



## **Public Consultation Paper**

### **Key Employee Engagement Programme (KEEP)**

#### **1. Introduction**

International research has shown that Employee Financial Participation can be effective in fostering partnership and in helping companies to attract and retain staff in a competitive international labour market. Improved competitiveness of companies supports the creation and maintenance of employment, and this in turn supports economic growth which benefits the economy as a whole.

The ‘Key Employee Engagement Programme’ (KEEP) incentive, introduced in Budget 2018, has the objective of supporting SMEs in Ireland in competing with larger enterprises to recruit and retain key employees. Smaller and/or younger companies with growth potential may not have the cash resources available to offer comparable salary packages to large, established businesses. However, where the employee believes in the growth potential of the firm, and by extension the potential for the company shares to increase in value, remuneration in the form of share options may improve the attractiveness of the SME employment offer.

## **2. Consultation Process**

This written consultation will run until Friday 24 May 2019.

### How to Respond

The preferred means of response is by email to: [keepconsultation@finance.gov.ie](mailto:keepconsultation@finance.gov.ie).

Alternatively, you may respond by post to:

KEEP Public Consultation,  
Room 2.2,  
14-16 Merrion Row,  
Department of Finance,  
Government Buildings,  
Upper Merrion Street,  
Dublin 2 D02 R583

When responding, please indicate if you are a business, business professional, adviser, representative body or member of the public.

### Freedom of Information

Responses to this consultation are subject to the provisions of the Freedom of Information Acts. The Department may receive requests for any or all information supplied as part of this process. Parties should also note that responses to the consultation will be published on the website of the Department of Finance in full.

### **3. Stakeholder Consultation Event**

The Department intends to hold a stakeholder consultation event regarding taxation supports for SMEs on 6 June 2019 in Dublin. This event will provide an opportunity for interested parties to amplify their views and to participate in a discussion which is intended to help ensure that KEEF fulfils its role.

Please indicate in your reply if you are interested in attending.

### **4. Background/Context to consultation**

#### **(i) Operation of KEEF**

Under the KEEF incentive, qualifying individuals may be granted the option to acquire a specified number of shares in their employer company at a specified price, the option price, which must not be less than the market value at the time of grant.

At a future date, within 10 years following grant of the option, the employee may choose to exercise the option and purchase the shares.

Provided certain conditions are met an exemption from income tax, the Universal Social Charge (USC) and Pay Related Social Insurance (PRSI) will apply to the discount from the market value at the date of exercise (assuming that the shares have increased in value since the option was granted.) The discount received will however be subject to Capital Gains Tax on the subsequent disposal of the shares.

This incentive is available for qualifying share options granted between 1 January 2018 and 31 December 2023.

Under the original design of the incentive, the total market value of all qualifying share options which could be granted by the qualifying company to a qualifying employee could not exceed the lessor of:

- 1) €100,000 in any one tax year;
- 2) €250,000 in any three consecutive years; or,
- 3) 50% of the annual emoluments of the employee or director in the year in which the qualifying share option is granted.

A limit of €3 million applies on the market value of issued but unexercised KEEP share options that a company may have on issue at any given time.

(ii) Amendments to KEEP in Finance Act 2018

During the course of 2018, it became apparent that take-up for the scheme was likely to be lower than anticipated. Taking account of the stakeholder representation he received on the scheme, the Minister for Finance announced his intention to make changes to the design of the scheme in his Budget 2019 speech.

Finance Act 2019 provided for the following amendments to KEEP:

- the limit of €250,000 in any 3 consecutive years of assessment was replaced by a life-time limit of €300,000; and,
- The limit of 50% of the annual emoluments in the year of assessment was increased to 100% of annual emoluments.

(iii) State Aid considerations

As KEEP is a notified State Aid, these changes were subject to a commencement order pending approval of the European Commission. This process is under way.

It should be noted that any potential amendments to KEEP would also be subject to State Aid approval, therefore EU State aid considerations must be borne in mind in considering any options for change to the current regime.

## **5. Consultation Questions**

Interested parties are invited to make submissions regarding the following questions. It is not necessary for each submission to address every question.

- What aspects of the current design of KEEP work effectively and why?
- What aspects of the current design of KEEP do not work effectively and why?
- Appendix 1 of this document contains proposals for amendments to KEEP which have been put forward by a number of stakeholders over the past year. You are invited to give your views on each proposal, whether in support or against, and to put forward any

other proposals that you might have for enhancing the effectiveness of the relief. We would ask that you support your submissions with clear evidence.

- Do you have any further proposals?

In answering the consultation questions, respondents are asked to keep in mind the key principles of the Department of Finance Tax Expenditure Guidelines<sup>1</sup>, as follows:

- What objective does the tax expenditure aim to achieve?
- What market failure is being addressed?
- Is a tax expenditure the best approach to address the market failure?
- What economic impact is the tax expenditure likely to have?
- How much is it expected to cost?

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<sup>1</sup> [http://www.budget.gov.ie/Budgets/2015/Documents/Tax\\_Expenditures\\_Oct14.pdf](http://www.budget.gov.ie/Budgets/2015/Documents/Tax_Expenditures_Oct14.pdf).

## Appendix 1

### Overview of main stakeholder proposals on KEEP (note: these proposals were made in advance of Finance Bill 2018).

Proposal	Issue raised
1. Amend the conditions of the qualifying employment.	The requirement that the employee work full time (30+ hours per week) for the qualifying company throughout the entirety of the relevant period is seen as inflexible.
2. Allow employees who transfer to a group company to retain their KEEP options.	It is seen as restrictive that KEEP requires that the qualifying individual will be an employee of and carry out the duties for a single company.
3. Change the conditions regarding remuneration.	The conditions regarding the maximum total value of share options that may be granted by the company to a qualifying employee, particularly the link between share options and the employee's total annual emoluments, is seen as restrictive. (This was addressed in FA 2018.)
4. Allow employer buy-back of shares.	KEEP does not permit the buy-back of shares by the company. This is seen as an obstacle in providing assured liquidity for the shares.
5. Allow existing shares to qualify for the scheme.	The requirement that only newly issued shares qualify for the scheme is seen as inflexible.
6. Change the definition of a 'holding company' for the purposes of the KEEP legislation.	The current definition of a holding company for the purposes of the legislation is seen as too restrictive. It has been suggested that the definition should be amended to that contained within the Revised Entrepreneur Relief (S597AA (1) (a) TCA 1997).
7. Allow for the CGT treatment available under KEEP to continue to apply where the SME undergoes a corporate reorganisation.	The current legislation does not provide for the continuing availability of CGT treatment if the SME undergoes a corporate reorganisation during the period in which the KEEP share option rights are outstanding. It has been suggested that we adopt the provisions contained within the Revised Entrepreneur Relief legislation to allow for this.
8. Develop an agreed 'safe harbour' approach to share valuation.	The current approach to valuation of shares for the purpose of the scheme is seen to create issues of cost and accessibility for SMEs. A Revenue approved "safe-harbour" valuation method would in the view of some

	commentators provide greater certainty and reduced costs in ensuring that share valuation reflect a realistic market price.
9. Update the Revenue guidance on the definition of ‘financial activities’ under KEEP.	All businesses that carry out ‘financial activities’ are excluded from KEEP. It is argued that the definition of financial activities, as contained in the TCA, is too broad in scope and has the effect of excluding FinTech and InsurTech SMEs from participation in KEEP.