

Arrangements reducing value of company shares. FA 1989 s90(1) to (10) and (12) 44.—(1) In this section—

“arrangement” means an arrangement which is made on or after 25 January 1989, and includes—

- (a) any act or omission by a person or by the trustees of a disposition,
- (b) any act or omission by any person having an interest in shares in a company,
- (c) the passing by any company of a resolution, or
- (d) any combination of acts, omissions or resolutions referred to in paragraphs (a), (b) and (c);

“company” means a private company within the meaning of section 27;

“event” includes—

- (a) a death, and
- (b) the expiration of a specified period;

“related shares” means the shares in a company, the market value of which shares is increased by any arrangement;

“related trust” has the meaning assigned to it by subsections (3) and (5);

“specified amount” means an amount equal to the difference between—

(a) the market value of shares in a company immediately before an arrangement is made, and ascertained under section 27 as if each share were a share in a company controlled at that time by the disponent concerned and that share was the absolute property of that disponent at that time, and

(b) the market value of those shares, or of property representing those shares, immediately after the arrangement is made, and ascertained under section 26,

and such specified amount is deemed to be situated where the company is incorporated.

(2) In this section, a reference to a company controlled by the disponent concerned is a reference to a company that is under the control of any one or more of the following, that is, that disponent, the relatives of that disponent, nominees of relatives of that disponent, and the trustees of a settlement whose objects include that disponent or relatives of that disponent, and for the purposes of this section, a company which is so controlled by that disponent is regarded as being itself a relative of that disponent.

(3) Where—

(a) a person has an absolute interest in possession in shares in a company, and

(b) any arrangement results in the market value of those shares, or of property representing those shares, immediately after that arrangement is made, being less than it would be but for that arrangement,

then, tax is payable in all respects as if a specified amount which relates to that arrangement were a benefit taken, immediately after that arrangement is made, from that person, as disponent, by—

(i) the beneficial owners of the related shares in that company, and

(ii) so far as the related shares in that company are held in trust (in this section referred to as the “related trust”) and have no ascertainable beneficial owners, by the disponent in relation to that related trust as if, immediately after that arrangement is made, that disponent was the absolute beneficial owner of those related shares,

in the same proportions as the market value of the related shares, which are beneficially owned by them or are deemed to be so beneficially owned, is increased by that arrangement.

(4) Where—

(a) an interest in property is limited by the disposition creating it to cease on an event,

(b) immediately before the making of an arrangement to which paragraph (c) relates, the property includes shares in a company, and

(c) the arrangement results in the market value of those shares, or of property representing those shares, immediately after that arrangement is made, being less than it would be but for that arrangement,

then, tax is payable under that disposition in all respects—

(i) where the interest in property is an interest in possession, as if such property included a specified amount which relates to that arrangement,

(ii) where the interest in property is not an interest in possession, as if it were an interest in possession and such property included a specified amount which relates to that arrangement, and

(iii) as if the event on which the interest was limited to cease under that disposition had happened, to the extent of the specified amount, immediately before that arrangement is made.

(5) Where—

(a) shares in a company are, immediately before the making of an arrangement to which paragraph (b) relates, subject to a discretionary trust under or in consequence of any disposition, and

(b) the arrangement results in those shares, or property representing those shares, remaining subject to

that discretionary trust but, immediately after that arrangement is made, the market value of those shares, or of property representing those shares, is less than it would be but for that arrangement,

then, tax shall be payable under that disposition in all respects as if a specified amount, which relates to that arrangement, were a benefit taken immediately after that arrangement is made—

(i) by the beneficial owners of the related shares in that company, and

(ii) so far as the related shares in that company are held in trust (in this section referred to as the “related trust”) and have no ascertainable beneficial owners, by the disponent in relation to that related trust as if, immediately after that arrangement is made, that disponent was the absolute beneficial owner of those related shares,

in the same proportions as the market value of the related shares, which are beneficially owned by them or are deemed to be so beneficially owned, is increased by that arrangement.

(6) Subsections (3), (4) and (5) shall not prejudice any charge for tax in respect of any gift or inheritance taken under any disposition on or after the making of an arrangement referred to in those subsections and comprising shares in a company, or property representing such shares.

(7) Where shares in a company, which are held in trust under a disposition made by any disponent, are related shares by reason of any arrangement referred to in this section, any gift or inheritance taken under the disposition on or after the arrangement is made and comprising those related shares, or property representing those related shares, are deemed to be taken from that disponent.

(8) In relation to the tax due and payable in respect of any gift or inheritance taken under paragraph (ii) of subsection (3) or paragraph (ii) of subsection (5), and notwithstanding any other provision of this Act—

(a) the disponent in relation to the related trust is not a person primarily accountable for the payment of such tax, and

(b) a person who is a trustee of the related trust concerned for the time being at the date of the gift or at the date of the inheritance, or at any date subsequent to that date, is so primarily accountable.

(9) A person who is accountable for the payment of tax in respect of any specified amount, or part of a specified amount, taken as a gift or an inheritance under this section shall, for the purpose of paying the tax, or raising the amount of the tax when already paid, have power, whether the related shares are or are not vested in that person, to raise the amount of such tax and any interest and expenses properly paid or incurred by that person in respect of such tax, by the sale or mortgage of, or a terminable charge on, the related shares in the relevant company.

(10) Tax due and payable in respect of a taxable gift or a taxable inheritance taken under this section shall be and remain a charge on the related shares in the relevant company.

(11) Where related shares are subject to a discretionary trust immediately after an arrangement is made in accordance with the provisions of this section, the amount by which the market value of such shares is increased by such arrangement is property for the purposes of a charge for tax arising by reason of section 15.

(12) Where, immediately after and as a result of an arrangement, shares in a company have been redeemed, the redeemed shares are, for the purpose of the references to property representing shares in subsection (1) and subsection (3), (4) or (5), except a reference in relation to which the redeemed shares are actually represented by property, deemed, immediately after the arrangement, being an arrangement made on or after 6 May 1993, to be represented by property, and the market value of the property so deemed to represent the redeemed shares is deemed to be nil.