



Finance Act 1996

1996 CHAPTER 8

PART IV

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER IV

SHARE OPTIONS, PROFIT SHARING AND EMPLOYEE SHARE OWNERSHIP

Share options

111 Amount or value of consideration for option

- (1) Section 149A of the Taxation of Chargeable Gains Act 1992 (consideration for grant of option under approved share option schemes not to be deemed to be equal to market value of option) shall be amended as follows.
- (2) In subsection (1)(b) (restriction to approved share option schemes) for “as mentioned in section 185(1) of the Taxes Act (approved share option schemes)” there shall be substituted “by an individual by reason of his office or employment as a director or employee of that or any other body corporate”.
- (3) In subsection (2) (grantor to be treated as if the amount or value of the consideration was its actual amount or value) for “The grantor of the option” there shall be substituted “Both the grantor of the option and the person to whom the option is granted”.
- (4) Subsection (4) (section not to affect treatment under that Act of person to whom option granted) shall cease to have effect.
- (5) For the side-note to that section there shall be substituted “Share option schemes.”

Status: This is the original version (as it was originally enacted).

- (6) This section has effect in relation to any right to acquire shares in a body corporate obtained on or after 28th November 1995 by an individual by reason of his office or employment as a director or employee of a body corporate.

112 Release and replacement

- (1) After section 237 of the Taxation of Chargeable Gains Act 1992 there shall be inserted—

“237A Share option schemes: release and replacement of options

- (1) This section applies in any case where a right to acquire shares in a body corporate (“the old right”) which was obtained by an individual by reason of his office or employment as a director or employee of that or any other body corporate is released in whole or in part for a consideration which consists of or includes the grant to that individual of another right (“the new right”) to acquire shares in that or any other body corporate.
- (2) As respects the person to whom the new right is granted—
- (a) without prejudice to subsection (1) above, the new right shall not be regarded for the purposes of capital gains tax as consideration for the release of the old right;
 - (b) the amount or value of the consideration given by him or on his behalf for the acquisition of the new right shall be taken for the purposes of section 38(1) to be the amount or value of the consideration given by him or on his behalf for the old right; and
 - (c) any consideration paid for the acquisition of the new right shall be taken to be expenditure falling within section 38(1)(b).
- (3) As respects the grantor of the new right, in determining for the purposes of this Act the amount or value of the consideration received for the new right, the release of the old right shall be disregarded.”
- (2) Section 238(4) of that Act (which provides that the release of an option under an approved share option scheme in exchange for another option, in connection with a company take-over, is not to involve a disposal, and which is superseded by subsection (1) above) shall cease to have effect.
- (3) This section has effect in relation to transactions effected on or after 28th November 1995.

Savings-related share option schemes

113 Exercise of rights by employees of non-participating companies

- (1) In paragraph 21 of Schedule 9 to the Taxes Act 1988 (provisions which an approved savings-related share option scheme may make with respect to the exercise of rights under the scheme) in sub-paragraph (1), the word “and” immediately preceding paragraph (e) shall be omitted and after that paragraph there shall be inserted “and
- (f) if, at the bonus date, a person who has obtained rights under the scheme holds an office or employment in a company which is not a participating company but which is—

Status: This is the original version (as it was originally enacted).

(i) an associated company of the grantor, or
(ii) a company of which the grantor has control,
those rights may be exercised within six months of that date.”

(2) After sub-paragraph (3) of that paragraph there shall be inserted—

“(4) Where a scheme approved before the date of the passing of the Finance Act 1996 is altered before 5th May 1998 so as to include such a provision as is specified in sub-paragraph (1)(f) above, the scheme may apply the provision to rights obtained under the scheme before the alteration takes effect, whether the bonus date in relation to the rights occurred before or after the passing of that Act; and where the provision is applied to such rights by virtue of this sub-paragraph, its application to such rights shall not itself be regarded as the acquisition of a right for the purposes of this Schedule.

This sub-paragraph has effect subject to paragraph 4 above.”

(3) In paragraph 26(3) of that Schedule (only directors or employees of grantor or participating company to be eligible to participate, except as provided by paragraph 19 or pursuant to such a provision as is referred to in paragraph 21(1)(e)) after “21(1)(e)” there shall be inserted “or (f)”.

Other share option schemes

114 Requirements to be satisfied by approved schemes

(1) Part IV of Schedule 9 to the Taxes Act 1988 (requirements applicable to approved share option schemes which are not savings-related) shall be amended in accordance with subsections (2) and (3) below.

(2) In paragraph 28 (scheme must impose limit on aggregate market value of shares which may be acquired in pursuance of rights obtained under the scheme or certain related schemes)—

(a) in sub-paragraph (1) (aggregate market value of shares not to exceed the appropriate limit) for “the appropriate limit” there shall be substituted “£30,000”; and

(b) sub-paragraphs (2) and (4) (meaning of the appropriate limit and, for the purposes of that definition, the relevant emoluments) shall cease to have effect.

(3) In paragraph 29 (price at which shares may be acquired to be stated and to be not manifestly less than the market value, or, in certain circumstances, 85 per cent. of the market value, of shares of the same class) for sub-paragraphs (1) to (6) there shall be substituted—

“(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) must not be manifestly less than the market value of shares of the same class at that time or, if the Board and the grantor agree in writing, at such earlier time or times as may be provided in the agreement.”

Status: This is the original version (as it was originally enacted).

- (4) Section 185 of the Taxes Act 1988 (approved share option schemes) shall be amended in accordance with subsections (5) to (7) below.
- (5) In subsection (2), for “Subject to subsections (6) to (6B) below” there shall be substituted “Subject to subsection (6) below”.
- (6) For subsections (6) to (6B) there shall be substituted—
- “(6) Where, in the case of a right obtained by a person under a scheme which is not a savings-related share option scheme, 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.”
- (7) In subsections (7) and (8) for “(6A)” there shall be substituted “(6)”.
- (8) In section 120 of the Taxation of Chargeable Gains Act 1992 (increase in expenditure by reference to tax charged in relation to shares etc) in subsection (6) (which defines the applicable provision) for paragraph (b) (which refers to subsection (6A) of section 185 of the Taxes Act 1988) there shall be substituted—
- “(b) subsection (6A) of that section (as that subsection has effect in relation to rights obtained before the day on which the Finance Act 1996 was passed), or
- (c) subsection (6) of that section (as that subsection has effect in relation to rights obtained on or after that day).”
- (9) Schedule 16 to this Act, which makes provision with respect to share option schemes approved before the day on which this Act is passed, shall have effect.
- (10) Subsections (3) to (7) above have effect in relation to rights obtained on or after the day on which this Act is passed.

115 Transitional provisions

- (1) If, during the period—
- (a) beginning with 17th July 1995, and
- (b) ending with the day preceding the passing of this Act,
- any rights have been obtained by a person under an approved share option scheme in circumstances falling within subsection (2) below, the rights shall be treated for the purposes of sections 185 to 187 of, and Schedule 9 to, the Taxes Act 1988 as being rights obtained otherwise than in accordance with the provisions of an approved share option scheme.
- (2) The circumstances mentioned in subsection (1) above are circumstances such that, on the assumptions in subsection (3) below, there would, by virtue of paragraph 28 or 29 of Schedule 9 to the Taxes Act 1988 (limit on what may be obtained and requirements with respect to price), have been, with respect to the operation of the scheme, a contravention of any of the relevant requirements or of the scheme itself.

Status: This is the original version (as it was originally enacted).

- (3) The assumptions mentioned in subsection (2) above are—
- (a) that the amendments made by subsection (2) of section 114 above had effect at all times on and after 17th July 1995;
 - (b) that the amendments made by subsections (3) to (7) of that section had effect in relation to rights obtained at any time on or after that date; and
 - (c) that the provisions of paragraphs 1(1) and 2 to 5 of Schedule 16 to this Act had effect at all times on and after 17th July 1995, but with the substitution for references to the day on which this Act is passed of references to that date.
- (4) For the purposes of this section, rights obtained by a person on or after 17th July 1995 shall be treated as having been obtained by him before that date if—
- (a) the scheme in question is one approved before that date;
 - (b) an offer of the rights or an invitation to apply for them was made in writing to that person before that date; and
 - (c) he obtained the rights within the period of thirty days beginning with the day on which the offer or invitation was made.
- (5) In this section—
- “approved share option scheme” means an approved share option scheme, within the meaning of section 185 of the Taxes Act 1988, other than a savings-related share option scheme;
 - “relevant requirements” has the meaning given in paragraph 1(1) of Schedule 9 to the Taxes Act 1988;
 - “savings-related share option scheme” has the meaning given by Schedule 9 to the Taxes Act 1988.

Profit sharing schemes

116 The release date

- (1) In section 187(2) of the Taxes Act 1988 (interpretation of sections 185 and 186 of, and Schedules 9 and 10 to, that Act) in the definition of “release date” (the fifth anniversary of the date on which shares were appropriated to a participant in a profit sharing scheme) for “fifth” there shall be substituted “third”.
- (2) The amendment made by subsection (1) above shall have effect in relation to shares of a participant in a profit sharing scheme if the third anniversary of the appropriation of the shares to the participant occurs on or after the day on which this Act is passed.
- (3) If the third anniversary of the appropriation of any shares to a participant in a profit sharing scheme has occurred, but the fifth anniversary of their appropriation to him has not occurred, before the passing of this Act, then, in the application of sections 186 and 187 of, and Schedules 9 and 10 to, the Taxes Act 1988 in relation to those shares, the release date shall be the day on which this Act is passed.

117 The appropriate percentage

- (1) In Schedule 10 to the Taxes Act 1988 (further provisions relating to profit sharing schemes) for paragraph 3 (the appropriate percentage) there shall be substituted—
- “3 (1) For the purposes of any of the relevant provisions charging an individual to income tax under Schedule E by reason of the occurrence of an event

Status: This is the original version (as it was originally enacted).

relating to any of his shares, the “appropriate percentage” in relation to those shares is 100 per cent., unless sub-paragraph (2) below applies.

(2) Where the individual—

(a) ceases to be a director or employee of the grantor or, in the case of a group scheme, a participating company as mentioned in paragraph 2(a) above, or

(b) reaches the relevant age,

before the event occurs, the “appropriate percentage” is 50 per cent., unless paragraph 6(4) below applies.”

(2) In section 187(8) of that Act (determination of certain values and percentages where shares are appropriated to a participant at different times) paragraph (b) (which relates to the appropriate percentage), and the word “and” immediately preceding it, shall cease to have effect.

(3) Subsections (1) and (2) above have effect in relation to the occurrence, on or after the day on which this Act is passed, of events by reason of whose occurrence any provision of section 186 or 187 of, or Schedule 9 or 10 to, the Taxes Act 1988 charges an individual to income tax under Schedule E.

118 The appropriate allowance

(1) In section 186(12) of the Taxes Act 1988 (determination of the appropriate allowance for the purposes of the charge to tax on capital receipts by a participant in an approved profit sharing scheme)—

(a) for “£100” there shall be substituted “£60”; and

(b) for “five years” there shall be substituted “three years”.

(2) Subsection (1) above has effect for the year 1997-98 and subsequent years of assessment.

Employee share ownership trusts

119 Removal of requirement for at least one year’s service

(1) In Schedule 5 to the Finance Act 1989 (employee share ownership trusts) in paragraph 4(5)(a) (for a trust to be a qualifying ESOT, its beneficiaries must have been employees or directors of the company for at least one year) the words “not less than one year and” shall cease to have effect.

(2) This section applies to trusts established on or after the day on which this Act is passed.

120 Grant and exercise of share options

(1) In Schedule 5 to the Finance Act 1989 (employee share ownership trusts), in paragraph 4 (the trust deed must contain provision as to the beneficiaries) after sub-paragraph (2) there shall be inserted—

“(2A) The trust deed may provide that a person is a beneficiary at a given time if at that time he is eligible to participate in a savings-related share option scheme within the meaning of Schedule 9 to the Taxes Act 1988—

Status: This is the original version (as it was originally enacted).

- (a) which was established by a company within the founding company's group, and
 - (b) which is approved under that Schedule.
- (2B) Where a trust deed contains a rule conforming with sub-paragraph (2A) above it must provide that the only powers and duties which the trustees may exercise in relation to persons who are beneficiaries by virtue only of that rule are those which may be exercised in accordance with the provisions of a scheme such as is mentioned in that sub-paragraph."
- (2) In consequence of the amendment made by subsection (1) above, section 69 of, and Schedule 5 to, the Finance Act 1989 (which respectively make provision about chargeable events in relation to the trustees of qualifying employee share ownership trusts and the requirements to be satisfied by such trusts) shall be amended in accordance with the following provisions of this section.
- (3) In subsection (4) of that section (meaning of "qualifying terms" for the purposes of the provision that the transfer of securities to beneficiaries is a chargeable event if it is not on qualifying terms)—
 - (a) in paragraph (a) (securities which are transferred at the same time must be transferred on similar terms) after "time" there shall be inserted "other than those transferred on a transfer such as is mentioned in subsection (4ZA) below";
 - (b) in paragraph (b) (securities must have been offered to all the persons who are beneficiaries), after "trust deed" there shall be inserted "by virtue of a rule which conforms with paragraph 4(2), (3) or (4) of Schedule 5 to this Act"; and
 - (c) in paragraph (c) (securities must be transferred to all such beneficiaries who have accepted the offer) for "beneficiaries" there shall be substituted "persons".
- (4) After subsection (4) of that section there shall be inserted—

"(4ZA) For the purposes of subsection (1)(b) 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 a savings-related share option scheme within the meaning of Schedule 9 to the Taxes Act 1988—
 - (i) which was established by, or by a company controlled by, the company which established the trust, and
 - (ii) which is approved under that Schedule, 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."
- (5) In sub-paragraph (4) of paragraph 4 of that Schedule (trust deed may provide for charity to be beneficiary if there are no beneficiaries falling within a rule conforming with sub-paragraph (2) or (3)) after "sub-paragraph (2)" there shall be inserted ", (2A)".
- (6) In sub-paragraph (7) of that paragraph (trust deed must not provide for a person to be a beneficiary unless he falls within a rule conforming with sub-paragraph (2), (3) or (4)) after "sub-paragraph (2)" there shall be inserted ", (2A)".

Status: This is the original version (as it was originally enacted).

- (7) In sub-paragraph (8) of that paragraph (trust deed must provide that person with material interest in founding company cannot be a beneficiary) after “at a particular time (the relevant time)” there shall be inserted “by virtue of a rule which conforms with sub-paragraph (2), (3) or (4) above”.
- (8) In paragraph 5(2) of that Schedule (trust deed must be so expressed that it is apparent that the general functions of the trustees are as mentioned in paragraphs (a) to (e)) after paragraph (c) there shall be inserted—
- “(cc) to grant rights to acquire shares to persons who are beneficiaries under the terms of the trust deed;”.
- (9) In paragraph 9 of that Schedule (trust deed must provide that transfers of securities to beneficiaries must be on qualifying terms and within the qualifying period) in sub-paragraph (2) (meaning of qualifying terms)—
- (a) in paragraph (a) (securities which are transferred at the same time must be transferred on similar terms) after “time” there shall be inserted “other than those transferred on a transfer such as is mentioned in sub-paragraph (2ZA) below”;
- (b) in paragraph (b) (securities must have been offered to all the persons who are beneficiaries) after “trust deed” there shall be inserted “by virtue of a rule which conforms with paragraph 4(2), (3) or (4) above”; and
- (c) in paragraph (c) (securities must be transferred to all such beneficiaries who have accepted the offer) for “beneficiaries” there shall be substituted “persons”.
- (10) After sub-paragraph (2) of that paragraph there shall be inserted—
- “(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 a savings-related share option scheme within the meaning of Schedule 9 to the Taxes Act 1988—
- (i) which was established by, or by a company controlled by, the founding company, and
- (ii) which is approved under that Schedule, 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.”
- (11) In paragraph 10 of that Schedule (trust deed must not contain features not essential or reasonably incidental to purposes mentioned in that paragraph)—
- (a) after “acquiring sums and securities,” there shall be inserted “granting rights to acquire shares to persons who are eligible to participate in savings-related share option schemes approved under Schedule 9 to the Taxes Act 1988, transferring shares to such persons;” and
- (b) for “Schedule 9 to the Taxes Act 1988” there shall be substituted “that Schedule”.
- (12) This section has effect in relation to trusts established on or after the day on which this Act is passed.