

Employee shareholder status: capital gains tax exemption and income tax/NICs treatment

Who is likely to be affected?

Individuals who have taken up the 'employee shareholder' employment status.

General description of the measure

The first measure will exempt any capital gains made by individuals on the disposal of shares acquired through the adoption of the 'employee shareholder' employment status from capital gains tax (CGT). The second will reduce or eliminate the income tax and National Insurance contributions (NICs) due when employee shareholders acquire shares, by deeming that they have paid £2,000 for the shares. This will ensure that the first £2,000 of share value received by employee shareholders is not subject to income tax or NICs. The third will eliminate any income tax and NICs due on the cost of the employer-funded independent advice which must be provided to individuals before they become employee shareholders.

Policy objective

This measure is part of a wider policy to introduce a new 'employee shareholder' employment status to reduce regulatory burdens on business, promote business and employment growth and increase the choices available to businesses and employees. This measure is intended to support take-up of the new 'employee shareholder' status.

Background to the measure

On 8 October 2012 the Government announced its intention to introduce a new 'employee shareholder' employment status. Individuals adopting the status will receive between £2,000 and £50,000 of CGT-exempt shares.

The Department for Business, Innovation and Skills published a consultation on the implementation of the 'employee shareholder' status on 18 October 2012. The consultation closed on 8 November 2012 and the Government published its response on 3 December 2012. The new employment status is contained in Clause 31 of the Growth and Infrastructure Act, which received Royal Assent on 25 April 2013.

The Government announced at Autumn Statement 2012 that it was considering options to reduce income tax and NICs liabilities that arise when employee shareholders receive shares, including an option to deem that employee shareholders have paid £2,000 for shares they receive. The decision to proceed with this option, which will ensure that the first £2,000 of share value received is free from income tax and NICs, was confirmed at Budget 2013.

On 30 May 2013 the Government tabled an amendment to the Finance Bill 2013 to eliminate any income tax and NICs due on qualifying independent advice provided to individuals considering entering into a new employee shareholder agreement.

This Tax Information and Impact Note (TIIN) replaces the two previous TIINs published on 11 December 2012 and 20 March 2013.

Detailed proposal

Operative date

These tax changes will apply to shares received through the adoption of the new 'employee shareholder' status on or after 1 September 2013.

Current law

Section 3 of the Taxation of Chargeable Gains Act 1992 (TCGA) provides that individuals pay CGT only on their chargeable gains (net of allowable losses and all other reliefs) that exceed the annual exempt amount (currently £10,600) for the tax year. Shares are assets for the purposes of CGT (section 21 TCGA 1992) and, in the absence of provisions to the contrary, gains on disposals of such assets are chargeable to CGT.

The Income Tax (Earnings and Pensions) Act 2003 provides that income tax is chargeable on earnings and other employment income, including employment-related securities (such as shares) awarded to a person by reason of their employment. Part 7 of this Act sets out special rules for the taxation of employment-related securities, and provides for the amount of tax due in certain cases, as well as specifying the time at which this tax is due.

Part 3 Chapters 2 to 11 ITEPA 2003 and Section 63(1) ITEPA 2003 set out the general rules on the taxation of employment-related expenses and benefits. Part 4 Chapter 11 of ITEPA contains exemptions that prevent certain categories of earnings, expenses payments and benefits in kind from being taxed as employment income.

The Corporation Tax Act 2009 sets out circumstances in which corporation tax relief is available to companies, including, at Part 12, in relation to employee share acquisitions.

The Social Security Contributions and Benefits Act 1992 creates a Class 1 National Insurance liability on employees and employers in respect of payments of earnings, including earnings paid in the form of employment related securities. Section 4(4) of that Act and Regulation 22(7) Social Security (Contributions) Regulations 2001 also bring into liability amounts which count as employment income in relation to employment related securities and securities options. Part IX of the Social Security (Contributions) Regulations 2001 contains disregards for certain types of securities – broadly speaking those which are not readily convertible assets and those carrying certain tax advantages.

Proposed revisions

Legislation will be introduced in Finance Bill 2013 to exempt any capital gains on the disposal of up to £50,000 of shares acquired by an employee shareholder under their employee shareholder agreement from CGT. Existing share pooling and identification rules will be amended as necessary.

Finance Bill 2013 will also include provisions that will amend the Income Tax (Earnings and Pensions) Act 2003 to reduce the income tax due when employee shareholders acquire shares under their employee shareholder agreement, by deeming that they have paid £2,000 for these shares. Consequential changes will also be made to the Corporation Tax Act 2009 so that where appropriate businesses can claim relief against the acquisition of shares by employee shareholders.

Legislation will also be introduced to amend Part 4, Chapter 11 of the Income Tax (Earnings & Pensions) Act 2003 to provide that the reasonable costs of relevant independent advice relating to proposed employee shareholder agreements shall be exempt from income tax.

Following Royal Assent to Finance Bill 2013, the Government will bring forward amendments to the Social Security (Contributions) Regulations 2001 to ensure that when an employee shareholder acquires shares, the same amount counts as earnings for Class 1 National Insurance as counts for Income Tax purposes and that the first £2,000 of the value of the shares also remain NIC free.

The tax advantages set out above will be subject to anti-abuse rules.

Summary of impacts

Exchequer impact (£m)	2013-14	2014-15	2015-16	2016-17	2017-18
	nil	nil	negligible	-10	-45
	This element combines the measures announced at Autumn Statement 2012 and Budget 2013. These figures are set out in Table 2.1 and Table 2.2 of Budget 2013 and have been certified by the Office for Budget Responsibility. More details can be found in the policy costings document published alongside the Budget.				
	nil	-15	-45	-65	-75
	These figures are set out in Table 2.1 of Budget 2013 and have been certified by the Office for Budget Responsibility. More details can be found in the policy costings documents published alongside the Budget.				
Economic impact	Whilst some companies and individuals may benefit from tax incentives attached to the status, this measure is not expected to have significant macroeconomic impacts.				
Impact on individuals and households	<p>As it is entirely new, predicting the take up of the new employment status is uncertain. It is broadly expected that about 50,000 to 80,000 individuals a year may eventually benefit from the income tax and NICs changes, of which about 20,000 to 40,000 may eventually benefit from the CGT exemption on disposal of the shares.</p> <p>Individuals will not be subject to income tax or NICs on qualifying independent advice received before adopting the status.</p>				
Equalities impacts	<p>The introduction of these tax changes is not expected to have a disproportionate impact on any protected group (beyond that already identified for the wider employment status, which includes provisions relating to maternity leave).</p> <p>The gender split for CGT payers has been relatively stable over time, with men making up around 60 per cent of those filing a tax return that includes a capital gain and women making up around 40 per cent. Those aged 45-50 and 55-60 are most likely to file a return that includes a capital gain.</p>				
Impact on business including civil society organisations	<p>This measure is expected to have a negligible impact on businesses and civil society organisations.</p> <p>The income tax and NICs changes are likely to increase take-up of the employment status. It is anticipated that many of the companies that offer employee shareholder agreements will already be submitting returns to HM Revenue & Customs (HMRC) in connection with employee share awards. The requirement to notify the awards of shares associated with the employee shareholder status is therefore likely to involve minimal additional activity in form returns.</p>				

Operational impact (£m) (HMRC or other)	The ongoing costs of operating 'employee shareholder' employment status, including the provision of valuation services, form processing and compliance work by HMRC, are estimated to be between £500,000 and £1.25 million. However, the exact costs of operating the status will depend on take up, which is difficult to predict at this stage.
Other impacts	<u>Small firms impact test:</u> the impact on small firms (with fewer than 20 employees) has been considered. These measures are beneficial and excluding companies with fewer than 20 employees would not achieve the stated policy objective. Other impacts have been considered and none have been identified.

Monitoring and evaluation

This measure will be kept under review through communication with affected taxpayer groups.

Further advice

If you have any questions about these changes, please contact Rob Clay (email: rob.clay@hmrc.gsi.gov.uk).

Declaration

David Gauke MP, Exchequer Secretary to the Treasury has read this Tax Information and Impact Note and is satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impacts of the measure.