



# Finance Act 1988

## 1988 CHAPTER 39

### PART III

#### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

### CHAPTER II

#### UNAPPROVED EMPLOYEE SHARE SCHEMES

#### *Supplementary*

#### **86 Meaning of “dependent subsidiary”**

- (1) For the purposes of this Chapter a company which is a subsidiary is a dependent subsidiary throughout a period of account of the company unless—
- (a) the whole or substantially the whole of the company’s business during the period of account (taken as a whole) is business carried on with persons who are not members of the same group as the company,
  - (b) during the period of account either there is no increase in the value of the company as a result of intra-group transactions, or any such increase in value does not exceed 5 per cent. of the value of the company at the beginning of the period (or a proportionately greater or smaller percentage in the case of a period which is longer or shorter than a year),
  - (c) the directors of the principal company of the group give to the inspector, not later than two years after the end of the period of account, a certificate that in their opinion the conditions mentioned in paragraphs (a) and (b) above are satisfied in relation to the period of account, and
  - (d) there is attached to the certificate a report addressed to those directors by the auditors of the subsidiary that the auditors—
    - (i) have enquired into the state of affairs of the company with particular reference to the conditions mentioned in paragraphs (a) and (b) above, and

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- (ii) are not aware of anything to indicate that the opinion expressed by the directors in their certificate is unreasonable in all the circumstances.
- (2) For the purposes of subsection (1)(a) above business carried on with any subsidiary of the company concerned shall be treated as carried on with a person who is not a member of the same group as the company unless the whole or substantially the whole of the business of that or any other subsidiary of the company during the company's period of account (taken as a whole) is carried on with members of the group other than the company and its subsidiaries.
- (3) In this section—
- “group” means a principal company and all its subsidiaries;
- “intra-group transactions” means transactions between companies which are members of the same group on terms which are not such as might be expected to be agreed between persons acting at arm's length (other than any payment for group relief, within the meaning given in section 402(6) of the Taxes Act 1988);
- “period of account”, in relation to a company, means the period for which it makes up its accounts;
- “principal company” means a company of which another company is a subsidiary and which is not itself a subsidiary of another company.

## **87 Other interpretation provisions**

- (1) In this Chapter, except where the context otherwise requires,—
- “associated company” has the same meaning as, by virtue of section 416 of the Taxes Act 1988, it has for the purposes of Part XI of that Act;
- “director” includes a person who is to be, or who has ceased to be, a director;
- “employee” includes a person who is to be, or who has ceased to be, an employee;
- “shares” includes stock and also includes securities as defined in section 254(1) of the Taxes Act 1988;
- “subsidiary” means 51 per cent. subsidiary;
- “value”, in relation to shares or a benefit, means the amount which the person holding the shares or receiving the benefit might reasonably expect to obtain from a sale in the open market;
- and references to an interest in any shares include references to an interest in the proceeds of sale of part of the shares.
- (2) For the purposes of this Chapter a company is “employee-controlled” by virtue 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.
- (3) Sections 839 (connected persons) and 840 (control) of the Taxes Act 1988 shall apply for the purposes of this Chapter.

- (4) Where a right to acquire shares or an interest in shares in a company is assigned to a person and the right was conferred on some other person by reason of the assignee's office as a director of, or his employment by, that or any other company, the assignee shall be treated for the purposes of this Chapter as acquiring the shares or interest in pursuance of a right conferred on him by reason of that office or employment.

## **88 Transitional provisions**

- (1) Section 138 of the Taxes Act 1988 and section 79 of the Finance Act 1972 shall not apply to an acquisition of shares, or of an interest in shares, made on or after 26th October 1987.
- (2) Where—
- (a) tax is chargeable by virtue of section 138(1)(a) of the Taxes Act 1988 or section 79(4) of the Finance Act 1972 by reference to the market value, after 26th October 1987, of shares in a company which is not a dependent subsidiary on that date, and (b) that market value is greater than the market value of the shares on 26th October 1987,
- the amount on which tax is chargeable (and the question whether any tax is chargeable) shall be determined by reference to the market value on 26th October 1987 (and for this purpose “market value” has the same meaning as in section 138 of the Taxes Act 1988).
- (3) Subject to subsection (4) below, this Chapter, with the omission of sections 79 and 80, shall have effect where shares, or an interest in shares, in a company which is not a dependent subsidiary on 26th October 1987 have been acquired before that date as it has effect (apart from this section) where shares or an interest in shares are acquired on or after that date.
- (4) In relation to shares which were, or an interest in which was, acquired before 26th October 1987 the removal or variation of a restriction to which the shares are subject shall not be a chargeable event for the purposes of section 78 above if, because of paragraph 7 of Schedule 8 to the Finance Act 1973, the restriction would not have been regarded as one to which the shares were subject for the purposes of section 79(2)(c) of the Finance Act 1972.

## **89 Consequential amendments**

In relation to acquisitions of shares or interests in shares on or after 26th October 1987—

- (a) for the words from “section 138(1)(a)” to “value of the shares” in section 185(3)(a) (approved share option schemes) and section 186(2)(b) (approved profit sharing schemes) of the Taxes Act 1988, and
- (b) for the words from “section 79(4)” to “value of the shares” in—
- (i) section 53(3)(b) of the Finance Act 1978 (approved profit sharing schemes),
- (ii) section 47(1)(b) of the Finance Act 1980 (savings-related share option schemes), and
- (iii) section 38(3)(a) of the Finance Act 1984 (approved share option schemes),

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there shall be substituted the words “section 78 or 79 of the Finance Act 1988 in respect of the shares”.