



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.

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,

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(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 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—

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“(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—
 - (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

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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—

“(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.