

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, SCHEDULE 5. (See end of Document for details)

SCHEDULES

SCHEDULE 5

Section 74.

EMPLOYEE SHARE OWNERSHIP TRUSTS

Modifications etc. (not altering text)

- C1** Sch. 5 applied (6.3.1992 with effect as mentioned in s. 289(1)(2) of the applying Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), **ss. 228(7), 235(8), 289** (with **ss. 60, 101(1), 171, 201(3)**)

Qualifying trusts

- 1 A trust is a qualifying employee share ownership trust at the time it is established if the conditions set out in paragraphs 2 to 11 below are satisfied in relation to the trust at that time.

Modifications etc. (not altering text)

- C2** See [Finance Act 1990 \(c. 29\)](#) ss.31–40—*roll-over relief for disposal of shares to employee share ownership trusts*

General

- 2 (1) The trust must be established under a deed (the trust deed).
(2) The trust must be established by a company (the founding company) which, at the time the trust is established, is resident in the United Kingdom and not controlled by another company.

Modifications etc. (not altering text)

- C3** See [Finance Act 1990 \(c. 29\)](#) ss.31–40—*roll-over relief for disposal of shares to employee share ownership trusts*

Trustees

- 3 (1) The trust deed must provide for the establishment of a body of trustees.
(2) The trust deed must—
(a) appoint the initial trustees;
(b) contain rules for the retirement and removal of trustees;
(c) contain rules for the appointment of replacement and additional trustees.
(3) The trust deed must provide that at any time while the trust subsists (therelevant time)—

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- (a) the number of trustees must not be less than three;
 - (b) all the trustees must be resident in the United Kingdom;
 - (c) the trustees must include one person who is a trust corporation, a solicitor, or a member of such other professional body as the Board may from time to time allow for the purposes of this paragraph;
 - (d) most of the trustees must be persons who are not and have never been directors of any company which falls within the founding company's group at the relevant time;
 - (e) most of the trustees must be persons who are employees of companies which fall within the founding company's group at the relevant time, and who do not have and have never had a material interest in any such company;
 - (f) the trustees falling within paragraph (e) above must, before being appointed as trustees, have been selected by a majority of the employees of the companies falling within the founding company's group at the time of their selection or by persons elected to represent those employees.
- (4) For the purposes of sub-paragraph (3) above a company falls within the founding company's group at a particular time if—
- (a) it is the founding company, or
 - (b) it is at that time resident in the United Kingdom and controlled by the founding company.

[^{F1}(5) This paragraph applies in relation to trusts established on or before the day on which the Finance Act 1994 was passed.]

Textual Amendments

F1 Sch. 5 para. 3(5) inserted (3.5.1994) by 1994 c. 9, s. 102, Sch. 13 para. 2

Modifications etc. (not altering text)

- C4** See Finance Act 1990 (c. 29) ss.31–40—*roll-over relief for disposal of shares to employee share ownership trusts*
- C5** Schedule 5 para. 3(3)(c) amended (1.1.1992) by S.I. 1991/2684, arts. 2(1), 4, Sch. 1
- C6** Sch. 5 para. 3(3)(c) applied (with modifications) (E.W.) (23.12.2011) by The Legal Services Act 2007 (Designation as a Licensing Authority) (No. 2) Order 2011 (S.I. 2011/2866), art. 1(2), Sch. 2

- [^{F2}3A Where a trust is established after the day on which the Finance Act 1994 was passed, the trust deed must make provision as mentioned in one of paragraphs (a) to (c) below—
- (a) provision for the establishment of a body of trustees and complying with paragraph 3(2) to (4) above;
 - (b) provision for the establishment of a body of trustees and complying with paragraph 3B(2) to (9) below;
 - (c) provision that at any time while the trust subsists there must be a single trustee.]

Textual Amendments

F2 Sch. 5 paras. 3A–3C inserted (3.5.1994) by 1994 c. 9, s. 102, Sch. 13 para. 3

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- ^{F3}3B (1) The following are the provisions that must be complied with under paragraph 3A(b) above.
- (2) The trust deed must—
- (a) appoint the initial trustees;
 - (b) contain rules for the retirement and removal of trustees;
 - (c) contain rules for the appointment of replacement and additional trustees.
- (3) The trust deed must be so framed that at any time while the trust subsists the conditions set out in sub-paragraph (4) below are fulfilled as regards the persons who are then trustees; and in that sub-paragraph “the relevant time” means that time.
- (4) The conditions are that—
- (a) the number of trustees is not less than three;
 - (b) all the trustees are resident in the United Kingdom;
 - (c) the trustees include at least one person who is a professional trustee and at least two persons who are non-professional trustees;
 - (d) at least half of the non-professional trustees were, before being appointed as trustees, selected in accordance with sub-paragraph (7) or (8) below;
 - (e) all the trustees so selected are persons who are employees of companies which fall within the founding company’s group at the relevant time, and who do not have and have never had a material interest in any such company.
- (5) For the purposes of this paragraph a trustee is a professional trustee at a particular time if—
- (a) the trustee is then a trust corporation, a solicitor, or a member of such other professional body as the Board may at that time allow for the purposes of this sub-paragraph,
 - (b) the trustee is not then an employee or director of any company then falling within the founding company’s group, and
 - (c) the trustee meets the requirements of sub-paragraph (6) below;
- and for the purposes of this paragraph a trustee is a non-professional trustee at a particular time if the trustee is not then a professional trustee for those purposes.
- (6) A trustee meets the requirements of this sub-paragraph if—
- (a) he was appointed as an initial trustee and, before being appointed as trustee, was selected by (and only by) the persons who later became the non-professional initial trustees, or
 - (b) he was appointed as a replacement or additional trustee and, before being appointed as trustee, was selected by (and only by) the persons who were the non-professional trustees at the time of the selection.
- (7) Trustees are selected in accordance with this sub-paragraph if the process of selection is one under which—
- (a) all the persons who are employees of the companies which fall within the founding company’s group at the time of the selection, and who do not have and have never had a material interest in any such company, are (so far as is reasonably practicable) given the opportunity to stand for selection,
 - (b) all the employees of the companies falling within the founding company’s group at the time of the selection are (so far as is reasonably practicable) given the opportunity to vote, and
 - (c) persons gaining more votes are preferred to those gaining less.

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- (8) Trustees are selected in accordance with this sub-paragraph if they are selected by persons elected to represent the employees of the companies falling within the founding company's group at the time of the selection.
- (9) For the purposes of this paragraph a company falls within the founding company's group at a particular time if—
- (a) it is at that time resident in the United Kingdom, and
 - (b) it is the founding company or it is at that time controlled by the founding company.

Textual Amendments

F3 Sch. 5 paras. 3A-3C inserted (3.5.1994) by 1994 c. 9, s. 102, Sch. 13 para. 3

- ^{F4}3C (1) This paragraph applies where the trust deed provides that at any time while the trust subsists there must be a single trustee.
- (2) The trust deed must—
- (a) be so framed that at any time while the trust subsists the trustee is a company which at that time is resident in the United Kingdom and controlled by the founding company;
 - (b) appoint the initial trustee;
 - (c) contain rules for the removal of any trustee and for the appointment of a replacement trustee.
- (3) The trust deed must be so framed that at any time while the trust subsists the company which is then the trustee is a company so constituted that the conditions set out in sub-paragraph (4) below are then fulfilled as regards the persons who are then directors of the company; and in that sub-paragraph “the relevant time” is that time and “the trust company” is that company.
- (4) The conditions are that—
- (a) the number of directors is not less than three;
 - (b) all the directors are resident in the United Kingdom;
 - (c) the directors include at least one person who is a professional director and at least two persons who are non-professional directors;
 - (d) at least half of the non-professional directors were, before being appointed as directors, selected in accordance with sub-paragraph (7) or (8) below;
 - (e) all the directors so selected are persons who are employees of companies which fall within the founding company's group at the relevant time, and who do not have and have never had a material interest in any such company.
- (5) For the purposes of this paragraph a director is a professional director at a particular time if—
- (a) the director is then a solicitor or a member of such other professional body as the Board may at that time allow for the purposes of this sub-paragraph,
 - (b) the director is not then an employee of any company then falling within the founding company's group,
 - (c) the director is not then a director of any such company (other than the trust company), and
 - (d) the director meets the requirements of sub-paragraph (6) below;

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and for the purposes of this paragraph a director is a non-professional director at a particular time if the director is not then a professional director for those purposes.

- (6) A director meets the requirements of this sub-paragraph if—
- (a) he was appointed as an initial director and, before being appointed as director, was selected by (and only by) the persons who later became the non-professional initial directors, or
 - (b) he was appointed as a replacement or additional director and, before being appointed as director, was selected by (and only by) the persons who were the non-professional directors at the time of the selection.
- (7) Directors are selected in accordance with this sub-paragraph if the process of selection is one under which—
- (a) all the persons who are employees of the companies which fall within the founding company's group at the time of the selection, and who do not have and have never had a material interest in any such company, are (so far as is reasonably practicable) given the opportunity to stand for selection,
 - (b) all the employees of the companies falling within the founding company's group at the time of the selection are (so far as is reasonably practicable) given the opportunity to vote, and
 - (c) persons gaining more votes are preferred to those gaining less.
- (8) Directors are selected in accordance with this sub-paragraph if they are selected by persons elected to represent the employees of the companies falling within the founding company's group at the time of the selection.
- (9) For the purposes of this paragraph a company falls within the founding company's group at a particular time if—
- (a) it is at that time resident in the United Kingdom, and
 - (b) it is the founding company or it is at that time controlled by the founding company.

Textual Amendments

F4 Sch. 5 paras. 3A-3C inserted (3.5.1994) by 1994 c. 9, s. 102, Sch. 13 para. 3

Beneficiaries

- 4 (1) The trust deed must contain provision as to the beneficiaries under the trust, in accordance with the following rules.
- (2) The trust deed must provide that a person is a beneficiary at a particular time (the relevant time) if—
- (a) he is at the relevant time an employee or director of a company which at that time falls within the founding company's group,
 - (b) at each given time in a qualifying period he was an employee or director of a company falling within the founding company's group at that given time, and
 - (c) ^{F5}in the case of a director, at that given time he worked as a director of the company concerned at the rate of at least 20 hours a week (ignoring such matters as holidays and sickness).

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- [^{F6}(2A) The trust deed may provide that a person is a beneficiary at a given time if at that time he is eligible to participate in [^{F7}an SAYE option scheme]—
- (a) which was established by a company within the founding company’s group, and
 - (b) which is approved under [^{F8}Schedule 3 to the Income Tax (Earnings and Pensions) Act 2003].
- ^{F6}(2B) Where a trust deed contains a rule conforming with sub-paragraph (2A) above it must provide that the only powers and duties which the trustees may exercise in relation to persons who are beneficiaries by virtue only of that rule are those which may be exercised in accordance with the provisions of a scheme such as is mentioned in that sub-paragraph.]
- (3) The trust deed may provide that a person is a beneficiary at a particular time (the relevant time) if—
 - (a) he has at each given time in a qualifying period been an employee or director of a company falling within the founding company’s group at that given time,
 - (b) he has ceased to be an employee or director of the company or the company has ceased to fall within that group, and
 - (c) at the relevant time a period of not more than eighteen months has elapsed since he so ceased or the company so ceased (as the case may be).
 - (4) The trust deed may provide for a person to be a beneficiary if the person is a charity and the circumstances are such that—
 - (a) there is no person who is a beneficiary within any rule which is included in the deed and conforms with sub-paragraph (2) [^{F9}, (2A)] or (3) above, and
 - (b) the trust is in consequence being wound up.
 - (5) For the purposes of sub-paragraph (2) above a qualifying period is a period—
 - (a) whose length is ^{F10} . . . not more than five years,
 - (b) whose length is specified in the trust deed, and
 - (c) which ends with the relevant time (within the meaning of that sub-paragraph).
 - (6) For the purposes of sub-paragraph (3) above a qualifying period is a period—
 - (a) whose length is equal to that of the period specified in the trust deed for the purposes of a rule which conforms with sub-paragraph (2) above, and
 - (b) which ends when the person or company (as the case may be) ceased as mentioned in sub-paragraph (3)(b) above.
 - (7) The trust deed must not provide for a person to be a beneficiary unless she falls within any rule which is included in the deed and conforms with sub-paragraph (2) [^{F11}, (2A)], (3) or (4) above.
 - (8) The trust deed must provide that, notwithstanding any other rule which is included in it, a person cannot be a beneficiary at a particular time (the relevant time) [^{F12}by virtue of a rule which conforms with sub-paragraph (2), (3) or (4) above] if—
 - (a) at that time he has a material interest in the founding company, or
 - (b) at any time in the period of one year preceding the relevant time he has had a material interest in that company.
 - (9) For the purposes of this paragraph a company falls within the founding company’s group at a particular time if—

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- (a) it is at that time resident in the United Kingdom, and
- (b) it is the founding company or it is at that time controlled by the founding company.

^{F13}(10)

Textual Amendments

- F5** Words in Sch. 5 para. 4(2)(c) substituted (1.5.1995 with effect as mentioned in s. 137(9) of the amending Act) by 1995 c. 4, s. 137(5)
- F6** Sch. 5 para. 4(2A)(2B) inserted (29.4.1996 with effect in relation to trusts established on or after 29.4.1996) by 1996 c. 8, s. 120(1)(12)
- F7** Words in Sch. 5 para. 4(2A) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by *Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 723, Sch. 6 para. 163(2)(a)* (with Sch. 7)
- F8** Words in Sch. 5 para. 4(2A)(b) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by *Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 723, Sch. 6 para. 163(2)(b)* (with Sch. 7)
- F9** Words in Sch. 5 para. 4(4) inserted (29.4.1996 with effect in relation to trusts established on or after 29.4.1996) by 1996 c. 8, s. 120(5)(12)
- F10** Words in Sch. 5 para. 4(5)(a) repealed (29.4.1996 with effect in relation to trusts established on or after 29.4.1996) by 1996 c. 8, s. 119(1)(2), 205, *Sch. 41 Pt. V(5)*, note 4
- F11** Words in Sch. 5 para. 4(7) inserted (29.4.1996 with effect in relation to trusts established on or after 29.4.1996) by 1996 c. 8, s. 120(6)(12)
- F12** Words in Sch. 5 para. 4(8) inserted (29.4.1996 with effect in relation to trusts established on or after 29.4.1996) by 1996 c. 8, s. 120(7)(12)
- F13** Sch. 5 para. 4(10) omitted (with effect in accordance with art. 7 of the commencing S.I.) by virtue of *Finance Act 2010 (c. 13), Sch. 6 paras. 12, 34(2); S.I. 2012/736, art. 7*

Modifications etc. (not altering text)

- C7** See *Finance Act 1990 (c. 29) ss.31–40—roll-over relief for disposal of shares to employee share ownership trusts*

Trustees' functions

- 5 (1) The trust deed must contain provision as to the functions of the trustees.
- (2) The functions of the trustees must be so expressed that it is apparent that their general functions are—
- (a) to receive sums from the founding company and other sums (by way of loan or otherwise);
 - (b) to acquire securities;
 - (c) to transfer securities or sums (or both) to persons who are beneficiaries under the terms of the trust deed;
 - ^{F14}(cc) to grant rights to acquire shares to persons who are beneficiaries under the terms of the trust deed;]
 - (d) to transfer securities to the trustees of profit sharing schemes approved under Schedule 9 to the Taxes Act 1988, for a price not less than the price the securities might reasonably be expected to fetch on a sale in the open market;
 - (e) pending transfer, to retain the securities and to manage them (whether by exercising voting rights or otherwise).

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Textual Amendments

F14 *Sch. 5 para. 5(2)(cc)* inserted (29.4.1996 with effect in relation to trusts established on or after 29.4.1996) by 1996 c. 8, s. 120(8)(12)

Modifications etc. (not altering text)

C8 *See Finance Act 1990 (c. 29) ss.31–40—roll-over relief for disposal of shares to employee share ownership trusts*

Sums

- 6 (1) The trust deed must require that any sum received by the trustees—
- (a) must be expended within the relevant period,
 - (b) may be expended only for one or more of the qualifying purposes, and
 - (c) must, while it is retained by them, be kept as cash or be kept in an account with a bank or building society.
- (2) For the purposes of sub-paragraph (1) above the relevant period is the period of nine months beginning with the day found as follows—
- (a) in a case where the sum is received from the founding company, or a company which is controlled by that company at the time the sum is received, the day following the end of the period of account in which the sum is charged as an expense of the company from which it is received;
 - (b) in any other case, the day the sum is received.
- (3) For the purposes of sub-paragraph (1) above each of the following is a qualifying purpose—
- (a) the acquisition of shares in the founding company;
 - (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.
- (4) The trust deed must provide that, in ascertaining for the purposes of a relevant rule whether a particular sum has been expended, sums received earlier by the trustees shall be treated as expended before sums received by them later; and a relevant rule is one which is included in the trust deed and conforms with sub-paragraph (1) above.
- (5) The trust deed must provide that, where the trustees pay sums to different beneficiaries at the same time, all the sums must be paid on similar terms.
- (6) For the purposes of sub-paragraph (5) 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.

Modifications etc. (not altering text)

C9 *See Finance Act 1990 (c. 29) ss.31–40—roll-over relief for disposal of shares to employee share ownership trusts*

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Securities

- 7 (1) Subject to paragraph 8 below, the trust deed must provide that securities acquired by the trustees must be shares in the founding company which—
- (a) form part of the ordinary share capital of the company,
 - (b) are fully paid up,
 - (c) are not redeemable, and
 - (d) are not subject to any restrictions other than restrictions which attach to all shares of the same class or a restriction authorised by sub-paragraph (2) below.
- (2) Subject to sub-paragraph (3) below, a restriction is authorised by this sub-paragraph if—
- (a) it is imposed by the founding company's articles of association,
 - (b) it requires all shares held by directors or employees of the founding company, or of any other company which it controls for the time being, to be disposed of on ceasing to be so held, and
 - (c) it requires all shares acquired, in pursuance of rights or interests obtained by such directors or employees, by persons who are not (or have ceased to be) such directors or employees to be disposed of when they are acquired.
- (3) A restriction is not authorised by sub-paragraph (2) above unless—
- (a) any disposal required by the restriction will be by way of sale for a consideration in money on terms specified in the articles of association, and
 - (b) the articles also contain general provisions by virtue of which any person disposing of shares of the same class (whether or not held or acquired as mentioned in sub-paragraph (2) above) may be required to sell them on terms which are the same as those mentioned in paragraph (a) above.
- (4) The trust deed must provide that shares in the founding company may not be acquired by the trustees at a price exceeding the price they might reasonably be expected to fetch on a sale in the open market.
- (5) The trust deed must provide that shares in the founding company may not be acquired by the trustees at a time when that company is controlled by another company.

Modifications etc. (not altering text)

C10 See Finance Act 1990 (c. 29) ss.31–40—roll-over relief for disposal of shares to employee share ownership trusts

- 8 The trust deed may provide that the trustees may acquire securities other than shares in the founding company—
- (a) if they are securities issued to the trustees in exchange in circumstances mentioned in section [F15135(1) of the ^{M1}Taxation of Chargeable Gains Act 1992], or
 - (b) if they are securities acquired by the trustees as a result of a reorganisation, and the original shares the securities represent are shares in the founding company (construing “reorganisation” and “original shares” in accordance with section [F15126] of that Act).

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Textual Amendments

F15 Words in [Sch. 5 para. 8](#) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the substituting Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, **Sch. 10 para. 19(5)** (with s. 60, 101(1), 201(3))

Modifications etc. (not altering text)

C11 See [Finance Act 1990 \(c. 29\)](#) ss.31–40—*roll-over relief for disposal of shares to employee share ownership trusts*

Marginal Citations

M1 [1992 c. 12](#).

- 9 (1) The trust deed must provide that—
- (a) where the trustees transfer securities to a beneficiary, they must do soon qualifying terms;
 - (b) the trustees must transfer securities before the expiry of the [^{F16}qualifying period] beginning with the date on which they acquired them.
- (2) For the purposes of sub-paragraph (1) above a transfer of securities is made on qualifying terms if—
- (a) all the securities transferred at the same time [^{F17}other than those transferred on a transfer such as is mentioned in sub-paragraph (2ZA) 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 [^{F18}by virtue of a rule which conforms with paragraph 4(2), (3) or (4) above] when the transfer is made, and
 - (c) securities are transferred to all such [^{F19}persons] who have accepted.
- [^{F20}(2ZA) For the purposes of sub-paragraph (1) 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 [^{F21}an SAYE option scheme]—
 - (i) which was established by, or by a company controlled by, the founding company, and
 - (ii) which is approved under [^{F22}Schedule 3 to the Income Tax (Earnings and Pensions) Act 2003], 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.]
- [^{F23}(2A) For the purposes of sub-paragraph (1) 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.]
- (3) For the purposes of sub-paragraph (2) 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.

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- (4) The trust deed must provide that, in ascertaining for the purposes of a relevant rule whether particular securities are transferred, securities acquired earlier by the trustees shall be treated as transferred by them before securities acquired by them later; and a relevant rule is one which is included in the trust deed and conforms with subparagraph (1) above.

Textual Amendments

- F16** Words in Sch. 5 para. 9(1)(b) substituted (3.5.1994) by 1994 c. 9, s. 102, **Sch. 13 para. 7(2)**
- F17** Words in Sch. 5 para. 9(2)(a) inserted (29.4.1996 with effect in relation to trusts established on or after 29.4.1996) by 1996 c. 8, s. 120(9)(a)(12)
- F18** Words in Sch. 5 para. 9(2)(b) inserted (29.4.1996 with effect in relation to trusts established on or after 29.4.1996) by 1996 c. 8, s. 120(9)(b)(12)
- F19** Words in Sch. 5 para. 9(2)(c) inserted (29.4.1996 with effect in relation to trusts established on or after 29.4.1996) by 1996 c. 8, s. 120(9)(c)(12)
- F20** Sch. 5 para. 9(2ZA) inserted (29.4.1996 with effect in relation to trusts established on or after 29.4.1996) by 1996 c. 8, s. 120(10)(12)
- F21** Words in Sch. 5 para. 9(2ZA)(b) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 723, **Sch. 6 para. 163(3)(a)** (with Sch. 7)
- F22** Words in Sch. 5 para. 9(2ZA)(b)(ii) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 723, **Sch. 6 para. 163(3)(b)** (with Sch. 7)
- F23** Sch. 5 para. 9(2A) inserted (3.5.1994) by 1994 c. 9, s. 102, **Sch. 13 para. 7(3)**

Modifications etc. (not altering text)

- C12** See Finance Act 1990 (c. 29) ss.31–40—roll-over relief for disposal of shares to employee share ownership trusts

Other features

- 10 The trust deed must not contain features which are not essential or reasonably incidental to the purpose of acquiring sums and securities, [^{F24}granting rights to acquire shares to persons who are eligible to participate in [^{F25}SAYE option schemes approved under Schedule 3 to the Income Tax (Earnings and Pensions) Act 2003], transferring shares to such persons,] transferring sums and securities to employees and directors, and transferring securities to the trustees of profit sharing schemes approved under [^{F26}Schedule 9 to the Taxes Act 1988].

Textual Amendments

- F24** Words in Sch. 5 para. 10 inserted (29.4.1996 with effect in relation to trusts established on or after 29.4.1996) by 1996 c. 8, s. 120(11)(a)(12)
- F25** Words in Sch. 5 para. 10 substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 723, **Sch. 6 para. 163(4)(a)** (with Sch. 7)
- F26** Words in Sch. 5 para. 10 substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 723, **Sch. 6 para. 163(4)(b)** (with Sch. 7)

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Modifications etc. (not altering text)

C13 See Finance Act 1990 (c. 29) ss.31–40—roll-over relief for disposal of shares to employee share ownership trusts

Rules about acquisition etc.

- 11 (1) The trust deed must provide that, for the purposes of the deed, the trustees—
- (a) acquire securities when they become entitled to them;
 - (b) transfer securities to another person when that other becomes entitled to them;
 - (c) retain securities if they remain entitled to them.
- (2) But if the deed provides as mentioned in paragraph 8 above, it must provide for the following exceptions to any rule which is included in it and conforms with subparagraph (1)(a) above, namely, that—
- (a) if securities are issued to the trustees in exchange in circumstances mentioned in section [F27 135(1) of the M2 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 the 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 [F27 126] of that Act).
- (3) The trust deed must provide that—
- (a) if the trustees agree to take a transfer of securities, for the purposes of the deed they become entitled to them when the agreement is made and not on a later transfer made pursuant to the agreement;
 - (b) if the trustees agree to transfer securities to another person, for the purposes of the deed the other person becomes entitled to them when the agreement is made and not on a later transfer made pursuant to the agreement.

Textual Amendments

F27 Words in Sch. 5 para. 11 substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the substituting Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, Sch. 10 para. 19(5) (with s. 60, 101(1), 201(3))

Modifications etc. (not altering text)

C14 See Finance Act 1990 (c. 29) ss.31–40—roll-over relief for disposal of shares to employee share ownership trusts

Marginal Citations

M2 1992 c. 12.

Position after trust’s establishment

- 12 A trust which was at the time it was established a qualifying employee share ownership trust shall continue to be one, except that it shall not be such a trust at any time when the requirements mentioned in paragraph 3(3)(a) to (f) above are not

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satisfied. [^{F28}This paragraph applies in relation to trusts established on or before the day on which the Finance Act 1994 was passed.]

Textual Amendments

F28 Words in [Sch. 5 para. 12](#) inserted (3.5.1994) by [1994 c. 9, s. 102, Sch. 13 para. 4](#)

Modifications etc. (not altering text)

C15 See [Finance Act 1990 \(c. 29\)](#) ss.31–40—*roll-over relief for disposal of shares to employee share ownership trusts*

[^{F29}12A(1) Subject to sub-paragraphs (2) and (3) below, a trust which was at the time it was established a qualifying employee share ownership trust shall continue to be one.

(2) If the trust deed makes provision under paragraph 3A(a) above, the trust shall not be a qualifying employee share ownership trust at any time when the requirements mentioned in paragraph 3(3)(a) to (f) above are not satisfied.

(3) If the trust deed makes provision under paragraph 3A(b) above, the trust shall not be a qualifying employee share ownership trust at any time when the conditions mentioned in paragraph 3B(4)(a) to (e) above are not satisfied.

(4) If the trust deed makes provision under paragraph 3A(c) above, the trust shall not be a qualifying employee share ownership trust at any time when—

- (a) there is not a single trustee,
- (b) the trustee is not a company which is resident in the United Kingdom and controlled by the founding company, or
- (c) the conditions mentioned in paragraph 3C(4)(a) to (e) above are not satisfied as regards the directors of the trustee.

(5) This paragraph applies in relation to trusts established after the day on which the Finance Act 1994 was passed.]

Textual Amendments

F29 [Sch. 5 para. 12A](#) inserted (3.5.1994) by [1994 c. 9, s. 102, Sch. 13 para. 5](#)

13 A trust is an employee share ownership trust at a particular time (the relevant time) if it was a qualifying employee share ownership trust at the time it was established; and it is immaterial whether or not it is a qualifying employee share ownership trust at the relevant time.

Modifications etc. (not altering text)

C16 See [Finance Act 1990 \(c. 29\)](#) ss.31–40—*roll-over relief for disposal of shares to employee share ownership trusts*

Interpretation

14 For the purposes of this Schedule the following are securities—

- (a) shares;
- (b) debentures.

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Modifications etc. (not altering text)

C17 See Finance Act 1990 (c. 29) ss.31–40—roll-over relief for disposal of shares to employee share ownership trusts

- 15 For the purposes of this Schedule, the question whether one company is controlled by another shall be construed in accordance with [^{F30}section 995 of the Income Tax Act 2007].

Textual Amendments

F30 Words in Sch. 5 para. 15 substituted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), Sch. 1 para. 283(2) (with Sch. 2)

Modifications etc. (not altering text)

C18 See Finance Act 1990 (c. 29) ss.31–40—roll-over relief for disposal of shares to employee share ownership trusts

- 16 (1) For the purposes of this Schedule a person shall be treated as having a material interest in a company if he, either on his own or with one or more of his associates, or if any associate of his with or without other such associates,—
- (a) is the beneficial owner of, or able (directly or through the medium of other companies or by any other indirect means) to control, more than 5 percent. of the ordinary share capital of the company, or
 - (b) possesses, or is entitled to acquire, such rights as would, in the event of the winding-up of the company or in any other circumstances, give an entitlement to receive more than 5 per cent. of the assets which would then be available for distribution among the participators.
- (2) In this paragraph—
- (a) “associate” has the [^{F31}meaning given by section 448 of the Corporation Tax Act 2010], but subject to sub-paragraph (3) below,
 - (b) “control” has the meaning given by [^{F32}section 995 of the Income Tax Act 2007], and
 - (c) “participator” has the [^{F33}meaning given by section 454 of the Corporation Tax Act 2010].
- (3) Where a person has an interest in shares or obligations of the company as a beneficiary of an employee benefit trust, the trustees shall not be regarded as associates of his by reason only of that interest unless sub-paragraph (5) below applies in relation to him.
- (4) In sub-paragraph (3) above “employee benefit trust” has the same meaning as in paragraph 7 of Schedule 8 to the Taxes Act 1988, except that in its application for this purpose paragraph 7(5)(b) of that Schedule shall have effect as if it referred to the day on which this Act was passed instead of to 14th March 1989.
- (5) This sub-paragraph applies in relation to a person if at any time on or after the day on which this Act was passed—
- (a) he, either on his own or with any one or more of his associates, or
 - (b) any associate of his, with or without other such associates,

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has been the beneficial owner of, or able (directly or through the medium of other companies or by any other indirect means) to control, more than 5 percent. of the ordinary share capital of the company.

- (6) Sub-paragraphs (9) to (12) of paragraph 7 of Schedule 8 to the Taxes Act 1988 shall apply for the purposes of sub-paragraph (5) above as they apply for the purposes of that paragraph.

Textual Amendments

- F31** Words in [Sch. 5 para. 16\(2\)\(a\)](#) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 216\(a\)](#) (with [Sch. 2](#))
- F32** Words in [Sch. 5 para. 16\(2\)\(b\)](#) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 283\(3\)\(a\)](#) (with [Sch. 2](#))
- F33** Words in [Sch. 5 para. 16\(2\)\(c\)](#) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 216\(b\)](#) (with [Sch. 2](#))

Modifications etc. (not altering text)

- C19** See [Finance Act 1990 \(c. 29\) ss.31–40—roll-over relief for disposal of shares to employee share ownership trusts](#)

- [^{F34}17 For the purposes of this Schedule a trust is established when the deed under which it is established is executed.]

Textual Amendments

- F34** [Sch. 5 para. 17](#) inserted (3.5.1994) by [1994 c. 9, s. 102, Sch. 13 para. 8](#)

- [^{F35}18 For the purposes of this Schedule “SAYE option scheme” has the same meaning as in the SAYE code (see section 516 of the Income Tax (Earnings and Pensions) Act 2003 (approved SAYE option schemes)).]

Textual Amendments

- F35** [Sch. 5 para. 18](#) inserted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 6 para. 163\(5\)](#) (with [Sch. 7](#))

Changes to legislation:

There are currently no known outstanding effects for the Finance Act 1989, SCHEDULE 5.