



Income Tax (Earnings and Pensions) Act 2003

2003 CHAPTER 1

PART 7 **U.K.**

EMPLOYMENT INCOME: SHARE-RELATED INCOME AND EXEMPTIONS

CHAPTER 6 **U.K.**

APPROVED SHARE INCENTIVE PLANS

Introduction

488 Approved share incentive plans (SIPs) **U.K.**

- (1) This Chapter provides—
 - (a) for the approval of share incentive plans (“SIPs”) by the Inland Revenue,
 - (b) for exemptions from income tax in connection with shares obtained under those plans,
 - (c) for amounts to count as employment income in certain circumstances in connection with such plans, and
 - (d) for the making of PAYE deductions in connection with such amounts.
- (2) Schedule 2 contains the requirements that have to be met for a SIP to be approved, together with—
 - (a) the approval procedure, and
 - (b) provisions relating to the administration and operation of a SIP.
- (3) The provisions of—
 - (a) this and the following sections of this Chapter,
 - (b) Schedule 2, and

Status: Point in time view as at 06/04/2003.

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- (c) the provisions mentioned in section 515 (tax advantages and charges under other Acts),
together constitute “the SIP code”.
- (4) In the SIP code—
- “approved” means approved by the Inland Revenue under Schedule 2, and “approval” has a corresponding meaning;
- “PAYE deduction” means a deduction required by PAYE regulations;
- a “share incentive plan” (or “SIP” for short) means a plan established by a company providing—
- (a) for shares to be appropriated to employees without payment (“free shares”), or
- (b) for shares to be acquired on behalf of employees out of sums deducted from their salary (“partnership shares”).
- (5) Other expressions used in the SIP code and contained in the index at the end of Schedule 2 have the meaning indicated by the index.

Scope of tax advantages

489 Operation of tax advantages in connection with approved SIP U.K.

- (1) Sections 490 to 499 apply for income tax purposes in connection with shares awarded under an approved SIP.
- (2) But those sections do not apply to an individual if, at the time of the award of shares in question, the earnings from the eligible employment are not (or would not be if there were any) general earnings to which any of the charging provisions of Chapter 4 or 5 of Part 2 apply.
- (3) “The eligible employment” means the employment which results in the individual meeting the employment requirement in relation to the plan.

Tax advantages connected with award of shares

490 No charge on award or acquisition of shares: general U.K.

- (1) This section applies—
- (a) on the award to an employee of free, matching or partnership shares under the plan, or
- (b) on the acquisition on behalf of an employee of dividend shares under the plan.
- (2) The employee is not liable to income tax on the value of the beneficial interest in the shares that passes to the employee at the time of the award or acquisition.

491 No charge on award of shares as taxable benefit U.K.

An employee is not liable to income tax by virtue of Chapter 8 of Part 3 (taxable benefits: notional loans in respect of acquisitions of shares) in respect of an award of shares to the employee under the plan.

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492 No charge on partnership share money deducted from salary U.K.

- (1) An employee is not liable to income tax under Part 2 on any amount of the employee's salary which is deducted as partnership share money under a partnership share agreement.
- (2) But the deduction of partnership share money is to be disregarded for the purpose of ascertaining—
 - (a) the amount of the employee's remuneration for the purposes of Chapter 1 of Part 14 of ICTA (retirement benefit schemes), or
 - (b) the amount of the employee's relevant earnings for the purposes of Chapter 3 or 4 of that Part of that Act (retirement annuities or personal pension schemes).

493 No charge on acquisition of dividend shares U.K.

- (1) A participant is not liable to income tax on the amount applied by the trustees in acquiring dividend shares on behalf of the participant.
- (2) The participant has no entitlement to a tax credit in respect of the amount so applied.
- (3) Section 234A(4) of ICTA (information relating to distributions to be provided by nominee) does not apply to any amount applied by the trustees in acquiring dividend shares on behalf of a participant.
- (4) Subsections (1) and (2) do not affect—
 - (a) any charge under section 68B(2) or 251C(1) of ICTA (charge under Case V of Schedule D or Schedule F on dividend shares ceasing to be subject to plan), or
 - (b) any entitlement to a tax credit in respect of the amount so charged.
- (5) Subsection (3) is subject to paragraph 80(4)(c) of Schedule 2 (information required where dividend shares cease to be subject to plan).

Tax advantages connected with holding of shares

494 No charge on removal of restrictions applying to shares U.K.

- (1) Subsection (2) applies where a participant's plan shares are subject to a provision for forfeiture in accordance with paragraph 32(1) of Schedule 2 (permitted restrictions: provision for forfeiture).
- (2) The participant is not liable to income tax by virtue of—
 - (a) section 427 (charge on interest in shares ceasing to be only conditional or on disposal), or
 - (b) section 449 (charge on removal of restriction applying to shares),when the provision for forfeiture is varied or removed.
- (3) A participant is also not liable to income tax by virtue of section 449 if the event which, under section 450, is a chargeable event for the purposes of that section is the ending of the holding period in relation to free, matching or dividend shares held by the participant.

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495 No charge on increase in value of shares of dependent subsidiary U.K.

- (1) A participant is not liable to income tax by virtue of section 453 (charge on increase in value of shares of dependent subsidiary) in respect of any of the participant's shares that are subject to the plan at or immediately before the appropriate time.
- (2) "The appropriate time" means the time by reference to which a chargeable increase is determined for the purposes of that section (see section 454(3) or (5)).

496 No charge on cash dividend retained for reinvestment U.K.

- (1) A participant is not liable to income tax in respect of an amount retained under paragraph 68(2) of Schedule 2 (amount of cash dividend not reinvested).
- (2) The participant has no entitlement to a tax credit in respect of an amount so retained.
- (3) This section does not affect any charge under—
 - (a) section 68B(1) or 251B(1) of ICTA (charge under Case V of Schedule D or Schedule F where cash dividend retained and then later paid out), or
 - (b) section 68B(2) or 251C(1) of ICTA (charge under Case V of Schedule D or Schedule F on dividend shares ceasing to be subject to plan),
 or affect any tax credit in respect of an amount so charged.

Tax advantages connected with shares ceasing to be subject to plan

497 Limitations on charges on shares ceasing to be subject to plan U.K.

- (1) No liability to income tax arises on free or matching shares ceasing to be subject to the plan, except as provided by—
 - (a) section 505 (charge on free or matching shares ceasing to be subject to plan), or
 - (b) section 507 (charge on disposal of beneficial interest during holding period).
- (2) No liability to income tax arises on partnership shares ceasing to be subject to the plan, except as provided by section 506 (charge on partnership shares ceasing to be subject to plan).
- (3) No liability to income tax arises on dividend shares ceasing to be subject to the plan, except as provided by section 68B(2) or 251C(1) of ICTA (charge under Case V of Schedule D or Schedule F on dividend shares ceasing to be subject to plan).

498 No charge on shares ceasing to be subject to plan in certain circumstances U.K.

- (1) A participant is not liable to income tax on shares ceasing to be subject to the plan if—
 - (a) they cease to be so subject on the participant ceasing to be in relevant employment, and
 - (b) subsection (2) applies.
- (2) This subsection applies if the participant ceases to be in relevant employment—
 - (a) because of injury or disability,
 - (b) on being dismissed by reason of redundancy,

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- (c) by reason of a transfer to which the Transfer of Undertakings (Protection of Employment) Regulations 1981 (S.I. 1981/1794) apply,
- (d) if the relevant employment is employment by an associated company (see paragraph 95(2) of Schedule 2), by reason of a change of control or other circumstances ending that company's status as an associated company,
- (e) by reason of the participant's retirement on or after reaching the specified retirement age (see paragraph 98 of Schedule 2), or
- (f) on the participant's death.

Tax advantages: supplementary

499 No charge in respect of incidental expenditure U.K.

An employee is not liable to income tax in respect of incidental expenditure of—

- (a) the trustees,
- (b) the company which established the plan, or
- (c) (if different) the employer,

in operating the plan.

Scope of tax charges

500 Operation of tax charges in connection with approved SIP U.K.

- (1) Sections 501 to 508 apply for income tax purposes in connection with shares awarded under an approved SIP.
- (2) But those sections do not apply to an individual if, at the time of the award of shares in question, the earnings from the eligible employment are not (or would not be if there were any) general earnings to which any of the charging provisions of Chapter 4 or 5 of Part 2 apply.
- (3) “The eligible employment” means the employment which results in the individual meeting the employment requirement in relation to the plan.

Charges connected with holding of shares

501 Charge on capital receipts in respect of plan shares U.K.

- (1) This section applies if conditions A and B are met.
- (2) Condition A is that a capital receipt is received by a participant in respect of, or by reference to, any of the participant's plan shares.
- (3) Condition B is that the plan shares in respect of, or by reference to, which the capital receipt is received are—
 - (a) free, matching or partnership shares that were awarded to the participant less than 5 years before the participant received the capital receipt, or
 - (b) dividend shares that were acquired on behalf of the participant less than 3 years before the participant received the capital receipt.

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- (4) If this section applies, the amount or value of the capital receipt counts as employment income of the participant for the relevant tax year.
- (5) The “relevant tax year” is the tax year in which the participant receives the capital receipt.
- (6) This section does not apply if the capital receipt is received by the participant’s personal representatives after the death of the participant.
- (7) Section 502 explains what is meant by a “capital receipt”.

502 Meaning of “capital receipt” in section 501 U.K.

- (1) This section applies for determining whether any money or money’s worth is a “capital receipt” for the purposes of section 501.
- (2) The general rule is that any money or money’s worth is a “capital receipt” for the purposes of section 501.
- (3) The general rule is subject to the following exceptions.
- (4) Money or money’s worth is not a capital receipt for the purposes of section 501 to the extent that—
 - (a) it constitutes income in the hands of the recipient for the purposes of income tax or would do so but for sections 489 to 498 (SIPs: tax advantages),
 - (b) it consists of the proceeds of disposal of the plan shares mentioned in section 501, or
 - (c) it consists of new shares within the meaning of paragraph 87 of Schedule 2 (company reconstructions).
- (5) If, as a result of a direction given by or on behalf of the participant for the purposes of paragraph 77 of Schedule 2 (power of trustees to raise funds to subscribe for rights issues), the trustees—
 - (a) dispose of some of the rights under a rights issue, and
 - (b) use the proceeds of that disposal to exercise other such rights,
 the money or money’s worth constituting the proceeds of that disposal is not a capital receipt for the purposes of section 501.

503 Charge on partnership share money paid over to employee U.K.

- (1) Any amount paid over to an individual under any of the provisions of Schedule 2 mentioned in subsection (2) counts as employment income of the individual for the relevant tax year.
- (2) The provisions are—
 - paragraph 46(5) (deductions in excess of permitted maximum amount),
 - paragraph 50(5)(b) or paragraph 52(6)(b) (surplus partnership share money remaining after acquisition of shares),
 - paragraph 52(7) (partnership share money paid over on individual ceasing to be in relevant employment),
 - paragraph 52(8) (partnership share money paid over where accumulation period brought to an end by event specified in plan),

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paragraph 55(3) (partnership share money paid over on withdrawal from partnership share agreement), or
paragraph 56 (partnership share money paid over on withdrawal of plan approval or termination of plan).

(3) The “relevant tax year” is the tax year in which the amount is paid over.

504 Charge on cancellation payments in respect of partnership share agreement **U.K.**

- (1) This section applies if an individual who has entered into a partnership share agreement receives any money or money’s worth in respect of the cancellation of the agreement.
- (2) The amount of the money or the value of the money’s worth counts as employment income of the individual for the relevant tax year.
- (3) The “relevant tax year” is the tax year in which the individual receives the money or money’s worth.

Charges connected with shares ceasing to be subject to plan

505 Charge on free or matching shares ceasing to be subject to plan **U.K.**

- (1) When free or matching shares cease to be subject to the plan, there may be an amount that counts as employment income of the participant depending on the period that has elapsed between—
 - (a) the date when the shares were awarded to the participant (“the award date”), and
 - (b) the date when they cease to be subject to the plan (“the exit date”).
- (2) If the period is less than 3 years, the market value of the shares at the exit date counts as employment income of the participant for the relevant tax year (see subsection (5)).
- (3) If the period is 3 years or more but less than 5 years, whichever is the lesser of—
 - (a) the market value of the shares at the award date, and
 - (b) the market value of the shares at the exit date,counts as employment income of the participant for the relevant tax year (see subsection (5)).
- (4) Where—
 - (a) subsection (3) applies, and
 - (b) the applicable amount is the market value of the shares at the award date,the tax due is reduced by the amount or aggregate amount of any tax paid by virtue of section 501 (charge on capital receipts in respect of plan shares) on any capital receipts in respect of the shares.
- (5) The “relevant tax year” is the tax year in which the exit date falls.
- (6) No liability to tax arises by virtue of this section—
 - (a) on the forfeiture of free or matching shares,

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- (b) if section 498 (no charge on shares ceasing to be subject to plan in certain circumstances) applies, or
- (c) if section 507 (charge on disposal of beneficial interest in holding period) applies.

506 Charge on partnership shares ceasing to be subject to plan U.K.

- (1) When partnership shares cease to be subject to the plan, there may be an amount that counts as employment income of the participant depending on the period that has elapsed between—
 - (a) the acquisition date in respect of those shares (as defined by paragraph 50(4) or, as the case may be, paragraph 52(5) of Schedule 2), and
 - (b) the date when they cease to be subject to the plan (“the exit date”).
- (2) If the period is less than 3 years, the market value of the shares at the exit date counts as employment income of the participant for the relevant tax year (see subsection (5)).
- (3) If the period is 3 years or more but less than 5 years, whichever is the lesser of—
 - (a) the amount of partnership share money used to acquire the shares, and
 - (b) the market value of the shares at the exit date,
 counts as employment income of the participant for the relevant tax year (see subsection (5)).
- (4) Where—
 - (a) subsection (3) applies, and
 - (b) the applicable amount is the amount of partnership share money used to acquire the shares,
 the tax due is reduced by the amount or aggregate amount of any tax paid by virtue of section 501 (charge on capital receipts in respect of plan shares) on any capital receipts in respect of the shares.
- (5) The “relevant tax year” is the tax year in which the exit date falls.
- (6) No liability to income tax arises by virtue of this section if section 498 (no charge on shares ceasing to be subject to plan in certain circumstances) applies.

507 Charge on disposal of beneficial interest during holding period U.K.

- (1) This section applies if—
 - (a) free or matching shares cease to be subject to the plan at any time during the holding period for those shares, and
 - (b) this occurs as a result of the participant assigning, charging or otherwise disposing of the participant’s beneficial interest in the shares in breach of obligations under paragraph 36(1)(b) of Schedule 2 (restrictions relating to disposals within holding period).
- (2) The market value of the shares at the date when they cease to be subject to the plan counts as employment income of the participant for the relevant tax year.
- (3) The “relevant tax year” is the tax year in which that date falls.

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508 Identification of shares ceasing to be subject to plan U.K.

- (1) For the purpose of determining any liability to tax arising by virtue of the SIP code in respect of any of a participant's shares ceasing to be subject to the plan—
 - (a) shares are to be taken as ceasing to be subject to the plan in the order in which they were awarded to the participant under the plan, and
 - (b) where shares are awarded to the participant on the same day, the shares are to be treated as ceasing to be subject to the plan in the order which gives rise to the lowest charge to income tax on the participant.
- (2) For the purposes of subsection (1) dividend shares are “awarded” to a participant when the trustees acquire them on behalf of, or appropriate them to, the participant.

PAYE

509 Modification of section 696 where charge on shares ceasing to be subject to plan U.K.

- (1) Where—
 - (a) as a result of shares ceasing to be subject to an approved SIP, there is an amount that counts as employment income of a participant by virtue of the SIP code, and
 - (b) the shares are readily convertible assets,section 696 (readily convertible assets) applies as follows.
- (2) Section 696 applies as if the participant (“P”) were being provided with PAYE income in the form of those shares—
 - (a) at the time when the shares cease to be subject to the plan, and
 - (b) in respect of the relevant employment in which P is employed at that time (or, if P is not then employed in relevant employment, the relevant employment in which P was last employed before that time).
- (3) In addition, subsection (2) of section 696 applies as if the reference in that subsection to the amount of income likely to be PAYE income in respect of the provision of the asset were a reference to the amount which is likely to count as employment income by virtue of the SIP code as a result of the shares ceasing to be subject to the plan.
- (4) In this section “readily convertible asset” has the same meaning as in section 696 (see sections 701 and 702), but this is subject to subsection (5).
- (5) In determining for the purposes of this section (and of section 696 in its application in accordance with this section) whether the shares are readily convertible assets, any market for the shares which—
 - (a) is created by virtue of the trustees acquiring shares for the purposes of the plan, and
 - (b) exists solely for the purposes of the plan,is to be disregarded.

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510 Payments by trustees to employer company on shares ceasing to be subject to plan U.K.

- (1) This section applies if, as a result of any shares (“the relevant shares”) ceasing to be subject to an approved SIP—
 - (a) there is an amount that counts as employment income of a participant by virtue of the SIP code, and
 - (b) an obligation to make a PAYE deduction arises in respect of that amount.
- (2) The trustees must pay to the employer company a sum which is sufficient to enable the employer company to discharge that obligation.
- (3) Subsection (2) is subject to—
 - (a) subsection (4), and
 - (b) section 511 (PAYE deductions to be made by trustees on shares ceasing to be subject to plan).
- (4) Subsection (2) only applies if, or to the extent that, the plan does not require the participant to pay the employer company a sum which is sufficient to discharge the obligation mentioned in subsection (1)(b).
- (5) Section 710(1) (notional payments: accounting for tax) has effect as if it required the deduction of income tax to be made from any sum or sums received by the employer company—
 - (a) from the trustees under subsection (2), or
 - (b) from the participant in accordance with a requirement of the plan, as mentioned in subsection (4).
- (6) After making the necessary PAYE deduction from the sum or sums received as mentioned in subsection (5), the employer company must pay any remaining amount to the participant.
- (7) In this section “the employer company” means—
 - (a) the company which employs the participant in relevant employment at the time when the relevant shares cease to be subject to the plan, or
 - (b) if the participant is not then employed in relevant employment, the company which last employed the participant in relevant employment before that time, so long as that company is one to which PAYE regulations apply at that time.

511 PAYE deductions to be made by trustees on shares ceasing to be subject to plan U.K.

- (1) This section applies if, as a result of any shares ceasing to be subject to an approved SIP—
 - (a) there is an amount that counts as employment income of a participant by virtue of the SIP code, and
 - (b) condition A or B is met.
- (2) Condition A is that the Inland Revenue—
 - (a) are of the opinion that it is impracticable for the employer company (within the meaning of section 510) to make a PAYE deduction, and
 - (b) accordingly direct that this section is to apply.

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- (3) Condition B is that there is no company that qualifies as the employer company (within the meaning of that section).
- (4) If this section applies—
 - (a) section 510(2) does not apply, and
 - (b) the trustees must make a PAYE deduction in respect of the taxable equivalent as if the participant were a former employee of the trustees.
- (5) The “taxable equivalent” means an amount equal to that mentioned in subsection (1).
- (6) If this section applies, section 689 (employee of non-UK employer) does not apply.

512 Disposal of beneficial interest by participant **U.K.**

- (1) This section applies if—
 - (a) a participant (“P”) disposes of P’s beneficial interest in any of P’s plan shares to the trustees, and
 - (b) the trustees are, as a result of paragraph 6 of Schedule 7D to TCGA 1992 (deemed disposal by trustees on disposal of beneficial interest), treated as having disposed of the shares in question.
- (2) If this section applies, sections 510 and 511 apply as if the consideration payable by the trustees to the participant on the disposal had been received by the trustees as the proceeds of disposal of plan shares.

513 Capital receipts: payments by trustees to employer company **U.K.**

- (1) This section applies if the trustees receive a sum of money which constitutes (or forms part of) a capital receipt which, by virtue of the SIP code, counts as employment income of a participant when it is received by the participant.
- (2) Out of that sum of money the trustees must pay to the employer company an amount equal to the amount of employment income.
- (3) The employer company must then pay over that amount to the participant, but when doing so must make a PAYE deduction.
- (4) This section is subject to section 514 (capital receipts: deductions to be made by trustees).
- (5) In this section “the employer company” means—
 - (a) the company which employs the participant in relevant employment at the time when the trustees receive the sum mentioned in subsection (1), or
 - (b) if the participant is not then employed in relevant employment, the company which last employed the participant in relevant employment before that time, so long as that company is one to which PAYE regulations apply at that time.

514 Capital receipts: PAYE deductions to be made by trustees **U.K.**

- (1) This section applies if—
 - (a) the trustees receive a sum of money which constitutes (or forms part of) a capital receipt which, by virtue of the SIP code, counts as employment income of a participant when it is received by the participant, and

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- (b) either condition A or B is met.
- (2) Condition A is that the Inland Revenue—
 - (a) are of the opinion that it is impracticable for the employer company (within the meaning of section 513) to make a PAYE deduction, and
 - (b) accordingly direct that this section is to apply.
- (3) Condition B is that there is no company that qualifies as the employer company (within the meaning of that section).
- (4) If this section applies, the trustees must, when paying the capital receipt over to the participant, make a PAYE deduction in respect of the taxable equivalent as if the participant were a former employee of the trustees.
- (5) The “taxable equivalent” means an amount equal to the amount which counts as employment income as mentioned in subsection (1)(a).
- (6) If this section applies, section 689 (employee of non-UK employer) does not apply.

Other tax consequences

515 Tax advantages and charges under other Acts U.K.

- (1) The following provisions of ICTA relate to SIPs—
 - (a) sections 68A to 68C and 251A to 251D (which provide for amounts to be charged to income tax under Schedule D Case V or Schedule F where—
 - (i) dividends are paid out to participants under an approved SIP, or
 - (ii) dividend shares cease to be subject to the plan in certain circumstances),
 - (b) sections 686B and 686C (which provide for section 686 of that Act (accumulation and discretionary trusts: special rates of tax) not to apply to income of the trustees of an approved SIP in certain circumstances), and
 - (c) Schedule 4AA (which makes provision about deductions allowed in calculating trade profits for corporation tax purposes in respect of certain of a company’s expenses relating to—
 - (i) providing shares for the purposes of an approved SIP, or
 - (ii) the establishment or operation of the plan).
- (2) SIPs are also dealt with in—
 - (a) Part 1 of Schedule 7D to TCGA 1992 (which provides for relief from capital gains tax for the trustees and for participants in relation to an approved SIP in certain circumstances, including where shares cease to be subject to the plan), and
 - (b) section 95 of FA 2001 (which contains relief from stamp duty and stamp duty reserve tax for transfers of partnership or dividend shares).
- (3) The references in this section to ICTA, TCGA 1992 and FA 2001 are to those Acts as amended by Schedule 6 to this Act.

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