These notes refer to the Corporation Tax Act 2009
(c.4) which received Royal Assent on 26 March 2009

CORPORATION TAX ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 11: Relief for particular employee share acquisition schemes

Overview

2514. This Part and Part 12 give specific statutory deductions for various costs associated with setting up and operating employee share schemes. These are arrangements under which employers provide incentives for their employees in the form of shares. This Part gives relief for the provision of shares under an approved share incentive plan. It also gives relief for the cost of setting up particular types of approved share scheme. It is based on sections 84A and 85A of ICTA and Schedule 4AA to ICTA.

2515. Neither Part 11 nor Part 12 gives relief for the day to day costs of running a scheme. These must be considered according to the ordinary rules that apply to the calculation of business profits for corporation tax purposes. Those rules also apply if relief is not available under either of these Parts for the costs of setting up a scheme or providing the shares under the scheme.

2516. The rule in section 53 in Part 3 (trading income), that prevents a deduction for items of a capital nature, is subject to contrary provision. This avoids a conflict between that general rule and, in the context of this Part, the specific relief given by some sections of this Part. For example, the cost of setting up a SIP would normally be considered to be capital expenditure.

Chapter 1: Share incentive plans

Section 983: Overview of Chapter

2517. This section introduces the provisions within the Chapter. It is new.

2518. The Chapter gives a deduction for the costs of setting up an approved share incentive plan (SIP) and for the provision of shares under the SIP. The qualifying conditions for approval of the SIP itself are in Schedule 2 to ITEPA and this Chapter is treated as part of the SIP code. See section 984.

Section 984: Chapter to form part of SIP code etc

2519. This section provides that this Chapter forms part of the SIP code. The section also deals with the trustees' acquisition of forfeited shares. It is based on paragraphs 1 and 6 of Schedule 4AA to ICTA.

2520. S*ubsection (2)* makes clear that a consequence of treating the Chapter as part of the SIP code is that the definitions in Schedule 2 to ITEPA apply to the Chapter.

2521. *Subsection (4)* deals with the trustees' acquisition of forfeited shares. The plan rules may require an employee to forfeit his or her plan shares if the employee leaves the company. No further deduction is allowed to the company if the forfeited shares are reawarded. See section 996 exclusion 5. But it may be necessary to identify whether these shares are included in a later award. See, for example, section 994(6)(b). Subsection (4) identifies when forfeited shares are acquired for this purpose.

Section 985: References to a deduction being allowed to a company

2522. This section explains how a deduction allowed by this Chapter is given to companies carrying on different types of business. It is based on paragraphs 1 and 13 of Schedule 4AA to ICTA.

2523. Paragraph 1(3) of Schedule 4AA to ICTA allows a deduction in calculating trade profits. Section 21A of ICTA applies this rule to the calculation of the profits of a property business. These deductions are dealt with in *subsection (2)*.

2524. A property business may also be an investment business. *Subsection (3)* makes specific provision for a company with investment business. The deduction is allowed as an expense of management (see Chapter 2 of Part 16).

2525. If the business is both a property business and an investment business subsection (3) gives priority to subsection (2). This priority is based on section 75(2) of ICTA which provides that a deduction as an expense of management is not given if the deduction is otherwise allowable.

Section 986: Treatment of receipts under Chapter

2526. This section explains how a withdrawal of relief is taxed. It is based on section 21A of, and paragraphs 10 to 13 of Schedule 4AA to, ICTA.

2527. If relief is withdrawn the company is treated as receiving an amount equal to the deduction. See, for example, section 990(4). This section sets out how this is taxed.

2528. *Subsection (3)* applies if the relief is recovered after the trade or property business has ceased. It makes clear that the recoveries are taxed as post-cessation receipts. In the source legislation the amounts are taxed as trading receipts. See *Change 76* in Annex 1. This change also affects sections 990(4) and (5), 992(4) and (6), 993(2) and (4) and 998(3) and (4).

2529. If the company is not carrying on a trade or property business or has not carried on a trade or property business the amount is one to which the charge to corporation tax on income is applied, see *subsection (4)*.

2530. This treatment is also applied to the recovery of relief given for contributions to a plan trust. In the source legislation paragraphs 10 and 12 of Schedule 4AA to ICTA charge these amounts as trade receipts. See *Change 76* in Annex 1.

2531. The amount charged by subsection (4) is included on the list of former Schedule D Case VI charges (in section 834A of ICTA as inserted by Part 1 of Schedule 1 to this Act). This does not mean that loss relief is available under section 396 of ICTA against the amount charged by subsection (4). This is because the amount charged by subsection (4) does not arise from a transaction as required by that section.

Section 987: Deduction for costs of setting up an approved share incentive plan

2532. This section gives a deduction for the costs setting up a SIP. It is based on paragraph 7 of Schedule 4AA to ICTA.

2533. *Subsection (4)* applies if there is a delay between the company incurring the costs and the SIP being approved. The deduction is given for the period of account in which the scheme is approved. This avoids the company having to amend its company tax return for the period in which the expenditure was incurred or in an extreme case being outside the time limit for amending that return.

Section 988: Deductions for running expenses of an approved share incentive plan

2534. This section prevents any prohibitive rule in this Chapter denying a deduction for the costs of running a SIP. It is based on paragraph 8 of Schedule 4AA to ICTA.

2535. The trustees of a SIP will incur costs related to the day to day running of the SIP. For example, they will have to operate a PAYE scheme to deal with the employees' income tax liabilities. They will also incur incidental costs in acquiring the shares. The employing company will have to meet these costs.

2536. The section does not itself give the company a deduction for payments made to the trustees to enable them to meet the running costs. It provides that none of the prohibitive rules in this Chapter, such as section 994(7), prevents a deduction being given for running expenses. As the SIP is run for the benefit of its employees the costs would usually be allowed as a normal deduction in calculating the company's taxable profits. Whether or not a deduction is allowed is considered on first principles.

2537. *Subsection (3)* makes clear that running expenses do not include the cost of acquiring the shares except for the incidental costs listed in *subsection (4)*. The reference to stamp duty reserve tax is new.

Section 989: Deduction for contribution to plan trust

2538. This section allows a deduction for a payment to the trustees which they use to buy shares for later award under the SIP. It is based on paragraphs 9 and 10 of Schedule 4AA to ICTA.

2539. In broad terms the purpose of this section is to give the company a deduction at the time when it funds the purchase of the shares and not when the shares are awarded to the employee. Without this section it could be difficult for companies to finance the purchase of shares in advance of them being awarded.

2540. The section applies to payments made on or after 6 April 2003. This commencement is preserved in Schedule 2 (transitionals and savings).

2541. "Plan trust" has the meaning given in paragraph 71(3) of Schedule 2 to ITEPA.

2542. *Subsection (2)* provides that at the end of the period of 12 months beginning when the trustees make the acquisition with the payment the trustees must hold at least 10% of the ordinary share capital of the company in which the shares are acquired. This total applies to all the shares held. There is no requirement that the total is made up of shares acquired using the payment.

2543. Under the SIP rules shares will be appropriated to an employee but the employee is required to leave the shares with the trustees. For example, paragraph 36(1) of Schedule 2 to ITEPA requires free shares to remain in the hands of the trustees for a holding period of at least three years. *Subsection (3)* makes clear that these shares count towards the 10% total.

Section 990: Withdrawal of deduction under section 989

2544. This section withdraws the relief given by section 989 if the shares acquired with the payment are not awarded within specified time limits. It is based on paragraph 10 of Schedule 4AA to ICTA.

2545. *Subsection (4)* provides that the relief is withdrawn by treating the deduction as an amount received by the company. This amount is taxed in accordance with the rules in section 986.

2546. This section refers to a deduction being given under section 989. It is possible that the deduction may have been given under paragraph 9 of Schedule 4AA to ICTA if the relief was given in an accounting period before this Act took effect. The general continuity of law provisions in Schedule 1 to this Act provide that where necessary references to the new legislation should be read as applying also to the source legislation. So the recovery provisions still apply.

2547. This section contains a change to clarify and make more consistent the way in which withdrawn relief is treated. See *Change 76* in Annex 1 and the commentary on section 986.

Section 991: Another deduction to be allowed if all acquired shares are awarded

2548. This section allows a further deduction if the relief is withdrawn under section 990 but all the acquired shares are awarded at a later date. It is based on paragraph 10 of Schedule 4AA to ICTA.

Section 992: Award of shares to excluded employee

2549. This section withdraws a proportion of the relief given under sections 989 and 991 if shares are awarded to an excluded employee. It is based on paragraph 10 of Schedule 4AA to ICTA.

2550. The definition of excluded employee in *subsection (2)* is the same as that in paragraph 4(2) of Schedule 4AA to ICTA which is rewritten as Exclusion 1 in section 996.

2551. This section contains a change to clarify and make more consistent the way in which withdrawn relief is treated. See *Change 76* in Annex 1 and the commentary on section 986.

Section 993: Termination plan notice

2552. This section withdraws a proportion of the relief given by section 989 if the company terminates the SIP before all the shares have been awarded. It is based on paragraph 12 to Schedule 4AA to ICTA.

2553. This section contains a change to clarify and make more consistent the way in which withdrawn relief is treated. See *Change 76* in Annex 1 and the commentary on section 986.

Section 994: Deduction for providing free or matching shares

2554. This section gives a deduction for providing free or matching shares. It is based on paragraph 2 of Schedule 4AA to ICTA.

2555. A “free share” is defined in paragraph 2(1)(a) of Schedule 2 to ITEPA. It means a share appropriated to the employee without payment.

2556. A “matching share” is defined in paragraph 3(1) of Schedule 2 to ITEPA. It means a share appropriated to the employee without payment in proportion to the partnership shares acquired by the employee.

2557. A “group plan” is defined in paragraph 4 of Schedule 2 to ITEPA. It means a SIP established by a parent company in which the companies it controls are allowed to participate.

Section 995: Deduction for additional expense in providing partnership shares

2558. This section gives a deduction for any contribution the company makes towards the acquisition of partnership shares. It is based on paragraph 3 of Schedule 4AA to ICTA.

2559. A “partnership share” is defined in paragraph 2(1)(a) of Schedule 2 to ITEPA. It means a share acquired by the trustees on behalf of an employee out of sums deducted from the employee’s salary.

2560. This section is concerned with the case to which paragraph 52 of Schedule 2 to ITEPA applies. Partnership shares are acquired by the trustees with funds provided by the employee. The rules of the SIP may require the employee to make payments to the trustees over an accumulation period which cannot last longer than twelve months. Paragraph 52(3) of Schedule 2 to ITEPA provides the number of partnership shares awarded to the employee is calculated at the end of the accumulation period by reference to the lower of:

- the market value of the shares at the beginning of the period; or
- the market value of the shares on the date on which they are to be acquired.

2561. If the market value of the shares at the end of the period is greater than the value at the beginning the company will make up the difference. This section gives the company a deduction for the excess.

Section 996: Shares excluded from sections 994 and 995

2562. This section identifies the shares that do not qualify for relief if they are awarded as free, matching or partnership shares. It is based on paragraphs 4, 6 and 9 of Schedule 4AA to ICTA.

2563. *Exclusion 1* is similar to the exclusion in section 992(2). It requires the employee to whom the shares are awarded to be within the charge to income tax on any earnings from the employment in respect of which the shares were awarded. Generally, it has the effect of excluding any shares awarded to non-UK resident employees.

2564. *Exclusion 2* is intended to protect the employee by acting as a disincentive to the award of shares that are intended to reduce in value.

2565. *Exclusion 3* applies if the company or an associated company operates another share scheme, including another SIP, and has already had a deduction for the cost of providing the shares for use by that scheme. As shares are not identifiable individually, rules are needed to identify when the shares included in an award were acquired. *Subsection (6)(b)* identifies whether shares included in an award have already had relief under another SIP or share scheme.

Section 997: No deduction for expenses in providing dividend shares

2566. This section provides that no deduction is allowed for the cost of providing dividend shares. It is based on paragraph 5 of Schedule 4AA to ICTA.

2567. The expression “dividend shares” is defined in paragraph 62(3)(b) of Schedule 2 to ITEPA. They are shares acquired by the trustees reinvesting cash dividends declared on plan shares the trustees hold on behalf of employees participating in the SIP.

Section 998: Withdrawal of deductions if approval for share incentive plan withdrawn

2568. This section withdraws any deduction given under this Chapter if approval for the SIP is withdrawn. It is based on paragraph 11 of Schedule 4AA to ICTA.

2569. Paragraph 83 of Schedule 2 to ITEPA allows an officer of Revenue and Customs to issue a notice to the company withdrawing approval of a SIP. If approval is withdrawn a separate notice must be issued under *subsection (2)* of this section to recover any relief given under this Chapter.

2570. The relief is withdrawn by treating the company as receiving an amount equal to the amount of the deduction. Section 986 sets out how this amount is taxed.

2571. This section contains a change to clarify and make more consistent the way in which withdrawn relief is treated. See *Change 76* in Annex 1 and the commentary on section 986.

Chapter 2: SAYE option schemes, Company share option schemes and Employee share options trusts

Section 999: Deduction for costs of setting up SAYE option scheme or CSOP scheme

2572. This section allows a deduction for the costs of setting up an approved "save as you earn" (SAYE) option scheme or an approved "company share option plan" (CSOP) scheme. It is based on sections 21A, 75 and 84A of ICTA.

2573. A CSOP scheme is commonly known as a company share option plan.

2574. The section is very similar to sections 987 and 1000. The deduction is given in calculating the trade or property business profits, *subsection (3)*, or as an expense of managing an investment business, *subsection (4)*. If the business is both an investment business and a property business subsection (4) gives priority to the property business. This order of priority is based on section 75(2) of ICTA which provides that a deduction as an expense of management is not given if the deduction is otherwise allowable.

2575. *Subsection (6)* applies if there is a delay between the company incurring the costs and the scheme being approved. The deduction is given for the period of account in which the scheme is approved. This avoids the company having to amend its company tax return for the period in which the expenditure is incurred or in an extreme case being outside the time limit for amending that return.

2576. Relief for providing the shares under the schemes is given by Part 12, which rewrites Schedule 23 to FA 2003.

2577. A CSOP can be set up by a non-UK resident company which trades in the United Kingdom otherwise than through a permanent establishment. Such a non-UK resident company would be subject to income tax, rather than corporation tax.

Section 1000: Deduction for costs of setting up employee share ownership trust

2578. This section gives relief for the costs of setting up a qualifying employee share ownership trust (QUEST). It is based on sections 21A, 75 and 85A of ICTA.

2579. In practice it is unlikely that a QUEST would be set up in an accounting period to which this Act applies. Section 67 of FA 1989 gave relief for employers' contributions to QUESTs. That relief was withdrawn by section 142 of FA 2003 with effect for contributions made in accounting periods beginning on or after 1 January 2003. Relief for the provision of shares through a QUEST is given now by Schedule 23 to FA 2003, rewritten in Part 12 of this Act.

2580. The relief given by section 85A of ICTA for the setting up costs was not withdrawn and is still available in the event that a company did set up a new QUEST. The section is very similar to section 999.

2581. This Act does not rewrite section 85 of ICTA (payments to trustees of approved profit sharing schemes). Approved profit sharing schemes were phased out by section 49 of FA 2000, and the deduction in section 85 of ICTA was phased out by section 50 of FA 2000. This Act accordingly does not rewrite section 85 of ICTA (or section 50 of FA 2000).