

**Changes to legislation:** *Income and Corporation Taxes Act 1988, PART VI is up to date with all changes known to be in force on or before 13 June 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*

## SCHEDULES

### SCHEDULE 9

#### APPROVED SHARE OPTION SCHEMES AND PROFIT SHARING SCHEMES

##### Modifications etc. (not altering text)

- C1** Sch. 9 excluded (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), **ss. 238(2)(c)(4)**, 289 (with ss. 60, 101(1), 171, 201(3))
- C1** Sch. 9 modified (29.4.1996) by [Finance Act 1996 \(c. 8\)](#), **s. 115**
- C1** Sch. 9 modified (29.4.1996) by [Finance Act 1996 \(c. 8\)](#), **s. 116(3)**
- C1** Sch. 9 modified (28.7.2000) by [Finance Act 2000 \(c. 17\)](#), **s. 49(1)(2)**
- C1** Sch. 9 continued for specified purposes (6.4.2003 with effect in accordance with s. 723(1) of the affecting Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), **s. 418(3)** (with Sch. 7)

### [<sup>F1</sup>PART VI

#### MATERIAL INTEREST TEST

##### Textual Amendments

- F1** Sch. 9 Pts. 1, 2, 6 repealed (except for specified purposes) (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), [Sch. 6 para. 112\(1\)](#), [Sch 8 Pt. 1](#) (with Sch. 7)

#### *Interests under trusts*

- 37 (1) This <sup>MI</sup> paragraph applies in a case where—
- (a) the individual (“the beneficiary”) was one of the objects of a discretionary trust; and
  - (b) the property subject to the trust at any time consisted of or included any shares or obligations of the company.
- (2) If neither the beneficiary nor any relevant associate of his had received any benefit under the discretionary trust before 14th November 1986, then, as respects any time before that date, the trustees of the settlement concerned shall not be regarded, by reason only of the matters referred to in sub-paragraph (1) above, as having been associates (as defined in section 417(3) and (4)) of the beneficiary.
- (3) If, on or after 14th November 1986—
- (a) the beneficiary ceases to be eligible to benefit under the discretionary trust by reason of—
    - (i) an irrevocable disclaimer or release executed by him under seal; or

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- (ii) the irrevocable exercise by the trustees of a power to exclude him from the objects of the trust; and
  - (b) immediately after he so ceases, no relevant associate of his is interested in the shares or obligations of the company which are subject to the trust; and
  - (c) during the period of 12 months ending with the date when the beneficiary so ceases, neither the beneficiary nor any relevant associate of his received any benefit under the trust,
- the beneficiary shall not be regarded, by reason only of the matters referred to in sub-paragraph (1) above, as having been interested in the shares or obligations of the company as mentioned in section 417(3)(c) at any time during the period of 12 months referred to in paragraph (c) above.
- (4) In sub-paragraphs (2) and (3) above “relevant associate” has the meaning given to “associate” by subsection (3) of section 417 but with the omission of paragraph (c) of that subsection.
  - (5) Sub-paragraph (3)(a)(i) above, in its application to Scotland, shall be construed as if the words “under seal” were omitted.

#### **Marginal Citations**

**M1** Source—1987 Sch.4 6-8

#### *Options etc.*

- 38 (1) For the purposes of section 187(3)(a) a right to acquire shares (however arising) shall be taken to be a right to control them.
- (2) Any reference in sub-paragraph (3) below to the shares attributed to an individual is a reference to the shares which, in accordance with section 187(3)(a), fall to be brought into account in his case to determine whether their number exceeds a particular percentage of the company’s ordinary share capital.
- (3) In any case where—
- (a) the shares attributed to an individual consist of or include shares which he or any other person has a right to acquire; and
  - (b) the circumstances are such that, if that right were to be exercised, the shares acquired would be shares which were previously unissued and which the company is contractually bound to issue in the event of the exercise of the right;
- then, in determining at any time prior to the exercise of that right whether the number of shares attributed to the individual exceeds a particular percentage of the ordinary share capital of the company, that ordinary share capital shall be taken to be increased by the number of unissued shares referred to in paragraph (b) above.
- (4) This paragraph has effect as respects any time after 5th April 1987.

#### *Shares held by trustees of approved profit sharing schemes*

- 39 In applying section 187(3), as respects any time before or after the passing of this Act, there shall be disregarded—

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- (a) the interest of the trustees of an approved profit sharing scheme in any shares which are held by them in accordance with the scheme and have not yet been appropriated to an individual; and
- (b) any rights exercisable by those trustees by virtue of that interest.

*[<sup>F2</sup> Shares subject to an employee benefit trust*

#### Textual Amendments

**F2** Sch. 9 para. 40 and preceding cross-heading inserted by [Finance Act 1989 \(c. 26\), s. 65](#)

- 40 (1) Where an individual has an interest in shares or obligations of the company as a beneficiary of an employee benefit trust, the trustees shall not be regarded as associates of his by reason only of that interest unless sub-paragraph (3) below applies in relation to him.
- (2) In this paragraph “employee benefit trust” has the same meaning as in paragraph 7 of Schedule 8.
- (3) This sub-paragraph applies in relation to an individual if at any time on or after 14th March 1989—
- (a) the individual, either on his own or with any one or more of his associates, or
  - (b) any associate of his, with or without other such associates,
- has been the beneficial owner of, or able (directly or through the medium of other companies or by any other indirect means) to control, more than 25 per cent., or in the case of a share option scheme which is not a savings-related share option scheme more than 10 per cent., of the ordinary share capital of the company.
- (4) Sub-paragraphs (9) to (12) of paragraph 7 of Schedule 8 shall apply for the purposes of this paragraph in relation to an individual as they apply for the purposes of that paragraph in relation to an employee.]]

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

- Act Tax Acts: power to modify conferred by [2004 c. 25 s. 18](#)
- Act applied (with modifications) by [S.I. 2010/875 reg. 16Sch. 2](#) (This amendment not applied to legislation.gov.uk. S.I. 2010/875 was revoked (27.8.2010) by SI 2010/1906, reg. 2 without having come into force)

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

- s. 109A(4B) inserted by [2005 c. 7 Sch. 4 para. 6\(3\)](#) (This amendment not applied to legislation.gov.uk. The amending provision (2005 c. 7, Sch. 4 para. 6) repealed retrospectively by 2005 c. 22, Sch. 6 para. 4(1)(6))
- Sch. 19AB para. 5(5)(a)(b) words substituted by [S.I. 2001/3629 art. 52\(2\)\(n\)](#) (This amendment not applied to legislation.gov.uk. The words to be substituted do not occur in Sch. 19AB para. 5)