



Finance Act 1989

1989 CHAPTER 26

PART II

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER I

GENERAL

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 [^{F1}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.

[^{F2}(e) where—

- (i) the trustees make a qualifying transfer within subsection (3AA) below for a consideration, and
 - (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.]

Status: Point in time view as at 28/07/2000. This version of this provision has been superseded.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, Section 69. (See end of Document for details)

- (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.
- [^{F3}(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.]

[^{F4}(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.]

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

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- (a) all the securities transferred at the same time [^{F5}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 [^{F6}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 [^{F7}persons] who have accepted.

[^{F8}(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.]

[^{F9}(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) [^{F10}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.

[^{F11}(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.

(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.

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- (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 ^{F12}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 ^{F12}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

- F1** Words in s. 69(1)(c) substituted (3.5.1994) by 1994 c. 9, s. 102, **Sch. 13 para. 6(2)**
- F2** S. 69(1)(e) inserted (28.7.2000) by 2000 c. 17, s. 55(2)
- F3** S. 69(3AA)-(3AD) inserted (28.7.2000) by 2000 c. 17, s. 55(3)
- F4** 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)
- F5** 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)
- F6** 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)
- F7** 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)
- F8** 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)
- F9** S. 69(4A) inserted (3.5.1994) by 1994 c. 9, s. 102, **Sch. 13 para. 6(3)**
- F10** Words in s. 69(5) inserted (28.7.2000) by 2000 c. 17, s. 55(4)
- F11** S. 69(5A) inserted (28.7.2000) by 2000 c. 17, s. 55(5)
- F12** 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))

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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
- C2** Definition employed for purposes of [Finance Act 1990 \(c. 29\)](#) s. 36—roll-over relief where replacement asset owned

Status:

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Changes to legislation:

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