

NOTICES OF AMENDMENTS

given on

Wednesday 26 June 2013

*For other Amendment(s) see the following page(s) of Supplement to Votes:
387-88 and 389*

CONSIDERATION OF BILL

FINANCE BILL, AS AMENDED

Mr Chancellor of the Exchequer

8

Schedule 2, page 144, line 34, at end insert—

‘(10A) For the purposes of subsection (10) it does not matter if the general offer is made to different shareholders by different means.’

Mr Chancellor of the Exchequer

9

Schedule 2, page 144, line 45, after ““(7)”, insert—

(8) ‘For the purposes of sub-paragraph (5) it does not matter if the general offer is made to different shareholders by different means’.

Notices of Amendments: 26 June 2013

Finance Bill, *continued*

Mr Chancellor of the Exchequer

10

Schedule 2, page 146, line 20, at end insert—

- ‘(3DA) In subsection (3D)(a) the reference to the issued ordinary share capital of the relevant company does not include any capital already held by the person making the offer or a person connected with that person and in subsection (3D)(b) the reference to the shares in the relevant company does not include any shares already held by the person making the offer or a person connected with that person.
- (3DB) For the purposes of subsection (3D)(a) and (b) it does not matter if the general offer is made to different shareholders by different means.’

Mr Chancellor of the Exchequer

11

Schedule 2, page 147, line 16, at end insert—

- ‘(1A) After sub-paragraph (3) insert—
- “(3A) In sub-paragraph (3)(a) the reference to the issued ordinary share capital of the company does not include any capital already held by the person making the offer or a person connected with that person and in sub-paragraph (3)(b) the reference to the shares in the company does not include any shares already held by the person making the offer or a person connected with that person.
- (3B) For the purposes of sub-paragraph (3)(a) and (b) it does not matter if the general offer is made to different shareholders by different means.”
- (1B) A SAYE option scheme approved before the day on which this Act is passed which contains a provision under paragraph 37(1) of Schedule 3 to ITEPA 2003 by reference to paragraph 37(2) has effect with any modifications needed to reflect the amendment made by sub-paragraph (1A).’

Mr Chancellor of the Exchequer

12

Schedule 2, page 147, line 37, leave out sub-paragraph (1) and insert—

- ‘(1) In Part 7 of Schedule 3 (exercise of share options) paragraph 38 (exchange of options on company reorganisation) is amended as follows.
- (1A) In sub-paragraph (2)(c)—
- (a) after “982” insert “or 983 to 985”, and
- (b) after “shareholder” insert “etc”.
- (1B) After sub-paragraph (2) insert—
- “(2A) In sub-paragraph (2)(a)(i) the reference to the issued ordinary share capital of the scheme company does not include any capital already held by the person making the offer or a person connected with that person and in sub-paragraph (2)(a)(ii) the reference to the shares in the scheme company does not include any shares already held by the person making the offer or a person connected with that person.
- (2B) For the purposes of sub-paragraph (2)(a)(i) and (ii) it does not matter if the general offer is made to different shareholders by different means.”’

Notices of Amendments: 26 June 2013

Finance Bill, *continued*

Mr Chancellor of the Exchequer

13

Schedule 2, page 149, line 34, at end insert—

- ‘(2HA) In subsection (2H)(a) the reference to the issued ordinary share capital of the relevant company does not include any capital already held by the person making the offer or a person connected with that person and in subsection (2H)(b) the reference to the shares in the relevant company does not include any shares already held by the person making the offer or a person connected with that person.
- (2HB) For the purposes of subsection (2H)(a) and (b) it does not matter if the general offer is made to different shareholders by different means.’.

Mr Chancellor of the Exchequer

14

Schedule 2, page 150, line 31, at end insert—

- ‘(3A) In sub-paragraph (3)(a) the reference to the issued ordinary share capital of the company does not include any capital already held by the person making the offer or a person connected with that person and in sub-paragraph (3)(b) the reference to the shares in the company does not include any shares already held by the person making the offer or a person connected with that person.
- (3B) For the purposes of sub-paragraph (3)(a) and (b) it does not matter if the general offer is made to different shareholders by different means.’.

Mr Chancellor of the Exchequer

15

Schedule 2, page 151, line 6, leave out sub-paragraph (1) and insert—

- ‘(1) In Part 6 of Schedule 4 (exercise of share options) paragraph 26 (exchange of options on company reorganisation) is amended as follows.
- (1A) In sub-paragraph (2)(c)—
- (a) after “982” insert “or 983 to 985”, and
- (b) after “shareholder” insert “etc”.
- (1B) After sub-paragraph (2) insert—
- “(2A) In sub-paragraph (2)(a)(i) the reference to the issued ordinary share capital of the scheme company does not include any capital already held by the person making the offer or a person connected with that person and in sub-paragraph (2)(a)(ii) the reference to the shares in the scheme company does not include any shares already held by the person making the offer or a person connected with that person.
- (2B) For the purposes of sub-paragraph (2)(a)(i) and (ii) it does not matter if the general offer is made to different shareholders by different means.’”.

Notices of Amendments: 26 June 2013

Finance Bill, *continued*

Mr Chancellor of the Exchequer

16

Schedule 2, page 151, line 13, at end insert—

Enterprise management incentives

30A(1) In Part 6 of Schedule 5 (company reorganisations) in paragraph 39 (introduction) after sub-paragraph (3) insert—

- “(4) In sub-paragraph (2)(a)(i) the reference to the issued share capital of the company does not include any capital already held by the person making the offer or a person connected with that person and in sub-paragraph (2)(a)(ii) the reference to the shares in the company does not include any shares already held by the person making the offer or a person connected with that person.
- (5) For the purposes of sub-paragraph (2)(a)(i) and (ii) it does not matter if the general offer is made to different shareholders by different means.”
- (2) The amendment made by this paragraph comes into force on such day as the Treasury may by order appoint.’
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EXPLANATORY NOTE

CLAUSE 14 SCHEDULE 2: TAX ADVANTAGED EMPLOYEE SHARE SCHEMES

AMENDMENTS 8 - 16

SUMMARY

1. These amendments to the legislation for tax advantaged employee share schemes are concerned with the rules that apply where company events (such as takeovers) involving 'general offers' take place. They determine when scheme rules may allow shares or share options to be exchanged for holdings in an acquiring company; or when shares can be withdrawn, or share options exercised, with tax advantages. The amendments confirm the rules as they have been consistently applied by HM Revenue & Customs (HMRC). They fit in the context of Schedule 2, which implements a package of changes simplifying and clarifying the legislation for tax advantaged employee share schemes.

DETAILS OF THE AMENDMENT

2. Amendments 8 and 9 make clarificatory amendments to the legislation for Share Incentive Plans (SIP) at section 498 and Schedule 2 Income Tax (Earnings and Pensions) Act 2003 (ITEPA). They confirm that a qualifying 'general offer' can take place where the offer is made to some shareholders in a different manner (as might be the case in a management buyout, where shares held by participating managers may be subject to a separate agreement). The amendments address several places in the SIP code where references to a 'general offer' occur.
3. Amendments 10 - 12 make clarificatory amendments to the legislation for Save As You Earn option schemes (SAYE) in section 519 and Schedule 3 ITEPA. They confirm that a qualifying 'general offer' can take place where shares in the company are already held by the person making the offer (so that the shares are not included within the general offer to acquire the remaining shares); or if the offer is made to some shareholders in a different manner. The amendments address several places in the SAYE code where references to a 'general offer' occur. Amendment 12 also makes a consequential change to provisions in the Bill (the new sub-paragraph (1A)) concerning the exercise of SAYE options upon certain company events within the Companies Act 2006.
4. The provisions of Amendment 11 have effect from the date the legislation receives Royal Assent, and SAYE schemes approved before

FINANCE BILL 2013
CLAUSE 14 SCHEDULE 2

the amendment takes effect are to be treated as if relevant provisions included the modifications made by this amendment.

5. Amendments 13 - 15 make clarificatory amendments to the legislation for Company Share Option Plans (CSOP) in section 524 and Schedule 4 ITEPA. They achieve the same outcome for CSOP as amendments 10 - 12 do for SAYE.
6. Amendment 16 makes a clarificatory amendment to the legislation for Enterprise Management Incentives (EMI) in Schedule 5 ITEPA. It achieves the same result for EMI as the other amendments do for SAYE and CSOP. The amendment will come into force on a date specified by Treasury Order (EMI is a notified State aid and changes to it need to be cleared with the European Commission).

BACKGROUND

7. These amendments to the legislation for tax advantaged employee share schemes clarify the rules that apply where company events involving 'general offers' take place.
8. In such cases the legislation allows employees holding shares or share options to be granted favourable tax treatment. They may be able to exchange their holdings for shares or options over shares in an acquiring company, and Schedule 2 creates new rights for them to realise shares without tax liability in the event of a cash takeover of a company.
9. But following a recent decision by a tax tribunal the Government considers it desirable to clarify the scope of what constitutes a 'general offer' for the purposes of these provisions. The present amendments aim to remove any possible uncertainty and confirm the rules as they have been consistently applied by HMRC.