Febrúar 2023

Individual Income Tax - Stock options[1]

Iceland – Article 9 and 10 of the Income Tax Act

In principle, all benefits in kind are included in taxable income (article 7 of the TSKL). In some cases special rules apply, e.g. with regard to company cars.

Stock options acquired by an employee, and, from 2021 onwards, by directors of innovative companies, through their employment, are as a general rule taxed as Category A income (progressive rates) based on the difference between the option price and the value arising on the exercise of an approved employee share option. However, subject to various conditions, the gain is taxable as Category C income (at 22%) if the option's value does not exceed ISK 1.5 million (ISK 600,000 before 2021). The taxation is postponed until the sale of the shares irrespective of the category of the income.

Denmark

With effect from 1 January 2017, an incentive for foreign experts being hired to work in Iceland The benefit for an employee of receiving stock options or shares is taxed in accordance with sections 7P, 16 or 28 of the LL.

If the requirements of section 7P of the LL are met, the taxation is postponed until the employee sells the shares. The employee is then taxable in accordance with the rules provided by the ABL. If the requirements of section 7P of the LL are not met, the stock options or shares received by the employee are taxed as a fringe benefit.

The requirements of section 7P of the LL are, as follows:

- stock options or shares must be granted as a part of an employment relationship;
- the employee and the employer must agree that section 7P of the LL applies for the grant;
- the agreement between the employee and the employer must clearly specify the value of the options/shares;
- the value of the stock options or shares must not exceed 10% of the employee's annual salary determined at the time of the agreement (up to 20%, provided that the stock options are granted to more than 80% of the employees);
- the stock options or shares must be granted by the company in which the employee is employed or a group company as determined in section 4(2) of the KGL;
- the employee is able to vest the shares in the company in which the employee is employed or a group company as determined in section 4(2) of the KGL;
- the shares which can be vested, cannot be a specified class of shares; and
- the stock options are not transferred.

If an employee ceases to be subject to taxation in Denmark, the employee will no longer be able to utilize the tax postponement rules of section 7P of the LL and exit taxation rules will apply.

Section 7P only applies to arrangements agreed on or after 1 July 2016.

[1] Heimild: International Bureau of Fiscal Documentation (IBFD), ibfd.org.

If the requirements of section 7P of the LL are not met, but the requirements of section 28 of the LL are met, the taxation of the benefit of an employee stock option is postponed until the employee assigns or exercises the option (section 28(1) of the LL). Also, any unrealized increase in the fair market value of a stock option from the time it is granted until it is exercised is exempt (section 30(1)(5) of the KGL) (such increase in value would otherwise be taxable under the financial derivatives regime).

If neither section 7P nor section 28 of the LL applies, the taxation of the benefit is imposed once the employee has acquired the right to the stock option. The time of taxation is determined based on whether certain suspensive criteria are met.

As regards shares, if the requirements of section 7P of the LL are not met, the taxation of the benefit of an employee share is imposed once the employee has acquired the right to the share (section 16 of the LL). The time of taxation is determined based on whether certain suspensive criteria are met.

Norway

According to section 5-14(3) of the sktl, a benefit derived upon the exercise or sale of an option to acquire or sell shares or primary capital certificates related to employment is subject to tax on employment income. The benefit is calculated at the time of exercise. For call options such benefit is calculated as the difference between the market value of the shares upon exercise and the exercise price (less a possible premium paid). For put options the benefit is calculated as the difference between the exercise price and the market value of the shares (less a possible premium paid). If the option itself is sold, a benefit is calculated as the difference between the sales price of the option and the acquisition cost (premium paid). The taxable benefit of the option is spread over the years during which it has been accumulated. Social security contributions and individual income tax are computed as if the benefit of the option had been derived during the period the taxpayer held the option with the same amount for each year.

With effect from 1 January 2022, a new model was introduced for the taxation of employee share options in start-ups and growing companies. According to the new model, the allocation or the redemption of the options will not trigger a liability to pay tax. Taxation is deferred until the shares are disposed of. This scheme replaces the separate tax scheme that was introduced for small start-up companies on 1 January 2018. Options in employment relationships covered under the new model should not be taxed as salary income.

There are several limitations to the modified rules, such as:

- the company cannot be listed on the stock exchange;
- the company must be incorporated for maximum 10 years with less than 50 employees on average;
- the employee and their relatives may not have more than 5% ownership;
- the upper limit for the company's total operating revenues and balance sheet total is NOK 80 million in the income year, before granting the stock options; and
- the option must be exercised between 3 and 10 years after the option has been granted.

Sweden

An employee who is granted a stock option is deemed to receive a taxable benefit in the year in which the option is exercised. Employees who are granted stock options while resident in Sweden, and who subsequently emigrate before exercising them, are subject to Swedish income tax only when the options are eventually exercised. The transfer of an option is treated as an exercise in all (i.e. emigration and non-emigration) cases. Where an employee emigrates before exercising the option, the other state could claim tax on the amount received, once the option is exercised. In these cases, any double taxation treaty between Sweden and the other state would generally apply, and the foreign tax paid would be creditable against Swedish income tax.

Employee stock options are not taxable, subject to certain conditions (chapter 11a of the IL).

Finland

Stock purchase plans. The benefit from the right to purchase shares issued for employees is taxable only to the extent that the price is less than 90% of the market value of the shares. If the right is not available to the majority of employees, the whole amount of the benefit is taxable (section 66 of the TVL).

With effect from 1 January 2021, and applicable to stock purchase plans executed on or after that date, employees of non-listed companies may purchase shares in the company they are employed by without this being regarded as taxable earned income. Several conditions apply, including that (section 66a of the TVL):

- the shares are purchased at not less than the mathematical value of the shares;
- the employee by himself or his family members, or the employee together with his family members, does not own, directly or indirectly, more than 10% of the shares or voting power in the company;
- the share purchase plan is made available for the majority of the employees in the company; and

- the company:
- is resident in another EEA country or in a country with which Finland has concluded an agreement for the exchange of tax information, and Finland, also in practice, obtains such information based on the agreement;
- conducts active business at the time the stock purchase plan is executed and its main assets consist of business assets;
- regularly pays salaries; and
- is registered in the Prepayment Register of the Finnish Tax Administration or is a foreign company that has proven that it has not neglected any of its prepayment or reporting duties under section 26 of the EPL.

Stock option plans. When an employee receives an option from his employer to purchase shares in any company (not just the employer company), the value (less any price paid for the option) at the date the option is exercised constitutes taxable earned income to the employee at that time. The transfer of an option is regarded as the exercise of it; the value is its transfer price or, if donated, its fair market value (less any price paid for the option) (section 66 of the TVL). Where the option right is donated or otherwise assigned, the benefit eventually produced by the option for the assignee (the increase in value between the value at the time of transfer and the exercise of the option) is deemed employment income of the transferor.

Ireland

Share options are generally taxed on the benefit that arises when they are exercised, or otherwise realized, rather than when they are initially granted. The charge to tax is proportionate to the period during which the individual exercised his employment in Ireland between the date of grant and the date of exercise.

Employees may enter into an approved savings-related share option scheme based on maximum monthly contributions of EUR 500 over a 3-year period. The employee may exercise the scheme options to purchase shares under the scheme free of tax. However, a liability to the Universal Social Charge (USC) arises based on the benefit which arises on exercise. The options granted by the scheme must provide at most a 25% discount on the market price of the shares on the date the options are granted. No charge to income tax arises as a consequence of the purchase taking place at this discounted price. However, any gains on options exercised at the end of the 3-year term are subjected to paying Related Social Insurance (PRSI) and USC at the time of exercise. Various additional conditions must be satisfied in order to obtain the Revenue Commissioners' approval (section 519A and Schedule 12A of the TCA 1997).

A wide number of other types of share scheme arrangements exist and specific tax rules attach to them.

The reporting of information by employers in relation to awards of shares to directors and employees is mandatory (except where the employer is already obliged to report the information), including awards given in the form of cash or where a discount on shares is provided.

Key Employee Engagement Programme
With effect from 1 January 2018, the Key Employee Engagement Programme (KEEP) was introduced. The programme applies to unquoted trading companies (i.e. companies none of whose shares are quoted on a stock exchange other than the Enterprise Securities Market (ESM) of the Irish Stock Exchange (ISE) or equivalent in the EEA country with which Ireland has a double tax agreement). Qualifying companies must be incorporated in an EEA country and be resident in Ireland (or resident in the EEA country, but carry on a business in Ireland through a branch or agency). Certain trading activities are specifically excluded, e.g. financial activities, dealing in or developing of land and professional services companies. The company must also fulfil the conditions for a small or medium-sized company (SME) on the date the options are granted, i.e. (i) employ fewer than 250 people, (ii) have an annual turnover not exceeding EUR 50 million, and/or (iii) have an annual balance sheet total not exceeding EUR 43 million.

A qualifying company may grant share options to employees up to a total market value of EUR 3 million with the total market value of the share options granted to any one individual not exceeding (i) EUR 100,000 in any tax year, (ii) a EUR 300,000 lifetime limit (EUR 250,000 over 3 consecutive years for the period from 1 January 2018 to 31 December 2018), or (iii) 100% of the individual's annual emoluments (50% from 1 January 2018 to 31 December 2018). The total market value of the "qualifying share option" granted to any one employee/director cannot exceed the following:

- EUR 100,000 in any one year of assessment;
- EUR 300,000 in all years of assessment; or
- 100% of the annual emoluments in the year of assessment in which the qualifying option is granted.

KEEP only applies to share options granted to full-time employees, or directors who spend a minimum of 30 hours per week working for the company.

The share options must be granted to the employees at market value and the main purpose of the scheme must be to recruit or retain employees. In order to qualify for the KEEP programme, the share options must be held for a minimum of 12 months before being exercised (with limited exceptions, e.g. on death or a sale of the company), and must be exercised within 10 years of the date of grant.

The shares received on the exercise of the options must be ordinary shares and they must not carry any preferential rights, e.g. to dividends or assets on winding up. In addition, the KEEP programme does not apply if the individual (either alone or with connected persons) can control directly or indirectly more than 15% of the ordinary share capital of the company.

Any gain realized on the exercise of an option granted on or after 1 January 2018 and before 1 January 2024, is exempt from income tax. Any gain arising on the exercise of the option is also exempt from PRSI and the USC. Capital gains tax will apply on any gain arising on the subsequent disposal of the shares with the employee's base cost being the actual amount paid for the shares on exercise of the options.

Finance Act 2019 introduced a number of favourable amendments to the legislation governing KEEP. These are as follows:

- the qualifying share option definition has been extended to include options granted in a qualifying holding company of a qualifying group. The definition of a qualifying group includes only a qualifying holding company, its qualifying subsidiary or subsidiaries and its relevant subsidiary or subsidiaries. The qualifying group (excluding the holding company) must be wholly or mainly carrying on a qualifying trade and must have at least one qualifying subsidiary and all of the companies in the group must be unquoted. The definition of a qualifying holding company is a company: (i) which is not controlled either directly or indirectly by another company, (ii) which does not carry on a trade or trades; and (iii) whose business consists wholly or mainly of the holding of shares only in its qualifying subsidiary or subsidiaries.
- A qualifying subsidiary means a company where a qualifying holding company directly owns more than 50% of the ordinary share capital and a relevant subsidiary is a company whereby more than 50% of the ordinary share capital is indirectly owned by the qualifying holding company. A relevant subsidiary cannot be regarded as a qualifying subsidiary.
- the "qualifying individual" definition has been changed to allow for part-time employees or flexible working arrangements and the movement of employees between group companies. The definition of a qualifying individual has been amended to include an individual who is required to work at least 20 hours per week or who devotes not less than 75% of their working time for a qualifying company or a qualifying company within a qualifying group. This change has in effect made the scheme available to employees who may previously not have qualified on the basis that they were not "full-time employees" and it also facilitates the possibility of an employee moving between qualifying companies within a group; and
- the requirement for the shares to be newly issued shares which carry no future or preferential right to assets on a winding-up or dividends has been removed. The scheme now offers the opportunity for options to be granted over existing shares as well as new shares, which is a welcome amendment which further enhances the flexibility of the scheme.

The changes are subject to a commencement order by the Minister for Finance.

Netherlands

Stock options granted to employees for no consideration or for a price below market price constitute employment income in kind. The withholding of wage tax and recognition for individual income tax purposes take place at the date of exercise or transfer of the share option or, if the exercise is subject to one or more future conditions, at the time all such conditions are met. The latter type of share options may only be exercised if a certain condition is met at a given future moment in time. Usually, such condition is that the employment with the employer or an affiliated entity still exists.

In Decree IFZ 2002/40 of 11 February 2002, the international aspects of stock option rights are explained. The Decree indicates that where an employee has been employed in various countries, a pro rata attribution related to the periods of employment must be made with respect to income from (un)conditional stock option rights.

UK

In general, employees acquiring shares in their employer company through a beneficial scheme are liable to income tax on the benefit obtained, i.e. the difference between the issue price and the market value. This rule applies whether or not the employee is acquiring shares directly or through stock options. However, there are several different schemes by which a charge to income tax and Capital gain tax (CGT) may be deferred or avoided altogether. The UK tax position in this area is highly complex.

For unapproved share option schemes, a charge will arise on the exercise of the options received. According to the rules for approved share option schemes, options not exercisable within 3 years of being granted and not giving the right to shares worth more than GBP 30,000 are exempted from an income tax charge. In these cases, a CGT charge will arise on the disposal of the shares acquired by the employee. Schemes must be approved by HM Revenue & Customs (HMRC) and are subject to a number of restrictions (sections 516-526 and Sch. 4 of ITEPA).

The following is a brief description of the main HMRC-approved share option schemes.

SAYE share option scheme (section 702 of ITTOIA). Under a SAYE scheme set up by an employer, an employee is given the option to buy a certain number of shares at a fixed price at a particular time.

The scheme must be open to all employees and directors who have satisfied a prescribed length of period of service. This period must not be more than 5 years.

Options may only be granted to current employees or current directors of the company, or in a group scheme of a participating company. A participating company is a subsidiary company of which the company establishing the scheme has control, and which can take part in the plan.

The grant of the option does not attract an income tax or national insurance contributions charge. However, the exercise price of the shares must be fixed at the time of the grant of option and must not be lower than 80% of the market value of the shares at the date of grant.

Alongside the grant of the option, the employee enters into a savings contract with a bank or building society designated by the employer, under which the employee must save a monthly amount between GBP 10 and 250. An employee may take part in more than one scheme, but the total monthly amounts saved must not exceed GBP 500.

An employee may save for either 3 or 5 years. (It is also possible to have a 7-year contract, but in that case contributions are made for the first 5 years and are then left in the SAYE account for the remaining 2 years. The 7-year contract is available only for SAYE contracts existing before July 2013) The interest and any bonus earned on the savings are free of tax. At the end of the contract period, the employee may exercise the option, using the savings to buy the shares. There is no tax or national insurance contributions charge on any difference between the exercise price of the shares and their market value on the date of exercise.

CGT may be payable on the disposal of the shares, but this could be sidestepped by transferring the shares into an Individual Savings Account (ISA).

Company share option plan (CSOP). Also known as “discretionary” or “executive” share option plans, the CSOP is mainly targeted at senior or key employees in a company. Unlike the SAYE scheme (see above), the company is free to select the employees to whom it wishes to offer the scheme. As such, the scheme need not be open to all employees and directors. However, it should only be open to employees and to full-time directors working at least 25 hours a week. However, an individual owning, or holding options over, more than 25% of the shares of a close company is disqualified from the scheme.

Under an approved CSOP scheme, an employee is granted an option to buy up to GBP 30,000 worth of shares at a fixed price at a particular time. In its Growth Plan 2022 (published on 23 September 2022), the government announced its intention to increase this limit to GBP 60,000 from April 2023. It was confirmed by the government at the Autumn Statement 2022 on 17 November 2022 that this increase would go ahead.

Further conditions must be met for a scheme to receive HMRC approval. The exercise price is fixed at the date of option and must not be less than the market value of the shares at that date. The total value of the shares over which an individual may hold an option must not exceed GBP 30,000 (or GBP 60,000 from April 2023), calculated at the date of grant. The date of exercise must be at least 3 years, and no later than 10 years, after the date of grant. Exercise within 3 years is permitted in certain cases, e.g. leaving the company due to disability, redundancy, injury or retirement at an age specified in the plan. In such a case, the option must be exercised within 6 months of leaving the company.

Gains on the disposal of the shares may be subject to CGT.

Provided the conditions are met, there is no tax or national insurance contributions charge on the grant or exercise of the options.

Approved share incentive plan (SIP) is an all-employee share plan. It is not mandatory for all employees to join the SIP, but the company must offer the scheme to all its employees who are UK-resident as well as eligible under the SIP rules.

Under the SIP rules, an employee may buy shares out of sums deducted from his salary, up to a maximum of GBP 1,800 (or 10% of your income for the tax year, whichever is lower) annually (“partnership shares”), and may also be allocated shares for free, directly or indirectly from the employer company ("free shares"). There is a limit on the number of free shares that may be awarded. A company may award to each relevant employee free shares of up to GBP 3,600. Before 6 April 2014, the annual maximum for partnership shares was GBP 1,500, and for free shares, GBP 3,000.

The maximum permitted annual amounts (stated above) may be revised by means of secondary legislation (i.e. by Treasury Order).

The employer may also award shares to match those bought by the employee out of his salary ("matching shares"). The maximum available for award is two matching shares for each partnership share. The employer may award the matching shares according to any ration it chooses, subject to the maximum award limit.

There is also provision for dividend shares. In brief terms, the trustees of a SIP may reinvest dividends from shares under the SIP (i.e. "plan shares") in the acquisition of more shares on behalf of participants in the SIP.

Given a minimum period of holding of 5 years, no income tax charge arises on any award of shares under the plan. The employee is treated for CGT as having acquired the shares for a consideration equal to the market value at the time they exit the scheme (sections 488-515 and Sch. 2 of ITEPA).

Enterprise management incentives (EMIs) are aimed at smaller, high-risk companies. Key employees may be granted options over shares up to the value of GBP 250,000 (the individual limit) over a 3-year period.

In determining whether the individual limit has been reached, account should be taken of any shares awarded to the employee under the CSOP (see above).

Where an option is granted to an employee and the relevant value exceeds the individual limit, the tax-advantaged treatment applies to the option up to the individual limit, with the excess not qualifying for beneficial treatment. Similar rules apply for the company-wide limit of GBP 3 million. Where the employer grants an option the result of which is that the GBP 3 million limit is exceeded, beneficial treatment applies up to the limit, and the excess is treated as not qualifying.

EMIs are, however, not available for companies that work in so-called "excluded activities". These activities are:

- banking;
- farming;
- property development;
- provision of legal services; and
- shipbuilding.

Where the individual limit has been reached, no further options may be granted to an employee until 3 years after the last such grant. This applies regardless of whether some options were exercised or released in the meantime.

In order for an employee to be eligible for the scheme, he must be required to spend at least 25 hours each week, or if less, 75% of his working time, working as an employee for the company in question, or for one of its qualifying subsidiaries. Directors are eligible for EMI treatment if they also meet this requirement.

Employees who have had to reduce their working hours (or were/are furloughed) due to the COVID-19 pandemic, however, treated as having continued working as normal for their employer during the pandemic. This is to ensure they retain access to the incentive. This treatment is in place from 19 March 2020 until 5 April 2022.

The EMI scheme is not available to an employee with a material interest in the relevant company. The relevant company is the company with the shares under option, or, where that company is a group company, any of the companies in that group. Broadly, "material interest" refers to (i) beneficial ownership of, or the ability to control, more than 30% of the shares of the company or (ii) (in the case of close companies) possession of or entitlement to acquire rights that would give 30% of the assets available on a winding-up.

No income tax charge or national insurance contributions charge arises on the grant of an EMI option.

There is also no income tax or national insurance contributions charge on the exercise of the option where this takes place no later than 10 years from the date of grant, and provided that, in the meantime, none of the disqualifying events set out in the legislation have taken place. Also, the employee must acquire the shares at a price at least equal to their market value on the date the option was granted.

"Employee shareholder" status shares. Under these rules, an employer may offer to an employee shares in the company for which the employee works. In return, the employee would give up certain specified employment rights. There is an exemption from income tax and national insurance contributions for the first GBP 2,000 of share value received by the employee shareholder.

There is CGT relief on the disposal of employee shareholder status shares, subject to certain limits. There is a lifetime limit of GBP 100,000 for CGT-exempt gains on the disposal of employee shareholder shares. This applies to employee shareholder shares acquired pursuant to an employee shareholder agreement entered into from midnight at the end of 16 March 2016, and to gains on such shares.