

Employee Shareholders



OVERVIEW

The basic idea behind the concept of 'employee shareholder' is that an employee is awarded at least £2,000 worth of shares in their employer (or a parent company of their employer) in return for giving up some employment rights (in particular the right to claim unfair dismissal in most cases and the right to a statutory redundancy payment).

The employer can be a UK or overseas company. The employee can be one who was already employed by the company before agreeing to become an employee shareholder, or an individual who agrees to be recruited as an employee shareholder.

Provided certain conditions are met, the first £2,000 worth of shares are deemed, for tax purposes, to have been paid for by the employee and so should not give rise to a liability for income tax or national insurance contributions ('NICs'), and there is a capital gains tax ('CGT') exemption on the disposal of the shares, provided they are worth no more than £50,000 on acquisition.

Employee Shareholder Status

An employee shareholder must meet all four of the following conditions:

1. *Employee shareholder agreement* - The individual must enter into an agreement with the company that they will be an employee shareholder.
2. *Statement of the particulars* - The individual must receive from the company a statement of the particulars of the status of employee shareholder and of the rights which attach to their shares. There is no requirement that this statement is in writing, although that would clearly be advisable.
3. *Shares issued with market value no less than £2,000* - In consideration of the individual's agreement to become an employee shareholder, the company issues fully paid up shares in the company, or procures the issue or allotment to the employee of fully paid up shares in its parent undertaking (which can be an overseas company), which have a restricted market value, on the day of issue, of at least £2,000.

NOTE: If the shares are not worth £2,000 then the individual will not be an employee shareholder, and not only is the income tax benefit lost but so too is the CGT exemption.

4. *No other consideration is given by the individual* - The individual must give no consideration for the shares other than by entering into the agreement to become an employee shareholder.

Implications of Agreeing to be an Employer Shareholder

1. *Statutory Employment Rights* - By agreeing to be an employee shareholder, the employee agrees not to have certain statutory rights of employees.

Partners

Chris Bliss FCA
Simon Jennings FCA
Philip Prettejohn FCA
Mark Harris FCA
Frances Jennings ACA
David Barker CTA
Kulwam Nagra FCA
Paul Baker ACA
Sally Ousley CTA
Andrew Shilling FCA
Craig Davies FCA
Graeme Privett CTA
Chris Hawley ACA
Phil Collington CTA
Toby Crooks ACA
Michael Foster CTA

However, it is important to note that an employer can still choose to provide the employee shareholder with those rights written into an employment contract.

2. *Taxation* - No income tax is payable if the restricted market value of the employee shareholder shares is only £2,000. If the value of the shares is more than £2,000, the individual will pay income tax on the difference between the market value of the shares and £2,000. If the shares are restricted shares, and a 'section 431' election is made, income tax is payable on the difference between the unrestricted market value and £2,000.

The disposal of employee shareholder shares will be exempt from CGT as long as the (unrestricted) market value of the shares on acquisition was no more than £50,000. However, there is no minimum holding period and no cap on the disposal value.

Steps to Implement an Employee Shareholder Scheme

A number of key steps must therefore be taken in order meet the conditions of employee shareholder status, and to secure the tax advantages that employee shareholders receive:

- The Articles of Association are updated for the new share class or classes.
- A share valuation is agreed with HMRC.
- The individual receives from the employer details of the share rights, and of the employment rights being given up, in a written statement of particulars.
- The individual receives independent legal advice as to the terms and effect of the proposed employee shareholder agreement.
- The employer and employee enter into the employee shareholder agreement (no earlier than seven days after receiving legal advice, but no later than 60 days following HMRC's agreement to the share valuation).

How can Rawlinson & Hunter help?

There are a number of factors which need to be considered to ensure the arrangements in place meet the requirements to obtain Employee Shareholder Status and that the reliefs are acquired and maintained. At Rawlinson & Hunter we have experience in ensuring the status and meeting the necessary reporting requirements as well as agreeing share valuations with HMRC.

If you are interested in further information in this regard, please contact the Rawlinson & Hunter partner who normally acts for you. Where you are not one of our regular clients, please contact Craig Davies or Andrew Shilling, who would be delighted to discuss this with you in more detail.

Craig Davies

Direct Dial: (+44) 20 7842 2136

Email: craig.davies@rawlinson-hunter.com

Andrew Shilling

Direct Dial: (+44) 20 7842 2135

Email: andrew.shilling@rawlinson-hunter.com

The information contained in this briefing does not constitute advice and is intended solely to provide the reader with an outline of the provisions. It is not a substitute for specialist advice in respect of individual situations.

Rawlinson & Hunter is a partnership regulated for a range of investment business activities by the Institute of Chartered Accountants in England and Wales.