

EXPLANATORY NOTE

CLAUSE 49 & SCHEDULE 7: EMPLOYMENT RELATED SECURITIES AMENDMENTS 7 - 10 TO SCHEDULE 7

SUMMARY

1. These amendments clarify issues around the tax treatment of employment-related securities (ERS), such as shares, and ERS options awarded to internationally mobile employees. They also address certain circumstances in which value from these ERS could be subject to tax in both the UK and another country, so as to avoid double taxation.

DETAILS OF THE AMENDMENTS

2. Clause 49 and Schedule 7 implement several recommendations of the Office of Tax Simplification (OTS) to simplify the rules for non tax advantaged ERS. These include new rules for the taxation of ERS and ERS options received by internationally mobile employees.

3. Income tax is chargeable on these ERS and ERS options under Part 7 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) on the occurrence of specified chargeable events. The rules in Part 7 set out how the amount on which tax is chargeable in relation to the ERS should be calculated in different circumstances. Where appropriate, an allowance is given within this calculation for “deductible amounts” - including any part of the value of the ERS which has previously been subject to income tax. In general, income which is “exempt income” cannot be treated as a deductible amount.

4. Amendment 7 inserts a new paragraph 9A to Schedule 7. This updates section 428 of ITEPA, concerning the amount subject to income tax on the occurrence of a chargeable event in relation to restricted ERS. The amendment ensures that amounts previously charged to ‘non-UK income tax’ when the ERS were acquired by an internationally mobile employee can be a ‘deductible amount’ when calculating what value is subject to UK tax on the occurrence of a subsequent chargeable event in relation to these ERS. It also sets out various definitions for the purpose of these rules. This puts amounts that have been charged to UK income tax and amounts charged to income tax outside the UK on a broadly equal footing, for the purposes of this tax calculation.

5. Amendment 7 also clarifies the treatment of income that would have been ‘exempt income’ in the UK had the internationally mobile employee been UK resident, or subject to the remittance basis of taxation, at the appropriate time. It provides that such amounts are to be treated for the purposes of the relevant calculation in the same way as income that was exempt in the UK – and are therefore not deductible amounts. This puts this income on a broadly equal footing for UK tax purposes, regardless of where the employee was based at the time that the relevant ERS were acquired.

6. Amendments 8, 9 & 10 insert new paragraphs 11A, 12A and 23A to Schedule 7 in order to provide the same clarification of the treatment of this ‘exempt’ income in other cases where it is necessary to establish an amount subject to tax in relation to ERS. These are the calculation of notional loan amounts outstanding in relation to ERS acquired for less than market at section 446T ITEPA; the amount subject to tax on the occurrence of a chargeable event in relation to ERS options; and amount that is taken to be consideration for the acquisition of restricted or convertible shares for the purposes of capital gains tax.

BACKGROUND NOTE

7. The OTS published a report and recommendations on employee share schemes in January 2013. This identified a number of areas in which the current tax rules created complexity, and included recommendations for how these might be simplified. Schedule 7, which these amendments update, implements a number of OTS recommendations – including new rules for the taxation of ERS and ERS options awarded to internationally mobile employees.