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EMPLOYEE SHAREHOLDER SHARES

This initiative is to apply to shares received through the adoption of a new status of ***employee shareholder*** which is available from 1 September 2013.

1. Employees will exchange some of their existing employment rights for the right to own shares in the business.

2. The Employment Rights Act 1996 is amended to create a third employment status (in addition to that of ***employee*** and ***worker***) of ***employee shareholder*** which is created by the Growth and Infrastructure Bill (GAI) 2013.

3. The scheme offers employees between £2,000 and £50,000 of shares, with any gains being exempt from CGT. However, in return employees must give up their UK rights relating to unfair dismissal, redundancy, flexible working and time off for training, and will have to give 16 weeks notice of a firm date of return from maternity leave. It is possible for businesses to build more generous employment conditions into their contracts, should they wish.

4. The House of Lords have imposed amendments to GAI 2013, and in particular the employer must provide legal advice and a 7 day cooling off period before an employee is able to relinquish the employment rights.

5. Also as required by the House of Lords, the company proposing an employee shareholder agreement has to give to the individual a written statement setting out details of the statutory employment rights which would not be available as a result of being an employee shareholder together with specified details on the rights which would attach to the shares being offered in return (for example, rights in relation to voting and dividends).

6. Another significant amendment is that the employee shareholder agreement will be of no effect unless having been given the statement referred to above, the individual takes advice from a "relevant independent adviser" on the terms and effect of the proposed employee shareholder agreement. The reasonable costs of that advice are to be borne by the company, whether or not the individual ultimately enters into the employee shareholder agreement, and there is no income tax charge on this benefit.

7. A "relevant independent adviser" is the same definition as for the purposes of a compromise agreement so in practice is likely to be a solicitor, barrister or qualifying trade union official. However in the case of employee shareholders, the adviser will not only have to advise on employment rights, but also on the rights attaching to the employee shareholder shares.

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8. Income tax and NICs will be payable when the employee shareholder acquires shares, but not on the first £2,000 of share value.

9. Employees who receive full CGT relief on shares awarded as part of their contract would remain eligible for existing employee ownership schemes, such as the Enterprise Management Incentive Scheme.

10. The scheme will be available to all employers, but the aim is for SMEs in particular to benefit from the additional flexibility afforded by the new contracts.

11. While employee shareholder contracts will be optional for existing employees, businesses can choose to offer only this type of contract when taking on new staff.

12. Employers choosing to operate the new employment status can offer employees fully paid shares with all types of shares being eligible. They can carry rights to dividends, voting rights etc. They can also be subject to any restrictions, including the surrender of shares on an employee leaving.

13. If shares are surrendered the employer has to buy them back at a reasonable value, by reference to the unrestricted market value at the time they were awarded.

14. If a sale of the shares is via a company buy-back, a special tax provision ensures that is not treated as a distribution. CGT treatment is therefore guaranteed, with the gain exempt from tax.

15. The company will obtain corporation tax relief on the amount taxed on the employee, plus on the exempt £2,000.