

# FINANCE ACT 2013

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## EXPLANATORY NOTES

### INTRODUCTION

#### *Section 40: Corporation Tax Relief for Employee Share Acquisitions Etc*

#### Summary

1. [Section 40](#) clarifies the rules on availability of corporation tax (CT) deductions where companies award shares or grant share options to their employees. It makes clear that, other than in specified circumstances, no CT deduction is available in relation to an employee share option unless shares are acquired pursuant to that option. It also makes clear that, except in specified circumstances, no other CT deductions should be made in cases where statutory CT relief is available. This legislation will have effect in relation to accounting periods ending on or after 20 March 2013.

#### Details of the Section

2. Subsection (2) introduces a new section 1038 Corporation Tax Act 2009 (CTA 2009) in place of the current section 1038. The existing legislation excludes other CT deductions where relief for employee share acquisitions is available under Part 12 CTA 2009, and this remains the purpose of the revised section 1038.
3. New subsections 1038(1) and 1038(2) set out the rule that where relief is, or would be, available under Part 12, no other CT deduction is allowed in relation to the provision of shares or share options; or for any connected matter. By virtue of subsection 1038(4) these provisions apply for any accounting period, whether before or after the employee acquires the shares in question.
4. New subsection 1038(3) provides that in cases where section 1022 CTA 2009 (concerning the takeover of a company whose shares are subject to a share option) applies, the exclusion at subsection 1038(2) in relation to share options has effect for any new options granted on the takeover of the company as well as any relevant earlier qualifying option.
5. New subsections 1038(5), 1038(6) and 1038(7) broadly reproduce provisions in the current section 1038, setting out the expenses for which CT deduction is excluded under subsection 1038(2) and providing exceptions to this exclusion in specified circumstances.
6. New subsection 1038(8) disregards deductions relating to the provision of convertible securities that are not shares from the exclusion at subsection 1038(2) in certain cases.
7. Subsection (3) introduces new section 1038A CTA 2009, which clarifies the exclusion of CT deductions in respect of share options pursuant to which shares are not acquired by employees.
8. New subsection 1038A(1) sets out rules applying in the case of share options obtained by employees because of their employment. Subsection 1038A(1)(b) also applies this new section to other share options connected with an option covered by subsection 1038A(1)(a), for example new options issued on a takeover of a company.

*These notes refer to the Finance Act 2013 (c.29)  
which received Royal Assent on 17 July 2013*

By virtue of new subsection 1038A(3) these provisions apply for any accounting period, whether before or after the employee obtains the option in question.

9. New subsection 1038A(2) provides that no CT deduction is allowable for any accounting period in relation to a share option or matters connected with it, unless shares are acquired pursuant to the option.
10. New subsection 1038A(4), 1038A(5) and 1038A(6) broadly reproduce provisions in the current section 1038, setting out the expenses for which CT deduction is excluded under new subsection 1038A(2) and providing exceptions to this exclusion in specified circumstances.
11. New subsections 1038A(7) and 1038A(8) provide that subsection 1038A(2) does not disallow a deduction for amounts on which an employee is subject to an income tax charge, or would have been subject to certain circumstances.
12. Subsections (5) and (6) provide that the new section 1038 applies for company accounting periods ending on or after 20 March 2013, regardless of when the acquisition of shares took place. However, the provision will not operate to deny a CT deduction in a company accounting period spanning 20 March 2013 where the shares were acquired before that date.
13. Subsections (7) and (8) provide that the new section 1038A applies for company accounting periods ending on or after 20 March 2013, regardless of when the share option was obtained. However, the provision will not operate to deny a CT deduction in an accounting period spanning 20 March 2013 where an option to acquire shares lapsed or otherwise ceased to be exercisable before that date.

## **Background**

14. Where an employee obtains a share option or is awarded shares, CT legislation generally allows the employing company a CT deduction at the point when the employee acquires the shares and, where applicable, is charged to income tax on them.
15. These rules broadly aim to achieve symmetry between the availability of CT relief to the employing company and a charge to income tax on the employee (where applicable).
16. In addition there are more general provisions in CT legislation that a company's taxable trading profits should be calculated by reference to generally accepted accounting practice (GAAP), except where this is specifically overridden in tax legislation.
17. A statutory relief for employee share acquisitions was introduced in 2003 and was designed, where appropriate, to override GAAP. Accounting standards were subsequently introduced to require companies to recognise an accounting expense, measured at fair value, in respect of shares and share options they provide to employees.
18. The argument is sometimes made that companies can deduct accounting expenses recognised for share-based payments against CT, even if the option or award lapses and the employee does not acquire shares; or alternatively that both the accounting expenses and the statutory deduction can be deducted in cases where the employee acquires shares.
19. In the Government's view it is wrong for companies to claim CT deductions for accounting expenses relating to share-based payments where shares are not acquired by the employee, other than where this is specifically provided for in legislation; or to claim what are, in effect, two deductions in respect of an acquisition of shares by an employee. The law has been applied on that basis by HM Revenue & Customs (HMRC) since the current rules were introduced in 2003.
20. HMRC will continue to resist claims of this type, on the basis that they are inadmissible under the terms of existing legislation.

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21. The present section is being introduced to clarify and confirm the position, and remove any uncertainty there may be among taxpayers and advisers about how the rules apply.