



Finance Act 1991

1991 CHAPTER 31

PART II

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER I

GENERAL

Profit-related pay, share schemes etc.

39 Approved share option schemes: price at which shares may be acquired.

- (1) In Schedule 9 to the Taxes Act 1988 (requirements by reference to which share option schemes approved) for paragraph 29 there shall be substituted—

- “29 (1) The price at which scheme shares may be acquired by the exercise of a right obtained under the scheme—
- (a) must be stated at the time the right is obtained, and
 - (b) except where stated under provision included in the scheme pursuant to sub-paragraph (2) below, must not be manifestly less than the market value of shares of the same class at the material time.
- (2) The scheme may provide that, if sub-paragraph (3) below applies, scheme shares may be acquired by the exercise of a right obtained under the scheme at a price which is not manifestly less than 85 per cent. of the market value of shares of the same class at the material time.
- (3) This sub-paragraph applies if the conditions specified in sub-paragraph (4)(a) and, as the case may be, (b) or (c) below, are met—

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- (a) where at the time the right is obtained the scheme is not a group scheme, as respects the grantor;
 - (b) where at the time the right is obtained the scheme is a group scheme, as respects each company to which the scheme is expressed to extend at that time.
- (4) The conditions are—
- (a) that the company has established, or is at the time the right is obtained a participating company in relation to, a scheme which is at that time an approved savings-related share option scheme or an approved profit sharing scheme (a “qualifying scheme);
 - (b) where there is only one qualifying scheme, that every employee eligible to participate in that scheme at the time the right is obtained has, in the twelve months immediately preceding that time, been informed by an appropriate person of the scheme’s existence;
 - (c) where there is more than one qualifying scheme, that, in the case of each of those schemes, every employee eligible to participate in that scheme at the time the right is obtained has, in the twelve months immediately preceding that time, been informed by an appropriate person of the scheme’s existence.
- (5) In determining whether the condition specified in sub-paragraph (4)(a) above is met, the withdrawal of approval under paragraph 3 above with effect from a time before the right is obtained shall be disregarded if the withdrawal takes place retrospectively from a time after the right is obtained.
- (6) For the purposes of sub-paragraph (4)(b) and (c) above, an employee has been informed of the existence of a scheme by an appropriate person if he has been informed by one or more of the following—
- (a) a company by virtue of employment with which the employee is eligible to participate in the scheme,
 - (b) the grantor, and
 - (c) where the scheme under which the right to acquire the shares is obtained is a group scheme, any other company which is a participating company in relation to that scheme.
- (7) The scheme may provide for such variation of the price at which scheme shares may be acquired as may be necessary to take account of any variation in the share capital of which the scheme shares form part.
- (8) In this paragraph, references to the material time are to the time the right to acquire the scheme shares is obtained or, if the Board and the grantor agree in writing, such earlier time or times as may be provided in the agreement.”
- (2) Section 185 of that Act (tax reliefs for approved share option schemes) shall be amended as mentioned in subsections (3) to (6) below.
- (3) In subsection (2) (exemption from tax in respect of receipt under approved scheme of right to acquire shares) for “Subject to subsections (4) and (6) below” there shall be substituted “Subject to subsections (6) to (6B) below”.

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- (4) In subsection (4) (which relates to certain rights to acquire shares obtained under a savings-related share option scheme) for “Subsections (2) and (3) above” there shall be substituted “Subsection (3) above”.
- (5) For subsection (6) there shall be substituted—
- “(6) Subsection (6A) below applies where—
- (a) a person obtains a right to acquire shares under a scheme which is not a savings-related share option scheme, and
 - (b) the price at which he may acquire shares by exercising the right is not applicable by virtue of provision included in the scheme pursuant to paragraph 29(2) of Schedule 9.
- (6A) Where 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.
- (6B) Subsection (6A) above shall also apply where—
- (a) a person obtains a right to acquire shares under a scheme which is not a savings-related share option scheme, and
 - (b) the price at which he may acquire shares by exercising the right is applicable by virtue of provision included in the scheme pursuant to paragraph 29(2) of Schedule 9;
- but with the substitution for “the market value” of “85 per cent. of the market value”.
- (6) In subsections (7) and (8), for “(6)” there shall be substituted “(6A)”.
- (7) Subsections (1), (5) and (6) above shall come into force on 1st January 1992.
- (8) Subsections (3) and (4) above shall apply in relation to rights obtained on or after 1st January 1992.

Commencement Information

II S. 39 partly in force at Royal Assent; s. 39(1),(5) and (6) in force at 01.01.1992.

Status:

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Changes to legislation:

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