
Changes to legislation: There are currently no known outstanding effects for the Finance Act 1998, Cross Heading: Anti-avoidance provisions. (See end of Document for details)

SCHEDULES

SCHEDULE 13

CHANGES TO EISETC

PART III

EIS DEFERRAL OF CHARGEABLE GAINS

Anti-avoidance provisions

35 After paragraph 9 there shall be inserted the following paragraphs—

“ Re-investment in same company etc.

- 10 (1) An individual to whom any eligible shares in a qualifying company are issued shall not be regarded for the purposes of this Schedule as making a qualifying investment if, where the asset disposed of consisted of shares in or other securities of any company (“the initial holding”), the qualifying company—
- (a) is the company in which the initial holding subsisted; or
 - (b) is a company that was, at the time of the disposal of the initial holding, or is, at the time of the issue of the eligible shares, a member of the same group of companies as the company in which the initial holding subsisted.
- (2) Where—
- (a) any eligible shares in a qualifying company (“the acquired holding”) are issued to an individual,
 - (b) an amount of qualifying expenditure on those shares has been set under this Schedule against the whole or part of any chargeable gain (the “postponed gain”), and
 - (c) after the issue of those shares, eligible shares in a relevant company are issued to him,
- he shall not be regarded in relation to the issue to him of the shares in the relevant company as making a qualifying investment for the purposes of this Schedule.
- (3) For the purposes of sub-paragraph (2) above a company is a relevant company if—
- (a) where that individual has disposed of any of the acquired holding, it is the company in which the acquired holding has subsisted or a company which was a member of the same group of companies as that company at any time since the acquisition of the acquired holding;

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- (b) it is a company in relation to the disposal of any shares in which there has been a claim under this Schedule such that, without that claim, there would have been no postponed gain in relation to the acquired holding; or
- (c) it is a company which, at the time of the disposal or acquisition to which the claim relates, was a member of the same group of companies as a company falling within paragraph (b) above.

Pre-arranged exits

- 11 (1) Where an individual subscribes for eligible shares ("the shares") in a company, the shares shall be treated as not being eligible shares for the purposes of this Schedule if the relevant arrangements include—
- (a) arrangements with a view to the subsequent repurchase, exchange or other disposal of the shares or of other shares in or securities of the same company;
 - (b) arrangements for or with a view to the cessation of any trade which is being or is to be or may be carried on by the company or a person connected with the company;
 - (c) arrangements for the disposal of, or of a substantial amount of, the assets of the company or of a person connected with the company;
 - (d) arrangements the main purpose of which, or one of the main purposes of which, is (by means of any insurance, indemnity or guarantee or otherwise) to provide partial or complete protection for persons investing in shares in that company against what would otherwise be the risks attached to making the investment.
- (2) The arrangements referred to in sub-paragraph (1)(a) above do not include any arrangements with a view to such an exchange of shares, or shares and securities, as is mentioned in paragraph 8(1) above.
- (3) The arrangements referred to in sub-paragraph (1)(b) and (c) above do not include any arrangements applicable only on the winding up of a company except in a case where—
- (a) the relevant arrangements include arrangements for the company to be wound up; or
 - (b) the company is wound up otherwise than for bona fide commercial reasons.
- (4) The arrangements referred to in sub-paragraph (1)(d) above do not include any arrangements which are confined to the provision—
- (a) for the company itself, or
 - (b) in the case of a company which is a parent company of a trading group, for the company itself, for the company itself and one or more of its subsidiaries or for one or more of its subsidiaries,
- of any such protection against the risks arising in the course of carrying on its business as it might reasonably be expected so to provide in normal commercial circumstances.
- (5) The reference in sub-paragraph (4) above to the parent company of a trading group shall be construed in accordance with the provision contained for the purposes of section 293 of the Taxes Act in that section.

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- (6) In this paragraph “the relevant arrangements” means—
- (a) the arrangements under which the shares are issued to the individual; and
 - (b) any arrangements made before the issue of the shares to him in relation to or in connection with that issue.

Put options and call options

- 12 (1) Sub-paragraph (2) below applies where an individual subscribes for eligible shares (“the shares”) in a company and—
- (a) an option, the exercise of which would bind the grantor to purchase such shares, is granted to the individual during the relevant period; or
 - (b) an option, the exercise of which would bind the individual to sell such shares, is granted by the individual during the relevant period.
- (2) The shares to which the option relates shall be treated for the purposes of this Schedule—
- (a) if the option is granted on or before the date of the issue of the shares, as never having been eligible shares; and
 - (b) if the option is granted after that date, as ceasing to be eligible shares on the date when the option is granted.
- (3) The shares to which the option relates shall be taken to be those which, if—
- (a) the option were exercised immediately after the grant, and
 - (b) any shares in the company acquired by the individual after the grant were disposed of immediately after being acquired,
- would be treated for the purposes of this Schedule as disposed of in pursuance of the option.
- (4) Nothing in this paragraph shall prejudice the operation of paragraph 11 above.
- (5) An individual who acquires any eligible shares on a disposal within marriage shall be treated for the purposes of this paragraph and paragraphs 13 to 15 below as if he subscribed for those shares.

Value received by investor

- 13 (1) Where an individual who subscribes for eligible shares (“the shares”) in a company receives any value from the company at any time in the seven year period, the shares shall be treated as follows for the purposes of this Schedule—
- (a) if the individual receives the value on or before the date of the issue of the shares, as never having been eligible shares; and
 - (b) if the individual receives the value after that date, as ceasing to be eligible shares on the date when the value is received.
- (2) For the purposes of this paragraph an individual receives value from the company if the company—
- (a) repays, redeems or repurchases any of its share capital or securities which belong to the individual or makes any payment to him for

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- giving up his right to any of the company's share capital or any security on its cancellation or extinguishment;
- (b) repays, in pursuance of any arrangements for or in connection with the acquisition of the shares, any debt owed to the individual other than a debt which was incurred by the company—
- (i) on or after the date on which he subscribed for the shares; and
 - (ii) otherwise than in consideration of the extinguishment of a debt incurred before that date;
- (c) makes to the individual any payment for giving up his right to any debt on its extinguishment;
- (d) releases or waives any liability of the individual to the company or discharges, or undertakes to discharge, any liability of his to a third person;
- (e) makes a loan or advance to the individual which has not been repaid in full before the issue of the shares;
- (f) provides a benefit or facility for the individual;
- (g) disposes of an asset to the individual for no consideration or for a consideration which is or the value of which is less than the market value of the asset;
- (h) acquires an asset from the individual for a consideration which is or the value of which is more than the market value of the asset; or
- (i) makes any payment to the individual other than a qualifying payment.
- (3) For the purposes of sub-paragraph (2)(e) above there shall be treated as if it were a loan made by the company to the individual—
- (a) the amount of any debt (other than an ordinary trade debt) incurred by the individual to the company; and
 - (b) the amount of any debt due from the individual to a third person which has been assigned to the company.
- (4) For the purposes of this paragraph an individual also receives value from the company if he receives in respect of ordinary shares held by him any payment or asset in a winding up or in connection with a dissolution of the company, being a winding up or dissolution falling within section 293(6) of the Taxes Act.
- (5) For the purposes of this paragraph an individual also receives value from the company if any person who would, for the purposes of section 291 of the Taxes Act, be treated as connected with the company—
- (a) purchases any of its share capital or securities which belong to the individual; or
 - (b) makes any payment to him for giving up any right in relation to any of the company's share capital or securities.
- (6) Where an individual's disposal of shares in a company gives rise to a chargeable event falling within paragraph 3(1)(a) or (b) above, the individual shall not be treated for the purposes of this paragraph as receiving value from the company in respect of the disposal.
- (7) In this paragraph "qualifying payment" means—

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- (a) the payment by any company of such remuneration for service as an officer or employee of that company as may be reasonable in relation to the duties of that office or employment;
 - (b) any payment or reimbursement by any company of travelling or other expenses wholly, exclusively and necessarily incurred by the individual to whom the payment is made in the performance of duties as an officer or employee of that company;
 - (c) the payment by any company of any interest which represents no more than a reasonable commercial return on money lent to that company;
 - (d) the payment by any company of any dividend or other distribution which does not exceed a normal return on any investment in shares in or other securities of that company;
 - (e) any payment for the supply of goods which does not exceed their market value;
 - (f) any payment for the acquisition of an asset which does not exceed its market value;
 - (g) the payment by any company, as rent for any property occupied by the company, of an amount not exceeding a reasonable and commercial rent for the property;
 - (h) any reasonable and necessary remuneration which—
 - (i) is paid by any company for services rendered to that company in the course of a trade or profession; and
 - (ii) is taken into account in computing the profits of the trade or profession under Case I or II of Schedule D or would be so taken into account if it fell in a period on the basis of which those profits are assessed under that Schedule;
 - (i) a payment in discharge of an ordinary trade debt.
- (8) For the purposes of this paragraph a company shall be treated as having released or waived a liability if the liability is not discharged within 12 months of the time when it ought to have been discharged.
- (9) In this paragraph—
- (a) references to a debt or liability do not, in relation to a company, include references to any debt or liability which would be discharged by the making by that company of a qualifying payment; and
 - (b) references to a benefit or facility do not include references to any benefit or facility provided in circumstances such that, if a payment had been made of an amount equal to its value, that payment would be a qualifying payment.
- (10) In this paragraph—
- (a) any reference to a payment or disposal to an individual includes a reference to a payment or disposal made to him indirectly or to his order or for his benefit;
 - (b) any reference to an individual includes a reference to an associate of his; and
 - (c) any reference to a company includes a reference to a person who at any time in the relevant period is connected with the company, whether or not he is so connected at the material time.

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- (11) In this paragraph “ordinary trade debt” means any debt for goods or services supplied in the ordinary course of a trade or business where any credit given—
- (a) does not exceed six months; and
 - (b) is not longer than that normally given to customers of the person carrying on the trade or business.

Value received by other persons

- 14 (1) Sub-paragraph (2) below applies where an individual subscribes for eligible shares (“the shares”) in a company and at any time in the seven year period the company or any subsidiary—
- (a) repays, redeems or repurchases any of its share capital which belongs to any member other than the individual or an individual falling within sub-paragraph (3) below, or
 - (b) makes any payment (directly or indirectly) to any such member, or to his order or for his benefit, for the giving up of his right to any of the share capital of the company or subsidiary on its cancellation or extinguishment.
- (2) The shares shall be treated for the purposes of this Schedule—
- (a) if the repayment, redemption, repurchase or payment in question is made or effected on or before the date of the issue of the shares, as never having been eligible shares; and
 - (b) if it is made or effected after that date, as ceasing to be eligible shares on the date when it is made or effected.
- (3) An individual falls within this sub-paragraph if the repayment, redemption, repurchase or payment in question—
- (a) gives rise to a qualifying chargeable event in respect of him, or
 - (b) causes any relief under Chapter III of Part VII of the Taxes Act attributable to his shares in the company to be withdrawn or reduced by virtue of section 299 or 300(2)(a) of that Act.
- (4) In sub-paragraph (3) above “qualifying chargeable event” means—
- (a) a chargeable event falling within paragraph 3(1)(a) or (b) above; or
 - (b) a chargeable event falling within paragraph 3(1)(e) above by virtue of sub-paragraph (1)(b) of paragraph 13 above (as it applies by virtue of sub-paragraph (2)(a) of that paragraph).
- (5) Where—
- (a) a company issues share capital (“the original shares”) of nominal value equal to the authorised minimum (within the meaning of the ^{M1}Companies Act 1985) for the purposes of complying with the requirements of section 117 of that Act (public company not to do business unless requirements as to share capital complied with), and
 - (b) after the registrar of companies has issued the company with a certificate under section 117, it issues eligible shares,
- the preceding provisions of this paragraph shall not apply in relation to any redemption of any of the original shares within 12 months of the date on which those shares were issued.

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- (6) In relation to companies incorporated under the law of Northern Ireland references in sub-paragraph (5) above to the ^{M2}Companies Act 1985 and to section 117 of that Act shall have effect as references to the ^{M3}Companies (Northern Ireland) Order 1986 and to Article 127 of that Order.
- (7) References in this paragraph to a subsidiary of a company are references to a company which at any time in the relevant period is a 51 per cent. subsidiary of the first mentioned company, whether or not it is such a subsidiary at the time of the repayment, redemption, repurchase or payment in question.

Investment-linked loans

- 15 (1) Where at any time in the relevant period an investment-linked loan is made by any person to an individual who subscribes for eligible shares (“the shares”) in a company, the shares shall be treated for the purposes of this Schedule—
- (a) if the loan is made on or before the date of the issue of the shares, as never having been eligible shares; and
 - (b) if the loan is made after that date, as ceasing to be eligible shares on the date when the loan is made.
- (2) A loan made by any person to an individual is an investment-linked loan for the purposes of this paragraph if the loan is one which would not have been made, or would not have been made on the same terms, if the individual had not subscribed for the shares or had not been proposing to do so.
- (3) References in this paragraph to the making by any person of a loan to an individual include references—
- (a) to the giving by that person of any credit to that individual; and
 - (b) to the assignment or assignation to that person of any debt due from that individual.
- (4) In this paragraph any reference to an individual includes a reference to an associate of his.”

Marginal Citations

- M1** 1985 c. 6.
M2 1985 c. 6.
M3 S.I. 1986/1032 (N.I.6).

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