



Employee Share Schemes Act 2002

2002 CHAPTER 34

An Act to make provision relating to employee share schemes; and for connected purposes. [7th November 2002]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Employee share ownership plans

- (1) Schedule 8 to the Finance Act 2000 (employee share ownership plans) is amended as follows.
- (2) After paragraph 68(3) there is inserted—
 - “(4) The instrument may contain terms that—
 - (a) define who is a professional trustee and who is a non-professional trustee;
 - (b) the trustees include at least one person who is a professional trustee and at least two persons who are non-professional trustees;
 - (c) at least half of the non-professional trustees were, before being appointed as trustees, selected in accordance with a specified process of selection;
 - (d) the trustees so selected are persons who are employees of the company or, in the case of a group plan, of a participating company; and such terms shall be deemed reasonably incidental to complying with the requirements of this Part of this Schedule for the purposes of sub-paragraph (3).”
- (3) After paragraph 112 there is inserted—

“Deduction for contribution to plan trust

112A (1) A deduction is allowed to a company under this paragraph where—

- (a) on or after the day on which this paragraph comes into force the company makes a payment to the trustees of an approved employee share ownership plan in order to enable them to acquire shares in the company or a company which controls it,
- (b) the payment is applied by the trustees to acquire such shares,
- (c) the shares are not acquired from a company, and
- (d) the condition in sub-paragraph (2) is met in relation to the company in which the shares are acquired.

(2) The condition in this sub-paragraph is that, at the end of the period of twelve months beginning with the date of the acquisition, the trustees hold shares in the company for the plan trust that—

- (a) constitute not less than 10 per cent of the ordinary share capital of the company; and
- (b) carry rights to not less than 10 per cent of—
 - (i) any profits available for distribution to shareholders of the company;
 - (ii) any assets of that company available for distribution to its shareholders in the event of a winding-up.

(3) For the purposes of sub-paragraph (2), shares that have been appropriated to, and acquired on behalf of, an individual under the plan shall continue to be treated as held by the trustees of the plan trust for the beneficiaries of that trust until such time as they cease to be subject to the plan (within the meaning of this Schedule).

(4) A deduction allowed under this paragraph—

- (a) is of an amount equal to the amount of the payment referred to in sub-paragraph (1), and
- (b) must be made for the period of account in which the condition in sub-paragraph (2) is met.

(5) No other deduction is allowed for any amount in respect of which a deduction has been made under this paragraph (except as specified in paragraph 112B(3)).”

(4) After paragraph 112A (as inserted by subsection (3) above) there is inserted—

“Withdrawal of deduction under paragraph 112A

112B(1) The Inland Revenue may by notice direct that the benefit of a deduction made under paragraph 112A is withdrawn where—

- (a) 30 per cent of the shares acquired by virtue of the payment in respect of which the deduction is made have not been awarded under the plan before the end of the period of five years beginning with the date of acquisition, or
- (b) all the shares acquired by virtue of that payment have not been so awarded before the end of the period of ten years beginning with that date.

(2) The effect of a direction under sub-paragraph (1)(a) or (b) is that the amount of the deduction is treated as a trading receipt of the company for the period of account in which the direction is given.

- (3) However, where—
 - (a) the Inland Revenue give a direction under sub-paragraph (1)(a) or (b) in respect of any deduction, and
 - (b) at any time after the giving of the direction, all the shares acquired by virtue of the payment in respect of which the deduction was made are awarded under the plan,a further deduction is allowed under this sub-paragraph to the company which made the payment.
- (4) A deduction under sub-paragraph (3)—
 - (a) is of an amount equal to the amount of the payment referred to in that sub-paragraph, and
 - (b) must be made for the period of account in which sub-paragraph (3)(b) is first satisfied.
- (5) No other deduction is allowed in respect of any amount for which a deduction has been made under sub-paragraph (3).
- (6) Where—
 - (a) a deduction is made under paragraph 112A or sub-paragraph (3) in respect of a payment for the acquisition of shares, but
 - (b) shares are awarded under the plan to an individual who at the time is not a Schedule E taxpayer (as defined by paragraph 108(2)),an amount equal to the appropriate proportion of the deduction is treated as a trading receipt of the company for the period of account in which the shares are so awarded.
- (7) For the purposes of sub-paragraph (6), the appropriate proportion of the deduction is the proportion which the number of shares awarded to the individual bears to the total number of shares acquired by virtue of the payment.
- (8) For the purposes of this paragraph, where shares are acquired by the trustees on different days, it shall be assumed that those acquired on an earlier day are awarded to employees under the plan before those acquired by the trustees on a later day.”

2 Deductions: supplementary

- (1) Schedule 8 to the Finance Act 2000 is also amended as specified in this section.
- (2) In paragraph 108 (cases in which no deduction allowed), at the end there is inserted—
 - “(6) No deduction is allowed in respect of the award of shares acquired by the trustees by virtue of a payment in respect of which a deduction has been made under paragraph 112A or 112B(3).”
- (3) In paragraph 113 (withdrawal of deductions on withdrawal of approval), for the words from “any” to “partnership shares)” there is substituted—
 - “(a) any deductions under paragraph 106,
 - (b) any deductions under paragraph 107,
 - (c) any deductions under paragraph 112A (in so far as not already withdrawn under paragraph 112B), or
 - (d) any deductions under paragraph 112B(3).”

- (4) In paragraph 121 (termination of plan), at the end there is inserted –
- “(10) In a case where –
- (a) by virtue of a payment made to the trustees by the company, the trustees acquire shares in the company, or a company which controls it,
 - (b) a deduction has been made in respect of that payment under paragraph 112A (and has not been withdrawn under paragraph 112B), and
 - (c) not all the shares acquired by virtue of the payment have been awarded under the plan before issue of the plan termination notice,
- an amount equal to the appropriate proportion of the deduction is treated as a trading receipt of the company for the period of account in which the plan termination notice is given.
- (11) For the purposes of sub-paragraph (10), the appropriate proportion of the deduction is the proportion which the number of shares acquired by virtue of the payment and not awarded as specified in sub-paragraph (10)(c) bears to the total number of shares so acquired.”

3 Deductions: income tax and capital gains tax

- (1) Schedule 8 to the Finance Act 2000 is also amended as specified in this section.
- (2) In paragraph 88 (income tax), after sub-paragraph (4) there is inserted –
- “(4A) In the case of shares acquired by the trustees by virtue of a payment in respect of which a deduction is allowed under paragraph 112A, the period applicable to the shares is (notwithstanding sub-paragraphs (3) and (4)) the period of ten years beginning with the date of acquisition.”
- (3) In paragraph 98 (capital gains tax), after sub-paragraph (3) there is inserted –
- “(3A) In the case of shares acquired by the trustees by virtue of a payment in respect of which a deduction is allowed under paragraph 112A, the relevant period is (notwithstanding sub-paragraphs (2) and (3)) the period of ten years beginning with the date of acquisition.”
- (4) In paragraph 100 (classes of share for the purposes of capital gains tax), at the end there is inserted –
- “(4) For the purposes of that Chapter, any shares which –
- (a) were acquired by the trustees by virtue of a payment in respect of which a deduction is allowed under paragraph 112A, and
 - (b) have not been awarded under the plan,
- shall (notwithstanding that they would otherwise fall to be treated as of the same class) be treated as of a different class from any shares held by the trustees that were not so acquired by them.”

4 Short title

This Act may be cited as the Employee Share Schemes Act 2002.

5 Commencement

This Act shall come into force on 6th April 2003.

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