
Status: Point in time view as at 31/07/1998.

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Finance Act 1998

1998 CHAPTER 36

PART III

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER I

INCOME TAX AND CORPORATION TAX

Employee share incentives

49 Employee share options.

- (1) In section 135 of the Taxes Act 1988, in each of subsections (2) and (5) (in accordance with which there is a charge to tax when an employee obtains a share option that is exercisable more than seven years after being obtained), for “seven” there shall be substituted “ten”.
- (2) Subsection (1) above has effect in relation to rights obtained on or after 6th April 1998.

50 Conditional acquisition of shares.

- (1) After section 140 of the Taxes Act 1988 there shall be inserted the following sections—

“140A Conditional acquisition of shares.

- (1) This section applies where—
 - (a) a beneficial interest in any shares in a company (“the employee’s interest”) is acquired by any person (“the employee”) as a director or employee of that or another company; and
 - (b) the employee acquires that interest on terms that make his interest in the shares only conditional.

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- (2) If the terms on which the employee acquires the employee's interest are such that his interest in the shares in question will or might continue to be only conditional until a time more than five years after his acquisition of the interest, tax shall be chargeable under Schedule E in respect of that interest on the basis that it is emoluments of the office or employment concerned.
- (3) In any other case, there shall (subject to the following provisions of this section) be no tax chargeable on the employee under Schedule E in respect of his acquisition of the interest except any tax which is so chargeable by virtue only of section 135 or 162.
- (4) If, in a case falling within subsection (2) or (3) above—
 - (a) the shares cease, without the employee ceasing to have a beneficial interest in them, to be shares in which the employee's interest is only conditional, or
 - (b) the employee, not having become chargeable by virtue of this subsection in relation to the shares, sells or otherwise disposes of the employee's interest or any other beneficial interest in them,
 he shall, for the year of assessment in which they so cease, or in which the sale or other disposal takes place, be chargeable to tax under Schedule E on the amount specified in subsection (5) below.
- (5) That amount is the amount (if any) by which the sum of the deductible amounts is exceeded by the market value of the employee's interest immediately after that interest ceases to be only conditional or, as the case may be, at the time of the sale or other disposal.
- (6) For the purposes of subsection (5) above the market value of the employee's interest at any time is the amount that might reasonably be expected to be obtained from a sale of that interest in the open market at that time.
- (7) For those purposes the deductible amounts are—
 - (a) the amount or value of the consideration given for the employee's interest;
 - (b) any amounts on which the employee has become chargeable to tax under Schedule E in respect of his acquisition of the employee's interest;
 - (c) any amounts on which the employee has, by reference to an event occurring not later than the time of the event by virtue of which a charge arises under this section, become chargeable to tax in respect of the shares under section 78 or 79 of the ^{MI}Finance Act 1988 (unapproved employee share schemes).
- (8) Where the employee dies holding the employee's interest this section shall have effect—
 - (a) as if he had disposed of that interest immediately before his death; and
 - (b) as if the market value of the interest at the time of that disposal were to be determined for the purposes of subsection (5) above on the basis—
 - (i) that it is known that the disposal is being made immediately before the employee's death; and

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(ii) that any restriction on disposal subject to which the employee holds the shares is to be disregarded in so far as it is a restriction terminating on his death.

(9) Any reference in this section or section 140B or 140C to shares in a company includes a reference to securities issued by a company; and the references in subsection (7)(c) above to an event include references to the expiry of a period.

140B Consideration for shares conditionally acquired.

- (1) This section applies in relation to any shares for determining the amount or value of the consideration referred to in section 140A(7)(a).
- (2) Subject to the following provisions of this section, that consideration is any given by—
 - (a) the employee; or
 - (b) in a case where section 140H(1)(b) applies and the shares were acquired by another person, that other person,in respect of the acquisition of an interest in the shares.
- (3) The amount or value of the consideration given by any person for an interest in the shares shall include—
 - (a) the amount or value of any consideration given for a right to acquire those shares; and
 - (b) the amount or value of any consideration given for anything by virtue of which the employee's interest in the shares ceases to be only conditional.
- (4) Where any consideration is given partly in respect of one thing and partly in respect of another, the amount given in respect of the different things shall be determined on a just and reasonable apportionment.
- (5) The consideration which for the purposes of this section is taken to be given wholly or partly for anything shall not include the performance of any duties of or in connection with the office or employment by reference to which the interest in the shares in question has been acquired by a person as a director or employee of a company.
- (6) No amount shall be counted more than once in the computation of the amount or value of any consideration.
- (7) Subsections (1) to (3) of section 136 shall apply for determining for the purposes of subsection (3)(a) above the amount or value of the consideration given for a right to acquire any shares as they apply for determining such an amount for the purposes of section 135.

140C Cases where interest to be treated as only conditional.

- (1) For the purposes of sections 140A and 140B (but subject to the following provisions of this section) a beneficial interest in shares is only conditional for so long as the terms on which the person with that interest is entitled to it—
 - (a) provide that, if certain circumstances arise, or do not arise, there will be a transfer, reversion or forfeiture as a result of which that person will cease to be entitled to any beneficial interest in the shares; and

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- (b) are not such that, on the transfer, reversion or forfeiture, that person will be entitled in respect of his interest to receive an amount equal to or more than the amount that might reasonably be expected (if there were no provision for transfer, reversion or forfeiture) to be obtained from a sale of that interest in the open market at that time.
- (2) A person shall not for the purposes of sections 140A and 140B be taken, in relation to any shares, to have an interest which is only conditional by reason only that, in a case where there is no restriction on the meeting of calls by that person, the shares—
 - (a) are unpaid or partly paid; and
 - (b) may be forfeited for non-payment of calls.
- (3) A person shall not for the purposes of sections 140A and 140B be taken, in relation to any shares in a company, to have an interest which is only conditional by reason only that the articles of association of the company require him to offer the shares for sale if he ceases to be an officer or, as the case may be, employee of the company.
- (4) A person shall not for the purposes of sections 140A and 140B be taken, in relation to any security, to have an interest which is only conditional by reason only that the security may be redeemed on payment of any amount.
- (5) In subsection (1) above the references, in relation to the terms of a person's entitlement, to circumstances arising include references—
 - (a) to the expiration of a period specified in or determined under those terms or the death of that person or any other person; and
 - (b) to the exercise by any person of any power conferred on him by or under those terms."
- (2) In section 77(1) of the ^{M2}Finance Act 1988 (application of Chapter about unapproved employee share schemes), after "Subject to" there shall be inserted " section 140A of the Taxes Act 1988 and "
- (3) After subsection (6) of section 79 of that Act (charge for shares in dependent subsidiaries) there shall be inserted the following subsection—
 - "(6A) If, before the time by reference to which the chargeable increase is determined, an event occurs by virtue of which the person making the acquisition becomes chargeable to tax under section 140A(4) of the Taxes Act 1988 (employee's interest in shares ceasing to be only conditional) on any amount ("the charged amount") in respect of the shares, the amount on which tax is chargeable by virtue of this section shall be reduced by the charged amount."
- (4) The preceding provisions of this section apply in relation to interests acquired on or after 17th March 1998.

Marginal Citations

- M1** 1988 c. 39.
- M2** 1988 c. 39.

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51 Convertible shares provided to directors and employees.

- (1) After the section 140C of the Taxes Act 1988 inserted by section 50 above there shall be inserted the following sections—

“140D Convertible shares.

- (1) This section applies where a person (“the employee”) has acquired convertible shares in a company as a director or employee of that or another company.
- (2) For the purposes of this section shares are convertible wherever they—
 - (a) confer on the holder an immediate or conditional entitlement to convert them into shares of a different class; or
 - (b) are held on terms that authorise or require the grant of such an entitlement to the holder if certain circumstances arise, or do not arise.
- (3) The employee shall be chargeable to tax under Schedule E if, at a time when he has a beneficial interest in them, the shares are converted into shares of a different class in pursuance of any entitlement to convert them that has been conferred on the holder.
- (4) A charge by virtue of this section shall be a charge for the year of assessment in which the conversion occurs on the amount of the gain from the conversion.
- (5) The amount of the gain from the conversion is the amount (if any) by which the market value at the time of the conversion of the shares into which the convertible shares are converted exceeds the sum of the deductible amounts.
- (6) The deductible amounts are—
 - (a) the amount or value of any consideration given for the convertible shares;
 - (b) the amount or value of any consideration given for the conversion in question;
 - (c) any amounts on which the employee has become chargeable to tax under Schedule E in respect of his acquisition of those shares;
 - (d) any amounts on which the employee has, by reference to an event occurring not later than the time of the conversion, become chargeable to tax in respect of the shares under section 78 or 79 of the ^{M3}Finance Act 1988 (unapproved employee share schemes);
 - (e) if the convertible shares were acquired through a series of conversions each of which was a taxable conversion, the amount of the gain from each conversion, so far as not falling within paragraph (c) above.
- (7) In subsection (6) above the reference to a taxable conversion is a reference to any conversion which—
 - (a) gave rise to a gain on which the employee was chargeable to tax by virtue of this section, or
 - (b) would have given rise to such a gain but for the fact that the market value of the shares at the time of the conversion did not exceed the sum of the deductible amounts.
- (8) Tax shall not be chargeable by virtue of this section if—
 - (a) the conversion is a conversion of shares of one class only (“the original class”) into shares of one other class only (“the new class”);

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- (b) all shares of the original class are converted into shares of the new class; and
 - (c) one of the conditions in subsection (9) below is fulfilled.
- (9) The conditions referred to in subsection (8) above are—
- (a) that immediately before the conversion the majority of the company's shares of the original class are held otherwise than by or for the benefit of—
 - (i) directors or employees of the company;
 - (ii) an associated company of the company; or
 - (iii) directors or employees of such an associated company;
 and
 - (b) that immediately before the conversion the company is employee-controlled by virtue of holdings of shares of the original class.
- (10) Tax shall not be chargeable by virtue of this section where the interest which the employee acquires in the shares into which the convertible shares are converted is an interest which (within the meaning given for the purposes of section 140A by section 140C) is only conditional.

140E Consideration for convertible shares.

- (1) This section applies in relation to any shares for determining the amount or value of the consideration referred to in section 140D(6)(a) or (b).
- (2) Subject to the following provisions of this section, the consideration referred to in section 140D(6)(a) is any consideration given by—
 - (a) the employee; or
 - (b) in a case where section 140H(1)(b) applies and the shares were acquired by another person, that other person,
 in respect of the acquisition of the shares.
- (3) The amount or value of the consideration given by any person for any shares shall include the amount or value of any consideration given for a right to acquire those shares.
- (4) Where any consideration is given partly in respect of one thing and partly in respect of another, the amount given in respect of the different things shall be determined on a just and reasonable apportionment.
- (5) The consideration which for the purposes of this section is taken to be given wholly or partly for anything shall not include the performance of any duties of or in connection with the office or employment by reference to which the shares in question have been acquired by a person as a director or employee of a company.
- (6) No amount shall be counted more than once in the computation of the amount or value of any consideration.
- (7) Subsections (1) to (3) of section 136 shall apply for determining for the purposes of subsection (3) above the amount or value of the consideration given for a right to acquire any shares as they apply for determining such an amount for the purposes of section 135.

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140F Supplemental provision with respect to convertible shares.

- (1) Where—
 - (a) a person has an interest in any convertible shares at the time of his death,
 - (b) those shares are converted into shares of a different class either on his death or within the following twelve months, and
 - (c) the conversion takes place wholly or partly as a consequence of his death,section 140D shall have effect as if the conversion had taken place immediately before his death and had been in pursuance of an entitlement to convert conferred on the deceased.
 - (2) In section 140D(2) the references, in relation to the terms of a person's entitlement, to circumstances arising include references—
 - (a) to the expiration of a period specified in or determined under those terms or the death of that person or any other person; and
 - (b) to the exercise by any person of any power conferred on him by or under those terms.
 - (3) For the purposes of section 140D, the market value of any shares at any time is the amount that might reasonably be expected to be obtained from a sale of the shares in the open market at that time.
 - (4) In this section and section 140D “associated company” has the same meaning as it has for the purposes of Part XI by virtue of section 416.
 - (5) For the purposes of section 140D a company is employee-controlled by virtue of holdings of shares of a class if—
 - (a) the majority of the company's shares of that class (other than any held by or for the benefit of an associated company) are held by or for the benefit of employees or directors of the company or a company controlled by the company; and
 - (b) those directors and employees are together able as holders of the shares to control the company.
 - (6) The provisions of sections 140D and 140E and this section apply in relation to an interest in shares as they apply in relation to shares.
 - (7) Section 840 (control) applies for the purposes of this section.”
- (2) Before subsection (7) of section 79 of the ^{M4}Finance Act 1988 (charge for shares in dependent subsidiaries) there shall be inserted the following subsection—
- “(6B) If, before the time by reference to which the chargeable increase is determined, an event occurs by virtue of which the person making the acquisition becomes chargeable to tax under section 140D(3) of the Taxes Act 1988 (charge on conversion of convertible shares) on any amount (“the charged amount”) in respect of the shares, the amount on which tax is chargeable by virtue of this section shall be reduced by the charged amount.”
- (3) The preceding provisions of this section apply in relation to shares acquired on or after 17th March 1998.

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Marginal Citations

M3 1988 c. 39.

M4 1988 c. 39.

52 Information powers.

- (1) After the section 140F of the Taxes Act 1988 inserted by section 51 above there shall be inserted the following section—

“140G Information for the purposes of sections 140A to 140F.

- (1) Where—
- (a) any person provides any individual with an interest in shares which is only conditional, and
 - (b) the circumstances are such that—
 - (i) the acquisition of that interest by that individual,
 - (ii) its subsequently ceasing to be only conditional,
 - (iii) its subsequent disposal, or
 - (iv) the death of the individual,
 gives rise or may give rise to a charge under section 140A on that individual,
- each of the relevant persons shall deliver to an officer of the Board particulars in writing of the interest and its provision.
- (2) Where—
- (a) a person has an interest in any shares which is only conditional,
 - (b) those shares cease to be shares in which that person’s interest is only conditional or are disposed of or that person dies, and
 - (c) that event gives rise to a charge under section 140A(4),
- each of the relevant persons shall deliver to an officer of the Board particulars in writing of the shares and the event.
- (3) Where—
- (a) any person has provided any individual with any convertible shares in a company,
 - (b) those shares are subsequently converted into shares of a different class, and
 - (c) the circumstances are such that the conversion gives rise or may give rise to a charge under section 140D on that individual,
- each of the relevant persons shall deliver to an officer of the Board particulars in writing of the shares and their conversion.
- (4) For the purposes of this section the relevant persons are—
- (a) the person who is providing, or who provided, the shares in question; and
 - (b) the person under or with whom the office or employment is or was held by reference to which the charge may arise or has arisen.

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- (5) Particulars required to be delivered under this section must be delivered no later than thirty days after the end of the year of assessment in which the interest is provided, the event occurs or the conversion takes place.
 - (6) Expressions used in this section and in section 140A or 140D above have the same meanings in this section as in section 140A or, as the case may be, section 140D.”
- (2) In the second column of the Table in section 98 of the ^{M5}Taxes Management Act 1970 (penalties for failure to furnish information), after the entry relating to section 136(6) of the Taxes Act 1988 there shall be inserted the following entry—

“section 140G;”.

Marginal Citations

M5 1970 c. 9.

53 Provision supplemental to sections 50 to 52.

After the section 140G of the Taxes Act 1988 inserted by section 52 above there shall be inserted the following section—

“140H Construction of sections 140A to 140G.

- (1) For the purposes of sections 140A to 140G and this section, a person acquires any shares or securities as a director or employee of a company if—
 - (a) he acquires them in pursuance of a right conferred on him, or an opportunity offered to him, by reason of his office or employment as a director or employee of the company; or
 - (b) the shares or securities are, or a right or opportunity in pursuance of which he acquires them is, assigned to him after being acquired by, conferred on or, as the case may be, offered to some other person by reason of the assignee’s office or employment as a director or employee of the company.
- (2) Subject to subsection (3) below, the references in subsection (1) above to a right or opportunity conferred or offered by reason of a person’s office or employment shall be taken to include—
 - (a) a reference to one so conferred or offered after he has ceased to hold it; and
 - (b) a reference to one that arises from the fact that any shares which a person acquires as a director or employee (or is treated as so acquiring by virtue of this paragraph) are convertible for the purposes of section 140D.
- (3) For the purposes of this section—
 - (a) the references in subsections (1) and (2) above to a person’s office or employment are references only to an office or employment in respect of which he is chargeable to tax under Case I of Schedule E; but

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- (b) subsection (2)(a) above shall not apply where a right or opportunity conferred or offered in the last chargeable period in which the office or employment was held by the person in question would not have fallen to be taken into account for the purposes of subsection (1)(a) above.
- (4) Without prejudice to subsection (2)(b) above where—
 - (a) a person has acquired an interest in any shares or securities which is only conditional or has acquired any convertible shares,
 - (b) he acquired that interest or those shares as a director or employee of a company, or is treated by virtue of this subsection as having done so, and
 - (c) as a result of any two or more transactions—
 - (i) he ceases to be entitled to that interest or those shares, and
 - (ii) he or a connected person becomes entitled to any interest in any shares or securities which is only conditional or to any convertible shares,
 he shall be treated for the purposes of sections 140A to 140G as if the interest or shares to which he becomes entitled were also acquired by him as a director or employee of the company in question.
- (5) Sections 140C and 140D(2) have effect for the purposes of subsection (4) above as they have effect for the purposes of sections 140A and 140B and section 140D respectively.
- (6) References in sections 140A to 140G or this section to the terms on which a person is entitled to an interest in shares or securities include references to any terms imposed by any contract or arrangement or in any other way.
- (7) References in this section to shares or to securities include references to an interest in shares or, as the case may be, securities.
- (8) Subsection (5) of section 136 applies for the purposes of sections 140A to 140G and this section as it applies for the purposes of that section but as if—
 - (a) references to a body corporate were references to a company;
 - (b) at the end of paragraph (d) there were inserted “or any other interest of a member of a company”; and
 - (c) the words after paragraph (d) were omitted.
- (9) Section 839 applies for the purposes of this section.”

54 Amendments consequential on sections 50 to 53.

- (1) The ^{M6}Taxation of Chargeable Gains Act 1992 shall be amended as follows.
- (2) After subsection (5) of section 120 (increase of expenditure by reference to tax charged in relation to shares) there shall be inserted the following subsections—
 - “(5A) Where an amount is chargeable to tax under section 140A of the Taxes Act in respect of—
 - (a) the acquisition or disposal of any interest in shares, or
 - (b) any interest in shares ceasing to be only conditional,
 the relevant amount is a sum equal to the amount so chargeable.

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- (5B) Where an amount is chargeable to tax under section 140D of the Taxes Act in respect of the conversion of shares, the relevant amount is a sum equal to the amount so chargeable.”
- (3) In subsection (7) of that section—
- (a) after “(5),” there shall be inserted “, (5A), (5B) ”; and
 - (b) after “138” there shall be inserted “, 140A, 140D ”.
- (4) After that subsection there shall be inserted the following subsection—
- “(8) For the purposes of subsection (5A) above this section shall have effect as if references in this section to shares included anything referred to as shares in section 140A of the Taxes Act.”
- (5) After section 149A there shall be inserted the following section—

“149B Employee incentive schemes: conditional interests in shares.

- (1) Where—
- (a) an individual has acquired an interest in any shares or securities which is only conditional,
 - (b) that interest is one which for the purposes of section 140A of the Taxes Act is taken to have been acquired by him as a director or employee of a company, and
 - (c) by virtue of section 17(1)(b) the acquisition of that interest would, apart from this section, be an acquisition for a consideration equal to the market value of the interest,
- section 17 shall not apply for calculating the consideration.
- (2) Instead, the consideration for the acquisition shall be taken (subject to section 120) to be equal to the actual amount or value of the consideration given for that interest as computed in accordance with section 140B of the Taxes Act.
- (3) This section shall apply in relation only to the individual making the acquisition and, accordingly, shall be disregarded in calculating the consideration received by the person from whom the interest is acquired.
- (4) Expressions used in this section and in section 140A of the Taxes Act have the same meanings in this section as in that section.”
- (6) This section has effect in relation to disposals on or after 17th March 1998 of interests and shares acquired on or after that date.

Marginal Citations

M6 1992 c. 12.

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