



Taxation of Chargeable Gains Act 1992

1992 CHAPTER 12

PART VII

OTHER PROPERTY, BUSINESSES, INVESTMENTS ETC.

[^{F1}Employee-ownership trusts

[^{F1}236J All-employee benefit requirement

- (1) A settlement meets the all-employee benefit requirement if the trusts of the settlement—
 - (a) do not permit any of the settled property to be applied, at any time, otherwise than for the benefit of all the eligible employees on the same terms,
 - (b) do not permit the trustees at any time to apply any of the settled property—
 - (i) by creating a trust, or
 - (ii) by transferring property to the trustees of any settlement other than by an authorised transfer,
 - (c) do not permit the trustees at any time to make loans to beneficiaries of the trusts, and
 - (d) do not permit the trustees or any other person at any time to amend the trusts in a way such that the amended trusts would not comply with one or more of paragraphs (a) to (c).
- (2) Section 236K makes provision about the requirement in subsection (1)(a).
- (3) “Eligible employee” means—
 - (a) if C meets the trading requirement by virtue of section 236I(1)(a), any individual who is employed by, or is an office-holder of, C, and
 - (b) if C meets the trading requirement by virtue of section 236I(1)(b), any individual who is employed by, or is an office-holder of, a relevant group company,but does not include an excluded participator.

Changes to legislation: Taxation of Chargeable Gains Act 1992, Section 236J is up to date with all changes known to be in force on or before 18 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

(4) But where—

- (a) C has ceased to meet the trading requirement or the trustees have ceased to hold any shares in C (or both), and
- (b) a person was an eligible employee at any time during the period of two years ending immediately before that event (or, where both have occurred, the earlier of them),

that person continues to be an “eligible employee”.

(5) “Excluded participator” means—

- (a) a person who is a participator in C, or, where C meets the trading requirement by virtue of section 236I(1)(b), in any relevant group company,
- (b) any other person who is a participator in any close company that has made a disposition whereby property became comprised in the same settlement, being a disposition which but for section 13 or 13A of the Inheritance Tax Act 1984 (dispositions by close companies for benefit of employees or to employee-ownership trusts) would have been a transfer of value for the purposes of inheritance tax,
- (c) any other person who has been a participator in any company mentioned in paragraph (a) or (b) at any time on or after the look-back date, or
- (d) any person who is connected with any person within paragraph (a), (b) or (c).

(6) The participators in a company who are referred to in subsection (5) do not include any participator who—

- (a) is not beneficially entitled to, or to rights entitling the participator to acquire, 5% or more of, or of any class of the shares comprised in, the company’s share capital, and
- (b) on a winding-up of the company would not be entitled to 5% or more of its assets.

(7) In this section—

“authorised transfer” means a transfer of property consisting of or including any ordinary share capital of a company (“the transferred company”) where—

- (a) the transferred company meets the trading requirement, and
- (b) the transfer is made to the trustees of a settlement which—
 - (i) meets the controlling interest requirement with respect to the transferred company immediately after the transfer, and
 - (ii) meets the all-employee benefit requirement with respect to the transferred company (ignoring section 236L),

and for this purpose references to “C” in sections 236I, 236M and 236T and this section are to be read as references to the transferred company,

“close company” and “participator” have the same meaning as in Part 4 of the Inheritance Tax Act 1984 (see section 102 of that Act), and references to a participator in a company are, in the case of a company which is not a close company, to be construed as references to a person who would be a participator in the company if it were a close company,

“the look-back date” means the first day of the period of 10 years ending with whichever is later of—

- (a) 10 December 2013, and
- (b) the day on which any property first became comprised in the settlement, and

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“relevant group company” means C or any other company which is a member of the group of which C is the principal company.

- (8) In this section references to the settled property include references to any income arising from it.
- (9) See section 236L for cases where the all-employee benefit requirement is treated as met.]

Textual Amendments

- F1** Ss. 236H-236U and cross-heading inserted (with effect in accordance with [Sch. 37 para. 2](#) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 37 para. 1](#) (with [Sch. 37 paras. 3, 4](#))

Modifications etc. (not altering text)

- C1** S. 236J applied (with modifications) by Inheritance Tax Act 1984 (c. 51), s. 75A(3) (as inserted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 37 para. 14\(1\)\(2\)](#))
- C2** S. 236J applied (with modifications) by Inheritance Tax Act 1984 (c. 51), s. 86(3A)(b) (as inserted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 37 para. 15\(3\)\(4\)](#))
- C3** Ss. 236J, 236K applied by Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 312E(2)(b) (as inserted (with effect in accordance with [Sch. 37 para. 8](#) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 37 para. 5](#))
- C4** S. 236J applied (with modifications) by Inheritance Tax Act 1984 (c. 51), s. 28A(2) (as inserted (with effect in accordance with [Sch. 37 para. 11\(2\)](#) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 37 para. 11\(1\)](#))
- C5** S. 236J applied (with modifications) by Inheritance Tax Act 1984 (c. 51), s. 13A(2) (as inserted (with effect in accordance with [Sch. 37 para. 10\(2\)](#) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 37 para. 10\(1\)](#))

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act applied by [1997 c. 16 Sch. 12 para. 12\(7\)](#)[1314](#)
- Act applied by [2002 c. 23 Sch. 16 para. 48\(1\)\(2\)](#)
- Act construed as one with reg. 37 by [S.I. 2006/575 reg. 37\(2\)](#)
- Act construed as one with reg. 38 by [S.I. 2006/575 reg. 38\(3\)](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 4(10)(11) inserted by [2016 c. 11 s. 15\(4\)](#)
- s. 4(10) words inserted by [2016 c. 24 s. 83\(11\)](#)
- s. 35(3)(d)(xviii) added by [2008 c. 17 Sch. 7 para. 9](#)
- s. 35(3)(d)(xviii) inserted by [2008 c. 18 Sch. 13 para. 46](#)
- s. 35(3)(d)(xviii) repealed by [S.I. 2008/3002 Sch. 1 para. 42](#)[Sch. 3](#) (This amendment comes into force on the day 2008 c. 4, s. 5 comes into force, see art. 1(2). That provision was brought into force on 1.12.2008 by [S.I. 2008/3068](#), art. 2(1)(b))
- s. 104(4)(b)(i) words substituted by [S.I. 1989/469](#), reg. 27(2) (as amended) by [S.I. 1997/1716 reg. 13\(1\)\(b\)](#)
- s. 107(11) words substituted by [S.I. 1989/469](#), reg. 27(2A) (as amended) by [S.I. 1997/1716 reg. 13\(2\)\(b\)](#)
- s. 169S(4A) inserted by [2015 c. 11 s. 43\(2\)](#)
- s. 587B inserted by [2000 c. 17 s. 43\(1\)](#)
- Sch. 5C para. 3(1) modified by [S.I. 2004/2199 reg. 7\(1\)](#)
- Sch. 5C para. 3(6) modified by [S.I. 2004/2199 reg. 7\(2\)](#)
- Sch. 5C para. 5(1) modified by [S.I. 2004/2199 reg. 7\(3\)](#)
- Sch. 5C para. 3 words inserted by [S.I. 2005/3229 reg. 128](#)
- Sch. 5C para. 5 words inserted by [S.I. 2005/3229 reg. 128](#)
- Sch. 5C para. 6 words inserted by [S.I. 2005/3229 reg. 128](#)
- Sch. 5C para. 3(1)(f) words substituted by [2007 c. 3 Sch. 1 para. 347](#)