Indecon Review of the Taxation of Share-Based Remuneration

Report

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Glossary of Terms and Abbreviations

APSS	Approved Profit Sharing Scheme
CSOP	Company Share Option Plan
ESA	Employer Share Awards
ESOT	Employee Share Ownership Trusts
ESPP	Employee Share Purchase Plan
KEEP	Key Employee Engagement Programme
PAYE	Pay-As-You-Earn
PRSI	Pay-Related Social Insurance
RSU	Restricted Stock Unit
SAYE	Save-As-You-Earn
SBR	Share-based Remuneration
SIP	Share Incentive Plan

Executive Summary

Introduction and background

This report presents an independent review completed by Indecon for the Department of Finance of the taxation framework for share-based remuneration (SBR) in Ireland. As part of the project, Indecon considered policy developments in the taxation of SBR internationally and evaluated submissions made to the Department of Finance's public consultation. A workshop was also held with those organisations who made submissions as well as meetings with key stakeholders and representative bodies. A detailed analysis of Revenue data was completed and some new survey evidence examined.

Share-Based Remuneration Framework in Ireland

The taxation system in Ireland provides a range of SBR incentives. These were introduced to ensure that Irish businesses are supported to attract, incentivise and retain employees and directors, in order to facilitate economic growth and employment. These schemes include Revenue approved schemes which attract preferential tax treatment. For these schemes Revenue approval is required before the establishment of each individual scheme, and they must generally be open to all employees on equal or similar terms. There are three approved schemes: Approved Profit Sharing Scheme (APSS), Employee Share Ownership Trust (ESOT), and Save As You Earn (SAYE). The APSS and SAYE have exemptions from income tax for employees (USC and employee PRSI still apply). An ESOT is a trust that operates like an APSS but with fewer restrictions. Such trusts are not eligible for the income tax exemption unless they are coupled with an APSS. There are also a number of unapproved schemes, which means prior approval from Revenue is not required in advance of establishing a scheme. In addition to the preferential tax treatment that applies to approved schemes, some unapproved schemes may also attract preferential tax treatment. An important scheme is the Key Employee Engagement Programme (KEEP), which is a targeted scheme that required EU State aid approval and aims to assist start-ups and SMEs through a number of tax advantages. No taxes apply for employees or employers on shares granted under this scheme except when those shares are disposed of by the employee (capital gains tax applies on any gains). Other unapproved schemes include restricted stock units and unapproved share options. Employee income tax, USC and employee PRSI apply to these schemes. In addition, an employer PRSI exemption applies to both approved and unapproved schemes, provided the awards are settled in shares of the employer company or shares of a company that controls the employer company.

Use of Share-Based Remuneration in Ireland

There has been significant use of SBR schemes, particularly by large firms. An analysis of PAYE data by firm size showed that large firms (250+ employees) accounted for 82-85% of employer PRSI foregone in the period 2020-2023. Micro and small firms use of the schemes is very limited.

Value of SBR Schemes (€m) Subject to PAYE by Firm Size

	2019	2020	2021	2022	2023
Micro (1-9)	19.5	13.4	21.9	15.5	19.6
Small (10-49)	63.6	51.8	123	55.1	77.2
Medium (50-249)	112.4	139.1	173.9	149	258.1
Large (250+)	749.8	999.4	1,461.2	1,317.3	1,794.8
Total	**945.5**	**1,203.8**	**1,780.1**	**1,536.9**	**2,149.8**

Source: Indecon analysis of Revenue data.

The information, communications and technology (ICT) sector accounted for the largest value of SBR and the value of shares amounted to €689m in 2022. Manufacturing was the second largest sector utilising these schemes with a value of €268m. In terms of ownership, foreign-owned multinational firms accounted for the largest proportion of the value of SBR. Of these, firms headquartered in the US accounted for €1,248m in 2022. Of note, however, is that non-internationally traded sectors such as wholesale/retail were also major users of these schemes.

Data on the KEEP, which is aimed at helping the SME sector, indicated that the number of share options exercised is very low with only 26 individuals exercising share options under this scheme in 2022 and the total value of share options exercised was only €3.2m. This contrasts with APSS where the total value of shares appropriated was €270m. It is important to note that KEEP and APSS are not directly comparable given that KEEP is restricted to SMEs, and SBR is disproportionately low amongst SMEs. Data on unapproved share options showed that the total market value of share options exercised amounted to €661m in 2022. For employer's share awards (ESAs), Restricted Stock Units (RSUs) account for the largest share of the total market value of these schemes.

International Developments in Taxation of Share-based Remuneration Policy

Share-based remuneration schemes have been used extensively in other countries to promote productivity, to enhance competitiveness, and to enable business to attract and retain employees. Internationally, tax and/or social security exemptions are provided although Ireland's employer PRSI exemption appears generous compared to many other countries where many social security exemption schemes are focused on the SME sector. There are, however, aspects of schemes in other countries that are more attractive than in Ireland, and other countries have higher eligibility limits. A small number of countries have rules in place to clearly define how valuation of unlisted shares should be undertaken, as well as safe harbour principles or the provision of valuation checks.

Stakeholder Perspectives and Survey Findings

As part of Indecon's research, we carried out a detailed review of the submissions to a public consultation organised by the Department of Finance. Indecon also held a discussion with a number of start-up founders, facilitated by Scale Ireland. Across all of our stakeholder engagements, similar issues were raised as summarised in the following table. These suggest that shareholders believe there is a need for enhancements to aspects of the existing schemes and that the employer PRSI exemption should be retained.

Summary of Stakeholder Submissions	
Issue	**Suggestions from Stakeholder Consultations and Indecon Comments Thereon**
Whether to retain the employer PRSI exemption.	It was suggested by many stakeholders that the benefits to firms of the employer PRSI exemption outweighs the cost of implementing the schemes. As a result, not surprisingly, firms were in favour of retaining the exemption. Indecon notes, however, that evidence on the quantified net economic benefits rather than the benefits to individual firms was not available. Indecon notes that there are fixed costs associated with setting up of schemes and there are decreasing variable costs associated with ongoing implementation and reporting requirements.
	The employer PRSI exemption was seen by stakeholders as increasing the attractiveness of Ireland for FDI and highly-skilled labour. Indecon notes that Ireland's competitiveness depends on many factors of which SBR is one element.
Changes to the APSS.	Stakeholders were in favour of increasing the annual limit on the APSSs and noted that the annual limit has not been increased in line with inflation since its inception. Indecon would point out that increasing the APSS limit would further increase the costs of this scheme.
	The attractiveness of the APSS was believed by stakeholders to have lessened for employers and employees. Indecon notes that despite this belief, the use of the scheme increased significantly since 2018/2019.
	The suggested move to a pre-notification system for APSS saw a mixed response from the public consultation submissions. Concerns related to the uncertainty that such a move could give rise to and this would need to be taken into account in any decision.
Reform the KEEP.	It was suggested that safe harbour principles should be introduced for the valuation of shares in order to lower costs of valuation for SMEs. Indecon notes that stakeholders were in favour of additional guidance to participants on the valuation of unlisted shares.
	Expansion of the KEEP eligibility conditions was proposed including eligibility of re-organisation of start-ups and expansion to other sectors including Fin Tech. Indecon notes that there are State-Aid considerations which limit any amendments to the KEEP without EU approval and such approval may not be forthcoming.
Reform the taxation of RSUs.	It was proposed by stakeholders that consideration be given to deferring taxation of RSU shares on vesting as the tax liability can necessitate the immediate disposal of shares. Indecon notes such tax deferrals are provided for in other countries. However, there are also alternative ways of preventing share disposals at vesting, such as employer loans to employees.
	Source-based taxation was suggested in order to avoid double taxation of RSUs for employees relocating to Ireland with unvested RSUs. Indecon's assessment is that the sourcing method is frequently used method internationally.
BIK tax rate on loans to buy shares	The BIK tax rate is high compared to other European companies and this was seen by stakeholders as creating a barrier to the provision of loans to buy shares. Indecon is of the view that the BIK rate applicable to SBR loans is likely to influence the level of take-up.
Introduce EOT Scheme	The introduction of EOT schemes was believed by stakeholders to increase employee commitment and ownership of companies, particularly in the case where the owner must pass on their company in 5-10 years. Indecon's assessment is that the tax treatment in Ireland limits the use of EOTs.
Other issues raised	Reinstating a SAYE savings carrier was proposed. Indecon notes that further evidence and analysis would be required to identify the reasons behind the absence of a savings carrier; however the decision to act as a savings carrier is unlikely to be dependent on tax considerations.
	Streamline and simplify regulatory reporting processes was seen by stakeholders as important. Indecon notes, however, this needs to be balanced against the need for additional evidence on the impact of schemes.
Source: Indecon analysis of public consultation submissions.	

Evaluation of Schemes

While there is strong support among stakeholders for improvement in the Irish SBR schemes it is important, given the need to ensure the best use of scarce exchequer resources, to evaluate the merits or otherwise of retaining or enhancing the existing incentives. While a formal economic cost-benefit appraisal of the SBR schemes is outside of the scope of this review, and is not currently feasible given the available information, it is useful to rigorously examine any evidence on the exchequer costs and also to consider the likely benefits. As discussed in our recommendations, Indecon believes it is important that policy makers obtain additional information from participants, which would enable a more comprehensive examination of the impact of the schemes.

Indecon's analysis highlights the scale of share-based schemes and indicates that in 2022 the value of SBR schemes reached over €2.1b. In that year, these schemes resulted in significant annual exchequer costs of €320.8m comprised of income tax foregone (€84.9m) and employer PRSI foregone (€235.9m). The costs of SBR has continued to increase and Indecon's indicative estimates suggest that the overall cost of these exemptions may have been around €400m in 2023.

Income tax and Employer PRSI Foregone (€m) from Share-Based Remuneration

	2020	2021	2022	2023
Income tax foregone	67.2	72.6	84.9	N/A
Employer PRSI foregone (PAYE)	132.8	196.5	169.6	237.4
Employer PRSI foregone (non-PAYE)	67.7	84.9	66.3	N/A
Total Employer PRSI foregone	**200.5**	**281.4**	**235.9**	**N/A**
Total	**267.7**	**354.0**	**320.8**	**N/A**

Source: Indecon analysis of Revenue data. Figures are rounded.
Note: Data for employer PRSI foregone is not available for 2018-2019. Data for income tax forgone and the amount of employer PRSI foregone not reported through PAYE are not yet available for the year 2023. Employer PRSI foregone is split between the portion reported through PAYE (through employer PAYE returns) and that not operated through PAYE and reported through other processes (through employer non-PAYE returns).

Data on non-PAYE employer PRSI foregone[1] shows that non-approved share options schemes and APSS account for most of these costs.

Breakdown of Employer's PRSI Foregone (€m) by Non-PAYE Scheme

	2020	2021	2022
Non-PAYE			
KEEP	0.1	0.3	0.3
APSS	23.9	24.3	29.8
SAYE	0.7	1.5	0.8
Unapproved Share Options	43	58.8	35.4
Total	*67.7*	*84.9*	*66.3*

Source: Indecon analysis of Revenue data.

[1] Employer PRSI foregone is split between the portion reported through PAYE (employer PAYE returns) and that not operated through PAYE and reported through other processes (employer non-PAYE returns).

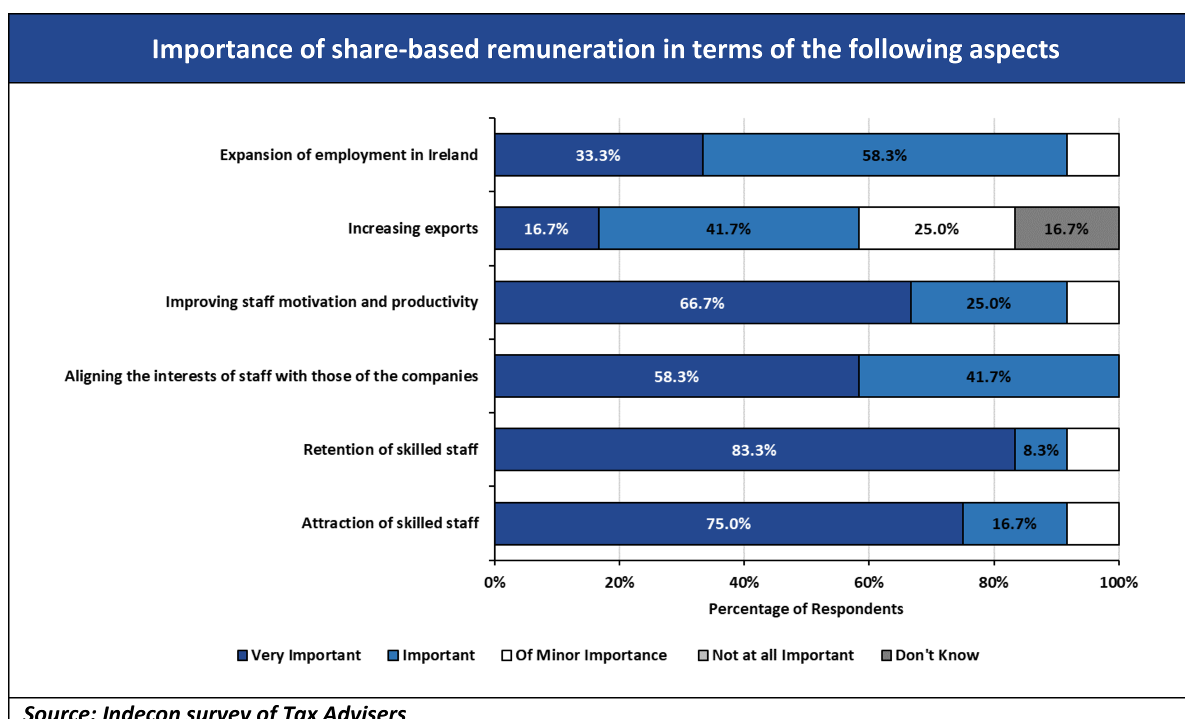
In addition to PRSI costs it is important to also consider the levels of tax foregone. Indecon's analysis indicates that these costs have increased significantly in recent years and are mainly accounted for by APSSs.

Breakdown of Income Tax Foregone (€m) by Scheme					
	2018	**2019**	**2020**	**2021**	**2022**
APSS	55.2	49.5	64.2	65.1	80.0
SAYE	1.8	1.8	2.6	5.6	3.2
KEEP	-	0.1	0.3	1.8	1.6
ESOT	0.1	0.1	0.1	0.1	0.1
Total	**57.1**	**51.5**	**67.2**	**72.6**	**84.9**

Source: Indecon analysis of Revenue data. Figures are rounded

New survey evidence was gathered by Indecon to obtain the views of leading tax advisors on their perceptions of the importance of a number of aspects of SBR for their clients. The views of tax advisers suggest that the attraction of and retention of skilled staff is the most important benefit of SBR for their clients. Improving staff motivation and productivity was also a perceived benefit as well as the impact of the resultant alignment of the interest of staff with those of the companies. Potential benefits of these schemes in terms of expansion of employment and exports were also suggested but Indecon notes that detailed evidence on the precise impacts on employment or exports is not available for the Irish schemes.

Importance of share-based remuneration in terms of the following aspects



Source: Indecon survey of Tax Advisers

Data on the type of companies that utilise each of the schemes is not available; however, Indecon obtained some sample case study type insights from four beneficiary firms of the importance of different potential impacts of SBR to their companies. The findings reinforce the significance of the impacts in terms of the attraction and retention of staff and ensuring an alignment of the interests of staff with those of the business.

Companies Utilising Share-based Remuneration – Assessment of Benefits and Impacts					
	Very Important	**Important**	**Of Minor Importance**	**Not at all Important**	**Don't Know**
Attraction of skilled staff	60%	40%	0%	0%	0%
Retention of skilled staff	80%	20%	0%	0%	0%
Aligning the interests of staff with those of the companies	60%	40%	0%	0%	0%
Improving staff motivation and productivity	60%	40%	0%	0%	0%
Increasing exports	0%	0%	0%	80%	20%
Expansion of employment in Ireland	0%	60%	20%	0%	20%
Source: Indecon					

The views of a sample of Irish companies and those of tax advisers are consistent with research undertaken by Indecon's associate practice, London Economics for HM Revenue and Customs on the evaluation of UK share schemes.[2] The London Economics research highlighted the impact on staff retention and recruitment and indicated that share schemes appear to improve business and employment outcomes. Out of the surveyed UK companies that were aware of these schemes, 81% indicated an improvement in employment and/or business outcomes. The most commonly reported impact by claimant companies related to staff retention, followed by recruitment. Some companies also mentioned that such schemes can have a positive impact on employee productivity and sense of connection to the company, which lead to improved company performance. Econometric analysis undertaken by London Economics identified a small positive and statistically significant impact (at the 10% level) of schemes on turnover, but the econometric analysis did not find any statistically significant impact on employment.

Key Findings and Recommendations

Taking account of our analysis and consultations as well as a review of key developments in taxation and PRSI policy and competitiveness considerations, the key policy findings emerging from the review are summarised in the following table.

[2] HM Revenue and Customs, London Economics Share Schemes Evaluation, HM Revenue Report No. 700

Key Findings

1. The taxation framework for share-based remuneration needs to be considered in the context of broader trends in the competitiveness of the economy. Ireland faces strong competition both for mobile investment and for talent, and competitor countries offer attractive share-based incentives. In some countries, including the UK, aspects of share-based schemes are more attractive than in Ireland as highlighted in our international review. However, the Irish Schemes provide incentives for a wide range of companies regardless of size. We also note that then in some countries benefits accruing from share-based remuneration are taxable as salary and are subject to social security contributions, including for instance Lithuania, Estonia, Latvia, Israel, the US, Germany, Poland, and Italy. Attractive tax advantaged schemes are provided for small enterprises in many important competitor countries, including Portugal, Denmark, France, Spain, UK, Germany, Italy, Sweden, and the US.
2. Our detailed analysis suggests that aspects where Ireland's approach is out of line with some competitor countries include lower eligibility levels, the treatment of BIK and the tax treatment of restricted stock units. Ireland's PRSI exemption however appears generous compared to many countries where such exemptions are more focused on SMEs.
3. There are a range of complex share-based remuneration schemes operating in Ireland with different eligibility criteria. The Tax and Duty Manual[3] for share schemes contains a lot of detailed and useful information. However, in a limited number of countries notably the UK, US and Australia, there are assured valuation methods. Additional guidance on valuation would help to reduce the uncertainty associated with the tax treatment of schemes.
4. APSS, RSUs and unapproved share options represent the most utilised schemes.
5. There have been very low levels of take-up of the KEEP that is aimed at SMEs. The use of share-based remuneration by micro and small firms is disproportionately low. The responses to stakeholder consultations suggest that the criteria for the KEEP reduces its attractiveness. There are, however, significant constraints on the scheme due to State aid rules, and any changes to this scheme would require new State aid approval.
6. The value of share-based remuneration schemes in Ireland reached over €2.1bn in 2022. Small and micro firms accounted for less than 5% of the value of schemes subject to PAYE (€1.5b). A breakdown by firm size is not available for some schemes.
7. The exchequer costs of the schemes have increased significantly and in 2022 exchequer costs reached over €320m, with the cost of the employer PRSI exemption amounting to €236m. Indecon estimates suggest exchequer costs in 2023 may have been of the order of €0.4b.
8. The income tax cost of share-based remuneration is almost entirely attributable to the APSS. The majority of the PRSI cost is likely to be due to unapproved share options, take-up of RSUs and APSS. A breakdown by scheme is not available for schemes reported through PAYE, which includes RSUs.
9. Share-based remuneration schemes are perceived as important in enhancing productivity, attracting and retaining skills and improving competitiveness. The stakeholder consultations undertaken for this review as well as the international research support this view. Econometric evidence of the UK schemes shows a small impact on turnover.
10. The PRSI exemption is regarded as an important support for SME and other businesses in Ireland.
11. Larger firms account for the majority of the cost of PRSI foregone and foreign owned multinationals account for the largest percentage of the value of share-based remuneration schemes. ICT and manufacturing sectors are the main beneficiaries of the scheme, but non-traded sectors are also significant users of these schemes.

[3] Tax and Duty Manuals are documents that contain the rules, guidelines, procedures and practices that cover Revenue activities. A TDM for share based remuneration is available with a number of chapters covering specific share schemes.

Key Findings
12. There are gaps in the available information on the utilisation and impact of Irish share-based remuneration schemes. These gaps are such that it is not possible to evaluate the impact of the schemes on employment and exports in beneficiary firms.
Source: Indecon

Indecon's recommendations are summarised in the following table.

Recommendations	
1	Consideration should be given to introducing measures to contain the growth in the overall exchequer costs of share-based remuneration schemes. The rationale for this recommendation is the high and growing costs of the schemes noted in our findings and detailed analysis. A significant element of these costs relate to the cost of PRSI exemption. One option would be to introduce a cap on the level of employer PRSI exemption.
2	Measures should be taken in the short term to enhance the attractiveness of the KEEP by providing greater clarity and guidance to SMEs particularly around share valuation, and by more effective promotion of the scheme. Consideration should be also given to wider amendments to, and a re-design of, the KEEP for the post-2025 period having regard to State aid constraints and the need to obtain State aid approval.
3	The taxation treatment of RSUs for internationally mobile employees should be moved to a sourcing or apportionment method aligned with the approach used internationally and with that used in respect for stock options for internationally mobile employees in Ireland.
4	Initiatives to simplify the administrative burden surrounding reporting of share-based remuneration schemes should be continued with a view to reducing administrative costs and increasing attractiveness for SMEs. Streamlining reporting could have benefits for both firms and the Revenue. Some additional information is, however, needed to assist future evidence-based evaluation of these schemes and the collection of the necessary data needs to be managed efficiently. As part of this, consideration should be given to moving the approval of APSSs by Revenue to a pre-notification system, but any such change should be signalled well in advance so as to avoid creating uncertainty.
5	The BIK rate on loans offered to employees for the purpose of funding costs associated with the purchase of shares in share-based remuneration plans should be reduced. For instance, the rate could be linked to market prevailing interest rates for non-financial corporations. The BIK rates applied in Ireland are significantly higher than in the UK. The rationale for this change is to improve take-up particularly among SMEs.
6	There is merit in considering reforming the taxation of employee ownership trusts (EOTs) in line with the treatment of such arrangements in the UK.
Source: Indecon	

Conclusions

Indecon's analysis suggests that SBR schemes are an important part of enterprise policy. Indecon believes that from a competitiveness perspective, there is a case for enhancing the attractiveness of aspects of the existing schemes while also taking measures to contain the growth in the high level of exchequer costs. There is also a need to put in place mechanisms to obtain more information on the impact of the schemes to support evidence-based policy developments in this area.

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1 Share-Based Remuneration Framework in Ireland

1.1 Introduction

This report presents an independent review completed by Indecon for the Department of Finance of the taxation framework for share-based remuneration (SBR) in Ireland. As part of the project, Indecon considered policy developments in the taxation of SBR internationally and evaluated submissions made to the Department of Finance's public consultation. A workshop was also held with those organisations who made submissions as well as meetings with key stakeholders and representative bodies. A detailed analysis of Revenue data was completed, and some new survey evidence examined.

This chapter will provide an overview of the employee share schemes available and supported through the taxation system in Ireland. The policy rationale and the main features and characteristics will be outlined, as well as the legislative underpinning of the taxation of each scheme under the Taxes Consolidation Act 1997.

1.2 Policy rationale

An important OECD report[4] provides a conceptual framework explaining the benefits of SBR from a businesses, employment, and public policy perspective. The central economic argument in favour of SBR is that it can mitigate the principal-agent problem in corporate governance by aligning the interests of managers with those of shareholders. The three primary benefits highlighted by the OECD reflect those outlined in the wider literature. The first benefit is increasing motivation and productivity of employees by directly linking their performance with the growth of company value (aligning the interests of employees with those of shareholders). The second benefit is for personnel recruitment and retention, particularly in the early company development stage where share awards and stock options can be an effective instrument in attracting and retaining highly skilled personnel. The third benefit is to alleviate liquidity and capital constraints that start-up companies face and to allow SMEs to compete for high-skilled labour with stock option salaries. From a public policy perspective, the OECD report points out that preferential tax treatment should be legislated for when it corrects a market failure or when it provides a benefit to society in general. The report suggests that only the second and third benefits are market failures, as these are linked to financial market frictions faced by smaller companies. The authors highlight that there is no agreement in the literature on the appropriate level of taxes to be levied on stock options and possible preferential tax treatments.

A report from the Social Market Foundation[5] (SMF) set out the case for an expansion of employee share ownership in the UK. This report argues that share plans help companies to attract employees through non-salary benefits and retain staff through buy-in. It is noted that this is particularly important for start-ups and scaling businesses because these firms compete in the labour market with more established companies that have more cash capacity to compensate employees. It is also argued that employee-owned businesses favour actions with long-term payback horizons and, as a result, invest more of their effort into a stable performance of the company. In support of their argument, the authors of the SMF report highlight that the Employee Share Ownership Index,

[4] OECD (2006) The Taxation of Employee Stock Options: available here.

[5] Social Market Foundation (2021) A stake in success. Employee share ownership and the post-Covid economy: available here.

composed of publicly listed companies with substantial employee ownership, performed better in the long term than the FTSE All Share Index.

The authors of the SMF report also highlight the potential for employee share ownership to bolster the financial resilience of employees by allowing employees to accumulate wealth through company shares or saving (Save As You Earn scheme). However, it is noted that this may incur financial risks for some employees, particularly lower income workers if a greater share of their income is susceptible to shocks. Some share schemes protect against this, for example, the SAYE scheme gives the individuals the option of acquiring shares, but they can also take cash savings instead.

Overall, most of the data in the studies have shown that there is an employee share ownership "wealth premium" that exceeds the typical value of employee shares themselves. This might reflect different characteristics of shareholding households, but some part of this association may reflect the multiplier effects of employee share ownership.

1.3 Overview of Irish Share-Based Remuneration Schemes

A range of SBR schemes are operated in Ireland including both schemes that require prior approval from Revenue to operate (approved schemes) and those that do not require prior Revenue approval (unapproved schemes). The following approved SBR schemes currently operate in Ireland:

- Approved Profit-Sharing Schemes (APSS).
- Employee Share Ownership Trust (ESOT).
- Save As You Earn (SAYE) Scheme.

The following unapproved schemes currently operate:

- Key Employee Engagement Programme (KEEP).
- Restricted Stock Units (RSUs).
- Unapproved Share Options.
- Employee Share Purchase Plans (ESPP).
- Growth Shares.
- Restricted Shares.
- Convertible Securities.
- Forfeitable shares.
- Discounted, free, partly paid shares.
- Phantom shares, stock appreciation rights, any cash payments following the value of shares.

An employer PRSI exemption applies to both approved and unapproved schemes, provided the awards are settled in shares of the employer company or shares of a company that controls the employer company. Each of these schemes are briefly outlined in this section. Table 1.1 summarises this information for approved schemes and Table 1.2 summarises the information applicable to the main unapproved schemes. The legislative underpinning of the taxation of these schemes is provided for in the Taxes Consolidation Act (TCA) 1997 and the relevant Schedule is referenced in the explanatory text for each scheme.

Table 1.1: Summary of Approved Schemes		
	APSS	**SAYE**
Plan scope	Requirements: approval must be sought from Revenue. Must be offered to all qualifying employees "on similar terms".	Requirements: approval must be sought from Revenue. Must be offered to all qualifying employees "on similar terms".
	Maximum allocation of shares to an employee is €12,700 per annum. Period of retention applies to the shares.	Maximum monthly savings allowable is €500 and minimum is €12.
Reporting Requirements	Annual return of information, Form ESS1, due by 31 March. Annual return of any income/gains arising from the trust, Form 1 due before 31 October. A nil return for DAC2-CRS and FATCA.	Grant of options: Form SRSO1, due by 31 March. Exercise of options: Form SRSO1, due by 31 March. PAYE reporting in the month of exercise.
Timing of tax (employee) **(There are also income tax implications if employees are in receipt of dividends as a result of their shareholding).**	At point of appropriation of shares, at point of sale and at receipt of dividends when relevant.	At point of exercise, at point of sale and at receipt of dividends when relevant.
Types of tax due (employee)	At point of appropriation: PRSI and USC.	At point of exercise: only USC and PRSI on any gains realised.
	Dividends: PRSI, USC and income tax is chargeable on any dividends received.	
	At point of sale: CGT on the gain between the appropriated value and the disposal value.	
	Note: if shares are disposed of after the retention period but before the release date, income tax is payable on the lesser of the locked-in value and disposal proceeds.	
Employer taxation	No employer PRSI.	No employer PRSI.
Source: Indecon analysis of Index Ventures country comparison and Revenue Tax and Duty Manual.		

Approved Profit-Sharing Scheme (APSS)[6]

Prior Revenue approval is required in order to set up this scheme, in accordance with Schedule 11 of the TCA 1997. The current pre-approval works as follows: after a Trust has been set up (in accordance with the conditions set out in Schedule 11 of the Taxes Consolidation Act 1997, explained in Section 10.5-10.6 in the Tax and Duty Manual) and the Trust Deed has been executed, the company must then apply for Revenue approval by submitting a series of documents and information. Once approval

[6] This outline represents an overview of the scheme only, further in-depth information can be found in Chapter 10 of the Tax and Duty Manual of Share Schemes: available here.

is granted, Revenue will notify the applicant company. This process involves a significant time commitment on the part of Revenue. While a pre-approval system affords some perceived level of certainty to employers that the proposed scheme is compliant with APSS rules, a similar perceived level of certainty could be provided in a pre-notification system accompanied by extensive and clear guidance documentation.

The costs of establishing a scheme and any amounts paid by the company to the trustees are deductible for corporation tax purposes. The scheme must be open to all "eligible employees" to participate on similar terms, for example length of service or similar factors. An eligible employee is one who:

- Is an employee of the company;
- Has been an employee with a minimum length of service;[7] and
- Is chargeable for income tax in respect of that employment.

Under the scheme, an employee may be allocated shares up to a maximum annual limit of €12,700 which is not liable for income tax. The locked-in value of the shares is the market value of the shares at the time that they are appropriated to the employee. Dividends received by employees in respect of these shares are assessable to income tax. Shares must be held by a trust for the purpose of the share scheme for the period of retention (generally two years from date of appropriation to the employee). The release date of the shares is generally three years from the date of appropriation. The legislation on this scheme is set out at sections 509-518 of the TCA 1997.

If the shares are disposed of after the period of retention but before the release date, an income tax charge will arise. If the employee ceases to be employed due to injury, disability, redundancy or pension, the shares can be sold immediately. Income tax in this case is charged on 50% of the locked-in value of the shares.

If the shares are disposed of after the release date, there is no income tax liability, but employees are liable to pay USC and PRSI on the value. Where shares are sold, capital gains tax may be due on where the disposal proceeds exceed the locked-in value of the shares at the date of appropriation.

In terms of reporting requirements, the form ESS1 must be filed by the trustees annually on or before 31 March in the year following the assessment year. A Form 1 must be filed by trustees annually on any income or gains arising to the trust, on or before 31 October. There is an obligation on trustees to file a nil return for Directive Administrative Cooperation (DAC), Common Reporting Standards (CRS), and Foreign Account Tax Compliance Act (FATCA) using forms DAC2-CRS and FATCA.

Employee Share Ownership Trust (ESOT)

An ESOT is similar to an APPS: it is a trust established by a company for the purpose of placing company shares into the hands of employees. However, it operates under fewer constraints than an APSS:

- An ESOT can obtain finance from a number of sources, not just the employer company's contributions; and
- An ESOT can hold the shares for up to 20 years.

[7] The minimum length of service requirement is set by the company and cannot exceed three years.

A Revenue approved ESOT must meet certain legislative requirements under Section 519 of the TCA 1997: (1) the ESOT must be established by a trust deed, and (2) the company establishing the ESOT must not be under the control of another company.

A body of trustees must be established, the structure of which must comply with Paragraphs 8, 9 or 10 of Schedule 12 TCA 1997. Beneficiaries are those who contribute to the trust. All employees (who have met the minimum length of service) must be eligible to be a beneficiary of the ESOT. A beneficiary cannot have a "material interest" in the company (controlling more than 15% of ordinary share capital) in the previous 12 months.

Although generally shares in the founding company are acquired by the trustees of the ESOT, it is possible that certain other securities may be acquired instead.

Beneficiaries are liable for income tax on any share transferred, or cash payments made, to them by the trustees of the ESOT under Schedule 12 of the TCA 1997 (unless an APSS is linked to the ESOT). The costs of establishing an approved ESOT and any payments made to trustees are deductible for corporation tax purposes. There are special tax treatments in place for trustees in respect of income accruing to the trust that consists of dividends (no income tax due), or when shares are transferred to an APSS trust, or when the proceedings of share sales are used to service the trust's debt or to pay a sum to representatives of a deceased beneficiary.

Save As You Earn (SAYE)

Prior Revenue approval is required to set up a savings related share option scheme in accordance with Schedule 12A of the TCA 1997. An approved SAYE scheme can only operate where there is an associated certified contractual savings scheme. Only qualifying savings institutions may operate a certified contractual savings scheme. The costs of establishing an approved SAYE scheme are deductible for corporation tax purposes. Employees will save with a qualifying institution under a SAYE contractual savings scheme for a period of three, five or seven years. The maximum monthly savings allowable is €500 and the minimum amount is €12. The monthly contribution is fixed at the start of the contract.

Participation in an approved SAYE scheme must be open at any time to every person who:

- Is an employee of the company;
- Has been such an employee for a minimum length of service;[8] and
- Is chargeable to income tax in respect of that employment.

Any interest or bonus paid on the savings at maturity will be exempt from income tax and Deposit Interest Retention Tax (DIRT). The participant can then exercise their option to buy shares, or they can take their savings back from the savings carrier. If options are exercised, any gain arising will be exempt from income tax unless the right is exercised within three years of grant. There is no exemption from USC or PRSI for the employee. If shares acquired are sold, capital gains tax is due. This is legislated for under Section 519A and 519C of the TCA 1997, in accordance with Schedule 12A and 12B.

In terms of reporting requirements, employers must file Form SRSO1 by 31 March in the year following the assessment year for the grant of options or when an employee exercises their options.

[8] See previous note.

The employer is required to report USC and PRSI on any gains realised through PAYE in the month of exercise. The employee is required to file Form CG1 for capital gains tax upon the disposal of shares.

Table 1.2: Summary of Main Unapproved Schemes				
	KEEP	**RSU**	**Growth Shares**	**Unapproved Share Options**
Plan scope	Company criteria: fewer than 250 employees globally and annual balance sheet not exceeding €43m.	A grant (or promise) to grant shares or cash to the value of shares to an employee on completion of a "vesting period" indicated by passage of time or the achievement of certain performance goals.	Linked to company/employee performance. The "hurdle" is specified by employer when the shares are issued.	Not a Revenue approved scheme.
	Market value of issued but unexercised share options limited to €6m.			Company grants a share option to an employee for a pre-determined number of shares at a pre-determined price for a pre-determined period.
	Maximum total market value of all qualifying share options granted to an employee must not exceed: (i) €100,000 in any one year of assessment; (ii) €300,000 in any 3 consecutive years of assessment, and (iii) 100% of the annual emoluments of the qualifying individual in the year of grant.			Two types of share options: short (must be exercised within 7 years from grant date) and long (can be exercised more than 7 years from grant date).
Reporting Requirements	Grant: Employer files Form KEEP1 by 31 March in the following year. Exercise: Employer files Form KEEP1 by 31 March in the following year. Disposal of shares: Employee files Form CG1/Form 12/Form 11 by 31 October in the year after disposal.	Grant (optional): Employer files Form ESA by 31 March in the following year. Vesting: Employer files Form ESA by 31 March in the following year, and PAYE reporting. Disposal of shares: Employee files Form CG1/Form 12/ Form 11 by 31 October in the year after disposal.	Grant: Employer files Form ESA. Exercise: Operates PAYE on any benefits from shares. Disposal of shares: Employee files Form CG1/Form 12/ Form 11 by 31 October in the year after disposal.	Grant: Employer files Form RSS1 Exercise: Employer operates PAYE on gains realised from 1 January 2024 as a result of the exercise/assignment/release of an option. Disposal of shares: Employee files Form CG1/Form 12/ Form 11 by 31 October in the year after disposal.
Timing of tax (employee)	At point of sale.	At point of vesting, at point of sale, and at receipt of dividends, when relevant.	At point of sale and at receipt of dividends, when relevant.	At point of exercise, at point of sale and at receipt of dividends, when relevant.
Tax rate (employee)	CGT (33%) on excess of allowance (€1,270) at point of sale.	At point of exercise: income tax, USC and PRSI.	If shares are given for free or at a discounted value, the employer must operate PAYE on the notional payment at the marginal rate of income tax of the individual at date of award. At point of sale: CGT on any gains between price paid by employee and the market value at disposal.	At point of exercise: income tax, USC and PRSI.
		Dividends: income tax, USC and PRSI are applicable.		Dividends: income tax, USC and PRSI are applicable.
			Dividends: income tax, USC and PRSI are applicable.	At point of sale: CGT on any gains realised.

Table 1.2: Summary of Main Unapproved Schemes				
	KEEP	RSU	Growth Shares	Unapproved Share Options
		At point of sale: CGT (33%) on excess of allowance (€1,270).		
Employer taxation	No employer PRSI.	No employer PRSI on *share-settled* RSUs.	No employer PRSI.	No employer PRSI.
Source: Indecon analysis of Index Ventures country comparison and Revenue Tax and Duty Manual.				

Key Employee Engagement Programme (KEEP)

The KEEP is an approved State aid scheme that targets small and medium enterprises (SMEs) and start-ups specifically. It is intended to help these firms attract and retain talented personnel in a highly competitive and increasingly globalised labour market. There is a general prohibition of State aids in the European Union[9] so that the Single Market, and competition and trade are not distorted by certain companies being favoured over others. However, where an aid meets certain policy objectives, it can be notified to the European Commission, and subject to approval from the European Commission it may be allowed.

The scheme is applicable in respect of share options granted during the period 1 January 2018 to 31 December 2025. Employees[10] who realise an income gain on the exercise of qualifying KEEP options are exempt from income tax, USC, and PRSI. This differs from other unapproved option schemes where income tax, USC and employee PRSI are taxable at point of exercise. As with all share schemes, Capital Gains Tax (CGT) is applicable upon the disposal of shares.

In order to qualify for the beneficial tax treatment for KEEP, a number of conditions must be satisfied by both the employee and the company. The employee and the company must meet these conditions for the duration of the scheme. The conditions are set out in Section 128F of the TCA 1997, which specifically legislates for the KEEP and the exemption from income tax, USC, and PRSI for the employee.

Employee:

- Must work 20+ hours per week and devote not less than 75% of their working time throughout the entirety of the relevant period;
- Employment office must last at least 12 months from date of grant;
- No material (15%) interest can be held in the qualifying company; and
- Options must be held for 12 months prior to exercise.

Qualifying company:

- Incorporated and resident in Ireland, UK or EEA state and carrying out business in Ireland through a branch or agency;
- The activities of a qualifying company must exist wholly or mainly for the purpose of carrying out a “qualifying trade” on a commercial basis with a view to the realisation of profit;
- A qualifying company must be a micro, small or medium-sized enterprise (SME) within the meaning of the Annex to Commission Recommendation 2003/361/EC;[11]

[9] Through Article 107 of the Treaty on the Functioning of the European Union (TFEU).

[10] Please note that tax legislation refers to “employee/director” in the Tax and Duty Manual, Indecon will use “employee” in this document to refer to same.

[11] See the following European Commission guidance: available here.

- A qualifying company must be an unquoted company;
- A qualifying company must not be regarded as one in difficulty under European Commission Guidelines on State aid; and
- A qualifying company must not issue qualifying share options with a market value exceeding €3m before 20 November 2023 and €6m afterwards.

A "qualifying trade" excludes the following activities: (a) adventure/concerns in the nature of trade; (b) dealing in commodities or futures on financial assets; (c) financial activities;[12] (d) professional services;[13] (e) dealing in/developing land; (f) building and contribution; (g) forestry; and (h) operations carried out in the coal/steel industry.

The total market value of all shares in respect of which qualifying share options can be granted to an employee must not exceed: (i) €100,000 in any one year of assessment; (ii) €300,000 in any three consecutive years of assessment, and (iii) 100% of the annual emoluments of the qualifying individual in the year of grant.[14] The share option price at the date of grant must not be less than the market value.

The KEEP guidance issued on the valuation of shareholding in an unquoted company indicates that the valuation depends on many factors including: the business sector/industry, the net assets of the business, the profitability of the business and future prospects. Revenue expects that valuation methods will comply with relevant accounting standards but does not provide details on the valuation methods it will accept and will not provide opinions on share valuations.

The KEEP was last amended through the Finance Act 2022. Six amendments were legislated for which received State aid approval from the European Commission (as required for all amendments to the KEEP). Of these, the following two amendments were commenced in September 2022:[15]

- The definitions of qualifying company and holding company were amended so as to allow companies operating through a group structure to qualify for relief.
- The conditions relating to qualifying employees were amended to allow for part-time/flexible working and movement within group structures (as business needs dictate).

The following four amendments were commenced in November 2023:

- Extension of the scheme to the end of 2025, a continuation of the scheme beyond its original sunset date of 2023;
- The facilitation of the buyback of company shares that were acquired under the KEEP to receive capital gains tax treatment;
- Increased limit for the total market value of issued but unexercised qualifying share options for qualifying companies and qualifying holding companies from €3m to €6m; and
- Changes to the types of shares that qualify for KEEP from new ordinary fully paid-up shares to ordinary fully paid up shares, so that existing shares a company holds can qualify.

[12] As defined in Section 489 TCA 1997, meaning the provision of financing, refinancing through the extension of credit.
[13] This includes all medical and veterinary services, architectural related services, accountancy, audit or tax, legal services and geological services.
[14] These conditions were updated in the Finance Act 2018 with effect from 1st January 2019. Different conditions apply to schemes set up prior to 1st January 2019, see Chapter 9 of the Tax and Duty Manual on KEEP for more details.
[15] Source: Government Website.

Employers must file Form KEEP1 at grant and at exercise while on share disposal the employee files Form CG1/Form 12/Form 11 as appropriate.

Restricted Stock Unit (RSU)

An RSU is a promise (or conditional grant) of shares to an employee/director such that on completion of a "vesting period", they will receive a number of shares or cash to the value of such shares. The vesting period is the period between the date of grant and the date on which the vesting condition is satisfied, either through the passage of time, the individual's performance, or by the achievement of corporate goals. Any combination of such conditions may also be specified. RSUs are not granted under option and are treated as a taxable emolument of the employment chargeable to income tax under Schedule E.[16] This is legislated for under Section 112 of the TCA 1997.

RSUs are chargeable to income tax on the date of vesting for the employee under the PAYE system, including USC and employee PRSI. There is an exemption from employer PRSI for RSUs settled in shares. When an employee changes residence during the vesting period, the country of residence at time of vesting determines the jurisdiction in which the tax liability is due according to Irish law. As discussed later in chapter 3, this differs from many other countries where the tax liability of globally mobile employees is calculated on pro-rata based on the length of time spent in each country of residence during the vesting period.

The employer has an obligation to report the vesting of a RSU in Form ESA (reporting of the grant is not mandatory). The employer is also obligated to report PAYE for the employee at vesting. The employee is required to file a CG1 return for the disposal of shares.

Unapproved Share Options

This scheme allows a company to grant a share option to an employee where they have the right to acquire a pre-determined number of shares at a pre-determined price[17] for a pre-determined period. The employee is charged income tax, USC and PRSI at marginal rates on the difference between market price and strike price at exercise of the options. Any gains realised after 1 January 2024 must be reported through the PAYE system by the employer, whilst gains realised up to 31 December 2023 are taxed under employee self-assessment. This is legislated for under Section 128 of the TCA 1997 for employees who are chargeable under Schedule E.

Reporting requirements for unapproved share options include the employer filing a Form RSS1 by 31 March in the year following the grant, exercise, transfer or release of options. The employee must file Form CG1 for any capital gains tax due on the disposal of shares.

Growth Shares

Growth shares are a special class of ordinary shares that generally have a low (or nil) value until a certain target or hurdle is reached by the business. This hurdle is specified by the employer and may refer to: company performance; the individual's performance; and leaver provisions. The employer may issue shares to the participant at market value, free of charge or for a discounted value.

[16] Section 128 TCA 1997 does not apply to RSUs.

[17] Or alternatively, at no cost (nil option).

If the participant pays the market value on award of shares, no tax arises. Shares issued free of charge or at a discounted value are a taxable benefit on award of the shares under income tax through PAYE, as legislated for under Section 112 of the TCA 1997. Employers must report details of growth share awards through Form ESA.

Employee Share Purchase Plan (ESPP)

An ESPP enables the employees of the company to purchase shares in the company or its parent company at a discount, through deductions from the employee's net salary or wages. The discount allowed is normally 15% of the market value of the shares on the first or last day of the offer period (whichever is lowest). The employee decides how much net salary or wages they wish to contribute each month for the period, which is retained by the company.

Employees are charged income tax on the difference between the market value of the shares (when the shares were purchased on behalf of the employee) and the amount paid by the employee. The particulars of the individual share scheme plan will determine whether or not a charge to income tax arises under Section 112 or 128 TCA 1997. The charge to income normally arises under section 112 TCA 1997. Where an ESPP provides an employee/director an option to acquire a share, it will be considered an unapproved share option and within the charge to tax under Section 128 TCA 1997 employers must report details of any forfeitable shares. It is charged tax in the same way as unapproved share options, as legislated under Section 128 TCA 1997 when the employee is chargeable to income tax under Schedule E.

Employers are required to report details of an award of shares under an ESPP using the Form ESA, which must be filed by 31 March following the relevant tax year. Where the ESPP is a share option scheme, details should only be reported on the RSS1 return.

Restricted Shares

Restricted shares are shares acquired by an employee of a company where there is a "clog" or restriction on the disposal of those shares. The shares are held in a trust established by the employer for the benefit of the employee for a specified period of at least one year.

An income tax charge will arise at acquisition where the employee acquires the shares for less than market value. The employee may benefit from an abatement (from 10%-60%) on the amount chargeable to income tax charge. This compensates for the restriction on disposal of shares. The abatement depends on the number of years of restriction. Employees are liable for capital gains tax on the disposal of shares, on the difference between the sale price and the acquisition cost of shares. This is legislated for under Section 128D of the TCA 1997.

Where restricted shares are acquired on the exercise of a share option, employers must file an RSS1 return. Employers must also report information on awards of restricted shares, disposals of restricted shares and forfeitures of restricted shares through Form ESA.

Convertible Securities

Convertible securities are granted to an employee and are convertible into securities of another description or into money. Income tax is charged on the date of acquisition and will be calculated by reference to the market value of the securities at that date, ignoring the right of conversion. A further income tax charge will be imposed on the conversion of the securities. This income tax charged is

added to the costs of acquisition of the securities when capital gains tax is being calculated on the disposal of the securities (reducing the CGT tax bill). This is legislated for under Section 128C of the TCA 1997.

The charge to income tax is legislated for under different sections of the TCA 1997 depending on the convertible nature of the securities:

- Section 112 applies where the employee is chargeable under Schedule E;
- Section 128 applies if it falls under the taxation of share options and other rights; and
- Section 122A applies if it taxed as a notional loan.

Employers must report details of all awards of convertible securities and details of any chargeable events in the return year when they occur through Form ESA.

Forfeitable shares

Forfeitable shares are awarded to employees and may be forfeited if specific targets are not met, for instance continuation of employment. Income tax, USC, and employee PRSI are due on any difference between the market value of the shares awarded and the price paid by the employee. This is due when the shares are awarded and Revenue will refund the tax paid in cases where the shares are forfeited.

The employer makes all the necessary deductions through PAYE and must also report details of all awards of forfeitable shares and any details of any forfeiture of shares in the return year the shares are forfeited through Form ESA.

Discounted, free, partly paid shares

Whenever shares are awarded for free or at a discount, the employee must pay income tax, USC and PRSI on the amount of the discount or on the full market value if the share was awarded for free. Employers must report details of any award of shares free of charge, shares at undervalue or a discounted price on the Form ESA.

Phantom shares, stock appreciation rights, any cash payments following the value of shares

These cash-settled share awards are cash payments following the value of shares and as such, they do not qualify for employer PRSI exemption. Employees must pay income tax, USC, and PRSI on any gains arising from these schemes. Employers must report details of cash-settled share awards on the Form ESA.

1.4 Summary of Key Findings

- Share-based remuneration can provide benefits to firms including in terms of improving employee motivation and productivity as well as wider economic benefits in helping firms to attract and retain high-skilled labour and to alleviate liquidity and capital constraints as the share-based portion of remuneration does not require up-front cash disbursements from firms.

- The taxation system in Ireland provides a range of SBR incentives. These were introduced to ensure that Irish businesses are supported to attract, incentivise and retain employees and directors, in order to facilitate economic growth and employment.
- These schemes include Revenue approved schemes, which attract preferential tax treatment. Before the establishment of each individual scheme, Revenue approval is required, and the schemes must be open to all employees on equal or similar terms.
- There are three approved schemes: APSS, ESOT, and SAYE. APSS and SAYE have exemptions from income tax for employees (USC and employee PRSI still apply).
- There are also a number of unapproved schemes, which means prior approval from Revenue is not required in advance of establishing a scheme. In addition to the preferential tax treatment that applies to approved schemes, some unapproved schemes may also attract preferential tax treatment.
- An ESOT is a trust that operates like an APSS but with fewer restrictions. Such trusts are not eligible for the income tax exemption unless they are coupled with an APSS.
- KEEP is an important targeted scheme that required EU State aid approval and aims to assist start-ups and SMEs through a number of tax advantages. No taxes apply for the employee or employer on shares granted under this scheme except when the shares are disposed of by the employee (in which case capital gains tax applies on any gains).
- Other unapproved schemes include RSUs and Unapproved Share Options. Employee income tax, USC, and employee PRSI apply to these schemes. In addition, an employer PRSI exemption applies to both approved and unapproved schemes, provided the awards are settled in shares.

2 Use of Share-Based Remuneration in Ireland

2.1 Introduction

This chapter presents a review and analysis of the use of SBR schemes in Ireland, based on data provided by Revenue. Section 2.2 presents an analysis of participation in SBR schemes, in particular along the following dimensions: firm size, sector, and ownership. Section 2.3 analyses the data associated with the main approved and unapproved schemes including KEEP, SAYE, APSS, unapproved share options, and other important employee share awards such as RSUs. Section 2.4 concludes with a summary of findings.

2.2 Participation in Share-Based Remuneration

In this section we examine participation and take-up of SBR in terms of the number of employers who administer schemes to their employees and the value of the SBR schemes. This is broken down by firm size, industry, and ownership (foreign/domestic and by country of ownership).

Wider Economic Context

The value of SBR increased by 17% between 2020 and 2022, from €1.8bn to €2.1b. This is in line with the growth of the overall national employee compensation. Therefore, the weight of SBR has remained stable during the period, at 1.8% of the national wage bill.

Table 2.1: Comparison of Share-Based Remuneration and National Wage Bill (€m)

	National Employee Compensation	Value of SBR	SBR/Employee Compensation
2020	101,312.89	1,816.8	1.8%
2021	111,193.63	2,549.6	2.3%
2022	121,903.53	2,139.0	1.8%

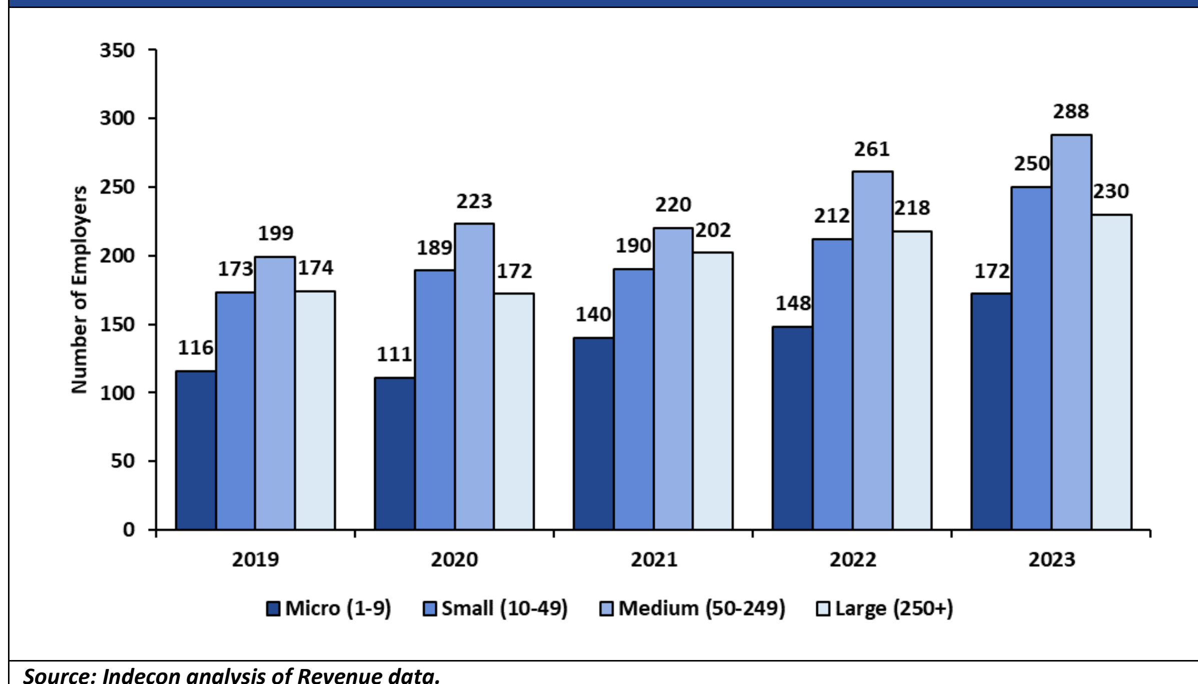
Source: Indecon analysis of Revenue data and CSO National Accounts Data[18]

Firm Size

Figure 2.1 presents the number of employers offering SBR schemes reported through PAYE from 2019-2023, broken down by firm size. Medium-sized enterprises are the biggest users, followed by small (10-49 employees) and large (250+ employees) companies. All firms have shown consistent growth in the use of SBR schemes during the period. Some increases in take-up can be seen for micro (1-9 employees) and small firms, which is encouraging given the policy rationale to support cash-constrained SMEs in competing for talent. However, as noted later, most of the exchequer costs relate to usage of these schemes by larger firms.

[18] CSO Compensation of Employees (Current Market Prices, 2022): available here.

Figure 2.1: Number of Employers Administering SBR Schemes Subject to PAYE by Firm Size



Source: Indecon analysis of Revenue data.

Table 2.2 shows the value of the SBR schemes reported through PAYE by firm size. Again, it is not surprising that large firms have the highest value of SBR schemes (83% of the total); however, the growth in value of SBR by micro and small firms in particular is disproportionately low and stagnant. For micro firms, the SBR value in 2023 is at the 2019 level whilst the value has increased by 21% for small firms, by 130% for medium firms, and by 139% for large firms over the same period.

Table 2.2: Value of SBR Schemes (€m) Subject to PAYE by Firm Size

	2019	2020	2021	2022	2023
Micro (1-9)	19.5	13.4	21.9	15.5	19.6
Small (10-49)	63.6	51.8	123	55.1	77.2
Medium (50-249)	112.4	139.1	173.9	149	258.1
Large (250+)	749.8	999.4	1,461.2	1,317.3	1,794.8
Total	**945.5**	**1,203.8**	**1,780.1**	**1,536.9**	**2,149.8**

Source: Indecon analysis of Revenue data.

Table 2.3 shows that the share of SBR value accounted for by micro, small, and medium enterprises is larger for unapproved shared options than for RSUs and SAYE schemes. This suggests that options are potentially a relatively more attractive type of scheme for SMEs. It is noteworthy that the value of unapproved share options used by SMEs (€101m) is approximately 30 times the value of KEEP options (€3.2m, as shown in Section 2.3). An analysis of the use of the APSS by type of firm was not possible given data constraints.

Table 2.3: Value of Selected SBR Schemes by Firm Size (2022)						
	Unapproved Options		**RSUs**		**SAYE**	
Company Size	**€m**	**Share**	**€m**	**Share**	**€m**	**Share**
Micro (1-9)	32.9	10%	18.8	1%	0.1	1%
Small (10-49)	31.3	10%	82.5	5%	0.1	1%
Medium (50-249)	36.5	11%	159.7	9%	0.1	1%
Large (250+)	193.6	60%	1,415.80	84%	6.4	82%
Unavailable	26.8	8%	13.7	1%	1.1	15%
Total	**321.1**	**100%**	**1,690.50**	**100%**	**7.8**	**100%**
Source: Revenue Data. Data was only available for the year 2022.						

We now examine the participation and take up of SBR schemes across NACE[19] industry sectors. Industry categories that were too small (<10) to report were aggregated up into the "Other" category. The distribution of take-up across NACE industry sectors can be seen in Table 2.4 and Table 2.5 overleaf. Participation in SBR schemes increased in almost every industry sector from 2019 to 2023, but the largest increases were seen in information and communications; and finance and insurance. In 2023, the five sectors with the greatest in SBR by number of firms were: information and communications; finance and insurance; manufacturing; wholesale/retail/motor vehicle repair; and professional, scientific, and technical.

Table 2.4: Number of Employers Administering SBR Schemes by NACE Sector					
	2019	**2020**	**2021**	**2022**	**2023**
Information and Communication	136	143	153	176	199
Finance and Insurance	120	124	145	153	186
Manufacturing	111	126	144	153	160
Wholesale/Retail/Motor Vehicle Repair	98	103	109	119	130
Professional, Scientific, and Technical	88	99	102	123	132
Administrative and Support Service	45	44	45	52	63
Transportation and Storage	11	12	15	16	19
Others	53	44	39	47	51
Total	**662**	**695**	**752**	**839**	**940**
Source: Indecon analysis of Revenue data.					

[19] NACE is the statistical classification of economic activities in the European Community, abbreviated as NACE from the French: ***N**omenclature statistique des **a**ctivités économiques dans la **C**ommunauté **e**uropéenne*

In assessing the use of SBR and potential future policy options, it is important to understand what sectors of the economy use SBR in their compensation of employees. Table 2.5 and Figure 2.2 allow us to examine the value of the PAYE portion of SBR schemes by NACE industry sector over the years 2019 - 2023. The information and communications sector have both the highest number of firms with SBR and the highest value throughout the period, but the value is about three times that of the manufacturing industry (2023) while the number of employers is 20% higher. In turn, the manufacturing industry lags behind finance and insurance in terms of take-up of the scheme among employers, but the value of share remuneration in manufacturing is over double that of finance and insurance in 2023. Sectoral data was not available for the non-PAYE portion of SBR.

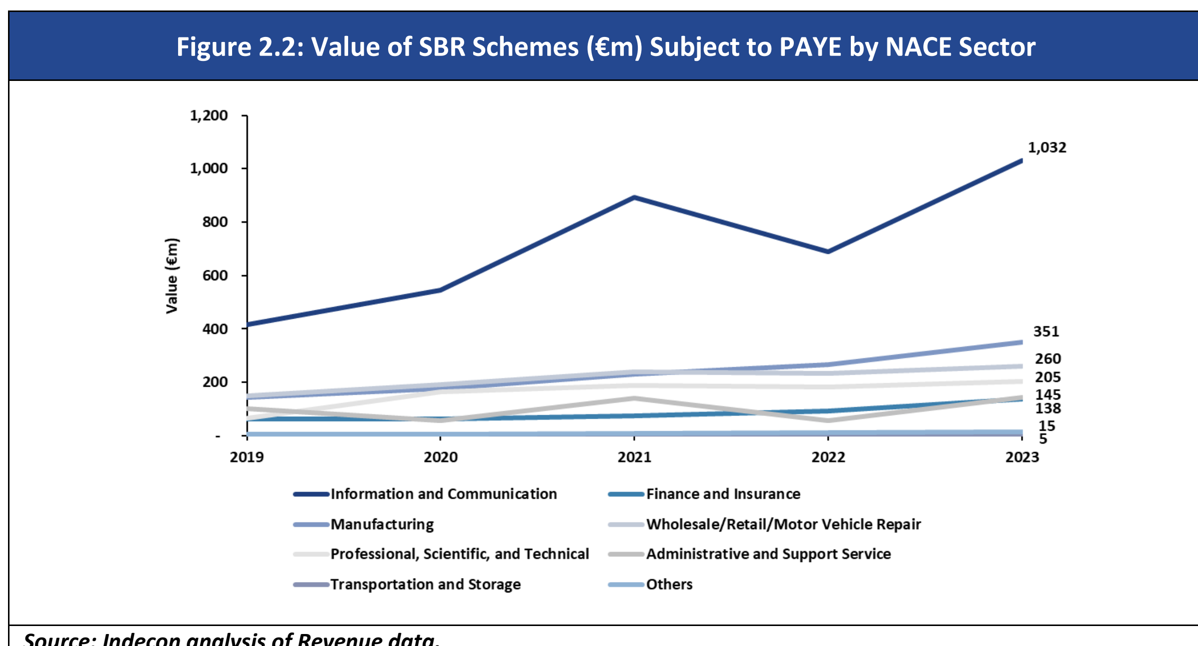
Table 2.5: Value of SBR Schemes (€m) Subject to PAYE by NACE Sector

	2019	2020	2021	2022	2023
Information and Communication	418	544	894	689	1,032
Finance and Insurance	61	61	76	91	138
Manufacturing	144	177	230	268	351
Wholesale/Retail/Motor Vehicle Repair	149	192	239	234	260
Professional, Scientific, and Technical	66	166	189	182	205
Administrative and Support Service	102	57	141	57	145
Transportation and Storage	1	2	4	4	5
Others	5	5	7	11	15
Total	**945**	**1,204**	**1,780**	**1,537**	**2,150**

Source: Indecon analysis of Revenue data.

Figure 2.2 illustrates the trend in the value by sector.

Figure 2.2: Value of SBR Schemes (€m) Subject to PAYE by NACE Sector

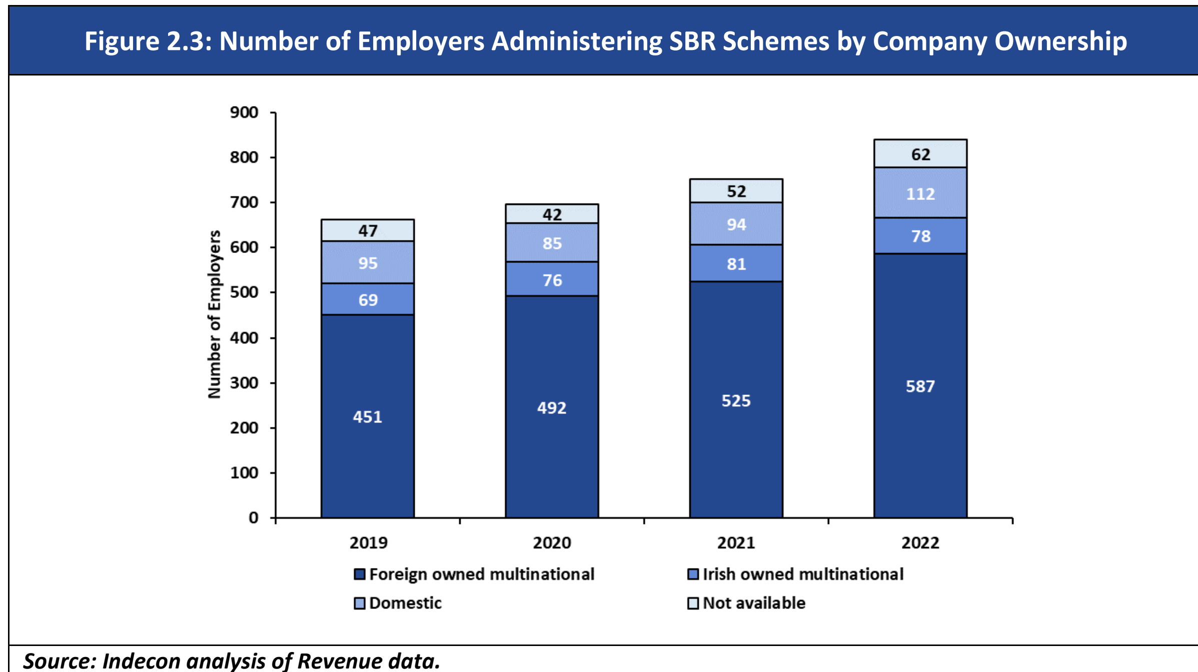


Source: Indecon analysis of Revenue data.

Ownership of Companies using SBR Schemes

We examine the participation in SBR by ownership.[20] Figure 2.3 shows that foreign-owned multinationals account for the largest proportion of firms who use SBR in Ireland, and domestic firms are also important users with 112 employers using SBR.

Figure 2.3: Number of Employers Administering SBR Schemes by Company Ownership



Source: Indecon analysis of Revenue data.

Analysis of where Company is Headquartered

Table 2.6 shows that a significant number of employees in companies available of SBR schemes are headquartered is the USA. Ireland-headquartered companies are the second largest category, in terms of employers administering SBR schemes in Ireland.

Table 2.6: Number of Employers Administering SBR Schemes by Country of Headquarter

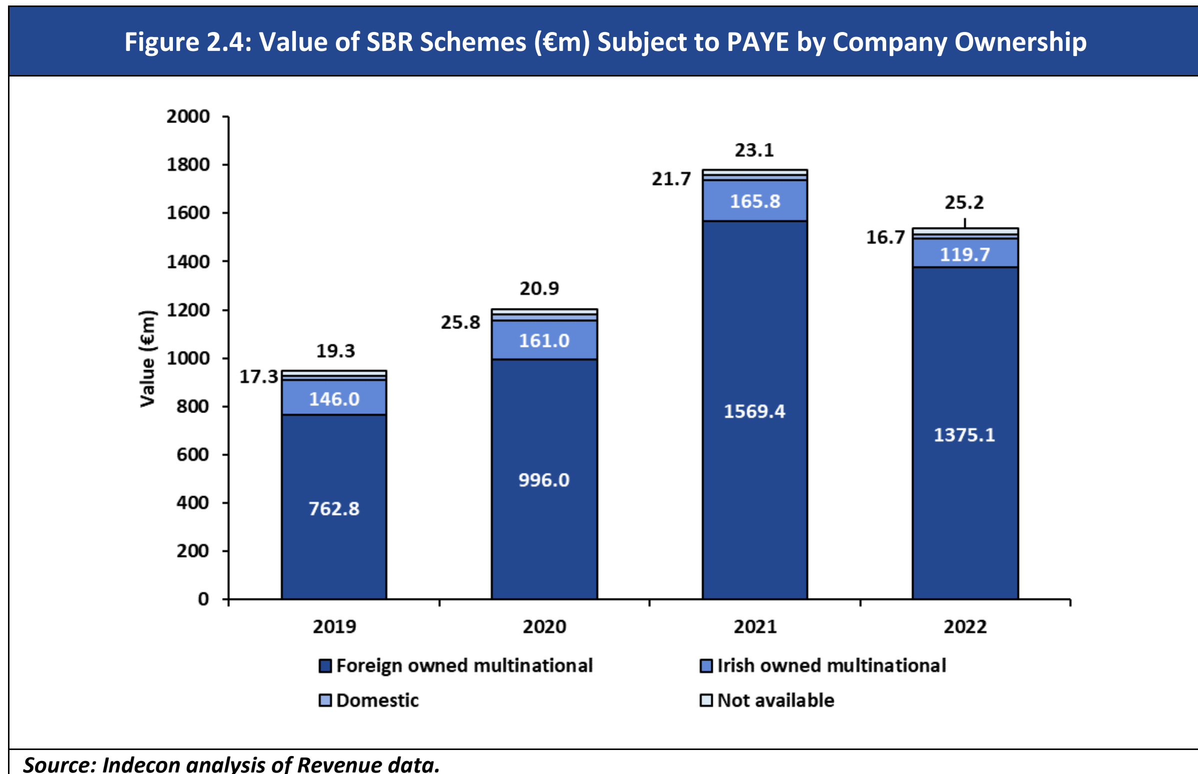
Country of Headquarter	2019	2020	2021	2022
USA	250	282	320	354
Ireland	69	76	81	78
UK	48	43	41	52
France	22	26	35	42
Canada	10	16	17	20
Germany	10	15	13	22
Other	59	51	59	69
Not available	194	186	186	202
Total	**662**	**695**	**752**	**839**

Source: Indecon analysis of Revenue data.

[20] Ownership and headquarter location are distinct concepts; however, they may be highly correlated.

Figure 2.4 shows the breakdown of the value of SBR by company ownership. This shows that foreign-owned multinational firms account for the highest share of SBR, followed by Irish multinational firms.

Figure 2.4: Value of SBR Schemes (€m) Subject to PAYE by Company Ownership



Source: Indecon analysis of Revenue data.

Table 2.7 shows that US-headquartered firms also account for the largest share in the value of SBR schemes in Ireland. The second is Ireland followed by the UK. The value of SBR in Ireland grew between 2019 and 2021 but declined in 2022.

Table 2.7: Value of SBR Schemes (€m) Subject to PAYE by Country of Headquarter

Country of Headquarter	2019	2020	2021	2022
USA	676.5	821.6	1,430.20	1,248
Ireland	146	161	165.8	119
UK	37.4	11.6	17.9	48.4
France	6.8	7.7	9.9	9.7
Canada	3.1	7.2	9.1	5.2
Germany	7.4	8.0	9.6	19.0
Other	13	26.3	57.9	28.2
Not available	55	160	79.4	58.4
Total	**945.6**	**1,203.80**	**1,780.10**	**1,536.90**

Source: Indecon analysis of Revenue data.

2.3 Scheme Details

Key Employee Engagement Programme

The KEEP is a targeted SBR scheme for small and medium-sized enterprises (SMEs). It has been the subject of discussion in recent years, with some stakeholders raising concerns about whether this scheme is achieving its desired policy goal (see Section 4.2 for more information). There have been amendments made to the scheme, including those commenced in November 2023. Therefore, it is important to examine the use of the KEEP in recent years.

Table 2.8 illustrates the trend in usage of KEEP from 2019 to 2022 based on data received from Revenue. The use of KEEP, as measured through the number of KEEP1 returns filed, peaked in 2021 with 39 returns and remained moderately steady throughout the period. The number of persons granted share options under the KEEP also peaked in 2021 before falling in 2022 below the initial levels recorded in 2019. The total market value of share options granted fell by 71% from 2021 to 2022, and almost halved from the 2019 value of €3m.

The number of persons who exercised share options fluctuated between 2019 and 2022, whilst the number of share options exercised grew over that period. Overall, the average number of options exercised per participant has increased but the number of participants has decreased. The average market value of the share options exercised has increased in 2022. While 1.2m share options were exercised in 2021 with a value of €3.5m, in 2022 only 625,000 share options were exercised and the value was stable at €3.2m. This suggests that the average market value of shares underlying KEEP options has increased and the decrease in participation might be more significant than suggested by the value figures alone.

In terms of revenue foregone, as a result of the exemption from income tax on the exercise of share options, the amount of revenue foregone grew from €100,000 to €1.6m from 2019 to 2022 (details in Section 5).

Table 2.8: Statistics on KEEP Participation in Ireland

	2019	2020	2021	2022
No. of KEEP1 returns filed	31	27	39	31
No. of persons granted share options	238	201	296	154
No. of share options granted	640,000	6.9m	2.9m	2.1m
Total market value of share options granted	€3m	€3.8m	€5.9m	€1.7m
No. of persons who exercised share options	*	37	32	26
No. of share options exercised	500	18,000	1.2m	625,000
Total net market value of share options exercised	€0.15m	€0.45m	€3.5m	€3.2m

Source: Indecon analysis of Revenue data (KEEP returns submitted to Revenue).
Note: Data as of 26th February 2024.
* Denotes that the figure was <10 and as a result, not disclosable.

Table 2.9 and Table 2.10 present the number of KEEP1 returns filed by firm size and NACE industry sector respectively. In many cases, the number of returns was smaller than 10 and in these cases the

data is concealed for confidentiality reasons (denoted by *). Overall, small firms with 10-49 employees use KEEP more than micro or medium-sized firms.

Table 2.9: Number of KEEP1 Returns Filed by Firm Size

	2019	2020	2021	2022
Micro (1-9)	*	*	*	*
Small (10-49)	16	15	22	16
Medium (50 -249)	*	*	*	*
Total	**31**	**27**	**39**	**31**

Source: Indecon analysis of Revenue data.
Note: Data as of 26th February 2024.
* Denotes that the figure was <10 and as a result, not disclosable.

In terms of industry, the data had to be aggregated into two categories: information and communication; and other. Perhaps reflecting the importance of digital start-ups in Ireland, firms in the information and communication sector file more than a third of the total number of KEEP1 returns, as reported in Table 2.10.

Table 2.10: Number of KEEP1 Returns Filed by NACE Industry Sector

	2019	2020	2021	2022
Information and Communication	11	*	15	11
Other	20	*	24	20
Totals	**31**	**27**	**39**	**31**

Source: Indecon analysis of Revenue data.
Note: Data as of 26th February 2024.
* Denotes that the figure was <10 and as a result, not disclosable.

SAYE Schemes

Table 2.11 highlights some summary statistics on the use of SAYE schemes. With data available from 2018 to 2022, there have only been marginal increases in the use of SAYE schemes, both through the number of schemes and the number of SRSO1 returns filed. However, it should be noted that the current lack of a savings carrier in the Irish market is restricting the launch of new SAYE schemes. The number of persons exercising share options is increasing over time, possibly because a number of SAYE schemes administered in previous years are reaching the end of their savings period (3-7 years). The number of shares being exercised moves roughly in line with the number of persons exercising their share options and this in turn affects the total market value of the shares exercised and the total capital gains from exercising those options.

Table 2.11: Statistics on SAYE schemes					
	2018	**2019**	**2020**	**2021**	**2022**
No. of Schemes	93	96	100	101	101
No. of SRSO1 returns filed	45	35	37	43	44
No. of persons that exercised options	1,100	1,200	1,200	1,700	2,300
No. of shares exercised	1.25m	1m	1.7m	1.8m	2.4m
Total market value of shares exercised	€10.5m	€12.8m	€15.7m	€23.6m	€19.6m
Total gain on options exercised	€4.5m	€4.5m	€6.6m	€14.1m	€7.9m
Source: Indecon analysis of Revenue data.					

APSS

Table 2.12 presents summary statistics on the use of APSSs, similar in structure to Table 2.11. The use of APSSs is more widespread than the use of SAYE schemes, in terms of both the number of schemes and the total market value of shares appropriated. Although the number of schemes that appropriated shares, the number of returns filed and the number of shares appropriated fluctuates over the five years from 2018-2022, the total market value of shares appropriated is increasing consistently from 2019-2022. In turn, the estimated revenue foregone has increased year on year from 2019-2022, which is estimated using a blended rate of income tax of 30% from the standard rate (20%) and the higher rate (40%). The trend in the number of participants also follows closely the total market value of share appropriated, owing to the scheme condition of offering similar terms for all employees.

Table 2.12: Statistics on APSS					
	2018	**2019**	**2020**	**2021**	**2022**
No. of APSS	400	399	386	390	399
No. of ESS1 returns filed	341	219	225	228	232
No. of schemes that appropriated shares	167	157	170	168	163
No. of shares appropriated	7.9m	7.6m	6.8m	5.1m	2.1m
Total Market Value of shares appropriated	€185m	€168m	€217m	€220m	€270m
No. of Participants	34,900	32,400	38,600	40,600	49,200
Source: Indecon analysis of Revenue data.					

Unapproved Share Options Schemes

Table 2.13 presents summary data on the use of unapproved share options in Ireland (as filed through the RSS1 form). The number of employees who were granted unapproved share options increased steadily over this period from 10,000 to over 16,000. However, the total number of unapproved share options granted has been steadily decreasing from 2020 to 2022. The total market value of unapproved share options fluctuated across the period, though this increased overall from 2020 to 2022. The number of employees who exercised share options also steadily increased over time from approximately 15,000 to 20,000. The number of employees exercising options is larger than the number of employees being granted options in any given year.

The total chargeable gain from the unapproved share options exercised fluctuated across the period, rising from €390m in 2020 to €533m in 2021 before declining in value in 2022 to €321m, which is below 2020 levels.

Table 2.13: Statistics on Unapproved Share Options

	2020	2021	2022
Form RSS1 no. of filers	456	580	534
No. of employers who granted share options	326	412	383
No. of employees granted share options	10000	14100	16400
Total number of share options granted	185m	178m	96m
Total market value of share options granted	€463m	€738m	€536m
No. of employers with employees who exercised share options	276	335	329
No. of employees who exercised share options	15200	19800	20100
Total number of share options exercised	56m	112m	30m
Total market value of share options exercised	€582m	€863m	€661m
Total chargeable gain from share options exercised	€390m	€533m	€321m

Source: Indecon analysis of Revenue data.

Employer's Share Awards (ESA)

Share awards are given to employees or directors in a company through many different schemes including RSUs, restricted shares, convertible securities, and others (filed through an ESA form) as outlined in chapter 1. Table 2.14 illustrates the number of employers and employees participating in the schemes. RSUs account for a large majority of these schemes in terms of both the number of employer and the number of employees. The second largest single category in 2022 is a group including discount, free, matching shares and ESPP, which have jointly a lower participation among employers and employees than RSUs.

Table 2.14: Number of Employers and Employees Participating in Employer's Share Awards						
	2020		**2021**		**2022**	
Scheme	**Employers**	**Employees**	**Employers**	**Employees**	**Employers**	**Employees**
Restricted Stock Units (RSUs)	570	45,150	666	55,000	695	67,600
Discount, Free, Matching, ESPP	119	9,600	158	9,700	170	12,600
Restricted Shares	71	2,100	103	1,500	110	3,000
Convertible Securities (CS)	NA	11	NA	82	NA	23
Forfeitable Shares	13	120	17	100	17	190
Phantom, SAR, Cash (PSC)	31	250	34	260	29	290
Growth, Hurdle, Flowering	29	180	51	530	56	260
Others	25	170	26	230	32	570
Total	**858**	**57581**	**1055**	**67402**	**1109**	**84533**

Source: Indecon analysis on Revenue data.

Table 2.15 shows the total market value of employer's share award schemes. As in the previous table, RSUs account for the largest share of market value, ranging between 83.8 and 93.9% of the total market value of these schemes. Restricted shares is the second largest single category listed in the table, accounting for between 3.4 and 10% of total market value. It should be noted that total market value is influenced by many factors, including the date of vesting of the shares, the issuance of shares and prevailing economic conditions.

Table 2.15: Total Market Value (€m)						
Scheme	**2020**		**2021**		**2022**	
	(€m)	**%**	**(€m)**	**%**	**(€m)**	**%**
Restricted Stock Units (RSUs)	1,350	90.6%	1,760	83.8%	1,690	93.9%
Discount, Free, Matching, ESPP	62	4.2%	74	3.5%	71	3.9%
Restricted Shares	51	3.4%	219	10.4%	68	3.8%
Convertible Securities (CS)	1.4	0.1%	4.9	0.2%	2	0.1%
Forfeitable Shares	0.5	0.0%	1	0.0%	8	0.4%
Phantom, SAR, Cash (PSC)	9	0.6%	19	0.9%	7	0.4%
Growth, Hurdle, Flowering	1.2	0.1%	3.2	0.2%	7	0.4%
Others	11	0.7%	15	0.7%	14	0.8%
Total	**1,490**		**2,100**		**1,800**	

Source: Indecon analysis of Revenue data.

2.4 Summary of Key Findings

- There has been significant use of SBR schemes, particularly by large firms. An analysis of PAYE data by firm size showed that large firms (250+ employees) accounted for 82-85% of employer PRSI foregone in the period 2020-2023. Micro and small firms use of the schemes is very small.
- The share of SBR value accounted for by micro, small and medium enterprises is larger for unapproved shared options than for RSUs and SAYE schemes. The value of unapproved share options used by SMEs (€101m) is approximately 30 times the value of KEEP options (€3.2m). An analysis of the use of the APSS by firm size was not possible given data constraints.
- The information, communications, and technology (ICT) sector accounted for the largest value of SBR and the value of shares amounted to €689m in 2022. Manufacturing was the second largest sector utilising these schemes with a value of €268m. In terms of ownership, foreign-owned multinational firms accounted for the largest proportion of the value of SBR. Of these firms, headquartered in the US accounted for €1,248m in 2022. Of note, however, is that non-internationally traded sectors such as wholesale/retail were also major users of these schemes.
- Data on the KEEP, which is targeted on SME sector, indicated that the number of share options granted is very low with only 26 individuals exercising share options under this scheme in 2022 and the total value of share options exercised was only €2.1m. This contrasts with APSS where the total value of shares appropriated was €270m. It is important to note that KEEP and APSS are not directly comparable given that KEEP is restricted to SMEs.
- Data on unapproved share options showed that the total market value of share options granted amounted to €536m in 2022. For employee share awards (ESAs) RSUs account for the largest share of the total market value of these schemes.

3 Share-based Remuneration Schemes in Competitor Countries

3.1 Introduction

Ireland faces strong competition both for mobile investment and for talent. As competitor countries offer attractive share-based incentives, it is important to consider developments in other countries. In reviewing the findings, it is important to note that there are significant differences in the rates of income tax and the income tax base between countries, which means that the impact of incentives on competitiveness is not directly comparable.

3.2 Tax Treatment of Share-Based Remuneration

The taxation of SBR internationally tends to follow the national rules in place for income tax purposes. Benefits deriving from SBR schemes are usually treated as employment income, generating both income tax liability and social security contributions. In some cases, a tax preferential treatment is granted which reduces or exempts the employer social security contributions and/or the employee income tax and social security contributions. In some cases, a preferential tax treatment is afforded by taxing benefits deriving from SBR as capital gains income, or by reducing the capital gains tax on share sales by employees.

Internationally, the tax treatment of SBR as employment income or capital gain has been a topic of discussion.[21] As in most countries discussed in this report, tax rules differ between employment income and capital gains. In the case of SBR in France, capital gains may be considered as remuneration when the gain is directly linked to the work of the employee or manager receiving it. The applicable tax rules are decided on a case-by-case basis, which introduces uncertainties, although the burden of proof is on the tax administration to demonstrate that the benefit should be taxed as remuneration. In an effort to reduce this uncertainty, French regulations provide for a number of tax-preferential schemes to foster access to shareholding for employees and to allow companies to develop financial incentives for managers. A first set of incentives applies to three profit-based remuneration schemes, which are not SBR strictly speaking though follow a similar logic as a portion of earnings is linked to the value of the company: Participation agreements, Profit-sharing agreements, and Value-sharing bonuses. These schemes are exempt from employer social security contributions and, under certain conditions, are also exempt from employee income tax and social security contributions. A second set of incentives is available for SBR schemes, including Free shares, Stock Options, and Entrepreneur Warrants. These schemes offer special tax treatments which, under certain conditions and within defined limits, reduce the income tax bill as well as the social security contributions of both employer and employees. Details of the tax treatment of these schemes is provided in Box 3.1.

In the UK, the rules surrounding SBR are similar to those in Ireland. Four tax-advantaged schemes exist in the UK: the Company Share Option Plan (CSOP), SAYE, the Share Incentive Plan (SIP), and the Enterprise Management Incentives (EMI). Each of these schemes allows employees to benefit from reliefs on one or more of these taxes: income tax, employee National Insurance Contributions (NICs), and capital gains tax (CGT). In addition, an employer operating the schemes may qualify for employer NICs and corporation tax relief. Details of tax treatment of these schemes are provided in Box 3.2.

[21] OECD (2006), “The taxation of employee stock options”.

The policy rationale behind the preferential tax treatment of these schemes in the UK is in line with international practice set out at Section 1.2 and can be summarised as follows:

— Align employee and shareholder interests: with the ability to benefit directly from company growth and with generous tax treatment alongside, the employee is encouraged to take a proactive part in increasing the company's value.

— Support recruitment and retention efforts: the schemes help businesses attract and retain high productivity workers. The tax advantages are an incentive to stay with the employer and help it grow so they benefit from the maximum reward available.

— Encourage financial planning: the schemes promote savings and investing habits amongst employees, enabling investment opportunities which may not have otherwise existed.

In some countries, such as the Netherlands and Belgium, the taxation of SBR follows the general taxation of benefits in kind, with the taxable amount determined by the difference between the fair market value and the purchase price paid by the employee. The resulting benefit in kind is taxable as employment income at the standard progressive rates. Within a benefit in kind framework, tax rules specifically related to share-based incentives determine the taxable moment of SBR and in particular of employee stock options.

Generally, the taxable time is the point the employee can freely dispose of the benefit. If shares are granted unconditionally, the benefit is taxable at grant. In the case of conditional promises such as RSUs, the benefit is taxable at time of vesting (at the fair market value at that time). In the case of employee stock options, the benefit is usually taxable at exercise, although there are differences across countries. In the Netherlands, employee stock options are taxed at exercise if the acquired shares are immediately tradeable. When shares are not immediately tradeable, the taxable moment can be postponed and the employee can choose to be taxed at exercise, or to postpone taxation until the shares become tradeable to avoid liquidity issues.[22] In Belgium, employee stock options are taxable at grant if the option is accepted in writing within 60 days of the offer. In this case, any capital gains arising from exercise or sale of the options are not taxable as employment income, and no social security contributions are owed. Options not accepted in writing within 60 days of offer are treated as an offering of stock, free or at a reduced price, and taxed at exercise.

There are different types of stock option plans in Sweden, including employee stock option plans, call options, phantom shares and warrants. The taxation of employee stock options occurs at exercise and is taxed as employment income including social security contributions. If the company fulfils eligibility criteria for the Qualified Stock Options (QSO) plan, then the share is only taxed at sale and no employer taxes/contributions arise.

Many other countries follow the principle that benefits accruing from SBR are taxable as salary and are subject to social security contributions, including for instance Lithuania, Estonia, Latvia, Israel, the US, Germany, Poland, and Italy.[23] Some of these countries provide for exceptions to this general rule when specific requirements are met and a special SBR scheme is in place. There are often restrictions in relation to the type of company assigning the shares/options and in terms of a minimum vesting/holding period.

[22] This provision was implemented on 1st January 2023.

[23] A country where this general rule does not apply is Canada, where employee stock options, considered a non-cash benefit, are not insurable for employment insurance and therefore, no social security is owed by employee or employer.

Tax advantaged schemes are often designed for small or young enterprises, reflecting the financial market failures these firms face which reduce the resources available to offer competitive wages and attract talent. Specific tax-advantaged schemes available internationally for SMEs and start-ups are discussed in the next section.

Box 3.1: Overview of Tax-advantaged Schemes in France

The "free shares" scheme (attribution d'actions gratuities) is a share award scheme where shares are attributed to employees as part of their remuneration. There is an acquisition period of at least one year where the employee is entitled to the shares but ownership is not transferred, and a retention period during which the employee owns but cannot sell the shares. Together, the acquisition period and the retention period must amount to at least two years. The total value of shares that can be attributed under this scheme shall not exceed 15% of the capital stock (20% for SMEs). Free shares can be attributed to all employees (including managers), or only categories of personnel. Where a company is listed, free shares must be attributed to all the employees or at least 90 % of employees. Listed companies must also have introduced a "participation" or "intéressement" mechanism before introducing a free share scheme. The acquisition gain is taxed according to special rules up to the value of €300,000. SMEs are also exempt from paying social security contributions up to a cap of €46,368 per employee (in 2024).[24]

The "entrepreneur warrants" (bons de souscription de parts de créateurs d'entreprise) is a scheme targeted at start-ups and tech companies where specific conditions must be met: the value of the company on the stock market must be less than €150m; the company must be less than 15 years old; and less than 75% of the company can be held by another company. The gains realised on the shares are taxed on disposal of shares at a lower tax rate (19%) for employees with tenure over 3 years.

The "stock options" scheme allows for a share option to be granted to employees for a reduced price. Any reduction in price, at the date of attribution, exceeding 5% is liable to personal income tax and social security contributions. The reduction in price is exempt from income tax up to this 5% threshold. The employer is liable for social security contributions at the rate of 30% at the attribution date.

Source: Indecon.

An overview of the schemes in the UK is provided in Box 3.2.

[24] Other conditions apply.

Box 3.2: Overview of Tax-advantaged Schemes in the UK
Four share plans are available in the UK, which offer preferential tax treatment and exemption from employer National Insurance Contributions (NICs) if certain conditions are satisfied. The Company Share Option Plan (CSOP) gives selected employees the option to buy up to £60,000 worth of the company's shares at a fixed price.[25] Employees who participate in CSOP do not have to pay income tax or NICs on the difference between what they pay for the shares and their market value at time of exercise. Because employers can decide which employees participate in the CSOP, this scheme can be used to attract highly skilled employees. Save As You Earn (SAYE) allows employees to purchase company shares for a fixed price using savings accumulated as part of the scheme. Employees who choose to participate in this scheme can save up to £500 a month and at the end of the savings contract (usually 3 or 5 years), they can use these savings to buy shares of the company. Employees do not pay tax on the interest at the end of the savings contract, and they do not pay income tax or NICs on the difference between what they pay for the shares and the market value of these shares. SAYE is not a discretionary scheme, which means that all qualifying employees must be able to participate if their firm operates this scheme. The Share Incentive Plan (SIP) is a non-discretionary plan that allows employees to obtain company shares in 4 ways (depending on the type(s) of shares offered by the company): free shares which can be awarded to employees up to a value of £3,600 per tax year; partnership shares which can be bought by employees with their salary before tax deductions, up to a value of £1,800; matching shares which can be awarded to employees in conjunction with partnership shares (up to two matching shares for each partnership share), and; dividend shares which can be purchased from the dividends earned from free, partnership or matching shares (without a limit). Enterprise Management Incentives (EMI) are available to companies with assets of £30m or less. Under this scheme, companies can grant share options up to the value of £250,000 in a three-year period. Employees are exempt from income tax or national insurance if shares are purchased for at least the market value they had at grant. In case of discounts given on the market value, income tax or national insurance are due on the difference between the price paid and the market value. Capital gains tax is due when selling the shares.
Source: London Economics (2023) "Share Schemes Evaluation for HM Revenue and Customs – CSOP, SAYE and SIP" and Indecon.

3.3 SME Schemes

As discussed in Section 1.2, the policy rationale for a preferential tax treatment of SBR may be stronger for smaller and younger firms, as financial frictions reduce these firms' ability to offer competitive wages and attract talent. For this reason, many countries offer tax-advantaged share schemes specifically designed for SMEs and/or start-ups. Some of these schemes have been recently introduced or amended to encourage further uptake. Indecon however accepts that such schemes may also be a factor in attracting mobile investment and talent for larger firms.

[25] This limit was recently increased from £30,000 (April 2023).

In 2023, new legislation was enacted in Portugal regarding the taxation of share and stock options for employees of start-ups, SMEs and companies in the innovation sector. The aim of the new taxation rules is to encourage the creation of start-ups and scale-ups. Previously, share options were taxed at the marginal income tax rate up to 53%. Under the new rules, only 50% of the income arising from employee share ownership will be taxable at a flat rate of 28%, once the underlying assets are held for more than one year. Taxation of the income received by employees under these plans is postponed to the earliest of the following: (i) disposal of shares or gift of shares, or (ii) loss of tax residency status in Portugal. Taxpayers who directly or indirectly hold 20% or more of the share capital or voting rights of the entity granting the plan are excluded from this benefit.

Under the Portuguese scheme, income is taxable in the following ways during the employment period: (1) disposal of shares: the positive difference between the sale's proceeds and the price paid by the employee; (2) gift of shares: the difference between the amount that would be subject to Stamp Duty and the price paid by the employee; (3) loss of tax residency: the difference between the Fair Market Value and the price paid by the employee.

In Denmark, a notified measure aimed at small and young companies affords qualifying companies a special tax treatment. The amount of SBR subject to the existing special tax treatment (under Danish rules) is increased to 50% of the employee's annual salary.

The special tax treatment means that this proportion of SBR is subject to a progressive share income tax of between 27-42% compared to the standard tax treatment which is an income tax rate (40-56.52%) being levied on the exercise on shares.

This scheme secured State aid approval, and the eligibility criteria are as follows:

- A company must have no more than 50 employees;
- The company must have annual net turnover/annual balance sheet total of no more than €2m;
- The company must not have been active for more than five years prior;
- The company must not be engaged in passive investment, as its main activity;
- The company cannot be listed on a stock exchange/regulated market when the agreement is signed;
- The company must not be in difficulty (as defined in the Community Guidelines on State aid); and
- The company must not be subject to an outstanding recovery order.

In France, the "free shares" scheme (attribution d'actions gratuites) offers a favourable treatment for SMEs in that the total value of shares attributed under the scheme for SMEs shall not exceed 20% of the capital stock (compared to 15% for non-SMEs). Under this scheme, SMEs are also exempt from the scheme's special flat rate tax for social contributions of 20%.[26]

[26] This exemption is classified as a State aid.

Another scheme that is specifically crafted for start-ups and tech companies in France is the "entrepreneur warrants" (bons de souscription de parts de créateurs d'enterprise). Specific conditions apply:

— The value of the company on the stock market must be less than €150m;

— The company must be less than 15 years old; and

— At least 25% of the company must be held by individuals or by entities held by individuals (at least 75%).

The scheme can be limited to certain employees. The purchasing price of the underlying shares stipulated in the warrants is regulated. The gains realised are taxed as one at the moment of the sale of shares. The tax rate for employees with tenure over three years since at the date of sale benefit from a lower tax rate of 19%. Otherwise, the gain is taxed at 30% capital gains and social security contributions (15.5%).

In Spain, a favourable tax treatment for SMEs is in place where the personal income tax exemption limit is increased to €50,000 for start-ups compared to €12,000 for other employers. For the exemption to be applicable, the following criteria have to be met:

— There is a required holding period for the share of three years;

— No more than 5% participation in the shareholding; and

— The same conditions must be offered to all employees of the company, group or subgroup of entities.

In the UK, the Enterprise Management Incentive (EMI) scheme is the most commonly used by start-ups. The qualifying criteria for companies are as follows:

— The company must have fewer than 250 full-time employees;

— Must have assets of £30m or less at the time of EMI options being granted;

— The company must be independent, more than 50% of the ordinary share capital must not be owned or controlled by another company;

— The company may only grant an employee a maximum value of £250,000 in options up to a limit of £3m in unexercised options; and

— The scheme is not open to some sectors, including for example commodities, financial instruments and activities, professional advice, primary sectors, and hospitality.

Employee taxation only arises at the point of sale and gains are subject to 20% capital gains tax in excess of the allowance (£11,700). A reduced rate of 10% is applied for EMI options that are held for more than two years.

In Germany, the Future Financing Act for start-ups was recently updated to widen eligibility criteria for companies classified as start-ups. This is effective from the beginning of 2024; qualifying criteria include:

— Company size thresholds were increased and now includes companies with up to 1,000 employees;

— Annual revenues of not more than €100m (or a balance sheet total not more than €86m); and

— The age of a company to be considered a start-up company has been significantly increased from 12 to 20 years.

In 2021, there was an amendment to the administration of employee share plans for start-ups with respect to “dry taxation”. Share options were taxed on exercise in Germany, which created an upfront tax burden on an asset that could not be readily sold by the employee. The new provision defers taxation until a later sale.

In Italy, there are two tax-advantaged schemes, one for start-ups and one for SMEs. The requirements for participating in these schemes are shown in Table 3.1 separately for the start-up and SME schemes. For these schemes, taxes are only levied at the point of sale using the capital gains tax rate of 26%. There are no employer social security contributions paid because they are not taxed as professional income at grant or exercise of options.

Table 3.1: Qualifying criteria for Italian tax-favoured schemes

Start-Up	**SMEs**
Headquarters in European Union with at least branch operations in Italy.	Headquarters in European Union with at least branch operations in Italy.
Less than €5m in turnover.	Less than €50m in turnover and €43m in total assets.
The team needs to be at least 2/3 graduates or 1/3 PhD	The team needs to be at least 1/3 graduates or 1/5 PhD.
-	Fewer than 250 employees
Developing innovative technology; private company and not "spun out".	-

Source: Index Ventures, Country by Country Review, available here.

In Sweden, there is a tax-favoured scheme for young companies called the Qualified Stock Options (QSOs/QESOs). The shares are only taxed at sale and as such, only incur capital gains tax and not income tax. QSOs are only available for companies who meet the following eligibility criteria:

- The company is less than 10 years old;
- The company has fewer than 50 employees at the time of grant; and
- The balance sheet is less than $8.5m (approximately).

It is also only available to employees who remain with the company for at least three years.

Table 3.2 presents a summary of differences across targeted SME/start-up schemes across different jurisdictions. Many countries have favourable tax treatments for employees in firms who are identified as SMEs or start-ups subject to eligibility or qualification criteria.

Table 3.2: Summary of international comparison of targeted SME schemes

	Eligibility Criteria	Favourable Tax Treatment
Denmark	7P Scheme: • < 50 employees • Annual net turnover/annual balance sheet total < €2m. • Active < 5 years. • Cannot be listed on a stock exchange.	• Share-based remuneration is subject to special tax treatment up to 50% of the employee's annual salary under this scheme. • Special tax treatment of income tax 27-42% compared to 40-52.07%.
France - Free Shares	• It must be offered to at least 90% of employees. • The company must be an SME to avail of special tax treatment.	• Total value of shares attributed under the scheme for SMEs shall not exceed 20% of the capital stock. • SMEs are exempt from a special flat rate tax for social contributions of 20%.
France - Entrepreneur Warrants	• Value of the company < €150m • < 15 years old. • Company must be owned by natural persons. • The scheme can be limited to certain employees.	A preferential tax rate applies for employees with tenure over 3 years at the date of sale.
Spain	• A required holding period of shares for 3 years. • No more than 5% participation in shareholding. • Same terms must be offered to all employees.	Start-ups can avail of an increase in the personal income tax exemption to €50,000.
Germany	Future Financing Act qualifying criteria: • < 1,000 employees. • Annual revenues < €100m or balance sheet total not more than €86m. • Age of company <20 years.	• The tax exemption limit for share benefits is increased to €2,000. • Employees can defer taxation until sale (to avoid "dry taxation").
Italy - Start Up	• Headquarters in EU with at least branch operations in Italy. • < €5m in turnover. • The team needs to be at least 2/3 graduates or 1/3 PhD. • Development of innovative technology as a private company.	Taxes are only levied at the point of sale using the capital gains tax rate of 26% - no income tax or social security contributions are paid.
Italy – SME	• Headquarters in EU with at least branch operations in Italy. • < €50m in turnover and <€43m in total assets. • The team needs to be at least 1/3 graduates or 1/5 PhD. • < 250 employees.	Taxes are only levied at the point of sale using the capital gains tax rate of 26% - no income tax or social security contributions are paid.
Sweden	• < 10 years old. • < 50 employees at the time of grant. • Balance sheet < $8.5m. • Only available to employees who will be with the company for 3 years.	Taxed only at sale under capital gains tax (no income tax).
United Kingdom	• < 250 full-time employees. • < £30m assets at time of grant. • No more than 50% of the ordinary share capital can be owned by another company. • Maximum grant value per employee of £250,000 in options (with a limit of £3m unexercised options). • Scheme is not open to certain sectors.	• Employee is taxed only at point of sale under 20% capital gains tax in excess of the allowance (£11,700). • A reduced rate of capital gains tax is applied for options held over 2 years.
Portugal	• Entity must qualify as a micro, small or medium sized company. • Restricted to certain sectors. • Minimum holding period of 1 year. • Employee must own less than 20% of the capital or voting rights.	• Only 50% of income from shares is taxable. • Flat rate of tax is 28%, once underlying assets are held for more than 1 year. • Taxation of income is deferred until disposal of shares.
United States	No targeted schemes exist, but ISO is tax-advantaged scheme. • Max $100,000 combined market value of stock that become exercisable in a calendar year. • Maximum 10 years to exercise. • Minimum 1 year between exercise and disposal.	• No social security contributions. • Advantaged long term capital gains rate (0-20%).
Australia	• < 10 years old. • <A$50m turnover. • <10% shareholding per employee. • Minimum holding period of 3 years.	Gains taxes at sale only at a discounted rate of 23.5%.
Netherlands	No tax advantaged schemes for start-ups/SMEs.	-

Source: Indecon analysis

3.4 Other Issues

Valuation of unlisted shares

For companies not listed on a stock market, an issue arises as to the company valuation utilised for taxation purposes. In the case of the KEEP, for instance, only options with a strike price equal to the market price are eligible. An issue then arises as to the valuation method used. The tax authority may challenge share valuations which produce unreliable valuations or are produced with inappropriate methods, and this creates a level of uncertainty for companies willing to avail of the preferential schemes or indeed of SBR generally. Professional valuation services may be used to reduce this uncertainty, but the costs of obtaining such professional valuations can be prohibitively high for relatively small or young companies.

A range of methods are used by different taxation authorities to provide a level of certainty around the share valuation used for tax purposes. Overall, four methods are used to reduce the uncertainty around unlisted shares valuation:

- Accepting professional valuations: The tax authority accepts share valuations provided by professional valuation firms and accompanied by a written report;
- Introducing safe harbour principles: The tax authority identifies those valuation methods that, if correctly followed, produce valuations which will always be accepted. While valuations can be challenged if the accepted methods are incorrectly applied, safe harbour principles provide a layer of certainty to participating firms insofar as diligent application of the accepted methods produces valuations that will be accepted;
- Providing valuation checks: The tax authority engages with companies and agrees on the company's share valuation in advance of submitting tax return; and
- Providing detailed guidance around accepted valuation methods: The tax authority publishes extensive guidance on the valuation methods that will be accepted as a basis for valuation.

The first method is accepted in virtually all countries and provides a high level of certainty to companies that the valuation provided by a professional firm will not be challenged by the tax authority. However, the costs of obtaining such professional valuation can be an obstacle to resource-constrained firms, including SMEs. Most countries use a combination of these methods to ensure that companies have an adequate level of reassurance that their share valuations will not be challenged.

The US 409A system provides safe-harbour methods which, if used, place the burden of proof on the Internal Revenue Service (IRS) that the employer was "grossly unreasonable" in relying upon the employer's valuation method. This includes an illiquid start-up method, which does not require independent valuation (the valuation must be undertaken by a qualified individual, as explained below, and this individual can be the firm's Chief Financial Officer, for instance). The illiquid start-up method can be used by private companies that have been in business for less than 10 years and which are not expecting to undergo a public offering within 180 days or a change in control within 90 days of the date of the valuation. The valuation can be undertaken by an individual with sufficient knowledge, experience, and skill, which "generally means at least five years of relevant experience in business valuation or appraisal, financial accounting, investment banking, private equity, secured lending, or other comparable experience in the line of business or industry in which the service recipient operates."[27] The valuation must be accompanied by a written report and a number of valuation factors must be considered. There are severe penalties for valuations that do not comply

[27] Internal Revenue Bulletin: 2007-19

with 409A requirements, including removal of all tax advantages as well as additional penalty payments.

The Australian system also provides safe harbour methods for valuing unlisted shares not requiring professional valuations. One method is only available to young or small businesses that have not issued more than $10m of capital in the previous 12 months. It is based on the value of net tangible assets adjusted for any preference shares. Other safe harbour methods are provided for valuing companies shares and an online calculator is also available to value unlisted rights to acquire listed shares.

The UK system provides shares valuation checks. Employers can ask the HM Revenue and Customs Shares and Assets Valuation team to agree the value of shares in one of the four tax-advantaged schemes described above. Employers can apply for a share valuation check by inserting company information online.[28] EMI valuations are valid for 90 days while SIP valuations can be valid for 6 month unless a significant event occurs which is likely to impact on the share value. A unit exists in the HMRC entirely dedicated to Shares and Assets Valuation (SAV), which provides advice about valuation of unquoted shares, and other assets including for instance intangible assets.

In the Netherlands, there is no safe harbour provision for the valuation of shares of unlisted companies. The Dutch Tax Authorities often approve valuations using the Discounted Cash Flow-method (DCF), but engagement with the company is often required to discuss the cash flow forecast or the risk profile. Other valuation methods are also accepted.

In France, no safe harbour provisions apply to share valuation. For unlisted companies, the administrative guidance provides that the general valuation rules applicable in company law must be followed. The Code of Commerce lists two possible methods: the multi-criteria method and the default revaluation method. According to the first method, the share value must take into account the characteristics of the company, the net accounting balance, profitability and future prospects. The second method is based on the market value of both assets and liabilities of the company. The method used must be consistent throughout the SBR life cycle (attribution, acquisition, sale). In most cases, the company establishes the attribution price based on a professional report by external auditors. For certain schemes such as phantom shares, professional valuation is a legal requirement.

While many countries do not provide safe harbour principles, international best practice supports the provision of an appropriate level of guidance, either in the form of guidelines or through some engagement with companies, on the valuation of unlisted shares.

RSUs

The taxation of RSUs for employees who change residence during vesting period is based on a pro-rata (apportionment) method in most of the countries reviewed, including in Denmark, the Netherlands, France, the UK, Hungary, Germany, and the US.

EOTs

In the past decade, the UK has taken substantial steps to increase the attractiveness of Employee Ownership Trust (EOT) schemes to promote employee ownership of companies. EOTs are a useful succession tool for owners who wish to sell their business to employees. From a public policy perspective, EOTs have the same benefits as other SBR schemes: enhanced productivity, enhanced recruitment and better retention of staff. It has also been posited that EOTs have wider economic

[28] https://www.tax.service.gov.uk/print-and-post/form/Test/1.0/VAL231/val231.xdp

benefits such as reducing the risk of businesses leaving the country or being acquired by large multinational firms, thus promoting growth of domestic businesses.

An EOT is a form of employee benefit trust to facilitate wide employee-ownership via indirect holdings.[29] A qualifying EOT must be established with a corporate as the trustee of the EOT (the Trustee Company). The shareholders (usually the company owner) sell their shares to the Trustee Company under a share purchase agreement. The trustees must retain at least a 51% controlling interest in the company. The EOT then funds the purchase of these shares in tranches through trading profits each year. As a result, employees can indirectly buy the company from the shareholders without having to use their own funds.

Under this scheme, shares are not technically given to employees; rather the trust owns the shares in this arrangement. There is no need to value shares, submit tax returns and deal with the administration that goes with buying and selling shares under a share plan. This is the plan's main attraction. A board of trustees is set up to govern the trust.

The tax advantages are that there is no income, inheritance or capital gains tax levied on the disposal of a controlling interest in a company to an EOT. The rationale behind the capital gains tax exemption for an owner selling their controlling interest to the EOT is that they may have to wait 5-10 years to be paid and to get their money through gradual payments. The tax advantages for the employees are that they can receive an annual tax-free cash bonus of up to £3,600 a year, along with other share-based incentive awards. The EOT must apply the benefits of share ownership to all eligible employees on the "same terms", determined by length of service, hours worked or salary.

In Ireland, the scheme most similar to an EOT is the ESOT scheme. However, the tax treatment is not as favourable as EOTs in the UK. As a result, stakeholders have expressed a view, as part of the consultation process during this review, that the tax treatment of employee ownership trusts is punitive compared to an alternative of selling a business to a larger firm, usually a multinational firm.

Other countries are considering the introduction of, or have already introduced, EOT schemes similar to that in the UK. Canada and Australia have both introduced similar schemes, but other countries without trust law, such as Denmark, are also developing institutional structures that mirror trust law and the UK setup for EOTs.

Stakeholders have suggested that two steps could be taken to amend the law and practice regarding discretionary trusts under the Capital Acquisitions Tax Consolidation Act (CATCA) 2003 and the law on close company anti-avoidance provisions under the TCA 1997.

The first step concerns discretionary trust tax where the 6% charge should be disapplied when the trust is part of a genuine employee ownership arrangement.[30] Appropriate criteria would ensure the targeting and proper use of this provision or concession. Stakeholders noted that the 1% annual charge should also be disapplied.

The second step is with respect to close company anti-avoidance provisions that can inadvertently make the establishment of discretionary trusts for employee ownership complex and unattractive. It was suggested that existing legislation and Revenue Guidance on the application of anti-avoidance provisions could be amended to confirm that where share disposal occurs in the context of an employee trust arrangement, it is outside the scope of Section 135(3A) of the TCA 1997.

[29] https://www.bdo.co.uk/en-gb/insights/tax/global-employer-services/employee-ownership-trusts-(eot)

[30] This discretionary trust tax applies on the capital value of the trust on the day the trust becomes subject to tax under Section 18(2) of CATCA 2003.

Table 3.3 provides an overview of comparative aspects of tax systems related to SBR in other jurisdictions. The first column compares the extent to which NICs for employers are exempted as in Ireland. France and the United Kingdom have exemptions from NICs while some other countries have particular schemes that qualify for social security exemptions.[31] The second column compares valuation methodologies that are accepted in other countries. Although in most countries there are no assured valuations, there tend to be accepted methods subject to verification by tax authorities: for example, discounted cash flow methodologies and valuations from the last round of funding are accepted. In the case of France and the Netherlands, dialogue between the company and the tax authorities is quite common. The third column notes the personal income baseline tax rates in each of these countries.

Table 3.3: Summary of international comparison of social security contributions, valuation methodologies and personal income tax rates

	Employer Exemption from Social Security Contributions	Valuation of Unlisted Shares	Personal Income Baseline Tax Rate	Social Security Rate
Denmark	None.	No assured valuations given, guidance issued by Danish tax authorities is available to help reporting by SMEs. Valuations from last funding round are generally accepted.	8-52.07%	Social Security is included in labour tax rates, but an additional labour market supplementary pension (ATP) is paid by those who are covered by social security. Employee: DKK 1,188 Employer: DKK 8,000-15,000
France	The mandatory participation scheme, the profit-sharing scheme and the value-sharing bonuses are exempt from social security payments.	No safe harbour provisions; the Code of Commerce lists two possible methods: the multi-criteria method and the default revaluation method.	0-45%	Employee: 20-23% Employer: 45% These rates are subject to a ceiling of €46,368 per annum
Spain	None.	No assured valuations are given, general tools and guidance is made available by tax authorities.	19-47%	Employee: 6.47% Employer: 30.48%
Germany	Tax exemption on €1,440 for share benefits on all employee ownership schemes in Germany. This is raised to €2,000 for the Future Financing Act companies.	Typically, it is accepted to use the valuation from the last funding round to calculate taxes due.	0-45%	Employee: 20.2% Employer: 19.6%
Italy	Only schemes for start-ups and SMEs do not incur employer social security contributions.	No assured valuations are given.	23-43%	Employee: 10% Employer: 40%
Sweden	Warrants, call options and schemes that qualify for the tax-advantaged Qualified	Valuation of shares are set to the nominal value of the shares or last round of funding can be used in many cases.	20-55% (depending on local tax rate)	Employee: none Employer: 31.42%

[31] National insurance and social security are used interchangeably in this chapter.

Table 3.3: Summary of international comparison of social security contributions, valuation methodologies and personal income tax rates				
	Employer Exemption from Social Security Contributions	**Valuation of Unlisted Shares**	**Personal Income Baseline Tax Rate**	**Social Security Rate**
	Stock Option (QSO) plan so not incur social security contributions.			
United Kingdom	There are no employer social security contributions payable on SAYE, CSOP, SIP and EMI shares.	The UK system provides shares valuation checks by inserting company information online.	20-45%	Employee: 8% Employer: 13.8%
Portugal	Yes.	No assured valuations, valuation from last funding round is generally accepted.	13.25-48%	Employee: 11% Employer: 23.75%
United States	Incentive stock options (ISOs) are exempt from social security contributions.	The US 409a system provides safe-harbour methods, placing burden of proof on the IRS.	10-37%	Employee: 6.2% Employer: 6.2%
Australia	None.	Safe harbour methods are provided that don't require professional valuations. For young/small business, it is based on the value of net tangible assets. For other companies, an online calculator is available.	0-45%	None
Netherlands	None.	No safe harbour provisions, Discounted Cash Flow method are often accepted. Dutch tax authorities often discuss with companies on the presented forecast or risk profile.	9.32-49.5%	Employee: approx. 27% Employee: approx. 27%
Source: Indecon analysis				

3.5 Views of Tax Advisers Consulted

As part of our research, tax advisors were asked for their views on how the Irish SBR schemes compare to those in competitor countries. A number of issues were highlighted across the responses, including valuation methodologies used in other countries, income tax rates on SBR, the limited scope of KEEP and the timing of taxation. Respondents frequently referred to aspects of the tax treatment of SBR in the UK, with references also to Portugal, Germany, France and Sweden. Table 3.4 presents a summary of these stakeholder perspectives, with direct excerpts from their inputs. These inputs from stakeholders are reflective of how tax advisors view the attractiveness of aspects of the taxation of SBR in Ireland relative to other countries. In interpreting these views it should be noted, for context, that the suggestions proposed may not be always aligned with the position in other countries. Thus, for example, while tax advisers have identified certain countries with valuation methods, Indecon's analysis suggests that many other countries, as well as Ireland, do not have such valuation methods.

Table 3.4: Summary of views on international comparisons	
Valuation methodology for shares	*"The US 409A system safeguards valuations... Those values are accepted by tax authority, which protects the company issuing the shares... This independent certification would provide greater certainty for businesses and employees. In the US, 409A valuations every 6 months provide assurance, and are frequently 60% below last round valuation."*
	"In a UK context HRMC have designated teams to support businesses when it comes to approving valuations and giving comfort that they will be valid for a period of time."
	"Valuation can be a stumbling block for the implementation of share schemes in Ireland - other countries have structured and agreed practices with tax authorities for valuation purposes and this would be very useful in Ireland."
Income tax rates on share-based remuneration	*"Tax rates are higher in Ireland than UK, US and other territories which means the employer PRSI exemption is extremely important."*
	"The 33% capital gains rate is already quite a bit higher compared to other EU counterparts (Portugal at 28%, France 30%, Baltics ranking from 15-20%). Furthermore, a number of EU Member States (i.e. France, Portugal, Germany, Greece) provide for a further reduction of the employee tax rate as long as certain conditions are met such as minimum years of tenure (2-3 years on average), small size of company (smaller companies benefit from further reduced rates), minimum years post exercise of options."
	"The problem is that USC in Ireland is particularly harsh and brings the Irish effective rate significantly out of kilter with international comparisons."
	"[UK's Company Share Ownership Plan (CSOP):] Any qualifying gain will be subject to CGT at up to 20%."
	"[Portugal's share plan regime:] A 50% discount applies to the taxable amount, which is taxed at a special rate of 28%, so an effective rate of 14%."
Limited scope of KEEP	*"The limited scope of KEEP means that in practice, the vast majority of Irish startups do not benefit from it, being forced to issue non-qualifying stock options which are taxed at much higher income tax rates."*
	"France's favourable scheme, used by almost all French tech startups, has only the following requirements: less than 15 years have passed since a company was formed; it is privately held; 25% of the share capital is held by individuals rather than institutions; and it pays corporate income tax in France – so it is also open to non-French companies."
	"Germany has improved its regime last year, which lifted the employee cap for participation from 250 employees to 500 employees; lifted the annual turnover cap from €50m to €100m; increased the annual balance sheet cap from €43m to €86m; and the company age cap was increased from 12 years to 20 years."
Timing of taxation/Deferral of taxation	*"KEEP shares are only taxed at point of sale, making Ireland's scheme competitive across the EU. However… the limited scope of KEEP means that few startups or their employees benefit from this regime, with employees incurring dry taxation upon exercise."*
	"Through our global network we are aware that many countries offer preferential tax treatment on share-based remuneration (deferral of taxation to sale of shares (e.g. Poland and Romania), provisions to receive certain amounts tax-free (e.g. Spain, Germany and Italy, etc.)."
	"[Swedish] rules allow options to vest and exercise into shares without triggering taxable salary income and without a social security impact. Instead, the full increase in the value is taxed as capital income at a future disposal of the shares."
	"[Portugal's share plan regime:] The tax liability is deferred broadly until such time as there is liquidity event, shares can be freely sold etc."

Source: Indecon analysis of survey data.

3.6 Summary of Key Findings

- Share-based remuneration schemes have been used extensively in other countries to promote productivity and to enhance competitiveness and to enable business to attract and retain employees.
- Internationally, tax and/or social security exemptions are provided although Ireland's employer PRSI exemption appears generous compared to many other countries where schemes are more focused on the SME sector. There are, however, aspects of schemes in other countries that are more attractive than in Ireland and other countries have higher eligibility limits. A small number of countries have rules in place to clearly define how valuation of unlisted shares should be undertaken, as well as safe harbour principles and the provision of valuation checks.

4 Stakeholder Perspectives

4.1 Introduction

As part of our research, we carefully analysed inputs from a wide range of stakeholders. These included submissions made to the Department of Finance from a public consultation on SBR. The consultation sought direct feedback from employers, employees, representatives and interested parties on the practical operation of the Irish tax regime applying to share schemes. The aim of the public consultation was to gain an understanding of industry and stakeholder views on the share scheme environment in Ireland. The Department of Finance also sought stakeholder views on the recommendations of the 2022 Commission on Taxation and Welfare (COTW) Report ("Foundations for the Future") on SBR.[32] The views and perspectives of stakeholders presented in this chapter are reflective of how stakeholders view aspects of the taxation of SBR in Ireland and their proposals for enhancement in the schemes. Indecon's overall assessment and findings are presented later in Chapter 6, which take account of the stakeholder views but of other evidence and wider policy and competitiveness considerations.

4.2 Views on Current Legislation

The public consultation asked for views of respondents on:

- The rationale for SBR schemes and related advantages, the most impactful Government initiatives and whether there are justifications for providing additional tax advantage;
- The future of share schemes in Ireland, including current trends in terms of use, the key risks, challenges, and opportunities of share schemes in Ireland;
- The place of share schemes in the wider economy, whether they are meeting the Government's policy objectives and the changing economic environment, including a highly mobile workforce;
- The legislation underpinning the taxation of share schemes, if any amendments are needed, simplifications or modernisations to the administrative requirements and the current tax treatment of RSUs;
- Revenue approved schemes (APSS and SAYE), the challenges and opportunities and views on a move to a self-certification process; and
- Other matters.

It was requested specifically in the public consultation document that respondents provide their opinions on the following recommendations of the COTW with regard to SBR:

i. Broadening the PRSI base such that PRSI should extend to all sources of employment income including, as a general rule, share-based remuneration;
ii. Limiting the exemption from employer PRSI on share-based remuneration through an appropriate annual cap or restricting the exemption to SMEs; and
iii. Aligning the taxation of internationally mobile employees who receive share-based remuneration (including RSUs) to the general treatment of unapproved share options.

As part of Indecon's research, we carried out a detailed review of the submissions to a public consultation organised by the Department of Finance, and we held discussions with a number of start-

[32] Commission for Taxation and Welfare (2022) Foundations for the Future, available here.

up founders, facilitated by Scale Ireland. Across all of our stakeholder engagements, similar issues were raised as summarised in the following table. These suggest that stakeholders believe there is a need for enhancements in aspects of the existing schemes and that the employer PRSI exemption should be retained. A summary of the outputs of the stakeholder consultations is presented in Table 4.1.

Table 4.1: Summary of Stakeholder Submissions

Issue	Suggestions from Stakeholder Consultations and Indecon Comments Thereon
Whether to retain the employer PRSI exemption.	It was suggested by many stakeholders that the benefits to firms of employer PRSI exemption outweighs the cost of implementing the schemes. As a result, not surprisingly, firms were in favour of retaining the exemption. Indecon notes, however, that evidence on the quantified net economic benefits rather than the benefits to individual firms was not available. Indecon notes that there are fixed costs associated with setting up of schemes and there are decreasing variable costs associated with ongoing implementation and reporting requirements.
	The employer PRSI exemption was seen by stakeholders as increasing the attractiveness of Ireland for FDI and highly-skilled labour. Indecon notes that Ireland's competitiveness depends on many factors of which SBR is one element.
Changes to the APSS.	Stakeholders were in favour of increasing the annual limit on the APSSs and noted that the annual limit has not been increased in line with inflation since its inception. Indecon would point out that increasing the APSS limit would further increase the already high costs of this scheme which may not be justified.
	The attractiveness of the APSSs was believed by stakeholders to have lessened for employers and employees. Indecon notes that despite this, the use of the scheme increased significantly since 2018/2019.
	The suggested move to a pre-notification system for APSS saw a mixed response from the public consultation submissions. Concerns related to the uncertainty that such a move could give rise to and this would need to be taken into account in any decision.
Reform the KEEP.	It was suggested that safe harbour principles should be introduced for the valuation of shares to lower costs of valuation for SMEs. Indecon notes that stakeholders were in favour of additional guidance to participants on the valuation of unlisted shares.
	Expansion of the KEEP eligibility conditions was proposed including eligibility of re-organisation of start-ups and expansion to other sectors including Fin Tech. Indecon notes that there are State-Aid considerations which limit any amendments to the KEEP without EU approval and such approval may not be forthcoming.
Reform the taxation of RSUs.	It was proposed by stakeholders that consideration be given to deferring taxation of RSU shares on vesting as the tax liability can necessitate the immediate disposal of shares. Indecon notes such tax deferrals are provided for in other countries. However, there are also alternative ways of preventing share disposals at vesting, such as employer loans to employees.
	Source-based taxation was suggested in order to avoid double taxation of RSUs for employees relocating to Ireland with unvested RSUs. Indecon's assessment is that the sourcing method is frequently used method internationally.
BIK tax rate on loans to buy shares	The BIK tax rate is high compared to other European companies and this was seen by stakeholders as creating a barrier to the provision of loans to buy shares. Indecon is of the view that the BIK rate applicable to SBR loans is likely to influence the level of take-up.
Introduce EOT Scheme	The introduction of EOT schemes was believed by stakeholders to increase employee commitment and ownership of companies, particularly in the case where the owner must pass on their company in 5-10 years. Indecon's assessment is that the tax treatment in Ireland limits the use of EOTs.
Other issues raised	Reinstating a SAYE savings carrier was proposed. Indecon notes that further evidence and analysis would be required to identify the reasons behind the absence of a savings carrier, however the decision to act as a savings carrier is unlikely to be dependent on tax considerations.
	Streamline and simplify regulatory reporting processes was seen by stakeholders as important. Indecon notes, however, this needs to be balanced against the need for additional evidence on the impact of schemes.

Source: Indecon analysis of public consultation submissions.

The stakeholder perspectives summarised above are discussed below in turn. A number of other issues that arose more than once across the public consultation submissions are also summarised at the end.

Employer PRSI exemption

One of the most common discussion points raised across the public consultation submissions was the importance of maintaining the employer PRSI exemption. Many of the stakeholder submissions argued that the PRSI exemption for employers compensates for the costs of administering the SBR schemes, ensures the continued viability of the schemes, and is important from a competitiveness perspective. Indecon, however, notes that there is insufficient evidence available on the quantified benefits of this measure compared to the high costs involved. The COTW 2022 report highlighted that the cost of the PRSI exemption in 2020 was not justified from a fiscal sustainability point of view and the analysis undertaken for this study indicates that the cost of this exemption has increased by 18% since 2020 (see Section 5.2). We note also that there are fixed costs associated with setting up the schemes and decreasing variable costs associated with ongoing implementation and reporting requirements. In relation to the recommendation of the COTW that the PRSI exemption be limited to SMEs or capped, it was argued by stakeholders that limiting the exemption to SMEs would only create difficulties and additional uncertainty for companies. It is also clear that many firms now benefitting, including multinational companies, would be excluded from these schemes if this change was made. In relation to the recommendation of the Commission on Tax and Welfare to broaden the PRSI base, an argument was put forward that retaining the PRSI exemption retained Ireland's attractiveness as a place to do business in an increasingly globalised market for both goods and services. One stakeholder submission highlighted that the PRSI exemption gives Ireland a competitive edge in terms of attracting foreign direct investment (FDI). Indecon's assessment is that Ireland's competitiveness depends on many factors of which SBR is one element. The context of broader trends in the competitiveness of the economy is discussed in Section 6.4. We also note the increasing cost of the employer PRSI exemption, which is analysed in Section 5.2.

APSS limit

It was raised in multiple submissions that the annual limit on the total market value of the shares that can be appropriated to any one participant in APSSs in a year has not been increased in almost 30 years from a level of €12,700. One submission highlighted that indexation to inflation alone would raise this amount to over €39,000. It was also highlighted that the reduced attractiveness of the scheme in terms of advantages for employers and employees will reduce uptake of the scheme, particularly by listed multinational companies. Again, it was argued in this context that Ireland's open economy for both goods and labour is highly susceptible to changes in the personal tax system with regard to SBR in attracting businesses and highly skilled personnel.

Move to a pre-notification system for APSS

The public consultation asked respondents for their views on whether a move to a self-administered and/or pre-approval notification would simplify the administrative burden for dealing with SBR. Most of the public consultation submissions did not address this question but of those that did, the views were mixed. Some stakeholders favoured this change, but some respondents raised concerns about

potentially increasing uncertainty. Companies felt that in the absence of Revenue prior approval, participants might inadvertently misinterpret tax rules when setting up the schemes potentially resulting in a subsequent removal of the tax advantages. Indecon is of the view that uncertainty is a factor limiting the use of SBR especially for smaller and younger firms. This would need to be taken into account in planning for any move to a pre-notification system.

Key Employee Engagement Programme (KEEP)

Most of the stakeholder submissions contained proposals for reform of the KEEP in a variety of ways. One of the issues raised was clarity around valuation of shares in the KEEP. It was argued that these valuations tend to be costly and onerous for small companies. It also added a great deal of uncertainty about whether a valuation was correct. Many of the submissions called for the introduction of a "safe harbour" arrangement or principle for share valuation and this would make the scheme easier to implement for SMEs. The absence of a safe harbour was felt to be a disincentive to the uptake of the scheme. The submissions highlighted safe harbour arrangements existing in the US (409a) and the UK (EMI) although Indecon notes that in many other countries such methods are not available. Many of the stakeholder submissions also called for the expansion of the KEEP as the current eligibility conditions were regarded as too restrictive. One submission argued that the current qualifying rules penalised growing companies and disproportionately affected businesses in their scale-up phase. The point was raised that companies could lose eligibility for KEEP if a re-organisation takes place during this phase of company growth, which risks the loss of highly skilled staff. Two stakeholder submissions argued for extending eligibility of KEEP to a wider range of sectors including Fin-Tech and professional services. Indecon notes that there are important State aid considerations limiting the extent to which the KEEP can be amended.

Restricted Stock Units (RSUs)

The issue was raised across multiple public consultation submissions that there are legislative issues with the taxation of RSUs. It was pointed out by stakeholders that employees can be faced with a significant tax liability on vesting of the shares such that the shares need to be disposed of almost immediately in order to pay the tax bill that has accrued, with the result that they do not receive the benefit of owning shares in their company. Indecon notes that such deferrals are provided for in some other countries but there are also alternative ways of preventing share disposals at vesting. Employer loans to employees to fund a tax liability are a possibility and these could be facilitated by the applicable Benefit-In-Kind rules.

A second issue raised concerned possible double taxation: dependent upon the tax residence[33] of an employee with unvested RSUs, double taxation could occur. Stakeholders raised the point that currently, an RSU is fully taxable in the State if vested when the holder is Irish tax resident, without any apportionment in respect of any part of the vesting period during which the holder was resident elsewhere. Where a non-resident employee/director of an Irish company receives an RSU, such RSUs are fully taxable in the State at the vest date. Often this is also taxable in the first country of residence as many countries use a pro-rata apportionment method based on the country of residence during vesting period, creating double taxation. Stakeholders have noted that double taxation relief may in part help reduce mismatches in liabilities but this requires calculating and claiming foreign tax credit and, in some cases, foreign authorities may not regard the Irish taxes as creditable. For instance, when a US citizen is transferred within a company to its Irish branch and is an Irish resident at the time of vesting, they are liable for both Irish and US taxes without any relief. The US Internal Revenue

[33] Revenue information on tax residency and how it is defined can be found here.

Service may not consider the Irish taxes on the US-sourced portion of the RSU awards as eligible for credit.

Many of the submissions advocated for Ireland to adopt a source-based approach to taxation on RSUs (and other share schemes). This suggestion means that taxation would be apportioned based on the amount of time spent in different jurisdictions during the vesting period. Indecon's assessment is that the sourcing method is frequently used internationally. This pro-rata approach is the method used by those jurisdictions that are home to many globally mobile employees.

Benefit-in-Kind (BIK) tax rate on loans to buy shares

The BIK rate on interest-free loans provided to employees to buy company shares currently stands at 13.5%, which was felt by stakeholders to be excessive. Some of the submissions highlighted that the BIK rate on loans to buy shares in the UK is 2.25% and in Spain at 3.25%. The current BIK rate on preferential loans to buy shares was viewed as acting as a barrier to the provision of the loan by the employer and thus, employee participation in share schemes, particularly for those on lower to middle income-levels. Indecon's view is that the BIK rate applicable to loans related to SBR schemes may be restricting the use of such schemes. An alternative BIK rate could be considered which reflects the cost for employers. For instance, this could be linked to overdraft rates applied to non-financial corporations, as opposed to household overdraft rates.

Employee Ownership Trust (EOT) Scheme

A number of stakeholder submissions suggested that an Employee Ownership Trust (EOT) scheme should be introduced in Ireland, similar to the UK. It was argued that EOTs can be used when an owner is disposing of a business so that it is sold to its employees. The UK experience where EOTs benefit from a number of tax advantages was referred to.[34] The benefits suggested by stakeholders in their submissions of introducing EOTs were that the vendor is able to sell the company to a buyer whose motive is to keep the business strong, and the employees' interests are represented through shareholdings. It is suggested that this increases productivity in the company and has wider economic benefits. Furthermore, stakeholders felt that the growth of EOTs globally was such that, from a competitiveness perspective, Ireland should also allow for these structures. Indecon notes that technical legislative amendments would be needed in order to introduce EOTs in Ireland. There would need to be an exemption from discretionary trust tax and anti-avoidance provisions for EOTs. It was proposed by stakeholders that disposals of shares in the company to the trustees of an EOT should be made fully exempt from capital gains tax.

Indecon's assessment is that the tax treatment of EOTs in Ireland is unfavourable compared to alternative ownership structures in the UK which is an important competitor country for trade and foreign investment. Employee Ownership Trusts are a special type of SBR where a relatively large share of ownership is transferred to employees through a trust. The rationale for the use of EOTs and the benefits are similar to those highlighted above for SBR in general, including increased staff retention and productivity. Indecon notes that a specific regime for EOTs is absent in Ireland and the tax treatment of EOTs follows general taxation rules, which may be limiting the use of EOTs.

[34] As discussed in chapter 4, individual shareholders are given a complete exemption from capital gains tax, and an income tax exemption of £3,600 per individual per tax year applies to all employees.

Reporting Requirements

A point that was raised multiple times throughout the public consultation submissions was the need for streamlining and simplifying the regulatory reporting requirements. There were many recommendations arising from the submissions. The primary recommendation from stakeholders was to make the filing process easier, for example consolidated forms for certain schemes, such as RSS1 and ESA. Other submissions suggested a modernised portal and online system where filings could be made, particularly for SRSO1 and ESOT1 which are still in paper form. It was also raised that the submission of ESS1, DAC2, Form 1 and FATCA by 31st March is an extremely onerous deadline that coincides with bonus payouts from APSS enrolment or maturity.

While noting development in recent years when many paper forms were moved to online forms, Indecon's assessment is that many of the issues raised by stakeholders on reporting requirements are relevant and the reporting of SBR can be streamlined. The suggestion from stakeholders to introduce an online portal should be considered. A system where single fields of information can be updated when required could allow for the recording of additional data while minimising administrative costs for both firms and Revenue. There is, however, a need for some additional information to be collected, including information on APSS trusts to allow the analysis of the types of companies using the scheme. Most importantly, additional information is also required to allow a detailed assessment of the impact of SBR schemes.

Other issues

A point of note that was raised across multiple submissions was the fact that the SAYE scheme is almost redundant because there is no savings carrier currently operating in the Irish market. It was raised that the specific criteria to be met by a savings carrier are too strict. One of the public consultation submissions noted that their representees favoured SAYE schemes over APSS because of the option to accept cash at the end of the saving period. The submissions overall highlighted the importance of continuing both schemes. Indecon notes that further evidence and analysis would be required to identify the reasons behind the absence of a savings carrier and to assess any policy options. The decision to act as a savings carrier is a commercial decision and is unlikely to be dependent on tax considerations.

4.3 Feedback on KEEP

Separate to the public consultation, Indecon held discussions with three entrepreneurs who had successfully founded start-up companies. These discussions were facilitated through Scale Ireland and mainly focused on the KEEP. The feedback was consistent from these entrepreneurs in arguing for a reduction in the complexity of the scheme and the cost of valuation.

The founders suggested that the link between the value of shares that can be issued and annual emoluments meant that start-up founders could not compete against larger firms to attract and retain talent. The eligibility and other requirements were also seen as restrictive. For example, it was suggested that firms could breach the SME employment limit or balance-sheet requirement of KEEP in one year but not the next as, according to EU Recommendation 2003/261, ceilings cannot be exceeded over two consecutive years. Indecon notes that this applies to any SME support based on the EU definition. Stakeholders recommended that the option for a firm to implement the scheme is given for a defined period of 5-10 years. Companies also raised the issue that the complexity of the scheme in terms of administrative burden and filing requirements requires a lot of time on the part of start-ups to understand and implement. It was suggested by the founders that many start-ups do not have this time and this could be part of the reason why the take up of the scheme is so low. Professional tax advice was felt to be expensive for most start-ups and small firms. Founders also suggested that the life cycle of a start-up may involve transitioning to a group structure and that these re-organisations should not be disqualification events. Founders also argued that there was little knowledge of KEEP and that there is potential for it to be better communicated to start-up founders, entrepreneurs and their employees.

The issue of simplifying the KEEP was also raised by tax advisors through a survey that asked for their views on the policy and legislative framework underpinning SBR in Ireland. Direct excerpts of their feedback on KEEP can be found in Box 4.1 overleaf.

4.4 Views of Tax Advisors

Tax advisors were asked for their views on the policy and legislative framework underpinning SBR in Ireland in the context of future needs. Responses to this question are summarised in Box 4.1 below. As is evident, the main issues raised by tax advisors related to simplifying KEEP and expanding eligibility criteria. The second issue that was most commonly raised was lowering the benefit-in-kind (BIK) loan rate of 13.5%.

Box 4.1: Tax adviser's views on the policy and legislative framework underpinning share-based remuneration in the context of future needs

"Ensure that KEEP regime is set up to support the growth of the start-up ecosystem. The KEEP scheme is not achieving its stated policy goals of supporting enterprise and promoting economic growth."

"SME offerings need to be further simplified and expanded, e.g. [the qualifying rules]."

"BIK rate on loans to a commercial rate (rather than the 13.5% rate)"

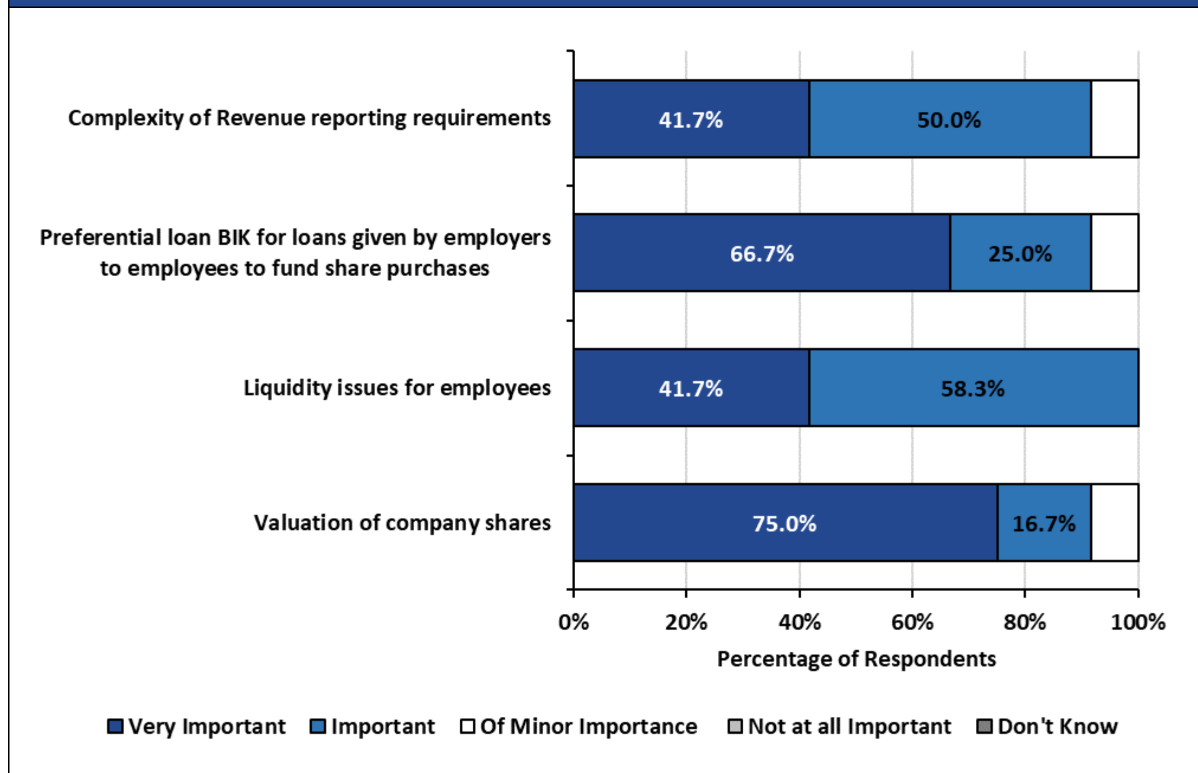
"A lower rate of interest on preferential loans could assist with … staff [funding] the acquisition of the awards they are being offered."

Source: Indecon survey of Tax Advisers

Tax advisers were asked their views on the importance of the following issues in affecting their clients' use of SBR. As shown in Figure 4.1 below, respondents indicated that the valuation of company shares was the most important issue affecting their clients' use of SBR. Preferential benefit-in-kind (BIK) loan rate was the second most important issue facing their clients, according to tax advisors.

Indecon's analysis suggests that these are important factors in the decisions of both employers and employees on setting up and participating in SBR schemes. The uncertainty surrounding the valuation of unlisted shares is a recognised issue internationally; and, as set out in Chapter 3, some authorities have taken steps to reduce this uncertainty. In relation to the BIK rate, liquidity issues related to the financing of participation in share-based schemes for employees may be restricting the take-up of schemes. While the relevant specified rates are part of wider BIK rules, there may be merit in considering the feasibility of an amendment of these rules for SBR. This is not as straightforward as a change to the percentage rate.

Figure 4.1: How important or otherwise the following issues are in affecting Tax Adviser's clients' (and/or their employees') use of share-based remuneration



Source: Indecon survey of Tax Advisers

Surveyed tax advisors were asked an open-ended question seeking their views and any other comments that they wished to make about how SBR is supported by the tax system in Ireland, as well as any changes that they would make. As Box 4.2 details below, their responses were broadly in line with points raised in the public consultation submissions although the issue that was most commonly brought up in response to this question was in relation to "dry taxation" or the taxation of SBR upon the exercise/vesting of share options. As outlined previously in Section 4.2, this can give rise to an income tax bill for the employee who cannot finance the tax bill unless a liquidity event (disposal of shares) occurs. Other issues raised in response to this question related to broadening KEEP eligibility criteria, valuation methodologies, and the BIK loan rate.

Box 4.2: Other comments/views Tax Advisers have on how share-based remuneration is supported by the taxation and PRSI systems in Ireland and any changes they would make

"Timing of taxation must be optimal to avoid dry taxation."

"Defer tax charge on share awards until a liquidity event."

"Employees can be faced with a "dry tax charge" i.e. where they are deemed to have a tax liability on shares that have a deemed market value but at the point of taxation do not have an ability to convert them into cash to assist settle that tax liability… More could be done in this space to defer tax liabilities on "dry" tax events, until such time as there is a liquidity event (IPO/sale for example)."

Source: Indecon survey of Tax Advisers

4.5 Summary of Key Findings

Key points raised by stakeholders are summarised below. Indecon's overall assessment and findings are presented in Chapter 6, taking account of these views but also other evidence and wider policy and competitiveness considerations.

- Stakeholders suggested that it is important to retain the employer PRSI exemption.
- It was proposed by stakeholders that the annual limit of €12,700 for the appropriation of shares in the APSS should be increased or indexed to inflation.
- Stakeholders argued that the KEEP needs to be reformed in several ways:
  - Introduce safe-harbour provision for valuation of company shares.
  - Expand the eligibility conditions to account for different company structures.
  - Expand eligibility criteria to FinTech and professional services industries.
- Reform of the taxation of RSUs was suggested by stakeholders as follows:
  - Defer the tax liability until the disposal of shares.
  - Use source-based approach to taxation of RSUs.
- Lowering the BIK loan rate was seen as important.
- The introduction of EOTs as in the UK, was proposed by stakeholders.
- It was felt by stakeholders that reporting requirements should be streamlined and simplified.

Indecon's evaluation of the schemes in section 5 takes account of these points but also of wider evidence.

5 Evaluation of Schemes

5.1 Introduction

While there is strong support among stakeholders for improvement in the Irish schemes it is important, given the need to ensure the best use of scarce exchequer resources, to evaluate the merits or otherwise of retaining or enhancing the existing incentives. While a formal economic cost benefit appraisal of the SBR schemes is outside of the scope of this review, and is not currently feasible given the available information, it is useful to rigorously examine any evidence on the exchequer costs and to consider the likely benefits. As discussed in our recommendations, Indecon believes it is important that policy makers obtain additional information from participants which would enable a more comprehensive examination of the impact of the schemes.

5.2 Revenue and Employer PRSI Foregone

In Table 5.1 we present the estimated revenue and employer PRSI foregone from the SBR schemes described in chapter 1. The table shows that the total income tax revenue foregone figure has increased steadily over time, from €57.1m in 2018 to €84.9m in 2022. The total amount of employer PRSI foregone has also increased in recent years, from €200.5m in 2020 to €235.9m in 2022, although in 2022 this is lower than in 2021. Total exchequer costs are estimated at €320.8m in 2022.

Employer PRSI foregone is split between the portion reported through PAYE and that not operated through PAYE and reported through other forms,[35] which includes:

- Unapproved share options: under employee self-assessment up to 31 December 2023;
- KEEP: as this scheme is exempt from income tax, USC and PRSI, no payments are made through PAYE;
- SAYE: reporting for this scheme through form SRSO1; and
- APSS: reporting for this scheme by trustees through ESS1.

As shown in Table 5.1 the employer PRSI foregone reported through PAYE increased by 40% in 2023 whilst 2023 data points for the portion not reported through PAYE and for the income tax foregone are not yet available. Assuming that in 2023 these amounts changed at the same rate observed between 2020 and 2022, income tax foregone would be €95.5m and employer PRSI foregone (not reported through PAYE) would be €65.6m in 2023. Under these assumptions, the total exchequer cost in 2023 could rise to just below €400m.

[35] For future 2024 data, the breakdown will change since Unapproved Share Options will move to being operated through PAYE.

Table 5.1: Income tax and Employer PRSI Foregone (€m) from Share-Based Remuneration				
	2020	**2021**	**2022**	**2023**
Income tax foregone	67.2	72.6	84.9	N/A
Employer PRSI foregone (PAYE)	132.8	196.5	169.6	237.4
Employer PRSI foregone (non-PAYE)	67.7	84.9	66.3	N/A
Total Employer PRSI foregone	**200.5**	**281.4**	**235.9**	**N/A**
Total	**267.7**	**354.0**	**320.8**	**N/A**

Source: Indecon analysis of Revenue data. Figures are rounded
Note: Data for employer PRSI foregone is not available for 2018-2019. Data for income tax forgone and the amount of employer PRSI foregone not reported through PAYE are not yet available for the year 2023.

Breakdowns for income tax foregone by scheme are shown in Table 5.2, for the years 2018 to 2022. The income tax foregone from the APSS accounts for 94% of the tax foregone in 2022. The amount grew quite substantially over the previous five years, from €55.2m in 2018 to €80m in 2022. The income tax foregone from the SAYE scheme grew between 2018 and 2021 but then tapered off in 2022 (revenue foregone from these schemes is estimated as a percentage of the total capital gains using the higher rate of income tax). It is possible that this is because there is currently no savings carrier in Ireland, which would limit the adoption of this scheme. Income tax foregone from the KEEP represents a fraction of the total and it slightly decreased in 2022, signalling stagnation of uptake. Income tax foregone owing to the ESOT scheme is virtually zero.

Table 5.2: Breakdown of Income Tax Foregone (€m) by Scheme					
	2018	**2019**	**2020**	**2021**	**2022**
APSS	55.2	49.5	64.2	65.1	80.0
SAYE	1.8	1.8	2.6	5.6	3.2
KEEP	-	0.1	0.3	1.8	1.6
ESOT	0.1	0.1	0.1	0.1	0.1
Total	**57.1**	**51.5**	**67.2**	**72.6**	**84.9**

Source: Indecon analysis of Revenue data.
Note: Figures are rounded.

Table 5.3 shows the breakdown of employer PRSI foregone by scheme for the non-PAYE portion. This breakdown is not available for the PAYE portion owing to the setup of PAYE reporting requirements, which do not allow for breaking down the data. This data may include some element of USC and PRSI due for APSS and SAYE schemes, although Revenue indicate that this figure is unknown and likely to be a small part of the overall total.

The employer PRSI foregone owing to unapproved share option schemes amounts to €35.4m in 2022, down from €43m in 2020 and after a temporary increase in 2021. Employer PRSI foregone owing to the KEEP increased in 2021 but remained stable in 2022. Employer PRSI foregone from APSS increased to just below €30m by 2022.

Table 5.3: Breakdown of Employer's PRSI Foregone (€m) by Non-PAYE Scheme			
	2020	**2021**	**2022**
Non-PAYE			
KEEP	0.1	0.3	0.3
APSS	23.9	24.3	29.8
SAYE	0.7	1.5	0.8
Unapproved Share Options	43	58.8	35.4
Total	*67.7*	*84.9*	*66.3*
Source: Indecon analysis of Revenue data.			

Table 5.4 shows a breakdown of the PAYE reported portion of employer PRSI foregone by firm size. The majority of this cost is attributable to large firms (with over 250 employees) which make up 83.5% of the PAYE portion of PRSI foregone in 2022 and similar proportions in previous years. This reflects the absence of any caps and the fact that larger firms have more employees, higher remuneration levels and tend to have more scope to administer multiple SBR schemes in their organisations. Medium enterprises account for the second largest proportion of employer's PRSI foregone, but in comparison this proportion ranges from 9.7-12% over the four years.

Table 5.4: Employer's PRSI Foregone (€m) by Firm Size (PAYE)								
	2020		**2021**		**2022**		**2023**	
Micro (1-9)	1.4	1.1%	2.4	1.2%	1.7	1.0%	2.1	0.9%
Small (10-49)	5.7	4.3%	13.5	6.9%	6.0	3.5%	8.5	3.6%
Medium (50-249)	15.3	11.5%	19.2	9.8%	16.4	9.7%	28.5	12.0%
Large (250+)	110.4	83.1%	161.4	82.1%	145.5	85.8%	198.3	83.5%
Total	**132.8**	100%	**196.5**	100%	**169.6**	100%	**237.4**	100%
Source: Indecon analysis of Revenue data.								

5.3 Benefits of Share-Based Remuneration Schemes

Given the very significant exchequer costs, it is important to consider the benefits of the SBR schemes. While data is not available to formally evaluate the net benefits, Indecon notes in many countries such schemes have been introduced in order to achieve wider economic policy objectives. These include increasing productivity and innovation, attracting skilled staff and improving competitiveness. This can facilitate expanding employment and exports and improving wider productivity in the economy. The attraction of mobile investment and talent is also important. These objectives are particularly relevant for a small internationally traded economy such as Ireland and are consistent with wider enterprise policy objectives.

As part of our research, we obtained survey evidence from leading tax advisory firms on their perceptions of the importance of share-base remuneration schemes. In total, some 12 advisers responded to the survey. Examples of the profile of the client base of the respondents is provided below in Box 5.1.

Box 5.1: Profile of Tax Advisers' client base and the areas of industry they are active in

"We have a broad range of clients, from SMEs to large corporates… Our clients would be active in a range of industries, including tech, renewable energy, transportation and construction."

"Our client base is very wide-ranging; we have clients that operate in every business sector from financial sector to technological to life sciences... Our clients range from start-ups to indigenous Irish private companies with national and overseas operations."

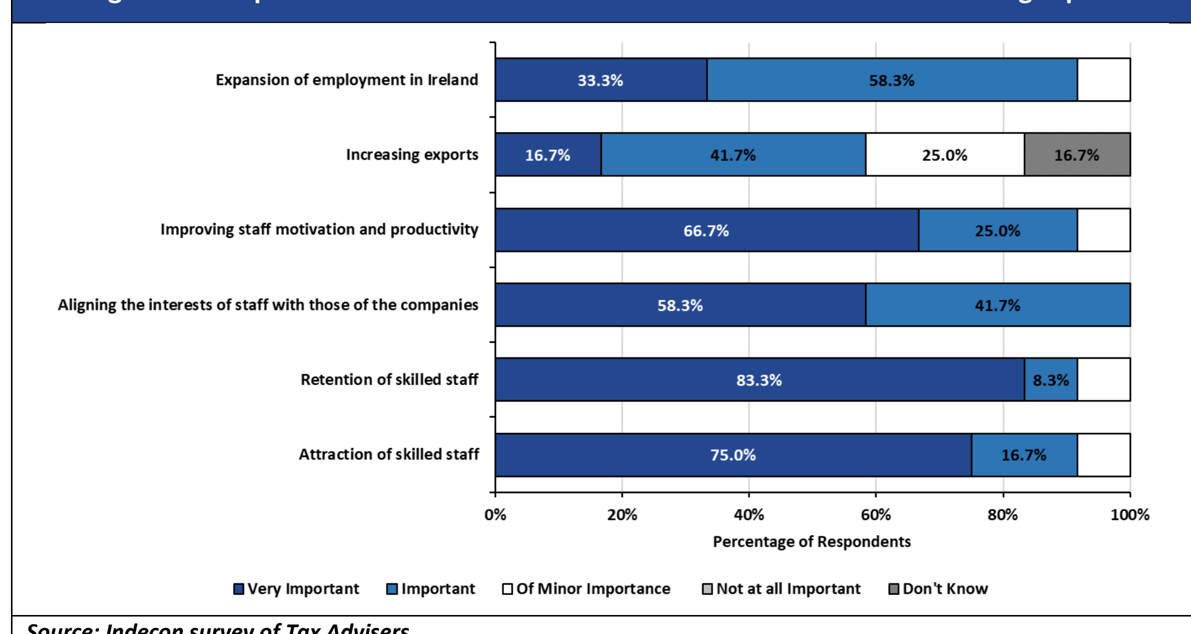
"We advise clients of all sizes across all industries… [including] large, listed business, Irish-owned SMEs and Private Equity and M&A."

"Our client base is a mix of SME, large firms, foreign and Irish-owned companies. They are active in financial services, asset management and investment funds, healthcare and life sciences, technology, media and communications etc."

Source: Indecon Survey of Tax Advisers

New survey evidence was obtained on the views of leading tax advisors on their perceptions of the importance of a number of aspects of SBR for their clients. The views of tax advisers suggest that the attraction of and retention of skilled staff is the most important benefit of SBR for their clients. Improving staff motivation and productivity was also a perceived benefit as well as the impact of the resultant alignment of the interest of staff with those of the companies. Potential benefits of these schemes in terms of expansion of employment and exports were also suggested. However, Indecon notes that detailed evidence on the precise impacts on employment or exports is not available for the Irish schemes.

Figure 5.1: Importance of share-based remuneration in terms of the following aspects



Source: Indecon survey of Tax Advisers

Advisors were asked to rank the relative importance of the factors listed in Table 5.5. The attraction of skilled staff is ranked by the highest proportion of respondents as the most important, followed by retention of skilled staff. Improving staff motivation and aligning the interests of staff with those of the company were ranked as the next highest. Expansion of employment and increasing exports were consistently ranked as the least important factors.

Data on what companies utilise the schemes is not available, but Indecon obtained some sample case study type insights from four beneficiary firms of the importance of different potential impacts of SBR to their companies. The findings reinforce the significance of the impacts in terms of the attraction and retention of staff and ensuring an alignment of the interest of staff with those of the business.

Table 5.5: Companies Utilising Share-based Remuneration – Assessment of Benefits and Impacts

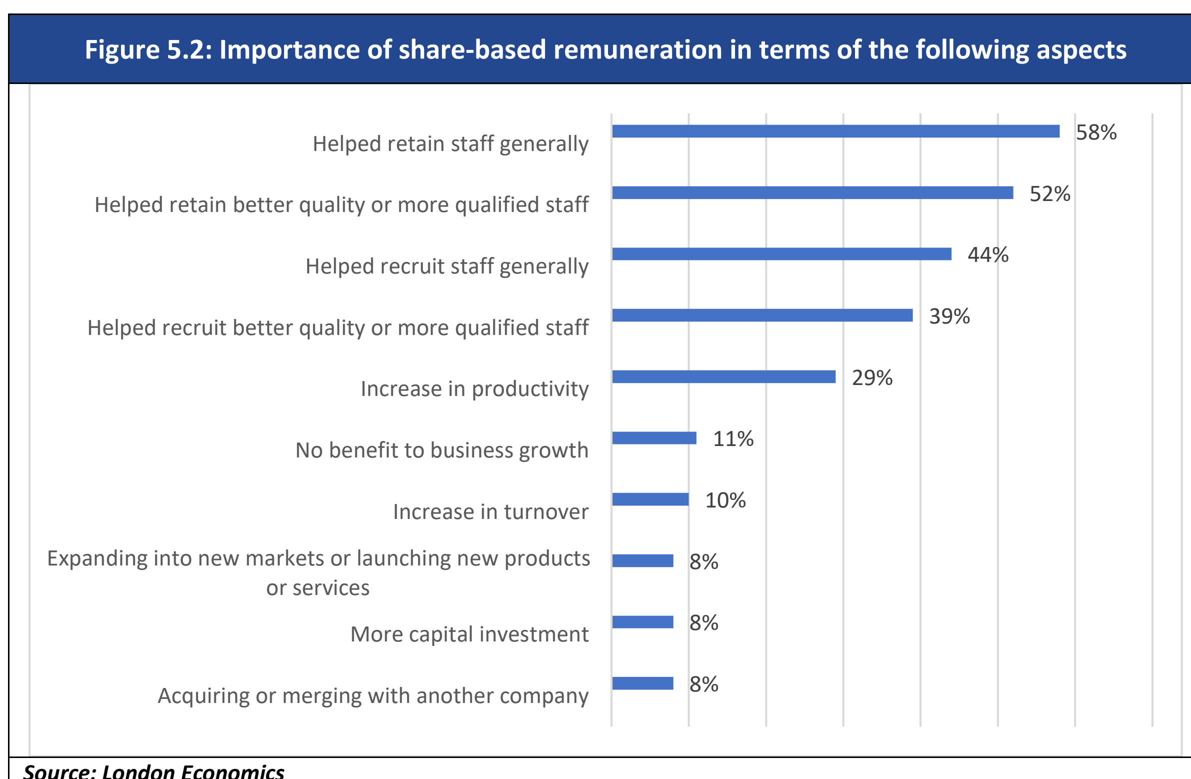
	Very Important	Important	Of Minor Importance	Not at all Important	Don't Know
Attraction of skilled staff	60%	40%	0.%	0%	0%
Retention of skilled staff	80%	20%	0%	0%	0%
Aligning the interests of staff with those of the companies	60%	40%	0%	0%	0%
Improving staff motivation and productivity	60%	40%	0%	0%	0%
Increasing exports	0%	0%	0%	80%	20%
Expansion of employment in Ireland	0%	60%	20%	0%	20%

Source: Indecon

The views of a sample of Irish companies and those of tax advisers are consistent with research undertaken by Indecon's associate practice, London Economics for HM Revenue and Customs on the evaluation of UK share schemes.[36] The London Economics research highlighted the impact on staff retention and recruitment and indicated that share schemes appear to improve business and employment outcomes. Out of the surveyed UK companies that were aware of these schemes, 81% indicated an improvement in employment and/or business outcomes. The most commonly reported impact by claimant companies related to staff retention, followed by recruitment. Some companies also mentioned that such schemes can have a positive impact on employee productivity and sense of connection to the company, which lead to improved company performance.

[36] HM Revenue and Customs, London Economics Share Schemes Evaluation, HM Revenue Report No. 700

Figure 5.2: Importance of share-based remuneration in terms of the following aspects



Source: London Economics

Econometric analysis undertaken by London Economics identified a small positive and statistically significant impact (at the 10% level) of schemes on turnover, but the econometric analysis did not find any statistically significant impact on employment. It should be noted though that the findings from the econometric analysis are only statistically significant at a 10% level and are subject to a number of caveats. For example, it is possible that companies self-selecting into share schemes are performing better than those not self-selecting into share schemes, which could lead to an overestimate of the impact.

Table 5.6: Impact on Turnover of Share-Based Schemes in the UK

	CSOP	SIP
Percentage change in turnover (associated with registration in a share scheme)	7.1%*	6.1%*
95% confidence interval	(-0.6% - 15.4%)	(-0.7% - 13.2%)
Number of treatment firms	266	94

Source: London Economics
Note: * = significant at the 10% level, ** = significant at the 5% level, *** = significant at the 1% level.

Table 5.7 shows the views of tax advisers on their perception of the continued relevance of the Irish tax and PRSI incentives for SBR in the attraction and development of business in Ireland. Most respondents suggested a combined relevance of these incentives.

Table 5.7: Continued Relevance of Irish Tax Incentive for Share Based Renumeration					
	Very Relevant	Relevant	Of Minor Relevance	Not Relevant	Don't Know
Continued relevance or otherwise of the Irish tax/PRSI incentives for share-based remuneration to the attraction and development of business in Ireland	75.0%	16.7%	8.3%	0.0%	0.0%
Source: Indecon survey of Tax Advisers					

The respondents were also asked an open-ended question about the Irish tax incentives for SBR. Their responses are captured in Box 5.2 below and are consistent with points made in the public consultation submissions that the PRSI exemption is important for businesses because it makes Ireland a more attractive place to do business and covers some of the administration costs of implementing a SBR scheme. Indecon notes that there are fixed costs associated with setting up of schemes and decreasing variable costs associated with ongoing implementation and reporting requirements. Respondents also referred to comparatively high-income tax rates in Ireland and felt that the PRSI and income tax exemptions for SBR compensated in part for this and could help in attracting highly-skilled labour to Ireland.

Box 5.2: Continued Relevance of Irish Tax Incentive for Share Based Renumeration

"If there was no Employer PRSI exemption in place, and the costs of setting up and administering the scheme remained, companies may be less likely to set up such schemes at an additional cost."

"The PRSI saving is extremely important for companies as it helps to fund the cost of implementing a scheme."

"The Employer PRSI exemption as a key tool in maintaining Ireland as an attractive place to do business… Many stakeholders view Ireland's income tax rates as burdensome in a global context."

"Tax rates in Ireland are usually higher than other territories and therefore this saving offers some compensation and helps to align with other countries."

"Talent is very mobile and on a global basis now. such incentives are required to ensure Ireland remains competitive and a key location to attract the very best global talent and experience."

Source: Indecon survey of Tax Advisers

5.4 Summary of Key Findings

- Indecon's analysis highlights the scale of share-based schemes and indicates that in 2022 the value of SBR schemes reached over €2.1b. In that year, these schemes resulted in significant annual exchequer costs of €320.8m comprised of income tax foregone (€84.9m) and employer PRSI foregone (€235.9m). The costs of SBR have continued to increase and Indecon's indicative estimates suggest that the overall cost of these exemptions may have been around €0.4b in 2023.
- In 2022, employer PRSI foregone relating to unapproved share option schemes amounted to €35.4m. The cost of the employer PRSI exemption is €30m for APSS and €1.6m for KEEP. This breakdown is not available for the schemes reported through PAYE.

- The main benefits of SBR are the attraction and retention of skilled staff. Econometric evidence from the UK suggests that SBR may also have a positive impact on company turnover.

6 Key Findings and Recommendations

6.1 Introduction

In this concluding chapter, we present Indecon's overall findings and recommendations. These draw on the analysis presented in earlier chapters, including our review of SBR schemes in competitor countries in chapter 3, stakeholder perspectives (chapter 4), and our evaluation of the costs and benefits of the various schemes in chapter 5. However, it is also important to place our findings and recommendations within the context of the recommendations of the Commission on Taxation and Welfare and developments in taxation and PRSI policy. We also take account of wider competitiveness considerations.

6.2 Recommendations of the Commission on Taxation and Welfare

The Commission on Taxation and Welfare reported in 2022 and included an analysis of SBR. It is interesting to note that the Commission's report was based on data on SBR up to 2020 which indicated a total value of €1.2bn of such remuneration (subject to PAYE) in that year. As set out in chapter 5, there has been a very substantial increase (78%) in the value of SBR to just under €2.15bn in 2023. The Commission also estimated tentatively that the cost of the employer PRSI exemption in 2020 was €132m (excluding costs from the exemption in respect of share remuneration not taxed through PAYE), arguing that "this level of relief cannot be justified from a fiscal sustainability point of view." Based on the most recent Revenue data reviewed in chapter 5, and reflecting the increased value of SBR, this cost has also increased very substantially which on a like-for-like basis would suggest a cost of over €237m in 2023.[37]

Having regard to the costs of the PRSI exemption and the principle of horizontal equity in the treatment of employment income, as well as a view that Ireland's treatment should be brought in line with many other EU and OECD countries, the Commission on Taxation and Welfare recommended that the exemption from employer PRSI be limited through either a cap per employer or through restricting the relief to SMEs. In a separate but related recommendation, it also proposed that PRSI should be extended to all forms of employment income, including SBR, though it acknowledged that most SBR is already subject to employee PRSI (except in the case of KEEP, a treatment the Commission endorsed).

The Commission also considered the KEEP and was cognisant of the productivity gap between SMEs and larger enterprises and envisaged a role for the tax system in skill attraction and retention in the SME sector. It noted the low uptake of the scheme and felt that more could be done to improve its effectiveness, recommending that the scheme be reformed to broaden its use. Notwithstanding the various recent changes made to the scheme in the interim (see section 1.3), take up has remained low as documented in section 2, although the impact of these changes will only be discernible in scheme data for 2023 and subsequent years.

In other recommendations, the Commission proposed that the taxation of share options move from a self-assessment basis to the PAYE system and this change was implemented with effect from January 2024. It also recommended that the taxation of internationally mobile employees in receipt of SBR including RSUs be aligned with the general treatment applying in the case of share options, such that the tax liability be apportioned to take account of workdays spent in Ireland during the vesting period.

[37] Estimated employer PRSI foregone for benefits reported through PAYE.

6.3 Recent Tax and PRSI Policy Developments

The Irish economy is highly dependent on the attraction of mobile investment and in facilitating the expansion of Irish owned enterprises and the attraction and retention of skilled personnel. This is influenced by the competitiveness of the corporate tax regime and by PRSI policy.

In the area of corporation tax, the rollout and implementation of the OECD's two-pillar *Base Erosion and Profit Shifting* reforms (BEPS) continues. Discussions remain on-going on key elements of the first pillar (Pillar One) which, once agreed, would involve the re-assignment of a portion of taxable profits of Irish-based multinationals to other jurisdictions (by reference to where consumers are located) and, accordingly, a loss of tax revenue. Regarding the second pillar (Pillar Two), the EU Minimum Tax Directive was transposed into Irish law in Finance (No.2) Act 2023 giving effect to the new rules from 2024. This means that a minimum effective corporate tax rate of 15 per cent will apply to the profits of 'large' enterprises (whose annual turnover exceeds €750m) from this year, which is expected to increase tax revenue, though it will be 2026 before there is any impact on receipts. The Department of Finance has indicated that the overall net effect of the two sets of changes will "be a significant loss of corporation tax revenue."[38] More generally and notwithstanding the efforts of the Department of Finance to engage with stakeholders and provide as much certainty through the publication of the Corporation Tax Roadmap in 2021, the fact that not all of the details of the changes have yet been agreed introduces an element of uncertainty for business. From a competitiveness perspective, the increase in the minimum rate of corporate tax is noteworthy.

Given the significance of the employer PRSI exemption for SBR it is also important to consider wider changes in the PRSI system and the financial outlook for the Social Insurance Fund, which is funded by PRSI revenue. The policy approach to the PRSI system is set out in the PRSI Roadmap approved by Government last year. This provides for incremental increases in all classes of PRSI (employer, employee and self-employed) over the period 2024-2028 with a cumulative increase in all rates of 0.7 percentage points by 2028, commencing with an increase of 0.1 percentage points on 1 October 2024.

These increases are intended to support several social welfare reforms agreed by Government including the introduction of a new pay-related jobseeker's benefit system and the retention of the State Pension age at 66. They are also informed by the findings of the Actuarial Review of the Social Insurance Fund as of 31 December 2020 - which found that even without any economic shocks to the economy or change to policy - the long-term sustainability of the Fund would face significant challenges. In the absence of any action to tackle the shortfalls, the excess of expenditure over income of the Fund would increase significantly over the medium to long term with an accumulated deficit of €500bn by 2076.

As a consequence of the above developments, some businesses in Ireland are facing increases in corporation tax as well as some incremental increases in PRSI. Increases in PRSI will also increase the Exchequer costs of share based PRSI exemptions.

6.4 Competitiveness and Wider Considerations

As well as taking account of wider tax and PRSI policy developments, the taxation framework for SBR needs to be considered in the context of broader trends in the competitiveness of the economy. Changes to the income tax or PRSI treatment of this type of remuneration would impact on labour costs; in the case of employers PRSI, an abolition or restriction of the exemption would lead to a

[38] Stability Programme April 2024 Update, Department of Finance

direct increase in overall labour costs for affected firms while for employees a less favourable treatment for income tax purposes could lead to increased wage demands to restore take-home pay. Any such changes would need to have regard to wider labour cost and competitiveness pressures.

As has been well documented, the Irish economy has performed strongly over recent years with a particularly strong labour market performance. Ireland is ranked highly in international competitiveness rankings and was ranked second out of 64 economies in the IMD's World Competitiveness Yearbook 2023, gaining nine places over 2022, and was assessed as the most competitive country in the euro area. However evolving policy changes have the potential to impact on the cost base faced by firms and on overall competitiveness. In this context, Indecon notes also that the Government has introduced several measures to improve working conditions over recent years which will bring Ireland in line with other countries but will increase labour costs unless there are improvements in productivity. These include statutory sick pay, the auto-enrolment retirement savings system, an additional public holiday and increases in the national minimum wage through its transition to a Living Wage. These measures are being phased in over several years and we have also highlighted above the planned increases in PRSI contributions over the 2024 to 2028 period. On foot of a recommendation from the National Competitiveness and Productivity Council (NCPC), an assessment of the combined impact of these measures was recently undertaken by the Department of Enterprise, Trade, and Employment, in conjunction with the Department of Social Protection. The report finds that the aggregate or economy-wide PAYE cost impact of the measures could range from 1.8% to 2.2% by 2026. However, the report highlights that this impact will vary considerably by firm sector and size with labour intensive, low-margin sectors such as retail and hospitality most affected. However, for other sectors and firms, the measures will have only a very small impact including those sectors dominated by multinational firms as well as domestic firms. These include ICT, financial services, and professional services. Indecon notes that SBR is largely concentrated in these sectors as is evident from our analysis earlier in section 2.

In reviewing share-based schemes and the impact of these schemes on retention and motivation of staff and in facilitating an increase in productivity, the National Competitiveness and Productivity Council in their report, Ireland's Competitiveness Challenge 2023, highlighted the importance of boosting productivity levels particularly in domestic-owned firms. The Council is of the view that developments in labour productivity are critical to Ireland's international competitiveness position.

Looking forward, international competitiveness pressures on Ireland are likely to intensify owing to factors such as geopolitical developments, an increased focus on industrial policy in the US, China and the EU and associated trade tensions. As discussed in the previous section, the tax policy space is likely to remain constrained in coming years as the implementation of BEPS continues. In this context, it is important to consider the role that changes to the taxation of SBR may play in the future and the impact of any major changes to the schemes.

6.5 Key Findings

Taking account of the discussion of policy developments and competitiveness considerations above and our earlier analysis of competitor country arrangements in chapter 3, the views of stakeholders in chapter 4 and our evaluation of the costs and benefits of schemes in chapter 5, we set out our key findings in Table 6.1.

Table 6.1: Key Findings
1. The taxation framework for share-based remuneration needs to be considered in the context of broader trends in the competitiveness of the economy. Ireland faces strong competition both for mobile investment and for talent, and competitor countries offer attractive share-based incentives. In some countries, including the UK, aspects of share-based schemes are more attractive than in Ireland as highlighted in our international review. However, the Irish schemes provide incentives for a wide range of companies regardless of size. We also note that in some countries benefits accruing from share-based remuneration are taxable as salary and are subject to social security contributions, including for instance Lithuania, Estonia, Latvia, Israel, the US, Germany, Poland, and Italy. Attractive tax advantaged schemes are provided for small enterprises in many important competitor countries, including Portugal, Denmark, France, Spain, UK, Germany, Italy, Sweden, and the US.
2. Our detailed analysis suggests that aspects where Ireland's approach are out of line with some competitor countries include lower eligibility levels, the treatment of BIK and the tax treatment of restricted stock units. Ireland's PRSI exemption however appears generous compared to many countries where schemes are more focused on SMEs.
3. There are a range of complex share-based remuneration schemes operating in Ireland with different eligibility criteria. The Tax and Duty Manual[39] for share schemes contains a lot of detailed and useful information. However, in a limited number of countries notably the UK, US and Australia, there are assured valuation methods. Additional guidance on valuation would help to reduce the uncertainty associated with the tax treatment of schemes.
4. APSS, RSUs and unapproved share options represent the most utilised schemes.
5. There have been very low levels of take-up of the targeted KEEP aimed at SMEs. The growth in value of share-based remuneration by micro and small firms is disproportionately low. Stakeholder consultations suggest that the criteria for the KEEP reduces its attractiveness. There are, however, significant constraints on any changes to this scheme without seeking new state aid approval.
6. The value of share-based remuneration schemes in Ireland reached over €2.1bn in 2022. Small and micro firms accounted for less than 5% of the value of schemes subject to PAYE (€1.5b). A breakdown by firm size is not available for some schemes.
7. The exchequer costs of the schemes have increased significantly and in 2022 exchequer costs reached over €320m, with the cost of the employer PRSI exemption amounting to €236m. Indecon estimates suggest exchequer costs in 2023 may have been of the order of €0.4b.
8. The income tax foregone from share-based remuneration is almost entirely attributable to the APSS. The majority of the PRSI cost is likely to be due to unapproved share options, take-up of RSUs and APSS. A breakdown by scheme is not available for plans reported through PAYE, which includes RSUs.
9. Share-based remuneration schemes are perceived as important in enhancing productivity, attracting and retaining skills and improving competitiveness. The stakeholder consultations undertaken for this review as well as the international research support this view. Econometric evidence of the UK schemes shows a small impact on turnover.
10. The PRSI exemption is regarded as an important support for SME and other businesses in Ireland.
11. Larger firms account for the majority of the cost of PRSI foregone and foreign owned multinationals account for the largest percentage of the value of share-based remuneration schemes. ICT and manufacturing sectors are the main beneficiaries of the scheme, but non-traded sectors are also significant users of these schemes.
12. There are gaps in the available information on the utilisation and impact of Irish share-based remuneration schemes. These gaps are such that it is not possible to evaluate the impacts of the schemes on employment and exports in beneficiary firms.

[39] Tax and Duty Manuals are documents that contain the rules, guidelines, procedures and practices that cover Revenue activities. A TDM for share based remuneration is available with a number of chapters covering specific share schemes.

Table 6.1: Key Findings
Source: Indecon

6.6 Recommendations

In the table below we summarise our recommendations. These are designed to balance the objective of maintaining or improving Ireland's competitive position while reducing the high and escalating Exchequer costs of share-based schemes. The recommendations are also designed to target the incentives and to monitor their effectiveness.

Table 6.2: Recommendations	
1	Consideration should be given to introducing measures to contain the growth in the overall exchequer costs of share-based remuneration schemes. The rationale for this recommendation is the high and growing costs of the schemes noted in our findings and detailed analysis. A significant element of these costs relate to the cost of PRSI exemption. One option would be to introduce a cap on the level of employer PRSI exemption.
2	Measures should be taken in the short term to enhance the attractiveness of the KEEP by providing greater clarity and guidance to SMEs particularly around share valuation and by more effective promotion of the scheme. Consideration should be also given to wider amendments and a re-design of the KEEP for the post-2025 period having regard to State aid constraints and the need to obtain State aid approval.
3	The taxation treatment of RSUs for internationally mobile employees should be moved to a sourcing or apportionment method aligned with the approach used internationally and with that used in respect for stock options for internationally mobile employees in Ireland.
4	Initiatives to simplify the administrative burden surrounding reporting of share-based remuneration schemes should be continued with a view to reducing administrative costs and increasing attractiveness for SMEs. Streamlining reporting could have benefits for both firms and the Revenue. Some additional information is, however, needed to assist future evidence-based evaluation of these schemes and the collection of the necessary data needs to be managed efficiently. As part of this, consideration should be given to moving the approval of APSSs by Revenue to a pre-notification system, but any such change should be signalled well in advance so as to avoid creating uncertainty.
5	The BIK rate on loans offered to employees for the purpose of funding costs associated with the purchase of shares in share-based remuneration plans should be reduced. For instance, the rate could be linked to market prevailing interest rates for non-financial corporations. The BIK rates applied in Ireland are significantly higher than in the UK. The rationale for this change is to increase the ability of SMEs to provide loans to employees and to improve take-up of share-based remuneration particularly among SMEs.
6	There is merit in considering reforming the taxation of employee ownership trusts (EOTs) in line with the treatment of such arrangements in the UK.
Source: Indecon	

1. **Consideration should be given to introducing measures to contain the growth in the overall exchequer costs of share-based remuneration schemes. The rationale for this recommendation is the high and growing costs of the schemes noted in our findings and detailed analysis. A**

significant element of these costs relate to the cost of PRSI exemption. One option would be to introduce a cap on the level of employer PRSI exemption.

As outlined earlier, the Exchequer income tax and PRSI costs of the share-based schemes are very significant and Indecon estimates the costs to be of the order of €0.4bn in 2023. There has also been a significant increase in the fiscal costs in recent years, from €267.7m in 2020 to €320.8m in 2022. Indecon is, however, cognisant that the implementation of international commitments on corporation tax is still evolving and the implications for tax revenues and for Ireland's attractiveness to foreign direct investment internationally remain subject to a degree of uncertainty. The Government's PRSI Roadmap has also already signalled some increases in PRSI rates over the next few years. A recent Actuarial Review of the Social Insurance Fund found that the long-term sustainability of the Fund faces significant challenges and that in the absence of actions to tackle the shortfalls, the excess of expenditure over income of the Fund would increase significantly over the medium to long term.

There are a number of policy options which Indecon considered, including making no change at this time. This option would have the advantage of not adding further to a range of planned, policy-driven pressures on labour costs and Ireland's competitiveness. However, it would expose the Exchequer and Social Insurance Fund to potentially significant further increases in the costs of the employer PRSI exemption. Given the importance of the PRSI exemption as a support for SMEs, Indecon also considered the option of limiting the employer PRSI exemption to micro, small, and medium-sized enterprises. This option would contain the growth in employer PRSI exemption costs. However, Indecon's assessment is that it may create uncertainty as firms grow. More importantly, this could possibly damage the attractiveness of Ireland for multinational companies by restricting their ability to attract and retain talent. Another option would be to restrict the incentive to internationally traded sector of the economy. The final option considered would be to introduce a per-employer or firm cap on employer PRSI exemption. This could be applied for all new applications. Depending on the calibration of the cap, this option could significantly reduce the cost of the exemption increasing its sustainability going forward.[40] Given these considerations, Indecon believes that a cap would merit consideration given the high and escalating cost of the schemes. A per-employer cap would have the advantage of minimising possible competitiveness losses while limiting the growth in Exchequer costs and avoiding introducing uncertainty over qualifying criteria.

2. **Initiatives to simplify the administrative burden surrounding reporting of share-based remuneration schemes should be continued with a view to reducing administrative costs and increasing attractiveness for SMEs. Streamlining reporting could have benefits for both firms and the Revenue. Some additional information is, however, needed to assist future evidence-based evaluation of these schemes and the collection of the necessary data needs to be managed efficiently. As part of this, consideration should be given to moving the approval of APSSs by Revenue to a pre-notification system, but any such change should be signalled well in advance so as to avoid creating uncertainty.**

The study highlighted the presence of administrative costs mainly relating to:

- Reporting requirements;

[40] Based on the 2023 data presented in Figure 2.1 and Table 2.2, the average saving for a large-firm arising from the PAYE-reported portion of employer PRSI is €862,000. Were an employer PRSI cap set at this level, we estimate that the saving to the Social Insurance Fund would amount to €99m based on the cost of the exemption for PAYE reported schemes in 2023. This is a static calculation that does not take account of possible behavioural responses by employers.

— Uncertainty arising from insufficient guidance available; and

— Valuation of unlisted shares.

Reporting requirements should continue to be streamlined and modernised to reduce the costs to firms of operating SBR schemes. Remaining paper forms should be made available in online form. The use of online forms should be reviewed and Indecon believes there is scope for streamlining the process of updating information online. There is merit in considering developing a unique online portal where firms can insert all their SBR data in one place and update information, when required, by logging in the portal and filling in the fields corresponding to the additional information required. Some additional information is, however, needed from companies to assist future evidence-based policy. This includes data to facilitate the evaluation of impact in terms of employment and output/exports.

It is also important to consider options to reduce the administrative burden on Revenue in the approval and supervision of SBR schemes. The current arrangement whereby individual APSSs must secure prior approval from Revenue involves a significant resource commitment by Revenue and the option of moving to a pre-notification system should be considered. However, any such change should be signalled well in advance to avoid creating uncertainty for firms and trustees.

An important aspect emerging from this study is that there is scope to improve the guidance available to support the implementation of schemes. On the issue of valuation of unlisted shares, implementation costs should be reduced by reducing the uncertainty around share valuations and minimising the costs associated with valuation requirements. However, improved guidance may not be enough to eliminate uncertainties. There is evidence of SMEs not availing of KEEP owing to the need for costly professional valuation although the issue of valuation of unlisted shares applies to other schemes as well. Valuation of option prices may also be a source of uncertainty for schemes offering unlisted options on listed shares. While many countries do not provide safe harbour principles, international best practice supports the provision of an appropriate level of guidance, either in the form of guidelines or through some engagement with companies, on the valuation of unlisted shares.

Policy options around valuation which have been adopted in some other countries include the following.

a. Adoption of safe harbour arrangements or principles. Under this option, the Department /Revenue would determine a set of qualifying valuation methods including provisions such as those available in the US or Australia. This might involve a small amount of resources from Revenue to perform high-level checks (potentially on a sample basis) of the data inputs, such as the future cash flow assumptions in a discounted cash flow method. This option would require consultation with stakeholders including valuation experts to devise the acceptable valuation methods and design a set of indicators that could be used by the Revenue Commissioner to perform high-level checks on the data.

b. Provision of valuation checks by Revenue Commissioners or setup of a process to arrive at agreement on share valuation, such as the system in place in the UK. This would require more resources compared to Option A, as Revenue would have to perform detailed checks at firms' request if the HMRC approach was adopted.

c. Introduction of valuation tools for unlisted options of listed shares. This option could be introduced in conjunction with either of Options A or B. It involves introducing an online valuation tool to calculate the price of an option on listed shares. As unapproved share

options are a very significant component of SBR, such a tool could potentially reduce the uncertainty faced by listed firms operating schemes underpinned by unlisted options.

3. **Measures should be taken in the short term to enhance the attractiveness of the KEEP by providing greater clarity and guidance to SMEs particularly around share valuation and by more effective promotion of the scheme. Consideration should be also given to wider amendments and a re-design of the KEEP for the post-2025 period having regard to State aid constraints and the need to obtain State aid approval.**

The KEEP is a potentially valuable tool in supporting innovative small and young firms and in contributing to the policy goals articulated by Government in the *White Paper on Enterprise* on strengthening the SME sector and strengthening the Irish-owned exporting sector. However, as take up of the scheme continues to be low, the Department should continue the dialogue with key stakeholders and consider further measures aimed at removing barriers to entry and maximising the potential benefits of the scheme. Notwithstanding the various recent changes made to the scheme following extensive consultation, take up has remained low, although the impact of these changes will only be fully discernible in scheme data for 2023 and subsequent years.[41]

There is merit in considering measures in the short run before the scheme expires at end 2025 to increase scheme uptake. Since KEEP is a notified state aid measure, the room for manoeuvre to amend it is limited. A State aid approval process would need to be completed to put in place a successor to KEEP post its sunset clause at end 2025.

Firstly, the adoption of more extensive and clearer guidance on the valuation of shares could be considered in advance of the current sunset clause of the scheme at end 2025, ideally with the introduction of safe harbour provisions as discussed above. The aim should be to give potential KEEP participants sufficient level of certainty around the valuation of unlisted shares and options. Findings from this study suggest that one reason for the unattractiveness of the KEEP for small firms is the perceived need for a professional valuation of shares to provide certainty to the tax advantages of the scheme. This issue is relevant to any share-based scheme, but the risks are potentially more serious for SMEs and particularly for the KEEP owing to the consequences that an incorrect valuation can have on the tax treatment of the whole scheme.

Secondly, there is merit in expanding the promotion/awareness campaigns on the scheme. It emerged from the stakeholder consultation programme that many entrepreneurs and start-up firms and their employees may not be aware of the benefits of the scheme. Indecon's assessment is that more effective promotion of the scheme would be beneficial and that there is a role here for the relevant enterprise development agencies including Enterprise Ireland and the Local Enterprise Offices in more actively highlighting the benefits of the scheme to their clients.

Indecon believes post 2025 there is merit in considering further amendments which would require State aid approval. These might form part of a new, re-designed or alternative scheme that could be put in place when the current scheme expires at end 2025. First, and subject to State aid considerations, there is merit in considering a simplification of the definition of a qualifying company, potentially adopting the definitions used for similar schemes in France or Germany discussed earlier. This should ensure that growing companies are not penalised. Second, an increase or removal of the link between annual emoluments and share based remuneration should be considered. The policy rationale for favouring taxation of SBR in SMEs and start-ups is that these firms cannot compete with larger firms for the attraction of talent who can offer wages that are multiples of those that SMEs/start-ups can offer. If SBR is to address this market failure, the link between the amount of SBR that can be given under KEEP and the wage/salary remuneration may need to be adjusted. There may

[41] The data used for this study was the latest data available at the time of the analysis.

also be benefits in linking the limit to annualised salary level rather than to annual emoluments and other changes to increase the attractiveness of the scheme.

4. **The taxation treatment of RSUs for internationally mobile employees should be moved to a sourcing or apportionment method aligned with the approach used internationally and with that used in respect for stock options for internationally mobile employees in Ireland.**

The analysis for this study, including our review of international practice in competitor countries and of stakeholders' views, provides support for the COTW recommendations regarding the rules governing the cross-border taxation of employees in receipt of RSUs. These should be aligned with international practice and with the tax treatment of stock options in Ireland. The taxation of RSUs should be based on a pro-rata principle taking account of the amount of time spent working in Ireland during the vesting period.

5. **The BIK rate on loans offered to employees for the purpose of funding costs associated with the purchase of shares in share-based remuneration plans should be reduced. For instance, the rate could be linked to market prevailing interest rates for non-financial corporations. The BIK rates applied in Ireland are significantly higher than in the UK. The rationale for this change is to improve take-up particularly among SMEs.**

Indecon's assessment is that the high BIK rate applicable to loans related to SBR schemes may be restricting the use of such schemes and it should be reduced. Currently, the BIK rate is 13.5% and is set with reference to market-prevailing overdraft rates for households. For comparison, BIK rates in Spain and the UK are at 3.25% and 2.25%, respectively. Other countries provide for tax deferrals in cases where liquidity issues create frictions which might otherwise limit the use of schemes. There is merit in considering linking the BIK rate to the prevailing market interest rates that enterprises face. For instance, this could be linked to overdraft rates applied to non-financial corporations, as opposed to household overdraft rates. Indecon, however, accepts that changes to BIK is complex.

6. **There is merit in considering reforming the taxation of employee ownership trusts (EOTs) in line with the treatment of such arrangements in the UK.**

As outlined in our review of practice in other competitor countries in Chapter 4, the UK taxation system wider has facilitated the adoption there of the EOT model. Other countries are also developing similar approaches. Facilitating employee ownership as an ownership succession option could contribute to enterprise policy goals of strengthening the indigenous sector and building a strong cohort of Irish-owned firms as the alternative is often the sale of the company to a foreign-owned multinational firm. This would require some potentially significant changes to legislation and to Revenue guidance. This could be achieved by reforming the ESOT scheme or by introducing a new scheme. Additional changes in legislation may be required in the areas of inheritance tax and discretionary trust tax. Revenue Guidance on the application of anti-avoidance provisions should be updated to remove obstacles to the setup of EOTs and guidance on tax rules on financing EOTs should be published.

6.7 Conclusions

Indecon's analysis suggests that SBR schemes are an important part of enterprise policy. Indecon believes that from a competitiveness perspective, there is a case for enhancing the attractiveness of aspects of the existing schemes while also taking measures to contain the growth in the high level of

exchequer costs. There is also a need to put in place mechanisms to obtain more information on the impact of the schemes to enhance evidence-based policy development in this area.

Annex 1 Stakeholder Workshop Feedback

As mentioned in Chapter 3, a workshop was held with those firms and organisations who made a submission to the public consultation run by the Department of Finance to further explore their views on certain issues. Participants were presented with a list of issues for further discussion based on these submissions. The main points raised in response to each of these issues are summarised here.

The cost of employer PRSI and income tax reliefs for SBR is very significant and rising. Are the costs of administering SBR to firms and the productivity and other benefits sufficient to justify this fiscal cost? Views on COTW recommendation to better target relief?

The PRSI exemption was felt, by some participants, to be essential to supporting the operation of SBR schemes, particularly for smaller employers. It was further raised in this discussion topic that under APSS, there is, in effect, a cap on the PRSI exemption because of the annual limit of tax-relieved shares that can be granted per employee.

It was also raised by attendees that Ireland is an increasingly costly place to do business, particularly on the foot of changes taking place with respect to corporation tax. The participants felt that it was important that Ireland continues to be an attractive place to do business and in particular, how Ireland is perceived internationally in terms of its taxation rules. Multiple attendees indicated that Ireland's income tax offering is not as attractive as many other countries, and so SBR is an opportunity to signal something to the international community.

Would you have any concerns with moving to a system of self-certification for approved schemes such as the APSS?

Respondents indicated that self-certification would work in specific instances, e.g. modifying scheme rules where the legislation and guidance is clear and easy to follow. However, for schemes like APSS, without Revenue seeing them in advance and approving them, companies could run the risk of tax leakage and tax non-compliance further down the line and one respondent noted that self-certification would not work for aspects such as investment entitlement. If the scheme was relaxed and simplified (e.g. taking away the "similar terms" requirement), it was suggested then that self-certification could be used. The current notification system gives companies certainty. A very common theme across some of the other topics was the issue of certainty of tax compliance for companies.

If self-certification were to become the norm, an important point was raised that the Revenue share schemes mailbox should be maintained for all share scheme related questions.

Given extent of changes to KEEP over recent years, would further changes at this stage be advisable or feasible? But perhaps problems with valuation of unlisted shares could be addressed through adopting approaches used in other countries?

The participants were conscious that there are state aid constraints that apply to the KEEP. These were not viewed as insurmountable, and it was suggested that some administrative changes would not require re-approval as a state aid if the underlying legislation was not changed. For example, some participants suggested that improving guidance on valuation methodologies and introducing public awareness campaigns would help in this case.

Overall, in terms of the points raised around future changes to the KEEP or a future scheme like it mirrored those points outlined in Section 4.2. A number of participants raised issues around valuation

methodology which it was felt creates too much uncertainty for companies. It was stated that the majority of founders and many SMEs do not use KEEP because of the uncertainty and the burden of valuation. It was felt that, ideally, the valuation methodology would either mirror the US 409a system or allow for last-round valuation to be used (as is industry norm).

Furthermore, it was raised that the eligibility criteria, particularly with regard to holding structures, are too restrictive for start-ups, scale-ups and SMEs. Implementing different organisational structures, e.g., using TopCo structure, is very common across the lifecycle of a new company.

The link between the value of equity and annual emolument was also viewed by attendees as problematic given that the purpose of the scheme is to allow smaller companies compete with larger entities who can offer higher salary levels.

It was felt by participants that the determination of eligibility by company age which is the case in France (15 years) and Germany (20 years) should be considered.

The lack of permanence of the scheme in itself creates uncertainty. Respondents generally were of the view that further change is needed and should be embraced, as most other EU countries are in the business of improving or changing their equivalent schemes.

Taxation of RSUs: would any major problems arise from move to sourcing method?

There were no comments raised on this issue by participants.

Reporting requirements: are there quick wins in terms of simplifying requirements and easing both firm and Revenue burdens?

It was raised by participants that employees are more internationally mobile in a post-COVID environments and that employers have to be able to compete on employment contracts to attract and retain talent in this environment. Reporting requirements in these cases must be simplified. The monthly PAYE reporting requirements for cross-border workers was onerous and it was suggested that this could move to a quarterly system. Real-time foreign tax credits should be provided for stock options to provide faster PAYE relief. In many cases, where an employee has left the company, there is still an obligation to continue to collect data on them which is onerous for many companies.

The second point raised by the respondents was in relation to Revenue online reporting systems and that the underpinning ROS software needed to be upgraded. It was acknowledged that this would be a challenging and expensive process for Revenue but the benefits for companies would be significant as it would facilitate the simplification of reporting processes for companies.

It was highlighted by attendees, in particular, that there can be up to 5 forms for firms to complete and that a single portal that would allow firms to ignore non-relevant parts was the way to go. In addition, the form doesn't cater to multinational firms in layout because the amount of data to be inputted creates problems when uploading some forms.

Other issues

One attendee highlighted that the various contractual and legal restrictions on pillar bank remuneration in Ireland in effect put a cap on variable pay and has meant that the banks cannot introduce performance based SBR. This creates an un-level playing field.

Other participants highlighted that the lack of an SAYE savings carrier is a huge barrier. It was noted that SAYE is a good scheme, but that it can't be used any more – including by multinational firms who implement SAYE in the UK but can't implement the same scheme in Ireland. Attendees highlighted with respect to this issue that there is a difference in regulation (or possibly in its interpretation) meaning that Irish banks have to create individual bank accounts for each employee for the scheme instead of one account for the administrator, as in the UK. This should be reconsidered, e.g., changing the SAYE legislation so that a trust account can be set up for the scheme, or having the Central Banks reassure banks that an administrator account is sufficient for regulatory purposes.

As a closing point, some attendees thought that it should be borne in mind that SBR is not just for higher-earning employees. They raised the point that the benefits are quite broad-based and include ensuring that all levels of workers have skin in the game including in important sectors such as manufacturing.