required, where relevant.

Appendix 1.

Specimen Scheme Rules

General Notes

A specimen set of Rules designed to meet the requirements for approval under Chapter 4, Part 17, Taxes Consolidation Act, 1997, and Schedule 12C, to that Act are set out hereunder. The specimen documents are in respect of a single company scheme, however where the company concerned has control of another company or companies, a group scheme can be put in place to extend to all or any of the companies of which the company establishing the scheme has control but such a 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.

The purpose of the specimen Rules is to illustrate the type of framework which companies might wish to adopt and operate.

There is considerable scope for variation to meet the particular requirements of the company. Companies should consider their own particular needs and be guided by their professional advisors.

1. Definitions

1.1. In these Rules the following words and expressions shall have the following meanings :

“Act”	the Taxes Consolidation Act, 1997,
“Adoption Date”	the date on which the Scheme is adopted by the Board,
“Approval Date”	the date on which the Scheme is approved by the Revenue Commissioners under paragraph 2, Schedule 12C, to the Act,
“Auditors”	the auditors for the time being of the Company,
“Basic Salary”	the remuneration of an Eligible Employee for a Year of Assessment including shift differentials, paid holidays and sick leave but excluding overtime and any other fluctuating emoluments,
“Board”	the Board of Directors of the Company or, except in Rule 10.4, a duly constituted committee thereof,
“Company”	[] ¹
“Control”	has the meaning assigned to it in section 432 of the Act,
“Date of Grant”	the date on which an Option is granted,
“Date of Exercise”	the date on which an Option is exercised,
“Directors”	the directors for the time being of the Company,
“Eligible Employee”	every person, subject to Rule 5, who on the Date of Grant and on the Date of Exercise (i) (a) is an employee of the Company, including a full-time director, (b) is chargeable to tax under Schedule E in respect of that employment, and (c) who has been such an employee or director continuously for a period of [] ¹ ending on the Date of Grant, or (ii) is any other employee or director of the Company, nominated by the Board to be an Eligible Employee

PROVIDED that no person shall be an Eligible Employee if that person is ineligible to participate in the Scheme by virtue of paragraph 7, Schedule 12C, to the Act,

¹ Insert the name of the Company establishing the Scheme.

¹ Insert a qualifying period. (The qualifying period cannot exceed three years).

“Key Director”	a full-time director of the Company whose specialist skills, qualifications and relevant experience are vital to the future success of the Company and is so certified to the Revenue Commissioners by the Company,
“Key Employee”	an employee of the Company whose specialist skills, qualifications and relevant experience are vital to the future success of the Company and is so certified to the Revenue Commissioners by the Company,
“Market Value”	has the meaning assigned to it by section 548 of the Act,
“Normal Retirement Age”	the age at which an Eligible Employee is required to retire in accordance with the terms of his employment,
“Option”	a right to acquire Shares granted in accordance with the Rules of the Scheme,
“Option Certificate”	a certificate in respect of an Option in such form as the Board shall determine and which has been agreed in writing with the Revenue Commissioners,
“Option Holder”	an individual to whom an Option has been granted (including where the context permits, the legal personal representatives of a deceased Option Holder),
“Participating Company”	means the Company and any other company of which the Company has Control and which has been nominated by the Board as a Participating Company,
“Rules”	the rules of the Scheme as amended from time to time,
“the Scheme”	means the [] ² share option scheme constituted and governed by these Rules as from time to time amended,
“Shares”	fully paid up ordinary shares of the Company which comply with the provisions of paragraphs 11 to 16, of Schedule 12C, to the Act,
“Subscription Price”	the price at which each Share subject to an Option may be acquired on the exercise of that Option, being, subject to Rule 7, the higher of; <ul style="list-style-type: none"> (i) the Market Value of a Share, or (ii) the nominal value of a Share on the day that the Option was granted,
“Subsisting Option”	an Option which has neither lapsed nor been exercised,
“Year of Assessment”	has the meaning assigned to it by section 2 of the Act.

² Insert the Scheme Name.

1.2. Words importing the singular shall include the plural, and vice versa, and words importing the masculine shall include the feminine.

1.3. Any reference to any statute (or a particular Part, Chapter or Section thereof) shall mean and include any statutory modification or re-enactment thereof for the time being in force, and any regulations made thereunder.

2. Grant of Options

2.1. The Board may, at any time following the Adoption Date, but not before the Approval Date, grant Options to each Eligible Employee to purchase Shares at the Subscription Price.

2.2. Subject to Rules 2.2.1, 2.2.2, 2.2.3, 2.3, 2.4, and 3, the form manner and timing of the grant of Options, any terms and conditions attaching to the grant of Options and the basis on which the number of Shares over which an individual shall be granted an Option shall be at the absolute discretion of the Board,

PROVIDED that not less than 70% of the total number of Shares over which Options are granted by the Board in any Year of Assessment shall be granted to Eligible Employees (excluding Key Directors and Key Employees).

2.2.1. The form, manner and timing, any terms and conditions and the basis on which the number of Shares over which any individual shall be granted an Option shall be the same for all Eligible Employees, (excluding, at the discretion of the Board, Key Directors and Key Employees).

2.2.2. The basis upon which the number of Shares over which Eligible Employees are granted Options (excluding, at the discretion of the Board, Key Directors and Key Employees) shall be determined in accordance with Rule 3 below.

2.2.3. Key Directors and Key Employees who are granted Options pursuant to Rule 2.3 shall not be granted Options pursuant to this Rule 2.2.

2.3. A maximum amount not exceeding 30% of the total number of Shares in respect of which Options have been granted to all Eligible Employees (including Key Directors and Key Employees) participating in the Scheme shall be available for grant by the Board to Key Directors and Key Employees in any Year of Assessment.

2.4. An Option shall not be granted to an Eligible Employee if at the Date of Grant such person is within []³ of his Normal Retirement Age.

2.5. As soon as possible after Options have been granted the Board shall issue an Option Certificate in respect of each Option.

2.6. No Option may be transferred, assigned or charged, and any purported transfer, assignment or charge shall cause the Option to lapse forthwith. Each Option Certificate shall carry a statement to this effect.

3. Calculation of Entitlement

3.1. Subject to Rule 2.2.1 the number of Shares over which an Option is granted to each Eligible Employee on each Date of Grant shall be such an amount as the Board shall determine, expressed as;

- (i) a fixed number of Shares determined by the Board, and/or
- (ii) a fixed number of Shares determined by the Board for each period of service, and/or
- (iii) a proportion of Basic Salary, and/or

- (iv) a proportion of Basic Salary for each period of service, and/or
- (v) such other formula as determined by the Board and as agreed in writing with the Revenue Commissioners.

4. Limitations on Grants

[4.1. No Option shall be granted pursuant to Rule 3 above if such grant would result in the aggregate of;

- i. the number of Shares over which Subsisting Options have been granted under this Scheme, and
- ii. the number of Shares which have been issued on the exercise of Options granted under this Scheme, and
- iii. the number of Shares over which Subsisting Options have been granted under any other share option scheme during the period of 10 years ending on the relevant Date of Grant, and
- iv. the number of Shares which have been issued pursuant to any other employee share scheme (including a share option scheme) during the period of 10 years ending on the relevant Date of Grant exceeding (x%) of the number of shares in issue.]⁴

5. Exercise of Options

5.1. Subject to Rule 7, any Option which has not lapsed may be exercised in whole or in part at any time following the earliest of the following events;

- i. the []⁵ anniversary of the Date of Grant
- ii. the death of the Option Holder.

5.2. An Option shall lapse on the earliest of the following events;

- i. the tenth anniversary of the Date of Grant
- ii. the first anniversary of the Option Holder's death
- iii. the Option Holder being adjudicated bankrupt.

5.3. Where an Eligible Employee ceases to hold the office or employment with the Company by virtue of which he was granted an Option under the Scheme, then he may, but only within []⁶ after he ceases to hold such office or employment, exercise his Option to the extent that he was entitled to exercise it at the date of such cessation.

6. Take-overs

6.1. If a company (in this Rule referred to as "the Acquiring Company") –

(a) obtains Control of the Company as a result of making a general offer to;

- (i) acquire the whole of the issued ordinary share capital of the Company which is made on condition such that if it is satisfied the person making the offer will have Control of the Company, or

³ Insert the number of years as appropriate.

⁴ These provisions are not required for Revenue approval. They are designed to protect existing shareholders. Each company must decide for itself what, if any, limits should be imposed.

⁵ Insert the appropriate anniversary.

⁶ Insert the appropriate period.

(ii) acquire all the shares in the Company which are of the same class as the Scheme Shares,

(b) obtains Control of the Company in pursuance of a compromise or arrangement sanctioned by the Court under section 201 of the Companies Act, 1963, or

(c) becomes bound or entitled to acquire Shares in the Company under section 204 of the Companies Act, 1963,

the Option Holder may with the agreement of the Acquiring Company within the “appropriate period” referred to in Rule 6.2 release each Subsisting Option (“the Old Option”) in consideration of the grant of a new option (“the New Option”) which satisfies the conditions that it

i. is over shares in the Acquiring Company or some other company falling within sub-paragraphs (b) or (c) of paragraph 12, Schedule 12C, to the Act, which satisfy the conditions specified in paragraphs 12 to 16 inclusive, Schedule 12C, to the Act;

ii. is a right to acquire such number of such Shares as has on acquisition of the New Option an aggregate Market Value equal to the aggregate Market Value of the Shares subject to the Old Option on its release;

iii. has a Subscription Price per share such that the aggregate price payable on the complete exercise equals the aggregate price which would have been payable on complete exercise of the Old Option; and

iv. is otherwise identical in terms to the Old Option.

6.2. The “appropriate period” referred to in Rule 6.1 is;

- (i) in a case falling within Rule 6.1(a), 6 months beginning with the time when the person making the offer has obtained Control of the Company and any condition subject to which the offer is made is satisfied;
- (ii) in a case falling within Rule 6.1(b), 6 months beginning with the time when the Court sanctions the compromise or arrangement; and
- (iii) in a case falling within Rule 6.1(c), the period during which the Acquiring Company remains so bound or entitled.

6.3. Where an Option Holder is granted a New Option for release of his Old Option in accordance with Rule 6.1 then;

(i) the New Option shall be treated as having been acquired at the same time as the Old Option and be exercisable in the same manner as the Old Option,

(ii) the New Option shall be subject to the provisions of the Scheme as it had effect in relation to the Old Option immediately before the release, and

(iii) with effect from the release of the Old Option and the grant of the New Option, the provisions of Rules 6, 7, 8, and 10 shall, in relation to the New Option be construed as if references to the Company and to the Shares were references to the Acquiring Company or, as the case may be, to the other company to whose shares the New Options relate, and to the shares in that other company, but references to Participating Company⁷ shall continue to be construed as if references to the Company were references to [].⁸

6.4. For the purposes of this Rule 6 other than Rule 6.1(c) a person shall be deemed to have obtained Control of a Company if he and others acting in concert with him have together obtained Control of it.

⁷ In the case of a Group Scheme

⁸ Insert the name of the Company.

6.5. The exercise of an Option pursuant to the preceding provisions of this Rule 6 shall be subject to the provisions of Rule 8 below.

7. Variation of Share Capital

7.1. In the event of any variation in the share capital of the Company by way of capitalisation or rights issue or any consolidation, sub-division or reduction or otherwise, the number of Shares subject to any Option and the Subscription Price for each of those Shares shall be adjusted in such manner as the Auditors confirm to be fair and reasonable provided that:-

- i. the aggregate amount payable on the exercise of an Option in full is not increased,
- ii. the Subscription Price for a Share is not reduced below its nominal value,
- iii. no adjustment shall be made without the prior written approval of the Revenue Commissioners, and
- iv. following the adjustment the Shares continue to satisfy the conditions specified in paragraphs 12 to 16 inclusive, Schedule 12C, to the Act.

8. Manner of Exercise of Options

8.1. No Option shall be exercised by an individual at any time when he is, or by the personal representatives of an individual who at the date of his death was, precluded by paragraph 7, of Schedule 12C, to the Act from participating in the Scheme.

8.2. No Option shall be exercised at any time when the shares which may be thereby acquired are not Shares as defined in Rule 1.1.

8.3. An Option shall be exercised by the Option Holder, or as the case may be, his personal representatives, giving notice to the Company in writing of the number of Shares in respect of which he wishes to exercise the Option accompanied by the appropriate payment and the relevant Option Certificate, and shall be effective on the date of its receipt by the Company.

8.4. Shares shall be allotted and issued or transferred pursuant to a notice of exercise within thirty days of the date of exercise. Save for any rights determined by reference to a date preceding the date of allotment, such Shares shall rank *pari passu* with the other Shares of the same class in issue at that date of allotment.

8.5. When an Option is exercised only in part, the balance shall remain exercisable on the same terms as originally applied to the whole Option and a new Option Certificate shall be issued accordingly by the Company as soon as possible after the partial exercise.

9. Sale of Shares

9.1. Where an Option Holder disposes of any of the Shares acquired by him on the exercise of an Option granted under the Scheme within a period of three years from the Date of Grant he must notify the Company of any such disposal.

10. Administration and Amendment

10.1. The Scheme shall be administered by the Board whose decision on all disputes shall be final.

10.2. The Company may from time to time by resolution of the Board, amend these Rules provided that;

- i. no amendment shall materially affect an Option Holder as regards an Option granted prior to the amendment being made,

ii. no amendment shall be made which would make the terms on which Options may be granted materially more generous or would increase the limit specified in Rule 4.1 without the prior approval of the Company in general meeting,

iii. no amendment shall be made without the prior written approval of the Revenue Commissioners.

10.3. The costs of establishing and operating the Scheme shall be borne by the Company.

10.4. The Board may establish a committee consisting of not less than three Board members to whom any or all of its powers in relation to the Scheme may be delegated. The Board may at any time dissolve the committee, alter its constitution or direct the manner in which it shall act.

10.5. Any notice or other communication under or in connection with the Scheme may be given by the Company either personally or by post and to the Company either personally or by post to the secretary. Items sent by post shall be pre-paid and shall be deemed to have been received seventy two hours after posting.

10.6. The Company shall at all times keep available sufficient authorised and unissued Shares to satisfy the exercise to the full extent still possible of all Options which have neither lapsed nor been fully exercised, taking account of any other obligations of the Company to issue unissued Shares.

11. General

11.1. These Rules shall be governed by and construed in accordance with the laws of Ireland.

Appendix 2 (Specimen Scheme Documents)

Option Certificate.

..... Ltd.
Approved Share Option Scheme

This is to certify that

.....
is the holder of an Option to acquire up to a maximum of.....
ordinary Shares of Ltd at a Subscription Price of
per ordinary Share.

PPS Number :

The Option was granted on under the Rules of theLtd
approved Share Option Scheme.

The Option is exercisable in whole or in part as specified in the Rules of the Scheme.

If there is to be no charge to income tax on the exercise of an Option then, in addition to complying with the Rules of the Scheme,

- the exercise must be made at a time when the Scheme retains the approval of the Revenue Commissioners,
- the exercises must be not later than 10 years after the Option was granted, and
- none of the Shares acquired as a result of the exercise of the Option are sold within 3 years from the date of grant of the Option.

Any sale, transfer, charge or other disposal of Shares after exercise, and before 3 years from the date of grant of the Option, must be notified immediately to the Company.

Signed
Secretary

This Certificate is important and should be kept in a safe place

This certificate is issued as a matter of record only and is not a document of title. This Option is personal to the Option Holder named herein and his legal personal representative and may not be sold, transferred, charged or otherwise disposed of in any other manner.

Notice of Exercise of Option

.....Ltd
Approved Share Option Scheme

To: The Secretary

..... Ltd
From: (name in BLOCK CAPITALS)
..... (ADDRESS)
.....
.....
.....

PPS Number :

(1) I hereby give notice toLtd that immediately upon your receipt of this certificate and the enclosed remittance I am exercising the Option, granted in the attached Option Certificate, to acquireordinary Shares inLtd at the Subscription Price stated of

(2) I enclose herewith a cheque drawn in favour ofLtd forbeing the amount payable in full for those Shares.

Signed Date

Full Name and Home Address in Block Capitals.

.....
.....
.....
.....

Notes

Any sale, transfer, charge or other disposal of Shares after exercise, and before 3 years from the date of grant of the Option, must be notified immediately to the Company.

Personal Representatives wishing to exercise an Option should write to the secretary, at the address below, who will inform them of the action which they should take.

Secretary's address.

.....
.....
.....
.....

Appendix 3. (Specimen annual Return of Information)



Income Tax

Return of Information of an Approved Share Option Scheme

In any communication please quote
: **SOS**

Date of Issue :

PERIOD ENDED 31 December 200X

Name of Approved Scheme :

(approved under Schedule 12C, Taxes Consolidation Act, 1997.)

You are hereby required to :

- (i) complete the form as required,
- (ii) complete the declaration on page 7,
- (iii) send the completed form to the Section named below **within 30 days.**

(Note 1)

Office of the Revenue Commissioners,
Employee Share Scheme Section,
Personal Income Tax Branch,
Direct Taxes Interpretation & International Division,
Stamping Building,
Dublin Castle,
Dublin 2.
Telephone : +353-1-6475 000

The required information should be supplied on a separate sheet if the space under any heading is inadequate.

Warning : Failure to make the returns required by this notice or the making of incorrect returns will give rise to penalties.

If a section does not apply please write NONE

Form SOS 1

1

1. Rights Granted

A. Complete the columns below for each date on which rights were granted under the scheme during the year. (If on any date rights were granted over more than one class or denomination of share, complete a separate column for each class or denomination of share.)

1. The date of grant of the rights.		
2. The name of the company over whose shares the rights were granted. Its company tax registered number in Ireland. The nominal value and class of those shares.		
3. The date(s) on which the market value of a share was taken for the purpose of determining the subscription price at which rights may be exercised.		
4. The market value in Euro of a share on that date(s) at 3. above.	€	€
5. The source of the valuation at 4. above. Please tick appropriate box :		
<ul style="list-style-type: none"> • by reference to the Stock Exchange Daily Official List, <input type="checkbox"/> • by agreement with the Revenue Commissioners (Note 2) <input type="checkbox"/> 	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
6. The subscription price per share in Euro at which options may be exercised.	€	€

B. Please state

- the number of directors and employees to whom rights were granted during the year under the “all employee” element of the scheme _____
- the number of key directors and key employees to whom rights were granted during the year under the “key employee” element of the scheme _____

If rights were granted during the year, you must complete item 5C on page 6.

C. Please provide on a separate sheet, for each date of grant, the name, PPS number, last known salary, duration of option and the number of shares, which can be acquired on exercise in respect of each participant. Please indicate directors by placing a ‘D’ beside their name.

D. Please state the total number of employees and directors in the company and any participating companies on the date the rights were granted.

E. Please state the total number of eligible employees in the company and any participating companies on the date the rights were granted.

2. Rights Exercised.

This section relates only to the exercise of rights during the year in the circumstance referred to in section 519D(4), Taxes Consolidation Act, 1997.

The circumstance is where the exercise of the right may result in an income tax charge on the gain arising. This will occur where the right has been exercised and any of the shares acquired on exercise have been sold, transferred, charged or otherwise disposed of **less than three years after the grant of the right**.

If such an event has occurred, please give below the following information for each participant who has exercised a right and any of the shares acquired on exercise have been sold, transferred, charged or otherwise disposed of **less than three years after the grant of the right**.

Name and PPS number of participant 1	Participants Tax District and reference 2 (Note 3)	Name of employing company 3	Date right granted 4	Date right exercised 5	No. of shares acquired 6	Subscription price paid per share € 7	Date of event 8	Market Value per share at date of exercise € 9

3. Variation in Share Capital (Note 4).

Give details of any variations (of the subscription price per share and of the number of shares included in rights) which have been made to take account of any variation in the share capital of which the scheme shares form part.

Has the variation of rights referred to above Yes No
been agreed with the Revenue Commissioners ?. Please tick ✓ one box

4. Exchange of Rights (Note 6)

If rights have been released and replacement rights granted under paragraph 17, Schedule 12C, Taxes Consolidation Act, 1997, you must fill in the rest of this page and page 5 giving details of any replacement rights granted or exercised during the year.

Replacement rights granted

Has the basis of exchange been agreed with the Revenue Yes No
Commissioners ?. Please tick ✓ one box

Name of company over whose shares
replacement rights were granted.

Its company tax registration number.

The date of grant of replacement rights.

The nominal value and class of share(s)
over which replacement rights were granted.

The subscription price per share in Euro
at which replacement rights may be exercised.

4. continued. Replacement Rights Exercised

This section relates only to the exercise of rights during the year in the circumstance referred to in section 519D(4), Taxes Consolidation Act, 1997.

The circumstance is where the exercise of the right may result in an income tax charge on the gain arising. This will occur where the right has been exercised and any of the shares acquired on exercise have been sold, transferred, charged or otherwise disposed of **less than three years after the grant of the right.**

If such an event has occurred, please give below the following information for each participant who has exercised a right and any of the shares acquired on exercise have been sold, transferred, charged or otherwise disposed of **less than three years after the grant of the right.**

Name and PPS number of participant	Participants Tax District and reference	Name of employing company	Date right granted	Date right exercised	No. of shares acquired	Subscription price paid per share	Date of event	Market Value per share at date of exercise €
1	2 (Note 3)	3	4	5	6	€ 7	8	9

5. Summary (Notes 6 and 7)

A. Option holders

- 1. The number of participants who, during this year, exercised rights under the scheme. _____
- 2. The number of participants who, during this year, exercised replacement rights under the scheme. _____
- 3. The number of participants who, **during this year**, cancelled their options or let them lapse. _____
State the number of options cancelled or lapsed. _____

B. Market value of 'scheme shares'

If the scheme shares are quoted on any recognised stock exchange or listed on NASDAQ please state the market value in Euro at 31 December 200X. _____

C. Rights granted

Please give a separate figure for each class or denomination of shares.

- | | Rights | Replacement Rights |
|---------------------------------------------------------------------------------------------------------------------------------------|--------|--------------------|
| 1. The number of shares over which rights were granted during the year to participants under the 'all employee' element of the scheme | _____ | _____ |
| 2. The number of shares over which rights were granted during the year to participants under the 'key employee' element of the scheme | _____ | _____ |

D. Rights exercised

Please give a separate figure for each class or denomination of share

- | | Rights | Replacement Rights |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|--------------------|
| 1. The number of shares issued or transferred on the exercise of rights and replacement rights during the year | _____ | _____ |
| 2. The total amount paid by the participants for the acquisition of those shares | _____ | _____ |
| 3. The total market value in Euro of the shares acquired at the date(s) of exercise | _____ | _____ |
| 4. Please provide on a separate sheet for each right exercised, the name, PPS number and the number of shares, which were acquired on exercise in respect of each participant. Please indicate directors by placing a 'D' beside their name. | | |

6. Participating companies

If a subsidiary company has become a participating company during the year, give the following information, on a separate schedule if necessary, for each such company

- a. name of company
 - b. registered office address
 - c. date company became a participating company
 - d. name of the Tax Office which deals with the company's corporation tax returns and the reference under which those returns are made
 - e. name of the Tax Office, which deals with the employers PAYE and the PAYE reference in that office
- A copy of the Board resolution nominating the new participating company must be attached if not already submitted.**

If a company has ceased to be a participating company, give the same information as above stating clearly that the company is no longer a participating company.

(For item c. state the date on which it ceased to be a participating company).

If any company has ceased to be a participating company, at the time it ceased did that company employ persons eligible to participate in the scheme ?.

Please tick one box Yes No

6. Participating Companies continued

List below companies which have become, or ceased to be, participating companies.

Please read the notes on page 8 carefully before you complete the declaration below.

7. Declaration

To the best of my knowledge and belief

- the particulars given on this form (and on the supplementary sheets numbered ----- to -----) are correct and complete
- all exercises of rights were under the terms of the scheme approved by the Revenue Commissioners
- throughout the year (or that part of it in which rights subsisted) the scheme shares (**Note 4**) satisfied the conditions in paragraphs 11 to 16, Schedule 12C, Taxes Consolidation Act, 1997, and
- no alterations have been made to the scheme which have not been approved in writing by the Revenue Commissioners

Signature ----- (**Note 8**) Date-----

8. Auditors Certificate (Note 9)

Please ensure that the Auditors certificate, where appropriate, is attached to this form.

Notes to help you complete Form SOS 1

1. This notice has been issued under paragraph 20, Schedule 12C, Taxes Consolidation Act, 1997. This paragraph enables the Revenue Commissioners to ask any person to give any information they think necessary.

Under paragraph 4(1), Schedule 12C, Taxes Consolidation Act, 1997, the Revenue Commissioners can withdraw approval of a scheme because of the company's failure to give the information required by this notice.

Failure to make the Return required by this notice or the making of an incorrect Return will give rise to penalties.

2. If the company is unquoted, agreement with the Revenue Commissioners Valuation Branch is essential.

3. In column 2 on pages 3 and 5 please give the name of the Tax District dealing with the PAYE affairs of the employer (or main employer) of the participant and the PAYE reference number of the employer.

4. Reference to scheme shares are to shares over which rights have been granted under the approved Share Option Scheme.

5. Complete section 4 only in respect of companies which have been taken over since rights were granted under the scheme.

6. Please include participants whose rights have lapsed or been cancelled during the year without being exercised separately at 3.

7. If any participants have exercised rights during the year, please provide details of the shares they obtained upon exercise at item 5.D. on page 6.

8. The declaration should be completed by the Company Secretary or other officer duly authorised to act in that behalf.

9. An auditors certificate certifying that in his/her opinion the terms of any rule included in the scheme by virtue of either or both paragraphs 8 and 9, Schedule 12C, Taxes Consolidation Act, 1997 are complied with in relation to a year of assessment, is required if the 'key employee/director' element of a scheme was operated in the year.

10. Even though the grant or exercise of an option is included on this form the individual participant must still declare the transaction on their personal tax return.

Rights Exercised (Note 3)

The following information is required for the year ended 31 December 200X in respect of each exercise of a right granted under the rules of the scheme.

Name	PPS Number	Name of Employing company	PAYE district and reference	Date right granted	Date of exercise of right	Nominal value and class of share acquired	Number of shares acquired	Subscription price paid per share €	Date of event	Proceeds received €	Last known salary at date of exercise €

Total