



Finance Act 1989

1989 CHAPTER 26

PART II

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER I

GENERAL

Employee share ownership trusts

67 Tax relief.

- (1) This section applies where—
 - (a) a company expends a sum in making a payment by way of contribution to the trustees of a trust which is a qualifying employee share ownership trust at the time the sum is expended,
 - (b) at that time, the company or a company which it then controls has employees who are eligible to benefit under the terms of the trust deed,
 - (c) at that time the company is resident in the United Kingdom,
 - (d) before the expiry of the expenditure period the sum is expended by the trustees for one or more of the qualifying purposes, and
 - (e) before the end of the claim period a claim for relief under this section is made.
- (2) In such a case the sum—
 - (a) shall be deducted in computing for the purposes of Schedule D the [^{F1}profits] of a trade carried on by the company, or
 - (b) if the company is an investment company or a company in the case of which section 75 of the Taxes Act 1988 applies by virtue of section 76 of that Act, shall be treated as expenses of management.

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- (3) For the purposes of subsection (1)(b) above, the question whether one company is controlled by another shall be construed in accordance with section 840 of the Taxes Act 1988.
- (4) For the purposes of subsection (1)(d) above each of the following is a qualifying purpose—
- (a) the acquisition of shares in the company which established the trust;
 - (b) the repayment of sums borrowed;
 - (c) the payment of interest on sums borrowed;
 - (d) the payment of any sum to a person who is a beneficiary under the terms of the trust deed;
 - (e) the meeting of expenses.
- (5) For the purposes of subsection (1)(d) above the expenditure period is the period of nine months beginning with the day following the end of the period of account in which the sum is charged as an expense of the company, or such longer period as the Board may allow by notice given to the company.
- (6) For the purposes of subsection (1)(e) above the claim period is the period of two years beginning with the day following the end of the period of account in which the sum is charged as an expense of the company.
- (7) For the purposes of this section the trustees of an employee share ownership trust shall be taken to expend sums paid to them in the order in which the sums are received by them (irrespective of the number of companies making payments).

Textual Amendments

F1 Words in s. 67(2)(a) substituted (31.7.1998) by 1998 c. 36, s. 46(3), **Sch. 7 para. 3**

Modifications etc. (not altering text)

C1 See Finance Act 1990 (c. 29) ss.31–40—*roll-over relief for disposal of assets to employee share ownership trusts*

68 Principal charges to tax.

- (1) This section applies where a chargeable event (within the meaning of section 69 below) occurs in relation to the trustees of an employee share ownership trust.
- (2) In such a case—
- (a) the trustees shall be treated as receiving, when the event occurs, annual profits or gains whose amount is equal to the chargeable amount (within the meaning of section 70 below),
 - (b) the profits or gains shall be chargeable to tax under Case VI of Schedule D for the year of assessment in which the event occurs, and
 - (c) the rate at which the tax is chargeable shall be [^{F2}the rate applicable to trusts] for the year of assessment in which the event occurs.
- (3) If the whole or any part of the tax assessed on the trustees is not paid before the expiry of the period of six months beginning with the day on which the assessment becomes final and conclusive, a notice of liability to tax under this subsection may be served

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on a qualifying company and the tax or the part unpaid (as the case may be) shall be payable by the company on service of the notice.

- (4) Where a notice of liability is served under subsection (3) above—
- (a) any interest which is due on the tax or the part (as the case may be) and has not been paid by the trustees, and
 - (b) any interest accruing due on the tax or the part (as the case may be) after the date of service,
- shall be payable by the company.
- (5) Where a notice of liability is served under subsection (3) above and any amount payable by the company (whether on account of tax or interest) is not paid by the company before the expiry of the period of three months beginning with the date of service, the amount unpaid may be recovered from the trustees (without prejudice to the right to recover it instead from the company).
- (6) For the purposes of this section each of the following is a qualifying company—
- (a) the company which established the employee share ownership trust;
 - (b) any company falling within subsection (7) below.
- (7) A company falls within this subsection if, before it is sought to serve a notice of liability on it under subsection (3) above—
- (a) it has paid a sum to the trustees, and
 - (b) the sum has been deducted as mentioned in section 67(2)(a) above or treated as mentioned in section 67(2)(b) above.

Textual Amendments

F2 Words in s. 68(2)(c) substituted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras.20, 25(1)

Modifications etc. (not altering text)

C2 See Finance Act 1990 (c. 29) ss.31–40—*roll-over relief for disposal of assets to employee share ownership trusts*

69 Chargeable events.

- (1) For the purposes of section 68 above each of the following is a chargeable event in relation to the trustees of an employee share ownership trust—
- (a) the transfer of securities by the trustees, if the transfer is not a qualifying transfer;
 - (b) the transfer of securities by the trustees to persons who are at the time of the transfer beneficiaries under the terms of the trust deed, if the terms on which the transfer is made are not qualifying terms;
 - (c) the retention of securities by the trustees at the expiry of the [^{F3}qualifying period] beginning with the date on which they acquired them;
 - (d) the expenditure of a sum by the trustees for a purpose other than a qualifying purpose.
- [^{F4}(e) where—
- (i) the trustees make a qualifying transfer within subsection (3AA) below for a consideration, and

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- (ii) they do not, during the period specified in subsection (5A) below, expend a sum of not less than the amount of that consideration for one or more qualifying purposes, the expiry of that period.]
- (2) For the purposes of subsection (1)(a) above a transfer is a qualifying transfer if it is made to a person who at the time of the transfer is a beneficiary under the terms of the trust deed.
- (3) For the purposes of subsection (1)(a) above a transfer is also a qualifying transfer if—
- (a) it is made to the trustees of a scheme which at the time of the transfer is a profit sharing scheme approved under Schedule 9 to the Taxes Act 1988, and
 - (b) it is made for a consideration which is not less than the price the securities might reasonably be expected to fetch on a sale in the open market.
- [^{F5}(3AA) For the purposes of subsection (1)(a) above a transfer is also a qualifying transfer if—
- (a) it is a transfer of relevant shares made to the trustees of the plan trust of an employee share ownership plan,
 - (b) the plan is approved under Schedule 8 to the Finance Act 2000 when the transfer is made, and
 - (c) the consideration (if any) for which the transfer is made does not exceed the market value of the shares.
- (3AB) For the purpose of determining whether a transfer by the trustees is a qualifying transfer within subsection (3AA) above, where on or after 21st March 2000—
- (a) the trustees transfer or dispose of part of a holding of shares (whether by way of a qualifying transfer or otherwise), and
 - (b) the holding includes any relevant shares,
- the relevant shares shall be treated as transferred or disposed of before any other shares included in that holding.
- For this purpose “holding” means any number of shares of the same class held by the trustees, growing or diminishing as shares of that class are acquired or disposed of.
- (3AC) For the purposes of subsections (3AA) and (3AB) above—
- “market value” has the same meaning as in Schedule 8 to the Finance Act 2000; and
- “relevant shares” means—
- (i) shares that are held by the trustees of the employee share ownership trust at midnight on 20th March 2000, and
 - (ii) shares purchased by those trustees with original funds after that time.
- (3AD) For the purposes of subsection (3AC) above—
- (a) “original funds” means any money held by the trustees of the employee share ownership trust in a bank or building society account at midnight on 20th March 2000, and
 - (b) any payment made by the trustees after that time (whether to acquire shares or otherwise) shall be treated as made out of original funds (and not out of money received after that time) until those funds are exhausted.]

[^{F6}(3A) For the purposes of subsection (1)(a) above a transfer is also a qualifying transfer if it is made by way of exchange in circumstances mentioned in section 85(1) of the Capital Gains Tax Act 1979 or section 135(1) of the Taxation of Chargeable Gains Act 1992.]

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(4) For the purposes of subsection (1)(b) above a transfer of securities is made on qualifying terms if—

- (a) all the securities transferred at the same time [^{F7}other than those transferred on a transfer such as is mentioned in subsection (4ZA) below] are transferred on similar terms,
- (b) securities have been offered to all the persons who are beneficiaries under the terms of the trust deed [^{F8}by virtue of a rule which conforms with paragraph 4(2), (3) or (4) of Schedule 5 to this Act] when the transfer is made, and
- (c) securities are transferred to all such [^{F9}persons] who have accepted.

[^{F10}(4ZA) For the purposes of subsection (1)(b) above a transfer of securities is also made on qualifying terms if—

- (a) it is made to a person exercising a right to acquire shares, and
- (b) that right was obtained in accordance with the provisions of a savings-related share option scheme within the meaning of Schedule 9 to the Taxes Act 1988—
 - (i) which was established by, or by a company controlled by, the company which established the trust, and
 - (ii) which is approved under that Schedule, and
- (c) that right is being exercised in accordance with the provisions of that scheme, and
- (d) the consideration for the transfer is payable to the trustees.]

[^{F11}(4A) For the purposes of subsection (1)(c) above the qualifying period is—

- (a) seven years, in the case of trusts established on or before the day on which the Finance Act 1994 was passed;
- (b) twenty years, in the case of other trusts;

and for this purpose a trust is established when the deed under which it is established is executed.]

(5) For the purposes of subsection (1)(d) [^{F12}or (e)] above each of the following is a qualifying purpose—

- (a) the acquisition of shares in the company which established the trust;
- (b) the repayment of sums borrowed;
- (c) the payment of interest on sums borrowed;
- (d) the payment of any sum to a person who is a beneficiary under the terms of the trust deed;
- (e) the meeting of expenses.

[^{F13}(5A) The period referred to in paragraph (e) of subsection (1) above is the period—

- (a) beginning with the qualifying transfer mentioned in that paragraph, and
- (b) ending nine months after the end of the period of account in which that qualifying transfer took place.

For this purpose the period of account means the period of account of the company that established the employee share ownership trust.]

(6) For the purposes of subsection (4) above, the fact that terms vary according to the levels of remuneration of beneficiaries, the length of their service, or similar factors, shall not be regarded as meaning that the terms are not similar.

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- (7) In ascertaining for the purposes of this section whether particular securities are retained, securities acquired earlier by the trustees shall be treated as transferred by them before securities acquired by them later.
- (8) For the purposes of this section trustees—
- (a) acquire securities when they become entitled to them (subject to the exceptions in subsection (9) below);
 - (b) transfer securities to another person when that other becomes entitled to them;
 - (c) retain securities if they remain entitled to them.
- (9) The exceptions are these—
- (a) if securities are issued to trustees in exchange in circumstances mentioned in section [F14]135(1) of the Taxation of Chargeable Gains Act 1992], they shall be treated as having acquired them when they became entitled to the securities for which they are exchanged;
 - (b) if trustees become entitled to securities as a result of a reorganisation, they shall be treated as having acquired them when they became entitled to the original shares which those securities represent (construing “reorganisation” and “original shares” in accordance with section [F14]126] of that Act).
- (10) If trustees agree to take a transfer of securities, for the purposes of this section they shall be treated as becoming entitled to them when the agreement is made and not on a later transfer made pursuant to the agreement.
- (11) If trustees agree to transfer securities to another person, for the purposes of this section the other person shall be treated as becoming entitled to them when the agreement is made and not on a later transfer made pursuant to the agreement.
- (12) For the purposes of this section the following are securities—
- (a) shares;
 - (b) debentures.

Textual Amendments

- F3** Words in s. 69(1)(c) substituted (3.5.1994) by 1994 c. 9, s. 102, **Sch. 13 para. 6(2)**
- F4** S. 69(1)(e) inserted (28.7.2000) by 2000 c. 17, s. 55(2)
- F5** S. 69(3AA)-(3AD) inserted (28.7.2000) by 2000 c. 17, s. 55(3)
- F6** S. 69(3A) inserted (16.7.1992, the amending provision applying in relation to exchanges made on or after 1.1.1992) by Finance (No. 2) Act 1992 (c. 48), s. 36(1)(2)
- F7** Words in s. 69(4)(a) inserted (29.4.1996 with effect as mentioned in s. 120(12) of the amending Act) by 1996 c. 8, s. 120(3)(a)
- F8** Words in s. 69(4)(b) inserted (29.4.1996 with effect as mentioned in s. 120(12) of the amending Act) by 1996 c. 8, s. 120(3)(b)
- F9** Word in s. 69(4)(c) substituted (29.4.1996 with effect as mentioned in s. 120(12) of the amending Act) by 1996 c. 8, s. 120(3)(c)
- F10** S. 69(4ZA) inserted (29.4.1996 with effect as mentioned in s. 120(12) of the amending Act) by 1996 c. 8, s. 120(4)
- F11** S. 69(4A) inserted (3.5.1994) by 1994 c. 9, s. 102, **Sch. 13 para. 6(3)**
- F12** Words in s. 69(5) inserted (28.7.2000) by 2000 c. 17, s. 55(4)
- F13** S. 69(5A) inserted (28.7.2000) by 2000 c. 17, s. 55(5)

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F14 Words in s. 69(9) substituted (in relation to tax for the year 1992-1993 and subsequent years subject as mentioned in s. 289 of the substituting Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, [Sch. 10 para. 19\(1\)](#) (with s. 60, 101(1), 171, 201(3))

Modifications etc. (not altering text)

C3 See [Finance Act 1990 \(c. 29\)](#) ss.31–40—*roll-over relief for disposal of assets to employee share ownership trusts*

C4 Definition employed for purposes of [Finance Act 1990 \(c. 29\)](#) s. 36—*roll-over relief where replacement asset owned*

70 Chargeable amounts.

(1) This section has effect to determine the chargeable amount for the purposes of section 68 above.

(2) If the chargeable event falls within section 69(1)(a), (b) or (c) above the following rules shall apply—

(a) if the event constitutes a disposal of the securities by the trustees for the purposes of the [^{F15}[Taxation of Chargeable Gains Act 1992](#)], the chargeable amount is an amount equal to the sums allowable under section [^{F15}38(1)(a)] and (b) of that Act;

(b) if the event does not constitute such a disposal, the chargeable amount is an amount equal to the sums which would be so allowable had the trustees made a disposal of the securities for the purposes of that Act at the time the chargeable event occurs.

(3) If the chargeable event falls within section 69(1)(d) above the chargeable amount is an amount equal to the sum concerned.

[^{F16}(4) If the chargeable event falls within section 69(1)(e) above the chargeable amount is an amount equal to—

(a) the amount of the consideration received for the qualifying transfer mentioned in section 69(1)(e) above, less

(b) the amount of any expenditure by the trustees for a qualifying purpose during the period mentioned in section 69(5A) above.]

Textual Amendments

F15 Words in s. 70(2) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the substituting Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, [Sch. 10 para. 19\(2\)](#) (with ss. 60, 101(1), 201(3))

F16 [S. 70\(4\)](#) inserted (28.7.2000) by [2000 c. 17](#), s. 55(6)

Modifications etc. (not altering text)

C5 See [Finance Act 1990 \(c. 29\)](#) ss.31–40—*roll-over relief for disposal of assets to employee share ownership trusts*

71 Further charges to tax: borrowing.

(1) This section applies where—

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- (a) a chargeable event (within the meaning of section 69 above) occurs in relation to the trustees of an employee share ownership trust,
 - (b) at the time the event occurs anything is outstanding in respect of the principal of an amount or amounts borrowed at any time by the trustees, and
 - (c) the chargeable event is one as regards which section 72(2)(b) below applies.
- (2) In the following provisions of this section—
- (a) “the initial chargeable event” means the event referred to in subsection (1)(a) above, and
 - (b) “the total outstanding amount” means the total amount outstanding, at the time the initial chargeable event occurs, in respect of the principal of an amount or amounts borrowed at any time by the trustees.
- (3) If any of the total outstanding amount is repaid after the initial chargeable event occurs, a further chargeable event shall occur in relation to the trustees at the end of the year of assessment in which the repayment is made.
- (4) In such a case—
- (a) the trustees shall be treated as receiving, when the further event occurs, annual profits or gains whose amount is equal to the chargeable amount,
 - (b) the profits or gains shall be chargeable to tax under Case VI of Schedule D for the year of assessment at the end of which the further event occurs, and
 - (c) the rate at which the tax is chargeable shall be [^{F17}the rate applicable to trusts] for the year of assessment at the end of which the further event occurs.
- (5) Subject to subsection (6) below, for the purposes of subsection (4) above the chargeable amount is an amount equal to the aggregate of the total outstanding amount repaid in the year of assessment.
- (6) In a case where section 72(2)(b) below had effect in the case of the initial chargeable event, for the purposes of subsection (4) above the chargeable amount is an amount equal to the smaller of—
- (a) the aggregate of the total outstanding amount repaid in the year of assessment, and
 - (b) an amount found by applying the formula A-B-C.
- (7) For the purposes of subsection (6) above—
- (a) A is the amount which would be the chargeable amount for the initial chargeable event apart from section 72(2) below,
 - (b) B is the chargeable amount for the initial chargeable event, and
 - (c) C is the amount (if any) found under subsection (8) below.
- (8) If, before the further chargeable event occurs, one or more prior chargeable events have occurred in relation to the trustees by virtue of the prior repayment of any of the total outstanding amount found for the time the initial chargeable event occurs, the amount found under this subsection is an amount equal to the chargeable amount for the prior chargeable event or to the aggregate of the chargeable amounts for the prior chargeable events (as the case may be).
- (9) In a case where—
- (a) a chargeable event (within the meaning of section 69 above) occurs in relation to the trustees in circumstances mentioned in subsection (1) above,

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- (b) a sum falls to be included in the total outstanding amount found for the time the event occurs,
 - (c) another chargeable event (within the meaning of that section) occurs in relation to the trustees in circumstances mentioned in subsection (1) above, and
 - (d) the same sum or a part of it would (apart from this subsection) fall to be included in the total outstanding amount found for the time the event occurs,
- the sum or part (as the case may be) shall not be included in the total outstanding amount found for the time the other chargeable event occurs.
- (10) In ascertaining for the purposes of this section whether a repayment is in respect of a particular amount, amounts borrowed earlier shall be taken to be repaid before amounts borrowed later.
- (11) Subsections (3) to (7) of section 68 above shall apply where tax is assessed by virtue of this section as they apply where tax is assessed by virtue of that section.

Textual Amendments

F17 Words in s. 71(4)(c) substituted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras.20, **25(1)**

Modifications etc. (not altering text)

C6 See [Finance Act 1990 \(c. 29\)](#) ss.31–40—*roll-over relief for disposal of assets to employee share ownership trusts*

72 Limit on chargeable amount.

- (1) For the purposes of this section each of the following is a chargeable event in relation to the trustees of an employee share ownership trust—
- (a) an event which is a chargeable event by virtue of section 69 above;
 - (b) an event which is a chargeable event by virtue of section 71 above.
- (2) If a chargeable event (the event in question) occurs in relation to the trustees of an employee share ownership trust, the following rules shall apply—
- (a) the amount which would (apart from this subsection) be the chargeable amount for the event in question shall be aggregated, for the purposes of paragraph (b) below, with the chargeable amounts for other chargeable events (if any) occurring in relation to the trustees before the event in question,
 - (b) if the amount which would (apart from this subsection) be the chargeable amount for the event in question (or the aggregate found under paragraph (a) above, if there is one) exceeds the deductible amount, the chargeable amount for the event in question shall be the amount it would be apart from this subsection less an amount equal to the excess, and
 - (c) section 70(2) and (3) and section 71(5) above shall have effect subject to paragraph (b) above.
- (3) For the purposes of subsection (2) above the deductible amount (as regards the event in question) is an amount equal to the total of the sums falling within subsection (4) below.

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- (4) A sum falls within this subsection if it has been received by the trustees before the occurrence of the event in question and—
- (a) it has been deducted as mentioned in section 67(2)(a) above, or treated as mentioned in section 67(2)(b) above, before the occurrence of that event, or
 - (b) it would fall to be so deducted or treated if a claim for relief under section 67 above had been made immediately before the occurrence of that event.

Modifications etc. (not altering text)

C7 See Finance Act 1990 (c. 29) ss.31–40—*roll-over relief for disposal of assets to employee share ownership trusts*

73 Information.

- (1) An inspector may by notice in writing require a return to be made by the trustees of an employee share ownership trust if they have at any time received a sum which has been deducted as mentioned in section 67(2)(a) above or treated as mentioned in section 67(2)(b) above.
- (2) Where he requires such a return to be made the inspector shall specify the information to be contained in it.
- (3) The information which may be specified is information the inspector needs for the purposes of sections 68 to 72 above, and may include information about—
 - (a) sums received (including sums borrowed) by the trustees;
 - (b) expenditure incurred by them;
 - (c) assets acquired by them;
 - (d) transfers of assets made by them.
- (4) The information which may be required under subsection (3)(a) above may include the persons from whom the sums were received.
- (5) The information which may be required under subsection (3)(b) above may include the purpose of the expenditure and the persons receiving any sums.
- (6) The information which may be specified under subsection (3)(c) above may include the persons from whom the assets were acquired and the consideration furnished by the trustees.
- (7) The information which may be included under subsection (3)(d) above may include the persons to whom assets were transferred and the consideration furnished by them.
- (8) In a case where a sum has been deducted as mentioned in section 67(2)(a) above, or treated as mentioned in section 67(2)(b) above, the inspector shall send to the trustees to whom the payment was made a certificate stating—
 - (a) that a sum has been so deducted or so treated, and
 - (b) what sum has been so deducted or so treated.
- (9) In the Table in section 98 of the ^{M1}Taxes Management Act 1970 (penalties for failure to comply with notices etc.) at the end of the first column there shall be inserted— “ Section 73 of the Finance Act 1989 ”.

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Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Cross Heading: Employee share ownership trusts. (See end of Document for details)

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Modifications etc. (not altering text)

C8 See Finance Act 1990 (c. 29) ss.31–40—.roll-over relief for disposal of assets to employee share ownership trusts

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Marginal Citations

M1 1970 c. 9.

74 Interpretation.

Schedule 5 to this Act shall have effect to determine whether, for the purposes of sections 67 to 73 above, a trust is at a particular time—

- (a) an employee share ownership trust;
- (b) a qualifying employee share ownership trust.

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Modifications etc. (not altering text)

C9 See Finance Act 1990 (c. 29) ss.31–40—.roll-over relief for disposal of assets to employee share ownership trusts

Status:

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