

*Status: Point in time view as at 06/05/2005.*

**Changes to legislation:** *Income and Corporation Taxes Act 1988, SCHEDULE 10 is up to date with all changes known to be in force on or before 15 July 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)*

## SCHEDULES

### SCHEDULE 10

#### FURTHER PROVISIONS RELATING TO PROFIT SHARING SCHEMES

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

- C1** Sch. 10 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\(3\)](#))
- C2** Sch. 10 modified (29.4.1996) by [Finance Act 1996 \(c. 8\)](#), **s. 116(3)**
- C3** Sch. 10 continued (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](#))

##### *Limitations on contractual obligations of participants*

- 1 (1) <sup>M1</sup>Any obligation placed on the participant by virtue of paragraph 2(2) of Schedule 9 shall not prevent the participant from—
- (a) directing the trustees to accept an offer for any of his shares (“the original shares”) if the acceptance or agreement will result in a new holding being equated with the original shares for the purposes of capital gains tax; or
  - (b) directing the trustees to agree to a transaction affecting his shares or such of them as are of a particular class, if the transaction would be entered into pursuant to a compromise, arrangement or scheme applicable to or affecting—
    - (i) all the ordinary share capital of the company in question or, as the case may be, all the shares of the class in question; or
    - (ii) all the shares, or all the shares of the class in question, which are held by a class of shareholders identified otherwise than by reference to their employment or their participation in an approved scheme; or
  - (c) directing the trustees to accept an offer of cash, with or without other assets, for his shares if the offer forms part of a general offer which is made to holders of shares of the same class as his or of shares in the same company and which is made in the first instance on a condition such that if it is satisfied the person making the offer will have control of that company, within the meaning of section 416; or
  - [<sup>F1</sup>(cc) directing the trustees to accept an offer of a qualifying corporate bond, whether alone or with cash or other assets or both, for his shares if the offer forms part of a general offer which is made as mentioned in paragraph (c) above; or]
  - (d) agreeing after the expiry of the period of retention to sell the beneficial interest in his shares to the trustees for the same consideration as, in accordance with sub-paragraph (d) of paragraph 2(2) of Schedule 9, would be required to be obtained for the shares themselves.

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- (2) <sup>M2</sup>No obligation placed on the participant by virtue of paragraph 2(2)(c) of Schedule 9 shall be construed as binding his personal representatives to pay any sum to the trustees.
- (3) <sup>M3</sup>If, in breach of his obligation under paragraph 2(2)(b) of Schedule 9 a participant assigns, charges or otherwise disposes of the beneficial interest in any of his shares, then, as respects those shares, he shall be treated for the purposes of the relevant provisions as if at the time they were appropriated to him he was ineligible to participate in the scheme; and paragraph 6 below shall apply accordingly.
- [<sup>F2</sup>(4) In sub-paragraph (1)(cc) above “qualifying corporate bond” shall be construed in accordance with section 117 of the 1992 Act.]

#### Textual Amendments

- F1** Sch. 10 para. 1(1)(cc) inserted (with effect in accordance with s. 101(7) of the amending Act) by Finance Act 1994 (c. 9), s. 101(2)
- F2** Sch. 10 para. 1(4) inserted (with effect in accordance with s. 101(7) of the amending Act) by Finance Act 1994 (c. 9), s. 101(3)

#### Marginal Citations

- M1** Source—1978 s.54(2); 1979 Sch.7
- M2** Source—1978 s.54(1A); 1980 s.46(2)
- M3** Source—1978 s.54(3)

#### *The period of retention*

- 2 <sup>M4</sup>For the purposes of any of the relevant provisions, “the period of retention”, in relation to any of a participant’s shares, means the period beginning on the date on which they are appropriated to him and ending on the second anniversary of that date or, if it is earlier—
- (a) the date on which the participant ceases to be a director or employee of the grantor or, in the case of a group scheme, a participating company by reason of injury or disability or on account of his being dismissed by reason of redundancy, within the meaning of [<sup>F3</sup>the Employment Rights Act 1996] or the [<sup>F4</sup>Employment Rights (Northern Ireland) Order 1996]; or
  - (b) the date on which the participant reaches [<sup>F5</sup>the relevant age]; or
  - (c) the date of the participant’s death; [<sup>F6</sup>or]
  - (d) in a case where the participant’s shares are redeemable shares in a workers’ cooperative, the date on which the participant ceases to be employed by, or by a subsidiary of, the cooperative.

For the purposes of sub-paragraph (a) above, in the case of a group scheme, the participant shall not be treated as ceasing to be a director or employee of a participating company until such time as he is no longer a director or employee of any of the participating companies.

[<sup>F7</sup>In this paragraph, the reference to the relevant age is a reference, in the case of a scheme approved before the day on which the Finance Act 1991 was passed, [<sup>F8</sup>in the case of a man, to the age of 65, and in the case of a woman, to the age of 60] and, in the case of a scheme approved on or after that day, to the specified age.]

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#### Textual Amendments

- F3** Words in [Sch. 10 para. 2](#) substituted (22.8.1996) by [Employment Rights Act 1996 \(c. 18\), s. 243, Sch. 1 para. 35\(4\)\(b\)](#)
- F4** Words in [Sch. 10 para. 2](#) substituted (24.9.1996) by [The Employment Rights \(Northern Ireland\) Order 1996 \(S.I. 1996/1919 \(N.I. 16\)\), art. 1\(2\), Sch. 1 \(with Sch. 2\)](#)
- F5** Words in [Sch. 10 para. 2\(b\)](#) substituted by [Finance Act 1991 \(c. 31, SIF 63:1\), s. 38\(3\)](#)
- F6** Word at the end of [Sch. 10 para. 2\(c\)](#) inserted (retrospectively) by [Finance Act 1988 \(c. 39\), s. 146, Sch. 13 paras. 1, 9](#)
- F7** Words in [Sch. 10 para. 2](#) inserted by [Finance Act 1991 \(c. 31, SIF 63:1\), s. 38\(3\)](#)
- F8** Words in [Sch. 10 para. 2](#) substituted (19.7.1995) by [Pensions Act 1995 \(c. 26\), ss. 126, 180\(2\)\(a\), Sch. 4 para. 12\(b\), s. 178\(3\)](#)

#### Marginal Citations

- M4** Source—1978 s.54(4), (5); 1980 s.46(3); 1986 s.24(3)

#### *The appropriate percentage*

- 3 <sup>F9</sup>(1) For the purposes of any of the relevant provisions [<sup>F10</sup>under which an amount counts as employment income of an individual] by reason of the occurrence of an event relating to any of his shares, the “appropriate percentage” in relation to those shares is 100 per cent., unless sub-paragraph (2) below applies.
- (2) Where the individual—
- ceases to be a director or employee of the grantor or, in the case of a group scheme, a participating company as mentioned in paragraph 2(a) above, or
  - reaches the relevant age,
- before the event occurs, the “appropriate percentage” is 50 per cent., unless paragraph 6(4) below applies.]

#### Textual Amendments

- F9** [Sch. 10 para. 3](#) substituted (with effect in accordance with [s. 107\(3\)](#) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 117\(1\)](#)
- F10** Words in [Sch. 10 paras. 3\(1\), 6\(4\)](#) substituted (6.4.2003 with effect in accordance with [s. 723\(1\)](#) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), Sch. 6 para. 113\(2\)](#) (with [Sch. 7](#))

- <sup>F11</sup>3A (1) In paragraph 3 above the reference to the relevant age shall be construed as follows.
- (2) Where the scheme is approved before 25th July 1991 and the event occurs before 30th November 1993, the relevant age is
- <sup>F12</sup>(a) in the case of a man, 65, and
  - (b) in the case of a woman, 60.]
- (3) Where—
- the scheme is approved before 25th July 1991,
  - the event occurs on or after 30th November 1993,
  - the scheme defines the period of retention by reference to the age of 60 for both men and women, and

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- (d) the reference to that age is incorporated in the definition by virtue of an alteration approved by the Board under paragraph 4 of Schedule 9 before the event occurs,  
the relevant age is 60.
- (4) Where—
- (a) the scheme is approved before 25th July 1991,
  - (b) the event occurs on or after 30th November 1993, and
  - (c) sub-paragraph (3) above does not apply,
- the relevant age is [<sup>F13</sup>in the case of a man, 65, and in the case of a woman, 60.]
- (5) Where the scheme is approved on or after 25th July 1991, the relevant age is the specified age.]

#### Textual Amendments

- F11** Sch. 10 para. 3A inserted (3.5.1994) by [Finance Act 1994 \(c. 9\), s. 100\(3\)](#)
- F12** Words in Sch. 10 para. 3A(2) substituted (19.7.1995) by [Pensions Act 1995 \(c. 26\), s. 180\(2\)\(a\), Sch. 4 para. 12\(c\)](#)
- F13** Words in Sch. 10 para. 3A(4) substituted (19.7.1995) by [Pensions Act 1995 \(c. 26\), s. 180\(2\)\(a\), Sch. 4 para. 12\(d\)](#)

#### *Capital receipts*

- 4 (1) <sup>M5</sup>Money or money's worth is not a capital receipt for the purposes of section 186(3) if or, as the case may be, to the extent that—
- (a) it constitutes income in the hands of the recipient for the purposes of income tax; or
  - (b) it consists of the proceeds of a disposal falling within section 186(4); or
  - (c) it consists of new shares within the meaning of paragraph 5 below.
- (2) If, pursuant to a direction given by or on behalf of the participant or any person in whom the beneficial interest in the participant's shares is for the time being vested, the trustees—
- (a) dispose of some of the rights arising under a rights issue, as defined in section 186(8), and
  - (b) use the proceeds of that disposal to exercise other such rights,
- the money or money's worth which constitutes the proceeds of that disposal is not a capital receipt for the purposes of section 186(3).
- (3) If, apart from this sub-paragraph, the amount or value of a capital receipt would exceed the sum which, immediately before the entitlement to the receipt arose, was the locked-in value of the shares to which the receipt is referable, section 186(3) shall have effect as if the amount or value of the receipt were equal to that locked-in value.
- (4) Section 186(3) does not apply in relation to a capital receipt if the entitlement to it arises after the death of the participant to whose shares it is referable.

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#### Marginal Citations

**M5** Source—1978 s.56(2)-(5)

### *Company reconstructions*

- 5 (1) <sup>M6</sup>This paragraph applies where there occurs in relation to any of a participant's shares ("the original holding") a transaction which results in a new holding being equated with the original holding for the purposes of capital gains tax; and any such transaction is referred to below as a "company reconstruction".
- (2) Where an issue of shares of any of the following descriptions (in respect of which a charge to income tax arises) is made as part of a company reconstruction, those shares shall be treated for the purposes of this paragraph as not forming part of the new holding, that is to say—
- (a) redeemable shares or securities issued as mentioned in section 209(2)(c);
  - (b) share capital issued in circumstances such that section 210(1) applies; and
  - (c) share capital to which section 249 applies.
- (3) In this paragraph—
- "corresponding shares", in relation to any new shares, means those shares in respect of which the new shares are issued or which the new shares otherwise represent;
  - "new shares" means shares comprised in the new holding which were issued in respect of, or otherwise represent, shares comprised in the original holding; and
  - "original holding" has the meaning given by sub-paragraph (1) above.
- (4) Subject to the following provisions of this paragraph, in relation to a profit sharing scheme, references in the relevant provisions to a participant's shares shall be construed, after the time of the company reconstruction, as being or, as the case may be, as including references to any new shares, and for the purposes of the relevant provisions—
- (a) a company reconstruction shall be treated as not involving a disposal of shares comprised in the original holding;
  - (b) the date on which any new shares are to be treated as having been appropriated to the participant shall be that on which the corresponding shares were appropriated; and
  - (c) the conditions in paragraphs 10 to 12 and 14 of Schedule 9 shall be treated as fulfilled with respect to any new shares if they were (or were treated as) fulfilled with respect to the corresponding shares.
- (5) In relation to shares comprised in the new holding, section 186(5) shall apply as if the references in that subsection to the initial market value of the shares were references to their locked-in value immediately after the company reconstruction, which shall be determined as follows—
- (a) ascertain the aggregate amount of locked-in value immediately before the reconstruction of those shares comprised in the original holding which had at that time the same locked-in value; and

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- (b) distribute that amount *pro rata* among—
- (i) such of those shares as remain in the new holding, and
  - (ii) any new shares in relation to which those shares are the corresponding shares, according to their market value immediately after the date of their reconstruction;
- and section 186(5)(a) shall apply only to capital receipts after the date of the reconstruction.
- (6) For the purposes of the relevant provisions if, as part of a company reconstruction, trustees become entitled to a capital receipt, their entitlement to the capital receipt shall be taken to arise before the new holding comes into being and, for the purposes of sub-paragraph (5) above, before the date on which the locked-in value of any shares comprised in the original holding falls to be ascertained.
- (7) In the context of a new holding, any reference in this paragraph to shares includes securities and rights of any description which form part of the new holding for the purposes of Chapter II of Part IV of the [F14]1992] Act.

#### Textual Amendments

**F14** Word in [Sch. 10 para. 5\(7\)](#) 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\(58\)](#) (with [ss. 60, 101\(1\), 171, 201\(3\)](#))

#### Marginal Citations

**M6** Source—1978 s.57; 1979(C) Sch.7

- [F15]5A (1) Paragraph 5(2) to (6) above apply where there occurs in relation to any of a participant’s shares (“the original holding”) a relevant transaction which would result in a new holding being equated with the original holding for the purposes of capital gains tax, were it not for the fact that what would be the new holding consists of or includes a qualifying corporate bond; and “relevant transaction” here means a transaction mentioned in Chapter II of Part IV of the 1992 Act.
- (2) In paragraph 5(2) to (6) above as applied by this paragraph—
- (a) references to a company reconstruction are to the transaction referred to in sub-paragraph (1) above;
  - (b) references to the new holding are to what would be the new holding were it not for the fact mentioned in sub-paragraph (1) above;
  - (c) references to the original holding shall be construed in accordance with sub-paragraph (1) above (and not paragraph 5(1));
  - (d) references to shares, in the context of the new holding, include securities and rights of any description which form part of the new holding.
- (3) In sub-paragraph (1) above “qualifying corporate bond” shall be construed in accordance with section 117 of the 1992 Act.]

#### Textual Amendments

**F15** [Sch. 10 para. 5A](#) inserted (with effect in accordance with [s. 101\(8\)](#) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), [s. 101\(4\)](#) (with [s. 101\(13\)](#))

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*Excess or unauthorised shares*

- 6 (1)<sup>M7</sup> This paragraph applies in any case where—
- (a) the total amount of the initial market value of all the shares which are appropriated to an individual in any one year of assessment (whether under a single approved profit sharing scheme or under two or more such schemes) exceeds the relevant amount; or
  - (b) the trustees of an approved profit sharing scheme appropriate shares to an individual at a time when he is ineligible to participate in the scheme by virtue of paragraph 8 or 35 of Schedule 9.
- (2) In this paragraph—
- “excess shares” means any share which caused the relevant amount to be exceeded and any share appropriated after that amount was exceeded; and
  - “unauthorised shares” means any share appropriated as mentioned in sub-paragraph (1)(b) above.
- (3) For the purposes of sub-paragraph (1)(a) above, if a number of shares is appropriated to an individual at the same time under two or more approved profit sharing schemes, the same proportion of the shares appropriated at that time under each scheme shall be regarded as being appropriated before the relevant amount is exceeded.
- (4) For the purposes of any of the relevant provisions [F16 under which an amount counts as employment income of an individual] by reason of the occurrence of an event relating to any of his shares—
- (a) the appropriate percentage in relation to excess or unauthorised shares shall in every case be 100 per cent.; and
  - (b) without prejudice to section 187(8), the event shall be treated as relating to shares which are not excess or unauthorised shares before shares which are.
- (5) Excess or unauthorised shares which have not been disposed of before the release date or, if it is earlier, the date of the death of the participant whose shares they are, shall be treated for the purposes of the relevant provisions as having been disposed of by the trustees immediately before the release date or, as the case may require, the date of the participant’s death, for a consideration equal to their market value at that time.
- (6) The locked-in value at any time of any excess or unauthorised shares shall be their market value at that time.
- (7) Where there has been a company reconstruction to which paragraph 5 above applies, a new share (within the meaning of that paragraph) shall be treated as an excess or unauthorised share if the corresponding share (within the meaning of that paragraph) or, if there was more than one corresponding share, each of them was an excess or unauthorised share.

**Textual Amendments**

**F16** Words in Sch. 10 paras. 3(1), 6(4) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 113(2) (with Sch. 7)

**Marginal Citations**

**M7** Source—1978 s.58; 1983 s.25(1)



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*P.A.Y.E. deduction of tax*

- 7 (1) <sup>M8</sup>Subject to sub-paragraphs (4) and (5) below, where the trustees of an approved profit sharing scheme receive a sum of money which constitutes (or forms part of)—
- (a) the proceeds of a disposal of shares falling within section 186(4), or
  - (b) a capital receipt,
- in respect of which [<sup>F17</sup>an amount counts as employment income of the participant] in accordance with section 186, the trustees shall pay out of that sum of money to the company specified in sub-paragraph (3) below an amount equal to that on which income tax is so payable; and the company shall then pay over that amount to the participant but in so doing shall make a P.A.Y.E. deduction.
- (2) Where a participant disposes of his beneficial interest in any of his shares to the trustees of the scheme and the trustees are deemed by virtue of section 186(9) to have disposed of the shares in question, this paragraph shall 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 shares falling within section 186(4).
- (3) The company to which the payment mentioned in sub-paragraph (1) above is to be made is the company—
- (a) of which the participant is an employee or director at the time the trustees receive the sum of money referred to in that sub-paragraph, and
  - (b) whose employees are at that time eligible (subject to the terms of the scheme and Schedule 9) to be participants in the approved profit sharing scheme concerned,
- and if there is more than one company which falls within paragraphs (a) and (b) above, such one of those companies as the Board may direct.
- (4) Where the trustees of an approved profit sharing scheme receive a sum of money to which sub-paragraph (1) above applies but—
- (a) there is no company which falls within paragraphs (a) and (b) of sub-paragraph (3) above, or
  - (b) the Board is of opinion that it is impracticable for the company which falls within those paragraphs (or, as the case may be, any of them) to make a P.A.Y.E. deduction and accordingly direct that this sub-paragraph shall apply,
- then, in paying over to the participant the proceeds of the disposal or the capital receipt, the trustees shall make a P.A.Y.E. deduction in respect of an amount equal to that on which income tax is payable as mentioned in sub-paragraph (1) above as if the participant were a former employee of the trustees.
- (5) Where the trustees of an approved profit sharing scheme receive a sum of money to which sub-paragraph (1) above applies and the Board direct that this sub-paragraph shall apply—
- (a) the trustees shall make the payment mentioned in that sub-paragraph to the company specified in the Board's direction; and
  - (b) that company shall pay over that amount to the participant but in so doing shall make a P.A.Y.E. deduction, and for that purpose if the participant is not an employee of that company he shall be treated as a former employee;
- but no such direction shall be given except with the consent of the trustees, the company or companies (if any) specified in sub-paragraph (3) above and the company specified in the direction.



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- (6) Where, in accordance with this paragraph any person is required to make a P.A.Y.E. deduction in respect of any amount, that amount shall be treated for the purposes of [F18 section 684 of ITEPA 2003 (PAYE regulations) and PAYE regulations as PAYE income payable to the recipient], and, accordingly, such deduction shall be made as is required by those regulations.
- (7) Where, in connection with a transfer of a participant's shares to which sub-paragraph (c) of paragraph 2(2) of Schedule 9 applies, the trustees receive such a sum as is referred to in that sub-paragraph, that sum shall be treated for the purposes of the Income Tax Acts—
- (a) as a sum deducted by the trustees pursuant to a requirement to make a P.A.Y.E. deduction under sub-paragraph (4) above; and
  - (b) as referable to the income tax F19 . . . which, as a result of the transfer, [F20 is charged on the participant] by virtue of section 186(4).
- (8) Unless the Board otherwise direct, in the application of this paragraph to a sum of money which constitutes or forms part of the proceeds of a disposal of, or a capital receipt referable to, excess or unauthorised shares (within the meaning of paragraph 6 above), the trustees shall determine the amount of the payment mentioned in sub-paragraph (1) above or, as the case may be, the amount of the P.A.Y.E. deduction to be made under sub-paragraph (4) above as if the shares were not excess or unauthorised shares.

#### Textual Amendments

- F17** Words in [Sch. 10 para. 7\(1\)](#) substituted (6.4.2003 with effect in accordance with [s. 723\(1\)](#) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), [Sch. 6 para. 113\(3\)\(a\)](#) (with [Sch. 7](#))
- F18** Words in [Sch. 10 para. 7\(6\)](#) substituted (6.4.2003 with effect in accordance with [s. 723\(1\)](#) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), [Sch. 6 para. 113\(3\)\(b\)](#) (with [Sch. 7](#))
- F19** Word in [Sch. 10 para. 7\(7\)\(b\)](#) repealed (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. 113\(3\)\(c\)\(i\)](#), [Sch 8 Pt. 1](#) (with [Sch. 7](#))
- F20** Words in [Sch. 10 para. 7\(7\)\(b\)](#) substituted (6.4.2003 with effect in accordance with [s. 723\(1\)](#) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), [Sch. 6 para. 113\(3\)\(c\)\(ii\)](#) (with [Sch. 7](#))

#### Marginal Citations

- M8** Source—1978 s.59; 1980 s.46(8); 1987 Sch.15 11(3)

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