

FINANCE ACT 2015

EXPLANATORY NOTES

INTRODUCTION

Section 19: Arrangements Offering a Choice of Capital Income Return

Summary

1. This section amends the Income Tax (Trading and Other Income) Act (ITTOIA) 2005 to remove the tax advantages given to shareholders by special purpose share schemes (commonly referred to as “B share schemes”), which offer shareholders a choice between income and capital returns on their shares, with effect from 6 April 2015.

Details of the Schedule

2. Subsection (1) provides for the amendment of Chapter 3 of Part 4 of ITTOIA 2005.
3. Subsection (2) inserts new section 396A into ITTOIA 2005.
4. *New section 396A: Arrangements offering a choice of capital or income return*
5. New section 396A(1) explains that section 396A will apply where a person has a choice to receive either a distribution or something that is of essentially the same value but is not chargeable to income tax. This something else is defined as “the alternative receipt” and might include the issue of bonus shares or a receipt from the company, or a third party, that would otherwise give rise to a chargeable gain.
6. The test whether the alternative receipt will be of “substantially the same value” as the dividend may be applied at either distributing company or receiving shareholder level.
7. New section 396A(2)(a) treats alternative receipts from UK companies as a distribution in the tax year of receipt.
8. New section 396A(2)(b) treats the alternative receipt as a qualifying distribution for the purposes of sections 397 or 399 ITTOIA 2005 (which provide dividend tax credits or treat tax as being paid at the basic rate), and for section 1100 Corporation Tax Act 2010 (which allows shareholders to request statements showing the value of a distribution).
9. New section 396A(3) explains that it does not matter whether the choice is subject to the exercise of any conditions or the exercise of any power, and also that the choice can include the failure to exercise a right. So, for example, where the shareholder will receive a bonus “B” share where an election is made and a bonus “C” share where no election is made, the failure to make an election is a choice to receive the “C” share.
10. New sections 396A (4) to (6) provide that a claim for relief can be made where, as a result of this charge on the alternative receipt, there is a “double charge”. For example, where a company issues bonus “B” shares to shareholders that so elect, and the “B” shares carry a right of purchase by a third party, both the issue of the shares and the sale to the third party will create separate tax charges (the first under this section, the second as a capital gain).

*These notes refer to the Finance Act 2015 (c.11)
which received Royal Assent on 26 March 2015*

11. Where such a claim is received, an officer of HM Revenue & Customs must make any just and reasonable consequential adjustment.
12. Subsections (4) to (9) make various consequential adjustments, including to extend the list of items to be charged at special rates for trustees in section 482 of the Income Tax Act 2007.
13. Subsection (10) provides that the amendments apply to things received on or after 6 April 2015, regardless of when the arrangements were entered into.

Background Note

14. This provision removes the choice between taxation as income or taxation as capital, which some companies offer their shareholders in certain circumstances when returning value to them. Returns where such a choice is offered will be taxed as income where they are received on or after 6 April 2015. This will support the government's objectives of tackling unfair outcomes in the tax system by ensuring parity of treatment with other taxpayers who are not able to choose how they are taxed on their income.