

Changes to legislation: *Income Tax (Earnings and Pensions) Act 2003, Cross Heading: Taxation of Chargeable Gains Act 1992 (c. 12) is up to date with all changes known to be in force on or before 24 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 6 **U.K.**

CONSEQUENTIAL AMENDMENTS

PART 2 **U.K.**

OTHER ENACTMENTS

Taxation of Chargeable Gains Act 1992 (c. 12)

207 The Taxation of Chargeable Gains Act 1992 is amended as follows.

^{F1}208

Textual Amendments

F1 Sch. 6 para. 208 omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 79\(a\)](#)

209 In section 11(1) (visiting forces, agents-general etc.)—

- (a) for “section 323(1) of the Taxes Act” substitute “ section 303(1) of ITEPA 2003 ”; and
- (b) for “subsection (2) of section 323 and subsections (4) to (8) of that section shall apply accordingly” substitute “ section 303(2) to (6) of that Act and section 323(2) of the Taxes Act ”.

210 (1) Amend section 120 (increased expenditure by reference to tax charged in relation to shares etc.) as follows.

(2) For subsection (1) substitute—

“(1) Subsection (1A) applies where—

- (a) a person (“the employee”) has acquired shares or an interest in shares as mentioned in section 447(1) of ITEPA 2003, and
- (b) an amount counts as employment income of the employee under Chapter 4 of Part 7 of that Act in respect of the shares.

(1A) On the first disposal of the shares after the acquisition occurs, the employment income amount shall be treated for the purposes of section 38(1)

(a) as consideration given by the person making the disposal for the acquisition of the shares.

(1B) For the purposes of subsections (1) and (1A)—

- (a) the “employment income amount” means the amount counting as employment income of the employee under that Chapter in respect of the shares, and

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(b) it is immaterial whether the disposal of the shares mentioned in subsection (1A) is made by the employee or another person.”

(3) In subsection (3)—

- (a) for “is chargeable to tax by virtue of section 162(5) of the Taxes Act” substitute “ is treated as earnings under section 195(2) of ITEPA 2003 ”, and
- (b) for “so chargeable” substitute “ so treated as earnings ”.

(4) In subsection (4)—

- (a) for “chargeable to tax under section 135(1) or (6) of the Taxes Act” substitute “ counting as employment income under section 476 or 477 of ITEPA 2003 ”, and
- (b) for “so chargeable to tax” substitute “ so counting as employment income ”.

(5) In subsection (5A)—

- (a) for “is chargeable to tax under section 140A of the Taxes Act” substitute “ counts as employment income under Chapter 2 of Part 7 of ITEPA 2003 ”, and
- (b) for “so chargeable” substitute “ so counting as employment income ”.

(6) In subsection (5B)—

- (a) for “is chargeable to tax under section 140D of the Taxes Act” substitute “ counts as employment income under Chapter 3 of Part 7 of ITEPA 2003 ”, and
- (b) for “so chargeable” substitute “ so counting as employment income ”.

(7) Omit subsection (6).

(8) For subsection (7) substitute—

“(7) Each of the provisions of this section mentioned in the first column of the following table is to be construed as if it were contained in the Chapter of ITEPA 2003 specified in the corresponding entry in the second column—

<i>Provision of this section</i>	<i>Chapter of ITEPA 2003</i>
subsections (1), (1A) and (1B)	Chapter 4 of Part 7
subsection (3)	Chapter 8 of Part 3
subsection (4)	Chapter 5 of Part 7
subsection (5A)	Chapter 2 of Part 7
subsection (5B)	Chapter 3 of Part 7;

and subsection (5) of this section is to be construed as one with section 138 of the Taxes Act.”

(9) After subsection (7) insert—

“(7A) In relation to events that gave rise to amounts chargeable to income tax before 6th April 2003, this section is to be read as if any reference to an amount mentioned in the first column of the following table included a reference to an amount mentioned in the corresponding entry in the second column—

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<i>Amount mentioned in this section</i>	<i>Amount chargeable before 6th April 2003</i>
an amount counting as employment income under Chapter 4 of Part 7 of ITEPA 2003	an amount chargeable to tax under Chapter 2 of Part 3 of the Finance Act 1988
an amount treated as earnings under section 195(2) of ITEPA 2003	an amount chargeable to tax under section 162(5) of the Taxes Act
an amount counting as employment income under section 476 or 477 of ITEPA 2003	an amount chargeable to tax under section 135(1) or (6) of the Taxes Act
an amount which counts as employment income under Chapter 2 of Part 7 of ITEPA 2003	an amount chargeable to tax under section 140A of the Taxes Act
an amount which counts as employment income under Chapter 3 of Part 7 of ITEPA 2003	an amount chargeable to tax under section 140D of the Taxes Act.”

- (10) In subsection (8) for “section 140A of the Taxes Act” substitute “ Chapter 2 of Part 7 of ITEPA 2003 ”.
- 211 (1) Amend section 149B (employee incentive schemes: conditional interests in shares) as follows.
- (2) In subsection (1) for “section 140A of the Taxes Act” substitute “ Chapter 2 of Part 7 of ITEPA 2003 (conditional interests in shares) ”.
- (3) In subsection (2) for “section 140B of the Taxes Act” substitute “ section 429 of ITEPA 2003 ”.
- (4) In subsection (4)—
- (a) for “section 140A of the Taxes Act” substitute “ Chapter 2 of Part 7 of ITEPA 2003 ”, and
- (b) for “that section” substitute “ that Chapter ”.
- 212 After section 149B insert—

“149C Priority share allocations

Section 17(1) shall not apply to an acquisition of shares if section 542 or 544 of ITEPA 2003 applies in relation to it.”

- 213 In section 222(8D)(b) (relief on disposal of private residence), for “the same meanings as they have for the purposes of Chapter II of Part V of the Taxes Act” substitute “ the meanings given by Chapter 2 of Part 3 of ITEPA 2003 ”.
- 214 In section 236A (employee share ownership plans), and in the sidenote and in the italic heading immediately before the section, for “employee share ownership” wherever it occurs substitute “ share incentive ”.
- 215 In section 238(2)(a) (approved profit sharing and share option schemes), for “is chargeable to income tax” substitute “ counts as employment income (or was chargeable to income tax for the year 2002-03 or an earlier year of assessment ”.

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216 After section 238 insert—

“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).”

217 After section 263 insert—

“263ZA Former employees: employment-related liabilities

- (1) This section applies if—
 - (a) a deduction of the amount of one or more deductible payments may be made under section 555 of ITEPA 2003 (former employee entitled to deduction from total income in respect of liabilities related to the former employment) when computing a former employee’s total income for a tax year, and
 - (b) the total amount which may be deducted exceeds the total income for that year.
- (2) In this section “excess relief” means the amount of the difference between—
 - (a) the total amount which may be deducted, and
 - (b) the total income.
- (3) The amount of the excess relief may be treated as an allowable loss accruing to the former employee for that tax year.
 This subsection applies only if the former employee makes a claim for the purpose.
- (4) But no relief is available under subsection (3) in respect of any amount of the excess relief that exceeds the maximum amount.
- (5) For the purposes of this section the “maximum amount”, in relation to the excess relief for a tax year, means the amount on which the former employee would be chargeable to capital gains tax for that year if the following were disregarded—
 - (a) any relief available under this section,
 - (b) any allowable losses falling to be carried forward to that year from a previous year for the purposes of section 2(2),
 - (c) section 3(1) (the annual exempt amount),
 - (d) any relief against capital gains tax under section 72 of the Finance Act 1991 (deduction of trading losses), and

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- (e) any relief against capital gains tax under section 90(4) of the Finance Act 1995 (relief for post-cessation expenditure).
- (6) A former employee may make a claim under subsection (3) and a claim under section 555(3) of ITEPA 2003 in the same notice.”
- 218 In section 271 (other miscellaneous exemptions), for subsection (1)(c) substitute—
- “(c) any gain accruing to a person from his acquisition and disposal of assets held by him as part of a fund—
- (i) mentioned in section 614(2) of the Taxes Act,
- (ii) to which section 615(3) of the Taxes Act applies, or
- (iii) mentioned in section 648, 649, 650, 651 or 653 of ITEPA 2003;”.
- 219 (1) Amend section 288(1) (interpretation) as follows.
- (2) In the entry relating to “allowable loss” for “and 16” substitute “ , 16 and 263ZA ”.
- (3) After the entry relating to “investment trust” insert—
- ““ITEPA 2003” means the Income Tax (Earnings and Pensions) Act 2003;”.
- 220 (1) Amend Schedule 7C (relief for transfers to approved share plans) as follows.
- (2) In paragraph 1(1) (introductory) for “an employee share ownership” substitute “ a share incentive ”.
- (3) In paragraph 2 (conditions relating to the disposal)—
- (a) in sub-paragraph (1) for “Schedule 8 to the Finance Act 2000” substitute “ Schedule 2 to ITEPA 2003 ”,
- (b) in sub-paragraph (2)—
- (i) for “Part VIII” substitute “ Part 4 ”,
- (ii) for “used in plan” substitute “ awarded ”, and
- (iii) for “61(a) and (c)” substitute “ 27(1)(a) and (c) and (2) ”,
- (c) in sub-paragraph (4) for “of Schedule 8 to the Finance Act 2000” substitute “ given by paragraph 97 of Schedule 2 to ITEPA 2003 ”.
- 221 After Schedule 7C insert—

“SCHEDULE
7D **U.K.**

Section 238A

APPROVED SHARE SCHEMES AND SHARE INCENTIVES

PART 1 **U.K.**

APPROVED SHARE INCENTIVE PLANS

Introductory

- 1 (1) The provisions of this Part of this Schedule apply for capital gains tax purposes in relation to an approved share incentive plan (“the plan”).

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- (2) This Part of this Schedule forms part of the SIP code (see section 488 of ITEPA 2003 (approved share incentive plans)).
- (3) Accordingly, expressions used in this Part of this Schedule and contained in the index at the end of Schedule 2 to that Act (approved share incentive plans) have the meaning indicated by the index.
- (4) In particular, for the purposes of paragraphs 5 and 7 of this Schedule “market value” has the meaning given by paragraph 92 of Schedule 2 to that Act (determination of market value); and Part 8 of this Act has effect subject to this paragraph.

Gains accruing to trustees

- 2 (1) Any gain accruing to the trustees is not a chargeable gain if the shares—
 - (a) are shares in relation to which the requirements of Part 4 of Schedule 2 to ITEPA 2003 (approved share incentive plans: types of shares that may be awarded) are met, and
 - (b) are awarded to employees, or acquired on their behalf as dividend shares, in accordance with the plan within the relevant period.
- (2) If any of the shares in the company in question are readily convertible assets at the time the shares are acquired by the trustees, the relevant period is the period of two years beginning with the date on which the shares were acquired by the trustees.

This is subject to sub-paragraph (4).
- (3) If at the time of the acquisition of the shares by the trustees none of the shares in the company in question are readily convertible assets, the relevant period is—
 - (a) the period of five years beginning with the date on which the shares were acquired by the trustees, or
 - (b) if within that period any of the shares in that company become readily convertible assets, the period of two years beginning with the date on which they did so,

whichever ends first.

This is subject to sub-paragraph (4).
- (4) If the shares are acquired by the trustees by virtue of a payment in respect of which a deduction is allowed under paragraph 9 of Schedule 4AA to the Taxes Act (deduction for contribution to plan trust), the relevant period is the period of ten years beginning with the date of acquisition.
- (5) For the purposes of determining whether shares are awarded to a participant within the relevant period, shares acquired by the trustees at an earlier time are taken to be awarded to a participant before shares of the same class acquired by the trustees at a later time.
- (6) Sub-paragraph (5) is subject to paragraph 78(1) of Schedule 2 to ITEPA 2003 (acquisition by trustees of shares from employee share ownership trust).

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(7) For the purposes of this paragraph “readily convertible assets” has the meaning given by sections 701 and 702 of that Act (readily convertible assets).

This is subject to sub-paragraph (8).

(8) In determining for the purposes of this paragraph whether shares are readily convertible assets any market for the shares that—

(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,

shall be disregarded.

(9) In relation to shares acquired by the trustees before 11th May 2001 this paragraph has effect with the substitution—

(a) in sub-paragraph (2), of “If the shares are readily convertible assets at the time they” for the words before “are acquired”, and

(b) in sub-paragraph (3)—

(i) of “If at the time of their acquisition by the trustees the shares are not readily convertible assets” for the words before “the relevant period”, and

(ii) in paragraph (b), of “the shares in question” for “any of the shares in that company”.

Participant absolutely entitled as against trustees

3 (1) Sub-paragraph (2) applies to any shares awarded to a participant under the plan.

(2) The participant is treated for capital gains tax purposes as absolutely entitled to those shares as against the trustees.

(3) Sub-paragraph (2) applies notwithstanding anything in the plan or the trust instrument.

Different classes of shares

4 (1) For the purposes of Chapter 1 of Part 4 of this Act (shares, securities, options etc: general) a participant’s plan shares are treated, so long as they are subject to the plan, as of a different class from any shares (which would otherwise be treated as of the same class) that are not plan shares.

(2) For the purposes of that Chapter, any shares to which sub-paragraph (3) applies shall be treated as of a different class from any shares to which sub-paragraph (4) applies, even if they would otherwise fall to be treated as of the same class.

(3) This sub-paragraph applies to any shares transferred to the trustees of the plan trust by a qualifying transfer that have not been awarded to participants under the plan.

(4) This sub-paragraph applies to any shares held by the trustees that were not transferred to them by a qualifying transfer.

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- (5) In this paragraph “qualifying transfer” has the meaning given in paragraph 78(2) of Schedule 2 to ITEPA 2003 (acquisition by trustees of shares from employee share ownership trust).
- (6) For the purposes of Chapter 1 of Part 4 of this Act any shares which—
- (a) were acquired by the trustees by virtue of a payment in respect of which a deduction is allowed under paragraph 9 of Schedule 4AA to the Taxes Act (deduction for contribution to plan trust), and
 - (b) have not been awarded under the plan,
- shall be treated as of a different class from any shares held by the trustees that were not so acquired by them, even if they would otherwise fall to be treated as of the same class.

No chargeable gain on shares ceasing to be subject to the plan

- 5 (1) Shares which cease to be subject to the plan are treated as having been disposed of and immediately reacquired by the participant at market value.
- (2) Any gain accruing on that disposal is not a chargeable gain.

Deemed disposal by trustees on disposal of beneficial interest

- 6 (1) If at any time the participant’s beneficial interest in any of his shares is disposed of, the shares in question shall be treated for the purposes of the SIP code as having been disposed of at that time by the trustees for the like consideration as was obtained for the disposal of the beneficial interest.
- (2) For this purpose there is no disposal of the participant’s beneficial interest if and at the time when—
- (a) in England and Wales or Northern Ireland, that interest becomes vested in any person on the insolvency of the participant or otherwise by operation of law, or
 - (b) in Scotland, that interest becomes vested in a judicial factor, in a trustee of the participant’s sequestrated estate or in a trustee for the benefit of the participant’s creditors.
- (3) If a disposal of shares falling within this paragraph is not at arm’s length, the proceeds of the disposal shall be taken for the purposes of the SIP code to be equal to the market value of the shares at the time of the disposal.

Treatment of forfeited shares

- 7 (1) If any of the participant’s plan shares are forfeited, they are treated as having been disposed of by the participant and acquired by the trustees at market value at the date of forfeiture.
- (2) Any gain accruing on that disposal is not a chargeable gain.

Disposal of rights under rights issue

- 8 (1) Any gain accruing on the disposal of rights under paragraph 77 of Schedule 2 to ITEPA 2003 (power of trustees to raise funds to subscribe for rights issue) is not a chargeable gain.

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- (2) Sub-paragraph (1) does not apply to a disposal of rights unless similar rights are conferred in respect of all ordinary shares in the company.

PART 2 **U.K.**

APPROVED SAYE OPTION SCHEMES

Introductory

- 9 (1) This Part of this Schedule forms part of the SAYE code (see section 516 of ITEPA 2003 (approved SAYE option schemes)).
- (2) Accordingly, expressions used in this Part of this Schedule and contained in the index at the end of Schedule 3 to that Act (approved SAYE option schemes) have the meaning indicated by the index.

Market value rule not to apply

- 10 (1) This paragraph applies where—
- (a) a share option (“the option”) has been granted to an individual—
 - (i) in accordance with the provisions of an approved SAYE option scheme, and
 - (ii) by reason of the individual’s office or employment as a director or employee of a company,
 - (b) the individual exercises the option in accordance with the provisions of the SAYE option scheme at a time when the scheme is approved, and
 - (c) condition A or condition B in section 519(2) or (3) of ITEPA 2003 (no charge in respect of exercise of option) is met.
- (2) The company mentioned in sub-paragraph (1)(a)(ii) may be—
- (a) the company whose shares are the subject of the option, or
 - (b) some other company.
- (3) If the option—
- (a) was granted under the SAYE option scheme before the withdrawal of approval under paragraph 42 of Schedule 3 to ITEPA 2003, but
 - (b) is exercised after the withdrawal of approval,
- then, for the purposes of sub-paragraph (1)(b) above in its application to the option, the scheme is to be treated as if it were still approved at the time of the exercise.
- (4) Section 17(1) (disposals and acquisitions treated as made at market value) shall not apply in calculating the consideration for—
- (a) the individual’s acquisition of shares by the exercise of the option, or
 - (b) any corresponding disposal of those shares to the individual.
- (5) References in sub-paragraphs (1)(b) and (4) above to the individual include references to a person exercising the option in accordance with provision included in the scheme by virtue of paragraph 32 of Schedule 3 to ITEPA

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2003 (exercise of options: death); and sub-paragraph (1)(c) above does not apply in relation to a person so exercising the option.

PART 3 **U.K.**

APPROVED CSOP SCHEMES

Introductory

- 11 (1) This Part of this Schedule forms part of the CSOP code (see section 521 of ITEPA 2003 (approved CSOP schemes)).
- (2) Accordingly, expressions used in this Part of this Schedule and contained in the index at the end of Schedule 4 to that Act (approved CSOP schemes) have the meaning indicated by the index.
- (3) This Part of this Schedule applies where—
- (a) a share option (“the option”) has been granted to an individual—
 - (i) in accordance with the provisions of an approved CSOP scheme, and
 - (ii) by reason of the individual’s office or employment as a director or employee of a company, and
 - (b) shares (“the relevant shares”) are acquired by the exercise of the option.
- (4) The company mentioned in sub-paragraph (3)(a)(ii) may be—
- (a) the company whose shares are the subject of the option, or
 - (b) some other company.

Relief where income tax charged in respect of grant of option

- 12 (1) This paragraph applies where an amount (the “employment income amount”) counted as employment income of the individual under section 526 of ITEPA 2003 (charge where option granted at a discount) in respect of the option.
- (2) For the purposes of section 38(1)(a) (acquisition and disposal costs etc.), that part of the employment income amount which is attributable to the relevant shares shall be treated as consideration given for the acquisition of the relevant shares.
- (3) This paragraph also applies where the individual was chargeable to income tax on an amount in respect of the option under—
- (a) subsection (6) of section 185 of ICTA (as it had effect before 1st January 1992),
 - (b) subsection (6A) of that section (as it had effect in relation to options obtained on or after 1st January 1992 but before 29th April 1996), or
 - (c) subsection (6) of that section (as it had effect in relation to options obtained on or after 29th April 1996);

and in such a case the “employment income amount” means the amount on which the individual was so chargeable.

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- (4) This paragraph applies whether or not—
- (a) the exercise of the option is in accordance with the provisions of the CSOP scheme, or
 - (b) the CSOP scheme is approved at the time of the exercise.

Market value rule not to apply

- 13 (1) This paragraph applies where—
- (a) the individual exercises the option in accordance with the provisions of the CSOP scheme at a time when the scheme is approved, and
 - (b) the condition in section 524(2) of ITEPA 2003 (no charge in respect of exercise of option) is met.
- (2) Section 17(1) (disposals and acquisitions treated as made at market value) shall not apply in calculating the consideration for—
- (a) the individual’s acquisition of the relevant shares by the exercise of the option, or
 - (b) any corresponding disposal of the relevant shares to the individual.
- (3) Sub-paragraph (2) also applies where the option is exercised at a time when the scheme is approved in accordance with provision included in the scheme by virtue of paragraph 25 of Schedule 4 to ITEPA 2003 (exercise of options: death); and references in that sub-paragraph to the individual are to be read accordingly.

PART 4 U.K.

ENTERPRISE MANAGEMENT INCENTIVES

Introductory

- 14 (1) This Part of this Schedule forms part of the EMI code (see section 527 of ITEPA 2003 (enterprise management incentives: qualifying options)).
- (2) Accordingly, expressions used in this Part of this Schedule and contained in the index at the end of Schedule 5 to that Act (enterprise management incentives) have the meaning indicated by the index.
- (3) In this Part of this Schedule, “qualifying shares”—
- (a) means shares acquired by the exercise of a qualifying option, subject to sub-paragraphs (4) and (5), and
 - (b) includes shares (“replacement shares”) which—
 - (i) are treated under section 127 (equation of original shares and new holding) as the same asset as a holding of qualifying shares, and
 - (ii) meet the requirements of paragraph 35 of Schedule 5 to ITEPA 2003 (type of shares that may be acquired).
- (4) If a disqualifying event occurs in relation to a qualifying option (whether the original option or a replacement option), shares acquired by the exercise

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of that option are qualifying shares only if the option is exercised within 40 days of that event.

- (5) References in this Part of this Schedule to “the original option”, where there has been one or more replacement options, are to the option that the replacement option (or, if there has been more than one, the first of them) replaced.

Taper relief on disposal of qualifying shares

- 15 For the purposes of computing taper relief on a disposal of qualifying shares, the shares are treated as if they had been acquired when the original option was granted.

Rights issues in respect of qualifying shares

- 16 Where—
- (a) an individual holds qualifying shares, and
 - (b) there is, by virtue of any such allotment for payment as is mentioned in section 126(2)(a) (allotment in proportion to shareholdings), a reorganisation affecting that holding,
- sections 127 to 130 (which relate to reorganisation or reduction of share capital) shall not apply in relation to that holding.”

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

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

- s. 452(2)(aa) inserted by [2013 c. 29 Sch. 23 para. 11](#)
- s. 707A inserted by [2024 c. 3 s. 36\(4\)](#)