
Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Cross Heading: Beneficiaries. (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\(3\)](#))

Beneficiaries

- 4 (1) The trust deed must contain provision as to the beneficiaries under the trust, in accordance with the following rules.
- (2) The trust deed must provide that a person is a beneficiary at a particular time (the relevant time) if—
- (a) he is at the relevant time an employee or director of a company which at that time falls within the founding company's group,
 - (b) at each given time in a qualifying period he was an employee or director of a company falling within the founding company's group at that given time, and
 - (c) [^{F1}in the case of a director, at that given time he worked as a] director of the company concerned at the rate of at least 20 hours a week (ignoring such matters as holidays and sickness).
- [^{F2}(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 [^{F3}an SAYE option scheme]—
- (a) which was established by a company within the founding company's group, and
 - (b) which is approved under [^{F4}Schedule 3 to the Income Tax (Earnings and Pensions) Act 2003].
- [^{F2}(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.]
- (3) The trust deed may provide that a person is a beneficiary at a particular time (the relevant time) if—
- (a) he has at each given time in a qualifying period been an employee or director of a company falling within the founding company's group at that given time,
 - (b) he has ceased to be an employee or director of the company or the company has ceased to fall within that group, and
 - (c) at the relevant time a period of not more than eighteen months has elapsed since he so ceased or the company so ceased (as the case may be).

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- (4) The trust deed may provide for a person to be a beneficiary if the person is a charity and the circumstances are such that—
- (a) there is no person who is a beneficiary within any rule which is included in the deed and conforms with sub-paragraph (2) [^{F5}, (2A)] or (3) above, and
 - (b) the trust is in consequence being wound up.
- (5) For the purposes of sub-paragraph (2) above a qualifying period is a period—
- (a) whose length is ^{F6} . . . not more than five years,
 - (b) whose length is specified in the trust deed, and
 - (c) which ends with the relevant time (within the meaning of that sub-paragraph).
- (6) For the purposes of sub-paragraph (3) above a qualifying period is a period—
- (a) whose length is equal to that of the period specified in the trust deed for the purposes of a rule which conforms with sub-paragraph (2) above, and
 - (b) which ends when the person or company (as the case may be) ceased as mentioned in sub-paragraph (3)(b) above.
- (7) The trust deed must not provide for a person to be a beneficiary unless she falls within any rule which is included in the deed and conforms with sub-paragraph (2) [^{F7}, (2A)], (3) or (4) above.
- (8) The trust deed must provide that, notwithstanding any other rule which is included in it, a person cannot be a beneficiary at a particular time (the relevant time) [^{F8} by virtue of a rule which conforms with sub-paragraph (2), (3) or (4) above] if—
- (a) at that time he has a material interest in the founding company, or
 - (b) at any time in the period of one year preceding the relevant time he has had a material interest in that company.
- (9) For the purposes of this paragraph a company falls within the founding company's group at a particular time if—
- (a) it is at that time resident in the United Kingdom, and
 - (b) it is the founding company or it is at that time controlled by the founding company.

^{F9}(10)

Textual Amendments

- F1** Words in Sch. 5 para. 4(2)(c) substituted (1.5.1995 with effect as mentioned in s. 137(9) of the amending Act) by 1995 c. 4, s. 137(5)
- F2** Sch. 5 para. 4(2A)(2B) inserted (29.4.1996 with effect in relation to trusts established on or after 29.4.1996) by 1996 c. 8, s. 120(1)(12)
- F3** Words in Sch. 5 para. 4(2A) 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(2)(a) (with Sch. 7)
- F4** Words in Sch. 5 para. 4(2A)(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(2)(b) (with Sch. 7)
- F5** Words in Sch. 5 para. 4(4) inserted (29.4.1996 with effect in relation to trusts established on or after 29.4.1996) by 1996 c. 8, s. 120(5)(12)
- F6** Words in Sch. 5 para. 4(5)(a) repealed (29.4.1996 with effect in relation to trusts established on or after 29.4.1996) by 1996 c. 8, s. 119(1)(2), 205, Sch. 41 Pt. V(5), note 4

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- F7** Words in Sch. 5 para. 4(7) inserted (29.4.1996 with effect in relation to trusts established on or after 29.4.1996) by [1996 c. 8, s. 120\(6\)\(12\)](#)
- F8** Words in Sch. 5 para. 4(8) inserted (29.4.1996 with effect in relation to trusts established on or after 29.4.1996) by [1996 c. 8, s. 120\(7\)\(12\)](#)
- F9** Sch. 5 para. 4(10) omitted (with effect in accordance with art. 7 of the commencing S.I.) by virtue of [Finance Act 2010 \(c. 13\), Sch. 6 paras. 12, 34\(2\); S.I. 2012/736, art. 7](#)

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*

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