

Chapter 8 - Restricted Shares

This document should be read in conjunction with sections 112, 128, 128D and 897B of the Taxes Consolidation Act 1997

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8.1 What are Restricted Shares

Restricted shares are shares acquired by an employee/director of a company, including shares acquired on the exercise of a stock/share option, where there is a “clog” or restriction on the disposal of those shares. Under the terms of a written agreement, the shares are held in a trust established by the employer for the benefit of the employee for a specified period of at least one year. During this period the employee is restricted from assigning, transferring, pledging as security for a loan, or selling the shares in any circumstances.

The only exceptions allowing for a disposal during the “clog” period, include the death of the employee or on a merger or acquisition of the company such that the employee receives an offer for the shares.

Section 128D TCA 1997 sets out the tax treatment of restricted shares acquired by directors and employees.

To take account of the restriction placed on the employee/director from disposing of the shares, under the provisions of section 128D TCA 1997, instead of charging the employee/director to income tax on the full amount of the difference between the market value of the shares at the date of acquisition and the price (if any) paid by the employee/director, the amount chargeable is abated, by between 10% and 60%, depending on the period of restriction.

8.2 Meaning of Restricted Shares

To qualify for the abatement, the shares acquired by the employee/director must:

- be shares in the company in which the employee/director is employed or in a company that controls (within the meaning of section 432 TCA 1997) that company, and
- are restricted shares.

Shares are restricted shares if all of the following conditions are satisfied—

- (a) there is a written contract or agreement in place under the terms of which there is a restriction on the freedom of the employee/director by whom the shares are held to assign, charge, transfer or otherwise dispose of the shares for a specified period of not less than one year,
- (b) the shares cannot be assigned, charged, transferred or otherwise disposed of during that specified period, except in limited circumstances. The limited circumstances are:

- (i) on the death of the employee/director,
 - (ii) where there is a change in control or a reorganisation of the share capital of the company in which the shares are held,
- (c) the shares are held in a trust established by the employer (e.g. employee benefit trust) or held under such other arrangements as the Revenue Commissioners may allow (e.g. secure stockbroker account). With effect from 4 February 2010, the trust must be established in the State, in an EEA State or the United Kingdom and the trustees must be resident in the State, in an EEA State or in the United Kingdom.

If necessary, case specific queries regarding shares held under “other arrangements” can be sent to the Employee Share Scheme Section of Revenue, who can be contacted via MyEnquiries ([Tax and Duty Manual \(TDM\)Part 37-00-36](#)) or at shareschemesection@revenue.ie.

8.3 Income Tax Charge on Acquisition of Shares

Broadly, an employee/director may acquire shares under an employee share award scheme, an employee share purchase plan (ESPP), or an employee share option scheme.

An income tax charge will arise under Schedule E where the employee acquires the shares for less than market value. A charge to income tax may arise in accordance with:

- Section 112 in respect of shares acquired under an employee share award scheme, where for example, the shares are given free of charge to the employee/director, or under an employee share purchase plan where the employee/director can purchase the shares at a discount, or
- Section 128 TCA 1997, where the employee/director acquires the shares on the exercise of a right (share option).

8.4 Abatement of Income Tax Charge

Section 128D TCA 1997 provides for an abatement of the income tax charge on the acquisition of the shares. The income tax charge is to be computed by reference to the market value of the shares at the date of acquisition without regard to the restriction on disposal.

The rate of abatement then depends on the number of years for which the restriction on the disposal of the shares remains in place. The Table below sets out the rates of abatement that apply.

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

Example 1

On 26 January 2023 an employee is awarded 1,000 ordinary shares in his employing company for nil consideration. The market value of the shares at that date was €10 per share. The employee is prohibited from disposing of the shares for 4 years. All of the conditions outlined in 8.2 are met.

Income tax charge on acquisition

Market value of shares	€10,000
Amount paid by employee	<u>Nil</u>
Income tax gain to the employee	€10,000
Less: Abatement (40%)	<u>(€4,000)</u>
Amount chargeable to income tax	€6,000

8.5 Removal or Variation of Restriction

Where the original restriction on the disposal of the shares is subsequently removed or varied during the restricted period, the income tax charge on the acquisition of the shares must be adjusted to take account of the actual period the restriction was in place.

A claw back of the abatement is necessary to collect any additional income tax that may be due as a result of the removal or variation of the restriction. Where the employer is responsible for operating PAYE via payroll on the initial award/share allotment and applies the abatement in accordance with the clog period, **the employer will be**

required to account for the additional tax due on the removal or variation of the restriction, with effect from February 2022. See example 2 below.

Where the employer does not have an obligation to account for the tax via payroll on the initial share award which is subject to the clog period, the responsibility to account for the additional tax due following the removal or variation of the restriction will remain with the employee, to be accounted for via the self-assessment system.

Example 2

On 1 March 2020, an employee is awarded 1,000 ordinary shares in his employer company for nil consideration. Under the terms of the award, the shares cannot be disposed of for a period of 6 years. The market value of the shares at 1 March 2020 is €3 per share. All of the conditions outlined in 8.2 are met.

On 1 March 2023, the employer removes the restriction on the disposal of the shares.

The employer is required to account for and operate PAYE in respect of the following:

On the 1 March 2020 share award

Market value of shares	€3,000
Amount paid by employee	Nil
Gain to the employee	€3,000
Less abatement (60% - 5+ years)	<u>€1,800</u>
Amount chargeable to income tax	€1,200*

*USC and PRSI ignored for the purpose of this example.

On the removal of the restriction on 1 March 2023 - Revision of charge arising on 1 March 2020

Market value of shares	€3,000
Amount paid by employee	<u>Nil</u>
Gain to the employee	€3,000
Abatement revised (20% - 2 years)	<u>€ 600</u>
Revised amount chargeable to income tax March 2020	€2,400
Amount previously charged	<u>€1,200</u>
Additional amount chargeable to income tax	€1,200

In this example, the employer is obliged to account for the tax arising on the additional amount chargeable to tax of €1,200 - which arises due to the removal of the restrictions by the employer. The employer must account for the tax on this amount via the payroll.

8.6 Disposal of Shares

Where shares are disposed of in any of the limited circumstances outlined in [section 8.2 \(b\)](#) above (i.e. on a death or in certain change of control/reorganisation events), before the end of the specified period of restriction, then, as in the case of a removal or variation of a restriction, the income tax charge on the acquisition of the shares must be adjusted to take account of the actual period the restriction was in place.

8.7 Capital Gains Tax

An individual who acquires restricted shares is chargeable to capital gains tax on any chargeable gain realised on the subsequent disposal of those shares. The tax is due on the difference between –

- (a) the sale price of the shares; and
- (b) the acquisition cost of the shares.

Where an amount chargeable to income tax on the acquisition of shares by a director or employee is to be treated, under section 552 TCA 1997, as forming part of the acquisition costs of the shares for Capital Gains tax purposes, then the amount to be so treated is the abated amount brought into charge on the acquisition of the shares plus any additional amount charged as a consequence of the lifting or variation of the restrictions or in the event of a permitted disposal.

The acquisition cost of the shares for CGT purposes is calculated as follows:

Shares acquired on exercise of a share option

Where the shares are issued on the exercise of the share option, the cost of acquisition is the sum of the following:

- the cost (if any) of the option,
- the price paid for the shares on exercise of the option, and
- the amount charged to income tax on the exercise of the option taking account of any reduction in the amount of the charge and any additional amount charged on the variation or lifting of the restriction.

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

Shares acquired otherwise than on exercise of a share option

In the case of newly issued shares, the cost of acquisition is the sum of the following:

- the price paid for the shares, and
- the amount charged to income tax on the acquisition of the shares taking account of any reduction in the amount of the charge and any additional amount charged on the variation or lifting of the restriction.

Where the shares are already in existence, the cost of acquisition is the market value of the shares at the time of acquisition.

8.8 Return of information

Where the restricted shares are acquired on the exercise of a share option, in accordance with the provisions of section 128, full particulars are to be included on the RSS1 return on or before 31 March in the year following the year of exercise of the option.

In any other case, employers must report the following information on the Employer's Share Awards return (Form ESA):

- Details of an award of restricted shares in the return year the award is granted.
- Details of any disposal of restricted shares before the end of the specified period in the return year the disposal takes place.
- Details of forfeiture of restricted shares after the end of the specified period in the return year the forfeiture takes place.

The Form ESA must be filed by 31 March following the relevant tax year. The return must be completed offline and then uploaded to Revenue Online Service (ROS). The return contains detailed instructions on how to complete and upload it to ROS. In addition, comprehensive guidance on the filing of share scheme returns can be found in TDM [Share Scheme Reporting - Chapter 15](#).

8.9 Shares Acquired under Revenue Approved Schemes

The abatement does not apply to shares acquired by a director or employee under Revenue approved schemes (i.e. profit sharing schemes, employee share ownership trust or savings-related share option schemes).