



Income and Corporation Taxes Act 1988

1988 CHAPTER 1

PART V

PROVISIONS RELATING TO THE SCHEDULE E CHARGE

CHAPTER IV

OTHER EXEMPTIONS AND RELIEFS

Share option and profit sharing schemes

185 Approved share option schemes.

- (1) ^{M1}The provisions of this section shall apply where, in accordance with the provisions of an approved share option scheme, an individual obtains a right to acquire shares in a body corporate by reason of his office or employment as a director or employee of that or any other body corporate and he obtains that right—
 - (a) in the case of a savings-related share option scheme, on or after 15th November 1980; or
 - (b) in the case of any other share option scheme, on or after 6th April 1984.
- (2) [^{F1}Subject to subsection (6) below], tax shall not be chargeable under any provision of the Tax Acts in respect of the receipt of the right.
- (3) ^{M2}Subject to subsections (4) and, except where paragraph 27(3) of Schedule 9 applies, (5) below, if he exercises the right in accordance with the provisions of the scheme at a time when it is approved—
 - (a) tax shall not be chargeable under any provision of the Tax Acts in respect of the exercise nor under [^{F2}section 78 or 79 of the Finance Act 1988 in respect of the shares];
 - (b) section [^{F3}17(1) of the 1992 Act] (assets deemed to be acquired at market value) shall not apply in calculating the consideration for the acquisition of the shares by him or for any corresponding disposal of them to him.

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- (4) [^{F4M3}Subsection (3) above] shall not apply in respect of a right, obtained by a person under a scheme which is a savings-related share option scheme, which is exercised within three years of its being obtained by virtue of a provision included in a scheme pursuant to paragraph 21 of Schedule 9.
- (5) ^{M4}Subsection (3) above shall not apply in relation to the exercise by any person of a right in accordance with the provisions of a scheme which is not a savings-related share option scheme if—
- (a) the period beginning with his obtaining the right and ending with his exercising it is less than three, or greater than ten, years; or
 - (b) the right is exercised within three years of the date on which he last exercised (in circumstances in which subsection (3) above applied) any right obtained under the scheme or under any other approved share option scheme which is not a savings-related share option scheme (any such right exercised on the same day being disregarded).
- [^{F5}(6) Where, in the case of a right obtained by a person under a scheme which is not a savings-related share option scheme, the aggregate of—
- (a) the amount or value of any consideration given by him for obtaining the right, and
 - (b) the price at which he may acquire the shares by exercising the right,
- is less than the market value, at the time he obtains the right, of the same quantity of issued shares of the same class, he shall be chargeable to tax under Schedule E for the year of assessment in which he obtains the right on the amount of the difference; and the amount so chargeable shall be treated as earned income, whether or not it would otherwise fall to be so treated.]
- (7) ^{M5}For the purposes of section [^{F3}38(1)(a) of the 1992 Act] (computation of chargeable gains: allowable expenditure) the consideration given for shares acquired in the exercise of the right shall be taken to have included that part of any amount on which income tax is payable in accordance with subsection [^{F6}(6)] above which is attributable to the shares disposed of.
- This subsection applies whether or not the exercise is in accordance with the provisions of the scheme and whether or not the scheme is approved at the time of the exercise.
- (8) Where a person is chargeable to tax under subsection [^{F6}(6)] above on any amount (the “amount of the discount”) and subsequently, in circumstances in which subsection (3) above does not apply—
- (a) ^{M6}he is chargeable to tax under section 135, the amount of the gain on which he is chargeable to tax under that section shall be reduced by that part of the amount of the discount which is attributable to the shares in question; or
 - (b) ^{M7}he is treated by virtue of section 162 as having had the benefit of a notional interest-free loan, the amount of the notional loan initially outstanding shall be reduced by that part of the amount of the discount which is attributable to the shares in question.
- (9) Where the provisions of a scheme which is not a savings-related share option scheme are approved in pursuance of an application made under paragraph 1 of Schedule 10 to the ^{M8}Finance Act 1984 before 1st January 1985 (and the approval has not been withdrawn), this section shall apply in relation to any right obtained before 1st July 1985 as if the scheme containing those provisions had been approved under that

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Schedule during the period beginning with the date on which that right was obtained and ending with the date on which those provisions were actually so approved.

- (10) In this section “savings-related share option scheme” has the meaning given by Schedule 9.

Textual Amendments

- F1** Words in s. 185(2) substituted (with effect in accordance with s. 114(10) of the amending Act) by Finance Act 1996 (c. 8), s. 114(5)
- F2** 1988(F) s.89 in respect of acquisitions on or after 26 October 1987. Previously “section 138(1)(a) in respect of an increase in the market value of the shares”.
- F3** Words in s. 185(3)(b)(7) substituted (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. 289, 290, Sch. 10 para. 14(12) (with ss. 60, 101(1), 171, 201(3)).
- F4** Words in s. 185(4) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 39(4)(8) (in relation to rights obtained on or after 1.1.1992)
- F5** S. 185(6) substituted for s. 185(6)-(6B) (with effect in accordance with s. 114(10) of the amending Act) by Finance Act 1996 (c. 8), s. 114(6)
- F6** Words in s. 185(7)(8) substituted (with effect in accordance with s. 114(10) of the amending Act) by Finance Act 1996 (c. 8), s. 114(7)

Modifications etc. (not altering text)

- C1** See 1988(F) s.68—benefits derived by director etc. from public offers not treated as emolument.
- C2** S. 185 applied (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. 120, 289 (with ss. 60, 101(1), 171, 201(3)).
- C3** S. 185 modified (29.4.1996) by Finance Act 1996 (c. 8), s. 115(1)

Marginal Citations

- M1** Source—1980 s.47(1); 1984 s.38(1)
- M2** Source—1980 s.47(1)(b); 1981 s.90(3)(a); 1984 s.38(3)(a)
- M3** Source—1980 s.47(2)
- M4** Source—1984 s.38(4)
- M5** Source—1984 s.38(6)
- M6** Source—1984 s.38(7)(a), (8)
- M7** Source—1984 s.38(7)(b), (9)
- M8** 1984 Sch.10 1(5)

186 Approved profit sharing schemes.

- (1) ^{M9}The provisions of this section apply where, after 5th April 1979 [^{F7}and before 1st January 2003], the trustees of an approved profit sharing scheme appropriate shares—
- which have previously been acquired by the trustees, and
 - as to which the conditions in Part II of Schedule 9 are fulfilled,
- to an individual who participates in the scheme (“the participant”).
- (2) ^{M10}Notwithstanding that, by virtue of such an appropriation of shares as is mentioned in subsection (1) above, the beneficial interest in the shares passes to the participant to whom they are appropriated—
- the value of the shares at the time of the appropriation shall be treated as not being income of his chargeable to tax under Schedule E; and

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- (b) he shall not be chargeable to income tax under that Schedule by virtue of [F⁸section 78 or 79 of the Finance Act 1988 in respect of the shares] or by virtue of section 162 in any case where the shares are appropriated to him at an undervalue within the meaning of that section.
- (3)^{M11} Subject to the provisions of this section and paragraph 4 of Schedule 10, if, in respect of or by reference to any of a participant's shares, the trustees become or the participant becomes entitled, before the release date, to receive any money or money's worth ("a capital receipt"), the participant shall be chargeable to income tax under Schedule E for the year of assessment in which the entitlement arises on the appropriate percentage (determined as at the time the trustees become or the participant becomes so entitled) of so much of the amount or value of the receipt as exceeds the appropriate allowance for that year, as determined under subsection (12) below.
- (4)^{M12} If the trustees dispose of any of a participant's shares at any time before the release date or, if it is earlier, the date of the participant's death, then, subject to subsections (6) and (7) below, the participant shall be chargeable to income tax under Schedule E for the year of assessment in which the disposal takes place on the appropriate percentage of the locked-in value of the shares at the time of the disposal.
- (5)^{M13} Subject to paragraphs 5 and 6(6) of Schedule 10, the locked-in value of a participant's shares at any time is—
- (a) if prior to that time he has become chargeable to income tax by virtue of subsection (3) above on a percentage of the amount or value of any capital receipt which is referable to those shares, the amount by which their initial market value exceeds the amount or value of that capital receipt or, if there has been more than one such receipt, the aggregate of them; and
 - (b) in any other case, their initial market value.
- (6) Subject to subsection (7) below, if, on a disposal of shares falling within subsection (4) above, the proceeds of the disposal are less than the locked-in value of the shares at the time of the disposal, subsection (4) above shall have effect as if that locked-in value were reduced to an amount equal to the proceeds of the disposal.
- (7) If, at any time prior to the disposal of any of a participant's shares, a payment was made to the trustees to enable them to exercise rights arising under a rights issue, then, subject to subsection (8) below, subsections (4) and (6) above shall have effect as if the proceeds of the disposal were reduced by an amount equal to that proportion of that payment or, if there was more than one, of the aggregate of those payments which, immediately before the disposal, the market value of the shares disposed of bore to the market value of all the participant's shares held by the trustees at that time.
- (8)^{M14} For the purposes of subsection (7) above—
- (a) no account shall be taken of any payment to the trustees if or to the extent that it consists of the proceeds of a disposal of rights arising under a rights issue; and
 - (b) in relation to a particular disposal the amount of the payment or, as the case may be, of the aggregate of the payments referred to in that subsection shall be taken to be reduced by an amount equal to the total of the reduction (if any) previously made under that subsection in relation to earlier disposals;
- and any reference in subsection (7) or paragraph (a) above to the rights arising under a rights issue is a reference to rights conferred in respect of a participant's shares, being

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rights to be allotted, on payment, other shares or securities or rights of any description in the same company.

(9) ^{M15}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 relevant provisions as having been disposed of at that time by the trustees for (subject to subsection (10) below) the like consideration as was obtained for the disposal of the beneficial interest; and for the purposes of this subsection 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 on the participant's sequestrated estate or in a trustee for the benefit of the participant's creditors.

(10) If—

- (a) a disposal of shares falling within subsection (4) above is a transfer to which paragraph 2(2)(c) of Schedule 9 applies, or

[^{F9}(b) any other disposal falling within that subsection is not at arm's length,]

- (c) a disposal of shares falling within [^{F10}that subsection] is one which is treated as taking place by virtue of subsection (9) above and takes place within the period of retention,

then for the purposes of the relevant provisions the proceeds of the disposal shall be taken to be equal to the market value of the shares at the time of the disposal.

(11) ^{M16}Where the trustees of an approved scheme acquire any shares as to which the requirements of Part II of Schedule 9 are fulfilled and, within the period of 18 months beginning with the date of their acquisition, those shares are appropriated in accordance with the scheme, section 686 shall not apply to income consisting of dividends on those shares received by the trustees; and, for the purpose of determining whether any shares are appropriated within that period, shares which were acquired at an earlier time shall be taken to be appropriated before shares of the same class which were acquired at a later time.

(12) ^{M17}For the purposes of subsection (3) above, “the appropriate allowance”, in relation to any year of assessment, means a sum which, subject to a maximum of [^{F11}£60], is the product of multiplying £20 by 1 plus the number of years which fall within the period of [^{F12}three years] immediately preceding the year in question and in which shares were appropriated to the participant under the scheme; and if in any year (and before the release date) the trustees become or the participant becomes entitled, in respect of or by reference to any of his shares, to more than one capital receipt, the receipts shall be set against the appropriate allowance for that year in the order in which they are received.

(13) Schedule 10 shall have effect with respect to profit sharing schemes.

Textual Amendments

F7 Words in s. 186(1) inserted (28.7.2000) by [Finance Act 2000 \(c. 17\), s. 49\(3\)](#)

F8 Words in s. 186(2)(b) substituted (in respect of acquisitions of shares on or after 26.10.1987) by [Finance Act 1988 \(c. 39\), s. 89](#)

F9 S. 186(10)(b) substituted (with effect in accordance with s. 134(2) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 134\(1\), Sch. 20 para. 11\(a\)](#)

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- F10** Words in s. 186(10)(c) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), s. 134(1), **Sch. 20 para. 11(b)**
- F11** Words in s. 186(12) substituted (with effect in accordance with s. 118(2) of the amending Act) by Finance Act 1996 (c. 8), **s. 118(1)(a)**
- F12** Words in s. 186(12) substituted (with effect in accordance with s. 118(2) of the amending Act) by Finance Act 1996 (c. 8), **s. 118(1)(b)**

Modifications etc. (not altering text)

- C4** S. 186 modified (29.4.1996) by Finance Act 1996 (c. 8), **ss. 115(1), 116(3)**

Marginal Citations

- M9** Source—1978 s.53(1)
- M10** Source—1978 s.53(3)
- M11** Source—1978 s.56(1); 1982 s.42(1)
- M12** Source—1978 s.55(1)
- M13** Source—1978 s.55(2)-(4)
- M14** Source—1978 s.55(5), (9)
- M15** Source—1978 s.55(7), (8)
- M16** Source—1978 s.53(6)
- M17** Source—1978 s.56(6); 1980 s.46(6); 1982 s.42(2); 1985 s.45(4)

187 Interpretation of sections 185 and 186 and Schedules 9 and 10.

- (1) ^{M18}In sections 185 and 186, this section and Schedules 9 and 10 “the relevant provisions” means those sections (including this section) and Schedules.
- (2) For the purposes of the relevant provisions, except where the context otherwise requires—
- “appropriate percentage” shall be construed in accordance with paragraph 3 of Schedule 10;
- “approved”, in relation to a scheme, means approved under Schedule 9;
- “associated company” has the same meaning as in section 416, except that, for the purposes of paragraph 23 of Schedule 9, subsection (1) of that section shall have effect with the omission of the words “ or at any time within one year previously ”;
- “bonus date” has the meaning given by paragraph 17 of Schedule 9;
- “capital receipt” means money or money’s worth to which the trustees of or a participant in a profit sharing scheme become or becomes entitled as mentioned in section 186(3), but subject to paragraph 4 of Schedule 10;
- “certified contractual savings scheme” has the meaning given by section 326;
- “control” has the same meaning as in section 840;
- “grantor”, in relation to any scheme, means the company which has established the scheme;
- “group scheme” and, in relation to such a scheme, “participating company” have the meanings given by paragraph 1(3) and (4) of Schedule 9;
- “initial market value”, in relation to shares in a profit sharing scheme, has the meaning given by paragraph 30(4) of Schedule 9;
- “locked-in value”, in relation to any shares, shall be construed in accordance with section 186(5);

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“market value” has the same meaning as in Part VIII of the ^{F13}1992 Act];
“new holding” has the meaning given by section ^{F13}126(1)(b) of the 1992 Act];

“participant”, in relation to a profit sharing scheme, means an individual to whom the trustees of the scheme have appropriated shares;

“participant’s shares”, in relation to a participant in a profit sharing scheme, means, subject to paragraph 5(4) of Schedule 10, shares which have been appropriated to the participant by the trustees;

^{F14}

.....

“period of retention” has the meaning given by paragraph 2 of Schedule 10;

“release date”, in relation to any of the shares of a participant in a profit sharing scheme, means the ^{F15}third anniversary of the date on which they were appropriated to him;

“relevant amount”, in relation to a participant in a profit sharing scheme, means an amount which is ^{F16}not less than £3,000 and not more than £8,000] but which, subject to that, is 10 per cent. of his salary (determined under subsection (5) below) for the year of assessment in question or the preceding year of assessment, whichever is the greater;

“relevant requirements” has the meaning given by paragraph 1 of Schedule 9;

“savings-related share option scheme” has the meaning given by paragraph 1 of Schedule 9;

“scheme” means a savings-related share option scheme, a share option scheme which is not a savings-related share option scheme or a profit sharing scheme, as the context may require;

“shares” includes stock;

^{F17}“specified age”, in relation to a scheme, means the age specified in pursuance of paragraph 8A of Schedule 9 as the specified age for the purposes of the scheme;]

“the trustees”, in relation to an approved profit sharing scheme or the shares of a participant in such a scheme, means the body of persons for the establishment of which the scheme must provide as mentioned in paragraph 30 of Schedule 9; and

“just instrument”, in relation to an approved profit sharing scheme, means the instrument referred to in paragraph 30(1)(c) of Schedule 9.

- (3) ^{M19}For the purposes of the application of the relevant provisions in relation to any share option scheme or profit sharing scheme, a person has a material interest ^{F18}in a company if he, either on his own or with one or more associates, or if any associate of his with or without such other associates,—
- (a) is 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, or
 - (b) where the company is a close company, possesses, or is entitled to acquire, such rights as would, in the event of the winding-up of the company or in any other circumstances, give an entitlement to receive more than 25 per cent., or in the case of a share option scheme which is not a savings-related share option

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scheme more than 10 per cent., of the assets which would then be available for distribution among the participants.]

In this subsection “associate” has the meaning given by section 417(3) and (4) [^{F18}and “participant” has the meaning given by section 417(1)].

- (4) ^{M20}Subsection (3) above shall have effect subject to the provisions of Part VI of Schedule 9.
- (5) ^{M21}For the purposes of subsection (2) above, a participant’s salary for a year of assessment means such of the emoluments of the office or employment by virtue of which he is entitled to participate in a profit sharing scheme as are liable to be paid in that year under deduction of tax pursuant to section 203 after deducting therefrom amounts included by virtue of Chapter II of this Part.
- (6) ^{M22}Section 839 shall apply for the purposes of the relevant provisions.
- (7) ^{M23}For the purposes of the relevant provisions a company is a member of a consortium owning another company if it is one of a number of companies which between them beneficially own not less than three-quarters of the other company’s ordinary share capital and each of which beneficially owns not less than one-twentieth of that capital.
- (8) ^{M24}Where the disposal referred to in section 186(4) is made from a holding of shares which were appropriated to the participant at different times, then, in determining for the purposes of the relevant provisions—
- (a) the initial market value and the locked-in value of each of those shares, ^{F19} . . .
 - (b) ^{F19}
- (9) ^{M25}Any of the relevant provisions with respect to—
- (a) the order in which any of a participant’s shares are to be treated as disposed of for the purposes of those provisions, or
 - (b) the shares in relation to which an event is to be treated as occurring for any such purpose,

shall have effect in relation to a profit sharing scheme notwithstanding any direction given to the trustees with respect to shares of a particular description or to shares appropriated to the participant at a particular time.

- (10) ^{M26}In the relevant provisions “workers’ cooperative” means a registered industrial and provident society, within the meaning of section 486, which is a cooperative society and the rules of which include provisions which secure—
- (a) that the only persons who may be members of it are those who are employed by, or by a subsidiary of, the society and those who are the trustees of its profit sharing scheme; and
 - (b) that, subject to any provision about qualifications for membership which is from time to time made by the members of the society by reference to age, length of service or other factors of any description, all such persons may be members of the society;

and in this subsection “cooperative society” has the same meaning as in section 1 of the ^{M27}Industrial and Provident Societies Act 1965 or, as the case may be, the ^{M28}Industrial and Provident Societies Act (Northern Ireland) 1969.

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Textual Amendments

- F13** Words in s. 187(2) substituted (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. 289, 290, **Sch. 10 para. 14(13)** (with ss. 60, 101(1), 171, 201(3)).
- F14** [S. 187\(2\)](#): definition of "pensionable age" repealed (19.7.1995) by [Pensions Act 1995 \(c. 26\)](#), ss. 126, 177, 180(2)(a), [Sch. 4 para. 12\(a\)](#), **Sch. 7 Pt. 2**
- F15** Word in s. 187(2) substituted (with effect in accordance with s. 116(2)(3) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), **s. 116(1)**
- F16** Words in s. 187(2) substituted (for the year 1991-92 and subsequent years of assessment) by virtue of [Finance Act 1991 \(c. 31\)](#), **s. 41(1)(2)**
- F17** [S. 187\(2\)](#): definition of "specified age" inserted by [Finance Act 1991 \(c. 31\)](#), **s. 38(4)**
- F18** Words in s. 187(3) substituted (in relation to accounting periods beginning after 31.3.1989) by [Finance Act 1989 \(c. 26\)](#), **Sch. 12 para. 9**
- F19** [S. 187\(8\)\(b\)](#) and preceding word repealed (with effect in accordance with s. 117(3) of the repealing Act) by [Finance Act 1996 \(c. 8\)](#), ss. 117(2), 205, **Sch. 41 Pt. 5(5)**, Note 1

Modifications etc. (not altering text)

- C5** [S. 187](#) modified (29.4.1996) by [Finance Act 1996 \(c. 8\)](#), **ss. 115(1)**, 116(3)
- C6** [S. 187](#) applied (29.4.1996) by [Finance Act 1996 \(c. 8\)](#), s. 114, **Sch. 16 para. 5(1)**

Marginal Citations

- M18** Source—1978 ss.53(2), 54(2), (4)(b), 6, 56(1), 57(1), (4), 61(1), [Sch.9 1, 16](#); 1980 s.46(4), [Sch.10 5\(b\), 8, 26\(1\)](#); 1982 s.40(8); 1983 s.25(1); 1984 [Sch.10 15\(1\), \(2\)](#); 1985 s.45(2)
- M19** Source—1970 s.285(6); 1978 [Sch.9 11\(3\)\(b\)](#); 1980 [Sch.10 26\(2\)](#); 1984 [Sch.10 4\(4\)](#)
- M20** Source—1987 s.33(2)
- M21** Source—1978 s.61(4); 1983 s.25(2)
- M22** Source—1978 [Sch.9 16](#); 1980 [Sch.10 26\(4\)](#); 1984 [Sch.10 15\(3\)](#)
- M23** Source—1978 [Sch.9 17](#); 1980 [Sch.10 26\(5\)](#); 1984 [Sch.10 15\(4\)](#); 1986 s.23(5)
- M24** Source—1978 s.55(6)
- M25** Source—1978 s.61(2)
- M26** Source—1978 [Sch.9 18](#); 1986 s.24(1)
- M27** 1965 c. 12.
- M28** 1969 c. 24. (N.I.).

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