

# GMS Flash Alert

## Global Compensation Edition

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# Ireland - Update: Share Schemes Reporting, ESA Electronic Return Available

Ireland's Revenue has issued two e-briefs on share incentive arrangements and associated reporting obligations. Revenue eBrief No. 120/21 sets out the updates made to the Revenue's Share Scheme Manual in light of the new reporting requirements for unapproved share arrangements.<sup>1</sup> The eBrief also sets out Revenue's position in relation to awards for which "sell to cover" applies and includes two new chapters relating to Growth Shares and Cash-Settled Share Awards.

In eBrief No. 123/21,<sup>2</sup> Revenue released the new Employers Share Award (ESA) return to be completed by employers.<sup>3</sup> The ESA form sets out the information to be reported for employees and directors in the company in relation to all unapproved employer share awards it must also include cash payments which derive their value directly or indirectly from shares. Prior to this release, there was no prescribed format for the reporting of unapproved equity arrangements other than for share option-related transactions.

Filing the ESA applies retrospectively for the 2020 tax year with a **31 August 2021** deadline for the 2020 tax year. For subsequent years, the filing deadline will be **31 March** following the year in question, in line with the filing deadline for other share scheme informational returns (such as the Forms RSS1, ESS1 and KEEP1). Failure to comply with this mandatory filing obligation can result in a monetary penalty. (For prior coverage, see [GMS Flash Alert 2021-155](#), 28 May 2021.)

## WHY THIS MATTERS

The updates to the Share Scheme Manual are important for companies and their globally-mobile employees to review and understand.<sup>4</sup> The updates set out Revenue's view of a Growth Share Scheme, the treatment of Cash-Settled Awards as well as the differences between "share settled" and "sell to cover" arrangements for employer and employee reporting obligations. The period between release of the 2020 Form ESA and the filing deadline is extremely short and collating all the information needed to complete the return within this timeframe may be challenging.

## More Details

With respect to the Form ESA, the level of detail required to be completed on the new electronic form is extremely broad. The form covers all share awards including those that are "cash-settled" as well as incentive cash payments whose value has been processed through Irish payroll but is based upon a notional share value, e.g. phantom shares.

The Form ESA must include details relating to directors of the company, domestic employees as well as globally-mobile employees working in Ireland.

In addition, the ESA form, which is in spreadsheet format, must be filed electronically by uploading to the Revenue online system (ROS). Employers need to be registered ROS users and must also separately register through ROS under the Share Scheme Reporting (SSR) facility to enable upload of the completed spreadsheet.

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## KPMG NOTE

### Advantages of New Form and Information Gathered

Revenue has indicated that as well as gaining an understanding of the range of equity arrangements in place across companies, the detail provided from the Form ESA will assist it in confirming whether or not employees have met personal tax compliance and payment obligations. This will be particularly relevant where there has been a disposal or transfer of shares by the employee on which Irish capital gains tax and/or capital acquisitions tax may arise. Given the 31 October 2021 personal tax filing deadline for the 2020 tax year, employers should also consider what level of employee communications is needed with respect to the 2020 ESA return.

### Procedural Considerations for Employers

Additional time should be factored in by employers for registering for SSR. If a tax agent will file the ESA return on behalf of the employer, the adviser must be linked as a tax agent for this purpose with Revenue. Both registration processes can take several days to complete so should be organised well in advance of the deadline.

When reporting is required for globally-mobile employees, a connected Irish group company can report relevant details on behalf of a foreign employer, which avoids the need for a separate registration process to be completed.

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## Details Outside the Scope of ESA Reporting Obligation

Details do not need to be provided in relation to an incentive arrangement which is already subject to a separate informational return. It should be noted that inclusion of relevant details in the statutory payroll return as part of the calculation of payroll withholding due on the award does not constitute a separate informational return. Examples of excluded arrangements include all Revenue-approved share scheme arrangements, such as the Key Employee Engagement Programme (KEEP) options, Approved Profit Share Schemes, and Save as You Earn (SAYE) options. In addition, for 2020, information relating to unapproved share option transactions is outside the scope of the ESA, having been separately addressed under the annual RSS1 return in March 2021. It remains to be seen whether the ESA return will be expanded to include unapproved share option transactions for 2021 and later years.

## Details in Scope of ESA Reporting Obligation

Depending upon the incentive arrangement in place, employers may be obliged to report the details associated with the grant, vesting, forfeiture, disposal, and/or cash payment made for each director or employee. When there are multiple awards or vestings in the tax year, each transaction should be listed as an additional line item for that employee. When an element of an award is "cash settled," the details should be outlined separately from any awards which are "share settled."

Notwithstanding that the statutory payroll return would have included details of the taxable value arising in relation to a specific award, the ESA form also requires confirmation of items that have been processed through payroll (e.g. Restricted Stock Units) as well as whether payroll withholding has been applied.

When considering whether the grant of an award is reportable, Revenue has confirmed that awards which are taxable only at vesting do **not** need to be returned on the basis that there is no beneficial entitlement at grant. Examples of such award arrangements may include Restricted Stock Units and Performance Shares when beneficial ownership does not pass until the date of vesting.

Relevant share arrangements to be reported on the ESA form are:

- Restricted Stock Units	- Stock appreciation rights
- Free or discounted shares	- Growth/hurdle/flowering shares
- Restricted shares	- Other share awards
- Convertibles securities or shares	- Cash awards indirectly linked to share values, e.g., phantom shares
- Forfeitable shares	- Cash-settled awards
- Employee share purchase plans	

## Next Steps

Employers should consider the following:

- Reviewing current share plans and cash-based incentive arrangements to help ensure that the taxation and reporting position are fully understood – this may also be an opportunity to consider whether the current arrangements remain fit for purpose.
- Identifying the stakeholders that will be responsible for providing the information needed.
- Documenting the processes and procedures relating to securing the information including, where possible, automation.
- Assessing the reporting obligations in relation to domestic directors and employees and globally-mobile employees.
- Preparing an employee communication regarding the changes and information that will be disclosed to Ireland's Revenue.

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## KPMG NOTE

If you have any queries in relation to the above or if would like any assistance in relation to preparation and completion of the form, procedures and employee communications, please contact your Qualified tax adviser or a member of the Reward Advisory Services team with KPMG in Ireland (see the Contact Us section below).

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## FOOTNOTES:

- 1 [Revenue eBrief No. 120/21](#) (20 June 2021) "Updated Share Schemes Manual and New Share Schemes Reporting Return (Form ESA)."
- 2 [Revenue eBrief No. 123/21](#) (23 June 2021) "Form ESA now available for download from Revenue website."
- 3 See Revenue's webpage "[Shares for employees](#)" for further details.
- 4 See Revenue webpage "[Consolidated TDM for all Share Schemes: Share Schemes](#)" for further details.

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## Contact us

For additional information or assistance, please contact your local GMS or People Services professional or one of the following professionals with the KPMG International member firm in Ireland:



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