

Employee share and security schemes and Capital Gains Tax

This Help Sheet deals with the following:

- approved share incentive plans (SIPs)
- other approved schemes
- transfers to Individual Savings Accounts (ISAs)
- transfers to certain pension schemes
- Enterprise Management Incentives (EMIs)
- unapproved share schemes
- same day share acquisitions after 5 April 2002
- a relief on certain disposals of unlisted shares to an approved share incentive plan.

The information in this Help Sheet will help you complete the *Capital gains summary* pages of your Tax Return when you have disposed of shares you acquired because of your job, or by exercising a share option granted because you are (or were) a director or an employee. The Help Sheet describes the capital gains costs of shares and other securities that are chargeable assets that you get because of your employment both before and after Finance Act 2003.

If you have disposed of some of your shares and kept others in the same company, you may also need Help Sheet 284 *Shares and Capital Gains Tax*, which explains the rules applying to disposals of shares.

For information about Income Tax and employee shares please see pages Ain 5 to Ain 20 of the *Additional information notes*, or go to www.hmrc.gov.uk
If you are in any doubt about how to calculate your gain or loss for capital gains purposes, ask us or your tax adviser.

Some employee share schemes are approved by us and others are not. The main difference is that employees do not usually pay Income Tax when they acquire shares under an approved scheme. Although EMI is not a formally approved share scheme, you will not usually pay Income Tax if you acquire shares by exercising an EMI share option.

In late 2002, a court decision, *Mansworth v Jelley* overturned the general understanding of the way the market value rule worked for certain shares acquired by exercising an employee share option. Finance Act 2003 restored the position to what it was thought to be before the court decision.

Finance Act 2003 reformed some of the Income Tax rules on employee shares. It widened the definition of equity remuneration to include a variety of financial products. Some of these financial products, for example, UK government securities, are outside the scope of Capital Gains Tax - see 'Exemptions' on page CGN 3 of the *Capital gains summary notes*. Finance Act 2003 also made changes to the capital gains acquisition cost of some shares and other securities.

Approved share incentive plans (SIPs)

If you keep your shares in the SIP until you dispose of them, you will have no Capital Gains Tax to pay in respect of this disposal. If you keep the shares after you take them out of the plan and dispose of them later, your cost for capital gains purposes will be their market value on the date the shares leave the plan.

Approved profit sharing schemes

For capital gains purposes:

- the cost of your shares is their market value when the trustees of the scheme allocate them to you. The trustees will tell you what this is
- you acquire your shares when the trustees allocate them to you (even though you cannot dispose of them freely at that time).

Approved savings-related share option schemes (SAYE schemes)

The capital gains cost of your shares is usually what you pay for them when you exercise your option. Where exceptionally you pay Income Tax on the exercise of your option, the amount chargeable to Income Tax forms part of the cost of your shares. If you exercised your option before 10 April 2003, the cost of your shares is the market value of the shares at the time you exercised the option.

Individual Savings Accounts (ISAs)

In the tax year to 5 April 2009, you could transfer shares worth up to £7,200 at the date of transfer into an ISA directly from a SIP, an approved profit sharing scheme or a SAYE scheme, providing certain conditions were met. If you transferred your shares to an ISA, no Capital Gains Tax is payable on the transfer or on the later disposal of the shares in the ISA.

For general information about ISAs, please see the ISA factsheet at www.hmrc.gov.uk

Personal pension schemes/stakeholder pension schemes

In the tax year to 5 April 2009, you could transfer shares to some personal or stakeholder pension schemes from a SAYE scheme, an approved profit sharing scheme or a SIP, providing certain conditions were met. You dispose of the shares you transfer, so if you make a gain you may be liable to Capital Gains Tax. Usually you will make a gain on your SAYE and approved profit sharing scheme shares because you acquire them for less than the market value at the date of the transfer to your pension scheme. If you transfer shares directly from the SIP to your pension scheme you will not be liable to Capital Gains Tax. But if you take the shares out of the plan and transfer them later, but within the 90 day limit, you may make a capital gain.

Company share option plans (CSOPs)

The capital gains cost of your shares is usually what you pay for them when you exercise your option. Where exceptionally you pay Income Tax on the exercise of your option, the amount chargeable to Income Tax forms part of the cost of your shares. If you exercised your option before 10 April 2003, the cost of your shares is the market value of the shares at the time you exercise the option.

Enterprise Management Incentives (EMIs)

If you exercised your EMI option before 10 April 2003, the capital gains cost of your shares is their market value at the time you exercised the option.

If you exercise your EMI option after 9 April 2003, the capital gains cost of your shares is what you pay for them together with the amount charged to Income Tax, if any, on the exercise of your option.

Unapproved employee share/securities options

If you exercised an unapproved share option before 10 April 2003, the capital gains cost of your shares is their market value at the time you exercised the option.

If you exercise an unapproved share option after 9 April 2003 the capital gains cost of your shares is the total of:

- what you pay for the option (if anything)
- the price you pay for the shares when you exercise the option, and
- the amount chargeable to Income Tax on the exercise.

If, after 15 April 2003, you exercise an option over securities that are chargeable assets, but not shares, the capital gains cost of your securities is the total of:

- what you pay for the option (if anything)
- the price you pay for the securities when you exercise the option, and
- the amount chargeable to Income Tax on the exercise.

All employee share/securities options

You are generally treated for capital gains purposes as acquiring your shares at the date when you exercise your option.

When you exercise your option, you may agree with your employer that you will pay part or all of your employer's National Insurance contribution if any is due. You can claim Income Tax relief for this payment. The amount on which you get Income Tax relief does not reduce the cost of your shares for capital gains purposes.

If you release your option in consideration of the grant of a new share option, and do not receive anything else, you will not be liable to Capital Gains Tax on receipt of the new option. You may be liable to Capital Gains Tax if you receive something else, as well as the new share option and you do not pay Income Tax on whatever else you receive.

If you do not exercise an option and it lapses you do not make an allowable loss for capital gains purposes.

Unapproved employee share/securities schemes

If, because of your job, you acquire free or cheap shares or other securities outside an approved share scheme and not by exercising a share option, the capital gains cost is generally their market value at the date you acquire them. For shares acquired before 16 April 2003, the main exception to this rule is where you got shares subject to the risk of forfeiture and pay Income Tax only when the risk is lifted or when you dispose of the shares. Finance Act 2003 made further exceptions from the rule.

The table below sets out the capital gains costs of some shares and other securities that Finance Act 2003 affected.

Shares or securities	Acquired before 1 Sep 2003	Acquired after 31 Aug 2003
Shares subject to risk of forfeiture for 5 years or less	Actual cost <i>plus</i> amount charged to Income Tax on removal of risk or on disposal subject to risk	Actual cost <i>plus</i> amounts, if any, charged to Income Tax on acquisition, variation, removal of risk or on disposal subject to risk
Shares subject to restrictions other than risk above	Market value subject to the restrictions <i>plus</i> amount, if any, charged to Income Tax after acquisition	Actual cost <i>plus</i> amounts, if any, charged to Income Tax on acquisition, variation, removal of risk or on disposal subject to risk
Securities other than shares subject to restrictions, that are chargeable assets	Market value subject to the restrictions	
Convertible shares	Market value <i>plus</i> amount charged to Income Tax on conversion	Actual cost <i>plus</i> amounts charged to Income Tax on acquisition and conversion
Convertible securities other than shares that are chargeable assets	Market value	

Shares subject to restrictions on disposal

If, because of your job, you acquire shares which you cannot dispose of freely, for example, for three years after you receive them, these shares are treated as a separate class of shares from any other shares in the company that you hold until the restrictions are removed. So, if you hold other shares in the company and sell some of them, you will not be treated as selling the shares that you cannot dispose of freely.

Same day share acquisitions after 5 April 2002

Shares of the same class in the same company acquired on the same day are normally pooled. When you dispose of them you use the average cost per share in calculating any capital gain or loss. However, there is a rule that may help you to reduce your Capital Gains Tax liability when you dispose of shares acquired after 5 April 2002.

You may elect to divide the shares you acquire on the same day into two categories. One category includes all the shares you acquire by exercising a qualifying EMI option and most shares that you acquire by exercising a SAYE or CSOP option. The other category includes any SAYE or CSOP shares where you pay Income Tax when you acquire them and all other shares of the same class in the same company that you acquire on the same day. You treat shares in this other

category as disposed of first. Broadly the shares that you treat as disposed of first will give rise to smaller gains.

This election applies only to shares acquired on the same day. It overrides the normal rules. You will need to consider your individual circumstances to decide whether or not to elect.

When can you elect

You can make the election after you dispose of shares you acquired after 5 April 2002. You must make the election within one year and 10 months after the end of the tax year in which you first dispose of some of the shares acquired on the same day: for the year ended 5 April 2009 by 31 January 2011. The election applies to all the shares of the same class in the same company acquired on one day. It applies to the first and all subsequent disposals of these shares.

How you elect

There is no special form. Explain that you are making a 'same day acquisition' election. Provide:

- the date you acquired the shares
- the name of the company
- the total number, class and cost or value of shares you acquired on the same day
- the number and cost of shares you acquired in the category treated as disposed of after other shares acquired by exercising
 - a qualifying EMI option
 - a SAYE option where you paid no Income Tax, and
 - a CSOP option where you paid no Income Tax
- the date, number of shares disposed of and the proceeds of your first disposal of some of the shares.

If, before the time limit is up, you make a Return showing the first disposal of shares and you want to make an election, include it in that Return. Enter the information about the disposal of shares in the *Capital gains summary* pages. Enter 'same day acquisition election' in your computations next to that disposal and include any further details in box 35 on page CG 2 or in the computations. Otherwise write to us.

You should make reference to the election each time you dispose of any of the remaining shares.

Relief on transfers of shares to an approved share incentive plan

This relief is designed to encourage shareholders disposing of their unlisted shares to sell them to the trustees of the company SIP for the benefit of all the employees of the company. You do not have to be an employee to claim it.

Getting relief

The conditions are:

- the person disposing of the shares cannot be a company
- the shares must be shares
 - that are not listed on a recognised stock exchange and not shares in a subsidiary of a listed company, and
 - that may be held in the SIP

- you have to dispose of shares to the trustees of a SIP
- the trustees must have a minimum stake of 10% in the company
- there must be no arrangements under which you can re-acquire any of the shares, except as a participant in the SIP
- you must acquire replacement assets, and
- you must claim the relief and within two years from the date you acquire the replacement assets.

Replacement assets are assets which are chargeable assets in your hands at the time you acquire them, but are not shares in, or debentures issued by, the company or any company which is in the same worldwide group as the company.

Relief available

If you use the whole of the amount you receive from the disposal of the shares to acquire replacement assets then none of your gain will be taxed. Instead, you reduce the cost of the replacement asset by the amount of the gain.

If you use part of the amount you receive from the disposal of the shares to acquire the replacement asset then you can defer that part of your gain by deducting it from the cost of the replacement asset. This only applies where the amount you use to acquire the replacement asset is not less than the amount of the gain.

There is no relief if the amount that you re-invest in the replacement asset is less than the amount of the original gain.

How to claim relief

When you claim relief you must tell us about:

- the shares you have disposed of
- the amount you received
- the date when you disposed of the shares
- the name and address of the trustees of the SIP to whom you disposed of the shares
- the replacement asset you have acquired
- the date when you acquired it
- its cost
- the amount of disposal proceeds of the shares that you have used to acquire the replacement asset.

Enter the information about the disposal of shares on the *Capital gains summary* pages. Enter 'relief on disposal to share incentive plan' and the amount claimed in your computations next to that disposal and include any further details in box 35 on page CG 2 or in the computations about the SIP and the replacement assets. The disposal of the shares should be entered on the *Capital gains summary* pages but you may prefer to claim the relief at a later date.

These notes are for guidance only and reflect the position at the time of writing. They do not affect any rights of appeal.