Chapter 2 - Restricted Stock Units (RSU)

This document should be read in conjunction with Sections 112, 897B and 985 of the Taxes Consolidation Act 1997

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A more recent version of this manual is available.

Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

The information in this document is provided as a guide only and is not professional advice, including legal advice. It should not be assumed that the guidance is comprehensive or that it provides a definitive answer in every case.

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2.1 Introduction

A Restricted Stock Unit (RSU) is a grant (or promise) to an employee/director to the effect that, on completion of a 'vesting period', he/she will receive a number of shares or cash to the value of such shares. In this way, no shares or cash will pass to the employee/director until the vesting period has passed.

RSUs are not granted under option (i.e. an option to acquire shares at a specific price within a defined period of time).

An RSU is, generally, evidenced by way of a certificate of such entitlement.

The 'vesting period' is the period of time between the date of grant (or promise) of the shares (or of the cash value of such shares) and the date on which the vesting condition is satisfied. Vesting periods are usually satisfied by passage of time (i.e. end of a stated period of time from the award date), by the individual's performance, or by the achievement of corporate goals.

2.2 Income Tax Treatment

An RSU is a taxable emolument of the employment chargeable to income tax under Schedule E (Section 112 TCA 1997) or Case III of Schedule D, as appropriate. It is not a share option to which Section 128 TCA 1997 applies.

RSUs chargeable to income tax under Schedule E are within the scope of the PAYE system. USC and PRSI are also chargeable on RSUs. To note, there may be exclusions in respect of employers PRSI where certain conditions are satisfied - see section 2.6 for further information.

The income tax charge on the shares (or the cash amount of such shares) arises either:

a) On the date of vesting (rather than grant date) of the RSU; or
b) Where the shares or cash pass to the employee/director on a date prior to the date of vesting, on that prior date.

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2.3 Summary of Tax Treatment of RSUs

Date of grant	**Tax at grant**	No
	Responsibility for collecting tax	N/A
	Employee reporting	No
	Employer reporting	Yes – Form ESA must be filed by 31 March following the relevant tax year. Note that reporting of grant details is currently optional. See section 2.8 for further details.
Date of vesting	**Tax at vest**	Yes – PAYE, USC & Employee PRSI
	Responsibility for payment of tax	Employer – PAYE withholding at date of vesting [1]
	Employee reporting	No
	Employer reporting	Yes – PAYE reporting. Form ESA must also be filed by 31 March following the relevant tax year.
Disposal of shares	**Tax at sale**	Yes – charge to capital gains tax (CGT) on any gains realised [2]
	Responsibility for payment of tax	Employee
	Employee reporting	Yes. An employee must file a return by 31 October in the year after the date of disposal. A return is required even if no tax is due because of reliefs or losses. An employee must file a Form CG1 if not usually required to submit annual tax returns; Form 12 if a PAYE worker or a Form 11 if considered a chargeable person for tax purposes.
	Employer reporting	Yes – Where "sell-to-cover" mechanism is operated by the employer, details must be reported on Form ESA which must be filed by 31 March following the relevant tax year.

1 The income tax charge arises on the date of vesting, or if earlier, where the shares or cash pass to the employee on a date prior to the date of vesting, on that prior date.

2 CGT must be paid by 15 December for disposals between 1 January and 30 November of the same year. CGT is due by 31 January for disposals in the immediately preceding December.

2.4 Vesting of Shares vs. Settlement

As outlined above, an RSU is a grant (or promise) to an employee/director that on completion of a vesting period, he/she will receive a number of shares or cash to the value of such shares.

As outlined at 2.3 the income tax charge on the shares (or the cash amount of such shares) arises either:

a) On the date of vesting (rather than grant date) of the RSU; or
b) Where the shares or cash pass to the employee/ director on a date prior to the date of vesting, on that prior date.

However, there may be a delay between the date that the shares vested and the date that they were actually delivered to the employee/director (i.e. the settlement date). This is known as a blocking or lock-in period.

Where the RSU is share settled (i.e. shares are issued to the employee/director), an employee may wish to sell their shares to fund the tax, USC and PRSI due. Revenue is prepared to delay collection of tax, USC and PRSI until the date on which the shares are actually settled, provided that the settlement date is within 60 days of the vesting date.

PAYE, PRSI and USC should be remitted with the payment for the month following the month in which the settlement date (or the 60th day following vesting) occurs. However, this is subject to all remittances being made by the last payment date in respect of the particular tax year, i.e. by January 14 or 23, as appropriate. This may mean that tax in respect of shares that vest towards the end of a tax year may have to be paid before the settlement date.

In cases where shares have vested and an employee/director is ceasing employment with a company, PAYE, PRSI and USC should be paid at the date of cessation if this occurs before the settlement date.

The chargeable date for tax purposes remains the date of vesting. The date of valuation for the purpose of establishing the taxable amount in respect of the shares and the foreign currency conversion date will continue to be the vesting date.

2.5 Payment of Dividend Equivalents

In some instances, an employee/director who has been granted an RSU may be entitled to amounts equivalent to the dividends accruing to the shares promised by way of the RSU.

These dividend equivalents are taxable emoluments of the employment/ office of the employee/director and are subject to the normal payroll deductions.

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2.6 Extent of the Charge

For the year of assessment 2018 and subsequent years, the statutory basis of assessment for employment income is, in most cases, the actual amount of income received (paid to the employee) in the year of assessment i.e. the "receipts basis". The receipts basis of assessment does not apply to income from certain directorships. Please refer to Tax and Duty Manual Part 05-01-08 for further information.

RSUs are fully taxable in the State if they vest at a time when the holder is Irish tax resident, without any apportionment by reference to any part of the vesting period during which the holder was resident elsewhere. If the RSUs vest and the holder is no longer Irish resident, the RSUs are not taxable in Ireland, regardless of the fact that the holder may have been resident in Ireland at the time of the grant and during the vesting period.

In relation to the taxation of RSUs, the full market value of the shares (or the cash amount of such shares) is liable to PAYE, USC and PRSI. Employers PRSI will not apply to share settled RSUs, where the shares awarded are in the employing company or in a company controlling the employing company. This exemption from employers PRSI does not however apply to cash-settled RSUs or other circumstances outside that described above.

Where a non-resident director of an Irish company receives an RSU, such RSUs are fully taxable in the State at the vest date, subject to any relieving provisions of a relevant Double Taxation Agreement. In the absence of a PAYE Exclusion Order, PAYE and USC must be deducted from the value of the share award. In the absence of a valid A1 Certificate or Certificate of Coverage, employee PRSI may also be due.

In the case of individuals who–

(a) in a tax year are resident but not domiciled in the State,
(b) have income (including RSUs) arising from a non Irish employment,
(c) perform some of the duties of their employment in the State and some of the duties outside the State, and
(d) have RSUs vesting in that tax year,

Revenue are prepared to accept that the appropriate deductions under the PAYE system should be made at the time of vesting from that proportion of an RSU attributable to the performance of the duties of the foreign employment in the State.

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2.7 Double Taxation Relief Through Payroll

2.7.1 General

Some individuals may, in addition to having a liability under the PAYE system in the State, also have a liability to income tax in a foreign State on the RSU or a portion of the RSU. Where this arises, and a double taxation agreement is in place with the other State, the individual may be entitled to a credit in relation to any amount subject to double taxation.

Subject to there being a valid entitlement under a Double Taxation Agreement, and he or she is entitled to relief for foreign income tax, Revenue is prepared to grant relief during the tax year rather than waiting until such time as the IT return is filed after year end.

To facilitate the granting of such relief in 'real-time', the following interim measures will apply to RSUs that are taxed through the PAYE system and are subject to a foreign income tax.

2.7.2 Conditions for Real-Time Double Taxation Relief

Real-time double taxation relief may apply where:

- An RSU, or a proportion of an RSU, is liable to income tax under the PAYE system and is also liable to a foreign income tax in a State with which there is a double taxation agreement.
- The agent/payroll operator is satisfied that foreign income tax applies and has established the effective tax rates on the doubly taxed amount.
- The agent/payroll operator has confirmed with the beneficiary of the RSU that the beneficiary is entitled to relief for foreign income tax and that he or she will file a tax return after the end of the tax year.
- The company will provide information to the relevant Revenue Branch dealing with the affairs of the company, immediately after the end of the tax year (i.e. before 31 March).

2.7.3 Procedure

Where an RSU, or a proportion of an RSU, is liable to both Irish income tax under the PAYE system and a foreign income tax under a system equivalent to PAYE, the following procedure may be applied when operating PAYE for the purposes of this arrangement:

- An estimated Irish effective rate of tax (incorporating income tax and USC) is to be determined at the pay date, as follows:

$$\frac{\text{(income tax + USC)}}{\text{Gross Income}}$$

- An estimated foreign effective rate is to be determined, as follows:

$$\frac{\text{Non-refundable foreign tax on RSU subject to foreign income tax}}{\text{Amount of RSU subject to foreign income tax}}$$

- A credit is to be determined, using the lower of the estimated effective rates, as follows:

Amount of RSU subject to foreign tax x the lower effective rate

- The credit may be granted by increasing the tax credits, as specified on the Revenue Payroll Notification, by the amount of the credit in the period in which the RSU is taxed and each subsequent period in the tax year.

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2.7.4 Compliance

In permitting this "interim" arrangement, it is understood that–

- Most RSU schemes are managed and controlled centrally whereby the payroll operator involved can be advised of the amount of the RSU and the amount of the credit to be allowed.
- Most payrolls have an override facility by which to allow the credit.
- The numbers of individuals involved are not thought to be significant.

The following conditions must be complied with–

- Evidence of deduction of foreign income tax at source (which must be non-refundable) must be available for verification if required.
- For the avoidance of doubt, formal claims for relief must still be made at year end. Therefore, the individuals concerned must file IT tax returns, where this treatment applies, within three months of the year-end.
- The companies involved will provide the relevant information to the relevant Revenue Branch dealing with the affairs of the company by three months of the year-end of the tax year in which the foreign tax credit was granted.

Where the conditions are fully complied with, including the filing of a tax return by the individual in receipt of the RSUs and the relevant information by the company involved (within 3 months of the year end), Revenue will regard the amounts returned in respect of the employer as correct.

However, where the conditions are not met, Revenue will make an assessment of the full amounts due and the standard interest provisions will apply. In addition, the facility provided by this arrangement will be withdrawn from the company and full PAYE will have to be operated on future RSUs that are subject to Schedule E.

In respect of 2019 cases for whom real-time foreign tax credits were provided through the payroll, the 31 March 2020 filling deadline was suspended. In such circumstances, the 2019 income tax return for such employees reverted to the standard income tax filing date (31 October 2020) for that return or any extended filing deadline for that return as appropriate.

The 31 March IT filing deadline for 2020 and 2021 cases where real-time foreign tax credits were provided through payroll is also suspended. The return date for such employees will also revert to the standard IT filing date (31 October 2021 and 31 October 2022 respectively).

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2.8 Return of information

Employers must report details of any RSU scheme or Performance Share Unit schemes similar to RSUs in the Employer's Share Awards return (Form ESA).

The reporting obligation arises in the year when the RSU is granted, share-settled or cash-settled. Note that reporting under the "Grant Details" section of the form is currently optional.

A payment of cash-equivalent of shares must be reported in the year when the cash payment is made, including payments made to directors or employees who no longer hold their office or employment.

When determining whether an event in relation to a particular employee is reportable in the Form ESA, employers should consider whether there is a payroll obligation in relation to that event. If so, it is likely the event is also reportable in the Form ESA.

Examples

Scenarios	Reportable
Employer grants RSUs or Performance Share Units operated in a similar manner to RSUs.	Yes. To note - currently the reporting of RSUs granted is optional.
RSUs granted to the same employee in the past will vest this year.	Yes. Where there is more than one acquisition date by the same employee or director, the employer shall use several lines in the Form ESA to provide separate details for each acquisition/ event.
Employee ceases employment. Any shares held from previously share-settled RSUs may now be forfeited by the employee.	Yes. Reportable under the Forfeitable Shares tab of the Form ESA in the year of forfeiture.
An RSU is cash-settled at a time when a former employee with an Irish contract of employment is no longer tax resident.	Yes. Generally, payroll deductions must be operated in relation to **any** payment of **any** emoluments including payments for

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	an office or employment no longer held. Employer must deduct income tax, USC, employee PRSI on all cash-settled RSUs. Note that cash payments are not exempt from employer PRSI.
An RSU is share-settled at a time when a former employee is no longer tax resident.	No.
An RSU is share-settled at a time when a director of an Irish company is not tax resident.	Yes. The vesting of an RSU is generally always taxable in the hands of a director, notwithstanding his/her tax residence position. This event is reportable on the Form ESA.
RSU vests and a sell-to-cover mechanism is operated to facilitate acquisition of shares.	Yes. The "Details of Share-settled awards" section of the form must be completed with details of the total number of shares acquired before operating the sell-to-cover mechanism. Employer must also indicate that sell-to-cover was used under the relevant column and include the net amount of shares retained by the employee.
An employee is tax resident in Ireland but not domiciled. An RSU granted in the past by the foreign parent company vests while the individual is on the Irish payroll.	Yes. Employers should report vesting details of current employees in the Form ESA. In line with their payroll obligations, employers should report the proportion attributable to the performance of the duties of the foreign employment in the State.

Note that the scenarios above are not intended to be exhaustive. Consideration must be given to the full facts of each case in order to determine the reporting obligations by the employer.

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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.

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