



Finance Act 2016

2016 CHAPTER 24

PART 4

CAPITAL GAINS TAX

Employee shareholder shares

88 Employee shareholder shares: limit on exemption

(1) Section 236B of TCGA 1992 (exemption for employee shareholder shares) is amended in accordance with subsections (2) and (3).

(2) After subsection (1) insert—

“(1A) Where a gain accrues to a person (“P”) on the first disposal of a post-16 March 2016 exempt employee shareholder share (the “relevant disposal”), subsection (1) applies only to so much of the gain as, when added to the total amount of previous potentially chargeable gains, does not exceed £100,000.

(1B) For the purposes of subsection (1A), “previous potentially chargeable gain” means a gain accruing to P on the first disposal of a post-16 March 2016 exempt employee shareholder share at any time before the relevant disposal.

(1C) Where a single transaction disposes of more than one post-16 March 2016 exempt employee shareholder share, the reference in subsection (1A) to the first disposal of a share is to be treated as a reference to the disposal of all of the post-16 March 2016 exempt employee shareholder shares first disposed of by that transaction.”

(3) After subsection (3) insert—

“(3A) In this section, “post-16 March 2016 exempt employee shareholder share” means an exempt employee shareholder share acquired in consideration of an employee shareholder agreement entered into after 16 March 2016.”

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- (4) Section 236F of TCGA 1992 (reorganisation of share capital involving employee shareholder shares) is amended in accordance with subsections (5) and (6).
- (5) After subsection (1) insert—
 - “(1A) Subsection (1B) applies where—
 - (a) an exempt employee shareholder share (“the original EES share”) is held by a person (“P”) before, and is concerned in, a reorganisation, and
 - (b) the original EES share is disposed of on the reorganisation.
 - (1B) P is to be treated as if the original EES share were disposed of for consideration of an amount determined in accordance with subsections (1D) to (1H) (the “relevant amount”).
 - (1C) In this section “notional gain” means the gain, if any, that would accrue to P if the original EES share were disposed of on the reorganisation for consideration of an amount equal to the market value of the share.
 - (1D) Subsections (1E) to (1G) apply where a notional gain would accrue to P on the disposal of the original EES share.
 - (1E) Where the whole of the notional gain would be a chargeable gain by virtue of section 236B(1A), the relevant amount is the amount that would secure that on the disposal neither a gain nor a loss would accrue to P.
 - (1F) Where part (but not the whole) of the notional gain would be a chargeable gain by virtue of section 236B(1A), the relevant amount is the maximum amount, not exceeding the market value of the share, that would secure that on the disposal no chargeable gain would accrue to P.
 - (1G) Where no part of the notional gain would be a chargeable gain by virtue of section 236B(1A), the relevant amount is equal to the market value of the original EES share at the time of the disposal.
 - (1H) Where no notional gain would accrue to P on the disposal of the original EES share, the relevant amount is the amount that would secure that on the disposal neither a gain nor a loss would accrue to P.
 - (1I) In determining for the purposes of this section whether any part of a notional gain is a chargeable gain by virtue of section 236B(1A), subsection (1B) is to be disregarded.
 - (1J) Where more than one original EES share is disposed of by P on a reorganisation, references in this section to the disposal of the original EES share are to be treated as references to the disposal of all of the original EES shares disposed of on the reorganisation.
 - (1K) In this section “reorganisation” has the same meaning as in section 127.”
- (6) In subsection (2) for “reference in subsection (1) to section 127 includes” substitute “references in this section to section 127 include”.
- (7) Section 58 of TCGA 1992 (spouses and civil partners) is amended in accordance with subsections (8) and (9).
- (8) In subsection (2)(c) after “disposal is” insert “a relevant disposal”.

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(9) After subsection (2) insert—

“(3) For the purposes of subsection (2) a disposal of exempt employee shareholder shares is a “relevant disposal” if (apart from this section)—

- (a) a gain would accrue on the disposal, and
- (b) no part of the gain would be a chargeable gain.

(4) Subsection (5) applies where the disposal is of exempt employee shareholder shares and (apart from this section)—

- (a) a gain would accrue on the disposal, and
- (b) part (but not the whole) of the gain would be a chargeable gain by virtue of section 236B(1A).

(5) Where this subsection applies, subsection (1) has effect in relation to the disposal as if—

- (a) for “such amount as” there were substituted “ the maximum amount, not exceeding the market value of the asset, that ”, and
- (b) for “neither a gain nor a loss” there were substituted “ no chargeable gain ”.”

(10) The amendments made by this section have effect in relation to disposals made after 16 March 2016.

89 Employee shareholder shares: disguised fees and carried interest

(1) In section 236B of TCGA 1992 (exemption for employee shareholder shares), after subsection (2) insert—

“(2A) Subsection (1) does not apply in relation to a gain accruing on a disposal where the proceeds of the disposal, in relation to any individual, constitute—

- (a) a disguised fee for the purposes of Chapter 5E of Part 13 of ITA 2007 (see section 809EZA(3) of that Act), or
- (b) carried interest within the meaning given by section 809EZC of that Act.”

(2) The amendment made by this section has effect in relation to gains accruing on or after 6 April 2016.

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 19 para. 12(5)(b) inserted by [2017 c. 32 Sch. 14 para. 49\(2\)\(c\)](#)
- Sch. 19 para. 12(5)(a) word inserted by [2017 c. 32 Sch. 14 para. 49\(2\)\(b\)](#)
- Sch. 19 para. 51(8)(b) words inserted by [2017 c. 32 Sch. 14 para. 48\(2\)](#)
- Sch. 19 para. 53(1) words inserted by [2017 c. 32 Sch. 14 para. 48\(4\)\(a\)](#)
- Sch. 19 para. 53(1) words inserted by [2017 c. 32 Sch. 14 para. 48\(4\)\(b\)](#)
- Sch. 19 para. 12(5)(a) words renumbered as Sch. 19 para. 12(5)(a) by [2017 c. 32 Sch. 14 para. 49\(2\)\(a\)](#)
- Sch. 19 para. 58(1) words substituted by [2017 c. 32 Sch. 14 para. 48\(5\)](#)
- Sch. 20 para. 1(4)(e) inserted by [2021 c. 26 Sch. 27 para. 47\(2\)](#)
- Sch. 20 para. 3(3)(d) and word inserted by [2021 c. 26 Sch. 27 para. 47\(3\)\(b\)](#)
- Sch. 20 para. 5(5) inserted by [2021 c. 26 Sch. 27 para. 47\(5\)](#)
- Sch. 22 para. 2(4B) inserted by [2021 c. 26 Sch. 27 para. 48\(2\)\(c\)](#)
- Sch. 22 para. 3(4A) inserted by [2021 c. 26 Sch. 27 para. 48\(3\)](#)