



# Finance Act 1991

## 1991 CHAPTER 31

### PART III

#### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

### CHAPTER I

#### GENERAL

*Profit-related pay, share schemes etc.*

#### **37 Profit-related pay: increased relief**

- (1) In section 171(1) of the Taxes Act 1988 (one half of certain profit-related pay exempt from income tax) for “One half” there shall be substituted “The whole”.
- (2) This section shall have effect in relation to profit-related pay paid by reference to profit periods beginning on or after 1st April 1991.

#### **38 Employee share schemes: non-discrimination**

- (1) The Taxes Act 1988 shall be amended as follows.
- (2) In Part III of Schedule 9 (requirements applicable to savings-related share option schemes) in paragraphs 19(b) and 20 for “pensionable age” there shall be substituted “the specified age”.
- (3) In Schedule 10 (further provisions relating to profit sharing schemes) in sub-paragraph (b) of paragraph 2 and in sub-paragraph (c)(ii) of paragraph 3 for “pensionable age” there shall be substituted “the relevant age”, and at the end of each of those paragraphs there shall be inserted—

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“In this paragraph, the reference to the relevant age is a reference, in the case of a scheme approved before the day on which the Finance Act 1991 was passed, to pensionable age and, in the case of a scheme approved on or after that day, to the specified age.”

- (4) In section 187(2) (definitions for the purposes of provisions relating to employee share schemes) after the definition of “shares” there shall be inserted—

““specified age”, in relation to a scheme, means the age specified in pursuance of paragraph 8A of Schedule 9 as the specified age for the purposes of the scheme;”.

- (5) In Part II of Schedule 9 (requirements generally applicable to employee share schemes) after paragraph 8 there shall be inserted—

“8A (1) In the case of a savings-related share option scheme or a profit sharing scheme, the scheme must specify what age is to be the specified age for the purposes of the scheme.

(2) The age specified—

- (a) must be the same for men and women, and
- (b) must be not less than 60 and not more than 75.”

- (6) Subsections (2) and (5) above shall have effect in relation to a scheme not approved before the day on which this Act is passed.

### **39 Approved share option schemes: price at which shares may be acquired**

- (1) In Schedule 9 to the Taxes Act 1988 (requirements by reference to which share option schemes approved) for paragraph 29 there shall be substituted—

“29 (1) The price at which scheme shares may be acquired by the exercise of a right obtained under the scheme—

- (a) must be stated at the time the right is obtained, and
- (b) except where stated under provision included in the scheme pursuant to sub-paragraph (2) below, must not be manifestly less than the market value of shares of the same class at the material time.

(2) The scheme may provide that, if sub-paragraph (3) below applies, scheme shares may be acquired by the exercise of a right obtained under the scheme at a price which is not manifestly less than 85 per cent. of the market value of shares of the same class at the material time.

(3) This sub-paragraph applies if the conditions specified in sub-paragraph (4)(a) and, as the case may be, (b) or (c) below, are met—

- (a) where at the time the right is obtained the scheme is not a group scheme, as respects the grantor;
- (b) where at the time the right is obtained the scheme is a group scheme, as respects each company to which the scheme is expressed to extend at that time.

(4) The conditions are—

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- (a) that the company has established, or is at the time the right is obtained a participating company in relation to, a scheme which is at that time an approved savings-related share option scheme or an approved profit sharing scheme (a “qualifying scheme”);
  - (b) where there is only one qualifying scheme, that every employee eligible to participate in that scheme at the time the right is obtained has, in the twelve months immediately preceding that time, been informed by an appropriate person of the scheme’s existence;
  - (c) where there is more than one qualifying scheme, that, in the case of each of those schemes, every employee eligible to participate in that scheme at the time the right is obtained has, in the twelve months immediately preceding that time, been informed by an appropriate person of the scheme’s existence.
- (5) In determining whether the condition specified in sub-paragraph (4)(a) above is met, the withdrawal of approval under paragraph 3 above with effect from a time before the right is obtained shall be disregarded if the withdrawal takes place retrospectively from a time after the right is obtained.
- (6) For the purposes of sub-paragraph (4)(b) and (c) above, an employee has been informed of the existence of a scheme by an appropriate person if he has been informed by one or more of the following—
- (a) a company by virtue of employment with which the employee is eligible to participate in the scheme,
  - (b) the grantor, and
  - (c) where the scheme under which the right to acquire the shares is obtained is a group scheme, any other company which is a participating company in relation to that scheme.
- (7) The scheme may provide for such variation of the price at which scheme shares may be acquired as may be necessary to take account of any variation in the share capital of which the scheme shares form part.
- (8) In this paragraph, references to the material time are to the time the right to acquire the scheme shares is obtained or, if the Board and the grantor agree in writing, such earlier time or times as may be provided in the agreement.”
- (2) Section 185 of that Act (tax reliefs for approved share option schemes) shall be amended as mentioned in subsections (3) to (6) below.
- (3) In subsection (2) (exemption from tax in respect of receipt under approved scheme of right to acquire shares) for “Subject to subsections (4) and (6) below” there shall be substituted “Subject to subsections (6) to (6B) below”.
- (4) In subsection (4) (which relates to certain rights to acquire shares obtained under a savings-related share option scheme) for “Subsections (2) and (3) above” there shall be substituted “Subsection (3) above”.
- (5) For subsection (6) there shall be substituted—
- “(6) Subsection (6A) below applies where—

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- (a) a person obtains a right to acquire shares under a scheme which is not a savings-related share option scheme, and
- (b) the price at which he may acquire shares by exercising the right is not applicable by virtue of provision included in the scheme pursuant to paragraph 29(2) of Schedule 9.

(6A) Where the aggregate of—

- (a) the amount or value of any consideration given by him for obtaining the right, and
- (b) the price at which he may acquire the shares by exercising the right, is less than the market value, at the time he obtains the right, of the same quantity of issued shares of the same class, he shall be chargeable to tax under Schedule E for the year of assessment in which he obtains the right on the amount of the difference; and the amount so chargeable shall be treated as earned income, whether or not it would otherwise fall to be so treated.

(6B) Subsection (6A) above shall also apply where—

- (a) a person obtains a right to acquire shares under a scheme which is not a savings-related share option scheme, and
- (b) the price at which he may acquire shares by exercising the right is applicable by virtue of provision included in the scheme pursuant to paragraph 29(2) of Schedule 9;

but with the substitution for “the market value” of “85 per cent. of the market value”.

- (6) In subsections (7) and (8), for “(6)” there shall be substituted “(6A)”.
- (7) Subsections (1), (5) and (6) above shall come into force on 1st January 1992.
- (8) Subsections (3) and (4) above shall apply in relation to rights obtained on or after 1st January 1992.

#### **40 Savings-related share option schemes**

- (1) In Part III of Schedule 9 to the Taxes Act 1988 (requirements applicable to savings-related share option schemes) in paragraph 24(2)(a) (scheme not to permit monthly amount of contributions linked to schemes to exceed £150) for “£150” there shall be substituted “£250”.
- (2) This section shall come into force on such day as the Treasury may by order made by statutory instrument appoint.

#### **41 Profit sharing schemes**

- (1) In section 187(2) of the Taxes Act 1988, in the definition of “relevant amount” (limit on the value of shares that may be appropriated to a participant in a year of assessment) for “not less than £2,000 and not more than £6,000” there shall be substituted “not less than £3,000 and not more than £8,000”.
- (2) This section shall apply for the year 1991-92 and subsequent years of assessment.

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## **42 Costs of establishing share option or profit sharing schemes: relief**

The following section shall be inserted after section 84 of the Taxes Act 1988—

### **“84A Costs of establishing share option or profit sharing schemes: relief**

- (1) Subsection (2) below applies where—
  - (a) a company incurs expenditure on establishing a share option scheme which the Board approve and under which no employee or director obtains rights before such approval is given, or
  - (b) a company incurs expenditure on establishing a profit sharing scheme which the Board approve and under which the trustees acquire no shares before such approval is given.
- (2) In such a case the expenditure—
  - (a) shall be deducted in computing for the purposes of Schedule D the profits or gains of a trade carried on by the company, or
  - (b) if the company is an investment company or a company in the case of which section 75 applies by virtue of section 76, shall be treated as expenses of management.
- (3) In a case where—
  - (a) subsection (2) above applies, and
  - (b) the approval is given after the end of the period of nine months beginning with the day following the end of the period of account in which the expenditure is incurred,for the purpose of applying subsection (2) above the expenditure shall be treated as incurred in the period of account in which the approval is given (and not the period of account mentioned in paragraph (b) above).
- (4) References in this section to approving are to approving under Schedule 9.
- (5) This section applies where the expenditure is incurred on or after 1st April 1991.”

## **43 Costs of establishing employee share ownership trusts: relief**

The following section shall be inserted after section 85 of the Taxes Act 1988—

### **“85A Costs of establishing employee share ownership trusts: relief**

- (1) Subsection (2) below applies where a company incurs expenditure on establishing a qualifying employee share ownership trust.
- (2) In such a case the expenditure—
  - (a) shall be deducted in computing for the purposes of Schedule D the profits or gains of a trade carried on by the company, or
  - (b) if the company is an investment company or a company in the case of which section 75 applies by virtue of section 76, shall be treated as expenses of management.
- (3) In a case where—
  - (a) subsection (2) above applies, and

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- (b) the trust is established after the end of the period of nine months beginning with the day following the end of the period of account in which the expenditure is incurred,

for the purpose of applying subsection (2) above the expenditure shall be treated as incurred in the period of account in which the trust is established (and not the period of account mentioned in paragraph (b) above).

- (4) In this section “qualifying employee share ownership trust” shall be construed in accordance with Schedule 5 to the Finance Act 1989.
- (5) For the purposes of this section the trust is established when the deed under which it is established is executed.
- (6) This section applies where the expenditure is incurred on or after 1st April 1991.”

#### **44 Priority share allocations for employees etc**

- (1) In relation to offers made on or after 16th January 1991, section 68 of the Finance Act 1988 (which provides for the benefits derived from priority rights in share offers to be disregarded in certain circumstances) shall have effect, and be deemed at all times on and after that date to have had effect, with the amendments specified in subsections (2) to (8) below.

- (2) In paragraph (a) of subsection (1), for the words “an offer” there shall be substituted the words “a bona fide offer”.

- (3) After that subsection there shall be inserted—

“(1ZA) A case falls within this subsection if—

- (a) there is a bona fide offer to the public of a combination of shares in two or more companies at a fixed price or by tender (“the public offer”);
- (b) there is at the same time an offer (“the employee offer”) of shares, or of a combination of shares, in any one or more, but not all, of those companies—
- (i) to directors or employees, or
- (ii) to directors or employees and to other persons,
- (whether the directors or employees are directors or employees of any of those companies, or of any other company or person); and
- (c) any of those directors or employees is entitled, by reason of his office or employment, to an allocation of shares under the employee offer in priority to any allocation to members of the public under the public offer.

(1ZB) In any case falling within subsection (1ZA) above—

- (a) the public offer and the employee offer shall be regarded for the purposes of subsection (1) above as together constituting a single offer of shares to the public, notwithstanding the difference in the shares to which each offer relates;
- (b) the reference to “the shares” in paragraph (b) of that subsection shall be taken as a reference to any of the shares which, in consequence

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- of paragraph (a) above, are to be regarded as subject to that single offer; and
- (c) in the following provisions of this section references to the offer or to shares subject to the offer shall be construed accordingly.”
- (4) For subsection (1A) there shall be substituted—
- “(1A) Where, disregarding the amount or value of any registrant discount made to the director or employee in respect of the shares of the company (or, in a case falling within subsection (1ZA) above, of the company in question), the price payable by him for the shares of that company which are allocated to him under the offer—
- (a) in a case not falling within subsection (1ZA) above, is less than the fixed price or the lowest price successfully tendered, or
- (b) in a case falling within that subsection, is not the same as, or as near as reasonably practicable to, the appropriate notional price for the shares of that company,
- subsection (1) above shall not apply to the benefit (if any) represented by the difference in price.”
- (5) After subsection (2B) there shall be inserted—
- “(2C) In a case falling within subsection (1ZA) above, the condition in paragraph (a) of subsection (2) above shall be taken to be satisfied in relation to the offer if, and only if, it is separately satisfied with respect to the shares in each one of the companies which are subject to that offer; and for this purpose only, any reference in that paragraph or in subsection (2A) or (2B) above to shares is a reference to shares in the particular company in question.”
- (6) In subsection (3A) (saving where the allocations of directors or employees are larger than those of other persons) after the words “the company”, where first occurring, there shall be inserted the words “(or, in a case falling within subsection (1ZA) above, any one or more of the companies to which the offer relates)”.
- (7) At the end of subsection (5) (definitions) there shall be added—
- ““the public offer” and “the employee offer” have the meaning given by paragraphs (a) and (b) of subsection (1ZA) above.”
- (8) After that subsection there shall be inserted—
- “(5A) For the purposes of this section, there is a “registrant discount” in respect of the shares of a company in any case where—
- (a) in connection with the offer, members of the public who comply with such requirements as may be imposed in that behalf are, or may become, entitled to a discount in respect of the whole or some part of the shares of that company which are allocated to them; and
- (b) at least 40 per cent. of the shares of that company which are allocated to members of the public other than employees and directors are allocated to individuals who are or become entitled either to that discount or to some other benefit of similar value for which they may elect as an alternative to the discount; and
- (c) directors or employees who either—

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- (i) subscribe for shares under the offer (or, in a case falling within subsection (1ZA) above, under the public offer) as members of the public, or
- (ii) subscribe for shares under the employee offer, as directors or employees,

and who comply (or, in the case of a requirement to register, are taken under the terms of the offer to comply) with the same requirements as are mentioned in paragraph (a) above, are, or may become, entitled to the same discount in respect of the shares of the company as any other members of the public to whom shares of that company are allocated under the offer;

and any reference in this section to the amount or value of the registrant discount made to a director or employee is a reference to the amount of any such discount made to him as is mentioned in paragraph (c) above or, as the case may be, the value of any such other benefit as is mentioned in paragraph (b) above which is conferred upon him as an alternative to the discount.

- (5B) For the purposes of this section, in a case falling within subsection (1ZA) above “the appropriate notional price” for the shares of any of the companies subject to the offer is such price as—
- (a) had the shares of that company, and of each of the other companies, instead of being subject to the offer, been subject to separate offers to the public in respect of each company at fixed prices, and
  - (b) had those separate offers been made at the time at which the public offer was in fact made,

might reasonably have been expected to be the fixed price for the shares of that company under the separate offer of those shares; but where subsection (5C) below applies, the amount determined in accordance with this subsection as the notional price for the shares of any company shall be varied in accordance with that subsection.

- (5C) If the amounts determined in accordance with subsection (5B) above as the appropriate notional prices for the shares of each of the companies subject to the public offer are such that, had the price for the combination of shares subject to the public offer been determined by aggregating the appropriate notional price (as so determined) for each one of the shares comprised in the combination, the price for the combination would have been different from the actual fixed price or (as the case may be) lowest successfully tendered price, then those amounts shall each be varied by multiplying them by the fraction of which—
- (a) the numerator is the actual fixed or lowest successfully tendered price for the combination of shares subject to the public offer; and
  - (b) the denominator is the different price mentioned above;
- and those amounts, as so varied, shall be the appropriate notional prices for the purposes of this section.”

- (9) In section 77 of that Act (scope of provisions about unapproved employee share schemes) in subsection (1), for the words “Subject to subsections (2) and (3) below” there shall be substituted the words “Subject to subsections (2) to (4) below”, and after subsection (3) (exemption where the acquisition is made in pursuance of an offer to the public) there shall be added—



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- “(4) Where, in a case falling within subsection (1ZA) of section 68 above, subsection (1) of that section—
- (a) applies or applied in relation to such a benefit as is there mentioned, or
  - (b) would so apply or have applied, had there been any such benefit,
- any acquisition made on or after 16th January 1991 in pursuance of any of the offers which, in that case, fall to be regarded by virtue of subsection (1ZB) of that section as together constituting a single offer of shares to the public for the purposes of subsection (1) of that section shall be regarded for the purposes of subsection (3) above as an acquisition made in pursuance of an offer to the public.”
- (10) The amendments made by subsection (9) above shall be deemed to have come into force on 16th January 1991.