



Income Tax (Earnings and Pensions) Act 2003

2003 CHAPTER 1

PART 7

EMPLOYMENT INCOME: SHARE-RELATED INCOME AND EXEMPTIONS

CHAPTER 11

SUPPLEMENTARY PROVISIONS ABOUT EMPLOYEE BENEFIT TRUSTS

Introduction

549 Application of this Chapter

- (1) This Chapter applies for the purposes of any listed provision in circumstances where—
- an individual (“B”) is interested as a beneficiary of an employee benefit trust in shares or obligations of a particular company (“the company”), and
 - the question arises under that provision whether the trustees of the trust are, as a result of B’s being so interested, to be regarded as associates of B’s for the relevant purposes.

The relevant purposes are those of the operation, in relation to the company, of the “no material interest” requirement contained in the Schedule to this Act in which the listed provision appears.

- (2) In this Chapter “listed provision” means any of the following provisions (under which trustees of an employee benefit trust are not to be regarded as associates if specified limits relating to share ownership are not exceeded)—
- paragraph 23(2) of Schedule 2 (approved SIPs),
 - paragraph 15(2) of Schedule 3 (approved SAYE option schemes),
 - paragraph 13(2) of Schedule 4 (approved CSOP schemes), or

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- (d) paragraph 32(2) of Schedule 5 (enterprise management incentives).
- (3) The general effect of this Chapter is that if the provisions of—
- (a) sections 552 and 553 (attribution of interest in company to beneficiary or associate), or
 - (b) section 554 (attribution of further interest),
- apply in relation to B or an associate of B's, B or the associate is to be treated for the purposes of the listed provision as having been the beneficial owner of a particular percentage of the company's ordinary share capital on a particular date.
- (4) In this Chapter, in relation to an individual, "associate"—
- (a) has the same meaning as in section 417(3) and (4) of ICTA (expressions relating to close companies), but
 - (b) does not include the trustees of an employee benefit trust as a result only of the individual's having (as mentioned in subsection (1)(a)) an interest in shares or obligations of the company which are subject to the trust.
- (5) In this Chapter "employee" means the holder of a taxable employment under Part 2 (as defined in section 66(3)), and accordingly includes an office-holder whose office is within the scope of that definition as a result of section 5(1).

Employee benefit trusts

550 Meaning of "employee benefit trust"

- (1) In this Chapter "employee benefit trust", in relation to a company, means a trust where conditions A and B are met.
- (2) Condition A is that all or most of the employees of the company are eligible to benefit under the trust.
- (3) Condition B is that after 13th March 1989 either—
 - (a) there has been no disposal of any of the property subject to the trust, or
 - (b) any disposal of any of that property was a disposal within subsection (4).
- (4) The disposals within this subsection are—
 - (a) disposals in the ordinary management of the trust, or
 - (b) qualifying disposals (within the meaning given by section 551).
- (5) In this section and section 551 "disposal" means disposal by sale, loan or otherwise.

551 "Qualifying disposals" for purposes of section 550

- (1) For the purposes of section 550 (meaning of "employee benefit trust") a "qualifying disposal" is a disposal of property consisting of—
 - (a) any of the ordinary share capital of the company, or
 - (b) money paid outright,
 where any of conditions 1, 2 and 3 is met.
- (2) Condition 1 is that the property has been applied for the benefit of—
 - (a) individual employees or former employees of the company,

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- (b) spouses, former spouses, widows or widowers of employees or former employees of the company,
 - (c) dependants of persons within paragraph (a), or
 - (d) relatives, or spouses of relatives, of persons within paragraph (a) or (b).
- (3) In subsection (2) each reference to the company includes a reference to a company controlled by the company.
- (4) Condition 2 is that the property has been applied for charitable purposes.
- (5) Condition 3 is that the property has been transferred to—
- (a) the trustees of another employee benefit trust,
 - (b) the trustees of a qualifying employee share ownership trust (within the meaning of Schedule 5 to FA 1989), or
 - (c) the trustees of a profit sharing scheme approved under Schedule 9 to ICTA (approved share option schemes and profit sharing schemes).
- (6) In this section “relative” means—
- (a) parent, child or remoter relation in the direct line, or
 - (b) brother, sister, uncle, aunt, nephew or niece.

Attribution of interests in company

552 Attribution of interest in company to beneficiary or associate

- (1) This section applies if—
- (a) after 13th March 1989 B, or an associate of B's, has received a payment (“the relevant payment”) from the trustees of the employee benefit trust, and
 - (b) at any time during the period of 3 years ending with the day on which the relevant payment was received (“the payment date”), the property subject to the trust consisted of or included any part of the ordinary share capital of the company.
- (2) In such a case B or the associate is to be treated for the purposes of the listed provision as having been the beneficial owner of the appropriate percentage of the ordinary share capital of the company on the payment date.
- (3) This is in addition to any percentage of that share capital of which B or the associate was actually the beneficial owner on that date.
- (4) Section 553 explains what is meant by “the appropriate percentage”.

553 Meaning of “appropriate percentage” for purposes of section 552

- (1) For the purposes of section 552 “the appropriate percentage” is—

$$\frac{P \times 100}{D}$$

where P and D have the meaning given by the following provisions.

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- (2) Unless subsection (3) applies, P is the aggregate of the relevant payment and any other payments received by B or associates of B's from the trustees of the trust during the period of 12 months ending with the payment date.
- (3) If—
- (a) any distributions were made to the trustees of the trust by the company in respect of its ordinary share capital during the period of 3 years ending with the payment date, and
 - (b) the aggregate of those distributions is less than the aggregate mentioned in subsection (2),
- P is the aggregate of those distributions.
- (4) Unless subsection (5) applies, D is the amount determined as follows—
- Step 1*
- Calculate the aggregate of—
- (a) any distributions made by the company in respect of its ordinary share capital during the period of 12 months ending with the payment date,
 - (b) any distributions so made during the period of 12 months immediately preceding that mentioned in paragraph (a), and
 - (c) any distributions so made during the period of 12 months immediately preceding that mentioned in paragraph (b).
- Step 2*
- Divide the aggregate so calculated by the number of the periods mentioned in paragraphs (a) to (c) in which distributions were so made.
- (5) If no distributions were so made during any of those periods, D is 1.
- (6) In this section “the payment date” and “the relevant payment” have the meaning indicated in section 552(1).

554 Attribution of further interest in company

- (1) This section applies if—
- (a) B or an associate of B's is (apart from this section) to be treated by virtue of section 552(2) as having been the beneficial owner of a percentage of the ordinary share capital of the company as a result of receiving the relevant payment from the trustees of an employment benefit trust, and
 - (b) B or an associate of B's has, during the period of 12 months ending with the payment date, received one or more payments from the trustees of any other employee benefit trust or trusts connected with the company.
- (2) In such a case section 552 applies to B or (as the case may be) the associate mentioned in subsection (1)(a) as if B or the associate had received—
- (a) any payment from the trustees of a trust as mentioned in subsection (1)(b), or
 - (b) where more than one payment has been received from the trustees of a trust, the last of the payments,
- on the payment date.
- (3) B or the associate is accordingly to be treated for the purposes of the listed provision as having been the beneficial owner on the payment date of both—

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- (a) the percentage of the ordinary share capital of the company mentioned in subsection (1)(a), and
 - (b) the appropriate percentage of that share capital as determined in accordance with subsection (2).
- (4) This is in addition to any percentage of that share capital of which B or the associate was actually the beneficial owner on that date.
- (5) For the purposes of this section a trust is “connected with” the company if, at any time during the period of 3 years ending with the payment date, the property subject to the trust consisted of or included any part of the ordinary share capital of the company.
- (6) In this section “the payment date” and “the relevant payment” have the meaning indicated in section 552(1).