



# Corporation Tax Act 2009

## 2009 CHAPTER 4

### PART 12

#### OTHER RELIEF FOR EMPLOYEE SHARE ACQUISITIONS

### CHAPTER 3

#### RELIEF IF EMPLOYEE OR OTHER PERSON OBTAINS OPTION TO ACQUIRE SHARES

#### *Introductory*

#### **1014 Overview of Chapter**

- (1) This Chapter provides for relief if—
  - (a) an employee or another person obtains an option to acquire shares because of the employee's employment by a company, and
  - (b) shares are acquired pursuant to the option.
- (2) Sections 1015 to 1017 set out the requirements that must be met for relief to be available.
- (3) Sections 1018 to 1020 set out how the amount of relief is calculated.
- (4) Section 1021 sets out how the relief is given.
- (5) Sections 1022 and 1023 deal with cases in which a person obtains an option to acquire shares in a company and that company is subsequently taken over.
- (6) Section 1024 provides for relief to be given to a successor company if the qualifying business is transferred by group transfers.

*Requirements to be met for relief to be available*

**1015 Basic requirements for relief under Chapter 3**

- (1) Relief under this Chapter is available to a company (“the employing company”) if—
- (a) a person (“the employee”) has employment with the employing company,
  - (b) that employment (“the relevant employment”) is in relation to a business within subsection (2) (“the qualifying business”),
  - (c) the employee or another person obtains an option to acquire shares because of the relevant employment,
  - (d) the person who obtains the option acquires shares pursuant to the option, and
  - (e) the conditions set out in sections 1016 and 1017 are met as mentioned in those sections.

The person who obtains the option is, in that capacity, called “the recipient”.

- (2) A business is within this subsection so far as—
- (a) the business is carried on by the employing company, and
  - (b) the employing company is within the charge to corporation tax in relation to the profits of the business.
- (3) If—
- (a) the recipient dies, and
  - (b) subsequently another person acquires shares pursuant to the option,
- this Chapter applies as if the recipient were alive and the shares were acquired by the recipient.

**1016 Conditions relating to shares acquired**

- (1) Each of the following conditions must be met in relation to the shares acquired.

*Condition 1*

The shares are ordinary shares that are fully paid-up and not redeemable.

*Condition 2*

The shares are—

- (a) shares of a class listed on a recognised stock exchange,
- (b) shares in a company that is not under the control of another company, or
- (c) shares in a company that is under the control of a listed company.

*Condition 3*

The shares are shares in—

- (a) the employing company,
- (b) a company that, when the option is obtained, is a parent company of the employing company,
- (c) a company that, when the option is obtained, is a member of a consortium that owns the employing company,
- (d) a company that, when the option is obtained, is a member of a consortium that owns a parent company of the employing company,
- (e) a company within subsection (2), or
- (f) a qualifying successor company (see section 1022).

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- (2) A company (“company A”) is within this subsection if when the option is obtained—
- (a) the employing company or a parent company of the employing company is a member of a consortium that owns another company (“company B”), and
  - (b) company A is—
    - (i) a member of that consortium or a parent company of a member of that consortium, and
    - (ii) a member of the same commercial association of companies as company B.

### **1017 Condition relating to employee’s income tax position**

- (1) The following condition must be met in relation to the income tax position of the employee.

*The Condition*

The acquisition of the shares is a chargeable event in relation to the employee for the purposes of section 476 of ITEPA 2003 (whether or not an amount counts as employment income of the employee because of that event).

- (2) Subsection (3) applies if the condition—
- (a) is not met, but
  - (b) would be met if at all material times the employee had been a UK employee.
- (3) This Chapter applies as if the employee had been a UK employee as mentioned in subsection (2)(b).
- (4) The employee is a UK employee if—
- (a) the employee is UK resident and ordinarily UK resident, and
  - (b) the duties of the relevant employment are performed in the United Kingdom.
- (5) If the employee is dead when the shares are acquired, the condition is to be treated as met if it would have been met had the employee been alive.

*Calculation of amount of relief*

### **1018 Calculation of relief if shares are neither restricted nor convertible**

- (1) If the shares acquired are neither restricted shares nor convertible shares, the amount of relief to be given is an amount equal to—
- (a) the market value of the shares when they are acquired, less
  - (b) the total amount or value of any consideration given by any person in relation to the obtaining of the option or to the acquisition of the shares.

This is subject to section 1020.

- (2) The consideration mentioned in subsection (1)(b) does not include—
- (a) the performance of any duties of, or in connection with, the relevant employment, and
  - (b) an amount paid or payable by the employee because of—
    - (i) an agreement within paragraph 3A(2) of Schedule 1 to the Social Security Contributions and Benefits Act 1992 (c. 4) or of Schedule 1

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to the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7), or

(ii) an election under paragraph 3B of either of those Schedules.

- (3) A just and reasonable apportionment is to be made of any consideration given partly in relation to the obtaining of the option or the acquisition of the shares and partly in relation to other matters.

### **1019 Calculation of relief if shares are restricted or convertible**

- (1) If the shares acquired are restricted shares or convertible shares (or both), the amount of relief to be given is calculated as follows.

This is subject to section 1020.

- (2) If the shares are restricted shares, the amount of relief is equal to—
- (a) the amount that counts as employment income of the employee under section 476 of ITEPA 2003 in relation to the acquisition of the shares, or
  - (b) if the option is a qualifying option (within the meaning of the EMI code), the amount that would have so counted apart from the EMI code.
- (3) If the shares are convertible shares, the amount of relief is equal to—
- (a) the amount that counts as employment income of the employee under section 476 of ITEPA 2003 in relation to the acquisition of the shares, or
  - (b) if the option is a qualifying option (within the meaning of the EMI code), the amount that would have so counted apart from the EMI code;
- and in calculating the employee's employment income for this purpose the market value of the shares is to be determined as if they were not convertible shares.
- (4) For the purposes of subsections (2) and (3)—
- (a) no account is to be taken of any relief under section 481 or 482 of ITEPA 2003, and
  - (b) “the EMI code” has the meaning given by section 527(3) of that Act.
- (5) If the shares are both restricted and convertible, the total amount of relief is whichever is the greater of the amounts of relief given by subsections (2) and (3) (or, if the amount is the same in each case, that amount).
- (6) If the employee is dead when the shares are acquired, the amount of relief is to be calculated as if the employee were alive.

### **1020 Reduction in amount of relief**

- (1) This section applies if the relevant employment is in relation to both the qualifying business and a business (or part of a business) that is not within section 1015(2).
- (2) The amount of relief is to be reduced by a just and reasonable amount.

*Giving of relief*

### **1021 How the relief is given**

- (1) The relief is given for the accounting period in which the shares are acquired.

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- (2) The amount of relief is allowed as a deduction in calculating the profits of the qualifying business for corporation tax purposes (subject to subsections (3) and (4)).
- (3) If the employing company is a company with investment business (as defined in section 1218), the amount of relief is treated as expenses of management of the company.

But this subsection does not apply if the qualifying business is a property business (in which case subsection (2) applies instead).

- (4) If the employing company is a company in relation to which section 76 of ICTA (expenses of insurance companies) applies, the amount of relief is treated as expenses payable falling to be brought into account at Step 1 in subsection (7) of that section.
- (5) If the relevant employment is in relation to more than one business (or part of a business) within section 1015(2), the relief is to be apportioned on a just and reasonable basis.

#### *Takeovers and transfers of businesses*

### **1022 Takeover of company whose shares are subject to option**

- (1) This section applies if—
  - (a) a person (“P”) obtains a qualifying option to acquire shares in a company,
  - (b) subsequently there is a takeover of that company,
  - (c) P, by agreement with the acquiring company, releases P’s rights under the qualifying option in consideration of P’s obtaining another option (“the new option”), and
  - (d) the new option is an option to acquire shares in a qualifying company.

Section 1023 explains what is meant by “qualifying option”, “takeover”, “the acquiring company” and “qualifying company”.

- (2) This Chapter applies as if shares acquired pursuant to the new option are acquired pursuant to the qualifying option.
- (3) The company whose shares are subject to the new option is a qualifying successor company for the purposes of paragraph (f) of condition 3 in section 1016 (condition relating to shares acquired).
- (4) In calculating the amount of any relief resulting from this section—
  - (a) any consideration given in relation to the obtaining of the new option is treated as consideration given in relation to the obtaining of the qualifying option, and
  - (b) any consideration given in relation to the acquisition of shares pursuant to the new option is treated as consideration given in relation to the acquisition of shares pursuant to the qualifying option.

The consideration covered by paragraph (a) does not include the consideration mentioned in subsection (1)(c).

### **1023 Supplementary provision for purposes of section 1022**

- (1) This section applies for the purposes of section 1022.

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- (2) An option is a qualifying option if condition 3 in section 1016 would be met in relation to shares acquired pursuant to the option.
- (3) There is a takeover of a company when another company (“the acquiring company”) acquires control of it.
- (4) The following companies are qualifying companies—
  - (a) the acquiring company,
  - (b) a company that, when the takeover occurs, is a parent company of the acquiring company,
  - (c) a company that, when the takeover occurs, is a member of a consortium that owns the acquiring company,
  - (d) a company that, when the takeover occurs, is a member of a consortium that owns a parent company of the acquiring company, and
  - (e) a company within subsection (5).
- (5) A company (“company A”) is within this subsection if when the takeover occurs—
  - (a) the acquiring company or a parent company of the acquiring company is a member of a consortium that owns another company (“company B”), and
  - (b) company A is—
    - (i) a member of that consortium or a parent company of a member of that consortium, and
    - (ii) a member of the same commercial association of companies as company B.

#### **1024 Transfer of qualifying business by group transfers**

- (1) This section applies in relation to relief to be given under this Chapter if—
  - (a) during the option period, the whole, or substantially the whole, of the qualifying business is transferred, and
  - (b) conditions A and B are met.
- (2) Condition A is that—
  - (a) the transfer is a group transfer, or
  - (b) if there is more than one transfer, all the transfers are group transfers.
- (3) Condition B is that, as a result of the transfer or transfers, at the end of the option period—
  - (a) the whole, or substantially the whole, of the qualifying business is carried on by one company (“the successor company”) only and that company is not the employing company, or
  - (b) the whole, or substantially the whole, of the qualifying business is carried on by companies (“the successor companies”) none of which is the employing company.
- (4) The relief is to be given to—
  - (a) the successor company, or
  - (b) whichever one of the successor companies is nominated by them,
 instead of the employing company (and references to the employing company in section 1021(3) and (4) are to be read as references to the company to which the relief is to be given).

- (5) In this section “the option period” means the period—
- (a) beginning when the option is obtained, and
  - (b) ending when the shares are acquired.