



## Tax incentives for employee ownership trusts

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### Who is likely to be affected?

Individuals, trustees, personal representatives and close companies which dispose of shares that give a controlling interest in a trading company (or in the parent company of a trading group) to a qualifying trust used as an indirect employee ownership structure.

Employees of a company controlled by a qualifying trust, or of a company in a group headed by such a company.

### General description of the measure

A number of new reliefs will be introduced in connection with indirect employee ownership. These are:

- a relief from capital gains tax (CGT) on gains accruing on the disposal of shares in a trading company (or in a holding company of a trading group) to a special trust which operates for the benefit of all employees;
- an exemption from income tax of £3,600 for certain payments made to employees of qualifying employee-owned companies; and
- minor consequential amendments to ensure exemption from inheritance tax (IHT) on the transfer of shares and other assets into such a trust, and to ensure that employers can claim a corporation tax deduction for payment of a relevant bonus.

The reliefs and exemptions will apply providing certain conditions are met.

### Policy objective

These measures will provide incentives for growth of the employee-ownership sector by promoting awareness of the sector and increasing the attractiveness of indirect employee ownership structures for businesses.

### Background to the measure

At Budget 2013 the Government announced the introduction of a CGT relief on the sale of a controlling interest in a business into an employee ownership structure, and that it would look at further incentives in this area, including measures targeted at employees through indirect ownership models. A consultation document, *Supporting the employee ownership sector* was published on 4 July 2013 and sought views on the structure of the CGT relief and an income tax exemption. The consultation closed on 26 September 2013. The Government's response to this consultation, *Supporting the employee ownership sector: a summary of responses*, was published on the GOV.UK website on 10 December 2013.

## Detailed proposal

### Operative date

The measures in relation to CGT and IHT will have effect on and after 6 April 2014. The income tax measure will have effect on and after 1 October 2014.

## **Current law**

Part 1 of the Taxation of Chargeable Gains Act 1992 charges CGT on a gift or sale of shares by an individual and some other legal persons. Tax is normally charged at either 18 per cent or 28 per cent but, where entrepreneurs' relief is due (under Part 5, Chapter 3), the rate is reduced to 10 per cent. Section 239 means that, subject to certain conditions being met, disposals to some types of trust which operate for the benefit of employees are not taxed.

Part 2 of the Income Tax (Earnings and Pensions) Act 2003 provides that income tax is chargeable on earnings and other employment income awarded to a person by reason of their employment. Section 62 of that Act sets out that an amount is earnings in relation to employment if it is salary, wages or a fee, a gratuity or other profit or incidental benefit of any kind obtained by an employee if it is money or money's worth, or anything that constitutes an emolument of the employment. In the absence of provisions to the contrary, any bonus payment made to an employee by an indirectly employee owned company would be subject to income tax as earnings from employment.

IHT is normally charged on transfers of property which reduce a person's estate either on death or during their lifetime, including transfers of property into a trust, unless that transfer is exempt. Sections 28 and 86 of the Inheritance Tax Act 1984 (IHTA) provide an exemption from such charges when shares are transferred by an individual to trusts which provide benefits to all or most employees of a company, their spouses, civil partners and dependants (employee benefit trusts) and which meet the conditions of section 86 IHTA. Section 13 provides a similar exemption when shares or other assets are transferred by a close company to such trusts.

## **Proposed revisions**

Legislation will be introduced in Finance Bill 2014 to amend the Taxation of Chargeable Gains Act 1992 so that disposals of shares to a new kind of trust which benefits all employees of a company (or a group) may be wholly relieved from CGT if certain criteria are met. These are that:

- the company whose shares are disposed of must be a trading company, or the parent company of a trading group;
- the trust which acquires the shares must operate for the benefit all employees;
- the trust must have a controlling interest in the company at the end of the tax year, which it did not have at the start of that year;
- certain participators must be excluded from being beneficiaries of the trust; and
- the claimant must not previously have qualified for relief on the same company's shares.

The new relief will be available on disposals which take place in a single tax year. The disposals may be made by more than one person, and can be of any number of shares. There will be provisions to prevent claimants of the new relief receiving disproportionate share-related benefits from the trust.

Finance Bill 2014 will also include provisions that amend the Income Tax (Earnings and Pensions) Act 2003 to exempt from income tax any relevant bonus payment made in a tax year to an employee by a qualifying indirectly employee-owned company that meets the relevant conditions. A relevant bonus will be a cash award other than regular salary or wages that is paid to all employees on equal terms, although bonuses can be set by an employer by reference to a percentage of salary or length of service or hours worked. The exemption will be subject to an annual cap of £3,600 per employee for each qualifying company.

To ensure that employers are not prevented from claiming a corporation tax deduction to which they would otherwise be entitled because a bonus is paid to their employees is

exempt from income tax under these new provisions, a consequential amendment will be made to section 1292 of the Corporation Tax Act 2009 to ensure such payments are treated as qualifying benefits.

An amendment will also be made to section 86 IHTA to ensure that a trust which meets the qualifying conditions for employee ownership purposes will be exempt from IHT even though it may otherwise not meet the criteria in section 86 for the existing IHT exemption.

The Government is considering how best to ensure that existing employee benefit trusts (EBTs) set up for the purpose of employee ownership are not compelled to amend their deeds or resettle their assets into a new trust in order for the tax exemptions and relief to be available.

## Summary of impacts

Exchequer impact (£m)	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
	-	-10	-20	-20	-20	-25
	These figures are set out in Table 2.1 of the Autumn Statement, as part of <i>Employee ownership: further support</i> and have been certified by the Office for Budget Responsibility. More details can be found in the policy costings document published alongside the Autumn Statement.					
<b>Economic impact</b>	These measures are not expected to have any significant economic impacts.					
<b>Impact on individuals and households</b>	These proposals will decrease the tax paid by employees of qualifying indirectly employee owned companies who receive a bonus payment and business owners who dispose of a qualifying interest into a qualifying structure. Around 67,000 employees are expected to benefit from the income tax exemption in 2014-15, with a maximum annual saving of £720 for a basic rate taxpayer.					
<b>Equalities impacts</b>	The Government has no evidence to suggest that these measures will have any adverse impacts on people with protected characteristics.					
<b>Impact on business including civil society organisations</b>	These measures are expected to have a negligible impact on businesses and civil society organisations in terms of administrative and one-off costs. The exemptions are not compulsory, so there is no need for any single employer to take any actions unless they want to do so.					
<b>Operational impact (£m) (HMRC or other)</b>	It is not anticipated that implementing these measures will incur any additional significant costs nor reap any significant savings for HM Revenue & Customs.					
<b>Other impacts</b>	<p><u>Small and micro business assessment:</u> the impact of these measures on small and micro businesses is not anticipated to differ from that on large businesses and is expected to be negligible.</p> <p>Other impacts have been considered and none have been identified.</p>					

## **Monitoring and evaluation**

The measures will be kept under review through communication with the relevant business sector.

## **Further advice**

If you have any questions about these changes, please contact:

Rob Clay on 03000 570649 (email: [rob.clay@hmrc.gsi.gov.uk](mailto:rob.clay@hmrc.gsi.gov.uk)) regarding the capital gains tax relief;

email: [employmentincome.policy@hmrc.gsi.gov.uk](mailto:employmentincome.policy@hmrc.gsi.gov.uk) regarding the income tax exemption; or

Danka Wigley on 03000 585277 (email: [danka.wigley@hmrc.gsi.gov.uk](mailto:danka.wigley@hmrc.gsi.gov.uk)) regarding the inheritance tax exemption.

**1 Companies owned by employee-ownership trusts**

Schedule 1 contains provision about tax reliefs in connection with companies owned by employee-ownership trusts.

## SCHEDULE 1

Section 1

## COMPANIES OWNED BY EMPLOYEE-OWNERSHIP TRUSTS

## PART 1

## CAPITAL GAINS TAX RELIEF

- 1 In Part 7 of TCGA 1992 (other property, businesses, investments etc), after section 236G insert –

**“236H Disposals to employee-ownership trusts**

- (1) This section applies where –
  - (a) a person other than a company (“P”) disposes of ordinary share capital of a company (“C”) to the trustees of a settlement,
  - (b) the relief requirements are met, and
  - (c) P makes a claim under this section.
- (2) Section 17(1) does not apply to the disposal.
- (3) The disposal, and the acquisition by the trustees, are to be treated for the purposes of this Act as being made for such consideration as to secure that neither a gain nor a loss accrues on the disposal.
- (4) “The relief requirements” are –
  - (a) that C meets the trading requirement at the time of the disposal and continues to meet that requirement for the remainder of the tax year in which that time falls (see section 236I),
  - (b) that the settlement meets the all-employee benefit requirement (see section 236J),
  - (c) that the settlement does not meet the controlling interest requirement immediately before the tax year in which the disposal occurs, but does meet it at the end of that year (see section 236L),
  - (d) that the limited participation requirement is met (see section 236M), and
  - (e) that this section does not apply in relation to any related disposal by P or a person connected with P which occurs in an earlier tax year.
- (5) A disposal in an earlier tax year is “related” to the disposal in question if –
  - (a) both disposals are of ordinary share capital of the same company, or
  - (b) the disposal in the earlier tax year is of ordinary share capital of a company which is, or at the time of that disposal was, a

member of the same group as the company whose ordinary share capital is the subject of the disposal in question.

- (6) A claim under this section must include –
- (a) information to identify the settlement,
  - (b) C’s name and the address of its registered office, and
  - (c) the date of the disposal and the number of shares disposed of.

### **236I Trading requirement**

- (1) C meets the trading requirement if C is –
- (a) a trading company which is not a member of a group, or
  - (b) the principal company of a trading group.
- (2) “Trading company” means a company carrying on trading activities whose activities do not include to a substantial extent activities other than trading activities.
- (3) “Trading group” means a group –
- (a) one or more of whose members carry on trading group activities, and
  - (b) the activities of whose members, taken together, do not include to a substantial extent activities other than trading group activities.
- (4) In this section –
- “trading activities” means activities carried on by the company in the course of, or for the purposes of, a trade being carried on by it;
  - “trading group activities” means activities carried on by a member of the group in the course of, or for the purposes of, a trade being carried on by any member of the group.
- (5) For the purposes of determining whether C is a trading company or the principal company of a trading group –
- (a) the activities of the members of a group are to be treated as one business (with the result that activities are disregarded to the extent that they are intra-group activities), and
  - (b) a business carried on by a company in partnership with one or more other persons is to be treated as not being a trading activity or a trading group activity.

### **236J All-employee benefit requirement**

- (1) A settlement meets the all-employee benefit requirement if the trusts of the settlement –
- (a) do not permit any of the settled property to be applied, at any time, otherwise than for the benefit of all the eligible employees on the same terms,
  - (b) do not permit the trustees, at any time, to apply any of the settled property by creating a trust, or by transferring property to the trustees of any settlement, and
  - (c) do not permit the trustees, at any time, to make loans to beneficiaries of the trusts.

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- (2) See section 236K for provision about the requirement in subsection (1)(a) (“the equality requirement”).
- (3) “Eligible employee” means –
- (a) if C meets the trading requirement by virtue of section 236I(1)(a), any person employed by C, and
  - (b) if C meets the trading requirement by virtue of section 236I(1)(b), any person employed by a relevant group company,
- but does not include an excluded participator.
- (4) “Excluded participator” means –
- (a) a person who is a participator in C, or, where the trading requirement was met by virtue of section 236I(1)(b), in any relevant group company,
  - (b) any other person who is a participator in any close company that has made a disposition whereby property became comprised in the same settlement, being a disposition which but for section 13 of the Inheritance Tax Act 1984 would have been a transfer of value,
  - (c) any other person who has been a participator in any company mentioned in paragraph (a) or (b) at any time after, or during the 10 years before, the disposal mentioned in section 236H(1), or
  - (d) any person who is connected with any person within paragraph (a), (b) or (c).
- (5) The participators in a company who are referred to in subsection (4) do not include any participator who –
- (a) is not beneficially entitled to, or to rights entitling the participator to acquire, 5% or more of, or of any class of the shares comprised in, the company’s share capital, and
  - (b) on a winding-up of the company would not be entitled to 5% or more of its assets.
- (6) In this section –
- (a) “relevant group company” means C or any other company which is a member of the group of which C is the principal company,
  - (b) “close company” and “participator” have the same meaning as in Part 4 of the Inheritance Tax Act 1984,
  - (c) references to a participator in a company are, in the case of a company which is not a close company, to be construed as references to a person who would be a participator in the company if it were a close company, and
  - (d) references to the settled property include references to any income arising from it.

### **236K Further provision about the equality requirement**

- (1) Trusts are not to be regarded as failing to meet the equality requirement (see section 236J(2)) by reason only that they –
- (a) permit the settled property to be applied, where an eligible employee has died, as if a surviving spouse, civil partner or dependant of the deceased person were the eligible employee



- (and continued to be employed) for a period of 12 months, or such shorter period as the trusts may provide, starting with the time of death,
- (b) prevent the settled property being applied for the benefit of persons who have not been –
- (i) if C meets the trading requirement by virtue of section 126I(1)(a), employees of C, and
  - (ii) if C meets the trading requirement by virtue of section 236I(1)(b), employees of a relevant group company (whether or not the same one),
- for a continuous period of 12 months or such shorter period as the trusts may provide, or
- (c) permit the trustees to comply with a request from a person that the trustees do not apply any of the settled property for the benefit of that person.
- (2) The equality requirement is not infringed by the trusts by reason only that, in addition to requiring the settled property to be applied for the benefit of all the eligible employees on the same terms, they also permit the settled property to be applied for charitable purposes.
- (3) The equality requirement is not infringed by applying the settled property by reference to –
- (a) an employee's remuneration,
  - (b) an employee's length of service, or
  - (c) hours worked by an employee;
- but this is subject to subsections (4) and (5).
- (4) The equality requirement is infringed if any of the settled property is applied on terms such that some (but not all) employees receive no benefits (other than by virtue of subsection (1)(b) and (c)).
- (5) If any of the settled property is applied by reference to more than one of the factors mentioned in subsection (3), the equality requirement is infringed unless –
- (a) each factor gives rise to a separate entitlement related to the level of remuneration, length of service or (as the case may be) hours worked, and
  - (b) the total entitlement is the sum of those separate entitlements.
- (6) Subject to subsection (3), the equality requirement is infringed if any feature of the trusts has, or is likely to have, the effect of conferring benefits wholly or mainly on –
- (a) directors, or
  - (b) employees receiving the higher or highest levels of remuneration, or
  - (c) employees who –
    - (i) are employed in a particular part of the business carried on by C or, if C is the principal company of a group, the group, or
    - (ii) carry on particular kinds of activities.

- (7) In this section –
- (a) “relevant group company” means C or any other company which is a member of the group of which C is the principal company, and
  - (b) references to the settled property include references to any income arising from it.

### **236L Controlling interest requirement**

- (1) A settlement meets the controlling interest requirement if –
- (a) the trustees –
    - (i) hold more than 50% of the ordinary share capital of C, and
    - (ii) have powers of voting on all questions affecting C as a whole which, if exercised, would yield a majority of the votes capable of being exercised on them,
  - (b) the trustees are entitled to more than 50% of the profits available for distribution to the equity holders of C,
  - (c) the trustees would be entitled, on a winding up, to more than 50% of the assets of C available for distribution to equity holders, and
  - (d) there are no provisions in any agreement or instrument affecting C’s constitution or management or its shares or securities whereby the condition in paragraph (a), (b) or (c) can cease to be satisfied without the consent of the trustees.
- (2) Chapter 6 of Part 5 of the Corporation Tax Act 2010 (group relief: equity holders and profits or assets available for distribution) applies for the purposes of subsection (1) as it applies for the purposes of the provisions mentioned in section 157(1) of that Act.

### **236M Limited participation requirement**

- (1) The limited participation requirement is met if either –
- (a) P has not been a participator in C at any time in the period of 12 months ending immediately after the disposal mentioned in section 236H(1), or
  - (b) the participator fraction does not exceed 2/5.
- (2) “The participator fraction” means –

$$\frac{NP}{NE}$$

where –

NP is the sum of –

- (a) the number of persons who immediately after the disposal are both –
  - (i) participators in C, and
  - (ii) employees of, or office holders in, C, and
- (b) the number of other persons who immediately after the disposal are both –
  - (i) employees of C or, if C is the principal company of a trading group, of any member of that group, and
  - (ii) connected with persons within paragraph (a);

NE is the number of persons who immediately after the disposal are employees of C or, if C is the principal company of a group, of any member of the group.

- (3) The participators in C who are referred to in subsections (1) and (2) do not include any participator who –
  - (a) is not beneficially entitled to, or to rights entitling the participator to acquire, 5% or more of, or of any class of the shares comprised in, its share capital, and
  - (b) on a winding-up of C would not be entitled to 5% or more of its assets.
- (4) In this section –
  - (a) “participator” has the meaning given by section 454 of CTA 2010, and
  - (b) references to a participator in a company are, in the case of a company which is not a close company, to be construed as references to a person who would be a participator in the company if it were a close company.

#### **236N Events which trigger deemed disposal and reacquisition by trustees**

- (1) Where the trustees of a settlement acquire ordinary share capital from a person in a tax year in circumstances where section 236H applies, subsection (3) applies on the first occasion a disqualifying event occurs in relation to the acquisition.
- (2) A “disqualifying event” occurs in relation to the acquisition if and when –
  - (a) at any time after that tax year –
    - (i) C ceases to meet the trading requirement, or
    - (ii) the settlement ceases to meet the controlling interest requirement, or
  - (b) at any time after the acquisition –
    - (i) the settlement ceases to meet the all-employee benefit requirement,
    - (ii) the participator fraction exceeds 2/5, or
    - (iii) the trustees act in a way which, as required by the all-employee benefit requirement, the trusts do not permit.
- (3) The trustees are treated as having, immediately after the disqualifying event –
  - (a) disposed of any ordinary share capital of C held by the trustees, and
  - (b) immediately reacquired that ordinary share capital, at its market value at that time.
- (4) In applying section 236J for the purposes of subsection (2)(b)(i), subsection (4)(c) of that section applies as if the reference to the disposal mentioned in section 236H(1) were a reference to the time in question under subsection (2) above.
- (5) In applying subsections (2) to (4) of 236M for the purposes of subsection (2)(b)(ii), those subsections apply as if references to the

disposal mentioned in section 236H(1) were references to the time in question under subsection (2) above.

### **236O Relief for deemed disposals under section 71**

- (1) This section applies where –
  - (a) a deemed disposal arises under section 71(1) by reason of the trustees of a settlement (“the acquiring settlement”) becoming absolutely entitled to settled property against the trustee of that settled property (“the transferring trustee”),
  - (b) that settled property consists of ordinary share capital of a company,
  - (c) the relief requirements are met, and
  - (d) the transferring trustee makes a claim under this section.
- (2) Section 17(1) does not apply to the disposal.
- (3) The deemed disposal and acquisition by the transferring trustee under section 71(1) are to be treated for the purposes of this Act as being made for such consideration as to secure that neither a gain nor a loss accrues on the disposal.
- (4) For the purposes of section 236N(1) the trustees of the acquiring settlement are treated as acquiring the ordinary share capital from the transferring trustee, at the time of the deemed disposal, in circumstances where section 236H applies.
- (5) In applying sections 236H(4) and 236I to 236N for the purposes of this section –
  - (a) references in those provisions to the settlement are to be read as references to the acquiring settlement, and
  - (b) references in those provisions to C are to be read as references to the company mentioned in subsection (1)(b).
- (6) A claim under this section must include –
  - (a) information to identify the acquiring settlement,
  - (b) the name of the company mentioned in subsection (1)(b) and the address of its registered office, and
  - (c) the date of the deemed disposal and the number of shares deemed disposed of.

### **236P Interpretation sections 236H to 236O**

- (1) In sections 236H to 236O and this section –
  - “company” has the meaning given by section 170(9);
  - “ordinary share capital” has the meaning given by section 1119 of CTA 2010;
  - “trade” means any trade which is conducted on a commercial basis and with a view to the realisation of profits.
- (2) In those sections –
  - (a) references to a group, to membership of a group or to the principal company of a group, are to be construed in accordance with the provisions of section 170, and
  - (b) references to a group are to be construed with any necessary modifications where applied to a company incorporated

under the law of a country or territory outside the United Kingdom.

- (3) In determining whether a person is connected with another for the purposes of those sections, section 286 applies as if subsection (8) of that section also mentioned uncle, aunt, nephew and niece.”

- 2 The amendment made by paragraph 1 has effect in relation to disposals made on or after 6 April 2014.

## PART 2

### EMPLOYMENT INCOME EXEMPTION

- 3 ITEPA 2003 is amended as follows.

- 4 In Part 4 (employment income: exemptions), after Chapter 10 insert –

#### “CHAPTER 10A

##### EXEMPTIONS: BONUS PAYMENTS BY CERTAIN EMPLOYERS

#### **312A Limited exemption for qualifying bonus payments**

- (1) This section applies in relation to qualifying bonus payments made, in a tax year, to an employee by an employer if the employer is a company which –
- (a) meets the trading requirement throughout the qualifying period (see section 312C), and
  - (b) meets the indirect employee-ownership requirement throughout the qualifying period (see section 312D).
- (2) No liability to income tax arises in respect of the qualifying bonus payments if, or to the extent that, the total chargeable amount in respect of those payments does not exceed £3,600 (“the exempt amount”).
- (3) If this section applies in a tax year in relation to more than one employer of the same person, subsection (2) applies separately in relation to the total payments made by each employer, unless subsection (4) applies.
- (4) If two or more of the employers are members of the same group for all or part of the tax year, subsection (2) applies to the total of the payments made to the employee by those employers, other than payments made by an employer at a time when it is not a member of that group (but see subsection (8)).
- (5) In applying subsection (2) –
- (a) the exempt amount is set against payments in the order in which they are received, and
  - (b) if two or more payments are received on the same day, which together take the total payments received in the tax year over the exempt amount, subsection (6) applies to determine the amount of each of those payments which is exempt.

- (6) In a case within subsection (5)(b), the amount of a payment which is exempt is given by the formula –

$$\frac{P}{SP} \times \text{REA}$$

where –

P is the amount of the payment,

SP is the sum of that payment and the other payments received on the same day, and

REA is so much of the exempt amount as remains after taking account of any qualifying bonus payments previously received in that tax year.

- (7) Where subsection (2) applies separately to different payments by virtue of subsection (3), subsections (5) and (6) also apply to those payments separately.
- (8) If, in a tax year –
- (a) an employer makes a payment when it is a member of a trading group, and
  - (b) later in that tax year the employer ceases to be a member of that group,
- the employer is treated for the purposes of this section as remaining a member of that group for the remainder of the tax year (without prejudice to it also being a member of any other group).
- (9) The Treasury may by order increase or reduce the sum of money specified in subsection (2).
- (10) A statutory instrument containing an order under this section which reduces the sum of money specified may not be made unless a draft of it has been laid before and approved by a resolution of the House of Commons.
- (11) In this section –
- “chargeable amount”, in respect of a qualifying bonus payment, means the amount of employment income which would be charged to tax in respect of that qualifying bonus payment, apart from this section;
- “the qualifying period” means the period of 12 months ending with the day on which the payment is received, but excluding –
- (a) if the settlement first met the all-employee benefit requirement in section 236J of TCGA 1992 during that 12 month period, any time before it met that requirement, and
  - (b) if the settlement first met the controlling interest requirement in section 236L of TCGA 1992 during that 12 month period, any time before it met that requirement.

### **312B “Qualifying bonus payments”**

- (1) A payment made by an employer (“E”) to an employee is a qualifying bonus payment if –
- (a) it does not consist of regular salary or wages,

- (b) it is awarded under a scheme which meets the participation requirement and the equality requirement,
  - (c) it is not made by a service company (see section 312E), and
  - (d) it is not excluded under subsection (10).
- (2) The participation requirement is that all persons in relevant employment must be eligible to participate in any award under the scheme.
- (3) The equality requirement is that every person who participates in an award under the scheme must do so on the same terms.
- (4) A person is in “relevant employment” if –
  - (a) where E is a member of a group, the person is employed by any company which is a member of the group, and
  - (b) in any other case, the person is employed by E.
- (5) The participation requirement is not infringed by reason of employees being excluded from participating in an award by reason of their having less than 12 months continuous service in relevant employment at the time of the award.
- (6) The equality requirement is not infringed by reason of the amount of an award under the scheme being determined by reference to –
  - (a) an employee’s remuneration,
  - (b) an employee’s length of service, or
  - (c) hours worked by an employee;but this is subject to subsections (7) and (8).
- (7) The equality requirement is infringed if an award is made on terms such that some (but not all) of the employees participating in the award receive nothing.
- (8) If the amount of an award is determined by reference to more than one of the factors mentioned in subsection (6), the equality requirement is infringed unless –
  - (a) each factor gives rise to a separate entitlement related to the level of remuneration, length of service or (as the case may be) hours worked, and
  - (b) the total entitlement is the sum of those separate entitlements.
- (9) Subject to subsection (6), the equality requirement is infringed if any feature of the scheme has, or is likely to have, the effect of conferring benefits wholly or mainly on –
  - (a) directors, or
  - (b) employees receiving the higher or highest levels of remuneration, or
  - (c) employees who –
    - (i) are employed in a particular part of the business carried on by E or, if E is a member of a group, the group, or
    - (ii) carry on particular kinds of activities.

- (10) A payment is excluded if the employee is a party to arrangements (whether made before or after the beginning of the employee's employment) under which—
- (a) the employee gives up the right to receive an amount of general earnings or specific employment income in return for the provision of the payment, or
  - (b) the employee and employer agree that the employee is to receive the payment rather than receive some other description of employment income.

### **312C Section 312A: the trading requirement**

- (1) For the purposes of section 312A(1) a company meets the trading requirement if—
- (a) it is a trading company, or
  - (b) it is a member of a trading group.
- (2) “Trading company” means a company carrying on trading activities whose activities do not include to a substantial extent activities other than trading activities.
- (3) “Trading group” means a group—
- (a) one or more of whose members carry on trading group activities, and
  - (b) the activities of whose members, taken together, do not include to a substantial extent activities other than trading group activities.
- (4) In this section—
- “trading activities” means activities carried on by the company in the course of, or for the purposes of, a trade being carried on by it;
  - “trading group activities” means activities carried on by a member of the group in the course of, or for the purposes of, a trade being carried on by any member of the group.
- (5) For the purposes of determining whether a company is a trading company or a member of a trading group—
- (a) the activities of the members of a group are to be treated as one business (with the result that activities are disregarded to the extent that they are intra-group activities), and
  - (b) a business carried on by a company in partnership with one or more other persons is to be treated as not being a trading activity.

### **312D Section 312A: the indirect employee-ownership requirement**

- (1) For the purposes of section 312A(1), a company meets the indirect employee-ownership requirement if—
- (a) a settlement meets the controlling interest requirement in respect of—
    - (i) the company, or
    - (ii) if the company is a member of a trading group, but not the principal company, that principal company, and



- (b) the settlement meets the all-employee benefit requirement.
- (2) For this purpose –
  - (a) section 236L of TCGA 1992 applies to determine if a settlement meets the controlling interest requirement in respect of a company, and
  - (b) sections 236J and 236K of that Act apply to determine if the settlement meets the all-employee benefit requirement,
- (3) But, for the purposes of subsection (2) –
  - (a) in sections 236J to 236K of that Act references to C are to be read as references to the company mentioned in subsection (2)(a), and
  - (b) the references in section 236J of that Act to section 236I(1)(a) and section 236I(1)(b) of that Act are to be read as references to section 312C(1)(a) and section 312C(1)(b) of this Act respectively.
- (4) “The qualifying period” has the same meaning as in section 312A.

**312E “Service company”**

- (1) For the purposes of section 312B(1) a payment is made by a “service company” if it is made by –
  - (a) a managed service company within the meaning of section 61B, or
  - (b) a company (“SC”) in respect of which Conditions A and B are met.
- (2) Condition A is that the business carried on by SC consists substantially of the provision of the services of persons employed by it.
- (3) Condition B is that the majority of those services are provided to persons –
  - (a) to whom subsection (4) applies, but
  - (b) who are not members of the same group as the company which makes the payment.
- (4) This subsection applies to –
  - (a) a person who controls or has controlled, or two or more persons who together control or have controlled, SC or any company of which SC is a 51% subsidiary at the time the payment is made,
  - (b) a person who, or two or more persons who together, at any time before the payment is made –
    - (i) employed all or a majority of the employees of SC, or
    - (ii) employed all or a majority of the employees of SC and other companies which are members of the same group as SC at the time of the payment (taken together), and
  - (c) any company which is a 51% subsidiary of, controlled by or connected or associated with, any person within paragraph (a) or (b).
- (5) For the purposes of subsection (4) –

- (a) a partnership is to be treated as a single person, and
  - (b) where a partner (alone or together with others) has control of a company, the partnership is to be treated as having (in the same way) control of that company.
- (6) The following provisions apply for the purposes of this section –
- (a) section 449 of CTA 2010 (“associated company”);
  - (b) section 995 of ITA 2007 (meaning of “control”);
  - (c) section 286 of TCGA 1992 (connected persons: interpretation).

### 312F Interpretation of Chapter 10A

- (1) In this Chapter –
- “company” has the meaning given by section 170(9) of TCGA 1992;
  - “ordinary share capital” has the meaning given by section 1119 of CTA 2010;
  - “trade” means any trade which is conducted on a commercial basis and with a view to the realisation of profits.
- (2) In this Chapter –
- (a) references to a group, to membership of a group or to the principal company of a group, are to be construed in accordance with the provisions of section 170 of TCGA 1992, and
  - (b) references to a group are to be construed with any necessary modifications where applied to a company incorporated under the law of a country or territory outside the United Kingdom.
- (3) In this Chapter references to a payment to an employee include, in the case of an employee who has died, a payment to the employee’s personal representatives.”
- 5 In section 717 (orders and regulations made by Treasury etc), in subsection (4) (instruments not subject to negative resolution procedure), after “under” insert “section 312A(9) (tax-exempt amount in respect of certain bonus payments),”.
- 6 In Part 2 of Schedule 1 (index of defined expressions), at the appropriate places insert –

“company (in Chapter 10A of Part 4)	section 312F”;
“ordinary share capital (in Chapter 10A of Part 4)”	section 312F”;
“trade (in Chapter 10A of Part 4)	section 312F”.

- 7 The amendment made by paragraph 4 has effect in relation to payments received on or after 1 October 2014.

PART 3

MINOR AMENDMENTS

*Inheritance Tax Act 1984*

- 8 (1) Section 13 of IHTA 1984 (dispositions by close companies for benefit of employees) is amended as follows.
- (2) In subsection (1) for the words from “if the persons” to the end substitute “if—
- (a) the persons for whose benefit the trusts permit the property to be applied include all or most of either—
    - (i) the persons employed by or holding office with the company, or
    - (ii) the persons employed by or holding office with the company or any one or more subsidiaries of the company, or
  - (b) the close company meets the trading requirement and the trusts are of a settlement which meets the all-employee benefit requirement.”
- (3) After subsection (4) insert—
- “(4A) Sections 236I, 236J and 236K of the 1992 Act apply to determine if the close company meets the trading requirement, and the settlement meets the all-employee benefit requirement, for the purposes of subsection (1)(b).  
For this purpose, references in those sections to C are to be read as references to the close company.”
- (4) The amendments made by this paragraph have effect in relation to dispositions of property made on or after 6 April 2014.
- 9 (1) Section 28 of IHTA 1984 (employee trusts) is amended as follows.
- (2) In subsection (1), for paragraphs (a) and (b) substitute—
- “(a) the trusts of the settlement are of the description specified in section 86(1) and the persons for whose benefit the trusts permit the settled property to be applied include all or most of the persons employed by or holding office with the company, or
  - (b) the company meets the trading requirement and the trusts are of a settlement which meets the all-employee benefit requirement.”
- (3) After subsection (6) insert—
- “(6A) Sections 236I, 236J and 236K of the 1992 Act apply to determine if the company meets the trading requirement, and the settlement meets the all-employee benefit requirement, for the purposes of subsection (1)(b).

For this purpose, references in those sections to C are to be read as references to the company mentioned in subsection (1).”

- (4) The amendments made by this paragraph have effect in relation to transfers of value made on or after 6 April 2014.
- 10 (1) Section 75 of IHTA 1984 is amended as follows (property becoming subject to employee trusts) is amended as follows.
- (2) In subsection (2), for paragraph (a) substitute –
- “(a) that –
- (i) the persons for whose benefit the trusts permit the settled property to be applied include all or most of the persons employed by or holding office with the company, or
- (ii) the company meets the trading requirement and the trusts are of a settlement which meets the all-employee benefit requirement.”
- (3) After subsection (3) insert –
- “(4) Sections 236L, 236J and 236K of the 1992 Act apply to determine if the company meets the trading requirement, and the settlement meets the all-employee benefit requirement, for the purposes of subsection (2)(a).
- For this purpose references in those sections to C are to be read as references to the company mentioned in subsection (1).”
- (4) The amendments made by this paragraph are treated as having come into force on 6 April 2014.
- 11 (1) Section 86 of IHTA 1984 (trusts for benefit of employees) is amended as follows.
- (2) In subsection (3), after paragraph (c) insert “, or
- (d) the settled property consists of or includes ordinary share capital of a company which meets the trading requirement and the trusts on which the settled property is held are those of a settlement which –
- (i) meets the controlling interest requirement with respect to the company, and
- (ii) meets the all-employee benefit requirement with respect to the company.”
- (3) After that subsection insert –
- “(3A) For the purpose of determining whether subsection (3)(d) is satisfied in relation to settled property which consists of or includes ordinary share capital of a company –
- (a) section 236I of the 1992 Act applies to determine if the company meets the trading requirement (with references to “C” being read as references to that company),
- (b) sections 236J to 236L of the 1992 Act apply to determine if the settlement meets the all-employee benefit requirement and the controlling interest requirement (with references in those sections to “C” being read as references to that company), and

(c) “ordinary share capital” has the meaning given by section 989 of the Income Tax Act 2007.”

(4) The amendments made by this paragraph are treated as having come into force on 6 April 2014.

*Corporation Tax Act 2009*

12 (1) In section 1292 of CTA 2009 (employee benefit contributions: provision of qualifying benefits), after subsection (6A) insert –

“(6B) For those purposes qualifying benefits are also provided, where a payment of money is made to a person, if and to the extent that the payment is exempt from income tax by virtue of section 312A of ITEPA 2003.”

(2) The amendment made by this paragraph has effect in relation to payments made on or after 1 October 2014.

## EXPLANATORY NOTE

### COMPANIES OWNED BY EMPLOYEE OWNERSHIP TRUSTS

#### SUMMARY

1. Clause [X] and Schedule [Y] introduce a relief from capital gains tax and an exemption from income tax relevant to the creation and operation of legal structures in which a trading company is owned by a particular sort of trust for the benefit of employees.
2. Part 1 of the Schedule introduces a relief from capital gains tax on disposals of shares in a trading company or in the parent company of a trading group. The disposals must be made to a trust with specified characteristics, and the trustees must hold a defined controlling interest in the company at the end of the tax year for which the relief is claimed. The trustees must apply the trust's property for the benefit of all the eligible employees of the company (or, as the case may be, the group headed by the company).
3. Part 2 of this Schedule introduces an exemption of up to £3,600 per employment by a company or group per tax year from income tax on a qualifying bonus payment. The qualifying bonus payment must be one made to its employees by a company which is owned directly or indirectly by a trust of the type specified in Part 1 at the time of the payment and which meets the qualifying conditions. A qualifying bonus payment will be an award other than regular salary or wages that is paid to all employees of the company (or the group of which it is a member) on equal terms, although bonus amounts can be set by reference to a percentage of salary or length of service or hours worked.
4. Part 3 of this Schedule makes consequential amendments to relevant inheritance tax provisions to support the creation and operation of the trust and to corporation tax legislation to support the payment of tax exempt bonuses by employers.

#### DETAILS OF THE SCHEDULE

##### *Part 1: capital gains tax relief*

5. Part 1 of the Schedule makes changes to the Taxation of Chargeable Gains Act 1992 (TCGA 1992) to introduce a relief from capital gains tax on disposals of shares in a trading company or in the parent company of a trading group. The disposals must be made to a trust with specified characteristics, and the trustees must hold a defined controlling interest in the company at the end of the tax year for which the relief is claimed. The trustees must apply the trust's property for the benefit of all the eligible employees of the company (or, as the case may be, the group headed by the company).
6. Paragraph 1 inserts new sections 236H to 236P into TCGA 1992.

7. Subsection (1) of new section 236H summarises the circumstances in which the section applies and relief is due. It refers to the relief requirements which are described more fully in subsection (4).
8. Subsections (2) and (3) of new section 236H ensure that, where the section applies and the TCGA would normally require that the consideration for the disposal would be taken to be the market value of the shares, this 'market value rule' will not apply. Instead, the consideration received by the person disposing of the shares and given by the trust which acquires the shares will be taken to be an amount which results in no gain and no loss arising on the disposal.
9. Subsection (4) of new section 236H introduces five 'relief requirements' all of which must be met in order for the capital gains tax relief to be due. Four of these requirements are described in detail in other sections of the TCGA. The trading requirement must be met by the company whose shares are acquired by the trustees at the time of the disposal and until the end of the tax year in which that disposal is made: see new section 236I, paragraph 12 below. The all-employee benefit requirement must be met by the trust or 'settlement' the trustees of which acquire the shares, see new sections 236J and 236K, paragraphs 16 and 21 below. The controlling interest requirement must also be met by that settlement, see new section 236L, paragraph 25 below. The limited participation requirement is an anti-avoidance provision, referring to the shareholders and other participators in the company, see new section 236M, paragraph 28 below.
10. Subsection (4)(e) and (5) of new section 236H contain the fifth relief requirement. This is that neither the claimant nor anyone connected with him has received relief under section 236H in an earlier year on a disposal of either shares in the same company or shares in a company which was at that time a member of the same group as the company whose shares are the subject of the present claim.
11. Subsection (6) of new section 236H requires the claimant to supply certain information to HMRC with any claim, to allow HMRC to check the validity of the claim.
12. New section 236I provides details of the trading requirement which must be met by the company ('C') whose shares are acquired by the trust. If C is not in a group then it must be a trading company. Otherwise C must be the parent company of a trading group.
13. Subsection (2) of new section 236I defines a trading company: C may be a trading company even if it carries on some non-trading activities, providing those activities are not substantial in relation to all its activities taken together.
14. Subsection (3) of new section 236I defines a trading group: at least one member of the group must carry on a trade and the activities of all the members taken together must not include to a substantial extent activities which are either non-trading or unrelated to the trade of another group member.
15. Subsection (5) of new section 236I provides for all the activities of the members of a group to be treated as one business and for businesses carried on by a company in its capacity as a member of a partnership not to be treated as trading activities or related to the trade of

another group member. The latter is to ensure that control of the company by the trustees carries with it control of the company's business: if the company is in a partnership it is not generally possible to say that it controls the partnership's business.

16. New section 236J provides details of the all-employee benefit requirement which must be met by the settlement whose trustees acquire the shares in company 'C'. Subsection (1) says that the settlement meets the requirement if the settled property is only permitted to be used for the benefit of all 'eligible employees' on the same terms (this is the equality requirement - see section 236K). The trusts of the settlement must not permit the trustees to create any sub trusts, to transfer property to the trustees of any other settlement or to make loans to beneficiaries of the trust.

17. Subsection (3) of new section 236J defines the 'eligible employees' who must be beneficiaries of the trust. Subject to the exceptions described in subsection (4), every employee of C and (where C is the parent company of a group) every employee of every member of the group headed by C is an eligible employee. The parent company of a group is a member of that group.

18. Subsection (4) of new section 236J lists individuals who are 'excluded participators', and as such cannot be eligible employees for the purposes of subsection (3). These individuals may therefore not be beneficiaries of the trust. An individual is an excluded participator if he or she:

- is a participator in C or in any company which is a member of the group of which C is the parent (the parent company of a group is a member of that group),
- is a participator in a close company which has transferred property to the trustees of the settlement and that transfer would have given rise to an inheritance tax charge but for the exemption in section 13 of the Inheritance Tax Act 1984,
- has been a participator in any of those companies after, or during the ten years before, the disposal on which relief is claimed,
- is connected with any participator identified under the preceding rules in this subsection. (In this context, 'connected with' takes its meaning from section 286 TCGA 1992, and is extended to include uncles, aunts, nephews and nieces. See section 236P(3), paragraph 39 below.)

For these purposes, 'participator' has a restricted meaning - see subsection (5), paragraph 19 below.

19. Subsection (5) of new section 236J applies a special definition of 'participator' for the purposes of deciding whether a person is an excluded participator. A person who does not own, or is not entitled to acquire, 5% or more of any class of share in a company and who would not be entitled to 5% or more of the company's assets on its winding-up is not treated as a participator and therefore cannot be an excluded participator.

20. Subsection (6) of new section 236J defines the terms 'relevant group company' 'close company' and 'participator' as used in this section, and ensures that the restrictions on how the settled property of the trust may be applied in section 236J refer also to income arising from that property.



21. New section 236K explains the ‘equality requirement’ which was introduced as an element of the all-employee benefit requirement by section 236J(1). This ensures that, with a few specific exceptions, every eligible employee benefits from the trust’s income and property, though they need not benefit by exactly the same amounts.
22. Subsections (1) and (2) of new section 236K list four things the trustees may be permitted to do with the trust’s income and property without jeopardising the equality requirement’s being met:
- apply it for the benefit of a surviving spouse, civil partner or dependant of an eligible employee who has died for up to 12 months after the death (or such shorter period as the trusts may provide), as if the recipient were that eligible employee,
  - not apply it to individuals who have not been continuously employed by the company or, as the case may be, the group for a minimum period (not exceeding 12 months) preceding the payment,
  - not apply it to employees who have freely asked not to receive benefits, and
  - apply it for charitable purposes.
23. Subsections (3) (4) and (5) of new section 236K permit differing amounts to be paid to eligible employees, notwithstanding the equality requirement, but not so that some employees receive nothing at all. An individual’s benefit from the trust may be computed by reference to his or her remuneration, length of service, or hours worked, but entitlement on account of each factor must be computed separately and the total payment must be sum of such relevant components.
24. Subsection (6) of new section 236K further ensures that the trust operates fairly for the benefit of all eligible employees (subject to the rules in subsection (3)). The equality requirement, and hence the all-employee benefit requirement, is not met if any feature of the trust actually has, or is likely to have, the effect of giving benefits wholly or mainly to directors or to more highly-paid employees, or to employees in a particular part of the business, or to employees carrying on particular activities.
25. New section 236L provides details of the controlling interest requirement which must be met by the settlement, trustees of which acquire the shares in company ‘C’, at the end of the tax year in which the relevant disposal is made. The requirement has three conditions, each of which must be satisfied, plus a fourth general condition which ensures the continuation of the controlling interest. For the purposes of the controlling interest requirement, Chapter 6 of Part 5 of the Corporation Tax Act 2010 applies to give the meaning of terms such as ‘equity holder’.
26. Subsection (1) of new section 236L requires the trustees:
- to hold a majority of the ordinary share capital of C and that they also have voting powers which represent a majority of votes on questions affecting C as a whole,
  - to be entitled to a majority of the profits available for distribution to equity holders of C, and
  - to be entitled to a majority of C’s assets available for distribution to equity holders in the event of C’s winding-up.

27. Even if the three conditions above are met, subsection (1)(d) provides that the controlling interest requirement will not be met if there are any provisions in any agreement or document affecting C's constitution or management or its shares or securities, for any of the conditions to cease to be met without the consent of the trustees.

28. Subsection (1) of new section 236M explains two ways in which the limited participation requirement may be met. It will be met if the claimant has not been a participator in the company C at any time in the 12 months ending immediately after his disposal. Alternatively, it will be met if the 'participator fraction' does not exceed  $\frac{2}{5}$  (subsection (2)). In this context 'participator' has a special meaning given at subsection (3).

29. Subsection (2) of new section 236M defines the 'participator fraction'. The numerator NP is determined immediately after the disposal: it is the total of (i) the number of persons who are both participators in C and either employees of, or office-holders in, C and (ii) the number of persons immediately after the disposal who are both employees of C (or, as the case may be, of any member of the group headed by C) and connected with anyone included in (i). The denominator NE is the total number of persons who are employed by C (or as the case may be, the group headed by C) immediately after the disposal. In this context 'participator' has a special meaning given at subsection (3). For these purposes, the meaning of 'connected' is given by section 236P, see paragraph 40 below.

30. Subsections (3) and (4) of new section 236M define 'participator' for the purposes of the limited participation requirement. The meaning is as given by section 454 of the Corporation Tax Act 2010, but it does not include any person who does not hold, or is not entitled to acquire, five percent or more of any class of C's share capital and who is also not entitled to five percent or more of C's assets on a winding-up. Where the word is used in connection with a company which is not a close company, 'participator' includes a person who would be a participator in the company if it were a close company.

31. New section 236N makes provisions for gains or losses to accrue to the trustees on the occurrence of a 'disqualifying event'. Disqualifying events largely correspond to the relief requirements in 236H ceasing to be met at a time after relief has been given on a disposal to the trust.

32. Subsection (2) of new section 236N lists the disqualifying events. These are:

- (a) that at any time after the tax year in which relief was granted
  - the company C ceases to meet the trading requirement, or
  - the settlement ceases to meet the controlling interest requirement; or
- (b) at any time after the acquisition of shares (in circumstances where section 236H applies) by the settlement
  - the settlement ceases to meet the all-employee benefit requirement,
  - the participation fraction exceeds  $\frac{2}{5}$ , or
  - the trustees act in a way contrary to the demands of the all-employee benefit requirement.

33. Subsection (3) of new section 236N directs that when a disqualifying event occurs, the trustees are treated as disposing of the shares they hold in C immediately after that event

and reacquiring the same shares for their then market value. Gains and losses latent in all the shares in the ordinary share capital held by the trustees at that time (whether or not they are shares in respect of which relief was granted under section 236H or section 236O) will accrue and may be taxed or relieved subject to the relevant provisions of the Taxes Acts.

34. Subsections (4) and (5) of new section 236N ensure that the all-employee benefit requirement at section 236J and the limited participation requirement at section 236M work properly for the purposes of identifying disqualifying events under section 236N.

35. New section 236O contains special provisions which apply when trustees of a settlement (the acquiring settlement) become entitled to shares in a company which is settled property against the trustee of that property in another settlement (the transferring settlement). Section 71 of TCGA 1992 provides for a disposal and reacquisition to be deemed to occur on that event by the trustees of the transferring settlement, and section 236O ensures that the trustee of the transferring settlement may claim relief on the deemed disposal, subject to the same conditions as apply on actual disposals of shares to a trust.

36. Subsections (2) and (3) of new section 236O allow the relief in the same way as section 236H where section 236O applies.

37. Subsection (4) of new section 236O ensures that the provisions of section 236N (concerning the consequences of disqualifying events) apply to the acquiring settlement in cases where relief is given under section 236O rather than under section 236H.

38. Subsection (5) of new section 236O ensures that the five relief requirements apply to claims under section 236O as they do to claims under section 236H.

39. Subsection (6) of new section 236O requires the claimant to supply certain information to HMRC with any claim, to allow HMRC to check the validity of the claim. This requirement corresponds to section 236H(6).

40. New section 236P defines ‘company’, ‘ordinary share capital’ and ‘trade’ as they are used in sections 236H to 236O. It also provides for references to a group, to membership of a group and to the principal company of a group to be read in a manner consistent with their definitions in section 170 TCGA 1992. References to a group made in relation to a non UK company are construed with any necessary modifications. This section also applies section 286 TCGA for the purposes of deciding whether one person is ‘connected with’ another, subject to the definition of a relative used in that section being extended to include uncle, aunt, nephew and niece.

41. Paragraph 2 of Part 1 of the Schedule provides for the relief to have effect in relation to disposals made in tax year 2014-15 or later years.

### ***Part 2: employment income exemption***

42. Paragraph 3 amends provisions within the Income Tax (Earnings and Pensions) Act (ITEPA) 2003.

43. Paragraph 4 introduces to Part 4 of the Income Tax (Earnings and Pensions) Act the new Chapter, Chapter 10A, which itself introduces the following provisions.

**Section 312A**

44. New subsection (1) states the conditions which must be satisfied by an employer company to be able to make a qualifying bonus payment, such conditions being the trading requirement and the indirect employee ownership requirement and both these conditions must be met throughout the qualifying period.

45. New subsection (2) sets the maximum amount of the qualifying bonus payment that is exempt from income tax (the “exempt amount”) at £3,600 per tax year.

46. New subsection (3) ensures that, where an employee has received a qualifying bonus from more than one employer in a tax year, the exemption in new subsection (2) applies separately in relation to the total payments made by each employer. The exception to this is set out in new subsection (4).

47. New subsection (4) ensures that where an employee receives a bonus from two or more employers within the same group at the time the payments are received, the exempt amount applies to the total amount of the bonuses received from all employers in the group and not separately in relation to each employer, as with new subsection (3).

48. New subsection (5) specifies the order in which the exempt amount should be applied when more than one qualifying bonus is received in the same tax year by an employee. The situation where two (or more) qualifying bonuses are received on the same day is covered in new subsection 6.

49. New subsection (6) specifies how the exempt amount should be applied where two or more qualifying bonuses are received on the same day. The subsection shows that the exempt amount (or the unused amount of the exempt amount) should be applied in proportion to the amounts of the bonuses received on the same day.

50. New subsection (7) makes clear that the above rules for applying the exempt amount to more than one payment apply in relation to each separate employment within the tax year (other than separate employments within the same group).

51. New subsection (8) states that where an employee has received a qualifying bonus from a member of a group of companies, the paying employer will be treated as remaining a member of that group until the following 5 April even if it has ceased to be a member of that group. This is relevant in determining if the total qualifying bonus payments received in a tax year from the group exceed the exempt amount (see subsection (4) above).

52. New subsection (9) gives the Treasury authority to increase or reduce the exempt amount.

53. New subsection (10) ensures that House of Commons approval is necessary for any reduction in the exempt amount.

54. New subsection (11) provides a definition of the terms “chargeable amount” and “the qualifying period”.

**Section 312B**

55. New subsection (1) sets out the conditions which must be met for a payment to be a qualifying bonus payment. The payment must not be regular salary or wages, must be awarded under a scheme which meets the participation requirement and the equality requirement, must not be made by a service company as set out at new section 312E and must not be an excluded payment under new subsection 312B(10).

56. New subsection (2) defines the participation requirement as a requirement that all persons in relevant employment must be eligible to participate in an award under the scheme.

57. New subsection (3) defines the equality requirement as a requirement that every person who participates in an award under the scheme must do so on equal terms.

58. New subsection (4) defines relevant employment.

59. New subsection (5) states that the participation requirement is not infringed only because employees with less than twelve months’ continuous service in relevant employment at the time of the award are excluded from participating in the award.

60. New subsection (6) lists the criteria on which an employer is permitted to base the allocation of an award under the scheme amongst employees without infringing the equality requirement.

61. New subsection (7) states that the equality requirement is infringed if, under the terms of the award, some, but not all, participating employees receive nothing.

62. New subsection (8) states that where the amount of a participating employee’s share of an award under the scheme is determined by reference to an employee’s remuneration, length of service or hours worked the equality requirement will not be satisfied unless each of those factors gives rise to a separate entitlement and the employee’s total entitlement is the sum of those separate entitlements. This means that the entitlements cannot be multiplied together.

63. New subsection (9) states that the equality requirement is infringed if any feature of the scheme has or is likely to have the effect of conferring benefits on certain employees or groups of employees within the business.

64. New subsection (10) defines an excluded payment and ensures that a payment cannot be a qualifying bonus payment if it is made under arrangements (made before or after the employment commences) where the payment is substituted for regular salary or wages.

**Section 312C**

65. New subsections (1) to (5) define ‘trading requirement’ and related terms, as referred to in section 312A(1). This requirement must be met throughout the qualifying period (see section 312A(1)).

**Section 312D**

66. New subsection (1) states that a company meets the indirect employee ownership requirement referred to in section 312A(1) if, throughout the qualifying period, the settlement meets the controlling interest requirement and the all-employee benefit requirement.

67. New subsection (2) by virtue of this subsection the controlling interest requirement and the all-employee requirement which are set out in the new capital gains tax relief provisions apply for determining whether a settlement satisfies those requirements for the purposes of section 312D(1) but with the modifications in sub section (3).

68. New subsection (3) confirms how those capital gains tax provisions should be interpreted for the purposes of their application in accordance with subsection (2).

69. New subsection (4) states that the term ‘qualifying period’ has the same meaning as in section 312A.

**Section 312E**

70. New subsection (1) states that a payment is made by a ‘service company’ for the purpose of new subsection 312B(1) if the payment is made by a managed service company within section 61B or a company which meets Conditions A and B set out at new subsections 312E(2) and (3).

71. New subsection (2) states that Condition A is that most of the business carried on by the company must be the provision of the services of its employees.

72. New subsection (3) states that Condition B is that most of those services are provided to persons defined in new subsection (4) but who are not members of the same group as the company which makes the payment.

73. New subsection (4) specifies the persons or companies referred to in subsection (3).

74. New subsection (5) states that for the purposes of applying subsection (4) special rules, set out in subsection (5), apply in relation to partnerships.

75. New subsection (6) lists the three legislative provisions that apply for the purposes of interpreting specified terms used within this section.

**Section 312F**

76. New subsections (1) and (2) define the words and phrases used in Chapter 10A by cross reference to other tax legislation.

77. Subsection (3) ensures that in the case where an employee has died, the deceased employee's personal representatives are still able to benefit from the exemption to the same extent (if at all) as if the employee had not died.

78. Paragraph 5 ensures that the Treasury authority to increase or reduce the exempt amount is not subject to annulment in pursuance of a resolution of the House of Commons.

79. Paragraph 6 inserts the updated reference to 'company (in Chapter 10A of Part 4)', 'ordinary share capital (in Chapter 10A of Part 4)' and 'trade (in Chapter 10A of Part 4)' in Part 2 of Schedule 1.

80. Paragraph 7 sets the date from which the amendments made to ITEPA apply and the date from which qualifying bonus payments are eligible for the income tax exemption.

***Part 3: minor amendments***

*Inheritance Tax Act 1984*

81. Paragraph 8 makes amendments to section 13 of Inheritance Tax Act 1984 (IHTA)

82. Paragraph 8(2) ensures that a transfer of cash or other assets to the trust by a close company is not a transfer of value, and hence is not subject to inheritance tax, if the settlement meets the all-employee benefit requirement in section 236J TCGA and the close company meets the trading requirement in section 236I. This ensures that the transfer to the trust is exempt even if the existing condition in section 13(2)(a) that the trust property must be applied for the benefit of 'all or most' employees is not met because of the application of the provisions in section 236K(1) TCGA.

83. Paragraph 8(3) inserts new section 13(4A) which explains that the trading requirement and all-employee benefit requirement mentioned in section 13(1) have the same meaning as for capital gains tax.

84. Paragraph 8(4) provides that these amendments take effect for transfers (dispositions) made on or after 6 April 2014.

85. Paragraph 9(1) makes amendments to section 28 of IHTA

86. Paragraph 9(2) ensures that a transfer of shares in a company to the trust by an individual is an exempt transfer, and hence exempt from inheritance tax, if the company meets the trading requirements in section 236I TCGA and the settlement meets the all-employee benefit requirement in section 236J TCGA.

87. Paragraph 9(3) inserts new section 28(6A) which explains that the trading requirement and all-employee benefit requirement mentioned in section 28(1) have the same meaning as for capital gains tax.
88. Paragraph 9(4) provides that these amendments come into effect for transfers of value made on or after 6 April 2014.
89. Paragraph 10 makes amendments section 75 of IHTA
90. Paragraph 10(2) ensures that shares in a company which are already held in a trust that become held on trusts to which this schedule applies are exempt from inheritance tax if the company meets the trading requirements in section 236I TCGA and the trusts are of a settlement which meets the all-employee benefit requirement in section 236J TCGA. This provides an exemption in similar circumstances to those in paragraphs 8 & 9.
91. Paragraph 10(3) inserts new section 75(4) which explains that the trading requirement and all-employee benefit requirement mentioned in section 75(2) have the same meaning as for capital gains tax.
92. Paragraph 10(4) provides that these amendments come into force on 6 April 2014.
93. Paragraph 11 makes amendments to section 86 of IHTA
94. Paragraph 11(2) inserts new section 86(3)(d) so that the trust qualifies for the existing exemption from inheritance tax which applies to employee benefit trusts providing that it holds shares in a company which meets the trading requirement in section 236I, and the trust meets the controlling interest requirement in section 236L TCGA and the all-employee benefit requirement in section 236J.
95. Paragraph 11(3) inserts new section 86(3A) which explains that the controlling interest requirement, trading requirement and all-employee benefit requirement mentioned in new section 86(3)(d) have the same meaning as for capital gains tax.
96. Paragraph 11(4) provides that these amendments come into force on 6 April 2014.

*Corporation Tax Act 2009 (“CTA2009”)*

97. Paragraph 12 ensures that a company which would otherwise be entitled to a corporation tax deduction in respect of a qualifying bonus payment is not prevented by section 1290 of the CTA 2009 (Employee benefit contributions) from claiming such deduction by virtue of all or part of such payment being exempt from income tax. It does this by amending section 1292 CTA 2009 (provision of qualifying benefits) so as to provide that if, and to the extent that the qualifying bonus payment is exempt from income tax under new Section 312A of ITEPA, it will be treated as a qualifying benefit.



**BACKGROUND NOTE**

98. The Government announced in Autumn Statement 2013 that it would provide £70 million annually from 2014-15 to support employee ownership models in order to incentivise growth of the sector. This will be in addition to the existing tax-advantaged share schemes.

99. The support is targeted at legal structures in which a trading company or group is owned by trustees which must act for the benefit of all employees. Structures of this kind have not until now received as much support as is given to arrangements under which employees own shares in their employer directly.

100. The capital gains tax relief and income tax and inheritance tax exemptions further the Government's policy of supporting existing employee-owned companies and promoting the creation of new employee-owned companies. The capital gains tax relief and inheritance tax exemption will encourage the creation of new structures through which employees can benefit from the success of their employer's business. The income tax exemption will allow those businesses to share their successes with employees through tax-advantaged payments.

101. The Government is considering reviewing this exemption in five years time to monitor take up, effectiveness and whether the spend is at the appropriate level.

102. If you have any questions about this change, or comments on the legislation, please contact [employmentincome.policy@hmrc.gsi.gov.uk](mailto:employmentincome.policy@hmrc.gsi.gov.uk) for comments about the income tax exemption; or [capitalgains.taxteam@hmrc.gsi.gov.uk](mailto:capitalgains.taxteam@hmrc.gsi.gov.uk) for comments about the capital gains tax relief or Inheritance Tax Act amendments.