



Corporation Tax Act 2009

2009 CHAPTER 4

PART 11

RELIEF FOR PARTICULAR EMPLOYEE SHARE ACQUISITION SCHEMES

CHAPTER 1

SHARE INCENTIVE PLANS

Introductory

983 Overview of Chapter

- (1) This Chapter is about deductions relating to approved share incentive plans.
- (2) Section 984 relates to the interpretation of this Chapter.
- (3) Sections 985 and 986 set out—
 - (a) how effect is given to deductions allowed under this Chapter, and
 - (b) how amounts treated as received under this Chapter are dealt with.
- (4) Sections 987 and 988 deal with deductions allowed for the costs of setting up plans and their running expenses.
- (5) Sections 989 to 993 deal with deductions allowed for payments used to acquire shares for plan trusts.
- (6) Sections 994 to 997 deal with other deductions relating to free shares, matching shares, partnership shares and dividend shares.
- (7) Section 998 deals with the withdrawal of deductions if approval for a plan is withdrawn.

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984 Chapter to form part of SIP code etc

- (1) This Chapter forms part of the SIP code (see section 488 of ITEPA 2003).
- (2) Therefore expressions used in this Chapter and contained in the index at the end of Schedule 2 to ITEPA 2003 have the meaning indicated by that index.
- (3) Subsection (4) applies if any of a participant's plan shares are forfeited.
- (4) For the purposes of this Chapter the shares are treated as acquired by the trustees—
 - (a) when the forfeiture occurs, and
 - (b) for no consideration.

Deductions and receipts: general

985 References to a deduction being allowed to a company

- (1) References in this Chapter to a deduction being allowed to a company are to be read in accordance with this section (and references to a deduction being made are to be read in that light).
- (2) If a deduction is allowed to a company, the deduction is made in calculating for corporation tax purposes the profits of a trade or property business carried on by the company.

This is subject to subsections (3) and (4).

- (3) If the company is a company with investment business (as defined in [^{F1}section 1218B]), the amount of the deduction is treated as expenses of management of the company.

But this subsection does not apply if the company's business is a property business (in which case subsection (2) applies instead).

[^{F2}(4) If—

- (a) the company is a company in relation to which the I - E rules apply, and
- (b) the expenses are referable, in accordance with Chapter 4 of Part 2 of FA 2012, to the company's basic life assurance and general annuity business,

the expenses are treated for the purposes of section 76 of that Act as ordinary BLAGAB management expenses of the company.]

- (5) So far as this Chapter provides for a deduction to be allowed, it has effect despite section 53 (no deduction for items of a capital nature in calculating trading profits), including that section as applied by section 210 to the calculation of profits of a property business.

Textual Amendments

F1 Words in s. 985(3) substituted (with effect in accordance with Sch. 18 para. 23 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 18 paras. 21(2), 22**; S.I. 2013/1817, art. 2(2); S.I. 2014/1962, art. 2(3)

F2 S. 985(4) substituted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 16 para. 185**

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986 Treatment of receipts under Chapter

- (1) This section applies if a company is treated under this Chapter as receiving an amount.
- (2) If the company is carrying on a trade or property business in respect of which it is within the charge to corporation tax, the amount is treated as a receipt of that trade or business.
- (3) If the company has permanently ceased to carry on a trade or property business in respect of which it was within the charge to corporation tax, the amount is treated as a post-cessation receipt of that trade or business (see Chapter 15 of Part 3).
- (4) Otherwise, the amount is treated as a receipt chargeable under the charge to corporation tax on income.

Deductions relating to setting up and running costs

987 Deduction for costs of setting up an approved share incentive plan

- (1) This section applies if a company incurs expenses in setting up a share incentive plan that is approved by an officer of Revenue and Customs.
- (2) A deduction for the expenses is allowed to the company.
- (3) But no deduction is allowed under this section if before the approval—
 - (a) an employee acquires rights under the plan, or
 - (b) the trustees acquire shares for the purposes of the plan.
- (4) If the approval is given more than 9 months after the end of the period of account in which the expenses are incurred, the deduction is allowed for the period of account in which the approval is given.
- (5) No other deduction is allowed in respect of expenses for which a deduction is allowed under this section.

988 Deductions for running expenses of an approved share incentive plan

- (1) This section applies if a company incurs expenses in contributing to the expenses of the trustees in running an approved share incentive plan.
- (2) This Chapter does not affect the deductions that, apart from this Chapter, are allowed to the company in relation to those expenses incurred by it.
- (3) For the purposes of this section expenses of the trustees in running an approved share incentive plan do not include expenses incurred in acquiring shares for the purposes of the plan other than expenses within subsection (4).
- (4) The expenses within this subsection are—
 - (a) interest paid on money borrowed by the trustees for the purpose of acquiring the shares, and
 - (b) any of the following—
 - (i) fees,
 - (ii) commission,
 - (iii) stamp duty,

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- (iv) stamp duty reserve tax, and
- (v) other incidental costs similar to any mentioned in sub-paragraphs (i) to (iv).

Deductions relating to payments used to acquire shares

989 Deduction for contribution to plan trust

- (1) A deduction is allowed to a company (“the paying company”) if—
- (a) the paying company makes a payment to the trustees of an approved share incentive plan to enable them to acquire shares in the paying company or a company that controls it,
 - [^{F3}(aa) the payment is not made pursuant to tax avoidance arrangements,]
 - (b) the trustees apply the payment to acquire such shares,
 - (c) the trustees do not acquire the shares from a company, and
 - (d) at the end of the interim period the condition in subsection (2) is met in relation to the company in which the trustees acquire the shares.
- (2) The condition is that the trustees hold shares in the company for the plan trust that—
- (a) constitute at least 10% of the ordinary share capital of the company, and
 - (b) carry rights to at least 10% of—
 - (i) any profits available for distribution to shareholders of the company, and
 - (ii) any assets of the company available for distribution to shareholders on a winding up.
- (3) For the purposes of subsection (2) shares that have been appropriated to, and acquired on behalf of, an employee under the plan are to be treated as held by the trustees for the plan trust so long as the shares are still subject to the plan.
- (4) The deduction is allowed for the period of account in which the interim period ends.
- (5) The amount of the deduction is an amount equal to the payment mentioned in subsection (1)(a).
- (6) If the deduction is made, no other deduction is allowed in relation to the payment (except as specified in section 991).
- [^{F4}(6A) For the purposes of this section the payment mentioned in subsection (1)(a) is made pursuant to tax avoidance arrangements if—
- (a) it is made pursuant to arrangements entered into by the paying company, and
 - (b) the main purpose, or one of the main purposes, of the paying company in entering into the arrangements was to obtain a deduction or an increased deduction.
- (6B) In subsection (6A) “arrangements” includes any arrangements, scheme or understanding of any kind, whether or not legally enforceable, involving a single transaction or two or more transactions.]
- (7) In this section “the interim period” means the period of 12 months beginning with the date on which the trustees acquire the shares as mentioned in subsection (1)(b).

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Textual Amendments

- F3** S. 989(1)(aa) inserted (with effect in relation to payments made on or after 24.3.2010) by [Finance Act 2010 \(c. 13\), s. 42\(5\)\(8\)](#)
- F4** S. 989(6A)(6B) inserted (with effect in relation to payments made on or after 24.3.2010) by [Finance Act 2010 \(c. 13\), s. 42\(6\)\(8\)](#)

990 Withdrawal of deduction under section 989

- (1) If—
- (a) a deduction is made under section 989, and
 - (b) condition A or B is met,
- an officer of Revenue and Customs may by notice direct that the deduction is withdrawn.
- (2) Condition A is that less than 30% of the acquired shares have been awarded under the plan before the end of the period of 5 years beginning with the date on which the trustees acquire them.
- (3) Condition B is that not all the acquired shares have been awarded under the plan before the end of the period of 10 years beginning with the date on which the trustees acquire them.
- (4) If a direction is made, the paying company is treated as receiving an amount equal to the deduction.
- (5) The amount is treated as received when the direction is made.
- (6) For the purposes of this section and sections 991 to 993—
- (a) “the acquired shares” means the shares acquired by the trustees as mentioned in section 989(1)(b), and
 - (b) if the trustees acquire shares on different days, assume that shares acquired on an earlier day are awarded under the plan before those acquired on a later day.

991 Another deduction to be allowed if all acquired shares are awarded

- (1) This section applies if—
- (a) a direction is made under section 990, and
 - (b) at any time after the making of the direction the condition in subsection (2) is met.
- (2) The condition is that all the acquired shares are awarded under the plan.
- (3) A deduction is allowed to the paying company for the period of account in which the condition is first met.
- (4) The amount of the deduction is an amount equal to the payment mentioned in section 989(1)(a).

992 Award of shares to excluded employee

- (1) This section applies if—

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- (a) a deduction is made under section 989 or 991, and
 - (b) a number of the acquired shares are awarded under the plan to an excluded employee.
- (2) An employee is excluded if, at the time the shares are awarded to the employee, the earnings from the relevant employment are not (or would not be if there were any) general earnings—
- (a) to which section 15 of ITEPA 2003 applies, or
 - (b) to which a section listed in section 20(1) of ITEPA 2003 applies.
- (3) “The relevant employment” means the employment because of which the shares are awarded to the employee.
- (4) The paying company is treated as receiving an amount equal to the relevant proportion of the deduction.
- (5) The relevant proportion is the proportion that the number of shares awarded to the excluded employee bears to the total number of the acquired shares.
- (6) The amount is treated as received when the shares are awarded to the excluded employee.

993 Plan termination notice

- (1) This section applies if—
- (a) a deduction has been made under section 989,
 - (b) the deduction has not been withdrawn under section 990,
 - (c) the paying company issues a plan termination notice under paragraph 89 of Schedule 2 to ITEPA 2003 in relation to the plan, and
 - (d) not all the acquired shares have been awarded under the plan before the issue of that notice.
- (2) The paying company is treated as receiving an amount equal to the relevant proportion of the deduction.
- (3) The relevant proportion is the proportion that the number of the acquired shares not awarded bears to the total number of the acquired shares.
- (4) The amount is treated as received when the paying company issues the plan termination notice.

Deductions relating to provision of certain types of shares

994 Deduction for providing free or matching shares

- (1) This section applies if, under an approved share incentive plan, shares are awarded to employees as free or matching shares because of their employment with a company (“the employing company”).
- (2) A deduction is allowed to the employing company for the period of account in which the shares are awarded to the employees.
- (3) The amount of the deduction is an amount equal to the market value of the shares awarded to the employees.

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- (4) But if the shares are awarded to the employees under a group plan, the amount of the deduction is an amount equal to the relevant proportion of the total market value of the shares included in the award.
- (5) The relevant proportion is the proportion that the number of shares awarded to the employees bears to the total number of shares included in the award.
- (6) For the purposes of this section—
 - (a) the market value of shares is their market value when they are acquired by the trustees of the plan trust, and
 - (b) if the trustees acquire shares on different days, assume that shares acquired on an earlier day are awarded before those acquired on a later day.
- (7) No deduction, other than one under this section, is allowed to the employing company or any associated company in relation to the provision of the shares awarded to the employees.
- (8) But subsection (7)—
 - (a) does not prevent a deduction being allowed under section 987 in relation to expenses incurred by a company in setting up a share incentive plan, and
 - (b) is subject to section 988.
- (9) If the shares are awarded to the employees because of their employment with two or more companies, only one of those companies can make a deduction under this section in relation to the award.
- (10) This section is subject to section 996.

995 Deduction for additional expense in providing partnership shares

- (1) This section applies if—
 - (a) under an approved share incentive plan, partnership shares are awarded to employees because of their employment with a company (“the employing company”), and
 - (b) the market value of the shares when they were acquired by the trustees of the plan trust exceeds the partnership share money paid by the participants to acquire those shares.
- (2) A deduction is allowed to the employing company for the period of account in which the shares are awarded.
- (3) The amount of the deduction is an amount equal to the excess mentioned in subsection (1)(b).
- (4) No deduction, other than one under this section, is allowed to the employing company or any associated company in relation to the provision of the shares.
- (5) But subsection (4)—
 - (a) does not prevent a deduction being allowed under section 987 in relation to expenses incurred by a company in setting up a share incentive plan, and
 - (b) is subject to section 988.

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- (6) If the shares are awarded to the employees because of their employment with two or more companies, only one of those companies may make a deduction under this section in relation to the award.
- (7) This section is subject to section 996.

996 Shares excluded from sections 994 and 995

- (1) No deduction is allowed under section 994 or 995 in relation to shares to which any of exclusions 1 to 5 applies.
- (2) Exclusion 1 applies to shares awarded to an excluded employee.
- (3) For the purposes of subsection (2) an employee is excluded if, at the time the shares are awarded to the employee, the earnings from the employee's employment with the employing company are not (or would not be if there were any) chargeable earnings—
 - (a) to which section 15 of ITEPA 2003 applies, or
 - (b) to which a section listed in section 20(1) of ITEPA 2003 applies.
- (4) Exclusion 2 applies to shares in a company that are liable to depreciate substantially in value for reasons that do not apply generally to shares in that company.
- (5) Exclusion 3 applies to shares in relation to which a deduction has been made by the employing company or an associated company in relation to the provision of the shares for the plan trust or for another trust.
- (6) For the purposes of subsection (5)—
 - (a) it does not matter upon what basis that deduction was made or what the nature or purpose of the other trust is, and
 - (b) if the trustees of the plan trust acquire shares on different days, in determining whether the same shares have been provided to more than one trust, assume that shares acquired on an earlier day are awarded under the plan trust before those acquired on a later day.
- (7) Exclusion 4 applies to shares acquired by the trustees of the plan trust as a result of a payment in relation to which a deduction is made under section 989 or 991.
- (8) Exclusion 5 applies to shares awarded after having been forfeited by a participant.

997 No deduction for expenses in providing dividend shares

- (1) No deduction is allowed to a company for expenses in providing shares that are acquired on behalf of employees under an approved share incentive plan as dividend shares.
- (2) This is subject to section 988.

Withdrawal of approval for a plan

998 Withdrawal of deductions if approval for share incentive plan withdrawn

- (1) This section applies if—

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- (a) a deduction is made by a company under section 989, 991, 994 or 995 in relation to an approved share incentive plan, and
 - (b) the approval for the plan is withdrawn.
- (2) An officer of Revenue and Customs may by notice direct that the deduction is withdrawn.
- (3) If a direction is made, the company is treated as receiving an amount equal to the deduction.
- (4) The amount is treated as received when the direction is made.

CHAPTER 2

SAYE OPTION SCHEMES, COMPANY SHARE OPTION SCHEMES AND EMPLOYEE SHARE OPTIONS TRUSTS

999 Deduction for costs of setting up SAYE option scheme or CSOP scheme

- (1) This section applies if—
- (a) a company incurs expenses in setting up a scheme within subsection (2) that is approved by an officer of Revenue and Customs, and
 - (b) no employee or director acquires rights under the scheme before it is approved.
- (2) The schemes within this subsection are—
- (a) SAYE option schemes within the meaning of the SAYE code (see section 516(4) of ITEPA 2003), and
 - (b) CSOP schemes within the meaning of the CSOP code (see section 521(4) of ITEPA 2003).

The references in subsection (1) to a scheme being approved are to it being approved under Schedule 3 or 4 to ITEPA 2003 (as the case may be).

- (3) A deduction for the expenses is to be made in calculating for corporation tax purposes the profits of a trade or property business carried on by the company.

This is subject to subsections (4) and (5).

- (4) If the company is a company with investment business (as defined in ^[F5]section 1218B), the expenses are treated as expenses of management of the company.

But this subsection does not apply if the company's business is a property business (in which case subsection (3) applies instead).

^[F6](5) If—

- (a) the company is a company in relation to which the I - E rules apply, and
 - (b) the expenses are referable, in accordance with Chapter 4 of Part 2 of FA 2012, to the company's basic life assurance and general annuity business,
- the expenses are treated for the purposes of section 76 of that Act as ordinary BLAGAB management expenses of the company.]
- (6) If the approval is given more than 9 months after the end of the period of account in which the expenses are incurred—

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- (a) for the purposes of subsection (3) the deduction is to be made for the period of account in which the approval is given, or
 - (b) for the purposes of subsection (4) or (5) the expenses are treated as referable to the accounting period in which the approval is given.
- (7) So far as this section provides for a deduction to be allowed, it has effect despite section 53 (no deduction for items of a capital nature in calculating trading profits), including that section as applied by section 210 to the calculation of profits of a property business.

Textual Amendments

- F5** Words in s. 999(4) substituted (with effect in accordance with Sch. 18 para. 23 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 18 paras. 21\(2\), 22](#); S.I. 2013/1817, art. 2(2); S.I. 2014/1962, art. 2(3)
- F6** S. 999(5) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 186](#)

1000 Deduction for costs of setting up employee share ownership trust

- (1) This section applies if a company incurs expenses in setting up a qualifying employee share ownership trust (within the meaning of Schedule 5 to FA 1989).
- (2) A deduction for the expenses is to be made in calculating for corporation tax purposes the profits of a trade or property business carried on by the company.

This is subject to [^{F7}subsection (3)].

- (3) If the company is a company with investment business (as defined in [^{F8}section 1218B]), the expenses are treated as expenses of management of the company.

But this subsection does not apply if the company's business is a property business (in which case subsection (2) applies instead).

^{F9}(4)

- (5) If the trust is established more than 9 months after the end of the period of account in which the expenses are incurred—
- (a) for the purposes of subsection (2) the deduction is to be made for the period of account in which the trust is established, or
 - (b) for the purposes of subsection (3) or (4) the expenses are treated as referable to the accounting period in which the trust is established.

- (6) For the purposes of subsection (5) a trust is established when the deed under which it is established is executed.

- (7) So far as this section provides for a deduction to be allowed, it has effect despite section 53 (no deduction for items of a capital nature in calculating trading profits), including that section as applied by section 210 to the calculation of profits of a property business.

Textual Amendments

- F7** Words in s. 1000(2) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 187\(2\)](#)

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- F8** Words in s. 1000(3) substituted (with effect in accordance with Sch. 18 para. 23 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 18 paras. 21(2), 22**; S.I. 2013/1817, art. 2(2); S.I. 2014/1962, art. 2(3)
- F9** S. 1000(4) omitted (17.7.2012) by virtue of Finance Act 2012 (c. 14), **Sch. 16 para. 187(3)**

Modifications etc. (not altering text)

- C1** S. 1000 applied (with effect in accordance with s. 148 of the amending Act) by Finance Act 2012 (c. 14), **s. 81(2)(3)(7)** (with s. 147, Sch. 17)

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