



HM Treasury

# Supporting the employee-ownership sector

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July 2013





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# Contents

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		Page
Chapter 1	Introduction	3
Chapter 2	Qualifying conditions: defining an indirectly employee owned company	7
Chapter 3	Capital Gains tax relief	11
Chapter 4	Income tax and National Insurance exemptions	15
Chapter 5	Summary of consultation questions	19
Chapter 6	The consultation process	21
Annex A	The Code of Practice on Consultation	23



# 1

## Introduction

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**1.1** The Government is committed to supporting employee ownership and encouraging its use more widely in UK business. As announced at Budget 2013, the Government will provide £50 million annually from 2014-15 to support employee ownership models in order to incentivise growth of the sector.

**1.2** The independent Nuttall Review of Employee Ownership in 2012 concluded that companies with employee ownership produce a number of economic benefits. These benefits include resilience during the economic downturn, faster job creation, and higher levels of commitment amongst staff. The review found that the nature of employee ownership means that employees themselves have a meaningful stake in the success of the business and are more dedicated to the business, which can help companies to be more successful than they would otherwise be. Along with these benefits, the Government welcomes the greater diversity of business models which employee ownership structures bring to the UK economy.

**1.3** There are generally three different forms that employee ownership can take:

- direct ownership, where the employees hold shares in their employer company;
- indirect ownership, where the shares are held collectively on behalf of the employees. An employee benefit trust is often used to facilitate this; or
- some companies combine direct and indirect employee ownership.

## Background

**1.4** Nuttall found that businesses which might be well suited either to setting up in an employee ownership structure, or converting to an employee ownership model from a more traditional structure, face a number of issues. These include a lack of awareness of the model (both on the part of professional advisers and finance providers), and both real and perceived regulatory complexities. Following the Nuttall review, the Department for Business, Innovation and Skills (BIS) has been leading work to address these issues, raising awareness and accessibility of employee ownership as a business structure.

**1.5** The Government believes there is a case for going further than this, and announced at Budget 2013 that it will provide funding for proposals to encourage and support the creation and growth of companies with employee ownership. The proposals will benefit both employees and employers in the sector, with the aim that the UK economy as a whole will profit from increased growth and business success.

**1.6** This consultation is concerned with indirect ownership forms. This sector, for the most part, does not benefit from existing tax advantaged share plans. These existing schemes encourage employees to directly acquire shares in their employer company individually, rather than enabling shares to be held collectively on behalf of employees. Following the findings of the Nuttall review and in order to support this sector, the Government has decided to introduce two tax reliefs to encourage, promote and support indirect employee ownership structures.

**1.7** This document sets out proposals for the two tax reliefs that the Government plans to introduce. The first is a capital gains tax (CGT) relief on the sale of a controlling interest in a business into an indirect employee ownership structure. Such a relief could provide an incentive for owners to sell some or all of their shares to an employee benefit trust. It could also allow the purchaser in those circumstances – the trustees – to secure the proprietor’s shareholding for a lower consideration than a third party would need to give in order for the proprietor to receive the same net proceeds. This relief will facilitate the creation of new indirect employee ownership structures, given that the Nuttall review identified that succession is one of the key points in the business lifecycle most relevant for transformation into an employee ownership structure.

**1.8** The second is an income tax and National Insurance Contribution (NIC) exemption for employees of companies where a significant proportion of the company is owned by a trust whose purpose is to benefit its employees. There will be a complementary employer NICs exemption for the company itself. The Government believes that these exemptions will go some way towards supporting existing and newly-created indirect employee ownership structures in the same way that tax advantaged employee share plans already encourage direct employee share ownership.

**1.9** Together, these tax reliefs will promote awareness of the sector and increase the attractiveness of indirect employee ownership structures for businesses which might be considering converting.

**1.10** The Government is aware that employee benefit trusts can sometimes be used by companies or individuals as a means to avoid or defer tax. It has taken a number of steps in recent years to close loopholes and protect the Exchequer against avoidance using employee benefit trusts, most notably through the disguised remuneration legislation in Finance Act 2011. Whilst the use of an employee benefit trust in its own right does not constitute avoidance, it is important that any new relief that could promote greater use of employee benefit trusts is accompanied with appropriate safeguards.

**1.11** Subject to the outcome of this consultation, the Government intends to publish draft legislation later in 2013 for inclusion in Finance Bill 2014. The legislation needed for the NICs exemptions will be made in 2014 by regulations under the Social Security Contributions and Benefits Act 1992.

## **Scope of the consultation**

**1.12** As the Nuttall review found, there are a number of barriers to companies wishing to set up, or convert to, an employee owned structure. Many of these barriers, such as the low visibility of the sector in comparison to alternatives and the absence of an employee owned company model, also pose problems when considering how best to support the sector. Prior to introducing the new reliefs, the Government is keen to gather information from the sector.

**1.13** In particular the consultation aims to:

- learn more about the nature and number of existing employee owned companies within an indirect ownership structure;
- learn about the likely extent of use of the proposed reliefs;
- set out the Government’s proposals for the qualifying conditions for the proposed CGT relief;
- set out the Government’s proposals for the structure of the income tax and NICs exemptions and who should benefit from them; and



- request views on how the income tax and NICs exemptions can be implemented with minimal complexity for employers.

**1.14** The Government is keen to hear views from people both inside and outside the employee owned sector to ensure that these reliefs support the sector as effectively as possible.



# 2

## Qualifying conditions: defining an indirectly employee owned company

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**2.1** This chapter explores the different criteria that could be used to define qualifying companies for the purposes of both the income tax and NICs exemptions and for the CGT relief. The criteria that could be considered includes voting rights, number of employees/shareholders, the percentage of shares held by a trust and whether employees have direct or indirect control over voting rights. These are discussed in turn below. The chapter poses a number of questions about both existing businesses in the sector and the ideal form of a qualifying employee owned company. The Government welcomes views on the questions set out in this chapter.

### What is an indirectly employee owned company for the purposes of this consultation?

**2.2** The Government is clear that it wishes to support those companies where a significant proportion of the company is owned by an employee benefit trust whose purpose is to benefit all of the company's employees. A suitable definition of an indirectly employee owned company will need to be constructed in order to set the qualifying conditions in legislation. It will be important to define these companies very carefully in order to minimise the risk of the relief being abused, and to ensure that companies which the Government is keen to support are not unnecessarily disqualified from the relief.

**2.3** However, there is currently no single definition of an indirectly employee owned company, and it is likely that a number of different structures exist within the sector. BIS are publishing model documentation for businesses wishing to move to employee ownership, but this is designed to be attractive to a wide range of businesses and therefore does not seek to impose a tight definition. This means that the template will not be sufficiently defined for the purposes of legislating for these reliefs. For the purposes of the tax legislation, it will be necessary to define in precise terms what type of structure will qualify as being employee owned, so that the tax advantages are targeted at the intended beneficiaries.

### Building the evidence base

**2.4** The Government wishes to use this consultation to gather information about the current size and nature of the sector. The questions below are intended to help us to learn more about this sector and thus enable the Government to legislate effectively for these reliefs.

#### Questions 1 to 7: Learning about the sector

- 1 If you have an interest in an indirectly employee owned business or company, what is its structure? How long has the business existed in its current structure? Was it created in an employee owned structure or converted at a later stage?
- 2 If owned by a trust, how does the trust own the company? Is the company owned directly through its shares? Are these shares equivalent to ordinary shares? What proportion of the company is owed by an employee benefit trust (or other

ownership vehicle)? Who does the trust benefit – is it all employees or just some? Is it used to reward all, or some employees?

- 3 Do you agree that the nature of an employee owned business or company helps the business to be successful? Can you explain why you think that is the case?
- 4 How large is the business in terms of number of UK based employees?
- 5 If you do not have an interest in an employee owned business, would you consider acquiring such an interest, or converting to an employee owned structure, in the future? Why/why not? What would encourage you to do so?
- 6 Are you a professional adviser? If so, do you see many indirectly employee owned companies? Do you think this number is likely to increase? What more could be done to increase the number? Will these reliefs help?
- 7 Did the Budget announcement raise awareness of the employee owned sector?

## Qualifying criteria

### Voting rights

**2.5** It is possible that defining qualifying companies simply by reference to the extent of their ownership by an employee benefit trust will not sufficiently fulfil the objectives of this relief, i.e. to support genuine employee interest in and engagement with this business model. For example, legislation will need to ensure that companies do not simply create a new class of shares with reduced voting rights and transfer a certain number of these shares into a trust, thus qualifying for the relief without committing itself to the principles behind employee ownership. The qualifying criteria are therefore likely to include requirements as to the voting rights carried by shares held by the trust: in an indirectly employee owned company the employee benefit trust will need to hold shares which give the trustees not less than a specified minimum percentage of the voting rights currently in the company.

**2.6** The Government is also considering a requirement that by virtue of the trust's holding, the trustee should be entitled to not less than a specified fraction of the assets available for distribution in liquidation or winding-up.

### Question 8:

Do you agree that the qualifying criteria should be expressed by reference to the proportion of shares with voting rights held by an employee benefit trust? Do you agree that the criteria should also look at the trust's entitlement to assets on liquidation or winding up?

### Beneficiaries of the trust

**2.7** The legislation will require that a qualifying structure takes the form of an employee benefit trust which operates for the benefit of all employees and which holds a majority of the company shares. The only exception to the requirement that the trust operates for the benefit of all employees will be if the trust decides to exclude employees who have been employed for less than six months, or if the trust has a provision for employees to opt out of the trust if they wish to do so. It would be possible for the company to have more than one employee benefit trust, but for these purposes, a majority shareholding will be calculated only with reference to shares held in an employee benefit trust which operates for the benefit of all employees.

**2.8** Given the potential for abuse and to ensure the relief is targeted appropriately, the Government is considering whether employee benefit trusts which operate in relation to

businesses with only a small number of employees (possibly five or fewer), or where all the employees are officers or founders of the company, should be excluded from the scope of these reliefs.

### Question 9:

Can respondents suggest criteria by which to exclude companies which are already controlled by employees by reason of their shareholding in the company?

**2.9** The Government has considered the suggestion that qualification for any relief should be contingent upon the employee voice being represented in some way beyond financial management. Studies suggest that productivity gains related to a business being employee owned occur when employees are effectively engaged in the business. There are a number of ways in which this could be done, such as stipulating that the existence of an 'employee council', for example, is a qualifying criterion. There is certainly merit to these suggestions. However, the Government believes that, at this time, such a requirement would introduce a great amount of complexity into the tax legislation for what could potentially produce only a disproportionately small benefit. Indirect financial ownership via a trust should give sufficient weight to the employee voice for the purposes of this measure.

## What is the appropriate level of ownership by the employee benefit trust?

**2.10** It will be necessary to set out in the legislation a level of indirect employee ownership which enables a company to qualify for the tax reliefs. An outline of the various different levels of employee ownership and their relevance for these tax reliefs is set out below.

**25 per cent** Any shareholding in excess of 25 per cent is a substantial stake in terms of company law, but the Nuttall review found that the benefits of employee ownership can be achieved at lower levels than this. Nevertheless, the Government would question whether companies with this low a proportion of employee ownership experience the benefits to the same extent as companies of which a larger proportion is employee owned.

Additionally, in order to ensure that these reliefs are affordable within the current fiscal constraints, there is an upper cost ceiling. The more companies which qualify for the reliefs, the less generous the final reliefs can be. A less generous relief would not incentivise growth of the sector as effectively as a more generous one.

For these reasons, the Government is not attracted to allowing companies with this level of employee ownership to qualify for the tax reliefs.

**51 per cent** The Government favours requiring that the trust holds more than half the ordinary shares in the employer company and has voting powers which would yield a majority on questions affecting that company as a whole. For convenience this is referred to as a 51 per cent holding, but the actual interest need only be just over 50 per cent.

These conditions will match the existing conditions for 'employee trusts' at section 28 Inheritance Tax Act 1984: as such, they will be familiar to advisers and planners. A 51 per cent holding would give employees genuine influence over the activities of the company.

- 70 per cent** Setting the qualifying criteria at this high level would automatically disqualify a number of companies but would mean that those who did qualify for the exemptions were substantially owned by their employees.
- 75 per cent** This would be consistent with the definition of a group of companies for CGT purposes, for which purposes a company, its 75 per cent subsidiaries and their 75 per cent subsidiaries, are taken to be members of a group as long as all the subsidiaries are also effective 51 per cent subsidiaries of the parent company. However, a number of companies would be disqualified from the exemptions.
- 100 per cent** Requiring that the trust own all of the business (either directly or by holding all of the issued share capital of the company carrying on the business) would maximise the benefits potentially available to employees but would be likely to reduce the number of businesses which qualify for reliefs and hence the number of individuals who benefit.

**Question 10:**

Do you agree that a simple majority of voting power carried by the company's issued share capital (referred to here as '51 per cent') is an appropriate level of control? If not, please explain why not.

# 3

## Capital Gains tax relief

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**3.1** This chapter sets out the basic structure of the capital gains tax (CGT) relief which was announced by the Chancellor at Budget 2013.<sup>1</sup> It deals with questions such as:

- Who can claim the relief?
- Should the relief be available only to sole proprietors?
- Whether the relief should be available on disposals of assets other than shares.
- The definition of the 'controlling interest' that the EBT must acquire.

**3.2** CGT is charged on gains which accrue when chargeable assets are disposed of by an individual. A sale or a gift of shares is normally treated as a disposal and a taxable gain or loss will accrue accordingly, so a shareholder who sells shares – for instance to an EBT – may be liable to CGT on his or her gains. The principal rates of CGT are 18 per cent and 28 per cent, but in many cases relevant to this consultation the effect of entrepreneurs' relief<sup>2</sup> will be to reduce the rate of tax on a disposal of shares to 10 per cent. The Government proposes that, subject to certain conditions, gains on disposal of a controlling interest to an indirect employee-ownership structure should be wholly exempt from CGT. It will not be necessary for the business to be indirectly employee owned before the disposal, but the disposal will need to be sufficient to transform the business into a qualifying structure.

**3.3** This CGT relief will provide an incentive for the creation of new indirect employee ownership structures. The income tax and NICs exemptions will be available to employees within those structures and the Government intends that the same conditions for the income tax and NICs exemptions will also apply to the CGT relief.

**3.4** The Government proposes that the exemptions be available to individuals and to personal representatives of deceased individuals.

### Question 11:

Is there a case for allowing the relief to other types of person liable to CGT, such as trustees?

In what circumstances would those persons wish to dispose of a qualifying interest in a company to an employee benefit trust?

**3.5** The Government's current view is that applying the CGT relief for gradual disposals or part disposals over time could quickly become complex and difficult to monitor. Therefore the Government believes that the appropriate balance to strike between offering a relief that could apply to organisations in different circumstances, while protecting against potential avoidance

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<sup>1</sup> The Budget announced that the Government would provide £50 million annually from 2014-15 to respond to recommendations from the Nuttall Review to support employee ownership and that part of the money would be used to fund a capital gains tax relief on the sale of a controlling interest in a business into an employee ownership structure.

<sup>2</sup> Entrepreneurs' Relief (ER) is due, subject to conditions being met, on certain disposals of shares in a trading company, subject to a minimum shareholding, a minimum period of ownership, and providing the claimant is an officer or employee of the company. Although described as a relief, it is in fact a special 10 per cent rate of tax which applies on gains up to a specified 'lifetime limit' (currently £10 million).

risks, is to offer a CGT relief on a single disposal with some flexibilities on qualifying conditions as set out in Chapter 2.

**3.6** The Government recognises that there may be cases of multiple ownership where no one individual holds a controlling interest. There is therefore an argument for also allowing the CGT relief to two or more individuals who make disposals which, taken together, represent the sale of a controlling interest to an employee ownership structure. One possibility is to require that all claimants on that basis be connected with one another: this would allow 'family-run' businesses, for example, to convert to employee ownership. An alternative would be to allow relief to any two or more individuals acting in concert who make disposals which result in a business becoming employee owned for the first time. Broadening the relief to cater for cases of multiple ownership where no one individual has a controlling interest could mean the relief is available to more businesses/companies seeking to convert to employee ownership. However, this would increase the potential costs of the relief and may necessitate a reduction in the amount of income tax and NICs exemptions allowed to employees and employers.

**Question 12:**

By how much would take-up of the CGT relief be increased if it were available to more than one transferor on the bases described?

**3.7** This consultation document has focussed on disposals of shares which confer control of a company. An individual proprietor, or members of a partnership, may wish to transfer their business to a trust for the benefit of its employees: in such cases the assets transferred will not be shares. This may be an alternative means of achieving employee ownership of a business and the Government is considering allowing the CGT relief to transferors of businesses as well as to transferors of shares. It may also be the case that a trust might acquire a business asset rather than shares in the company. However, it will be necessary to consider the total cost of the relief when deciding the types of transfer on which it is available.

**Question 13:**

Should the CGT relief be available on disposals of unincorporated businesses, as well as disposals of ordinary share capital in a company? How would extending the relief in this way increase the likely number of qualifying disposals?

**3.8** Relief will be available on disposals of 'controlling interests' in the business which will thereby become employee owned. Where the business is carried on by a company, the Government considers that for these purposes 'controlling interest' should mean shares which together give the holder the power to exercise more than one half of the voting power in the company. However, there are alternative, or supplementary, definitions which might be adopted. For instance, the requisite total voting power might instead be 25 per cent or the interest might have to entitle the holder to more than a specified fraction of the company's net worth in the event of liquidation or winding-up.

**Question 14:**

Would any other definition of 'controlling interest' be preferable in connection with the CGT relief?

**Question 15:**

What do you see as the risks and advantages of the simple '51 per cent' definition and any possible alternative definitions?

How would the number of claimants vary with the possible definitions?



**3.9** Where a business is unincorporated, the definition of a controlling interest is more problematic. If CGT relief is allowed on disposals of businesses as well as on disposals of shares the Government intends to require that a specified minimum interest in the business should be transferred to the trust.

**Question 16:**

If the Government decides to extend the CGT relief to disposals of unincorporated businesses, how should a controlling interest in such businesses be defined so as to guarantee that an appropriate stake in the business is acquired by the trust?

**Question 17:**

The Government is aware that employee ownership has many forms and can include a mix of indirect and direct ownership. An employee benefit trust might hold the economic value in a company whilst all its employees own voting shares (with negligible economic rights), or over a period of time a company might switch from wholly indirect ownership to introduce significant levels of direct ownership. Should the evolution of the form of employee ownership have any impact on the granting of relief on the initial disposal of a controlling interest to the trustees of an employee benefit trust?

**3.10** The Government wants the reliefs to be fair, and wishes to minimise the potential for abuse. Although the individual who benefits from the CGT relief is likely to have disposed of a controlling interest in the business in question, it may be possible for them to retain a substantial interest after the disposal, as it may be commercially desirable for them to remain active within the business.

**3.11** The Government recognises the possibility of abuse if the transferor is able to acquire shares in a company or other assets from the trust. At its simplest, this could allow 'rebased' of gains latent in the interest originally sold to the trust so that those gains are not taxed but are reflected in the base cost of new assets. This would be contrary to the aims of the policy and the Government will consider what provisions are necessary to address this risk.

**3.12** The CGT relief will be claimed by the individual making the disposal of the controlling interest on his or her self-assessment tax return under the normal rules.



# 4

## Income tax and National Insurance exemptions

**4.1** This chapter sets out the basic structure of the proposed income tax and NICs exemptions which the Government plans to introduce to support the indirect employee ownership sector. It also outlines the qualifying conditions for the income tax and NICs exemptions to apply and sets out how the exemptions will work in practice.

### Basic structure of the income tax and NICs exemptions

**4.2** The Government's intention is to provide an exemption from income tax and NICs on a certain amount of a bonus or equivalent payment made by an entity within an indirectly employee owned structure to employees of a company within that structure. These exemptions will be available to any company that meets the qualifying conditions, not just to those where a previous owner was able to claim the capital gains tax relief for a qualifying disposal of a controlling interest. These exemptions will enable companies to distribute profits in a tax advantaged way and in turn support the longer-term interest of employees in the company. The new exemptions for indirectly employee owned companies will be capped at a fixed amount per year which can be paid free of liability to income tax and both employer and employee NICs.

**4.3** These are straightforward exemptions which are designed so that both employers and employees in the sector benefit. The benefit to employees is evident – less of their income will be liable to income tax and NICs. Employers will also benefit, as the exemption also applies to employer NICs, and they will be able to deliver a higher post-tax salary to their employees at no extra cost to the company. No decision has yet been taken on the value of the exemptions, but they will need to be set at a level that is affordable within the £50 million per annum that the Government has set aside.

**4.4** The exemptions will apply only to cash payments, and not to other transfers of value, such as shares. This measure is intended to encourage indirect models of employee ownership rather than direct ownership. Measures such as tax advantaged employee share plans, which exist to encourage employee share ownership, are already generously treated by the tax system.

### Illustrative example of how the exemptions will work

**4.5** An employee benefit trust pays an annual bonus of £200 to an employee. If the upper limit of the exemption was fixed at £500, the treatment for an employee liable at the basic rate would be as follows:

Bonus payment	Exempt amount (annually)	Income tax saved on bonus at 20%	Employee NICs saved on full bonus at 12%	Employer NICs saved on full bonus at 13.8%	Full savings
£200	£500	£40	£24	£27	£91

However, if an employee benefit trust pays a bonus of £4,000 to an employee and the upper limit of the exemption was fixed at £750, the treatment for the same employee would be as follows:

Bonus payment	Exempt amount (annually)	Income tax saved on bonus at 20%	Employee NICs saved on full bonus at 12%	Employer NICs saved on full bonus at 13.8%	Full savings
£4,000	£750	£150	£90	£103	£343

## Qualifying conditions for the income tax and NICs exemption: eligible payments and payees

**4.6** This section sets out the Government’s views on what qualifying payments should represent, and which employees will qualify for the exemptions. It asks for respondents’ opinions on these proposals, along with a number of other questions on which the Government would welcome views.

**4.7** The Government is considering restricting the new exemptions to profit-related bonus payments, as they most closely represent a distribution of the profits of the business, but is keen to ensure this does not lead to greater complexity for businesses in understanding or operation. The Government would therefore welcome views on how it should define the target payments. Separate provisions will be included to prevent abuse of the relief.

### Question 18:

How should the type of payments that qualify for the new exemptions be defined?

**4.8** Additionally, the Government is considering whether to legislate to specify which entity should make the payment which is intended to qualify for exemptions; it could be either the employer company or the employee benefit trust. The Government is aware that tax complexities may arise if payments are made directly to employees by the employee benefit trust, but is minded to allow that the tax exemptions apply in these circumstances if the company decides that option is best for them.

### Question 19:

The Government expects that, in most cases, payments will be made directly to the employee from the employer company but it is aware that employers may seek to make different arrangements. The Government is considering whether the exemptions should apply where the payments are made by the employee benefit trust although it recognises this may involve more complex legislation. If the exemptions were limited to payments made by an employer company would this provide sufficient flexibility? How could the exemptions be effectively extended to payments made by trusts?

**4.9** The Government does not intend that the exemptions should depend on every employee receiving the same value of bonus payments. It will, however, stipulate that the trust through which the company is owned or partly owned must operate for the actual benefit of all employees. The Government is looking to encourage employee benefit trusts that genuinely benefit all employees and will be considering how the legislation in this area can ensure that a business only qualifies for these exemptions if this is the case in practice.

**4.10** The exemptions will be designed as an amount per employee, per year, which will qualify for an exemption from income tax and NICs. The proposed structure of the exemptions will mean that they are available to all employees, including directors who are also employees. This

amount will be available for payment in stages – for example, if the limit for the annual exemption is set at £500, and a £50 bonus is paid in July and another £60 in September then both can be paid free of tax and NICs. Alternatively, it could be used against a single annual bonus payment. This will allow companies flexibility in deciding how best to distribute profits. In the interests of simplicity, the Government proposes that the allowance should be applied in full even when an employee joins a qualifying company part-way through the tax year.

**4.11** Although all employees will be eligible for the exemptions, the Government does not propose to make it a mandatory requirement that all employees must benefit from a bonus payment each year. This will give a greater degree of choice than if restrictions were imposed about the level of payments that must be made and to whom. Nevertheless, anti-avoidance provisions will be introduced to ensure that the employee benefit trust does not act only for the benefit of a narrow group of employees. The fixed level of the per-employee exemptions will mean that senior individuals do not benefit disproportionately from the exemptions, but the Government is also considering how best to ensure that trusts do not, in practice, operate solely for the benefit of a small group of senior employees.

#### **Question 20:**

Do you agree that the proposed outline of the way the exemptions will operate is fair and straightforward for the employer to understand and implement?

**4.12** These exemptions will have no impact on the corporate tax position, so if the company (rather than the trustees) makes the 'bonus payment', it will still be able to claim a deduction for the cost in computing its taxable profits.

### **Operation of the exemptions**

**4.13** Once a business has established that it meets the qualifying criteria then it will be able to apply the exemptions. The Government envisages that this will work in a very simple way – there will be no requirement to deduct tax or NICs from the qualifying payments made to employees and there will be no reporting requirements for the exempt amount. The employee will not need to declare the exempt amount as taxable earnings. It will be a matter for the individual employer to decide whether the amount that is paid, but is exempt from income tax and from NICs, is shown on the payslip or not.



# 5

## Summary of consultation questions

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**5.1** This consultation will run for 12 weeks. Respondents might also be interested in the guidance and research material that the Department for Business, Innovation and Skills have made available on their website, including the Nuttall review. This can be found at: <https://www.gov.uk/government/policies/making-companies-more-accountable-to-shareholders-and-the-public/supporting-pages/making-employee-ownership-more-accessible>.

### List of consultation questions

#### Learning about the sector

- 1 If you have an interest in an indirectly employee owned business or company, what is its structure? How long has the business existed in its current structure? Was it created in an employee owned structure or converted at a later stage?
- 2 How does the trust own the company? Is the company owned directly through its shares? Are these shares equivalent to ordinary shares? What proportion of the company is owed by an employee benefit trust (or other ownership vehicle)? Who does the trust benefit – is it all employees or just some? Is it used to reward all, or some employees?
- 3 Do you agree that the nature of an employee owned business or company helps the business to be successful? Can you explain why you think that is the case?
- 4 How large is the business in terms of number of UK based employees?
- 5 If you do not have an interest in an employee owned business, would you consider acquiring such an interest, or converting to an employee owned structure, in the future? Why/why not? What would encourage you to do so?
- 6 Are you a professional adviser? If so, do you see many indirectly employee owned companies? Do you think this number is likely to increase? What more could be done to increase the number? Will these reliefs help?
- 7 Did the Budget announcement raise awareness of the employee owned sector?

#### Qualifying criteria and operation of the relief

- 8 Do you agree that the qualifying criteria should be expressed by reference to the proportion of shares with voting rights held by an employee benefit trust? Do you agree that the criteria should also look at the trust's entitlement to assets on liquidation or winding up?
- 9 Can respondents suggest criteria by which to exclude companies which are already controlled by employees by reason of their shareholding in the company?
- 10 Do you agree that a simple majority of voting power carried by the company's issued share capital (referred to here as '51 per cent') is an appropriate level of control? If not, please explain why not.

- 11 Is there a case for allowing the relief to other types of person liable to CGT, such as trustees? In what circumstances would those persons wish to dispose of a qualifying interest in a company to an employee benefit trust?
- 12 By how much would take-up of the CGT relief be increased if it were available to more than one transferor on the bases described?
- 13 Should the CGT relief be available on disposals of unincorporated businesses, as well as disposals of ordinary share capital in a company? How would extending the relief in this way increase the likely number of qualifying disposals?
- 14 Would any other definition of 'controlling interest' be preferable in connection with the CGT relief?
- 15 What do you see as the risks and advantages of the simple '51 per cent' definition and any possible alternative definitions? How would the number of claimants vary with the possible definitions?
- 16 If the Government decides to extend the CGT relief to disposals of unincorporated businesses, how should a controlling interest in such businesses be defined so as to guarantee that an appropriate stake in the business is acquired by the trust?
- 17 Should the CGT relief be available on disposals of unincorporated businesses, as well as disposals of ordinary share capital in a company? How would extending the relief in this way increase the likely number of qualifying disposals?
- 18 How should the type of payments that qualify for the new exemptions be defined?
- 19 The Government expects that, in most cases, payments will be made directly to the employee from the employer company but it is aware that employers may seek to make different arrangements. The Government is considering whether the exemptions should apply where the payments are made by the employee benefit trust although it recognises this may involve more complex legislation. If the exemptions were limited to payments made by an employer company would this provide sufficient flexibility? How could the exemptions be effectively extended to payments made by trusts?
- 20 Do you agree that the proposed outline of the way the exemptions will operate is fair and straightforward for the employer to understand and implement?

**5.2** Final policy decisions will take into account feedback from this consultation process but will also need to reflect the £50 million costs set aside for these measures.



# 6

## The consultation process

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**6.1** This consultation is being conducted in line with the Tax Consultation Framework. There are five stages to tax policy development:

- **Stage 1:** Setting out objectives and identifying options;
- **Stage 2:** Determining the best option and developing a framework for implementation including detailed policy design;
- **Stage 3:** Drafting legislation to effect the proposed change;
- **Stage 4:** Implementing and monitoring the change; and
- **Stage 5:** Reviewing and evaluating the change.

**6.2** This consultation is taking place during Stage 2 of the process. The purpose of the consultation is to seek views on the policy for introducing a capital gains tax relief and an income tax and NICs exemption for payments made to employees in the indirect employee ownership sector. These reliefs build on the commitment originally announced in Budget 2013. An impact assessment of this policy will be published with draft legislation for technical consultation in the autumn 2013.

### How to respond

**6.3** The Government welcomes comments and responses to this consultation. The key consultation questions are summarised in Chapter 5. All e-mail correspondence should be sent to [jane.page@hmtreasury.gsi.gov.uk](mailto:jane.page@hmtreasury.gsi.gov.uk) by close of business on 26 September 2013.

**6.4** This consultation document is available on the gov.uk website. Where possible, all correspondence should be sent electronically. Alternatively, mail correspondence can also be sent to the following address:

Jane Page  
Personal Tax Team  
HM Treasury  
1 Horse Guards Road  
London SW1A 2HQ

**6.5** When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

### Confidentiality disclosure

**6.6** Information provided in response to this consultation document, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

**6.7** If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential.

**6.8** If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Treasury or HM Revenue and Customs (HMRC). HM Treasury and HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

## **The Consultation Code of Practice**

**6.9** This consultation is being conducted in accordance with the Code of Practice on Consultation. A copy of the Code of Practice criteria and a contact for any comments on the consultation process can be found in Annex A.

# A

## The Code of Practice on Consultation

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**A.1** This consultation is being conducted in accordance with the Code of Practice on Consultation that sets the following criteria:

- formal consultation should take place at a stage when there is scope to influence the policy outcome;
- consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible;
- consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals;
- consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach;
- keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained;
- consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation; and
- officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

**A.2** If you feel that this consultation does not satisfy these criteria, or if you have any complaints or comments about the process, please contact:

Amy Burgess

Consultation Coordinator, Better Regulation and Policy Team  
H M Revenue & Customs  
Room 1/73, 100 Parliament Street  
London, SWA 2BQ

E-mail [hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk](mailto:hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk)



## **HM Treasury contacts**

This document can be downloaded from  
[www.gov.uk](http://www.gov.uk)

If you require this information in another  
language, format or have general enquiries  
about HM Treasury and its work, contact:

Correspondence Team  
HM Treasury  
1 Horse Guards Road  
London  
SW1A 2HQ

Tel: 020 7270 5000

E-mail: [public.enquiries@hm-treasury.gov.uk](mailto:public.enquiries@hm-treasury.gov.uk)

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