

Guide to Profit Sharing Schemes

PROFIT SHARING SCHEMES

This booklet describes the provisions of Chapter 1 of Part 17, Taxes Consolidation Act, 1997 and Schedule 11 of that Act, incorporating all amendments up to and including the Finance Act 2010, relating to profit sharing schemes approved by the Revenue Commissioners.

A number of technical terms are used in the legislation. These terms are explained in Appendix 1.

A specimen Scheme Rules and Form of Acceptance and Agreement and Contract of Participation are included in Appendix 3.

Notes on the completion of the Return are included in Appendix 4.

These notes are for use by practitioners. They 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.

In accordance with the legislation a Trust must be established to operate a scheme. A Trust Instrument is a legal document and must be executed before the Revenue Commissioners will approve a scheme.

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1. INTRODUCTION

- 1.1 If an employee is given shares by his/her employer the individual is normally chargeable to income tax on the value of the shares just as the employee would be chargeable to income tax on the value of a cash bonus.
- 1.2 The Finance Act, 1982 introduced a scheme which provides a mechanism whereby a company which operates an approved profit sharing scheme may allocate shares to its employees and the employee is, subject to certain conditions, exempt from the income tax charge. Under an approved scheme an employee may be allocated shares up to a maximum *annual limit*. Dividends received by the employees in respect of the allocated shares are assessable to income tax in the normal way.

After the shares are allocated to an individual they must be held by a trust established for the purpose and a participant must agree to his/her shares remaining with the trustees for the *period of retention*.

- 1.3 A participant in an approved scheme is not liable to income tax on the value of the shares at the time they are allocated. If the shares are disposed of after the *period of retention* (generally two years from the date on which they were allocated), but before the *release date* (generally three years from the date on which they were allocated) the participant is liable to income tax under Schedule E on 100% of the value of the shares at the date on which they were allocated or, if less, on 100% of the sale proceeds. The percentage is 100% unless the employee ceases to be employed due to injury, disability or redundancy, or reaches pensionable age, as defined in the Social Welfare Consolidation Act, 2005 (currently 66 years).
- 1.4 When a participant ceases to be employed due to injury, disability or redundancy the shares can be sold immediately. Similarly they may be sold immediately when an employee reaches pensionable age. Income tax is charged on 50% of the original value of the shares (or the sales proceeds if less) in the case of such disposals.

- 1.5 If the participant disposes of shares after the release date there is no liability to income tax at all on the disposal.
- 1.6 If a participant dies while the Trustees are holding scheme shares on his/her behalf, the *period of retention* comes to an end immediately even if the shares have been held for less than two years. The participant's personal representatives can sell or transfer the shares and an income tax charge will not arise.
- 1.7 The participant may be liable to capital gains tax when he/she sells the shares if the disposal proceeds exceed the *market value* of the shares at the date of allocation and if the total gains are large enough to attract liability.
- 1.8 It should be noted that where any references are made in this booklet to a liability to income tax arising, a liability to the income levy also arises.
- 1.9 The costs of establishing an approved profit sharing scheme and any amounts paid by the company to the Trustees can, subject to certain conditions, be included in the sums to be deducted by the company in calculating its profits for corporation tax purposes.

2. APPLYING FOR APPROVAL OF A SCHEME

2.1 All applications for approval of profit sharing schemes and all enquiries about approval of schemes should be made to: The Office of the Revenue Commissioners, Employee Share Scheme Section, Income & Capital Taxes Division, Stamping Building, Dublin Castle, Dublin 2. Telephone: +353 (0)1 6475000.

2.2 A company proposing to establish a profit sharing 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 The following information should be provided in relation to an application for approval of a scheme:

- a copy of the company resolution establishing the scheme
- a copy of the Rules
- a copy of the executed Trust Deed
- copies of all documents that will be issued to participants in the scheme i.e. employee booklet, contract of participation etc.
- where an appraisal scheme is to be used as the basis of calculation of entitlement for the scheme, copies of all forms etc. used for the scheme and 5 examples of how this scheme operates
- a copy of the Memorandum and Articles of Association of any company whose shares will be allocated under the scheme and where the shares to be used for the scheme are in a private company, a copy of the Shareholders Agreement if one exists
- a declaration that the shares to be used in the scheme satisfy the conditions in paragraphs 8 to 11 of Part 3, Schedule 11, Taxes Consolidation Act, 1997 and stating how the conditions of paragraphs 8 and 9 are met. The declaration should be on company headed paper and signed by the 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, and

- details of the tax reference numbers for corporation tax purposes and employer return purposes of all participating companies.

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

3. REQUIREMENTS FOR APPROVAL

- 3.1 The conditions that have to be satisfied by an approved scheme can be classified as follows
- general
 - relating to the participants
 - relating to the shares, and
 - relating to the Trust.

General conditions

- 3.2 The scheme must provide for the establishment of a body of persons (trust) resident in the State who, out of monies paid to them by the company concerned or, in the case of a group scheme, paid to them by a participating company, purchase or subscribe for shares which satisfy the conditions set out in paragraphs 3.11 to 3.14 inclusive.

The Trustees must perform their functions in accordance with a trust instrument. The shares so purchased or subscribed for must be formally allocated to individuals who are eligible to participate in the scheme.

- 3.3 The scheme must not contain features which are neither essential nor reasonably incidental to the purpose of providing employees and directors with benefits in the nature of interests in shares and must not contain any features which have the effect of discouraging employees from participating in the scheme.
- 3.4 Where the company setting up a scheme has *control* of another company or companies, the scheme may be extended to all or any of the companies over which it has *control*. A scheme of this kind is called a group scheme. A participating company in a group scheme is the company which established the scheme or a company over which the company has *control* and to which the scheme extends. Where the company setting up the scheme is a member of a group of companies, the scheme must not have the effect of conferring benefits wholly or mainly on directors of companies in the group or on those employees of companies in the group who are in receipt of higher or the highest levels of remuneration.

- 3.5 The basis of calculation of entitlement under the scheme must be clearly set out in the rules of the scheme or in an appendix to the rules. A scheme which includes a facility for employees to either forgo salary in order to increase their entitlement under a scheme or a scheme that requires participants to buy shares out of their own resources in order to receive free shares under a scheme (usually called a contributory scheme), or for bonuses payable to participants to be used for the purposes of the scheme may be approved. A scheme which provides for salary forgone only will not be approved. More information in relation to the use of bonuses, salary forgone and contributory schemes is set out in Appendix 2.
- 3.6 The scheme must provide that the total *initial market value* of the shares appropriated to any one participant in a year of assessment will not exceed the *annual limit*.

Conditions relating to the participants

- 3.7 Participation in the scheme must be open at any time (i.e. at each appropriation date) to every person who
- is then an employee or full-time director of the company which has established the scheme or, in the case of a group scheme, of a participating company
 - 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 in respect of his office or employment under Schedule E.

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

A scheme may also allow participation by

- part-time directors, or
- employees or directors who have worked for the company for less than the required qualifying period, or
- employees or directors who are not chargeable to tax in respect of their office or employment under Schedule E, or
- former employees or directors who left within the preceding eighteen months.

- 3.8 All employees and directors meeting the qualifying conditions must be eligible to participate on similar terms. This does not mean that every participant must be allocated the same number of shares. A scheme may provide for the appropriation of shares to participants by reference to their levels of remuneration, their length of service or similar factors. Where levels of remuneration are used these should relate to basic remuneration. Any fluctuating emoluments must be excluded i.e. overtime, bonuses etc. Shift premium payments are treated as part of basic salary for this purpose. Where there is an appraisal scheme in operation for all employees in a company, and that scheme is considered by the Revenue Commissioners to be objective, non-discriminatory and in accordance with the "similar terms" provisions of the legislation, shares can be appropriated on the basis of the results of that appraisal scheme. The question of whether a scheme is open to all participants on similar terms can only be finally determined by reference to the rules of the particular scheme.
- 3.9 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 persons choosing not to participate.
- 3.10 The scheme must not allow shares to be appropriated to an individual at a particular time
- unless at that time or within the preceding eighteen months the individual was a director or employee of the company which has established the scheme, or, if the scheme is a group scheme, of a participating company, or
 - unless the shares were transferred to the Trustees of the scheme by the Trustees of an Employee Share Ownership Trust (ESOT) to which section 519 Taxes Consolidation Act 1997 applies and the individual is at that time, or was within the preceding 30 days, a beneficiary of that employee share ownership trust, or
 - if the individual has already had shares appropriated to him/her during the year under another approved profit sharing scheme established by
 - (a) the company concerned, or

(b) a company which *controls* or is controlled by that company or which is controlled by a company which also *controls* that company, or

(c) a company which is a member of a consortium owning that company or which is owned in part by that company as a member of a *consortium*,

unless any of the companies, as referred in (a) to (c) inclusive above, is taken-over by another company under a scheme for reconstruction or amalgamation (within the meaning of section 587 of the Taxes Consolidation Act 1997) and in this situation the *annual limit* applying to the aggregate value of the shares appropriated under both schemes cannot be exceeded, or

- if at that time, or at any time within the preceding twelve months, the individual had a *material interest* in a *close company* which is either the company whose shares are to be appropriated, or which has *control* of the company whose shares are to be appropriated, or is a member of a *consortium* which owns that company.

3.11 The individual must contract with the company

(a) to permit the shares to remain in the hands of the Trustees for the *period of retention*

(b) not to assign, charge or otherwise dispose of his/her beneficial interest in the shares during that period

(c) if the participant directs the Trustees to transfer the shares to him/her after the *period of retention* but before the *release date*, to pay to the Trustees before the transfer takes place, a sum equal to income tax at the *standard rate* on the *appropriate percentage* of the *locked-in value* of the shares at the time of the direction, and

(d) to agree not to direct the Trustees to dispose of his/her shares before the *release date* except by way of sale for the best consideration in money that can reasonably be obtained at the time of sale.

Conditions relating to the shares

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

(a) company which established the scheme, or

(b) a company which has *control* of the company concerned, or

(c) a company which either is or has *control* of a company which

- (i) is a member of a *consortium* owning either the company which established the scheme or a company having *control* of that company, and
 - (ii) beneficially owns not less than 15% of the ordinary share capital of the company so owned, or
- (d) a company which issued the shares to the trustees of an ESOT to which section 519 Taxes Consolidation Act 1997 applies in an exchange to which section 586 Taxes Consolidation Act 1997 applies, and which then transferred these shares to the trustees of the approved profit sharing scheme.

3.13 The shares must **not** be shares

- (a) in a service company, or
- (b) in a company that has control of a service company, where the company (the company that has control of the service company) is under the control of the same person(s) as that of the service company.

A service company is a company whose business is the provision of the services of persons employed by it and the majority of those services are provided to:

- a person or two or more persons who together control the company,
- an associated company, or
- an associated partnership.

A company is associated with another company where both companies are under the control (within the meaning of section 432 of the Taxes Consolidation Act 1997) of the same person or persons or where both companies act in pursuit of a common purpose, or where a person or persons with a reasonable commonality of identity have or had the power to determine the trading operations of both companies, or have control of the company.

An associated partnership means where the partnership and the service company act in pursuit of a common purpose.

A reference to a partnership includes a reference to a person. Where a partner or a partner together with other persons have control of a

company, then the partnership is to be treated as having control of that company.

3.14 The shares must be

- (a) 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 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 restrictions other than restrictions which attach to all shares of the same class.

The shares may be subject to a restriction which is imposed by the company's articles requiring directors and employees of the company or any other company controlled by that company to dispose of their shares when they cease to be directors or employees, and individuals who are not, or have ceased to be, such directors or employees to dispose of, on acquisition, shares which they have acquired in pursuance of rights or interests obtained by them.

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

3.15 Except where the scheme shares are in a company whose ordinary share capital, at the time of the acquisition of the shares by the Trustees, 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 concerned, or any other company and not in pursuance 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, or

- companies which have *control* of the company whose shares are in question or of which that company is an *associated company*, where the shares are not quoted on a recognised stock exchange but are shares in a company which is under the *control* of a company whose shares are quoted on a recognised stock exchange.

3.16 In certain limited circumstances and subject to certain conditions, 'specified securities' may be used. Specified securities are shares (other than ordinary shares) or debentures transferred by the trustees of an ESOT to the trustees of the approved profit sharing scheme and which were acquired by the trustees of the ESOT by way of an amalgamation to which section 586 of the Taxes Consolidation Act 1997 applies (including securities which replaced these securities as a result of a company reorganisation under section 584 of the Taxes Consolidation Act 1997 and any further securities acquired using dividends on the securities previously acquired).

Conditions relating to the trust

3.17 The Trustees must be independent of the company. Usually a corporate body is appointed as Trustee. However the Trustees can be individuals e.g. a director of the company, an employee representative and an independent third party. If the Trustees are individuals there must be a minimum number of three, one of which should be independent of the company.

3.18 The Trust must be resident in the State.

3.19 The trust instrument must contain provisions prohibiting the Trustees

- from disposing of any shares during the *period of retention* except in certain circumstances e.g. the disposal of shares in return for other shares or cash in a company take-over, amalgamation or a transaction which effects a new holding, and
- from disposing of any shares after the *period of retention* and before the *release date* except pursuant to a direction given by or on behalf of the participant. In addition the Trustees must be obliged to

dispose of the shares only for the best consideration in money that can reasonably be obtained.

3.20 The Trustees must be required by the trust instrument to:

- notify each participant, in writing, as soon as possible after the appropriation of the
 - (a) number,
 - (b) description, and
 - (c) initial market value of the shares which have been allocated to the participant
- pay over to the participant any money or money's worth including dividends or other income received by them for or by reference to the participant's shares except where
 - (a) the participant instructs the Trustees to use the funds arising from the sale of rights arising under a rights issue in the acquisition of additional shares, stock, securities etc., or
 - (b) the money consists of a sum equivalent to income tax at the *standard rate* on the *appropriate percentage* of the *locked-in value* of the shares where a participant directs the Trustees to transfer ownership of the shares to him/her at any time after the *period of retention* and before the *release date*, or
 - (c) the money's worth consists of new shares arising from a reconstruction or amalgamation
- deal only with a direction given by or on behalf of the participant in relation to any rights conferred in respect of his/her shares to be allocated other shares, securities or rights of any description
- maintain such records as may be necessary to carry out their obligations under the scheme, and
- inform a participant of any facts in relation to the calculation of any liability to income tax under Schedule E he/she may have in respect of the shares.

4. APPROPRIATION OF SHARES

- 4.1 Under an approved profit sharing scheme sums paid to the Trustees by the participating companies are used to acquire qualifying shares for allocation to participants and to meet the operating costs of the scheme. The Trustees can acquire shares
- by purchase from existing holders, including participants in the scheme, or
 - by subscription for newly issued shares, or
 - by way of gift, or
 - by way of rights or bonus issue for shares which they have acquired but not yet allocated to participants.
- 4.2 The initial market value of shares allocated to any one participant in any year of assessment must not exceed the *annual limit*. The initial market value of a share is its *market value* at the date of allocation or if the Revenue Commissioners and the Trustees agree in writing, on or by reference to such earlier agreed date. This date must be within 30 days of the allocation date.
- 4.3 If the shares being used in the scheme are quoted on a recognised stock exchange, the rules may provide for the initial market value to be determined by reference to the quoted price. The NASDAQ is regarded as a recognised stock exchange for the purposes of the legislation.
- 4.4 If shares are purchased over a number of days, not exceeding 30 days, the average price of the shares can be used as the initial market value if the Revenue Commissioners and the Trustees agree in writing.
- 4.5 If the shares to be used in the scheme are not quoted, the initial market value of the shares must be agreed with the Revenue Commissioners before any allocation of shares. The following information should be submitted to enable the Revenue Commissioners to agree a valuation:
- a copy of the company accounts for the last three financial years ending prior to the date of allocation 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
- an estimate of the number of shares to be appropriated on the relevant appropriation date and the number of participants who will participate in the scheme on that occasion.

5. DISPOSAL OF SHARES

Income Tax

- 5.1 A participant in an approved profit sharing scheme may not normally sell or transfer any scheme shares during the *period of retention*. If shares are sold or transferred after the *period of retention* and before the *release date*, the participant will be liable to income tax on the *appropriate percentage* of the lesser of the *locked-in value* of the shares and the disposal proceeds. The disposal proceeds are the sum received by the participant after taking into account any incidental costs of the sale.
- 5.2 Shares can be allocated to participants at different times. Where there is a disposal from a holding which comprises shares allocated at different times, the disposal is treated as being of shares which were allocated earlier before those which were allocated later. This overrides any specific direction given by a participant to the Trustees.
- 5.3 If the shares are disposed of otherwise than at arm's length the *market value* of the shares disposed of will be substituted for the amount of the sale proceeds for the purpose of calculating the charge to tax.
- 5.4 There is no disposal of a participant's shares on the vesting of the beneficial interest in any person on the insolvency of the participant or otherwise by the operation of the law of the State.
- 5.5 If a participant dies while the Trustees are holding scheme shares on his/her behalf, the *period of retention* immediately comes to an end even if the shares have been held for less than two years. The participant's personal representatives can sell or transfer the shares and no income tax is payable.

- 5.6 Where a participant ceases to be an employee or director by reason of injury, disability or redundancy or when the participant reaches State pension age (currently 66 years) he/she may sell or transfer the scheme shares immediately even if the shares have been held for less than two years. The participant will be liable to income tax if the disposal or transfer takes place before the *release date* but the amount charged to income tax is reduced to 50% of the *locked-in value*.
- 5.7 After the *period of retention* and before the *release date*, a participant may direct the Trustees to transfer the shares to him/her. However the participant must pay to the Trustees, before the transfer takes place, a sum equal to income tax at the *standard rate* on the *appropriate percentage* of the *locked-in value* of the shares at the time of direction.

Capital Gains Tax

- 5.8 The normal capital gains tax rules will apply. The base cost for capital gains tax purposes is the initial market value of the shares at the date they are appropriated to the participant.
- 5.9 Where the shares to be disposed of are shares which the participant received through his participation in an approved employee share ownership trust within the meaning of section 519 Taxes Consolidation Act 1997, the capital gains tax arising on the disposal will be calculated by reference to the disposal proceeds less the *market value* of the shares when they could have first been transferred to the approved profit sharing scheme under the terms of the employee share ownership trust or any other document.

6. CAPITAL RECEIPTS

- 6.1 During the period that the participant's shares are held by the Trustees, the participant may become entitled to receive money or money's worth in respect of the shares. These sums are described as capital receipts. The term does not include money or money's worth to the extent that it
- constitutes income in the hands of the participant for the purposes of income tax, or
 - consists of the proceeds of a disposal of scheme shares, or
 - consists of qualifying new shares in a company reconstruction etc., or
 - consists of the proceeds of disposal of part of the rights arising under a rights issue if these proceeds are used to exercise other such rights.
- 6.2 The amount charged to tax is the *appropriate percentage* of the amount the participant receives. If the amount or value of the capital receipt exceeds the *locked-in value* of the relevant shares the charge to tax is restricted to the *appropriate percentage* of the *locked-in value* of the shares immediately before the entitlement. Immediately after a participant has become entitled to a capital receipt which is chargeable to tax the *locked-in value* of the shares giving rise to that entitlement is reduced by the amount of the capital receipt charged to tax.
- 6.3 There is no charge on a capital receipt where the entitlement arises after a participant's death, or the amount or value of the receipt does not exceed €13.

7. COMPANY RECONSTRUCTIONS

- 7.1 While scheme shares are held by the Trustees the shares may be the subject of a bonus or rights issue or a share exchange or the company may reorganise or reduce its share capital or may be subject to an amalgamation or a successful take-over offer. The legislation provides that a participant may instruct the Trustees to dispose of his/her shares during the *period of retention* in return for new shares, securities or cash in a company take-over or amalgamation. Any new shares or securities issued stand in the place of the original shares and are dealt with by the Trustees in the same way as the original shares.
- 7.2 These provisions do not apply where there is a bonus issue followed by a repayment of capital within the meaning of section 131(2) Taxes Consolidation Act, 1997, or there is a charge to tax under section 130(2)(c) or section 132(2) Taxes Consolidation Act, 1997.
- 7.3 Shares issued in lieu of dividends are subject to income tax. Such shares arising on scheme shares must be passed by the Trustees to the relevant participants.
- 7.4 Where there is a transaction in relation to any of a participant's shares which, for capital gains tax purposes, results in a new holding being equated with an original holding the transaction is treated as not involving a disposal of the shares comprised in the original holding, and the date on which any new shares are to be treated as having been allocated to the participant is the date on which the original shares were allocated.
- 7.5 When scheme shares are disposed of the participant is liable to income tax on the *appropriate percentage* of the *locked-in value* of the shares. When there is a company reconstruction which involves the exchange of shares it is necessary to apportion the *locked-in value* of the old corresponding shares among the new shares. The steps to be taken are
- ascertain the total *locked-in value*, before the reconstruction, of the old corresponding shares which have the same *locked-in value* as each other, and

- distribute that *locked-in value* among any of the old shares, and the new shares, pro rata, according to their *market value* immediately after the reconstruction. Any subsequent income tax charged in respect of the shares in the new holding will be by reference to their *locked-in value* immediately after the reconstruction.
- 7.6 When, as part of a company reconstruction, the Trustees become entitled to a capital receipt in addition to new shares, the necessary adjustment to the *locked-in value* of the corresponding shares in respect of the capital receipt must be made before the *locked-in value* of the new shares is calculated. In other words, because the income tax charge on the capital receipt will reduce the value of the corresponding shares, the *locked-in value* of the new shares will be determined by reference to that reduced amount.
- 7.7 The transaction referred to in paragraph 7.4 relates to reconstructions as a result of which the participant receives new shares or securities in exchange for existing shares. The legislation also provides that a participant may instruct the Trustees to dispose of his/her shares during the *period of retention* in return for cash. If a cash offer for shares is accepted, this is a disposal by the participant and the Trustees must pass the cash to the participant.
- 7.8 If as a result of a take-over a participant receives both new shares and cash for an original holding of scheme shares the rules set out in paragraph 7.4 will apply to the new shares and the rules set out in paragraph 7.7 will apply to the cash.
- 7.9 If however the take-over offer allows for the exchange of shares for cash only, on application, the Revenue Commissioners may agree to apply the relieving provisions in paragraph 7.4 if the scheme will be continued by the new company, all the cash is retained by the Trustees and not passed to the participants and the total sums are invested by the Trustees in shares in the new company without delay.

- 7.10 A rights issue is a company reconstruction but there are special rules for participants who wish to exercise their rights. If a participant directs the Trustees to take up all or any of the entitlement to a rights issue, it is necessary to ensure, that when the shares which are subject to the rights issue are disposed of, the participant gets credit in calculating the charge to tax for any money paid to acquire the additional shares. The rule is that, if at any time before disposing of the scheme shares, a participant has made a payment to acquire shares on a rights issue, the calculation made to determine whether the proceeds of the disposal are less than the acquisition cost will take into account the payments made by the participant. This is achieved by reducing the proceeds of the disposal by the proportion of the amounts paid by the participant which the *market value* of the shares disposed of bears to the *market value* of the participant's total holding of scheme shares at the time of disposal. Shares acquired under a rights issue must be held by the Trustees in the same way as the original shares. The new shares are allocated on a pro-rata basis among the existing appropriations of scheme shares. The total *locked-in value* of each share is reduced.
- 7.11 There is no charge to income tax on the proceeds from the sale of some of the rights arising under a rights issue to the extent that the Trustees, at the direction of the participant, use these proceeds to take up the balance of the rights.

8. EXCESS OR UNAUTHORISED SHARES

- 8.1. Where the total of the initial market values of all shares appropriated to an individual in any one year of assessment exceeds the *annual limit*, the shares which cause the limit to be exceeded are excess shares. In the rare event of simultaneous allocations under more than one approved scheme, the rule is that the same proportion of shares under each scheme is to be regarded as excess shares. Shares allocated to an individual at a time when that individual is not eligible to participate in a scheme are unauthorised shares.
- 8.2. Excess or unauthorised shares are treated differently for tax purposes than other shares. The *locked-in value* of such shares at any time (e.g. when they are disposed of) is their *market value* at that time. The initial market value and the effect of any capital receipts which are normally deductible in computing *locked-in value* are disregarded. The *appropriate percentage* is always 100%. The effect of this is that when excess or unauthorised shares are disposed of, the whole of the proceeds of sale or the *market value* of the shares, if it is not an arm's length sale, are chargeable to income tax at the time of disposal. Excess or unauthorised shares still held at the *release date* or the date of the participant's death are treated as having been disposed of, immediately before that date, at their *market value* at that time.
- 8.3. When a participant who has been allocated excess or unauthorised shares disposes of some shares, he/she is treated as disposing of shares which are not excess or unauthorised shares before shares which are. This is subject to the first-in-first-out identification rule and overrides any direction given to the Trustees by a participant.

9. ALTERATIONS TO A SCHEME

- 9.1 Approval of a scheme will cease automatically if an alteration is made to the terms of an approved scheme or to its Trust Deed, unless the alteration has been approved by the Revenue Commissioners. The Employee Share Scheme Section must be consulted in advance on proposed changes and the agreed alteration can then be made, subject to the approval of the Revenue Commissioners.
- 9.2 There is a right of appeal to the Appeal Commissioners where the Revenue Commissioners fail to approve an alteration to a scheme.

10. WITHDRAWAL OF APPROVAL

- 10.1 Approval may be withdrawn from a scheme at any time if
- a participant is in breach of his/her obligations as set out in paragraph 3.11 (a), (c) and (d) above, or
 - there is, in the operation of the scheme, any contravention of any of the provisions of the profit sharing legislation, the scheme itself or the terms of the scheme trust including the failure to submit the annual return of information or to provide the information considered necessary by the Revenue Commissioners to enable them to perform their functions under the legislation, or
 - any of the conditions relating to the shares cease to be met, or
 - any of the conditions relating to the participants cease to be met.
- 10.2 There is a right of appeal to the Appeal Commissioners against the withdrawal of approval.

11. THE APPROVED SCHEME RETURN

- 11.1 The Revenue Commissioners have power to call for such information as they think necessary for the administration of the profit sharing legislation. However each participant is responsible to return in his/her annual tax return details of any share allocations, dividends, capital receipts, bonus issues/rights issues, share disposals etc. in the normal way.
- 11.2 Trustees of an approved profit sharing scheme are required to make an annual return to the Revenue Commissioners, Employee Share Scheme Section. A guide to the completion of the annual Return of Information is shown in Appendix 4.
- 11.3 If at any time after a scheme has been approved any person fails to provide information requested by the Revenue Commissioners or to submit the annual Return of Information, approval of the scheme may be withdrawn with effect from that time or from such later time as the Revenue Commissioners may specify.
- 11.4 Failure to comply with any request by the Revenue Commissioners to provide information or to submit the annual Return of Information may render the person liable to penalties.

12. THE PROFIT SHARING TRUST

- 12.1 For tax purposes the Trustees of a profit sharing trust are under the same obligations as any other Trustees to account for income tax at the *standard rate* on any income arising to the Trust, to account for any capital gains tax arising on any disposals out of the Trust and to account for any other tax properly payable.
- 12.2 However, where the Trustees, within a period of eighteen months beginning with the date of acquisition of the shares, allocate the shares in accordance with the scheme the surcharge under section 805 Taxes Consolidation Act, 1997 will not apply to the dividends on those shares and any gain accruing to the Trustees on the allocation of those shares will not be a chargeable gain.

APPENDIX 1 - DEFINITIONS

Annual limit

The total initial market value of the shares to be appropriated to any one participant in a year of assessment cannot exceed:

- (c) €12,700 in any one year of assessment, or
- (d) €38,100 where the shares concerned were transferred to the Trustees of the approved scheme by the Trustees of an employee share ownership trust within the meaning of section 519 Taxes Consolidation Act, 1997, and the following conditions are satisfied:
 - (i) at each time in the 5 years or such lesser period as the Minister for Finance may prescribe, commencing with the date of the establishment of the employee share ownership trust 50%, or such lesser percentage as the Minister for Finance may prescribe, of the securities retained by the Trustees at the time they were pledged by them as security for borrowings,
 - (ii) at the time of the transfer referred to in (i) a period of at least 10 years (or such lesser period (not being less than the period referred to in (i)) as the Revenue Commissioners may allow) commencing on the date the employee share ownership trust was established and ending at the time when all shares pledged as security for borrowings by the Trustees of the employee share ownership trust became unpledged (encumbered period) has elapsed, and
 - (iii) no shares which were pledged, at any time since the Trust was established, as security for borrowings by the Trustees of

the employee share ownership trust were previously transferred to the Trustees of the approved scheme because they remained so pledged during the encumbered period.

This €38,100 limit may only be applied in the first year of assessment during which the encumbered period has lapsed and only in respect of shares appropriated after that date.

Appropriate percentage For the purposes of charging an individual to income tax by reason of the occurrence of an event the appropriate percentage is, if the event occurs before the third anniversary of the date on which the shares were appropriated, 100%. However, if at the time of the event the participant has ceased to be an employee or director of a relevant company by reason of injury or disability or on account of dismissal by reason of redundancy, within the meaning of the Redundancy Payments Act, 1967 to 1991 or has reached pensionable age, as defined in the Social Welfare Consolidation Act, 2005 (currently 66 years) the relevant percentage is reduced to 50%.

Associated company An associated company as defined in section 432 Taxes Consolidation Act, 1997.

Close company A close company as defined in section 430 Taxes Consolidation Act, 1997.

Consortium A company is a member of a consortium owning another company if it is one of not more than 5 companies which between them beneficially own not less than 75% of the other company's ordinary share capital and each of which beneficially owns not less than 5% of that capital.

<i>Control</i>	Control as defined in section 432 Taxes Consolidation Act, 1997.
<i>Locked-in value</i>	<p>The locked-in value of any participant's shares at any time is generally the initial market value of the shares. However,</p> <p>(a) if prior to that time the participant has become chargeable to income tax in respect of any capital receipt in respect of those shares, the locked-in value of the shares is the amount by which their initial market value exceeds the amount of all those capital receipts</p> <p>(b) if the proceeds of a disposal are less than the locked-in value of the shares at the time of disposal, the locked-in value is reduced to an amount equal to the proceeds of the disposal.</p>
<i>Market value</i>	This is the value of a share as defined in section 548 Taxes Consolidation Act, 1997.
<i>Material interest</i>	An individual has a material interest in a close company if he/she, either on his/her own or with any one or more of his/her associates, or if any associate of his/hers with or without any such other associate, is the beneficial owner of, or is able, directly or through the medium of other companies or by any other indirect means, to <i>control</i> more than 15% of the ordinary share capital of the company.
<i>Period of Retention</i>	<p>This is the minimum period during which a participant's shares must remain with the trustees of the scheme. It is defined in the legislation as being, in relation to any participant's shares, the period beginning on the date on which the shares are appropriated to a participant and ending on the earliest of the following dates:</p> <ul style="list-style-type: none"> ▪ the second anniversary of that date, or

- the date on which the participant ceases to be an employee or director of the company operating the scheme (or of a participating company if the scheme is a group scheme) by reason of injury, disability or redundancy within the meaning of the Redundancy Payments Act, 1967 to 1991, or
- the date on which the participant reaches pensionable age, as defined in the Social Welfare Consolidation Act 2005, or
- the date of the participant's death, or
- where the shares concerned were transferred to the Trustees of the approved scheme by the Trustees of an employee share ownership trust within the meaning of section 519 Taxes Consolidation Act, 1997, and
 - (a)(i) immediately prior to the transfer the shares had been held in that employee share ownership trust for a period of less than 2 years, and
 - (ii) the participant concerned was a beneficiary under that employee share ownership trust at all times during the period ending on the date on which the shares were appropriated to him/her, the day following the day on which a period, being a period equivalent in length to the difference between 2 years and the length of the period for which the shares had been so held, has elapsed since the shares were so appropriated to him/her, or
 - (b) (i) immediately prior to the transfer the shares had been held in that employee share ownership trust for a period of 2 years or more, and
 - (ii) the participant concerned was a beneficiary under that employee share ownership trust at all times during the

period ending on the date on which the shares were appropriated to him/her, the day following the day on which the shares are appropriated to him/her, or

(c)(i) immediately prior to the transfer the shares had been held in that employee share ownership trust for a period of not less than 3 years, and

(ii) the participant concerned was a beneficiary under that employee share ownership trust at all times during the 3 years ending on the date on which the shares were appropriated to him/her,

the day following the day on which the shares are appropriated to him/her.

Release Date

In relation to a participant's shares means

- the third anniversary of the date on which the shares were appropriated to a participant, or
- where the shares concerned were transferred to the Trustees of the approved scheme by the Trustees of an employee share ownership trust within the meaning of section 519 Taxes Consolidation Act, 1997, and

(a)(i) immediately prior to the transfer the shares had been held in that employee share ownership trust for a period of less than 3 years, and

(ii) the participant concerned was a beneficiary under that employee share ownership trust at all times during the period ending on the date on which the

shares were appropriated to him/her,

the day following the day on which a period, being a period equivalent in length to the difference between 3 years and the length of the period for which the shares had been so held, has elapsed since the shares were so appropriated to him/her, or

(b)(i) immediately prior to the transfer the shares had been held in that employee share ownership trust for a period of not less than 3 years, and

(ii) the participant concerned was a beneficiary under that employee share ownership trust at all times during the 3 years ending on the date on which the shares were appropriated to him/her,

the day following the day on which the shares are appropriated to him/her.

Standard Rate

The standard rate of tax is currently 20%.

APPENDIX 2 – BASIS OF ENTITLEMENT GUIDELINES

BONUSES

Certain bonuses may be used for the purposes of a scheme (i.e. to fund the purchase of shares for appropriation to participants and to form the basis of entitlement of benefits of participants under the scheme).

Fixed bonuses

A fixed bonus is as a bonus to which an employee has a contractual entitlement (written or implied), for example, a fixed amount of bonus provided for under an employee's contract of employment. Fixed bonuses **cannot** be used for the purposes of an approved profit sharing scheme.

Discretionary bonuses

A discretionary bonus is a bonus where both the payment and the amount are determined at the discretion of the employer and the employee does not have a contractual right (written or implied) to the bonus. The Revenue Commissioners are prepared to accept that, for this purpose, an employee will not be treated as having a contractual right to a bonus solely because the bonus becomes payable on specified performance criteria being met under a company performance scheme/individual performance appraisal scheme.

The Revenue Commissioners are prepared to allow discretionary bonuses to be used by a company for the purposes of an approved profit sharing scheme, where they are available to all eligible employees. In the case of discretionary bonuses payable under individual performance appraisal schemes, the Revenue Commissioners must be satisfied that the scheme is objective, non-discriminatory, applicable to all participants and in accordance with the 'similar terms' provisions of the approved profit sharing scheme legislation. This can only be determined by reference to the particular facts of each case. Where a company intends using discretionary bonuses for the purposes of a scheme, full particulars (including copies of all appraisal forms used in the case of individual performance appraisal schemes) must be sent to Employee Share Scheme Section when application for approval of a scheme, or application for approval of amendment to an existing scheme, as the case may be, is being made.

Sales commission

Where a company operates a sales commission payment scheme for sales staff and a separate discretionary bonus payment scheme for non-sales staff, Revenue Commissioners are prepared to allow a company to use sales commission commensurate with the general level of discretionary bonus payable to other employees for the purposes of an approved profit sharing scheme.

Example 1

Discretionary bonus payable to non-sales staff under a performance appraisal scheme 0- 5%. Sales Commission payable to sales staff under a performance appraisal scheme 0-20%.

Non-sales employee received 5% bonus Sales employee received 20% sales commission.

Lowest common percentage is 5%.

Maximum amount that can be invested in APPROVED PROFIT SHARING SCHEME is to be determined using the formula:

$$\text{Lowest maximum common denominator} \times \frac{\text{Bonus \%}}{\text{Maximum bonus \%}}$$

$$\text{Non-sales employee can invest: } 5 \times \frac{5}{5} = 5\%$$

$$\text{Sales employee can invest: } 5 \times \frac{20}{20} = 5\%$$

Example 2

Discretionary bonus payable to non-sales staff under a performance appraisal scheme 0- 5%. Sales Commission payable to sales staff under a performance appraisal scheme 0-20%.

Non-sales employee received 5% bonus.

Sales employee received 10% sales commission.

Lowest common percentage is 5%.

Maximum amount that can be invested in the Approved Profit Sharing Scheme is to be determined using the formula:

$$\frac{\text{Lowest maximum common denominator} \times \text{Bonus \%}}{\text{Maximum bonus \%}}$$

$$\text{Non-sales employee can invest: } 5 \times \frac{5}{5} = 5\%$$

$$\text{Sales employee can invest: } 5 \times \frac{10}{20} = 2.5\%$$

Where a company intends using sales commission for the purposes of a scheme, full particulars must be sent to Employee Share Scheme Section, when application for approval of the scheme, or application for approval of an amendment to an existing scheme, as the case may be, is being made.

Team bonuses

Revenue Commissioners are prepared to allow team bonuses to be used for the purposes of an approved profit sharing scheme, where Revenue Commissioners are satisfied that:

- The team bonus is not a fixed bonus,
- The team performance measures are based on business results or other objective tests,
- Where there are different teams with different targets, the measurement of the achievement of those targets and the ratings applied to the achievements are comparable, and
- There are equal opportunities for all teams.

The above guidelines are general. Revenue Commissioners must be satisfied that the basis of entitlement of benefits under the scheme is in accordance with the 'similar terms' provisions of the approved profit sharing scheme legislation. This can only be determined by reference to the particular facts of each case. Where a company intends using team bonuses for the purposes of a scheme, full particulars must be sent to Employee Share Scheme Section, when application for approval of the scheme, or application for approval of amendment to an existing scheme, as the case may be, is being made.

Different bonus dates

In accordance with the legislation on approved profit sharing schemes, the Revenue Commissioners must be satisfied that **at any time** (*i.e. at each appropriation date*) every eligible employee must be allowed to participate in the scheme on similar terms.

Where a company operates different bonus dates for different groups of employees and directors and where the bonus is used as a basis of entitlement under an approved profit sharing scheme, all appropriations must take place on the same date. This is to ensure that the similar terms rule is complied with.

SALARY FORGONE

While each scheme will be considered by reference to its own particular rules the following guidelines should be followed in setting up a scheme which includes a salary forgone provision:

- salary forgone must form only a subsidiary element of the overall scheme
- salary forgone must be optional for each participant
- the maximum amount of salary that may be forgone is 7½% of basic salary
- where it is intended to include a provision for a minimum amount of salary to be forgone, that minimum amount cannot exceed the lesser of €127 or 1% of basic salary
- where varying percentages are included in a scheme the same choice must be given to all participants, and
- in respect of each participant there must be at least a 1:1 ratio between the shares funded by the monies provided by the company and the shares appropriated in lieu of salary forgone.

Practical operation of Salary Forgone

- salary forgone can only be operated, in a scheme, in a year in which there is a company contribution to the scheme
- shares appropriated in lieu of salary forgone should be appropriated at the same time as shares funded by other monies provided by the company

Salary forgone and carry forward of contributions

Salary forgone can only be operated, in an approved profit sharing scheme in a year in which there is a company contribution to the scheme. In general, shares appropriated in lieu of salary forgone should be appropriated at the same time as shares funded by other monies provided by the company

In exceptional circumstances, where it is not possible to appropriate shares in lieu of salary forgone at the same time as shares funded by monies provided by the company, the following procedure may apply:

- monies to be used for shares in lieu of salary forgone may be deducted from a participant's salary over a period of time and used to purchase shares at a time after shares funded with monies by the company are appropriated, provided this is done within the **same tax year**,
- in no circumstances may shares in lieu of salary forgone be appropriated prior to shares funded by monies provided by the company in any **tax year**;
- the value of shares appropriated in lieu of salary forgone must not exceed the relevant limits (see page 35),
- the value of shares appropriated in lieu of salary forgone must not exceed the value of shares funded by other monies provided by the company in that **tax year**, and
- the number of shares appropriated in lieu of salary forgone must not exceed the number of shares appropriated from monies provided by the company.

CONTRIBUTORY SCHEMES

A "contributory" element may be included in an approved profit sharing scheme. This is where participants are required by their employer company to purchase shares out of their own resources in order to receive free shares under a scheme. As is the case in a scheme providing for salary forgone each scheme will be considered by reference to its own particular rules. However, the following guidelines should be followed in setting up a "Contributory" Scheme:

- the "contributory" amount must form only a subsidiary element of the overall scheme
- the maximum amount of shares purchased by the participant out of his/her own resources cannot exceed 7½% of basic salary
- where it is intended to include a minimum amount in respect of a participant's contribution that minimum amount cannot exceed the lesser of €127 or 1% of basic salary
- each participant must receive at least 1 free share for each share purchased, and
- while the "purchased" shares do not form part of an approved profit sharing scheme they must be retained for the employee by Nominees/Trustees for a minimum period of two years.

Contributory schemes - carry forward of contributions

Where a contributory scheme operates, the employee/director's contribution is generally deducted from his/her net salary on a monthly basis. Where the amount of the participant's contributions (against which the company will give matching shares) is not sufficient to purchase a number of whole shares, the Revenue Commissioners are prepared to allow the carrying forward of surplus amounts within the **same tax year** where the aggregate contributions are insufficient to purchase a whole number of shares on a particular appropriation date. The following conditions will apply:

- the surplus contributions carried forward when added to the normal monthly contribution cannot exceed the maximum allowable monthly contribution (the maximum allowable contribution will be specified in the rules of the approved profit sharing scheme, but, bearing in mind that there must be at least a 1:1 ratio between the number of free shares appropriated under the approved profit sharing scheme and the number of shares purchased by the participant, the maximum monthly contribution cannot in any event exceed €529.16),
- the monthly contributions must be fixed at the beginning of the year and cannot be varied from month to month, and
- the participant must agree to the carrying forward of the contributions.

The approval of "Contributory" Schemes is concessional. Schemes with this element included will be monitored as part of the normal annual return process and the concession is subject to review.

APPENDIX 3

Specimen Scheme Rules and Form of Acceptance and Agreement and Contract of Participation

General Notes

A specimen set of Rules designed to meet the requirements for approval under Chapter 1 of Part 17, Taxes Consolidation Act, 1997 and Schedule 11 of that Act is 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 documents 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.

A specimen Form of Acceptance and Agreement and Contract of Participation which may be used in operating a scheme is also attached. Companies will wish to consider carefully their plans for communicating, both at the outset of the scheme and subsequently, with employees generally and with scheme participants in particular.

1. Definitions

In these Rules and in the Trust Deed:

1.1 The following words and expressions shall have the following meanings:

“Act”	the Taxes Consolidation Act, 1997
“Appropriate Percentage”	the percentage of the Locked-in Value of a Participant’s shares chargeable to income tax under Schedule E computed in accordance with Section 511(3) of the Act
“Appropriation Date”	the date in relation to any year on which Shares are appropriated to a Participant pursuant to the Scheme
“Approved Scheme”	a profit sharing Scheme approved by the Revenue Commissioners for the purposes of Chapter 1 of Part 17 of the Act and Schedule 11 thereof
“Auditors”	the Auditors for the time being of the Company or in the event of there being joint Auditors such one of them as the Company shall select
“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
“The Board”	the Board of Directors of the Company or a duly constituted committee thereof
“Capital Receipt”	the meaning given to that expression by Section 513 of the Act

"Company"	[]
"Director"	a director for the time being of the Company
"Eligible Employee"	<p>at any Invitation Date any person who:</p> <ul style="list-style-type: none"> (i)(a) is an employee of a Participating Company, including a full-time director (b) is chargeable to tax under Schedule E in respect of that employment, and (c) at any Appropriation Date will have been such an employee of the Participating Company continuously for a period of [] ending on the Appropriation Date and for this purpose service with a Subsidiary which is a Participating Company shall be treated as service with the Participating Company, or <p>(ii) is any other employee of a Participating Company, including a full-time director, who has a contract of employment and has been nominated by the Directors for participation in the Scheme</p> <p>provided that such person is not ineligible to become a Participant by virtue of the provisions of Part 4 of Schedule 11 of the Act</p>
"Entitlement"	the amount of each Eligible Employee's entitlement as may be determined in accordance with Rule 3 or on such other basis as may, from time to time, be agreed in writing with the Revenue Commissioners

"Initial Market Value"	the market value of a share (calculated in accordance with section 548 of the Act) on the date on which the shares are appropriated, or on such earlier date(s) as has been agreed in writing with the Revenue Commissioners pursuant to Section 510(2)(b) of the Act
"Invitation Date"	the date on which the Company advises each Eligible Employee of his/her Entitlement under the Scheme and asks whether he wishes to be a Participant
"Locked-in Value"	the meaning given to that expression by Section 512(1) of the Act
"New Shares"	the meaning given to that expression by Section 514(1) of the Act
"Participant"	an Eligible Employee who has elected to participate and is appropriated Shares in the Scheme
"Participating Company"	any company being the Company or a Subsidiary which is for the time being bound by the provisions of the Trust Deed other than in its capacity as Trustee hereof
"Period of Retention"	the meaning given to that expression by Section 511(1)(a) of the Act
"Release Date"	the meaning given to that expression by Section 511(2) of the Act
"Rules"	these rules with, and subject to, any modifications, alterations, amendments or extensions hereto for the time being in force

“Scheme”	means the [] constituted by this Trust Deed and Rules
“Scheme Shares”	any Share or other security in the Company which has been appropriated under the Scheme and is for the time being held by the Trustees on behalf of a Participant
“Shares”	fully paid ordinary shares of the Company which comply with the provisions of Part 3 of Schedule 11 of the Act and where the context requires shall refer to a single share
“Subsidiary”	any subsidiary of the Company which is controlled by the Company, control being construed in accordance with Section 432 of the Act
“Trust Deed”	the trust deed constituting the Scheme with any modifications and variations thereto for the time being in force
“Trustees”	the trustee or trustees for the time being of the Scheme
“Year”	an accounting reference period of the Company used for the purposes of calculating the benefits (if any) payable under the Profit Sharing Scheme
“Year of Assessment”	the meaning given to that expression by Section 2(1) of the Act.

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. Conditions of participation

- 2.1 As soon as practicable after the end of the Year, the Company shall identify all Eligible Employees who are not then participating in the Scheme and all employees who at the next Appropriation Date are expected to be Eligible Employees and shall communicate in writing with each person advising him of his Entitlement and asking whether he wishes to be a Participant.

- 2.2 Those Eligible Employees who wish to participate in the Scheme shall within a period of fourteen days after receipt of the notification referred to above, or such other period as the Company shall allow, return to the Company a form of acceptance and a contract of participation duly signed agreeing the terms and conditions set out therein.

- 2.3 The contract shall be addressed to the Directors and the Trustees and shall be signed by the Eligible Employee and returned to the Directors. An Eligible Employee shall not be entitled to an appropriation of Scheme Shares unless he has completed a contract on/before the Appropriation Date which is binding in respect of the relevant Appropriation Date.

- 2.4 A signed contract shall bind the Eligible Employee in contract with the Company and the Trustees:

- (i) to permit his Scheme Shares to remain in the hands of the Trustees throughout the Period of Retention
- (ii) not to assign, charge or otherwise dispose of the beneficial interest in his Scheme Shares during that period
- (iii) if he directs the Trustees to transfer the ownership of his Scheme Shares to him at any time before the Release Date, to pay to the Trustees before the transfer takes place a sum equal to income tax at the standard rate on the Appropriate Percentage of the Locked-in Value of the Scheme Shares at the time of direction, and

- (iv) not to direct the Trustees to dispose of his Shares at any time before the Release Date in any other way except by sale for the best consideration in money that can reasonably be obtained at the time of sale.

3. Allocation of funds, acquisition and appropriation of Shares

3.1 Each Participating Company shall on or before each Appropriation Date pay to the Trustees the aggregate of the amounts due following the completion and return of contracts in accordance with Rule 2 by such Eligible Employees employed by it.

3.2 As soon as reasonably practicable after the receipt from the Participating Companies of the amounts referred to in Rule 3.1 above the Trustees will apply the aggregate of such amounts in the acquisition of Shares for appropriation to such Eligible Employees. The Shares so acquired for appropriation shall be appropriated to each such Eligible Employee on the basis that the aggregate Initial Market Value of the Shares appropriated to him is as nearly as possible equal to, but not more than, the amount of his Entitlement that has been paid to the Trustees. The aggregate Initial Market Value of shares that may be appropriated to any one Participant in any one Year of Assessment shall not exceed the amount, for the time being, specified in Paragraph 3(4) of Part 2 of Schedule 11 of the Act.

3.3 The Entitlement of each Eligible Employee under the Scheme shall be such amount as the Board shall determine expressed as:

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

provided that in any year of assessment the basis of calculation of entitlement of each Eligible Employee shall be the same.

(In the context of this Rule "period of service" shall mean a complete year or such other complete period as may from time to time be specified, of continuous service as an employee of the Company and/or any Subsidiary.)

(B) In any year in which there is an entitlement under (A) above and that entitlement is taken in Shares, a Participant may forgo salary up to the amount of his Entitlement under (A) above taken in Shares provided that the amount forgone does not exceed 7½% of Basic Salary and provided further that the aggregate of the Initial Market Values of the Shares acquired under (A) and (B) does not exceed the amount, for the time being, specified in Paragraph 3(4) of Part 2 of Schedule 11 of the Act.

3.4 Where the Trustees are unable to purchase sufficient Shares to satisfy in full appropriations pursuant to Rule 3.2 the Trustees shall reduce the appropriation pro-rata.

3.5 In the event that a portion of the Shares acquired by the Trustees carries any right not attaching to all such Shares, the Trustees shall appropriate those Shares among Eligible Employees as nearly as possible in the same proportions as provided in Rule 3.2 above.

3.6 As soon as practicable after any Scheme Shares have been appropriated by the Trustees to a Participant in accordance with the Rules, the Trustees shall give the Participant notice in writing of the appropriation specifying the number and description of Scheme Shares appropriated, their Initial Market Value and the date on which such Scheme Shares were appropriated.

3.7 The Trustees shall sell any Shares which they do not appropriate on an Appropriation Date under this Rule within eighteen months of the date of acquisition for the best consideration in money reasonably obtainable at the time and retain the net proceeds of sale in accordance with Clause [] of the Trust Deed.

4. Limitations upon numbers of Shares available for appropriation

- 4.1 No issue of Shares shall be made which would result in more than [] Shares in total being issued under this Scheme and any other scheme for the acquisition of Shares by employees.
- 4.2 No issue of Shares shall be made which would result in more than [] Shares in total being issued in any one year under this Scheme or any other scheme for the acquisition of shares by employees.
- 4.3 The limits specified in Rule 4.1 and Rule 4.2 and, if appropriate, the Market Value of the Shares shall be adjusted in such manner as the Auditors shall consider fair and reasonable to take account of any issue by way of capitalisation of reserves, any rights issue or any sub-division, consolidation or reduction of share capital.

5. Conditions of retention and disposal

- 5.1 Scheme Shares shall subject as hereinafter provided in this Rule be held by the Trustees until the date on which the Participant concerned directs the Trustees:
- 5.1.1 to sell his Scheme Shares, or
- 5.1.2 to transfer the legal ownership of Scheme Shares to him.
- 5.2 A Participant shall not be entitled to give any direction under Rule 5.1 above or to assign or charge or otherwise dispose of his beneficial interest in any Scheme Shares before the end of the Period of Retention applicable to such Scheme Shares except in the circumstances mentioned in section 511(6)(a), (b) or (c) of the Act.
- 5.3 Subject to Rule 5.2 above, the Trustees shall disregard any direction given in respect of the disposal or transfer of a Participant's Scheme Shares before the end of the Period of Retention and shall not be required or bound to act in accordance therewith if to their knowledge such Participant is or would following implementation of such direction be in breach of his obligations in respect of such Scheme Shares under Rule 5.2 above.

6. Issue or reorganisation

- 6.1 A Participant shall not be prevented by Rule 5 above from:
- 6.1.1 directing the Trustees to accept an offer for any of his Shares (hereinafter referred to as "the Original Shares") if the acceptance or agreement will result in a new holding, within the meaning of section 584 of the Act, being equated with the Original Shares for the purposes of Capital Gains Tax, or
 - 6.1.2 directing the Trustees to agree to a transaction affecting his Shares or such of them as are of a particular class if the transaction would be entered into pursuant to a compromise, arrangement or scheme applicable to or affecting:
 - (i) all the ordinary share capital of the company or, as the case may be, all the shares of the class in question, or
 - (ii) all the shares, or shares of the class in question, held by a class of shareholders identified otherwise than by reference to their employment or their participation in this Scheme.
 - 6.1.3 directing the Trustees to accept an offer of cash, with or without other assets, for his shares if the offer forms part of a general offer made to holders of shares of the same class as his or of shares in the Company and which is made in the first instance on a condition such that if it is satisfied the person making the offer will have control of the Company within the meaning of section 11 of the Act.
 - 6.1.4 agreeing after the Retention Period to sell the beneficial interest in his Shares to the Trustees for the same consideration as in accordance with Rule 2.4(iv) above would be required to be obtained for the Shares themselves.
- 6.2 In the event of an offer being made or a transaction being proposed in any of the circumstances described in Rule 6.1.1, 6.1.2 or 6.1.3 the Trustees shall forthwith notify each Participant thereof and shall act in accordance with the instructions of the Participant in dealing with his Scheme Shares and in the absence of any such instructions shall take no action.

- 6.3 In the event of the Company proposing to make a rights issue in respect of any class of its share capital which includes Shares held on behalf of Participants, the Trustees shall immediately upon receipt of the offer from the Company, notify each Participant of the following options in respect of the Shares held by the Trustees on his behalf:
- 6.3.1 to instruct the Trustees to exercise the rights in respect of all or any of his Shares provided that such instruction is accompanied by payment in cash of the amount necessary to exercise such rights, or
 - 6.3.2 to instruct the Trustees to exercise the rights in respect of some only of his Shares and to dispose of the rights nil paid in respect of the remainder and either:
 - (i) to pay to the Trustees any amount in excess of the disposal proceeds necessary to exercise such rights, or
 - (ii) to instruct the Trustees to pay to him any amount of the disposal proceeds in excess of the amount necessary to exercise such rights, or
 - 6.3.3 to instruct the Trustees to dispose of the rights nil paid in respect of all or any of his Shares and pay the proceeds to him.
- 6.4 The Participant shall instruct the Trustees accordingly within any period of time specified by the Trustees and shall, if appropriate, pay to the Trustees in cash any amounts necessary to carry out such instructions. The Trustees shall, subject to receipt of the cash as aforesaid, carry out the instructions of the Participants within the time allowed by the Company for the exercise of the rights. If a Participant shall fail to give any direction to and shall not otherwise have authorised the Trustees, they shall take no action in respect of the rights associated with the Shares held on behalf of that particular Participant.
- 6.5 Any New Shares allocated to the Trustees pursuant to Rule 6.2 and Rule 6.3 or on a capitalisation issue shall be deemed to have been appropriated to a Participant on the Appropriation Date of the Shares in respect of which they were allocated.

7. Payments and transfers to Participants

- 7.1 If any amount falls to be paid to a Participant prior to the Release Date in respect of his Scheme Shares being:
- 7.1.1 the proceeds of a sale of Scheme Shares pursuant to a direction given by the Participant under Rule 5.1.1, or
 - 7.1.2 a Capital Receipt
- the Trustees shall pay such amount to the Participant.
- 7.2 If a Participant directs the Trustees to transfer the ownership of any Scheme Shares to himself pursuant to Rule 5.1.2 before their Release Date, he shall pay to the Trustees, before the transfer takes place, a sum equal to income tax at the standard rate on the Appropriate Percentage of the Locked-in Value of the Scheme Shares at the time of the direction.
- 7.3 If, following a company reconstruction as defined in Section 514 of the Act, the Trustees are allotted any shares or other securities which are not New Shares, they shall forthwith transfer the same to the Participant.

8. Repurchase by Trustees

- 8.1 The Trustees may at the time a Participant directs the Trustees to dispose of any Scheme Shares offer to purchase the beneficial interest in such Scheme Shares from the Participant at the best consideration in money that can reasonably be obtained at the time of the sale.
- 8.2 If, at the time of the proposed purchase of Scheme Shares under Rule 8.1, the Trustees do not have sufficient funds to purchase such Scheme Shares, they may apply to the Company for such funds. If any funds are so provided by the Company they shall reduce the liability of the Company in respect of the payment to be made pursuant to Rule 3 in respect of the next Appropriation Date.
- 8.3 The Trustees shall hold any Shares purchased pursuant to Rule 8.1 above upon trust for appropriation to Eligible Employees employed by the Company that provided the funds used in the purchase of such Shares subject to Rule 3.7.

9. Payment of dividends

- 9.1 Any dividends paid by the Company to the Trustees in respect of Scheme Shares shall be forwarded to the Participants on whose behalf the Trustees hold such Scheme Shares together with particulars of the related tax credit.
- 9.2 Any dividends received by the Trustees during the period from the date of their acquisition of Shares to the Appropriation Date shall be dealt with by the Trustees in accordance with Clause [] of the Trust Deed.

10. Voting rights

Participants have no right to attend or vote at a General Meeting of the Company. The voting rights in respect of the Scheme Shares shall, on a poll, be exercised only in accordance with any directions in writing by the Participants concerned to the Trustees. In the absence of any such direction, the Trustees shall abstain from voting.

11. Rights of employees

Participation in the Scheme by a Participant is a matter entirely separate from any pension right or entitlement he may have and from his terms and conditions of employment and participation in this Scheme shall in no respect whatever affect in any way a Participant's pension rights and entitlements or terms or conditions of employment and in particular (but without limiting the generality of the foregoing words) any Participant who leaves the employment of a Participating Company shall not be entitled to any compensation for any loss of any right or benefit or prospective right or benefit under this Scheme which he might otherwise have enjoyed whether such compensation is claimed by way of damages for wrongful dismissal or other breach of contract or by way of compensation for loss of office or otherwise howsoever.

12. Duty to account for tax

- 12.1 When the Trustees receive from a Participant who has directed them to transfer the ownership of his Shares to him at any time before the Release Date the sum calculated in accordance with Rule 7.2 above, that sum shall be accounted for to the Revenue Commissioners in accordance with section 516 of the Act.
- 12.2 The Trustees shall keep records of all sums received from Participants under Rule 12.1.
- 12.3 The Trustees shall inform each Participant in writing of any facts known to them which are relevant to determining the liability (if any) of that Participant to Irish income tax under Schedule E.
- 12.4 The Trustees shall make such returns of information to the Revenue Commissioners as are required under section 510(7) and (8) of the Act.

13. Administration

- 13.1 If as a result of an error or omission any Shares to which a Participant is entitled pursuant to these Rules are not appropriated to him in accordance with Rule 3.2, the Company, and the Trustees shall do all such acts and things as may be agreed in writing with the Revenue Commissioners to enable the Trustees to appropriate to the Participant the Shares necessary to put him in a position he would have been in but for such want of appropriation provided always that such Eligible Employee shall be treated within the terms of the Scheme as if he had received an appropriation of Shares on the Appropriation Date.
- 13.2 Any notification or other notice in writing to be given to any Participant in pursuance of this Scheme shall be sufficiently given if sent through the post in a prepaid envelope addressed to the Participant at his address as shown on the records of the Trustees.
- 13.3 Any certificate, notification or other notice in writing required to be given to the Company or to the Trustees shall be properly given if sent to or delivered to the Company concerned or to the first named Trustee at their

respective registered or principal offices or in the case of an individual Trustee at his last known address.

14. Miscellaneous

If any matter arises on or in connection with this Scheme or its operation for which specific provision is not made in these Rules such matter shall be resolved, dealt with or provided for in such manner as the Board shall in its absolute discretion consider appropriate having taken into account the respective interests of the Company and of the Participants and the requirements of the Revenue Commissioners.

Form of Acceptance and Agreement and Contract of Participation

To: The Directors of [ENTER NAME OF THE COMPANY] and

To: The Trustees of the [ENTER NAME OF SCHEME]

From: Surname Forename(s)

(Mr/Mrs/Ms)

Home Address:

PPS Number:

1. I am a member of the [ENTER SCHEME NAME] and I wish to receive
 - (a) Shares to the value of [ENTER AMOUNT] in the Company in respect of my Entitlement under Rule 3.3(A)
 - (b) in addition I wish to forgo salary to the value of [ENTER % OR AMOUNT OF BASIC SALARY] for Shares under the scheme. (Shares acquired through salary forgoing cannot exceed Shares acquired under paragraph (a) above).
2. I authorise (NAME OF EMPLOYING COMPANY) to pay to the Trustees the sum of €[ENTER AMOUNT] for the acquisition of Shares.
3. I have read the explanatory booklet describing the Scheme.
4. In consideration of my participation in the Scheme I bind myself in contract with the Company and agree to be bound by the Rules of the Scheme and in particular:
 - (i) to permit Scheme Shares appropriated to me to remain in the hands of the Trustees throughout the Period of Retention
 - (ii) not to assign, charge or otherwise dispose of my beneficial interest in my Scheme Shares during that period
 - (iii) not to direct the Trustees to dispose of my Shares at any time before the Release Date in any other way except by sale for the best consideration in money that can reasonably be obtained at the time of sale, and
 - (iv) if I direct the Trustees to transfer the ownership of my Scheme Shares to me at any time before the Release Date, to pay to the Trustees before the transfer takes place a sum equal to income tax

at the standard rate on the Appropriate Percentage of the Locked-in Value of the Scheme Shares at the time of direction.

5. I authorise the Trustees, in the event of my failure to direct them as to how to deal with Shares they hold on my behalf on a rights issue during the period of time specified by the Trustees, to dispose of the rights nil paid in respect of a proportion of such Shares as will enable them to apply the proceeds in exercising the rights in respect of the remainder of such Shares.
6. I undertake to notify the Trustees of any change in my address.
7. I understand that this contract is binding in respect of all appropriations of Scheme Shares to me at any time from this date forward.

Signed

Date

APPENDIX 4

Annual Return of Information Form

Form E.S.S.1 (Return of Information for Approved Profit Sharing Schemes) is made available each year on the Revenue website for download at <http://www.revenue.ie/en/tax/it/tax-return-forms.html>.

The return must be submitted by 31 March in the year following the year of assessment for which the return is being made.

Tax Return Guide

This guide is to help you complete this tax return. It has no binding force and does not affect any right of appeal. If you want help or further information, contact Office of the Revenue Commissioners, Employee Share Scheme Section, Income & Capital Taxes Division, Stamping Building, Dublin Castle, Dublin 2.

Always quote the official reference number if you write or telephone.

The number of the appropriate note in this guide appears against the relevant item in the form.

If there is not enough space in a section, please give details on a separate sheet and enter the total on the form. Where no entry is required under a heading, write "NONE". Do not leave any space blank.

FORM ESS1

PART A - RETURN OF INFORMATION

General Note

You are required under section 510(8) of the Taxes Consolidation Act 1997 to make a return of the information set out in the form. The law provides for penalties for failure to make a return, or for the making of a false return, or helping to make a false return. The law also provides that the Revenue Commissioners may withdraw approval of a scheme where the scheme trustees fail to make a return.

Note 1. Payment to Trustees by participating company

Enter the name of the company making the payment to the trustees. This will normally be the company which has established the scheme but if the return is for a "group scheme" enter the name of each "participating company" which made a payment to the trustees in the year. The payments from each company should be split between amounts received to acquire shares for appropriation to participants (including incidental costs of acquiring the shares), and amounts received to meet the expenses of the trustees in administering the scheme. If any payments were subsequently returned to the company as being surplus to requirements only the net amount of the payment should be entered.

Note 2. Shares acquired by Trustees for appropriation to participants

A separate entry is required for each acquisition of shares in the year by trustees.

Note 3. Shares appropriated to participants

Enter separate details for each occasion when shares were appropriated to participants. The "initial market value" of a share is either:

- its market value at the date of appropriation, or
- its market value at an earlier date or dates by virtue of a prior agreement between the trustees and the Revenue Commissioners.

Part F should be completed also.

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Note 4. Capital receipts received by Trustees on scheme shares

The trustees as holders of scheme shares may become entitled to "capital receipts" (section 513 Taxes Consolidation Act, 1997). If such sums were received on more than one occasion in the year enter separate details for each occasion. Any receipts from a disposal of rights arising under a "Rights Issue" which were used to exercise other such rights should not be included (see Section 5). Enter details of the nature and value of the "capital receipt" per share. Immediately after a participant has become entitled to a "capital receipt", the "locked-in value" of the shares giving rise to that entitlement is reduced by the amount of the receipt and the revised "locked-in value" per share should be

entered. The calculation of the revised value should be given on a separate sheet. Part C should be completed also.

Note 5. Rights Issues

As a "rights issue" is a "company reconstruction" an entry will also be required in Section 8. If any "capital receipts" arose from the disposal of rights arising under a "rights issue" and the proceeds were not used to exercise other such rights you should include the relevant details in Section 4.

Note 6. Disposals of shares on the direction of participants

Enter the total proceeds received by the trustees in respect of shares sold by them on the direction of participants. The total amount paid by the trustees to each participant should also be shown together with the "locked-in value" of the shares at the date they were disposed of. Part D should be completed also.

Note 7. Transfers of shares to participants

After the end of the period of retention and before the release date, a participant may direct the trustees to transfer his shares to him. The transfer must be made on condition that he first pays the trustees a sum equal to income tax at the standard rate on the "appropriate percentage" of the "locked-in value" of the shares at the time of the direction. In these circumstances enter:

- the total "locked-in value" of shares transferred, and
- the total tax obtained from participants in respect of such transfers.

Part E should be completed also.

Note 8. Capital reorganisations and/or reconstructions

Enter details of all reorganisations and reconstructions including particulars of:

- bonus issues
- rights issues
- alteration of rights attaching to a share class
- conversion of securities including exchanges
- company amalgamations and take-overs
- reduction or reorganisation of share capital.

Where there has been a company reconstruction it is necessary to:

- ascertain the aggregate "locked-in value" before the reconstruction of the old "corresponding shares" having the same "locked-in value", and
- distribute that "locked-in value" among any of the old shares which survive into the new holding and the new shares, pro rata, according to their value immediately after the reconstruction.

Any subsequent income tax charged in respect of the shares in the new holding will be by reference to their "locked-in value" immediately after the reconstruction, calculated as set out above. Details of the revised "locked-in value" per share for each class of share and appropriation affected should be entered. If necessary details of the calculation should be given on a separate sheet.

Note 9. Alterations and/or amendments to the scheme trust

If an alteration is made to the terms of an approved scheme or to its trust deed approval will automatically cease unless the alteration is itself approved by the Revenue Commissioners. It is therefore essential that Employee Share Scheme Section should be notified before any alterations are effected.

Note 10. Liability under section 805 Taxes Consolidation Act, 1997

The trust deed may provide for shares to be held by the trustees in unappropriated form or for other investments or property to be held by them temporarily. If any income arises from such shares or property or otherwise in such circumstances that the income does not immediately become the property of the beneficiary it is likely that the income will be taxable at the additional rate in accordance with section 805 Taxes Consolidation Act, 1997 (subject to any relief provided by section 510(6) Taxes Consolidation Act, 1997).

Note 11. Exercise of Powers

The trust deed may contain powers which, if exercised, could change the nature of the interests of the beneficiaries or even prejudice approval under Schedule 11 Taxes Consolidation Act 1997. If any powers are exercised, by Deed or otherwise, full details should be entered.

Notes 12-14 General

PART B - INCOME and OUTGOINGS and CAPITAL GAINS

A return of total income arising to the trustees is required whether it arises from appropriated shares or any other source. If it is more convenient to attach a schedule of income and its sources then only the totals of gross income and tax suffered need be entered in the appropriate sections.

Note 15. Management and/or Administration Expenses

Particulars should be given of any expenses incurred by the trustees, whether in accordance with the terms of the trust deed or otherwise, for the purpose administering the trust or collecting the income. Do not include the cost of collection of rents, maintenance or insurance of property.

Note 16. Disposals for Capital Gains Tax Purposes

The ordinary Capital Gains Tax rules apply in determining what constitutes a "disposal" by the trustees with the following two exceptions:

- in the case of an approved profit sharing trust a participant is treated for Capital Gains Tax purposes as being absolutely entitled to his shares from the date of appropriation. This means that from the date of appropriation the trustees are treated as "bare trustees" and the disposal of appropriated scheme shares does not constitute a chargeable occasion for them, and
- the trustees are specifically exempt from Capital Gains Tax at the time when shares are appropriated to a participant, provided that appropriation takes place within eighteen months of acquisition. In deciding whether or not shares have been appropriated within eighteen months of acquisition, a first-in-first-out identification rule applies.

Any Capital Gains Tax liability of the trustees which is not extinguished by the operation of the two special rules is computed in the ordinary way under the Capital Gains Tax provisions. You should enter details in respect of each "chargeable asset" disposed of and your calculation of the chargeable gain or allowable loss on each disposal. If necessary, details of the calculation should be given on a separate sheet.

Note 17. Chargeable assets acquired

You should enter details in respect of each "chargeable asset" acquired by the trustees during the year with the exception of shares acquired for appropriation to participants.

Note 18.

Parts C,D,E and F should be completed in the circumstances outlined in Notes 3, 4, 6 and 7 above. In the case of a "group scheme" you should complete separate parts C,D,E and F in respect of each "participating company".

Note 19. "Appropriate Percentage"

The "appropriate percentage" is normally 100%. However where the participant has reached pensionable age (as defined for Social Welfare purposes - 66 years) or has ceased employment because of injury, disability or redundancy the "appropriate percentage" is 50%. You should indicate clearly on the form if the "appropriate percentage" is 50% and you should also specify the relevant circumstances involved.

Note 20. Part D

If the proceeds of disposal have been reduced under section 512(4) Taxes Consolidation Act, 1997 (i.e. where the participant has made a payment to the trustees to enable them to exercise rights arising under a "rights issue") this should be specified and the calculation of the reduction should be given on a separate sheet.

Note 21. Part F

If a participant's entitlement under the profit sharing scheme is calculated by reference to his length of service, salary etc., you should specify the length of service, salary etc. involved. In any year in which an appropriation or part of an appropriation is based on salary forgone and/or shares purchased by the participant out of his/her own resources a breakdown in respect of the number of shares appropriated on each basis should be supplied on a separate sheet.

Note 22.

You should specify the total value of a participant's entitlement under the scheme even if he has chosen not to have his full entitlement satisfied by the appropriation of shares.