MAPLES GROUP

UPDATE

COVID-19 Ireland Update: Management Equity Incentive Plans - Key Considerations

Attracting, motivating and retaining staff is one of the critical challenges many businesses face. In light of cash flow constraints arising as a result of COVID-19, many employers are looking at alternative ways to ensure key employees are incentivised to perform and grow value in the business, and equity plans can often be a suitable tool to assist with this. Others are using this time to implement strategic plans that may have been planned for some time, including appropriate executive equity plans. Often, such arrangements require little day-to-day administration or cost and research indicates they can contribute to company performance due to alignment of interests between employees and employer.

Equity Incentives

An equity-related incentive package can assist in achieving these goals. Equity incentives usually fall within one of four broad categories:

- Revenue approved share options and plans
- Unapproved share options
- 'Phantom' equity schemes
- Direct shareholdings

Determining the Type of Plan

The key factors for determining what type of plan is appropriate for a business are:

- Aligning desired business objectives with outcomes from plan (e.g. growth in company profits vs growth in equity value)
- Seniority of personnel involved
- Desired tax outcomes

Choosing the Correct Plan

Many companies will operate a number of plans to incentivise different cohorts of employees towards different goals. The following table sets out an overview of the main forms of plans used by private companies with Irish employees. However, this list is not exhaustive and plans can be created to address a variety of desired outcomes.

Plan Type	Key Terms	Tax Outcomes	Key Commercial Outcomes
Unapproved Share Option Plan	Participants granted options to acquire company shares Strike price may be less than market value or (effectively) nil Common to include conditions that participants remain engaged to benefit from options	Income tax (including employee PRSI and USC, but not employer PRSI) on difference between strike price and market value on date of exercise CGT on gains above market value on date of exercise	Encourages contribution to growth in equity value Often used to incentivise employees towards some form of exit event (trade sale or IPO)
KEEP	Company must be an SME to qualify Similar to share option plan, however: • Strike price must not be less than market value on date of award • Value of option must not exceed: - €100,000 in any one year of assessment - €300,000 in all years of assessment, or 100% of the qualifying individual's annual emoluments in the year of assessment	CGT on increase in value above exercise price	Encourages contribution to growth in equity value Often used to incentivise employees towards some form of exit event (trade sale or IPO) Mostly availed of by companies which have not raised significant capital or at an early stage of development

Plan Type	Key Terms	Tax Outcomes	Key Commercial Outcomes
Growth / Flowering Shares	Awards of shares with no current value, value accrues once certain targets are achieved Plans are highly bespoke and tend to be used for senior personnel in companies where significant value has already been created	CGT on exit	Incentivises growth in equity value and achievement of other defined targets
Restricted Shares / Share Clog Scheme	Shares issued on terms which restrict transfer of shares for a minimum period (1–5 years) Care should be taken to ensure any leaver terms do not infringe these restrictions which would result in claw-back of tax Shares must be held by a trustee Typically used for more senior / key personnel	Income tax (including employee PRSI and USC) on market value on date of grant Market value is abated (up to 60%) by reference to the duration of the 'clog' / restriction on share transfer	Enables employees to receive shares without paying income tax on market value on date of award Incentivises growth in equity value

Given the tax impact on many of the plans mentioned above, ensuring appropriate advice and certainty on supporting market value of the shares at date of award is likely to be critical.

Staff Retention

One common objective among all plans is staff retention. For this reason, many plans will contain detailed and specific terms on how shares or options are to be treated in the event of leaving employment. These terms should balance company culture and objectives and for that reason, require thought and advice on appropriate terms, in particular crafting terms which do not create incentives for employees to leave employment in certain scenarios or receive value where they have acted to the detriment of the company.

In addition, there may be tax considerations associated with vesting of shares or forfeiture of shares on leaving employment. These considerations are particularly relevant in the case of growth share plans and grants of restricted shares.

Private Equity-backed Companies

In companies backed by private equity investors, plans are often specifically tailored to align employees' actions with the investor's economic outcomes. These plans may be based on some of the plans described within this Update or be specifically tailored to the key objectives of the investor. As with any of the other plans described herein, obtaining professional advice on appropriate structure and tax considerations at the outset is critical.

Other Considerations / Nominee Arrangements

In addition to considering the correct type of plan for employees and structuring for employee departure, all plans and equity awards should be implemented in a way that is suitable for the shareholding structure of the company. In particular, if participants have relatively small equity stakes in the company, a trustee or nominee structure should be considered. This should reduce the number of parties required to sign various documents when the company is involved in any kind of activity requiring shareholder involvement (from matters as simple as changing the company name, to taking in additional investment, trade sale or corporate reorganisation). These arrangements should be set up in a way which enables the nominee to take all actions on behalf of the parties for whom it holds shares. These arrangements are helpful in all situations where there are a number of parties with small equity stakes but are particularly important where employees who have left employment are entitled to retain an equity stake.

Further Information

The team at Maples has significant experience in advising on structuring and implementing tailored plans for a wide variety of clients. If you are interested in any further information on this topic, please liaise with your usual Maples Group contact or:

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