



Finance Act 2000

2000 CHAPTER 17

PART III

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER II

OTHER PROVISIONS

Employee share ownership

47 Employee share ownership plans

Schedule 8 to this Act (employee share ownership plans) shall have effect.

48 Relief for transfers to employee share ownership plans

(1) In the Taxation of Chargeable Gains Act 1992, after section 236 insert—

“Employee share ownership plans

236A Relief for transfers to employee share ownership plans

Schedule 7C (which makes provision for roll-over relief where shares are transferred to an approved employee share ownership plan) shall have effect.”.

(2) After Schedule 7B to that Act insert the Schedule 7C set out in Schedule 9 to this Act.

49 Phasing out of approved profit sharing schemes

- (1) The Board shall not approve a profit sharing scheme under Schedule 9 to the Taxes Act 1988 (approval of share option schemes and profit sharing schemes) unless the application for approval is received by the Board before 6th April 2001.
- (2) For the purposes of subsection (1) an application for approval which is not accompanied by the particulars and evidence referred to in paragraph 1(2) of that Schedule is not regarded as received by the Board until the required particulars and evidence have been received by them.
- (3) In section 186 of that Act (approved profit sharing schemes), in subsection (1) (under which the section applies to appropriations of shares made after 5th April 1979) after “5th April 1979” insert “and before 1st January 2003”.

50 Phasing out of relief for payments to trustees of profit sharing schemes

- (1) This section has effect to phase out deductions under section 85 of the Taxes Act 1988 (corporation tax relief for payments to trustees of approved profit sharing schemes).
- (2) In the case of sums paid to the trustees on or after 21st March 2000 and before 6th April 2002 no deduction may be made by virtue of subsection (2)(a) of that section (sums applied in acquiring shares for appropriation) unless the trustees appropriate the shares acquired, by the application of the sum, as mentioned in that provision—
 - (a) before the end of the period of nine months beginning on the day following the end of the period of account in which payment to the trustees was made, and
 - (b) before 1st January 2003.
- (3) No deduction may be made by virtue of subsection (2)(a) of that section in respect of any sum paid to the trustees on or after 6th April 2002.
- (4) No deduction may be made by virtue of subsection (2)(b) of that section (sums to meet expenses of trustees in administering the scheme) in respect of any sum paid to the trustees more than three years after the date of the last appropriation of shares to individuals which was made—
 - (a) in accordance with the approved profit sharing scheme, and
 - (b) before 1st January 2003.
- (5) For the purposes of this section references to a deduction under section 85 are to a deduction under subsection (1)(a) or by virtue of subsection (1)(b) of that section.

51 Approved profit sharing scheme: other awards of shares

- (1) In Schedule 9 to the Taxes Act 1988 (approved share option schemes and profit sharing schemes), in paragraph 3(2) (grounds for withdrawing approval of profit sharing schemes), after “below” in paragraph (e) insert—

“; or

 - (f) the trustees appropriate shares to participants, one or more of whom have had free shares appropriated to them, at an earlier time in the same year of assessment, under a relevant share plan”.
- (2) After paragraph 3(3) of that Schedule insert—

Status: This is the original version (as it was originally enacted).

- “(4) For the purposes of sub-paragraph (2)(f) above the reference to persons having had free shares appropriated to them includes persons who would have had free shares appropriated to them but for their failure to obtain a performance allowance (within the meaning of paragraph 25 of Schedule 8 to the Finance Act 2000).
- (5) In sub-paragraph (2)(f) and (4) above—
“free shares” has the same meaning as in Schedule 8 to the Finance Act 2000;
“relevant share plan”, in relation to a profit sharing scheme, means an employee share ownership plan that—
(a) was established by the grantor or a connected company, and
(b) is approved under Schedule 8 to that Act.
- (6) For the purposes of sub-paragraph (5) above “connected company” means—
(a) a company which controls or is controlled by the grantor or which is controlled by a company which also controls the grantor, or
(b) a company which is a member of a consortium owning the grantor or which is owned in part by the grantor as a member of a consortium.”.

52 Approved profit sharing schemes: restriction on type of shares

- (1) Schedule 9 to the Taxes Act 1988 (share option schemes and profit sharing schemes) is amended in accordance with subsections (2) to (4).
- (2) In paragraph 9(1) (requirements to be satisfied by shares in share option schemes), after “below” insert “(disregarding paragraph 11A)”.
- (3) After paragraph 11 (requirements as to listing etc.) insert—
“11A (1) In the case of a profit sharing scheme, scheme shares must not be shares—
(a) in an employer company, or
(b) in a company that—
(i) has control of an employer company, and
(ii) is under the control of a person or persons within sub-paragraph (2)(b)(i) below in relation to an employer company.
- (2) For the purposes of this paragraph a company is “an employer company” if—
(a) the business carried on by it consists substantially in the provision of the services of the persons employed by it, and
(b) the majority of those services are provided to—
(i) a person who has, or two or more persons who together have, control of the company, or
(ii) a company associated with the company.
- (3) For the purposes of sub-paragraph (2)(b)(ii) above a company shall be treated as associated with another company if both companies are under the control of the same person or persons.

Status: This is the original version (as it was originally enacted).

- (4) For the purposes of sub-paragraphs (1) to (3) above—
 - (a) references to a person include a partnership, and
 - (b) where a partner, alone or together with others, has control of a company, the partnership shall be treated as having like control of that company.
- (5) For the purposes of this paragraph the question whether a person controls a company shall be determined in accordance with section 416(2) to (6).”.
- (4) In paragraph 12—
 - (a) in sub-paragraph (1), in paragraph (c) for “other than” to the end of that paragraph there shall be substituted “other than those permitted by sub-paragraph (1A) below.”, and
 - (b) after sub-paragraph (1) insert—
 - “(1A) Subject to sub-paragraph (1B) below, scheme shares may be subject to—
 - (a) restrictions which attach to all shares of the same class, or
 - (b) a restriction authorised by sub-paragraph (2) below.
 - (1B) In the case of a profit sharing scheme, scheme shares must not be subject to any restrictions affecting the rights attaching to those shares which relate to—
 - (a) dividends, or
 - (b) assets on a winding-up of the company,
 other than restrictions which attach to all other ordinary shares in the same company.”.
- (5) Subsections (1) to (4) shall be deemed to have come into force on 21st March 2000.
- (6) Subsections (3) and (4) do not have effect in relation to shares acquired before 21st March 2000 by the trustees of a profit sharing scheme approved under Schedule 9 to the Taxes Act 1988.

53 Approved profit sharing schemes: loan arrangements

- (1) In paragraph 2 of Schedule 9 to the Taxes Act 1988 (conditions for approval of share option schemes and profit sharing schemes), after sub-paragraph (2) insert—
 - “(2A) The Board shall not approve a profit sharing scheme unless they are satisfied—
 - (a) that the arrangements for the scheme do not make any provision, and are not in any way associated with any provision made, for loans to some or all of the employees of—
 - (i) the company that established the scheme, or
 - (ii) in the case of a group scheme, any participating company,
 and
 - (b) that the operation of the scheme is not in any way associated with such loans.
 - (2B) For the purposes of sub-paragraph (2A) above “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.”.

Status: This is the original version (as it was originally enacted).

(2) In paragraph 3(2) of that Schedule (withdrawal of approval of profit sharing schemes), before paragraph (d) insert—

“(ca) the Board—

(i) cease to be satisfied of the matters mentioned in paragraph 2(2A) above, or

(ii) in the case of a scheme approved before 21st March 2000, are not satisfied of those matters; or”.

(3) This section shall be deemed to have come into force on 21st March 2000.

54 Employee share ownership trusts

No claim for relief under section 229(1) or (3) of the Taxation of Chargeable Gains Act 1992 (roll-over relief where disposal made to employee share ownership trust) may be made in relation to a disposal of shares, or an interest in shares, made on or after 6th April 2001.

55 Shares transferred from employee share ownership trust

(1) Section 69 of the Finance Act 1989 (chargeable events in relation to employee share ownership trusts) is amended in accordance with subsections (2) to (5).

(2) In subsection (1) (definition of “chargeable event”), after paragraph (d) insert—

“(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.”.

(3) After subsection (3) insert—

“(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.

Status: This is the original version (as it was originally enacted).

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.”.

(4) In subsection (5) after “(1)(d)” insert “or (e)”.

(5) After that subsection insert—

“(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) In section 70 of the Finance Act 1989 (chargeable amounts), after subsection (3) insert—

“(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.”.

56 Further provisions about share options

(1) In Chapter IV of Part V of the Taxes Act 1988 (provisions relating to the Schedule E charge: other exemptions and reliefs), after section 187 insert—

Status: This is the original version (as it was originally enacted).

“Contributions in respect of share option gains

187A Relief for contributions in respect of share option gains

- (1) Where a person (“the earner”) is chargeable to tax under section 135 on a gain, relief is available under this section if—
 - (a) an agreement has been entered into allowing the secondary contributor to recover from the earner the whole or part of any secondary Class 1 contributions in respect of the gain, or
 - (b) an election is in force which has the effect of transferring to the earner the whole or part of the liability to pay secondary Class 1 contributions in respect of the gain.
- (2) The amount of the relief is the total of—
 - (a) any amount that, in pursuance of any such agreement as is mentioned in subsection (1)(a), is recovered in respect of the gain by the secondary contributor not later than 60 days after the end of the year of assessment in which occurred the event giving rise to the charge to tax under section 135; and
 - (b) the amount of any liability in respect of that gain that, by virtue of any such election as is mentioned in subsection (1)(b), has become the earner’s liability.
- (3) Where notice of withdrawal of approval of any such election is given, relief under subsection (2)(b) is limited to so much of the earner’s liability in respect of the gain as is met before the end of the 60th day after the end of the year of assessment in which occurred the event giving rise to the charge under section 135.
- (4) Relief under this section shall be given by way of deduction from the amount of the gain on which the earner is chargeable to tax under section 135.
- (5) Any such deduction does not affect the amount of the gain for the purposes of—
 - (a) section 120(4) of the Taxation of Chargeable Gains Act 1992 (amount treated as consideration for acquisition of shares), or
 - (b) section 4(4)(a) of the Contributions and Benefits Act (amount treated as remuneration for contributions purposes).
- (6) The agreements and elections referred to in this section are those having effect under paragraph 3A or 3B of Schedule 1 to the Contributions and Benefits Act.

References to approval in relation to an election are to approval by the Inland Revenue under paragraph 3B of that Schedule.

- (7) In this section—

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992 or the Social Security Contributions and Benefits (Northern Ireland) Act 1992; and

“secondary Class 1 contributions” and “secondary contributor” have the same meaning as in that Act.”.

Status: This is the original version (as it was originally enacted).

Section 187A inserted by this subsection applies to any agreement or election having effect as mentioned in subsection (6) of that section, whether made before or after the passing of this Act.

(2) Section 203FB of the Taxes Act 1988 (PAYE: gains from share options) is amended as follows—

- (a) in subsections (2) and (3), for “subsection (7)” substitute “subsection (6A)”;
- (b) after subsection (6) insert—

“(6A) Where section 203F has effect in accordance with subsection (2) or (3) above, subsection (3) of section 203F shall apply as if the reference in that subsection to the amount of income likely to be chargeable to tax under Schedule E in respect of the provision of the asset were a reference to the amount on which tax is likely to be chargeable by virtue of section 135 in respect of the event in question, reduced by the amount of any relief likely to be available under section 187A.”;

- (c) in subsection (7), for “any of the preceding provisions of this section” substitute “subsection (4) or (5) above” and for “section 135, 140A or 140D” substitute “section 140A or 140D”.

These amendments apply where the event giving rise to the charge to tax occurs after the passing of this Act.

(3) In section 136(6) of the Taxes Act 1988 and section 85(1) of the Finance Act 1988 (duty to deliver particulars relating to share options, etc. within 30 days after end of year of assessment), for “30 days” substitute “92 days”.

These amendments apply where the event giving rise to the duty to deliver particulars occurs on or after 6th April 2000.

(4) After section 136(6) of the Taxes Act 1988 add—

- “(7) A body corporate is not obliged to deliver particulars under subsection (6) above which it has already given in a notice under paragraph 2 of Schedule 14 to the Finance Act 2000 (enterprise management incentives: notice required for option to be qualifying option).

In other respects the obligations imposed by that subsection and that paragraph are independent of each other.

- (8) The duty of a body corporate under subsection (6) above to deliver particulars of any matter includes a duty to deliver particulars of any secondary Class 1 contributions payable in connection with that matter that—
 - (a) are recovered as mentioned in section 187A(2)(a), or
 - (b) are met as mentioned in section 187A(3).

In this subsection “secondary Class 1 contributions” has the same meaning as in section 187A.”.

Section 136(8) inserted by this subsection applies to any amounts recovered or met as mentioned in section 187A(2)(a) or (3) of the Taxes Act 1988, whether before or after the passing of this Act.