

Corporation Tax Relief and Share Incentives

Since accounting periods beginning on or after 1 January 2003, a statutory corporation tax deduction ("CT Deduction") has been available in respect of shares awarded under share plans.

When is a CT Deduction available?

A CT Deduction will only be available where:

- the shares (or the option) were acquired by reason of employment with the company claiming the CT Deduction;
- the award or grant is made for the purposes of a business carried on by the employing company and that business is within the charge to corporation tax;
- the shares are fully paid up ordinary shares that are not redeemable;
- the shares are either listed on a recognised stock exchange or are shares in a company not under the control of another company or, broadly, are shares in a company which is under the control of a company (other than a close company) whose shares are listed on a recognised stock exchange;
- the shares are either shares in the employing company or its parent or a member of a consortium which owns the employing company; and
- the employee is subject to income tax on the award of shares or the grant or exercise of the option or would be if:
 - (a) the employee was resident and ordinarily resident in the UK and the duties of his employment by reason of which the award was made were performed in the UK; or
 - (b) the shares were not received under an HMRC approved share option plan.

Provisions are included to preserve a CT Deduction where on a takeover options are rolled over into shares of the acquiring company. Where the arrangements do not fall within the above requirements, it may still be possible to secure a deduction by using an EBT. However, as a result

of the anti-avoidance legislation introduced at the same time the deduction will only be available when and if the receipt by the employee of the shares is subject to income tax and National Insurance contributions. In addition the amount of the deduction may be different. The statutory deduction takes precedence.

How much is the CT Deduction?

The CT Deduction will be an amount equal to the market value of the shares at the date of the award or at the date of exercise of the option less any amount paid for the shares (i.e. the "option spread"). If the award or grant was made partly in respect of a business which is within the charge to corporation tax and partly in respect of another business, the relief will be restricted on a just and reasonable basis.

For which accounting period is the CT Deduction obtained?

The CT Deduction is given in the accounting period in which the employee acquires a beneficial interest in the shares.

Shares subject to forfeiture

Shares subject to forfeiture are, broadly speaking, shares which can forcibly be acquired from the employee for less than their market value. Where shares are subject to forfeiture, the employee is generally charged to income tax, not when the shares are received, but when the risk of forfeiture passes (or if earlier, the date of disposal of the shares). The amount subject to the income tax charge is the value of the shares immediately after the risk of forfeiture has passed (or if earlier, the date of disposal of the shares) less any amount paid for the shares by the employee. Where shares subject to forfeiture are awarded or acquired on exercise of an option, the CT Deduction is deferred until the risk of forfeiture passes (or, if earlier, the shares are disposed of) and is an amount equal to the amount subject to income tax.

Disclaimer: This briefing gives general information only and is not intended to be an exhaustive statement of the law. Although we have taken care over the information, you should not rely on it as legal advice. We do not accept any liability to anyone who does rely on its content.

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