

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Cross Heading: Securities. (See end of Document for details)

SCHEDULES

SCHEDULE 5

EMPLOYEE SHARE OWNERSHIP TRUSTS

Modifications etc. (not altering text)

- C1** Sch. 5 applied (6.3.1992 with effect as mentioned in s. 289(1)(2) of the applying Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), [ss. 228\(7\), 235\(8\), 289](#) (with [ss. 60, 101\(1\), 171, 201\(3\)](#))

Securities

- 7 (1) Subject to paragraph 8 below, the trust deed must provide that securities acquired by the trustees must be shares in the founding company which—
- form part of the ordinary share capital of the company,
 - are fully paid up,
 - are not redeemable, and
 - are not subject to any restrictions other than restrictions which attach to all shares of the same class or a restriction authorised by sub-paragraph (2) below.
- (2) Subject to sub-paragraph (3) below, a restriction is authorised by this sub-paragraph if—
- it is imposed by the founding company's articles of association,
 - it requires all shares held by directors or employees of the founding company, or of any other company which it controls for the time being, to be disposed of on ceasing to be so held, and
 - it requires all shares acquired, in pursuance of rights or interests obtained by such directors or employees, by persons who are not (or have ceased to be) such directors or employees to be disposed of when they are acquired.
- (3) A restriction is not authorised by sub-paragraph (2) above unless—
- any disposal required by the restriction will be by way of sale for consideration in money on terms specified in the articles of association, and
 - the articles also contain general provisions by virtue of which any person disposing of shares of the same class (whether or not held or acquired as mentioned in sub-paragraph (2) above) may be required to sell them on terms which are the same as those mentioned in paragraph (a) above.
- (4) The trust deed must provide that shares in the founding company may not be acquired by the trustees at a price exceeding the price they might reasonably be expected to fetch on a sale in the open market.
- (5) The trust deed must provide that shares in the founding company may not be acquired by the trustees at a time when that company is controlled by another company.

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Modifications etc. (not altering text)

C1 See Finance Act 1990 (c. 29) ss.31–40—roll-over relief for disposal of shares to employee share ownership trusts

- 8 The trust deed may provide that the trustees may acquire securities other than shares in the founding company—
- (a) if they are securities issued to the trustees in exchange in circumstances mentioned in section [F¹135(1) of the ^{M1}Taxation of Chargeable Gains Act 1992], or
 - (b) if they are securities acquired by the trustees as a result of a reorganisation, and the original shares the securities represent are shares in the founding company (construing “reorganisation” and “original shares” in accordance with section [F¹126] of that Act).

Textual Amendments

F1 Words in Sch. 5 para. 8 substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the substituting Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, Sch. 10 para. 19(5) (with s. 60, 101(1), 201(3))

Modifications etc. (not altering text)

C2 See Finance Act 1990 (c. 29) ss.31–40—roll-over relief for disposal of shares to employee share ownership trusts

Marginal Citations

M1 1992 c. 12.

- 9 (1) The trust deed must provide that—
- (a) where the trustees transfer securities to a beneficiary, they must do so on qualifying terms;
 - (b) the trustees must transfer securities before the expiry of the [F²qualifying period] beginning with the date on which they acquired them.
- (2) For the purposes of sub-paragraph (1) above a transfer of securities is made on qualifying terms if—
- (a) all the securities transferred at the same time [F³other than those transferred on a transfer such as is mentioned in sub-paragraph (2ZA) below] are transferred on similar terms,
 - (b) securities have been offered to all the persons who are beneficiaries under the terms of the trust deed [F⁴by virtue of a rule which conforms with paragraph 4(2), (3) or (4) above] when the transfer is made, and
 - (c) securities are transferred to all such [F⁵persons] who have accepted.
- [F⁶(2ZA) For the purposes of sub-paragraph (1) above a transfer of securities is also made on qualifying terms if—
- (a) it is made to a person exercising a right to acquire shares, and
 - (b) that right was obtained in accordance with the provisions of [F⁷an SAYE option scheme]—

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- (i) which was established by, or by a company controlled by, the founding company, and
- (ii) which is approved under [^{F8}Schedule 3 to the Income Tax (Earnings and Pensions) Act 2003], and
- (c) that right is being exercised in accordance with the provisions of that scheme, and
- (d) the consideration for the transfer is payable to the trustees.]

[^{F9}(2A) For the purposes of sub-paragraph (1) above the qualifying period is—

- (a) seven years, in the case of trusts established on or before the day on which the Finance Act 1994 was passed;
 - (b) twenty years, in the case of other trusts.]
- (3) For the purposes of sub-paragraph (2) above, the fact that terms vary according to the levels of remuneration of beneficiaries, the length of their service, or similar factors, shall not be regarded as meaning that the terms are not similar.
- (4) The trust deed must provide that, in ascertaining for the purposes of a relevant rule whether particular securities are transferred, securities acquired earlier by the trustees shall be treated as transferred by them before securities acquired by them later; and a relevant rule is one which is included in the trust deed and conforms with sub-paragraph (1) above.

Textual Amendments

- F2** Words in Sch. 5 para. 9(1)(b) substituted (3.5.1994) by 1994 c. 9, s. 102, **Sch. 13 para. 7(2)**
- F3** Words in Sch. 5 para. 9(2)(a) inserted (29.4.1996 with effect in relation to trusts established on or after 29.4.1996) by 1996 c. 8, s. 120(9)(a)(12)
- F4** Words in Sch. 5 para. 9(2)(b) inserted (29.4.1996 with effect in relation to trusts established on or after 29.4.1996) by 1996 c. 8, s. 120(9)(b)(12)
- F5** Words in Sch. 5 para. 9(2)(c) inserted (29.4.1996 with effect in relation to trusts established on or after 29.4.1996) by 1996 c. 8, s. 120(9)(c)(12)
- F6** Sch. 5 para. 9(2ZA) inserted (29.4.1996 with effect in relation to trusts established on or after 29.4.1996) by 1996 c. 8, s. 120(10)(12)
- F7** Words in Sch. 5 para. 9(2ZA)(b) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 723, **Sch. 6 para. 163(3)(a)** (with Sch. 7)
- F8** Words in Sch. 5 para. 9(2ZA)(b)(ii) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 723, **Sch. 6 para. 163(3)(b)** (with Sch. 7)
- F9** Sch. 5 para. 9(2A) inserted (3.5.1994) by 1994 c. 9, s. 102, **Sch. 13 para. 7(3)**

Modifications etc. (not altering text)

- C3** See Finance Act 1990 (c. 29) ss.31–40—roll-over relief for disposal of shares to employee share ownership trusts

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