

Alan McGuinness
HMRC
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6 February 2013

Dear Sirs,

Draft Finance Bill 2013 - Enterprise management incentives: qualification for capital gains tax entrepreneurs' relief

Introduction

We are the Quoted Companies Alliance, the independent membership organisation that champions the interests of small to mid-size quoted companies. Their individual market capitalisations tend to be below £500m.

The Quoted Companies Alliance is a founder member of European **Issuers**, which represents over 9,000 quoted companies in fourteen European countries.

The Quoted Companies Alliance Tax and Share Schemes Expert Groups has examined your proposals and advised on this response. A list of members of the Expert Groups is at Appendix A.

Response

We very much welcome the Government's announcement that the 12 month holding period for the relief will now include the period for which the Enterprise Management Incentives (EMI) share option was held (and not just the period after exercise of this option). This should make it much easier for employees of our member companies, small and mid-size quoted companies, to take advantage of this extended relief.

We have included some additional comments on the draft legislation for these changes:

1. Based on the drafting of Condition C and D (Schedule 1, 3 – 7A and 7B), if a company is taken over on 1 October and a senior employee retires or leaves as a result, but does not exercise the option (perhaps held for several years) until after the change of control, it seems that Condition C is not satisfied, unless the employee stays on as a non-executive director or other office holder. The alternative is Condition D, which basically requires the conditions to be satisfied up to the 'cessation date'; however, that cessation is when the company ceases to be a trading company or part of a trading group. We would query whether this should also cover a situation where the employee has ceased to be an employee?

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2. The simple identification rule for employee shareholders has not been copied in the Entrepreneurs' Relief rules, but this could be a possible simplification. The same day acquisition pooling rules appear to treat the relevant EMI shares acquired as a separate block to be disposed of last. The significance is that employees frequently exercise different options on the same day and often make a part disposal of some of the shares on the same day to fund the acquisition costs. These identification rules are supposed to create a 'first in, first out' matching of relevant EMI shares. It seems quite complex. With the development of GAAR, would it be possible to give holders of relevant EMI shares the power to determine?

3. It seems that section 127 of TCGA can be used for relevant EMI shares in a reorganisation to prevent a disposal and a liability arising on what is often a share swap situation, but that any shares acquired in exchange will not qualify for the enhanced EMI Entrepreneurs' Relief. The usual shareholding rules would apply and, assuming the individual had the qualifying level of shareholding, it seems the one year holding period would commence after the reorganisation. Could HMRC confirm if this is the correct reading of the draft legislation?

If you would like to discuss any of these points further, we would be happy to attend a meeting.

Yours faithfully,

A handwritten signature in blue ink, appearing to be 'TW', written over a horizontal line.

Tim Ward
Chief Executive

Quoted Companies Alliance Share Schemes Expert Group

Nicholas Stretch (Chairman)	CMS Cameron McKenna LLP
Fiona Bell (Deputy Chairman)	RM2 Partnership Limited
Barbara Allen	Stephenson Harwood
Simon Allum	Lewis Silkin
Martin Benson	Baker Tilly
Danny Blum	Eversheds LLP
Stephen Chater /Robert Postlethwaite	Postlethwaite & Co
Christopher Connors	Charles Russell LLP
Karen Cooper	Osborne Clarke
Jared Cranney	Interior Services Group plc
Vanessa Cundy Cooper	KPMG LLP
John Daughtrey	Equiniti
Michael Deeks	Olswang
Matthew Findley	Pinsent Masons LLP
David Firth	Penna Consulting PLC
Philip Fisher	PKF (UK) LLP
Amanda Flint	Grant Thornton UK LLP
David Fuller	CLS Holdings PLC
Andy Goodman	BDO LLP
Paula Hargaden	Burges Salmon
Daniel Harris	Ernst & Young LLP
Colin Kendon	Bird & Bird LLP
Michael Landon/Nigel Mills	MM & K Limited
Peter Mossop/Collum Spillane	Sanne Group
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Quoted Companies Alliance Tax Expert Group

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