

Explanatory Notes on the Completion of Form RSS1

Introduction

This form is for use by persons required to return particulars in respect of Shares and Other Securities awarded to directors and employees, including Restricted Shares, Forfeitable Shares, Convertible Securities and Share Options (Sections 128, 128C, 128D, 128E and 897B TCA 1997 (Taxes Consolidation Act 1997)).

SECTION A – Shares and other securities

Where directors or employees acquire shares or other securities by reason of their office or employment free of charge or at a discount, the employees are chargeable to income tax on the market value of the shares or securities less any consideration given by the director or employee for the shares or securities.

There are special rules regarding the tax treatment of Restricted Shares and Forfeitable Shares acquired by directors and employees. **Sections B** and **C** should be completed in respect of these.

Section A of this form sets out the particulars which must be returned in respect of shares and other securities awarded to directors and employees other than restricted shares or forfeitable shares awarded.

SECTION B - Restricted shares

Section 128D TCA 1997 applies to “restricted shares” acquired by a director or employee by reason of his or her office or employment (shares include stock).

Shares are “restricted shares” if:

- (a) the shares are shares in the company in which the director or employee holds his or her office or employment, or in a company that controls that company, and
- (b) there is a written agreement between the employer and the director/employee (which is in place for bona fide commercial reasons) under which the employee is prohibited from disposing of the shares (i.e. assigning, charging, pledging as security for a loan, transferring, or otherwise disposing of the shares) for a specified period exceeding one year, and
- (c) during the period of restriction the shares are held in a trust established by the employer, or under such other arrangement approved of by the Revenue Commissioners.

The restriction on the disposal of the shares, must, subject to certain exceptions, be a total restriction, i.e. cannot be disposed of under any circumstances during the specified period. The exceptions are:

- on the death of the director or employee,
- disposals as a consequence of company reconstructions, amalgamations or takeovers.

Section 128D TCA 1997 provides for an abatement of the income tax charge on the acquisition of the shares (which is to be computed by reference to the market value of the shares at that date without regard to the restrictions).

The rate of abatement depends on the number of years for which the restriction on the disposal of the shares is in place. The rates are as follows:

Number of years restriction	Rate of abatement
1	10%
2	20%
3	30%
4	40%
5	50%
More than 5	60%

Example

An employee is awarded 1,000 shares, which are valued at €10 each. The employee is prohibited from disposing of the shares for five years and one month.

Income Tax Treatment

Market Value	€10,000
Gain to the employee	€10,000
Abatement (60%)	€6,000
Amount chargeable to income tax	€4,000

If the restrictions are subsequently removed or varied, or if the shares are disposed of, then the amount of the income charged to tax on the acquisition of the shares must be revised to take account of the actual period for which there was a restriction on the disposal of the shares.

Notes to completion of SECTION B

Note A

Enter the total market value of all restricted shares acquired by the director or employee. Where there was more than one acquisition date, give separate details for each acquisition.

Note B

Enter the number of years for which there is a restriction on the disposal of the shares.

Note C

Give full particulars of the trust, including the name, where established (e.g. in the State or in another EEA State) and details regarding the trustees (names and addresses).

Note D

Shares are forfeitable shares if there is a bona fide written contract or agreement in place under the terms of which;

- there will be a forfeiture of the shares, if certain circumstances arise or do not arise (e.g. if the employee ceases employment before the expiry of a specified period),
- as a result of the forfeiture, the director or employee will cease to have any beneficial interest in the shares, and
- the director or employee will not be entitled to receive, directly or indirectly, consideration in money or money's worth in respect of the shares on their forfeiture in excess of the consideration given by the director or the employee for the acquisition of the shares.

Shares are not forfeitable shares by reason only that the shares are unpaid or partly paid shares that may be forfeited for non-payment of calls, or where the shares must be offered for sale by employees who cease employment with the company.

Note E

Enter the number of years for which the restriction on the disposal of the shares was/will be in place after the removal/variation of the restriction.

Note F

Enter the number of years for which the restriction on the disposal of the shares was originally in place before the removal/variation of the restriction or disposal of the shares.

Note G

Enter **1** where the disposal arises on the death of the director or employee.

Enter **2** where the occasion of disposal falls within Paragraph (c)(ii)(I) of Section 128D(3) TCA 1997 – company reconstructions and reorganisations.

Enter **3** where the occasion of disposal falls within Paragraph (c)(ii)(II) of Section 128D(3) TCA 1997 – scheme or arrangement affecting all of the ordinary share capital of the company or all the shares of the same class as the shares acquired by directors and employees.

Enter **4** where the occasion of disposal falls within Paragraph (c)(ii)(III) of Section 128D(3) TCA 1997 – as part of a general offer involving a change in control of the company.

SECTION C – Forfeitable shares

Section 128E TCA 1997 applies to “forfeitable shares” acquired by a director or employee by reason of his or her office or employment (shares include stock).

Shares are forfeitable shares if there is a bona fide written contract or agreement in place under the terms of which;

- there will be a forfeiture of the shares, if certain circumstances arise or do not arise (e.g. if the employee ceases employment before the expiry of a specified period),
- as a result of the forfeiture, the director or employee will cease to have any beneficial interest in the shares, and
- the director or employee will not be entitled to receive, directly or indirectly, consideration in money or money’s worth in respect of the shares on their forfeiture in excess of the consideration given by the director or the employee for the acquisition of the shares.

Shares are not forfeitable shares by reason only that the shares are unpaid or partly paid shares that may be forfeited for non-payment of calls, or where the shares must be offered for sale by employees who cease employment with the company.

Notes to completion of SECTION C

Note A

Enter the total market value of all forfeitable shares acquired by the director or employee. Where there was more than one acquisition date, give separate details for each acquisition.

SECTION D - Convertible Securities and related chargeable events

Section 128C TCA 1997 applies to securities acquired by a director or employee by reason of his or her office or employment, which are convertible into securities of another description or into money or money's worth.

"Securities" includes all of the following:

- shares,
- securities within the meaning of Section 135 TCA 1997,
- debentures,
- debenture stock,
- loan stock,
- bonds,
- certificated of deposit,
- other instruments (including certificates and warrants) creating or acknowledging indebtedness, including certificates and other instruments providing for a share in the profits of a company; options (other than options to acquire securities, except where such options are acquired under arrangements of which the main purpose or one of the main purposes is the avoidance of income tax, corporation tax or capital gains tax), financial and commodity futures within the meaning of the Investment Intermediaries Act 1995,
- warrants and other instruments entitling their holders to subscribe for securities,
- certificates and other instruments conferring rights in respect of securities held by persons other than persons on whom the rights are conferred and the transfer of which may be effected without the consent of those persons,
- units in a collective investment scheme.

Section 128C TCA 1997 applies notwithstanding that the securities may be awarded either before the director or employee commenced to hold the office or employment or after he or she ceased to hold the office or employment.

Notes to completion of SECTION D

Note A

Enter the total market value of all convertible securities acquired by the director or employee. Where there was more than one acquisition date, give separate details for each acquisition.

Note B

There are four circumstances that give rise to a "**chargeable event**". These are:

1. the conversion of the employment-related securities into securities of another description, where the employee or director (or any other person who acquired the employment-related securities by reason of the employee's or director's office or employment) has a beneficial interest in those securities before the conversion occurs and in the securities into which they are converted, see **Chargeable Event 1**,
2. the release of the entitlement to convert for consideration, where the employee or director (or any other person who acquired the employment-related securities by reason of the employee's or director's office or employment) has a beneficial interest in the securities, see **Chargeable Event 2**,
3. the disposal for consideration, of the employment-related securities by the employee or director (or any other person who acquired the employment-related securities by reason of the employee's or director's office or employment) while they are still convertible, see **Chargeable Event 3**,
4. the receipt of a benefit in money or money's worth by the employee or director (or any other person who acquired the employment) in connection with the entitlement to convert (for example, the receipt of compensation for the loss of the entitlement) see **Chargeable Event 4**,

Note C

The formula for calculating the chargeable amount on the occurrence of a chargeable event is **A - B** where:

A is the amount of any **gain** realised on the occurrence of a chargeable event. This amount is computed differently for each of the chargeable events.

B is the aggregate of the amount of any consideration given for the entitlement to convert and any expenses incurred by the holder of the securities in connection with the conversion, disposal, release of entitlement to convert, or receipt of benefit in connection with an entitlement to convert, as the case may be.

Chargeable Event 1

A is calculated by using the formula:

C - (D + E), where:

C is the market value, at the time of the chargeable event, of the securities into which the employment-related securities are converted and where those securities are themselves convertible, the market value is determined as if they were not convertible.

Where the employment-related securities are an interest in securities (i.e. an interest less than the full holding), then a proportion of this market value, which is equivalent to the proportion of the interest held, is to be used, (e.g. 50% of the full holding held, then 50% of the market value at the time of the chargeable event of the securities into which the employment-related securities are converted is to be used).

D is the market value of the employment-related securities at the time of the chargeable event, determined as if they were not convertible securities or an interest in convertible securities.

E is the amount of the consideration given for the conversion of the employment-related securities.

Chargeable Event 2

A is the consideration (money or money's worth) received for the release of the entitlement to convert.

Chargeable Event 3

A is the consideration (money or money's worth) received for the release of the entitlement to convert.

A is calculated by using the formula:

F - G, where

F is the amount of consideration received on disposal of the securities.

G is the market value of the employment-related securities at the time of the chargeable event, determined as if they were not convertible securities or an interest in convertible securities.

Chargeable Event 4

A is the amount or market value of the benefit received in connection with the entitlement to convert.

SECTION E - Share Options

Section 128 TCA 1997 applies to any right obtained by a person as a director of a company or as an employee. The section defines "right" as a right to acquire any asset or assets including shares in any company. "Shares" is defined as including stock and securities.

Section 128 TCA 1997 applies notwithstanding that the right may be granted either before the director or employee commenced to hold the office or employment or after he/she ceased to hold the office or employment. However, the section does not apply to a right obtained by reason of a foreign office or employment, the income from which is taxable on a remittance basis on the director/employee.

In effect, the legislation applies to options to acquire shares (i.e. share options) and other rights to acquire shares or assets granted to directors and employees by reason of their office or employment. This form sets out the particulars which must be returned in respect of such share options and other rights.

Notes to completion of SECTION E

Note A

A long option or right is an option which is capable of being exercised more than seven years after the Grant Date.

Note B

If there is a restriction, (as outlined in Section B of these Explanatory Notes) on the disposal of the shares, specify the period of restriction and state where the shares are being held during that period.

Note C

This column should be completed for share options and other rights assigned or released (in whole or in part).

AUDIT

This return may be subject to an Audit by a Revenue official.

The law provides that a Revenue official may make enquiries or take such actions as are considered necessary to verify the accuracy of a return.

Accessibility

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