

Explanatory Note

Clauses 1, 2 and 3: Employee shareholder shares

Summary

1. These clauses remove most of the tax reliefs associated with shares received in return for entering into an Employee Shareholder agreement on or after 1 December 2016.

Details of the clause

Clause 1: Employee shareholder shares: amount treated as earnings

2. Subsection 1 amends section 226A of Income Tax (Earnings and Pensions) Act (ITEPA) 2003 so that the amount treated as earnings from employment is equal to the market value of the shares acquired. This subsection also omits section 226A(3) ITEPA 2003 which contains now-redundant computational rules, and references to other sections in ITEPA 2003 which are omitted by subsection 2. Paragraph (d) of this subsection makes clear that the rules at section 226A(7) ITEPA 2003 for determining the market value of shares apply only for the purposes of deciding whether that section applies. They do not apply for the purposes of determining the amount treated as earnings under subsection (2).
3. Subsection 2 omits sections 226B to 226D ITEPA 2003 which are no longer required. These sections provide relief from Income tax on £2,000 worth of shares acquired by an employee as consideration for entering into an Employee Shareholder agreement. They also contain associated anti-avoidance provisions.
4. Subsection 3 makes consequential changes to other sections in ITEPA 2003 following the repeal of sections 226B to 226D.
5. Subsection 4 makes consequential changes to the Corporation Tax Act (CTA) 2009 following the amendments to ITEPA 2003 made by subsections 1 to 3.
6. Subsection 5, 6 and 7 contain the commencement provisions.

Clause 2: Employee shareholder shares: abolition of Capital Gains Tax (CGT) exemption

7. Subsection 2 amends section 58 of the Taxation of Chargeable Gains Act (TCGA) 1992 (spouses and civil partners). It removes references to exempt Employee Shareholder shares by restoring the section to its form before Finance Act 2013.
8. Subsection 3 amends the definitions provided in section 149AA TCGA 1992. Following the repeal of section 236B TCGA 1992, section 149AA needs to contain its own free-standing relevant definitions.
9. Subsection 4 omits sections 236B to 236F TCGA 1992 which are no longer required. These sections provide for the exemption from Capital Gains Tax which applies in specified circumstances to shares received as consideration for entering into an Employee Shareholder agreement. They provide for the exemption to be limited to £100,000 in some circumstances, and for relevant anti-avoidance provisions.
10. Subsection 5 makes a consequential amendment to section 236G TCGA 1992. Following the repeal of section 236B TCGA 1992, section 236G can no longer rely on that section for the meaning of 'Employee Shareholder agreement'.
11. Subsection 6, 7 and 8 contain the commencement provisions.

Clause 3: Employee shareholder shares: purchase by company

12. Subsection 1 omits section 385A Income Tax (Trading and Other Income) Act (ITTOIA) 2005 (no charge to tax on purchase by company of exempt Employee Shareholder shares).
13. Subsection 2, 3 and 4 contain the commencement provisions.

Background note

14. These clauses
 - remove the Income tax and National Insurance Contributions relief which applies to the first £2,000 worth of Employee Shareholder shares received by an individual
 - remove the Capital Gains Tax exemption which applies to such shares and
 - remove the provision which ensures that, when a company buys Employee Shareholder shares back from an Employee Shareholder, the consideration is not a distribution in the shareholder's hands
15. The independent advice received by an individual before entering into an Employee Shareholder agreement continues to be tax-free.

16. These clauses do not affect the reliefs available to the employer company.
17. The income tax reliefs and CGT exemption will no longer be available with effect from 1 December 2016 on any shares acquired in consideration of an Employee Shareholder agreement entered into on or after that date. Any individual who has received independent advice regarding entering into an Employee Shareholder agreement before the 23 November 2016 will still have the opportunity to receive the tax advantages currently available, provided they enter into the agreement on or before 30 November.
18. Any individual who receives independent advice on 23 November 2016 before 1:30pm, will have the opportunity to receive the tax advantages currently available provided they enter into the Employee Shareholder agreement on or before 1 December. Any individual who receives independent advice on entering into an Employee Shareholder agreement after 1:30pm on 23 November will not have the opportunity to receive the tax advantages currently available, although they remain at liberty enter into the agreement.
19. The measure does not affect the availability of the status itself; it simply removes most of the tax benefits associated with accepting the status. However, the government has announced its intention to close the status to new users at the earliest opportunity.
20. The measure is part of the government's wider policies of sustainability and fairness in the system of tax reliefs. There is evidence suggesting that the Employee Shareholder status is not being used as intended by companies.
21. If you have any questions about this change, or comments on the legislation, please contact Ben Martin on 03000 520630 (email: benjamin.martin@hmrc.gsi.gov.uk)