



Taxation of Chargeable Gains Act 1992

1992 CHAPTER 12

PART VII

OTHER PROPERTY, BUSINESSES, INVESTMENTS ETC.

Superannuation funds, profit sharing schemes, employee trusts etc.

237 Superannuation funds, annuities and annual payments.

No chargeable gain shall accrue to any person on the disposal of a right to, or to any part of—

- (a) any allowance, annuity or capital sum payable out of any superannuation fund, or under any superannuation scheme, established solely or mainly for persons employed in a profession, trade, undertaking or employment, and their dependants,
- (b) an annuity granted otherwise than under a contract for a deferred annuity by a company as part of its business of granting annuities on human life, whether or not including instalments of capital, or an annuity granted or deemed to be granted under the ^{M1}Government Annuities Act 1929, or
- (c) annual payments which are due under a covenant made by any person and which are not secured on any property.

Marginal Citations

M1 1929 c. 29.

[^{F1}237A Share option schemes: release and replacement of options.

- (1) This section applies in any case where a right to acquire shares in a body corporate (“the old right”) which was obtained by an individual by reason of his office or employment as a director or employee of that or any other body corporate is released in whole or in part for a consideration which consists of or includes the grant to that

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individual of another right (“the new right”) to acquire shares in that or any other body corporate.

- (2) As respects the person to whom the new right is granted—
- (a) without prejudice to subsection (1) above, the new right shall not be regarded for the purposes of capital gains tax as consideration for the release of the old right;
 - (b) the amount or value of the consideration given by him or on his behalf for the acquisition of the new right shall be taken for the purposes of section 38(1) to be the amount or value of the consideration given by him or on his behalf for the old right; and
 - (c) any consideration paid for the acquisition of the new right shall be taken to be expenditure falling within section 38(1)(b).
- (3) As respects the grantor of the new right, in determining for the purposes of this Act the amount or value of the consideration received for the new right, the release of the old right shall be disregarded.]

Textual Amendments

- F1** S. 237A inserted (with effect in accordance with s. 112(3) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 112\(1\)](#)

238 Approved profit sharing and share option schemes.

- (1) Notwithstanding anything in a profit sharing scheme approved under Schedule 9 of the Taxes Act or in paragraph 2(2) of that Schedule or in the trust instrument relating to that scheme, for the purposes of capital gains tax a person who is a participant in relation to that scheme shall be treated as absolutely entitled to his shares as against the trustees of the scheme.
- (2) For the purposes of capital gains tax—
- (a) no deduction shall be made from the consideration for the disposal of any shares by reason only that an amount determined under section 186 or 187 of or Schedule 9 or 10 to the Taxes Act [^{F2}counts as employment income (or was chargeable to income tax for the year 2002-03 or an earlier year of assessment)] under section 186(3) or (4) of that Act;
 - (b) any charge to income tax by virtue of section 186(3) of that Act shall be disregarded in determining whether a distribution is a capital distribution within the meaning of section 122(5)(b);
 - (c) nothing in any provision of section 186 or 187 of or Schedule 9 or 10 to that Act with respect to—
 - (i) the order in which any of a participant’s shares are to be treated as disposed of for the purposes of those provisions as they have effect in relation to profit sharing schemes, or
 - (ii) the shares in relation to which an event is to be treated as occurring for any such purpose,
 shall affect the rules applicable to the computation of a gain accruing on a part disposal of a holding of shares or other securities which were acquired at different times; and

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- (d) a gain accruing on an appropriation of shares to which section 186(11) of that Act applies shall not be a chargeable gain.
- (3) In this section “participant” and “the trust instrument” have the meanings given by section 187 of the Taxes Act.
- ^{F3}(4)

Textual Amendments

- F2** Words in s. 238(2)(a) 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. 215](#) (with [Sch. 7](#))
- F3** S. 238(4) repealed (with effect in accordance with s. 112(2)(3) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 112\(2\), Sch. 41 Pt. V\(5\)](#)

[^{F4}238A Approved share schemes and share incentives

- (1) Schedule 7D (approved share schemes and share incentives) shall have effect.
- (2) Schedule 7D relates—
 - (a) in Part 1, to approved share incentive plans (SIPs) (see section 488 of ITEPA 2003),
 - (b) in Part 2, to approved SAYE option schemes (see section 516 of that Act),
 - (c) in Part 3, to approved CSOP schemes (CSOPs) (see section 521 of that Act), and
 - (d) in Part 4, to enterprise management incentives (see section 527 of that Act).]

Textual Amendments

- F4** S. 238A inserted (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. 216](#) (with [Sch. 7](#))

239 Employee trusts.

- (1) Where—
 - (a) a close company disposes of an asset to trustees in circumstances such that the disposal is a disposition which by virtue of section 13 of the ^{M2}Inheritance Tax Act 1984 (employee trusts) is not a transfer of value for the purposes of inheritance tax, or
 - (b) an individual disposes of an asset to trustees in circumstances such that the disposal is an exempt transfer by virtue of section 28 of that Act (employee trusts: inheritance tax),this Act shall have effect in relation to the disposal in accordance with subsections (2) and (3) below.
- (2) Section 17(1) shall not apply to the disposal; and if the disposal is by way of gift or is for a consideration not exceeding the sums allowable as a deduction under section 38—
 - (a) the disposal, and the acquisition by the trustees, shall be treated for the purposes of this Act as being made for such consideration as to secure that neither a gain nor a loss accrues on the disposal, and

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- (b) where the trustees dispose of the asset, its acquisition by the company or individual shall be treated as its acquisition by the trustees.

Paragraph (b) above also applies where section 149(1) of the 1979 Act applied on the disposal of an asset to trustees who have not disposed of it before the coming into force of this section.

- (3) Where the disposal is by a close company, section 125(1) shall apply to the disposal as if for the reference to market value there were substituted a reference to market value or the sums allowable as a deduction under section 38, whichever is the less.
- (4) Subject to subsection (5) below, this Act shall also have effect in accordance with subsection (2) above in relation to any disposal made by a company other than a close company if—
- (a) the disposal is made to trustees otherwise than under a bargain made at arm's length, and
 - (b) the property disposed of is to be held by them on trusts of the description specified in section 86(1) of the ^{M3}Inheritance Tax Act 1984 (that is to say, those in relation to which the said section 13 of that Act has effect) and the persons for whose benefit the trusts permit the property to be applied include all or most of either—
 - (i) the persons employed by or holding office with the company, or
 - (ii) the persons employed by or holding office with the company or any one or more subsidiaries of the company.
- (5) Subsection (4) above does not apply if the trusts permit any of the property to be applied at any time (whether during any such period as is referred to in the said section 86(1) or later) for the benefit of—
- (a) a person who is a participator in the company (“the donor company”), or
 - (b) any other person who is a participator in any other company that has made a disposal of property to be held on the same trusts as the property disposed of by the donor company, being a disposal in relation to which this Act has had effect in accordance with subsection (2) above, or
 - (c) any other person who has been a participator in the donor company or any such company as is mentioned in paragraph (b) above at any time after, or during the 10 years before, the disposal made by that company, or
 - (d) any person who is connected with a person within paragraph (a), (b) or (c) above.
- (6) The participators in a company who are referred to in subsection (5) above do not include any participator who—
- (a) is not beneficially entitled to, or to rights entitling him to acquire, 5 per cent. or more of, or of any class of the shares comprised in, its issued share capital, and
 - (b) on a winding-up of the company would not be entitled to 5 per cent. or more of its assets;

and in determining whether the trusts permit property to be applied as mentioned in that subsection, no account shall be taken—

- (i) of any power to make a payment which is the income of any person for any of the purposes of income tax, or would be the income for any of those purposes of a person not resident in the United Kingdom if he were so resident, or

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- (ii) if the trusts are those of a profit sharing scheme approved under Schedule 9 to the Taxes Act of any power to appropriate shares in pursuance of the scheme.
- (7) In subsection (4) above “subsidiary” has the meaning given by section 736 of the ^{M4}Companies Act 1985 and in subsections (5) and (6) above “participator” has the meaning given in section 417(1) of the Taxes Act, except that it does not include a loan creditor.
- (8) In this section “close company” includes a company which, if resident in the United Kingdom, would be a close company as defined in section 288.

Marginal Citations

- M2** 1984 c. 51.
M3 1984 c. 51.
M4 1985 c. 6.

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