

*Status: Point in time view as at 16/12/2010.*

**Changes to legislation:** Taxation of Chargeable Gains Act 1992, SCHEDULE 7D is up to date with all changes known to be in force on or before 15 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

## SCHEDULES

### [<sup>F1</sup>SCHEDULE 7D

Section 238A

#### APPROVED SHARE SCHEMES AND SHARE INCENTIVES

##### Textual Amendments

- F1** Sch. 7D 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. 221](#) (with Sch. 7)

### PART 1

#### APPROVED SHARE INCENTIVE PLANS

##### Modifications etc. (not altering text)

- C1** Sch. 7D Pt. 1 applied (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. 2 para. 87](#) (with Sch. 7)

##### *Introductory*

- 1 (1) The provisions of this Part of this Schedule apply for capital gains tax purposes in relation to an approved share incentive plan (“the plan”).
- (2) This Part of this Schedule forms part of the SIP code (see section 488 of ITEPA 2003 (approved share incentive plans)).
- (3) Accordingly, expressions used in this Part of this Schedule and contained in the index at the end of Schedule 2 to that Act (approved share incentive plans) have the meaning indicated by the index.
- (4) In particular, for the purposes of paragraphs 5 and 7 of this Schedule “market value” has the meaning given by paragraph 92 of Schedule 2 to that Act (determination of market value); and Part 8 of this Act has effect subject to this paragraph.

##### *Gains accruing to trustees*

- 2 (1) Any gain accruing to the trustees is not a chargeable gain if the shares—
- (a) are shares in relation to which the requirements of Part 4 of Schedule 2 to ITEPA 2003 (approved share incentive plans: types of shares that may be awarded) are met, and
- (b) are awarded to employees, or acquired on their behalf as dividend shares, in accordance with the plan within the relevant period.

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- (2) If any of the shares in the company in question are readily convertible assets at the time the shares are acquired by the trustees, the relevant period is the period of two years beginning with the date on which the shares were acquired by the trustees.

This is subject to sub-paragraph (4).

- (3) If at the time of the acquisition of the shares by the trustees none of the shares in the company in question are readily convertible assets, the relevant period is—
- (a) the period of five years beginning with the date on which the shares were acquired by the trustees, or
  - (b) if within that period any of the shares in that company become readily convertible assets, the period of two years beginning with the date on which they did so,

whichever ends first.

This is subject to sub-paragraph (4).

- (4) If the shares are acquired by the trustees by virtue of a payment in respect of which a deduction is allowed under [F<sup>2</sup>section 989 of CTA 2009] (deduction for contribution to plan trust), the relevant period is the period of ten years beginning with the date of acquisition.
- (5) For the purposes of determining whether shares are awarded to a participant within the relevant period, shares acquired by the trustees at an earlier time are taken to be awarded to a participant before shares of the same class acquired by the trustees at a later time.
- (6) Sub-paragraph (5) is subject to paragraph 78(1) of Schedule 2 to ITEPA 2003 (acquisition by trustees of shares from employee share ownership trust).
- (7) For the purposes of this paragraph “readily convertible assets” has the meaning given by sections 701 and 702 of that Act (readily convertible assets).

This is subject to sub-paragraph (8).

- (8) In determining for the purposes of this paragraph whether shares are readily convertible assets any market for the shares that—
- (a) is created by virtue of the trustees acquiring shares for the purposes of the plan, and
  - (b) exists solely for the purposes of the plan,
- shall be disregarded.
- (9) In relation to shares acquired by the trustees before 11th May 2001 this paragraph has effect with the substitution—
- (a) in sub-paragraph (2), of “If the shares are readily convertible assets at the time they” for the words before “are acquired”, and
  - (b) in sub-paragraph (3)—
    - (i) of “If at the time of their acquisition by the trustees the shares are not readily convertible assets” for the words before “the relevant period”, and
    - (ii) in paragraph (b), of “the shares in question” for “any of the shares in that company”.

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### Textual Amendments

- F2** Words in Sch. 7D para. 2(4) substituted (with effect in accordance with s. 1329(1) of the amending Act) by **Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 387** (with Sch. 2 Pts. 1, 2)

#### *Participant absolutely entitled as against trustees*

- 3 (1) Sub-paragraph (2) applies to any shares awarded to a participant under the plan.
- (2) The participant is treated for capital gains tax purposes as absolutely entitled to those shares as against the trustees.
- (3) Sub-paragraph (2) applies notwithstanding anything in the plan or the trust instrument.

#### *Different classes of shares*

- 4 (1) For the purposes of Chapter 1 of Part 4 of this Act (shares, securities, options etc: general) a participant's plan shares are treated, so long as they are subject to the plan, as of a different class from any shares (which would otherwise be treated as of the same class) that are not plan shares.
- (2) For the purposes of that Chapter, any shares to which sub-paragraph (3) applies shall be treated as of a different class from any shares to which sub-paragraph (4) applies, even if they would otherwise fall to be treated as of the same class.
- (3) This sub-paragraph applies to any shares transferred to the trustees of the plan trust by a qualifying transfer that have not been awarded to participants under the plan.
- (4) This sub-paragraph applies to any shares held by the trustees that were not transferred to them by a qualifying transfer.
- (5) In this paragraph "qualifying transfer" has the meaning given in paragraph 78(2) of Schedule 2 to ITEPA 2003 (acquisition by trustees of shares from employee share ownership trust).
- (6) For the purposes of Chapter 1 of Part 4 of this Act any shares which—
- (a) were acquired by the trustees by virtue of a payment in respect of which a deduction is allowed under paragraph 9 of Schedule 4AA to the Taxes Act (deduction for contribution to plan trust), and
  - (b) have not been awarded under the plan,
- shall be treated as of a different class from any shares held by the trustees that were not so acquired by them, even if they would otherwise fall to be treated as of the same class.

#### *No chargeable gain on shares ceasing to be subject to the plan*

- 5 (1) Shares which cease to be subject to the plan are treated as having been disposed of and immediately reacquired by the participant at market value.
- (2) Any gain accruing on that disposal is not a chargeable gain.

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*Deemed disposal by trustees on disposal of beneficial interest*

- 6 (1) If at any time the participant's beneficial interest in any of his shares is disposed of, the shares in question shall be treated for the purposes of the SIP code as having been disposed of at that time by the trustees for the like consideration as was obtained for the disposal of the beneficial interest.
- (2) For this purpose there is no disposal of the participant's beneficial interest if and at the time when—
- (a) in England and Wales or Northern Ireland, that interest becomes vested in any person on the insolvency of the participant or otherwise by operation of law, or
  - (b) in Scotland, that interest becomes vested in a judicial factor, in a trustee of the participant's sequestrated estate or in a trustee for the benefit of the participant's creditors.
- (3) If a disposal of shares falling within this paragraph is not at arm's length, the proceeds of the disposal shall be taken for the purposes of the SIP code to be equal to the market value of the shares at the time of the disposal.

*Treatment of forfeited shares*

- 7 (1) If any of the participant's plan shares are forfeited, they are treated as having been disposed of by the participant and acquired by the trustees at market value at the date of forfeiture.
- (2) Any gain accruing on that disposal is not a chargeable gain.

*Disposal of rights under rights issue*

- 8 (1) Any gain accruing on the disposal of rights under paragraph 77 of Schedule 2 to ITEPA 2003 (power of trustees to raise funds to subscribe for rights issue) is not a chargeable gain.
- (2) Sub-paragraph (1) does not apply to a disposal of rights unless similar rights are conferred in respect of all ordinary shares in the company.

**PART 2**

APPROVED SAYE OPTION SCHEMES

*Introductory*

- 9 (1) This Part of this Schedule forms part of the SAYE code (see section 516 of ITEPA 2003 (approved SAYE option schemes)).
- (2) Accordingly, expressions used in this Part of this Schedule and contained in the index at the end of Schedule 3 to that Act (approved SAYE option schemes) have the meaning indicated by the index.

*Market value rule not to apply*

- 10 (1) This paragraph applies where—

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- (a) a share option (“the option”) has been granted to an individual—
    - (i) in accordance with the provisions of an approved SAYE option scheme, and
    - (ii) by reason of the individual’s office or employment as a director or employee of a company,
  - (b) the individual exercises the option in accordance with the provisions of the SAYE option scheme at a time when the scheme is approved, and
  - (c) condition A or condition B in section 519(2) or (3) of ITEPA 2003 (no charge in respect of exercise of option) is met.
- (2) The company mentioned in sub-paragraph (1)(a)(ii) may be—
- (a) the company whose shares are the subject of the option, or
  - (b) some other company.
- (3) If the option—
- (a) was granted under the SAYE option scheme before the withdrawal of approval under paragraph 42 of Schedule 3 to ITEPA 2003, but
  - (b) is exercised after the withdrawal of approval,
- then, for the purposes of sub-paragraph (1)(b) above in its application to the option, the scheme is to be treated as if it were still approved at the time of the exercise.
- (4) Section 17(1) (disposals and acquisitions treated as made at market value) shall not apply in calculating the consideration for—
- (a) the individual’s acquisition of shares by the exercise of the option, or
  - (b) any corresponding disposal of those shares to the individual.
- (5) References in sub-paragraphs (1)(b) and (4) above to the individual include references to a person exercising the option in accordance with provision included in the scheme by virtue of paragraph 32 of Schedule 3 to ITEPA 2003 (exercise of options: death); and sub-paragraph (1)(c) above does not apply in relation to a person so exercising the option.

### PART 3

#### APPROVED CSOP SCHEMES

##### *Introductory*

- 11 (1) This Part of this Schedule forms part of the CSOP code (see section 521 of ITEPA 2003 (approved CSOP schemes)).
- (2) Accordingly, expressions used in this Part of this Schedule and contained in the index at the end of Schedule 4 to that Act (approved CSOP schemes) have the meaning indicated by the index.
- (3) This Part of this Schedule applies where—
- (a) a share option (“the option”) has been granted to an individual—
    - (i) in accordance with the provisions of an approved CSOP scheme, and
    - (ii) by reason of the individual’s office or employment as a director or employee of a company, and
  - (b) shares (“the relevant shares”) are acquired by the exercise of the option.

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- (4) The company mentioned in sub-paragraph (3)(a)(ii) may be—
- (a) the company whose shares are the subject of the option, or
  - (b) some other company.

*Relief where income tax charged in respect of grant of option*

- 12 (1) This paragraph applies where an amount (the “employment income amount”) counted as employment income of the individual under section 526 of ITEPA 2003 (charge where option granted at a discount) in respect of the option.
- (2) For the purposes of section 38(1)(a) (acquisition and disposal costs etc.), that part of the employment income amount which is attributable to the relevant shares shall be treated as consideration given for the acquisition of the relevant shares.
- (3) This paragraph also applies where the individual was chargeable to income tax on an amount in respect of the option under—
- (a) subsection (6) of section 185 of ICTA (as it had effect before 1st January 1992),
  - (b) subsection (6A) of that section (as it had effect in relation to options obtained on or after 1st January 1992 but before 29th April 1996), or
  - (c) subsection (6) of that section (as it had effect in relation to options obtained on or after 29th April 1996);
- and in such a case the “employment income amount” means the amount on which the individual was so chargeable.
- (4) This paragraph applies whether or not—
- (a) the exercise of the option is in accordance with the provisions of the CSOP scheme, or
  - (b) the CSOP scheme is approved at the time of the exercise.

*Market value rule not to apply*

- 13 (1) This paragraph applies where—
- (a) the individual exercises the option in accordance with the provisions of the CSOP scheme at a time when the scheme is approved, and
  - (b) the condition in section 524(2) of ITEPA 2003 (no charge in respect of exercise of option) is met.
- (2) Section 17(1) (disposals and acquisitions treated as made at market value) shall not apply in calculating the consideration for—
- (a) the individual’s acquisition of the relevant shares by the exercise of the option, or
  - (b) any corresponding disposal of the relevant shares to the individual.
- (3) Sub-paragraph (2) also applies where the option is exercised at a time when the scheme is approved in accordance with provision included in the scheme by virtue of paragraph 25 of Schedule 4 to ITEPA 2003 (exercise of options: death); and references in that sub-paragraph to the individual are to be read accordingly.

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## PART 4

### ENTERPRISE MANAGEMENT INCENTIVES

#### *Introductory*

- 14 (1) This Part of this Schedule forms part of the EMI code (see section 527 of ITEPA 2003 (enterprise management incentives: qualifying options)).
- (2) Accordingly, expressions used in this Part of this Schedule and contained in the index at the end of Schedule 5 to that Act (enterprise management incentives) have the meaning indicated by the index.
- (3) In this Part of this Schedule, “qualifying shares”—
- (a) means shares acquired by the exercise of a qualifying option, subject to subparagraphs (4) and (5), and
  - (b) includes shares (“replacement shares”) which—
    - (i) are treated under section 127 (equation of original shares and new holding) as the same asset as a holding of qualifying shares, and
    - (ii) meet the requirements of paragraph 35 of Schedule 5 to ITEPA 2003 (type of shares that may be acquired).
- (4) If a disqualifying event occurs in relation to a qualifying option (whether the original option or a replacement option), shares acquired by the exercise of that option are qualifying shares only if the option is exercised within 40 days of that event.
- (5) References in this Part of this Schedule to “the original option”, where there has been one or more replacement options, are to the option that the replacement option (or, if there has been more than one, the first of them) replaced.

#### *Taper relief on disposal of qualifying shares*

<sup>F3</sup>15 .....

#### **Textual Amendments**

- F3** Sch. 7D para. 15 omitted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 50](#)

#### *Rights issues in respect of qualifying shares*

- 16 Where—
- (a) an individual holds qualifying shares, and
  - (b) there is, by virtue of any such allotment for payment as is mentioned in section 126(2)(a) (allotment in proportion to shareholdings), a reorganisation affecting that holding,
- sections 127 to 130 (which relate to reorganisation or reduction of share capital) shall not apply in relation to that holding.]

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