

CORPORATION TAX ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 12: Other relief for employee share acquisitions

Overview

Chapter 4: Additional relief in cases involving restricted shares

Overview

2653. This Chapter applies if the shares acquired, either directly or pursuant to an option, are restricted shares. It gives the company further relief if an employment income charge arises after the shares have been acquired or if the employee dies. It is based on Part 4 of Schedule 23 to FA 2003.
2654. **Schedule 2** (transitionals and savings) provides that the special rules for restricted shares in this Part do not apply to shares acquired before 16 April 2003. If shares acquired before that date are forfeitable shares as defined in paragraph 19 of Schedule 23 to FA 2003 (as originally enacted) that Schedule continues to apply.

Section 1025: Additional relief available if shares acquired are restricted shares

2655. This section sets out the basic conditions for the relief to apply and identifies the company to which the relief is given. It is based on paragraph 21 of Schedule 23 to FA 2003.
2656. *Subsection (1)* gives the two basic conditions for the relief to apply.
2657. First, subsection (1)(a), the company must have been entitled to relief under either Chapter 2 or Chapter 3 in relation to restricted shares which have been acquired either directly or through an option. This condition will still be met if the amount of the relief is nil possibly because section 425(1) of ITEPA has applied to an acquisition of forfeitable shares. See the commentary on section 1009(2).
2658. For a number of years after this Act takes effect initial relief on the acquisition of the shares will have been given not under Chapters 2 and 3 of this Part but under Schedule 23 to FA 2003. In that case the continuity of law provisions in Schedule 2 (transitionals and savings), apply to treat references to Chapters 2 and 3 as if they were references to the equivalent provisions in the source legislation. Schedule 2 gives a signpost to those provisions and states their effect.
2659. Second, subsection (1)(b), after the shares have been acquired either section 426 of ITEPA applies (so giving the employee an amount of employment income) or the employee dies.
2660. The chargeable events that can give rise to a post-acquisition employment income charge under section 426 of ITEPA are listed in section 427(3) of ITEPA.

2661. The definition of “associated person” in section 421C(1) of ITEPA includes the person who acquired the shares.
2662. There will be no employment income charge if the employee dies before any of the events listed in section 427(3) of ITEPA occurs. Section 421B(4) and (6) of ITEPA provides that Chapter 2 of Part 7 of ITEPA ceases to apply to the securities immediately before the death of the employee.
2663. Subsection (1) treats the death as a chargeable event and gives the relief that would have been given if there had been an actual chargeable event at the date of death. No further relief is available under subsection (1) as the death of the employee prevents any further charge arising under section 426 of ITEPA.
2664. This section does not give relief if the employee has died before the shares are acquired. First, the deeming provision in paragraph 20(3) of Schedule 23 to FA 2003 (see the commentary on section 1009) is not expressed to apply to paragraph 21 of Schedule 23. Second, paragraph 21(2)(c) of Schedule 23, when read with paragraph 21(7) of Schedule 23, can work sensibly only if the employee dies after the shares are acquired. Third, the inclusion of paragraph 21(2)(c) of Schedule 23 itself indicates that paragraph 21(2)(b) of Schedule 23 applies only while the employee is alive.

Section 1026: Relief available on occurrence of chargeable event

2665. This section gives the relief available if there is a chargeable event as defined in section 427(3) of ITEPA. It is based on paragraphs 21 and 22 of Schedule 23 to FA 2003.
2666. Various reliefs are available in calculating the amount that counts as employment income but these reliefs are not deducted from the relief given to the company (see *subsection (4)*).

Section 1027: Relief available on death of employee

2667. This section gives the relief available on the death of the employee. It is based on paragraphs 21 and 22 of Schedule 23 to FA 2003.
2668. The amount of the relief is calculated by deeming the shares to be sold to an unconnected person immediately before the death of the employee (see *subsection (3)*). This deemed sale is a chargeable event within section 427(3) of ITEPA.

Section 1028: Supplementary provision for purposes of sections 1026 and 1027

2669. This section explains how relief is given under the Chapter. It is based on paragraphs 9, 16 and 21 of Schedule 23 to FA 2003.
2670. The section does not repeat the rules but cross-refers to the equivalent provisions in Chapters 2 and 3.

Section 1029: Transfer of qualifying business by group transfers

2671. This section gives relief to the successor company if the business carried on by the employing company is transferred before a chargeable event or the death of the employee. It is based on paragraph 23 of Schedule 23 to FA 2003.
2672. The section is very similar to section 1024 which gives relief to a successor company if the business is transferred some time between the grant of the option and the acquisition of shares pursuant to the option. Section 1024 identifies this time-frame as the “option period”.
2673. *Subsection (6)* provides that the “interim period” for this section starts when the shares or option are acquired. If the original relief has been given under Chapter 3 this means the “interim period” will include the period before the shares are acquired. This rule is

*These notes refer to the Corporation Tax Act 2009
(c.4) which received Royal Assent on 26 March 2009*

needed to give relief to the successor company if there is a group transfer before the shares are acquired.

2674. [Section 1024](#) will give relief under Chapter 3 and section 1029 will give relief under this Chapter. Section 1029 would apply also if there was a further transfer after the shares had been acquired but before a chargeable event or the death of the employee.