

Key Employee Engagement Programme

Summary of KPMG Submission



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KPMG responded to the Department of Finance public consultation on Ireland's Key Employee Engagement Programme (KEEP)

KEEP is a share based tax incentive that is intended to support Small and Medium Sized Enterprises (SME's) in attracting and retaining key employees through deferring the point of taxation of qualifying share option awards to the date of the ultimate disposal of the shares. In addition, gains on the disposal of KEEP shares are subject to Capital Gains Tax (CGT) at a rate of 33% instead of being subject to income tax and Pay Related Social Insurance (PRSI) at combined rates of up to 52%.

Take up of KEEP has been disappointing. The consultation asks for feedback on what aspects of the current design of KEEP work effectively, and which do not. Our feedback to the consultation questions draws on insights from soundings taken from working with SMEs across business sectors and across stages in the business life cycle - from early stage ideation and commercialisation to mature businesses seeking to expand into new markets.

KPMG's response highlights the main barrier to the effectiveness of KEEP as a tool for SMEs to attract and retain key employees is that the qualifying conditions for the relief do not reflect the commercial structures through which SMEs operate in Ireland. If KEEP is to work effectively, the conditions attaching to the relief must accommodate corporate group structures and key employees who spend their time working for different group members as business needs dictate.

KPMG's main suggestion to improve the relief are that:

- The definition of qualifying holding company must be broadened so that it can accommodate holding companies which have a range of relationships with their subsidiary companies and which may hold less than 100% of the shares in a subsidiary.
- The definition of a qualifying individual is broadened so that employees can satisfy KEEP working time requirements through time spent working for companies across the SME group.
- Other tax measures that interact with KEEP are changed to ensure that liquidity can be provided for the eventual disposal of shares by key employees. These include permitting SMEs to preserve CGT treatment for buy back of KEEP shares from employees on a phased basis (as resources or events such as employee departures require) as well as supporting efforts to provide a market in its shares by the SME purchasing shares and delivering existing shares to employee to satisfy KEEP option awards.



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About KPMG Private Enterprise

Passion, it's what drives entrepreneurs, family businesses and fast-growing companies alike. It's also what inspires KPMG Private Enterprise to help drive your success. Building and growing a business isn't easy, it takes hard work, dedication and sound service. Every step you take has an impact on your business model and with KPMG Private Enterprise we will be there for you for each and every one of them.

Our proven advisory services will drive your business forward. We'll set you up with the right team, advice and processes to save you time and money. We will apply our wealth of knowledge, experience and energy to take your business to the next level – helping you to make the right decisions along the way. At KPMG Private Enterprise you get the best of our global resources with a local touch and a local point of contact to help your company excel at every step of your business journey.

Your success is our legacy.

If you believe the issues raised in this consultation may affect your business, or you would like to discuss KPMG's KEEP submission in more detail, please contact your KPMG team or the KPMG contacts listed here.

Detailed recommendations: Amendments to KEEP

Our recommendations address both suggested tax policy changes and technical changes to KEEP

In addition to suggested changes to KEEP, we have recommended technical changes to other tax measures so as to improve outcomes from the interaction of these provisions with KEEP.

A summary of our recommendations is set out in the table below.



To improve the availability of KEEP for SMEs which operate under group corporate structures, we suggest:

- that the definition of holding company is amended to adopt the definition used for Entrepreneur Relief which captures a broader range of relationships between a holding company and its 51% trading subsidiaries.
- adopting the Entrepreneur Relief group-wide approach to the working time requirements of KEEP employees by allowing the individual to satisfy the minimum working time requirements through time spent working for more than one group company.
- qualifying individuals can continue to qualify for KEEP where there is a group reorganisation event.



Narrow the scope of 'excluded activities' which is very broadly cast in order to align with the broader policy intent of promoting Ireland as a location for higher value services.

It would be useful to expressly provide that services such as FinTech, InsureTech, and more generally higher value services which draw upon the skills of employees with professional qualifications do not fall within the scope of 'excluded activities'.



In order to support SMEs in providing liquidity in unlisted KEEP shares, we suggest:

- making provision for the phased buy back of KEEP shares to reflect the practical needs of qualifying individuals and companies, i.e. so that there is a market for the shares when individuals wish to dispose of them and the company can ensure an orderly realisation of shares when resources permit or upon events such as an employee departure.
- providing that arrangements with employees to purchase their shares remain eligible for CGT treatment on disposal by the employee.
- removing the requirement for the shares issued at the time of exercise of KEEP options to be newly issued shares so that the SME can deliver shares that have been set aside by the company for the KEEP share scheme or that have been purchased from a previous employee.



Allow companies to meet market practice in delivering key employee share awards by removing the absolute value limits on KEEP awards in proportion to cash pay.



Provide legislative certainty that adoption of a safe harbour approach to valuing KEEP shares meets the market value requirements.



Looking at the wider tax environment for SMEs shares, we suggest allowing the period of ownership of KEEP share options to qualify for the period of ownership for Entrepreneur Relief which provides for a 10% rate of CGT on certain share gains.



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