

Status: Point in time view as at 01/09/2013.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2013, PART 1. (See end of Document for details)

SCHEDULES

SCHEDULE 23

EMPLOYEE SHAREHOLDER SHARES

PART 1

INCOME TAX TREATMENT OF EMPLOYEE SHAREHOLDER SHARES

- 1 ITEPA 2003 is amended in accordance with paragraphs 2 to 15.
- 2 In section 19(2) (time of receipt of non-money earnings), at the appropriate place insert— “ section 226A (amount treated as earnings: employee shareholder shares). ”

Commencement Information

- II [Sch. 23 para. 2](#) in force at 1.9.2013 for the purposes of the amendment made by that paragraph by [S.I. 2013/1755, art. 2](#)

- 3 In Chapter 12 of Part 3, after section 226 insert—

“Shares of employee shareholders

226A Amount treated as earnings

- (1) This section applies if shares having a market value of no less than £2000 are acquired by an employee in consideration of an employee shareholder agreement.
- (2) An amount calculated in accordance with subsection (3) is to be treated as earnings from the employment, in respect of the acquisition of the shares, for the tax year in which they are acquired.

But this is subject to subsection (4).

- (3) The amount is—

$$MV - P$$

where—

- a MV is an amount equal to the market value of the shares;
- b P is any payment the employee is treated as making for the shares under section 226B.

But if P exceeds MV, the amount is nil.

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- (4) If the shares are acquired pursuant to an employment-related securities option, subsection (2) does not apply.
- (5) If subsection (2) applies, nothing else constitutes earnings under this Part from the employment in respect of the acquisition of the shares.
- (6) For the purposes of this section and sections 226B to 226D—
- shares are “acquired” by an employee if the employee becomes beneficially entitled to them (and they are acquired at the time when the employee becomes so entitled);
- “employee shareholder agreement” means an agreement by virtue of which an employee is an employee shareholder (see section 205A(1) (a) to (d) of the Employment Rights Act 1996);
- “employee shareholder share” means a share acquired by an employee in consideration of an employee shareholder agreement;
- “employee” and “employer company”, in relation to an employee shareholder agreement, mean the individual and the company which enter into the agreement;
- “employment-related securities option” has the same meaning as in Chapter 5 of Part 7 (see section 471(5));
- “market value” has the same meaning as it has for the purposes of TCGA 1992 by virtue of Part 8 of that Act; and the market value of shares is their market value on the day on which they are acquired (but see also subsection (7)).
- (7) For the purposes of subsection (1), the market value of the shares is to be determined ignoring—
- (a) any election under section 431 (election for market value of restricted shares to be calculated as if not restricted), and
 - (b) section 437 (market value of convertible securities to be determined as if not convertible).

226B Deemed payment for employee shareholder shares

- (1) This section applies if shares having a market value of no less than £2000 are acquired by an employee in consideration of an employee shareholder agreement.
- (2) Where all the shares acquired in consideration of the agreement are acquired on the same day, the employee is to be treated, for the purposes of this Act, as having made on that day a payment of £2000 for those shares.
- (3) Where—
- (a) shares are acquired by the employee in consideration of the agreement on more than one day, and
 - (b) of those shares, shares having a market value of not less than £2000 are acquired on the first of those days,
- the employee is to be treated for the purposes of this Act as having made, on the first of those days, a payment of £2000 for the shares acquired on that day.

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- (4) If the market value of the shares acquired by the employee on the day mentioned in subsection (2) or (3)(b) exceeds £2000, the amount of the payment under subsection (2) or (3) which the employee is to be treated as having made for each of the shares is an amount equal to the appropriate proportion of the market value of that share.
- (5) The “appropriate proportion” is the following—

$$\frac{2000}{V}$$

where V is the total market value of the shares acquired by the employee on the day.

- (6) This section is subject to—
- (a) section 226C (only one payment deemed to be made under agreements with associated companies), and
 - (b) section 226D (no deemed payment if shareholder or a connected person has a material interest in the company).
- (7) Except as provided by this section, for the purposes of this Act the employee is to be treated as having given no consideration for shares acquired in consideration of the agreement.
- (8) Section 226A(7) applies for the purposes of this section as it applies for the purposes of section 226A(1).

226C Only one payment deemed to be made under associated agreements

- (1) An employee who is treated as having made a payment under section 226B for shares acquired in consideration of an employee shareholder agreement (“the relevant agreement”) is not to be treated as having made a payment for any other qualifying shares.
- (2) “Qualifying shares” means employee shareholder shares in—
- (a) the employer company in relation to the relevant agreement, or
 - (b) an associated company of that company,
- which are acquired by the employee in consideration of an agreement within subsection (3).
- (3) An agreement is within this subsection if it is—
- (a) another employee shareholder agreement with the same employer company, or
 - (b) an employee shareholder agreement with an associated company of that company.
- (4) For the purposes of this section—
- (a) a company is an “associated company” of another if—
 - (i) one of the two has control of the other, or
 - (ii) both are under the control of the same person or persons, and

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- (b) if a company controls another when an employee shareholder agreement is entered into with the employee, paragraph (a) applies as if that continued to be the case (in addition to any other circumstances) when any subsequent employee shareholder agreement is entered into with that employee.
- (5) But subsection (4)(b) does not apply as between two companies if—
 - (a) one of the companies has been dissolved,
 - (b) the period of two years beginning with the date of the dissolution has passed, and
 - (c) the employee has not, at any time in that period, been engaged in any office or employment (including engagement under a contract for services) with any company which is an associated company of the dissolved company.
- (6) In this section “control” is to be read in accordance with sections 450 and 451 of CTA 2010.

226D Shareholder or connected person having material interest in company

- (1) No payment is treated as made under section 226B in respect of any shares if, on the date on which the shares are acquired—
 - (a) the employee has a material interest in the employer company or a relevant parent undertaking, or
 - (b) the employee is connected with an individual who has a material interest in the employer company or a relevant parent undertaking.
- (2) No payment is treated as made under section 226B in respect of any shares if—
 - (a) at any time in the period of one year ending with the date on which the shares are acquired, the employee had a material interest in the employer company or a relevant parent undertaking, or
 - (b) on the date on which the shares are acquired, the employee is connected with an individual who, at any time in the period of one year ending with that date, had a material interest in the employer company or a relevant parent undertaking.

- (3) Subsections (4) and (5) define “material interest” for the purposes of this section.

Those subsections must be read together with subsections (6) to (8).

- (4) An individual (“A”) has a material interest in a company if at least 25% of the voting rights in the company are exercisable—
 - (a) by A,
 - (b) by persons connected with A, or
 - (c) by A and persons connected with A together.
- (5) If a company is a close company, an individual (“A”) has a material interest in it if—
 - (a) A,
 - (b) persons connected with A, or
 - (c) A and persons connected with A together,

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possess such rights as would, in the event of the winding up of the company or in any other circumstances, give an entitlement to receive at least 25% of the assets that would then be available for distribution among the participators.

(6) For the purposes of subsection (1), A is to be treated as having a material interest in a company at any time if either of the following conditions is met.

(7) The first condition is that—

- (a) A,
- (b) persons connected with A, or
- (c) A and persons connected with A together,

have an entitlement to acquire such rights as would (together with any existing rights) give A a material interest in the company.

(8) The second condition is that there are arrangements in place between—

- (a) the employer company or a relevant parent undertaking, and
- (b) A, or persons connected with A, or A and persons connected with A together,

which enable A or those persons to acquire such rights as would (together with any existing rights) give A a material interest in the company.

(9) In this section—

“arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);

“close company” includes a company that would be a close company but for—

- (a) section 442(a) of CTA 2010 (exclusion of companies not resident in the United Kingdom), or
- (b) sections 446 and 447 of CTA 2010 (exclusion of certain quoted companies);

“relevant parent undertaking” means any parent undertaking of the employer company and for this purpose “parent undertaking” is to be read in accordance with section 1162 of the Companies Act 2006.”

Commencement Information

I2 Sch. 23 para. 3 in force at 1.9.2013 for the purposes of the amendment made by that paragraph by S.I. 2013/1755, art. 2

4 In consequence of the amendment made by paragraph 3—

- (a) in the heading to Chapter 12 of Part 3, for “PAYMENTS” substitute “ OTHER AMOUNTS ”, and
- (b) before section 221 insert the heading “*Payments*”.

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Commencement Information

- I3** Sch. 23 para. 4 in force at 1.9.2013 for the purposes of the amendments made by that paragraph by S.I. 2013/1755, art. 2

- 5 In section 428 (restricted securities: amount of charge on occurrence of chargeable event), in subsection (7), after paragraph (b) insert—
“(ba) any amount treated as earnings from the employee's employment under section 226A (employee shareholder shares: amount treated as earnings) in respect of the acquisition of the employment-related securities (other than an amount of exempt income),”.

Commencement Information

- I4** Sch. 23 para. 5 in force at 1.9.2013 for the purposes of the amendment made by that paragraph by S.I. 2013/1755, art. 2

- 6 In section 431 (election for full or partial disapplication of Chapter 2 (restricted securities)), in subsection (3), after paragraph (a) insert—
“(aa) determining any amount that is to be treated as earnings from the employment where section 226A applies (employee shareholder shares: amount treated as earnings),”.

Commencement Information

- I5** Sch. 23 para. 6 in force at 1.9.2013 for the purposes of the amendment made by that paragraph by S.I. 2013/1755, art. 2

- 7 In section 437 (convertible securities: adjustment of charge), in subsection (1) (a), after “charge)” insert “, section 226A (employee shareholder shares: amount treated as earnings) ”.

Commencement Information

- I6** Sch. 23 para. 7 in force at 1.9.2013 for the purposes of the amendment made by that paragraph by S.I. 2013/1755, art. 2

- 8 In section 446B (charge on acquisition of securities with artificially depressed market value), in subsection (4), after paragraph (b) insert—
“(ba) section 226A (employee shareholder shares: amount treated as earnings),”.

Commencement Information

- I7** Sch. 23 para. 8 in force at 1.9.2013 for the purposes of the amendment made by that paragraph by S.I. 2013/1755, art. 2

- 9 In section 446T (securities acquired for less than market value: amount of notional loan), in subsection (3), after paragraph (b) insert—

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“(ba) any amount treated as earnings from the employee's employment under section 226A (employee shareholder shares: amount treated as earnings) in respect of the acquisition of the employment-related securities (other than an amount of exempt income),”.

Commencement Information

I8 Sch. 23 para. 9 in force at 1.9.2013 for the purposes of the amendment made by that paragraph by S.I. 2013/1755, art. 2

10 In section 446V (Chapter 3C to be additional to other income tax charges), after paragraph (b) insert—

“(ba) section 226A (employee shareholder shares: amount treated as earnings),”.

Commencement Information

I9 Sch. 23 para. 10 in force at 1.9.2013 for the purposes of the amendment made by that paragraph by S.I. 2013/1755, art. 2

11 In section 452 (shares in research institution spin-out companies: market value on acquisition), in subsection (2), after paragraph (a) insert—

“(aa) determining any amount that is to be treated as earnings from the employment under section 226A (employee shareholder shares: amount treated as earnings),”.

Commencement Information

I10 Sch. 23 para. 11 in force at 1.9.2013 for the purposes of the amendment made by that paragraph by S.I. 2013/1755, art. 2

12 In section 479 (securities options: amount of gain realised on chargeable event), after subsection (3) insert—

“(3A) Sections 226B to 226D (deemed payment for acquisition of employee shareholder shares) provide for the determination of the amount of consideration, if any, which is given for employee shareholder shares (within the meaning of section 226A(6)).”

Commencement Information

I11 Sch. 23 para. 12 in force at 1.9.2013 for the purposes of the amendment made by that paragraph by S.I. 2013/1755, art. 2

13 In section 531 (enterprise management incentives: limitation of charge where shares acquired below market value), after subsection (3) insert—

“(3A) Sections 226B to 226D (deemed payment for acquisition of employee shareholder shares) provide for the determination of the amount, if any, for which employee shareholder shares (within the meaning of section 226A(6)) are acquired.”

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I12 Sch. 23 para. 13 in force at 1.9.2013 for the purposes of the amendment made by that paragraph by S.I. 2013/1755, art. 2

14 (1) Section 532 (enterprise management incentives: consequences after disqualifying events) is amended as follows.

(2) After subsection (4) insert—

“(4A) Sections 226B to 226D (deemed payment for acquisition of employee shareholder shares) provide for the determination of the amount, if any, for which employee shareholder shares (within the meaning of section 226A(6)) are acquired.”

(3) In subsection (5), for “those subsections” substitute “ subsections (2) and (3) ”.

Commencement Information

I13 Sch. 23 para. 14 in force at 1.9.2013 for the purposes of the amendments made by that paragraph by S.I. 2013/1755, art. 2

15 In section 554N (exclusions: other cases involving employment-related securities etc), in subsection (7)(b), after “Part 3” insert “ , or an amount treated under section 226A as earnings of A, ”.

Commencement Information

I14 Sch. 23 para. 15 in force at 1.9.2013 for the purposes of the amendment made by that paragraph by S.I. 2013/1755, art. 2

16 In Chapter 3 of Part 4 of ITTOIA 2005 (tax on dividends etc from UK companies), after section 385 insert—

“Purchase by company of exempt employee shareholder shares

385A No charge to tax on purchase by company of exempt employee shareholder shares

(1) No tax is charged under this Chapter on the amount or value of a payment made by a company on the purchase of shares from an individual if—

- (a) the payment is made in respect of shares in the company,
- (b) the shares are exempt employee shareholder shares, and
- (c) at the time of the disposal, the individual is not an employee of, or an office-holder in, the employer company or an associated company of that company.

(2) In this section—

“exempt employee shareholder share”, “employer company” and “associated company” have the same meaning as in sections 236B to 236D of TCGA 1992 (capital gains tax treatment of employee shareholder shares);

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“in respect of shares in the company” has the same meaning as in Part 23 of CTA 2010 (company distributions) (see section 1113 of that Act).”

Commencement Information

I15 [Sch. 23 para. 16](#) in force at 1.9.2013 for the purposes of the amendment made by that paragraph by [S.I. 2013/1755, art. 2](#)

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