

# NOTICES OF AMENDMENTS

Wednesday 25 June 2014

## CONSIDERATION OF BILL

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Mr Chancellor of the Exchequer

44

Schedule 33, page 559, line 35, leave out “(see sections 236J to 236L)” and insert “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 sections 236J to 236L and subsection (4A) of this section)”

Mr Chancellor of the Exchequer

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Schedule 33, page 560, line 1, leave out “but does meet it at the end of that year” and insert “but—

- (i) it meets that requirement at the end of that tax year, and
- (ii) if it met the requirement at an earlier time in that tax year (whether before or after the time of the disposal) it continued to meet it throughout the remainder of that tax year.”

Mr Chancellor of the Exchequer

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Schedule 33, page 560, line 7, at end insert—

“(4A) For the purposes of subsection (4)(b)—

- (a) unless the settlement met the all-employee benefit requirement by virtue of section 236L (cases in which all-employee benefit requirement treated as met) at the time of the disposal, that section does not apply for the purposes of determining whether the settlement continues to meet that requirement after the disposal, and
- (b) if, at the time of the disposal, the settlement met that requirement by virtue of section 236L and later continues to meet it otherwise than by virtue of that section, it may not again meet the requirement by virtue of that section.”

Mr Chancellor of the Exchequer

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Schedule 33, page 560, line 19, at end insert—

“(7) Section 236NA makes provision about events which prevent a claim being made under this section and circumstances in which a claim is revoked.”

Mr Chancellor of the Exchequer

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Schedule 33, page 563, line 46, leave out “is treated as meeting that requirement” and insert “at any time is treated as meeting that requirement at that time”

Finance Bill, *continued*

- Mr Chancellor of the Exchequer 49
- Schedule 33, page 564, line 9, leave out “day of the disposal mentioned in section 236H(1)” and insert “time in question”
- Mr Chancellor of the Exchequer 50
- Schedule 33, page 566, line 10, at end insert—  
“(A1) The limited participation requirement is met if Conditions A and B are met.”
- Mr Chancellor of the Exchequer 51
- Schedule 33, page 566, line 11, leave out “The limited participation requirement is met if” and insert “Condition A is that”
- Mr Chancellor of the Exchequer 52
- Schedule 33, page 566, line 15, at end insert—  
“(1A) Condition B is that the participator fraction does not exceed  $\frac{2}{5}$  at any time in the period beginning with that disposal and ending at the end of the tax year in which it occurs.”
- Mr Chancellor of the Exchequer 53
- Schedule 33, page 566, line 18, after “(1)(b)” insert “and (1A)”
- Mr Chancellor of the Exchequer 54
- Schedule 33, page 567, line 7, at end insert—
- “236NA No section 236H relief if disqualifying event in next tax year**
- (1) This section applies where—
- (a) a disposal is made in circumstances where paragraphs (a) and (b) of section 236H(1) are satisfied, and
- (b) one or more disqualifying events occur in relation to the disposal in the tax year following the tax year in which the disposal occurs.
- (2) A “disqualifying event” occurs in relation to the disposal if and when—
- (a) C ceases to meet the trading requirement,
- (b) the settlement ceases to meet the all-employee benefit requirement,
- (c) the settlement ceases to meet the controlling interest requirement,
- (d) the participator fraction exceeds  $\frac{2}{5}$ , or
- (e) the trustees act in a way which the trusts, as required by the all-employee benefit requirement, do not permit.
- (3) No claim for relief under section 236H may be made in respect of the disposal on or after the day on which the disqualifying event (or, if more than one, the first of them) occurs.
- (4) Any claim for relief under section 236H made in respect of the disposal before that day is revoked, and the chargeable gains and allowable losses of any

Finance Bill, *continued*

person for any chargeable period are to be calculated as if that claim had never been made.

- (5) Such adjustments must be made in relation to any person, whether by the making of assessments or otherwise, as are required to give effect to subsection (4) (regardless of any limitation on the time within which any adjustment may be made).
- (6) Section 236H(4A) (restrictions on application of section 236L) applies for the purposes of subsection (2)(b).
- (7) Section 236N(2) applies for the purposes of subsection (2)(d) as it applies in relation to section 236N(1)(b) and (1A)."

Mr Chancellor of the Exchequer

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Schedule 33, page 567, line 11, after "occasion" insert ", after the end of the tax year following the tax year in which the acquisition occurs, when"

Mr Chancellor of the Exchequer

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Schedule 33, page 567, leave out lines 13 to 25 and insert—

- "(2) A "disqualifying event" occurs in relation to the acquisition if and when—
  - (a) C ceases to meet the trading requirement,
  - (b) the settlement ceases to meet the all-employee benefit requirement,
  - (c) the settlement ceases to meet the controlling interest requirement,
  - (d) the participator fraction exceeds 2/5, or
  - (e) the trustees act in a way which the trusts, as required by the all-employee benefit requirement, do not permit."

Mr Chancellor of the Exchequer

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Schedule 33, page 567, line 26, leave out "after" and insert "before"

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Schedule 33, page 567, line 34, leave out "(2)(b)(i)" and insert "(2)(b)"

Mr Chancellor of the Exchequer

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Schedule 33, page 567, leave out lines 44 to 48

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Schedule 33, page 568, line 1, leave out "(2)(b)(ii) as it applies in relation to section 236N(1)(b)" and insert "(2)(b) as it applies in relation to section 236N(1)(b) and (1A)"

Mr Chancellor of the Exchequer

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Schedule 33, page 568, line 36, at end insert—

Finance Bill, *continued*

“(7) Section 236PA makes provision about events which prevent a claim being made under this section and circumstances in which a claim is revoked.”

Mr Chancellor of the Exchequer

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Schedule 33, page 568, line 36, at end insert—

**“236PA No section 236P relief if disqualifying event in next tax year**

- (1) This section applies where—
- (a) a deemed disposal arises in circumstances where paragraphs (a) to (c) of section 236P(1) are satisfied, and
- (b) one or more disqualifying events occur in relation to the disposal in the tax year following the tax year in which the deemed disposal arises.
- (2) No claim for relief under section 236P may be made in respect of the deemed disposal on or after the day on which the disqualifying event (or, if more than one, the first of them) occurs.
- (3) Any claim for relief under section 236P made in respect of the deemed disposal before that day is revoked, and the chargeable gains and allowable losses of any person for any chargeable period are to be calculated as if that claim had never been made.
- (4) Such adjustments must be made in relation to any person, whether by the making of assessments or otherwise, as are required to give effect to subsection (3) (regardless of any limitation on the time within which any adjustment may be made).
- (5) “Disqualifying event” is to be construed in accordance with subsections (2), (6) and (7) of section 236NA except that—
- (a) references in those subsections to the disposal are to be read as references to the deemed disposal, and
- (b) in applying sections 236I to 236O and 236R for this purpose—
- (i) references in those provisions to the settlement are to be read as references to the acquiring settlement (within the meaning of section 236P(1)), and
- (ii) references in those provisions to C are to be read as references to the company mentioned in section 236P(1)(b).”

Mr Chancellor of the Exchequer

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Schedule 33, page 570, line 17, leave out “The” and insert “Subject to paragraph 2A, the”

Mr Chancellor of the Exchequer

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Schedule 33, page 570, line 18, at end insert—

“2A In relation to disposals made on or after 6 April 2014 but before 26 June 2014, TCGA 1992 has effect as if—

- (a) in section 236H—

Finance Bill, *continued*

- (i) in subsection (4)(b), for the words from “at the time of the disposal” to the end there were substituted “(see sections 236J to 236L)”,
- (ii) subsection (4)(c)(ii) (and the “and” before it) were omitted, and
- (iii) subsections (4A) and (7) were omitted,
- (b) in section 236N—
  - (i) in subsection (A1), for “Conditions A and B are” there were substituted “Condition A is”, and
  - (ii) subsection (1A) were omitted,
  - (c) section 236NA were omitted,
  - (d) in section 236O—
    - (i) in subsection (1) the words “, after the end of the tax year following the tax year in which the acquisition occurs, when” were omitted,
    - (ii) for subsection (2) there were substituted—
- “(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 the trusts, as required by the all-employee benefit requirement, do not permit.”,
  - (iii) in subsection (3) for “before” there were substituted “after”,
  - (e) section 236P(7) were omitted, and
  - (f) section 236PA were omitted.”

Mr Chancellor of the Exchequer

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Schedule 33, page 575, line 36, leave out “day of the disposal mentioned in section 236H(1)” and insert “time in question”

Mr Chancellor of the Exchequer

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Schedule 33, page 582, line 9, leave out “date of the disposal mentioned in section 236H(1)” and insert “time in question”

**EXPLANATORY NOTE**

**AMENDMENTS 44-66 TO SCHEDULE 33: COMPANIES OWNED BY EMPLOYEE-OWNERSHIP TRUSTS**

**SUMMARY**

1. These amendments provide for the capital gains tax relief described in Schedule 33 to be withdrawn from claimants when certain events occur within a specified period which mean that the objectives of employee-ownership are no longer met

**DETAILS OF THE AMENDMENTS**

2. Amendments 44-62 relate to paragraph 1 of Schedule 33. They amend provisions in Part 7 of TCGA 1992.

3. Amendment 44 changes the all-employee benefit requirement - one of the conditions in section 236H for capital gains tax relief to be available - so that it must be met when the relievable disposal takes place and for the remainder of the tax year.

4. Amendment 45 changes the controlling interest requirement - another of the conditions in section 236H for capital gains tax relief to be available - so that it must be met at the end of the tax year and, if it met the requirement at an earlier point in the tax year, it must not cease to be met at any time during rest of the tax year.

5. Amendment 46 inserts new subsection (4A) into section 236H. This subsection explains how the alternative mechanism at section 236L, by which a settlement may be treated as meeting the all-employee benefit requirement, works for the purposes of the relief requirements in section 236H(4). A settlement which ceases to meet the conditions of the all-employee benefit requirement cannot rely on section 236L (ie on the behaviour of its trustees and other factors) to ensure that it is treated as continuing to meet that requirement, and hence meet the relevant relief requirement. Likewise, a settlement which was treated as meeting the all-employee benefit requirement by virtue of section 236L but later came to actually meet it by virtue of satisfying the conditions of section 236K cannot revert to relying on section 236L in order to meet it and hence meet the relevant relief requirement.

6. Amendment 47 introduces a signpost to the reader of section 236H that there are further conditions relevant to making a claim to relief, and the possible withdrawal of relief, at section 236NA.

7. Amendment 48 makes it clear that the conditions under which a pre-existing settlement may be treated as meeting the all-employee benefit requirement in section 236L

may be applied at any point in time to determine whether the settlement is to be so treated at that time.

8. Amendment 49 ensures that the wording of the behaviour conditions at section 236L(1)(c) is clear and consistent with the amended earlier wording of that section. Both now refer to the same, specific, time.

9. Amendments 50-53 clarify the conditions in section 236N which must be met in order for the limited participation requirement - another of the conditions for capital gains tax relief - is met.

10. Amendment 54 introduces a new section, 236NA, which withdraws relief already given and prevents further claims to relief when specified events occur before the end of the tax year following the tax year in which the disposal is made.

11. Subsection (1) of new section 236NA states that the new section applies when a disposal has been made on which relief under section 236H is available, whether or not a claim to relief has in fact been made, and when subsequent to such a disposal a 'disqualifying event' occurs in the tax year following the year in which the disposal occurs.

12. Subsection (2) of new section 236NA defines 'disqualifying events' for the purposes of subsection (1).

13. Subsection (3) of new section 236NA states that where the section applies no claim for relief may be made on or after the day of the disqualifying event in respect of the disposal.

14. Subsection (4) of new section 236NA states that any claim for relief which has been made before the disqualifying event is revoked, and the gains or losses of any person for any period are computed as though that claim had never been made.

15. Subsection (5) of new section 236NA ensures that HMRC may make any and all adjustments necessary to give effect to a revocation of a claim under subsection (4).

16. Subsection (6) of new section 236NA explains how the alternative mechanism at section 236L, by which a settlement may be treated as meeting the all-employee benefit requirement, works for the purposes of the disqualifying events rules. Section 236H(4A) applies in this context as it does for section 236H(4)(b): section 236L (which provides for the all-employee benefit requirement to be treated as met in certain circumstances) cannot be relied upon to prevent there being a disqualifying event where the all-employee benefit requirement has previously actually been met.

17. Subsection (7) of new section 236NA explains how the disqualifying event concerning the participator fraction works. The rule at section 236N(2) applies in this context. There is normally a disqualifying event if the fraction exceeds 2/5. However, there is a 'grace period' of up to six months during which the fraction may exceed 2/5 without there

being a disqualifying event on that account. In order for this treatment to apply, the fraction must exceed  $\frac{2}{5}$  as a result of events beyond the reasonable control of the trustees, such as sudden changes in commercial circumstances.

18. Amendment 55 alters the scope of section 236O so that it can only apply when a disqualifying event occurs after the end of the tax year next following the tax year in which the acquisition by the trustees occurs. (If a disqualifying event occurs before that time then new section 236NA will apply to withdraw relief given to shareholders who transferred their shares to the trustees of the employee-ownership trust - see Amendment 10.)

19. Amendment 56 clarifies the meaning of 'disqualifying event' by removing references to the time at which the relevant event must occur.

20. Amendment 57 changes the way in which the gain or loss which is deemed to accrue when a disqualifying event occurs is computed. The computation is now based on the notional sale and repurchase of shares by the trustees of the settlement taking place immediately before, rather than immediately after, the disqualifying event.

21. Amendments 58 and 59 clarify how the alternative mechanism at section 236L, by which a settlement may be treated as meeting the all-employee benefit requirement, works for the purposes of the disqualifying events rules. They are necessary as a consequence of amendments 6 and 13.

22. Amendment 60 makes clear that the rules at section 236N(2) which determine whether a time when the participator fraction exceeds  $\frac{2}{5}$  is to be disregarded apply for the purposes of determining whether there has been a disqualifying event.

23. Amendment 61 introduces a signpost to the reader that there are further conditions relevant to making a claim to relief under section 236P, and the possible withdrawal of relief, at section 236NA.

24. Amendment 62 introduces a new section, 236PA, which withdraws relief already given under section 236P and prevents further claims to relief when specified events occur before the end of the tax year following the tax year in which the deemed disposal under section 71 is treated as made. It is a counterpart to new section 236NA introduced by Amendment 10.

25. Subsection (1) of new section 236PA states that the new section applies when a deemed disposal has arisen on which relief under section 236P is available, whether or not a claim to relief has in fact been made, and when subsequent to such a disposal a 'disqualifying event' occurs in the tax year following the tax year in which the deemed disposal is treated as made.

26. Subsection (2) of new section 236PA states that where the section applies no claim for relief may be made on or after the day of the disqualifying event in respect of the disposal.

27. Subsection (3) of new section 236PA states that any claim for relief which has been made before the disqualifying event is revoked, and the gains or losses of any person for any period are computed as though that claim had never been made.

28. Subsection (4) of new section 236PA ensures that HMRC may make any and all adjustments necessary to give effect to a revocation of a claim under subsection (3).

29. Subsection (5) of new section 236PA explains what is meant by a ‘disqualifying event’ for the purposes of section 236PA. The definition in section 236NA (see Amendment 10) is used, with minor modifications necessary to make it applicable to the circumstances in which section 236P has applied.

30. Amendment 63 is to paragraph 2 of Schedule 33, the commencement and transitional provisions. It ensures that disposals which took place on or after 6 April and before 23 June 2014 are not subject to the rules for withdrawal of relief on the occurrence of a disqualifying event, but are instead subject to special rules introduced by Amendment 20.

31. Amendment 64 introduces new paragraph 2A to Schedule 33. It creates special rules which apply to disposals made on or after 6 April and before 26 June 2014. These disposals are subject to the rules as they were originally published in the Finance Bill in March 2014. Specifically, claims to relief in respect of such disposals will not be revoked if there is a disqualifying event:

- the relief requirements in section 236H are modified in relation to these disposals
- the limited participation requirement at section 236N is also modified
- section 236NA and section 236PA, which revoke or prevents a claim to relief when there has been a disqualifying event in the tax year following the tax year in which the disposal is made, will not apply
- section 236O, which deems a gain or loss to accrue to the trustees when a disqualifying event occurs, applies, subject to the event taking place at a specified time

32. Amendment 65 is to paragraph 4 of Schedule 33, which provides for the income tax exemption on qualifying bonus payments. It amends the wording of section 312E(4) ITEPA 2003 to ensure consistency with the amended wording of section 236L TCGA 1992 (see Amendment 4).

33. Amendment 66 is to paragraph 18 of Schedule 33, which amends Schedule 2 to ITEPA 2003 (approved share incentive plans). It ensures that the words in the new subparagraphs being inserted into paragraph 27 of Schedule 2 are consistent with the amended wording of section 236L TCGA 1992 (see Amendment 4).

**BACKGROUND NOTE**

34. Schedule 33 contains provisions which encourage the creation and continuation of employee-owned structures by which a trading company or trading group of companies is owned and controlled by a special trust for the benefit of all eligible employees. One of the new reliefs is from capital gains tax when shareholders transfer their shares to the trustees in order to create one of these employee ownership trusts.

35. The Schedule introduces a provision at new section 236O of the Taxation of Chargeable Gains Act 1992 to encourage trustees to maintain the employee-ownership structure and to continue to meet the aims of the policy: if the structure is unwound or the conditions for relief cease to be met, a gain (which includes the relieved gain) accrues to the trustees. However, several stakeholders have pointed out that the trustees may not be UK resident, in which case their gain under this provision would not be subject to UK tax and its deterrent effect is lost.

36. These amendments address this risk indirectly by withdrawing any relief which has been given, and blocking further claims to relief, if the structure is dismantled or the conditions for relief cease to be met within one year of the end of the tax year in which the disposal to the trustees is made in respect of which relief may be claimed. This is instead of the relieved gain accruing to the trustees. After that time, those events will instead cause a gain to accrue to the trustees under section 236O, as they do in the provisions as originally published in the Finance Bill 2014.