Chapter 3 - Unapproved Share Options

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

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3.1 Introduction

This chapter explains the tax treatment of rights obtained by directors and employees to acquire shares, otherwise than through Revenue approved savings-related share options (SAYE) scheme or a preferential scheme such as the Key Employee Engagement Programme ("KEEP").

When a company grants a share option to an employee/director, they are given the right to acquire a pre-determined number of shares at a pre-determined price for a predetermined period. Such option schemes are commonly referred to as "unapproved share option schemes".

Where a company grants a share option to an employee/director, it will generally issue documentation covering the following:

- the number of shares that the employee/ director can acquire,
- the price that the employee director has to pay for the shares ("Option Price"),
- the dates from which, and by which the employee/director may exercise his or her option ("Exercise Period"), and
- the conditions regarding the right to exercise the option, which may include good leaver and/or bad leaver provisions.

The "date of exercise" is the date at which the employee/director takes up their right to acquire shares.

The shares may be at no cost to the employee/director (nil option) or at a pre-determined price that the employer has set.

In some cases, the employee/director will have to pay something for the option itself.

There are two types of share options for tax purposes:

(a) a 'short option' - which must be exercised within seven years from the date it is granted; and

(b) a 'long option' - which can be exercised more than seven years from the date it is granted.

3.2 Summary of Tax Treatment of Unapproved Share Options

Grant of options	**Tax at grant**	No [1]
	Responsibility for collecting tax	N/A
	Employee reporting	No
	Employer reporting	Yes - form RSS1 must be filed by 31 March following year of grant
Exercise of options	**Tax at exercise**	Yes – income tax, USC & PRSI at marginal rates [2]
	Responsibility for payment of tax	Employee – must pay within 30 days of exercise
	Employee reporting	Yes – must complete form RTSO1 within 30 days of exercise and must file income tax return for year of exercise
	Employer reporting	Yes – form RSS1 must be filed by 31 March following year of exercise
Disposal of shares	**Tax at sale**	Yes – charge to capital gains tax (CGT) on any gain realised [3]
	Responsibility for payment of tax	Employee
	Employee reporting	Yes – An individual 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 individual 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	No

1 Assumes options are not capable of being exercised more than seven years following the date of grant.

2 Marginal rates of income tax and USC must apply, unless the taxpayer applies for and receives prior approval to apply tax at the standard rate of income tax and a lower USC rate.

3 Must pay any CGT due by 15 December for disposals between 1 January and 30 November of the same year. Tax is due by 31 January for disposals in the immediately preceding December.

3.3 Charge to Tax

3.3.1 Scope of Section 128 TCA 1997

Where an employee/ director, by reason of their employment/office, obtains a right to acquire shares ("share option") or any other asset(s) in any company legislation provides for income tax and capital gains tax consequences.

Specifically, section 128 TCA 1997 applies to any right granted to an employee/ director by reason of their employment/ office to acquire any asset or assets including shares in any company. "Shares" is defined as including stock and securities.

A charge under section 128 TCA 1997 also arises where:

- a right is granted by reason of an employee/director's employment/office or but which is assigned to him or her by another person, or

- a right is granted to an employee/director before the commencement of the employment/office or after the cessation of the employment/office where it is acquired by reason of the employment/ office. For example, an employee may be granted share options as an inducement to take up employment.

3.3.2 Schedule E Charge

The charge to income tax under section 128 TCA 1997 applies to employees/directors who are chargeable to tax under Schedule D or Schedule E in respect of the emoluments of their employment/ office.

It does not matter whether the profits or gains from the employment/office or employment in question are chargeable to income tax under Schedule E or Case III of Schedule D, the charge under section 128 will always be under Schedule E.

Under Section 128 TCA 1997 an individual is liable to income tax under Schedule E in respect of any gain arising on the exercise, assignment or release of a right obtained by that person where-

(a) the right has been obtained by reason of that person's employment/office (whether or not a right is obtained by reason of a person's employment/office is a question of fact); and

(b) section 71(3) TCA 1997 (i.e. the remittance basis of taxation) does not apply to the profits or gains from the relevant employment/ office under which the right is or was granted. See Tax and Duty Manual Part 05-01-21A on the Revenue website for more information on the remittance basis of taxation.

The amount of the gain as computed is chargeable under Schedule E in the year in which the right is exercised, assigned or released.

3.3.3 Non-Residents

With effect from 5 April 2007 section 128 TCA 1997 also applies to cases where the employee/director is not resident in the State when the right is granted (see Section 3.9 for more information regarding residence and share options).

3.4 Tax Treatment of Share Options

3.4.1 Date of Grant

The date of grant is the date at which the employee/director is granted the right to acquire shares in the future.

3.4.2 Short Options - Tax at Date of Grant

Where a share option is not capable of being exercised more than seven years after the date on which it is granted (i.e. a short option) no charge to income tax arises on the date that the right is granted.

3.4.3 Long Options – Tax at Date of Grant

Where a share option is capable of being exercised more than seven years after it is granted (i.e. a long option) a charge to income tax may arise on both:

(a) the grant of the share option (where the option price is less than the market value of the shares); and
(b) the exercise, assignment or release of the share option.

Credit is given for any income tax charged on the grant of the share option against the income tax due on the exercise, assignment or release of the share option.

The amount of the gain chargeable to income tax on the grant of a long option is the difference between:

(a) the market value of the share(s) at the date the share option is granted; and
(b) the consideration for which the share(s) may be obtained on the exercise of the share option (i.e. the exercise price). If this consideration is variable the least amount of the consideration should be taken into account.

In practice, where a employee/director is granted a long option, the option price will, generally speaking, be equal to the market value of the shares at the date of grant, and consequently no income tax charge would arise at the date of grant.

Example 1

Orla was granted a share option on 6 May 2015 under the terms of which the share option may be exercised anytime up to 6 May 2023. This is a 'long option' as it is capable of being exercised more than seven years after the date of grant.

Date share option granted	6 May 2015
Exercise Price	€5.00 per share
Market Value at 6 May 2015	€5.50 per share

Number of Shares	1,000
Value of shares at date of grant	€5,500
Less option price payable on exercise	€5,000
Income gain	€500

The total gain subject to income tax at the date of grant is €500 (€0.50 per share x 1,000 shares).

If the individual's marginal rate of income tax is 20%, then the income tax due is €100. If the individual's marginal rate of tax is 40%, then the income tax due is €200.

A credit for the tax charged on the grant of the option will be available for offset against any income tax charged on the subsequent exercise, assignment or release of the share option.

3.4.4 Tax at Exercise, Assignment or Release

Income tax is chargeable under Schedule E on any gain realised on the exercise, assignment or release of a share option obtained by a person as an employee/director. The amount chargeable to income tax is reckonable income for PRSI and USC purposes.

3.4.5 Short Options – Tax at Date of Exercise

The amount of the gain chargeable to income tax on the exercise of a short option is the difference between:

(a) the market value of the share(s) at the date of acquisition; and
(b) the aggregate amount or value of the consideration, if any, given for the share(s) and for the grant of the share option.

For the purposes of (b), consideration does not include the performance by the employee/director of his or her duties in or in connection with his or her employment/office and only one deduction may be allowed in respect of any consideration given for the grant of an option.

Example 2

Thomas was granted a share option on 6 May 2017 under the terms of which the share option must be exercised before 1 December 2019. This is a 'short option' as it must be exercised within seven years of the date of grant.

Date share option granted	6 May 2017
Exercise Price	€2.00 per share
Market Value at 6 May 2017	€2.00 per share
Number of Shares	500
Date share option exercised	10 May 2018

Market Value at 10 May 2018 €5.00 per share

There is no charge to income tax at the date of grant as the option is a 'short' option.

At the date of exercise, the taxable gain is calculated as follows:

Market value of shares at date of exercise	€2,500
Less option price paid	€1,500
Income gain	€1,500

The total gain subject to income tax at the date of exercise is €1,500 (€3.00 per share x 500 shares).

3.4.6 Long Options – Tax at Date of Exercise

Where an individual can exercise a share option seven years after the date of grant, the amount of the gain chargeable to income tax on the exercise of that option is the difference between:

(a) the market value of the share(s) at the date of acquisition; and
(b) the aggregate amount or value of the consideration, if any, given for the share(s) and for the grant of the share option.

For the purposes of (b), consideration does not include the performance by the employee director of his or her duties in or in connection with his or her employment/office and only one deduction may be allowed in respect of any consideration given for the grant of an option.

However, credit is given for any income tax charged on the grant of the share option against any income tax due on the exercise, assignment or release of the long option.

Example 3

Orla was granted a share option on 6 May 2015 under the terms of which the share option may be exercised anytime up to 6 May 2023 (i.e. more than seven years after the date of grant). This is a 'long option'. Orla exercised all of her share options on 4 May 2017.

Date share option granted	6 May 2015
Exercise Price	€5.00 per share
Market Value at 6 May 2015	€5.50 per share
Number of Shares	1,000
Date share option exercised	4 May 2017
Market Value at 4 May 2017	€10.00 per share

The total gain subject to income tax at the **date of grant** is €500 (1,000 shares x (€5.50 - €5.00)).

- If the individual's marginal rate of income tax is 20%, then the income tax due at grant is €100.
- If the individual's marginal rate of tax is 40%, then the income tax due is €200.

At the **date of exercise** on 4 May 2017, the taxable gain is calculated as follows:

Value of shares at date of exercise	€10,000
Less option price paid on exercise	€5,000
Income gain	€5,000

The total gain subject to income tax at the date of exercise is €5,000 (€5.00 per share x 1,000 shares).

However, the individual would be entitled to a credit for any income tax charged on the grant of the share option.

Depending on if the individual's marginal rate of income tax in the year 2017 is 20% or 40%, the net income tax at the date of exercise is calculated as follows:

	20%	40%
Income tax due on gain (gain X marginal rate)	€1,000	€2,000
Less income tax paid at grant	€100	€200
Income tax payable at exercise	€900	€1,800

3.4.7 Assignment or Release of Share Options

The amount of the gain chargeable to income tax on the assignment or release of a share option is the difference between:

(a) the amount or value of the consideration for the assignment or release; and

(b) the amount or value of any consideration given, if any, for the grant of the option.

For the purposes of (b), consideration does not include the performance by the employee/ director of his or her duties in or in connection with his or her employment/ office and only one deduction may be allowed in respect of any consideration given for the grant of an option.

If a cash payment is received by an employee/ director on the release of a share option, this should be subject to PAYE and PRSI in the normal manner.

Example 4

Isobel was granted a share option on 6 May 2017 under the terms of which the share option must be exercised before 1 December 2019. Details of the option were as follows:

Date share option granted	6 May 2017
Exercise Price	€2.00 per share
Market Value at 6 May 2017	€2.00 per share
Number of Shares	500

On 1 December 2018, she released her option for a consideration of €3.00 for each share over which she held options.

The €1,500 amount of cash consideration received is chargeable under Schedule E in December 2018.

3.4.8 Cashless Exercise

A 'cashless exercise' is the term given to an exercise of options whereby the employee/director does not provide any cash to exercise the option and acquire the shares but rather requests the company sell the shares in order to finance the original exercise and the tax liability on the gain realised on the exercise of the share option. This is also referred to as a "same day sale". Notwithstanding that the exercise may be described as a 'cashless exercise', the income tax position remains the same. The employee/director will also need to consider any capital gains tax (CGT) implications of selling the shares.

Example 5

Ian was granted a share option on 6 May 2016 under the terms of which the share option must be exercised before 1 December 2019. This is a 'short option' as it must be exercised within seven years of the date of grant.

On 6 May 2017, Ian exercised his option and instructed his employer company to sell the required number of shares to cover the tax liability, and he agreed to pay for his shares out of the proceeds of the sale.

Date share option granted	6 May 2016
Exercise Price	€2.00 per share
Market Value at 6 May 2016	€2.00 per share
Number of Shares	500
Date share option exercised	6 May 2017
Market Value at 6 May 2017	€5.00 per share

There is no charge to income tax at the date of grant as the option is a 'short' option.

At the date of exercise, the taxable gain is calculated as follows:

Value of each share at date of exercise of the option	€5.00
Less option price paid on exercise	€2.00
Gain realised on the exercise of the share option	€3.00 per share

The total gain subject to income tax at the date of exercise is €1,500 (€3.00 per share x 500 shares).

Assuming that Ian is a marginal rate tax payer, he will be liable to pay income tax of €600 on the income gain arising (ignoring USC and PRSI for the purposes of this example). Ian's employer will then need to sell enough shares to release enough cash for Ian to cover the income tax arising. As the market value of the shares on the date of exercise is €5 per share, Ian's employer will need to sell 120 shares in order to cover the taxes due (600/5 = 120) and 200 to cover the cost of the shares.

For the purpose of calculating Capital Gains Tax, the shares sold will be identified as those acquired on the date of exercise. This "share identification" rule applies as the shares have been sold within 4 weeks of acquisition. As Ian has acquired the shares at €2 and is allowed a deduction in relation to the amount subject to income tax a capital gains tax liability will not arise. Ian will however be required to report details of the disposal when he files his annual return of income (Form 11) for 2017.

Following the "sell to cover" mechanism, Ian will still have 180 shares. Where the remaining shares are sold following 4 weeks from the date of acquisition, the normal share identification rules will apply in order to calculate the base cost of any future disposal of shares.

See Section 3.8 for further information regarding the capital gains tax treatment.

3.4.9 Gain Realised by Someone Other than the Employee/Director

There is an anti-avoidance provision in the legislation (section 128(6) TCA 1997) to prevent arrangements being put in place for someone other than the employee/ director to realise the gain and thereby avoid the charge to income tax.

A charge to income tax under section 128(6) TCA 1997 also applies in the case of a gain realised by virtue of a right obtained by reason of an employee/director's employment/office even though the gain is realised by a person other than the employee/director in the following circumstances—

i. where the right is granted to that other person,
ii. where the right was granted to the employee/director but subsequently transferred at less than the arm's length price, or
iii. where the right was granted to the employee/director but subsequently transferred, to someone who is a connected person at the time the gain is realised, or

iv. where the employee/director benefits directly or indirectly from the exercise, assignment or release of the right by the other person.

A gain realised by another person includes a gain realised on the exercise of a right by the employee/ director, where it is exercised by the employee/director as nominee or bare trustee, or otherwise on behalf of the other person.

In the case of an assignment of a right, the gain realised must be reduced by the amount of any gain realised by the previous holder on the assignment of a right.

3.4.10 Bankruptcy

Where an employee/director is divested of a right following his or her bankruptcy or is otherwise divested of the right by operation of law, he or she is not chargeable to income tax in respect of a gain realised by some other person from the exercise of the right. Instead, the other person is chargeable to income tax under Case IV of Schedule D on any gain realised. The amount of the gain is computed in the same way as it would have been if the employee/director had exercised the option.

3.4.11 Death of Option Holder

Where the holder of a share option dies and the rules of the share option scheme allow the personal representatives to exercise the share option and acquire the shares over which the option was held, any gain realised on the exercise of the option should be calculated in the normal manner in respect of the deceased person and the relevant income tax assessments made on the personal representatives in their capacity as personal representatives of the deceased person.

3.4.12 Foreign Exchange

If the exercise price of a share option is denominated in a currency other than euro, the exchange rate applying to the currency of the other country on the day of the exercise, assignment or release of the option must be used to calculate the gain arising on the exercise, assignment or release of the share option.

3.4.13 Impact on Pension Plan

Any amount of the gain on the exercise, assignment of release of a share option, assessable to income tax can be taken into account to calculate age related percentage limits for a pension plan.

3.5 Exchange of Share Options

Where an employee/director surrenders (by way of assignment or release) a share option obtained by the person by reason of his or her employment/office in exchange, or partly in exchange, for a new option, special rules apply.

Where share options are exchanged, the new option and the old option are looked at as one for the purpose of a charge to income tax under section 128 TCA 1997. No charge to income tax arises on the exchange of the options.

For the purposes of calculating a gain, if any, arising from the exercise of the new option, the value of the old option is not treated as part of the acquisition cost of the new option, but account must be taken of any consideration given for the grant of the old option to the extent that it has not been offset at the time of its assignment or release by any consideration other than the receipt of the new option.

These rules also apply where exchanged options are acquired by means of a series of transactions.

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These special rules do not prevent a charge arising under section 128 TCA 1997 on the exercise of the original right, where, for example, as part of a scheme or arrangement, the purpose or one of the main purposes of which is the avoidance of tax, it is the original right and not the new right that is exercised, and the employee/director benefits directly or indirectly from the exercise of the original right.

3.6 Payment of Relevant Tax on Share Options ("RTSO")

3.6.1 Overview

Where an employee/director exercises a share option he or she must pay what is referred to as "Relevant Tax on Share Options" (RTSO) in respect of any income tax due on any gain realised on the exercise of the share option. RTSO is payable within 30 days of an option being exercised and as it is outside the PAYE collection system the employee/director is responsible for making this payment to the Collector General.

The **Form RTSO1** must be used for the purpose of making an RTSO payment to the Collector-General within 30 days of the date of exercise. Form RTSO1 is available on the Revenue website.

Where an individual considers that his or her income from all sources for the year of assessment will be chargeable at the standard rate of income tax only, the individual may apply in writing to the Revenue Commissioners (local Revenue office) for approval to pay RTSO at the standard rate of income tax. This approval must be obtained by the individual in advance of making the payment of RTSO to the Collector-General. If this approval hasn't been given tax at the marginal rate of tax must be remitted.

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Example 6

On 10 July 2015, Michael is granted an option to acquire 10,000 shares at €3 per share. The terms under which the share option was granted confirm that it must be exercised before 5 May 2020. Michael exercised the share option on 1 March 2017. The market value of the shares at that date was €5 per share. Michael is a marginal rate tax payer.

Market value of shares at 01/03/2017	€50,000
Option price (i.e. price paid by Michael)	(€30,000)
Gain on exercise of share option	€20,000
Amount of RTSO due (€20,000 at 40%)	€8,000
Employee PRSI due (€20,000 at 4%)	€800
USC due (€20,000 at 8%)	€1,600
Latest date for payment of RTSO, PRSI and USC	30 March 2017

3.6.2 Payment of USC and PRSI

The Universal Social Charge (USC) and PRSI must be calculated and included with the amount of RTSO and the total entered on Form RTSO1. Any gain on the exercise of share options is reckonable income for PRSI or USC purposes.

The formula used in section 128B (2) which charges RTSO at the higher rate of income tax in force in a particular tax year is adapted to charge USC at its highest rate, unless the individual satisfies Revenue that he or she will actually be chargeable at a lower rate of USC and obtains advance approval for payment at a lower rate.

By virtue of section 531AN (2A), the gain on the exercise of share options is not included in the calculation of relevant income for the purposes of the 3% USC surcharge.

Employee PRSI is to be paid at the rate applicable to the PRSI Class that applies to the individual for the particular tax year.

3.6.3 Late Payment of RTSO

The normal provisions relating to assessments, appeals, collection and recovery of income tax apply also to the assessment, collection and recovery of RTSO.

Where RTSO is paid late, there is provision for the imposition of interest at 0.0322 per cent per day or part of a day from the date when the RTSO amount becomes due and payable until the actual date of payment.

3.6.4 Self-Assessment

Individuals who exercise share options are taxable under Schedule E but are 'chargeable persons' for the purposes of Part 41A TCA 1997 by virtue of section 128(2) and (2A) TCA 1997. Employees liable to pay RTSO must then submit the usual self-assessment return, containing details of all share option gains in a tax year, by 31 October following the year in which the gains are realised. The income tax return must be filed for the relevant year in addition to the form RTSO1.

There is an exception where the person has been exempted from the requirement to make a return by reason of a notice given by Revenue under section 959N TCA 1997. Where this occurs the person is advised by notice in writing of the exclusion and the notice will specify the length of the exclusion. This exclusion does not extend to removing the obligation to make a return where a person has a liability to capital gains tax for a chargeable period.

3.6.5 Late Filing Surcharge

The late filing surcharge provided by Section 1084 TCA 1997 applies where the income tax return is not submitted by the relevant due date for the relevant tax year even where all the person's other income is solely within PAYE.

3.6.6 Preliminary Tax

RTSO is separate and distinct from preliminary tax and, therefore, is not considered for the purposes of-

(a) determining the amount of preliminary tax payable for the relevant year of assessment;
(b) the calculation of the margin of error regarding preliminary tax paid in respect of a year of assessment in which the share option is exercised; and
(c) determining whether the preliminary tax 90%, 100% or 105% rule has been satisfied in relation to the payment of preliminary tax.

The RTSO paid may, however, be used to satisfy the individual's overall income tax liability for the tax year (i.e. it can be credited against the individual's final income tax liability including the liability relating to the gain on the exercise of the share option).

More detailed information on preliminary is contained in Tax and Duty Manual Part 41-00-13, 'Preliminary Tax Paying the Right Amount of Tax on Time', which is available on the Revenue website.

3.7 Employer Reporting

3.7.1 Annual Return

There is an obligation on companies to electronically file a return with Revenue for any year in which it grants an option to an employee, or any year in which an option is exercised, transferred or released. Self-assessment principles apply to the making of a return. The relevant information must be filed online using the return Form RSS1, Return of Share Options and Other Rights.

The return can be uploaded to ROS via the Secure Upload/Download Service. Further information on filing the return is available on the Instructions & Explanatory tab of the Form RSS1, available on the Revenue website.

This return is due on or before the 31 March in the year following the year in which the options were so granted, assigned, released, or exercised, as the case may be.

Section 128 requires that persons must provide particulars to Revenue in respect of

- share options and other rights granted,
- shares allotted and assets transferred in pursuance of such a right, and
- consideration given for the assignment or release in whole or in part of such a right or receives notice of the assignment of such a right.

Returns are also required from the Irish employer where the share options are granted by a non-resident company.

3.8 Capital Gains Tax

3.8.1 General

An employee/director who acquires shares by the exercise of a share option is chargeable to capital gains tax (CGT) on any chargeable gain realised on the subsequent disposal of those shares.

Broadly, capital gains tax is calculated on the difference between the sale proceeds of an asset and the acquisition costs of the asset. This section explains what acquisitions costs should be taken into account for capital gains tax purposes where the asset being disposed of is a share(s) acquired on the exercise of a share option and some related issues.

Indexation, where applicable, is available by reference to the date the expenditure is incurred. In the case of a benefit charged to income tax, that date may be taken to be the date the tax is paid[4].

In ascertaining the rate of CGT to be applied to the chargeable gain on a disposal of such shares, the period of ownership of the shares begins on the date the shares were actually acquired, and not the date of the granting of the option.

3.8.2 Acquisition Costs where Shares are Newly Issued Shares

Where a company grants share options to an employee/director, it may be necessary for the company to issue new shares to satisfy the option granted.

In these circumstances, regardless of the date when the options are exercised and the shares acquired, the cost of acquisition is the sum of the following-

(a) the cost (if any) of the share option,
(b) the price paid for the shares on the exercise of the share option, and
(c) the amount charged to income tax under section 128 TCA 1997 on the exercise of the share option.

Example 7

On 1 January 2015, Deirdre by virtue of her employment is granted share options under an unapproved share option scheme. On 1 January 2017, when the market value of the shares is €15,000, Deirdre exercises her option and acquires newly issued shares for the option price of €10,000. Deirdre immediately sells the shares for €15,000.

4 Indexation no longer applies to acquisitions on or after 1 January 2003. For disposals made on or after 1 January 2003 indexation relief will only apply for the period of ownership of the asset up to 31 December 2002.

Calculation of chargeable gain

Disposal proceeds		€15,000
Less costs of acquisition:		
(a) Cost of option	NIL	
(b) Price paid for the share options	€10,000	
(c) Amount charged to income tax under Section 128 TCA 1997 (€15,000 - €10,000)	€5,000	€15,000
Chargeable Gain		NIL

3.8.3 Acquisition Costs where the Shares are Already in Existence

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

Where the shares are already in existence at the time of exercise of a share option, the cost of acquisition is the sum of the following-

- the price paid for the shares on exercise of the share option, and
- the amount charged to income tax under section 128 TCA 1997 on the exercise of the share option.

Example 8

On 1 January 2015 Edward by virtue of his employment is granted share options under an unapproved share option scheme. On 1 January 2017, when the market value of the shares is €15,000, Edward exercises his option and acquires shares which are already in existence for the option price of €10,000. On 1 March 2017, Edward sells the shares for €18,000.

Calculation of chargeable gain

Disposal proceeds	€18,000
Less costs of acquisition:	
Market Value of shares at time of acquisition	€15,000
Chargeable Gain	€3,000

The amount chargeable to income tax under section 128 TCA 1997 of €5,000 (€15,000 - €10,000) cannot be added to the market value of the shares.

3.8.4 Identification of Shares

An employee/director may acquire shares of the same class on the exercise of share options at different dates. The normal rules apply in relation to the identification of such shares for the purposes of capital gains tax.

Where a person holds shares of the same class which have been acquired at different dates, the shares acquired at the earlier time are deemed to be disposed of first (FIFO -'first in first out' rule applies).

The FIFO rules are modified in any case where shares of the same class are bought and sold within a period of four weeks. Where shares are sold within four weeks of acquisition the shares sold are identified with the shares acquired within that period. Furthermore, where a loss accrues on the disposal of shares and shares of the same class are acquired within a four-week period, the loss is not available for offset against any other gains arising. Instead the loss is only available for set off against any gain that might arise on the subsequent disposal of the shares so acquired. This provision does not apply where there is a gain on the disposal.

3.9 International Aspects – Share Options

3.9.1 General

The tax treatment of Irish resident individuals who have been granted share options under Irish share option schemes is relatively straightforward. However, the position becomes more complex once and international element is introduced.

The purpose of 3.9 is to provide guidance on specific issues arising where share option income gains are within the charge to Irish tax and also within the charge of a foreign jurisdiction.

While each case must be examined on its own merits, Revenue's general approach is to follow -

(i) the Irish domestic tax legislation as regards the Irish tax implications arising from share options; and

(ii) OECD recommendations vis a vis double taxation relief taking account of the content of the relevant Double Taxation Agreement(s) (hereafter referred to as DTAs) appropriate to each particular case.

3.9.2 Interpretation of Relevant Provisions of Irish DTAs based on OECD Model Tax Convention

In June 2004, the OECD Committee of Fiscal Affairs approved the principles in the OECD report on cross-border income tax issues arising from stock option plans. The additions to the Commentary to the OECD Model Tax Convention were incorporated in the 2005 update to the Model Tax Convention.

This instruction follows the interpretation proposed in the OECD report and deals with provisions in Irish DTAs relating to the taxation of income from employments, directorships and capital gains (normally Articles 15, 16 and 13 respectively) that follow the text in the current OECD Model Tax Convention, which is the case with most Irish DTAs.

3.9.3 Income from Employment Article of DTAs

3.9.3.1 Employment Income

Article 15 of the OECD Model Tax Convention deals with the Taxation of Income from Employment and covers "salaries, wages and other similar remuneration". Following the OECD recommendations referred to above, income from share options is included within this definition when the share options are granted, either directly or indirectly, as part of an employee remuneration package.

Gains accruing to an employee from the grant and subsequent holding of share options up to the date they are exercised, assigned or released will be considered as income from employment covered by the Income from Employment article.

Under the Income from Employment articles of Irish DTAs that mirror Article 15 of the OECD Model Tax Convention, the State of residence of the employee may tax gains arising from share options if, at the date when such gains arise (normally either at date of grant or at date of exercise, assignment or release of the share options), the employee is a resident of that State for the purposes of the DTA.

The article permits the other (source) State to also tax such income insofar as the relevant employment in respect of which the share options were granted was exercised in that State (subject however to the limitation in paragraph 2 of Article 15).

Where both States have taxing rights under the article and both tax the same element of income or gains, the Elimination of Double Taxation articles in the DTA will require the State of residence of the taxpayer to relieve double taxation. In the case of Ireland, this is achieved through the credit method, by crediting the source State's tax against the Irish tax on the same income or gain. The credit for the foreign tax paid against Irish tax cannot exceed the Irish tax due on that same income or gain.

3.9.3.2 Period of Employment for which Share Options have been Granted

Where an employee, in the course of an employment, has moved between Ireland and another DTA country in the period between the date of grant and the date of exercise, assignment or release of the share options, it will be necessary to ascertain the period of employment that the share options are remunerating. This information is required:

- in order to allocate source taxation rights under the **Income from Employment** article of the relevant DTA; and
- for calculating foreign tax that may be allowed as a credit under the **Elimination of Double Taxation** article.

For example, an Irish resident individual may be granted share options by an employer before being posted to work in a country with which Ireland has a DTA. Under the **Income from Employment** article of the DTA, Ireland may only tax the income gain arising to the extent that it relates to employment duties exercised in the State. The share scheme documentation should clearly set out the period of employment to which the share options relate.

For example, where a specific period must pass before a share option becomes exercisable (vesting period), the share option will be considered referable to the vesting period.

In this way, share options can form part of a company's reward policy and are often used to incentivise employees.

Once all conditions attaching to the grant of the share option have been satisfied, the option is deemed to have vested. Once the share option has vested, the employee may exercise the share option. However, blocking periods must also be considered. A blocking period is merely a period of time following the share option vest (and is not subject to forfeiture) during which the option cannot be exercised.

Blocking periods are disregarded for the purposes of attributing option income under the Employment Article of a DTA.

In determining any apportioned amount of income gain, the number of working days spent in each country during the employment period for which the options were granted should be included.

3.9.3.3 Share Option Granted when Resident of Ireland and Exercised when Resident of a DTA country

If an Irish resident employee is granted a share option in respect of an employment exercised in Ireland and, after becoming non-resident, exercises, assigns or releases that share option, Ireland will retain a taxing right under section 128 TCA 1997 in relation to that event.

This is subject, where appropriate, to double taxation relief. If the employee has become a resident of a country with which Ireland has a DTA, then under the Income from Employment article Ireland will relieve its charge to income tax to that part of the gain that was derived in respect of the period of relevant employment exercised in Ireland.

See Example 9 in Section 3.10.

3.9.3.4 Share Options Granted to an Employee while a Resident of a DTA Country and Part of Referable Employment Exercised in Ireland

The charge to income tax under section 128 TCA 1997 on the exercise of a share option applies to individuals, irrespective of the fact that it was granted at a time when the individual:

(a) was not resident in the State for tax purposes; and
(b) his/her income was not within the charge to Irish tax.

In this way, individuals who were granted share options prior to arrival will be chargeable to tax to the extent that the income gain relates to a period of employment exercised in Ireland.

This is subject to any relief for double taxation. Where DTA relief applies, the taxable income will be restricted, on a time apportionment basis to the portion of the gain referable to employment duties exercised in Ireland. This is on the assumption that para 2 of the Employments Article does not apply.

See Examples 10 and 11 in Section 3.10.

3.9.3.5 Non-Resident Individuals None of whose Duties of Employment are Exercised in the State

Revenue will not seek to impose the charge to income tax under section 128 TCA 1997 in respect of the exercise, assignment or release of share options under an unapproved share option scheme where -

(a) the date of grant of the share option is at a time when
- the individual is non-resident;
- the emoluments from the individual's employment were not within the charge to tax in the State under either Schedule D or Schedule E (or, if within the charge, are relieved from Irish tax); and

(b) none of the duties of the employment/ office referable to the grant of the option are exercised in the State.

See Example 12 in Section 3.10.

3.9.3.6 Share Options Granted in respect of an Irish Employment but Part of the Period of Employment for which the Share Option was Granted was Exercised in a Non-DTA Country

If the share option is granted in respect of an Irish employment, Ireland has taxing rights on the entire benefit derived from the exercise of the share option. As there is no DTA with the other country, Ireland's right to tax is not restricted.

In circumstances where the gain from the exercise of a share option is chargeable to income tax in Ireland and also in a country with which Ireland does not have a DTA, then a deduction (rather than a credit) will generally be given in respect of foreign tax paid when computing the Irish tax.

See Example 13 in Section 3.10.

3.9.4 Directors' Fees Article

Director's fees and other similar payments are dealt with in Article 16 of the OECD Model Tax Convention.

Directors' fees and other similar payments derived by a resident of a Contracting State in his/ her capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

An income gain arising to a director in respect of share options exercised, assigned or released is regarded as income arising in his/ her capacity as a board member of the relevant company.

In this way, once the company in which the individual is a director is a resident of the State, any income gain arising in respect of such options is taxable in the State. In this way the income arising from the holding of an Irish office remains within the

charge to tax. There is therefore no requirement to time apportion any income gain arising with regard to periods spent in the State.

However, where share options are granted under the terms of the employment contract to an executive director (i.e. an employee who is also a board member), then to the extent any relief is due under the DTA, the Employment Article will apply.

As with all DTAs, it is important to review the specific article dealing with Director's fees to determine whether there is any deviation from the OECD Model Tax Convention. The Director's Fees article of the Ireland/ US DTA differs from the OECD Model Tax Convention. Where fees are derived by a US resident director of an Irish resident company, Ireland may only tax the fees to the extent that they relate to board meetings held in the State. The fees attributable to board meetings held in the US will be taxable only in the US. Accordingly, where part of a gain from the exercise, assignment or release of share options in an Irish resident company by a US resident director relates to US board meetings, Ireland may not tax this part of the gain.

3.9.5 Capital Gains Tax (CGT) on Disposal of Shares Acquired

Any gain arising in respect of a disposal of shares acquired by way of exercise is regarded as a capital gain for DTA purposes. Capital gains are dealt with in Article 13 of the OECD Model Tax Convention.

Where the relevant DTA follows the Model Convention, the state of residence of the individual has exclusive taxing rights in respect of the capital gains arising from the disposal of shares (provided the shares disposed of are not connected with a permanent establishment in the other State nor derive the greater part of their value from immovable property in the other State).

Therefore, where the DTA mirrors to the Model Convention, any capital gain arising in respect of share disposal will generally only be taxed only in the State in which the individual is a resident of for the purposes of the DTA.

See Examples 9 – 14 in Section 3.10.

3.9.6 Interaction of RTSO and Double Taxation Relief

Where an individual is in a position to calculate the amount of Irish income tax due on the exercise of the share option and is satisfied that he/she is entitled to double taxation relief in Ireland on the exercise of the share option, the amount of the relevant tax on share options (RTSO) payable can reflect the double taxation relief.

In circumstances where the amount of RTSO is less than the amount that should have been paid, interest will arise from the due date of payment of the RTSO.

3.9.7 Long Option - Credit where Charge to Income Tax Imposed at the Date of Grant

See Example 14 in Section 3.10.

3.10 International Aspects - Examples

Example 9

Income tax treatment where an employee is granted a share option whilst a resident of Ireland and exercises it whilst a resident of a DTA country

Facts

- Tom was tax resident in Ireland in 2014 and 2015. He was also considered **resident of** Ireland for the purposes of the DTA in those years.
- During 2014 and 2015, he was employed in Ireland by an Irish subsidiary of a multinational company.
- On 1 January 2014 he was granted an option to acquire 10,000 shares in the parent company at an option price of €1 per share.
- Under the share plan rules, Tom's right to exercise the share option was conditional upon him remaining in employment for 3 years i.e. to 31 December 2016.
- On 1 January 2016, Tom permanently transferred to a company affiliated with his employing company and in a DTA state. He was considered **resident** *of* that DTA state for 2016.
- At 31 December 2016, the share options vested meaning that Tom acquired an entitlement to exercise the share options. However, the share scheme rules specified that such options could only be exercised during the period 1 January 2018 to 31 December 2019.
- On 1 January 2018, Tom exercised his share options, the market value at which date was €7 per share.
- On 1 March 2019, Tom sold his shares at which date the market value was €8 per share.

Tom	Irish tax resident	Resident of a DTA country	Period of relevant employment
2014	Grant (1.1.14)		
2015			
2016		Permanent transfer (1.1.16)	Right vested (31.12.16)
2017			
2018		Exercise (1.1.2018)	
2019			Disposal (1.3.2019)

The share option was granted in respect of an employment period of three years (780 working days[5]) of which –

- Two years (520 working days) were spent in Ireland;
- One year (260 working days) was spent outside Ireland but in a DTA country

Charge to income tax under Irish domestic tax legislation

Market value of shares at date of exercise (€7 x 10,000)	€70,000
Less option price (€1 x 10,000)	€10,000
Income gain	€60,000

Charge to Irish income tax after double taxation relief

Where the terms of a double taxation agreement (DTA) confine the charge to income tax to the period(s) of employment exercised in Ireland, the taxable gain of €60,000 is apportioned as follows -

Taxable amount 60,000 X 520 days / 780 days = €40,000

Therefore, in line with Article 15 of the Model Convention, Ireland may tax so much of Tom's remuneration as is attributable to the exercise of his duties in Ireland. Remuneration includes share option income. The income gain is therefore apportioned by reference to Irish duties performed during the vesting period. The fact that Tom's employer implemented a blocking period is not relevant to the apportionment.

Capital Gains Tax

The capital gain on a subsequent disposal of shares acquired by Tom on exercise of the share option would not normally be taxable in Ireland if at the date of the disposal Tom was neither resident in Ireland nor ordinarily resident in Ireland.

Apart from the territorial limitations of Irish Capital Gains Tax[6], normally the sole taxing right will be granted to the State of residence of the individual under the DTA. For the purposes of the DTA, the gain on the disposal of the shares is a capital gain covered by Article 13 (Capital Gains). As Tom was not ordinarily resident in Ireland and was a resident of the DTA country at the date of disposal of the shares, it has the sole taxing right on the capital gain.

5 Assume there are 260 working days in a year

6 An individual who is neither resident nor ordinarily resident in the state for a year of assessment is not liable to tax on gains arising from a disposal of shares in that year, except where those shares are unquoted shares deriving their value or the greater part of their value from land, buildings, minerals and related exploration rights in the State or the Continental Shelf.

Example 10

Share options granted to an employee whilst a resident of a DTA country and exercised whilst resident in Ireland

Facts

- Patrick is a resident of a DTA country;
- On 1 January 2010, he was granted an option to acquire 10,000 shares in the parent company at a price of €1 per share;
- Under the terms of the share option plan, the right to exercise the share option was conditional upon Patrick remaining in the employment of the group until 31 December 2013;
- The share option could be exercised between 1 January 2014 and 31 December 2014;
- On 1 January 2011, Patrick arrived to Ireland under the terms of an international assignment with his employer;
- On 31 December 2014, Patrick exercised his option to acquire the shares. The market value of the shares at that date was €7 each;
- On 1 July 2015, Patrick sold the shares. The market value of the shares at that date was €8 each.

Patrick	Irish tax resident	Resident of a DTA country	Period of relevant employment
2010		Grant (1.1.10)	
2011	Permanent transfer (1.1.11)		
2012			
2013			Right vested (31.12.13)
2014	Exercise (31.12.14)		
2015			Disposal (1.7.15)

The share option was granted for a period of employment covering four years (1,040 working days) of which:

- three years (780 working days) were spent in Ireland;
- one year (260 working days) was spent outside of Ireland but in a DTA country.

Charge to income tax under Irish domestic tax legislation

Market value of share at date of exercise (€7 x 10,000)	€70,000
Less Option Price (€1 x 10,000)	€10,000
Taxable Gain	€60,000

Charge to Irish income tax after Double taxation relief

As the share option was granted before Patrick became resident in Ireland and the only connection with Ireland was the exercise (in part) of the relevant employment in Ireland, Ireland may only tax the part of the gain that is referable to the exercise of the relevant employment in Ireland.

Accordingly, as three-quarters of the period of relevant employment was exercised in Ireland, Ireland may tax three-quarters of the benefit derived from the exercise of the share option (i.e. 60,000 X 3/4 = 45,000). Ireland will give double taxation relief in respect of any tax paid in a DTA country in respect of this €45,000. Patrick will need evidence of non-refundable tax paid in the DTA country in order to support his claim for relief under the DTA.

Capital Gains Tax

As a resident of Ireland at the date of disposal of the shares, Patrick is liable to capital gains tax on the gain from the disposal. Under section 128(10) TCA 1997, the amount chargeable to tax under section 128 TCA 1997 will be treated as consideration paid by the person acquiring the shares. Ignoring indexation, the Irish capital gains tax liability is as follows -

If new shares issued on the exercise of the share option

Sale proceeds (€8 x 10,000)		€80,000
Less		
Actual cost	€10,000	
Gain chargeable to income tax in Ireland	€45,000	
Gain chargeable to income tax in a DTA country (see Note)	€15,000	€70,000
Gain for capital gains tax purposes		€10,000

Note - Revenue is prepared to allow the amount chargeable to income tax in a DTA country as part of the base cost for capital gains tax purposes. This is provided that the aggregate of the gains chargeable to income tax does not exceed an amount equal to the full amount that would be chargeable in Ireland if all of the gain on the exercise, assignment or release of the share option is referable to duties of the employment/ office exercised here. Evidence of the amounts chargeable in the DTA country should be retained by the individual should Revenue request same in support of base cost.

If existing shares issued on the exercise of the share option

Sale proceeds (€8 x 10,000)	€80,000
Less Market value of the shares at acquisition	€70,000
Gain for capital gains tax purposes	€10,000

Note - Above examples assume that the CGT personal exemption has been otherwise utilised and that indexation relief is not applicable.

Example 11

Share options granted to and exercised by an employee whilst a resident of a DTA country but after a relevant period of employment was exercised in Ireland

Facts

- On 1 January 2010, Mary was resident of a DTA country and employed there;
- On that date she was granted a share option to acquire 10,000 shares in the parent company at a price of €1 per share;
- Under the terms of the share option plan, the right to exercise the share option was conditional upon Mary remaining in the employment of the group until 31 December 2013;
- The share option could be exercised from 1 January 2014 and on or before 31 December 2014;
- On 1 January 2011, Mary was posted to her employer's branch in Ireland;
- On 1 January 2013, Mary repatriated to her home country and resumed working for her employer in the DTA country;
- On 31 December 2014 Mary exercised her share option at which time the market value of the share was €7;
- On 1 March 2016, Mary sold the shares at which time the market value of the shares was €8;

Mary	Irish tax resident	Resident of a DTA country	Period of relevant employment
2010		Grant (1.1.10)	
2011	Posted (1.1.11)		
2012			
2013		Repatriated (1.1.2013)	Right vested (31.12.13)
2014		Exercise (31.12.14)	
2015			
2016			Disposal (1.3.16)

The share option was granted for a period of employment covering four years (1,040 working days) of which -

- two years (520 working days) were spent in Ireland;
- two years (520 working days) were spent outside of Ireland in the DTA country.

Charge to income tax under Irish domestic tax legislation

Market value of share at date of exercise (€7 x 10,000)	€70,000
Less Option Price (€1 x 10,000)	€10,000
Taxable Gain	€60,000

Charge to Irish income tax after Double taxation relief

In this example, the income from employment article of the Ireland/Country X DTA will limit Ireland's taxing right to the part of the gain derived from the exercise of the relevant employment in Ireland. Accordingly, Ireland may tax one half of the benefit (€30,000) representing two of the four years of the relevant employment that was exercised in Ireland. The taxable gain of €60,000 is apportioned as follows

$$\text{Taxable amount } €60{,}000 \times \frac{520 \text{ days}}{1{,}040 \text{ days}} = €30{,}000$$

If Country X taxes any of this €30,000, it would generally be expected to grant a credit for the Irish tax (computed in accordance with its relevant foreign tax credit rules) or exempt the income from further taxation.

Capital Gains Tax

For the purposes of the Ireland/Country X DTA, the gain on the disposal of the shares is a capital gain covered by Article 13 (Capital Gains). As Mary was neither resident nor ordinarily resident in the State at the time of the disposal, she is chargeable only in respect of gains made on the disposal of specified assets. Such assets include unquoted shares deriving their value or the greater part of their value from land, buildings, minerals and related exploration rights in the State or the Continental Shelf.

Example 12 - Share options granted to an employee whilst a resident of a DTA country

Facts

- On 1 January 2013, Nora was resident of a DTA country and employed there;
- On that date she was granted a share option to acquire 1,000 shares in the parent company at a price of €5 per share;
- Under the terms of the share option plan, the right to exercise the share option was conditional upon Nora remaining in the employment of the group until 31 December 2015;
- The share option could be exercised from 1 January 2017;
- On 1 January 2016, Nora was posted to her employer's branch in Ireland;
- On 31 December 2018, Nora repatriated to her home country and resumed working for her employer in the DTA country;
- On 31 December 2017 Nora exercised her share option at which time the market value of the share was €50. The gain chargeable to income tax in the DTA country on the exercise of this option was €45,000;
- On 1 March 2018, Nora sold the shares for €60,000;

Nora	Irish tax resident	Resident of a DTA country	Period of relevant employment
2013		Grant (1.1.13)	
2014			
2015			Right vested (31.12.15)
2016	Posted (1.1.16)		
2017		Exercise (31.12.17)	
2018		Repatriated 31.12.2018	Disposal (1.03.18)

The share option was granted for a period of employment covering three years (780 working days). None of the duties of the employment for these three years were performed in Ireland.

Charge to income tax under Irish domestic tax legislation

As Nora was not a resident of Ireland at the date of grant of the share option and none of the employment relevant to the grant of the share option was exercised in Ireland, the charge to Irish income tax on the exercise of the share option is relieved.

Capital Gains Tax

As a resident of Ireland at the date of disposal of the shares, Nora has a capital gains tax liability on the gain from the disposal. Ignoring indexation, the chargeable gain for capital gains tax purposes is as follows –

If new shares issued on the exercise of the share option

Sale proceeds		€60,000
Less		
Actual cost	€5,000	
Gain chargeable to income tax in Ireland	Nil	
Gain chargeable to income tax in a DTA country	€45,000	€50,000
Gain for capital gains tax purposes		€10,000

If existing shares issued on the exercise of the share option

Sale proceeds	€60,000
Less Market value of the shares at acquisition	€50,000
Gain for capital gains tax purposes	€10,000

Note - Above examples assume that the CGT personal exemption has been otherwise utilised.

Example 13

Shares options granted in respect of an Irish employment but part of the period of employment for which the share option was granted was exercised in a non-DTA country

Facts

- On 1 January 2012, Sean was Irish resident and employed here;
- On that date he was granted an option to acquire 10,000 shares in the company at a price of €2 per share;
- Under the terms of the share option plan, the right to exercise the share option was conditional on Sean remaining in the employment of the group until 31 December 2015;
- On 1 January 2014, Sean transferred to an affiliate company in a non-DTA country (and became a resident of that country from that date).
- On 1 January 2016, Sean exercised his right to acquire the share option, at which time the shares were worth €7 each. The income tax charged in the non DTA country on the exercise of the share option was €12,500.

Sean	Irish tax resident	Resident of a non-DTA country	Period of relevant employment
2012	Grant (1.1.12)		
2013			
2014		Posted (1.1.14)	
2015			Right vested (31.12.15)
2016		Exercise (1.1.16)	

The share option was granted for a period of employment covering four years of which:

- two years were spent in Ireland;
- two years were spent outside of Ireland in a non-DTA country.

Charge to income tax under Irish domestic tax legislation

Market value of share at date of exercise (€7 x 10,000)	€70,000
Less Option Price (€2 x 10,000)	€20,000
Taxable Gain	€50,000

As the share option was granted in respect of an Irish employment, Ireland has taxing rights on the entire income derived from the exercise of the share option.

As there is no DTA with the other country, Ireland's right to tax is not restricted.

As stated in Paragraph 10.7.5, in circumstances where the gain from the exercise of a share option is chargeable to income tax in Ireland and also in a country with which Ireland does not have a DTA, unilateral relief may be granted. This is achieved in the form of a deduction in respect of non-refundable foreign tax paid when computing the Irish tax.

Market value of share at date of exercise (€7 x 10,000)		€70,000
Less Option Price (€2 x 10,000)	€20,000	
Income tax paid in a non-DTA country on the exercise of the share option	€12,500	€32,500
Taxable Gain		€37,500

Example 14 - Long Option - Credit where charge to income tax imposed at Date of Grant

Facts

- On 1 January 2013, Helen was resident in Ireland and employed in the State by an Irish subsidiary of a multinational company;
- On that date she was granted an option to acquire 10,000 shares in the company at a price of €1 per share;
- The share option was capable of being exercised until 1 January 2021 (a long option);
- The market value of the shares at the date of grant was €1.50 per share;
- Under the terms of the share option plan, the right to exercise the share option was conditional on Helen remaining in the employment of the group until 31 December 2015;
- The share option could not be exercised until 31 December 2016 at the earliest.
- On 1 January 2015 Helen transferred to an affiliate company in a DTA country (and became a resident of that country from that date).
- On 1 January 2017, Helen exercised her right to acquire the share option, at which time the shares were worth €7 each.
- On 1 March 2018, Helen sold the shares, at which time were worth €8.

Helen	Irish tax resident	Resident of a DTA country	Period of relevant employment
2013	Grant (1.1.13)		
2014			
2015		Transferred (1.1.15)	Right vested (31.12.15)
2016			
2017		Exercise (1.1.17)	
2018			Disposal (1.03.18)

The share option was granted for a period of employment covering three years (780 working days) of which -

- two years (520 working days) were spent in Ireland;
- one year (260 working days) was spent outside of Ireland in a DTA country.

Charge to income tax under Irish domestic tax legislation

Where the share option is capable of being exercised more than 7 years after the share option has been granted (this is known as a 'long option'), the charge to income tax may be imposed on both

- the grant of the share option; and
- on the exercise, assignment or release of the share option,

with a credit given for the income tax charge on the grant of the share option against the income tax due on the exercise, assignment or release of the share option.

As a resident of Ireland at the date of grant of the share option, Ireland will tax Helen at that date on the benefit she derived on the grant of the share option. Article 15 of the DTA (Income from Employment) imposes no limitation on the right of Ireland to tax its residents in respect of employment income considered under its tax laws as derived at that time.

Income tax charge at date of grant of the share option

Market value of share at date of grant (€1.50 x 10,000)	€15,000
Less Option Price (€1 x 10,000)	€10,000
Taxable Gain	€5,000
Tax due (@40% rate of income tax)	€2,000

Income tax due at date of exercise of the share option

In this case, an income tax charge also arises in Ireland on the date of exercise of the share option. Under Article 15 of the DTA, Ireland may tax remuneration derived by a resident of the DTA country from the exercise of an employment in Ireland.

Market value of share at date of exercise (€7 x 10,000)	€70,000
Less Option Price (€1 x 10,000)	€10,000
Taxable Gain	€60,000

Charge to Irish income tax after Double taxation relief

However, as Helen worked only two years in Ireland, the taxable gain of €60,000 is reduced to:-

Taxable amount €60,000 X **520 days** = €40,000

780 days

The income due on the exercise of the share option is -

Income tax due (€40,000 @ 40%)	€16,000
Less Income tax paid at the date of the grant of the share option	€2,000
Net income tax payable on the exercise of the share option	€14,000

Capital Gains Tax

For the purposes of the Ireland/Country D DTA, the gain on the disposal of the shares is a capital gain covered by Article 13 (Capital Gains). As Helen was neither resident nor ordinarily resident in the State at the time of the disposal, she is chargeable only in respect of gains made on the disposal of specified assets. Such assets include unquoted shares deriving their value or the greater part of their value from land, buildings, minerals and related exploration rights in the State or the Continental Shelf.