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## SCHEDULES

### SCHEDULE 8 **U.K.**

Section 47.

#### EMPLOYEE SHARE OWNERSHIP PLANS

#### PART I **U.K.**

##### INTRODUCTORY

##### *Employee share ownership plans*

- 1 (1) In this Schedule an “employee share ownership plan” means a plan established by a company providing—
- (a) for shares (“free shares”) to be appropriated to employees without payment, or
  - (b) for shares (“partnership shares”) to be acquired on behalf of employees out of sums deducted from their salary.
- (2) A plan that provides for partnership shares may also provide for shares (“matching shares”) to be appropriated without payment to employees in proportion to the partnership shares acquired by them.
- (3) Where a plan contains provision for all, or more than one, of the kinds of shares mentioned in sub-paragraphs (1) and (2), it may leave it for the company to decide when the provisions relating to each kind of share are to have effect.
- (4) In this Schedule, in relation to an employee share ownership plan “the company” means the company which established the plan.

##### *Group plans*

- 2 (1) An employee share ownership plan established by a company that controls other companies (a “parent company”) may extend to all or any of those other companies.
- In this Schedule a plan established by a parent company which so extends is referred to as a “group plan”.
- (2) In relation to a group plan a “participating company” means the parent company or any other company to which for the time being the plan is expressed to extend.

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*Meaning of “award of share”s, “participan”t etc.*

- 3 (1) For the purposes of this Schedule an award of shares is made under a plan on each occasion when in accordance with the plan—
- (a) matching or free shares are appropriated to employees, or
  - (b) partnership shares are acquired on behalf of employees.
- (2) For the purposes of this Schedule an individual participates in an award of free, matching or partnership shares under the plan if shares (“the individual award”) included in that award are—
- (a) in the case of an award of free or matching shares, appropriated to him, or
  - (b) in the case of an award of partnership shares, acquired on his behalf,
- and references to shares awarded to an individual are to free or matching shares appropriated to him, or partnership shares acquired on his behalf, under the plan.
- (3) In this Schedule “participant”, in relation to a plan, means an individual to whom shares have been awarded under the plan.

*Application for approval*

- 4 (1) Where an employee share ownership plan has been established, on the application of the company the Inland Revenue shall approve the plan if they are satisfied that it meets the requirements of this Schedule.
- (2) An application for approval must contain such particulars and be supported by such evidence as the Inland Revenue may require.

*Appeal against refusal of approval*

- 5 (1) If the Inland Revenue refuse to approve the plan, the company may appeal to the Special Commissioners.
- (2) Notice of appeal must be given to the Inland Revenue within 30 days after their decision was notified to the company.
- (3) If the Special Commissioners allow the appeal they may direct the Inland Revenue to approve the plan with effect from such date (but not earlier than the application for approval) as the Commissioners may specify.

**PART II U.K.**

GENERAL REQUIREMENTS

*Introduction*

- 6 The plan must meet the requirements of—

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### *The purpose of the plan*

- 7 (1) The purpose of the plan must be to provide benefits to employees in the nature of shares in a company which give them a continuing stake in that company.
- (2) The plan must not contain, and the operation of the plan must not involve, features which are neither essential nor reasonably incidental to that purpose.

### *All-employee nature of plan*

- 8 (1) The plan must provide that every employee who—
- (a) meets the requirements mentioned in Part III (eligibility of individuals) in relation to an award of shares under the plan, and
  - (b) is chargeable to tax under Case I of Schedule E in respect of the employment by reference to which he satisfies the condition in paragraph 14 (the employment requirement),
- is eligible to participate in the award, and invited to do so.
- (2) The plan must not contain any feature which has or would have the effect of discouraging any description of employees within sub-paragraph (1) from participating in an award of shares under the plan.

This does not apply to any provision required or authorised by this Schedule.

- (3) The plan may provide that an employee who—
- (a) meets the requirements mentioned in Part III (eligibility of individuals) in relation to an award of shares under the plan, but
  - (b) is not chargeable to tax as mentioned in sub-paragraph (1)(b),
- is eligible to participate in the award, and may be invited to do so.
- (4) For the purposes of this Schedule an individual is a “qualifying employee”, in relation to an award of shares, if—
- (a) he is eligible to participate in the award, and
  - (b) either—
    - (i) he must be invited to participate in the award (see sub-paragraph (1)), or
    - (ii) under the plan he may be invited to participate in the award (see sub-paragraph (3)) and has been so invited.

### *Participation on same terms*

- 9 (1) The requirement of this paragraph is—
- (a) that every employee who is invited to participate in an award must be invited to participate on the same terms, and
  - (b) that those who do participate must actually do so on the same terms.
- (2) The requirement of this paragraph is infringed by the awarding of free shares by reference to factors other than those mentioned in sub-paragraph (3).

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- (3) The requirement of this paragraph is not infringed by the awarding of free shares by reference to an employee's—
- (a) remuneration,
  - (b) length of service, or
  - (c) hours worked.

This is subject to sub-paragraph (4).

- (4) Where the awarding of free shares is by reference to more than one of the factors mentioned in sub-paragraph (3) the requirement of this paragraph is infringed unless—
- (a) each factor gives rise to a separate entitlement related to the level of remuneration, length of service or (as the case may be) hours worked, and
  - (b) the total entitlement is the sum of those separate entitlements.
- (5) In the case of an award of free shares which provides for performance allowances, this paragraph has effect as provided in paragraph 29 (performance allowances: method one) or, as the case may be, paragraph 30 (performance allowances: method two).

For this purpose “performance allowance” has the meaning given in paragraph 25(1).

*No preferential treatment for directors etc.*

- 10 (1) The first requirement of this paragraph is that no feature of the plan must have or be likely to have the effect of conferring benefits wholly or mainly—
- (a) on directors, or
  - (b) on employees receiving higher levels of remuneration.
- (2) The second requirement of this paragraph is that in the case of a plan established by a company that is a member of a group, the identity of the company (or, if it is a group plan, the participating companies) must not be such that the plan has or is likely to have the effect of conferring benefits wholly or mainly—
- (a) on employees of companies that are members of the group who receive higher levels of remuneration, or
  - (b) on directors of such companies.
- (3) This paragraph is subject to paragraph 9(3) (award of shares by reference to remuneration etc.).

*No further conditions*

- 11 No conditions, other than those required or permitted by this Schedule, may be imposed on an employee's participation in an award of shares under the plan.

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### *No loan arrangements*

- 12 (1) The arrangements for the plan must not make any provision, or be in any way associated with any provision made, for loans to some or all of the employees of—
- (a) the company, or
  - (b) in the case of a group plan, any participating company,
- and the operation of the plan must not be in any way associated with such loans.
- (2) For the purposes of sub-paragraph (1) “arrangements” includes any scheme, agreement, undertaking or understanding, whether or not legally enforceable.

## **PART III U.K.**

### ELIGIBILITY OF INDIVIDUALS

#### *Introduction*

- 13 (1) The plan must provide that an individual may only participate in an award of shares if—
- (a) in the case of free shares, he is eligible to participate in the award at the time it is made, and
  - (b) in the case of partnership or matching shares—
    - (i) if there is no accumulation period, he is eligible to participate in the award at the time the partnership share money relating to the award is deducted, and
    - (ii) if there is an accumulation period, he is eligible to participate in the award at the time of the first deduction of partnership share money relating to the award.
- (2) For the purposes of sub-paragraph (1), in the case of an award of matching shares the deduction of partnership share money “relating” to the award is the deduction relating to the award of partnership shares to which the matching shares relate.
- (3) An individual is eligible to participate in an award of shares under the plan if and only if—
- (a) the requirements of the plan are met as to—
    - (i) employment (see paragraph 14),
    - (ii) no material interest (see paragraph 15), and
    - (iii) not participating in other schemes (see paragraph 16), and
  - (b) in a case where the individual is not within paragraph 8(1) (employees who must be invited to participate in the award), any further eligibility requirements of the plan are met.

#### *The employment requirement*

- 14 (1) The plan must provide that an individual is not eligible to participate in an award of shares unless—

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- (a) he is an employee of the company or, in the case of a group plan, of a participating company, and
  - (b) where the plan provides for a qualifying period, he has at all times during that period been an employee—
    - (i) of the company, or
    - (ii) in the case of a group plan, of a company that is a participating company at the end of that period.
- (2) If the plan provides for a qualifying period, that period must be—
- (a) in the case of free shares, a period of not more than 18 months ending with the date on which the award is made,
  - (b) in the case of partnership or matching shares—
    - (i) if the plan does not provide for an accumulation period, a period of not more than 18 months ending with the deduction of partnership share money relating to the award, and
    - (ii) if the plan provides for an accumulation period, a period of not more than six months ending with the start of the accumulation period relating to the award.
- (3) For the purposes of sub-paragraph (2), in the case of an award of matching shares the deduction of partnership share money or accumulation period “relating” to the award is the deduction or period relating to the award of partnership shares to which the matching shares relate.
- (4) In relation to an award, the same qualifying period must apply in relation to all employees of the company or, in the case of a group plan, of the participating companies.
- (5) Subject to sub-paragraphs (2) and (4), the plan may authorise the company to specify different qualifying periods in respect of different awards of shares.

*The “no material interest” requirement*

- 15 (1) The plan must provide that an individual is not eligible to participate in an award of shares if he has, or has within the preceding twelve months had, a material interest in—
- (a) a close company whose shares may be awarded under the plan, or
  - (b) a company which has control of such a company or is a member of a consortium which owns such a company.
- (2) For the purposes of this paragraph an individual is regarded as having a material interest in a company if—
- (a) the individual,
  - (b) the individual together with one or more associates of his, or
  - (c) any associate of the individual’s, with or without any other such associates, has a material interest in the company.
- (3) This paragraph is supplemented—
- (a) as regards the meaning of “material interest”, by paragraphs 17 to 19, and
  - (b) as regards the meaning of “associate”, by paragraph 20 (read with paragraphs 21 and 22).

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*The requirement of non-participation in other relevant share schemes*

- 16 (1) The plan must provide that an individual is not to participate in an award of free shares under the plan in a tax year if in that year—
- (a) shares have been (or are at the same time to be) appropriated to him in accordance with an approved profit sharing scheme established by the company or a connected company, or
  - (b) he has participated (or is at the same time to participate) in another employee share ownership plan established by the company or a connected company and approved under this Schedule.
- (2) The plan must provide that an individual is not eligible to participate in an award of partnership or matching shares under the plan in any tax year if, in that year, he has participated (or at the same time participates) in an award of shares under another employee share ownership plan established by the company or a connected company and approved under this Schedule.
- (3) For the purposes of this paragraph an individual is treated as having participated in an award of free shares under an employee share ownership plan if he would have participated in that award but for his failure to obtain a performance allowance (see paragraph 25).
- (4) In this paragraph “connected company” means—
- (a) a company which controls or is controlled by the company or which is controlled by a company which also controls the company, or
  - (b) a company which is a member of a consortium owning the company or which is owned in part by the company as a member of a consortium.

*Meaning of “material interest”*

- 17 (1) For the purposes of paragraph 15 (the “no material interest” requirement) a material interest in a company means—
- (a) beneficial ownership of, or the ability to control, directly or through the medium of other companies or by any other indirect means, more than 25% of the ordinary share capital of the company; or
  - (b) where the company is a close company, possession of or entitlement 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 25% of the assets that would then be available for distribution among the participators.
- (2) In this paragraph—
- “close company” includes a company that would be a close company but for—
    - (a) section 414(1)(a) of the Taxes Act 1988 (exclusion of companies not resident in the United Kingdom), or
    - (b) section 415 of that Act (exclusion of certain quoted companies); and
  - “participator” has the meaning given by section 417(1) of that Act.

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- (3) This paragraph is supplemented by paragraph 18 (options etc.) and paragraph 19 (shares held by trustees of approved profit sharing scheme etc.).

*Material interest: options etc.*

- 18 (1) For the purposes of paragraph 17(1) (meaning of material interest) a right to acquire shares (however arising) is treated as a right to control them.
- (2) In any case where—
- (a) the shares attributed to an individual consist of or include shares which he or another person has a right to acquire, and
  - (b) the circumstances are such that if that right were to be exercised the shares acquired would be shares which were previously unissued and which the company is contractually bound to issue in the event of the exercise of the right,
- then in determining at any time prior to the exercise of the right whether the number of shares attributed to the individual exceeds a particular percentage of the ordinary share capital of the company, that ordinary share capital shall be taken to be increased by the number of unissued shares referred to in paragraph (b).
- (3) The references in sub-paragraph (2) to the shares attributed to an individual are to the shares which in accordance with paragraph 17(1)(a) fall to be brought into account in his case to determine whether their number exceeds a particular percentage of the company's ordinary share capital.

*Material interest: shares held by trustees of approved profit sharing schemes etc.*

- 19 In applying paragraph 17(1) (meaning of material interest) there shall be disregarded—
- (a) the interest of the trustees of—
    - (i) any approved profit sharing scheme, or
    - (ii) an approved employee share ownership plan,
 in any shares held by them in accordance with the scheme or plan but which have not been appropriated to or acquired on behalf of an individual; and
  - (b) any rights exercisable by those trustees by virtue of any such interest.

*Meaning of "associate"*

- 20 (1) In paragraph 15 (the "no material interest" requirement) "associate", in relation to a person, means—
- (a) any relative or partner of that person,
  - (b) the trustee or trustees of any settlement in relation to which that person, or any relative of his (living or dead), is or was a settlor, and
  - (c) where that person is interested in any shares or obligations of the company which are subject to any trust, or are part of the estate of a deceased person,



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the trustee or trustees of the settlement concerned or (as the case may be) the personal representatives of the deceased.

- (2) In sub-paragraph (1)(a) and (b) “relative” means husband or wife, parent or remoter forebear, child or remoter issue, or brother or sister.
- (3) In sub-paragraph (1)(b) “settlor” and “settlement” have the same meaning as in Chapter IA of Part XV of the Taxes Act 1988 (see section 660G(1) and (2)).

*Meaning of “associat”e: trustees of employee benefit trust*

- 21 (1) This paragraph applies for the purposes of paragraph 20(1)(c) (meaning of “associate”: trustees of settlement) where an individual is interested as a beneficiary of an employee benefit trust in shares or obligations of a company (“the relevant company”) in relation to which it falls to be determined whether that individual has an interest.
- (2) The trustees of the employee benefit trust are not regarded as associates of the individual by reason only of his being so interested if neither—
  - (a) the individual, nor
  - (b) the individual together with one or more associates of his, nor
  - (c) any associate of the individual’s, with or without any other such associates, has at any time on or after 14th March 1989 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 25% of the ordinary share capital of the company.
- (3) In this paragraph “employee benefit trust” has the same meaning as in paragraph 7 of Schedule 8 to the Taxes Act 1988.
- (4) Sub-paragraphs (9) to (12) of that paragraph apply for the purposes of this paragraph in relation to an individual as they apply for the purposes of that paragraph in relation to an employee.
- (5) In sub-paragraph (2)(b) and (c) “associate” does not include the trustees of an employee benefit trust by reason only that the individual has an interest in shares or obligations of the trust.

*Meaning of “associat”e: trustees of discretionary trust*

- 22 (1) This paragraph applies for the purposes of paragraph 20(1)(c) (meaning of “associate”: trustees of settlement) where—
  - (a) the person in question (“the beneficiary”) is one of the objects of a discretionary trust, and
  - (b) the property subject to the trust has at any time consisted of, or included, shares or obligations of the company (“the relevant company”) in relation to which it falls to be determined whether that person has an interest.
- (2) If—
  - (a) the beneficiary has ceased to be eligible to benefit under the discretionary trust by reason of—
    - (i) an irrevocable disclaimer or release executed by him, or

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- (ii) the irrevocable exercise by the trustees of a power to exclude him from the objects of the trust,
  - (b) immediately after the beneficiary ceased to be so eligible, no associate of his was interested in the shares or obligations of the relevant company which were subject to the trust, and
  - (c) during the period of twelve months ending with the date when the beneficiary ceased to be so eligible, neither he nor any associate of his received any benefit under the trust,
- the beneficiary is not regarded by reason only of the matters mentioned in sub-paragraph (1) as having been interested in the shares or obligations of the relevant company at any time during the period of twelve months mentioned in paragraph (c).
- (3) In sub-paragraph (2) “associate” has the meaning given by paragraph 20, but with the omission of sub-paragraph (1)(c) of that paragraph (trusts and estates).

#### PART IV U.K.

##### FREE SHARES

###### *Introduction*

- 23 If the plan provides for free shares it must comply with the requirements of this Part of this Schedule.

###### *Maximum annual award*

- 24 (1) The plan must provide that the initial market value of the free shares awarded to a participant in any tax year cannot exceed £3,000.
- (2) For this purpose the “initial market value” of shares means their market value on the date on which they are awarded.
- (3) For the purposes of this paragraph the market value of shares subject to restrictions or risk of forfeiture shall be determined as if there were no such restriction or risk.

For this purpose shares are “subject to risk of forfeiture” if the interest that may be acquired is only conditional within the meaning of section 140C of the Taxes Act 1988.

###### *Performance allowances*

- 25 (1) Sub-paragraph (2) applies if the plan provides for performance allowances, that is for—
- (a) whether or not free shares will be awarded to an individual, or
  - (b) the number or value of free shares awarded,
- to be conditional on performance targets being met.
- (2) Where this sub-paragraph applies—

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- (a) the requirements of—
    - paragraph 26 (performance allowances: general application),
    - paragraph 27 (performance measures and targets), and
    - paragraph 28 (performance allowances: information to be given to employees), and
  - (b) the requirements of either paragraph 29 (method one) or paragraph 30 (method two),
- must be complied with.

*Performance allowances: general application*

- 26 If the plan provides for performance allowances in relation to an award it must make provision for such allowances for all qualifying employees in relation to that award.

*Performance allowances: measures and targets*

- 27 (1) If the plan provides for performance allowances the following requirements must be met with respect to performance measures and performance targets.
- (2) The performance measures used must—
    - (a) be based on business results or other objective criteria, and
    - (b) be fair and objective measures of the performance of the units to which they are or may be applied.
  - (3) The performance targets must be set for performance units comprising one or more employees.
  - (4) For the purposes of an award of free shares under the plan an employee must not be a member of more than one performance unit.

*Performance allowances: information to be given to employees*

- 28 (1) If the plan provides for performance allowances in relation to an award of shares, the plan must require the company—
  - (a) to notify each employee participating in the award of the performance targets and measures which, under the plan, will be used to determine the number or value of free shares awarded to him; and
  - (b) to notify all qualifying employees of the company or, in the case of a group plan, of any participating company, in general terms, of the performance measures to be used to determine the number or value of free shares to be awarded to each employee participating in the award.
- (2) The notices must be given as soon as reasonably practicable.
  - (3) The company may exclude from the notice mentioned in sub-paragraph (1)(b) any information the disclosure of which the company reasonably considers would prejudice commercial confidentiality.

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*Performance allowances: method one*

- 29 (1) The requirements of this paragraph are that if the plan provides for performance allowances in relation to an award of shares—
- (a) at least 20% of the shares in the award must be awarded without reference to performance in accordance with the requirement of paragraph 9 (participation on same terms),
  - (b) the remaining shares must be awarded by reference to performance, and
  - (c) the highest number of shares within paragraph (b) awarded to an individual must be not more than four times the highest number of shares within paragraph (a) awarded to an individual.
- (2) In determining for the purposes of sub-paragraph (1)(a) whether the requirement of paragraph 9 (participation on same terms) is met the shares to which sub-paragraph (1)(a) above applies are treated as a separate award of free shares.
- (3) Where the plan meets the requirements of sub-paragraph (1), the requirement of paragraph 9 (participation on same terms) does not apply to any provision of the plan relating to the awarding of shares within sub-paragraph (1)(b).
- (4) If free shares of different classes are awarded, the requirements of sub-paragraph (1) apply separately in relation to each class.

*Performance allowances: method two*

- 30 (1) The requirements of this paragraph are that in relation to an award of free shares under the plan—
- (a) some or all of the shares must be awarded by reference to performance; and
  - (b) the awarding of the shares to qualifying employees who are members of the same performance unit must meet the requirement of paragraph 9 (participation on same terms).
- (2) In determining for the purposes of sub-paragraph (1)(b) whether the requirement of paragraph 9 (participation on same terms) is met the free shares awarded in respect of each performance unit are treated as a separate award of free shares.
- (3) If this method is used nothing in paragraph 9 (participation on same terms) requires the awarding of shares to members of different performance units to be on the same terms.

*The holding period*

- 31 (1) The plan must require the company in respect of each award of free shares to specify a period (“the holding period”) during which a participant is bound by contract with the company—
- (a) to permit his free shares to remain in the hands of the trustees, and
  - (b) not to assign, charge or otherwise dispose of his beneficial interest in the shares.
- (2) The holding period—

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- (a) must be a period of at least three years but not more than five years, beginning with the date on which the shares in question are awarded to the participant, and
  - (b) must be the same in respect of all shares in the same award.
- (3) The plan may authorise the company to specify different holding periods from time to time.

But it must prevent the company from increasing the holding period specified in respect of free shares that have been awarded under the plan.

- (4) The participant's obligations with respect to the holding period—
- (a) come to an end if during the period he ceases to be in relevant employment, and
  - (b) are subject to—
    - paragraph 32 (power to authorise trustees to accept general offers etc.);
    - paragraph 73 (meeting PAYE obligations); and
    - paragraph 121(5) (termination of plan: early removal of shares with participant's consent).

*Holding period: power to authorise trustees to accept general offers etc.*

- 32 A participant may direct the trustees to do any of the following during the holding period—
- (a) to accept an offer for any of his free shares (“the original shares”) if the acceptance or agreement will result in a new holding being equated with the original shares for the purposes of capital gains tax; or
  - (b) to accept an offer of a qualifying corporate bond (whether alone or with other assets or cash or both) for his free shares if the offer forms part of such a general offer as is mentioned in paragraph (c); or
  - (c) to accept an offer of cash, with or without other assets, for his free shares if the offer forms part of a general offer which is made to holders of shares of the same class as his or of shares in the same company and which is made in the first instance on a condition such that if it is satisfied the person making the offer will have control of that company, within the meaning of section 416 of the Taxes Act 1988; or
  - (d) to agree to a transaction affecting his free shares or such of them as are of a particular class, if the transaction would be entered into pursuant to a compromise, arrangement or scheme applicable to or affecting—
    - (i) all the ordinary share capital of the company or, as the case may be, all the shares of the class in question, or
    - (ii) all the shares, or all the shares of the class in question, which are held by a class of shareholders identified otherwise than by reference to their employment or their participation in an approved employee share ownership plan.

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## PART V **U.K.**

### PARTNERSHIP SHARES

#### *Introduction*

- 33 If the plan provides for partnership shares it must comply with the requirements of this Part of this Schedule.

#### *Partnership share agreements*

- 34 The plan must provide for qualifying employees to enter into agreements with the company (“partnership share agreements”) under which—
- (a) the employee authorises the company to deduct part of his salary for the purchase of partnership shares, and
  - (b) the company undertakes to arrange for partnership shares to be awarded to the employee in accordance with the plan.

#### *Deductions from salary*

- 35 (1) The plan must provide for a partnership share agreement to be given effect by deductions from the employee’s salary.

Amounts so deducted are referred to in this Part of this Schedule as “partnership share money”.

- (2) The partnership share agreement must specify—
- (a) what amounts are to be deducted, and
  - (b) at what intervals.

This does not prevent the employee and the company agreeing to vary those amounts or intervals.

- (3) For the purposes of sub-paragraph (2)(a) the agreement may specify a percentage of the employee’s salary.
- (4) The plan must require the employer company to calculate the amounts and intervals having regard to the provisions of paragraph 36 (maximum amount of deductions from salary).

For this purpose “the employer company” is the company by reference to which the employee meets the requirement of paragraph 14 (the employment requirement) in relation to the plan.

#### *Maximum amount of deductions*

- 36 (1) The amount of partnership share money deducted from an employee’s salary must not exceed—

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- (a) £125 in any month, or
  - (b) where the salary is not paid at monthly intervals, such amount as bears to £125 the same proportion as the pay interval in question bears to one month.
- (2) The amount of partnership share money deducted from an employee's salary must not exceed 10% of the employee's salary.

This means—

- (a) if the plan does not provide for an accumulation period, 10% of the salary payment from which the deduction is made;
  - (b) if the plan provides for an accumulation period, 10% of the total of the employee's salary payments over that period.
- (3) The plan may authorise the company to specify lower limits than those specified in sub-paragraphs (1) and (2).

Different limits may be specified in relation to different awards of shares.

- (4) Any amount deducted in excess of that allowed by sub-paragraph (1) or (2), or any lower limit in the plan, must be paid over to the employee as soon as practicable.

#### *Minimum amount of deductions*

- 37 (1) The plan may provide that the amount to be deducted in pursuance of a partnership share agreement in any month must not be less than a minimum amount specified in the plan.
- (2) The specified minimum amount must not be greater than £10.
- (3) Sub-paragraphs (1) and (2) apply whatever the intervals at which the employee is paid.

#### *Notice of possible effect of deductions on benefit entitlement*

- 38 (1) The plan must provide that the company may not enter into a partnership share agreement with an employee unless the agreement contains a notice under this paragraph.
- (2) A notice under this paragraph is a notice in a prescribed form containing prescribed information as to the possible effect of deductions on an employee's entitlement to social security benefits, statutory sick pay and statutory maternity pay.
- (3) In this paragraph "prescribed" means prescribed by regulations made by the Board.

#### *Partnership share money held for employee*

- 39 (1) The plan must provide that partnership share money deducted in accordance with a partnership share agreement is—
- (a) paid to the trustees as soon as practicable, and

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- (b) held by them on behalf of the employee until such time as it is applied by them in acquiring partnership shares on the employee's behalf.

This is subject to paragraphs 40(4)(b) and 42(5)(b) and (6) (obligations to pay money to employee).

- (2) References in this Schedule to the trustees acquiring partnership shares on behalf of an employee include their appropriating to an employee shares already held by them.
- (3) The plan must provide for the trustees to keep any money required to be held by them under this paragraph in an account (interest bearing or otherwise) with—
- (a) an institution authorised under the <sup>M1</sup>Banking Act 1987,
  - (b) a building society, or
  - (c) a relevant European institution.
- (4) If the partnership share money held on behalf of an employee is held in an interest bearing account the plan must provide for the trustees to account to the employee for the interest.

**Marginal Citations**

**M1** 1987 c. 22.

*Plan with no accumulation period*

- 40 (1) If the plan does not provide for an accumulation period, it must provide for partnership share money to be applied by the trustees in acquiring partnership shares on behalf of the employee on the acquisition date.
- (2) For this purpose “the acquisition date” means the date set by the trustees in relation to the award of partnership shares, being a date within 30 days after the last date on which the partnership share money to be applied in acquiring the shares was deducted.
- (3) The number of shares awarded to each employee must be determined in accordance with the market value of the shares on the acquisition date.
- (4) Any surplus partnership share money remaining after the acquisition of shares by the trustees—
- (a) may with the agreement of the employee be carried forward and added to the amount of the next deduction, and
  - (b) in any other case must be paid over to the employee as soon as practicable.
- (5) This paragraph is subject to paragraph 43 (restriction imposed on number of shares awarded).

*Plan with accumulation period*

- 41 (1) The plan may provide for accumulation periods not exceeding twelve months.
- (2) Where it does so—



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- (a) the partnership share agreement must specify when each accumulation period begins and ends (the beginning of the first period being not later than the date on which the first deduction is made), and
  - (b) the accumulation period which applies in relation to each award of partnership shares must be the same for all individuals who are eligible to participate in the award.
- (3) The partnership share agreement may specify that an accumulation period comes to an end on the occurrence of a specified event.

This is subject to sub-paragraph (2)(b).

- (4) Where the plan provides for accumulation periods, it may also provide that if—
- (a) during an accumulation period, a transaction occurs in relation to any of the shares (“the original holding”) to be acquired under a partnership share agreement which results in a new holding of shares being equated with the original holding for the purposes of capital gains tax, and
  - (b) the employee gives his consent for the purposes of this sub-paragraph,
- the partnership share agreement shall have effect after the time of that transaction as if it were an agreement for the purchase of shares comprised in the new holding.

*Application of money deducted in accumulation period*

- 42 (1) This paragraph applies if the plan provides for one or more accumulation periods.
- (2) The plan must provide for the partnership share money deducted in each period to be applied by the trustees in acquiring partnership shares on behalf of the employee on the acquisition date.
- This is subject to sub-paragraphs (6) and (7).
- (3) In sub-paragraph (2) “the acquisition date” means the date set by the trustees in relation to the award of partnership shares, being a date within 30 days after the end of the accumulation period which applies in relation to the award.
- (4) The number of shares awarded to each employee must be determined in accordance with the lower of—
- (a) the market value of the shares at the beginning of the accumulation period, and
  - (b) the market value of the shares on the acquisition date.
- (5) Any surplus partnership share money remaining after the acquisition of shares by the trustees—
- (a) may with the agreement of the employee be carried forward to the next accumulation period, and
  - (b) in any other case must be paid over to the employee as soon as practicable.
- (6) The plan must provide that where—
- (a) partnership share money has been deducted in an accumulation period, and
  - (b) the employee ceases to be in relevant employment during that period,
- the partnership share money is paid over to the individual as soon as practicable.

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- (7) The partnership share agreement may provide that, where an accumulation period comes to an end on the occurrence of a specified event, the partnership share money deducted in that period must be paid over to the individual as soon as practicable instead of being applied in acquiring shares.
- (8) This paragraph is subject to paragraph 43 (restriction imposed on number of shares awarded).

*Restriction imposed on number of shares awarded*

- 43 (1) The plan may authorise the company to specify the maximum number of shares (“the award maximum”) to be included in an award of partnership shares.
- A different number may be specified in relation to different awards.
- (2) If the plan so authorises the company, it must require partnership share agreements to contain an undertaking by the company to notify the employee of any restriction on the number of shares to be included in an award.
  - (3) The plan must require the notice to be given—
    - (a) if there is no accumulation period, before the deduction of the partnership share money relating to the award, and
    - (b) if there is an accumulation period, before the beginning of the accumulation period relating to the award.
  - (4) The plan must provide that where the award maximum in respect of an award of partnership shares is smaller than the number of shares which would otherwise be included in the award, the number of partnership shares included in each individual award under paragraph 40(1) or 42(2) shall be reduced proportionately.

*Stopping and re-starting deductions*

- 44 (1) The plan must provide that an employee may at any time give notice in writing to the company to stop deductions in pursuance of a partnership share agreement.
- (2) The plan must also provide that an employee who has stopped deductions may subsequently give notice in writing to the company to re-start deductions in pursuance of the agreement, but may not make up deductions that have been missed.
- (3) If the plan makes provision for one or more accumulation periods, it may prevent an employee re-starting deductions more than once in any accumulation period.
- (4) The plan must provide that unless a later date is specified in the notice—
- (a) the company must within 30 days of receiving a notice within sub-paragraph (1), ensure that no further deductions are made by it under the partnership share agreement;
  - (b) the company must on receiving a notice within sub-paragraph (2) re-start deductions under the partnership share agreement not later than the re-start date.

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- (5) For the purposes of sub-paragraph (4)(b) “the re-start date” is the date of the first deduction due under the partnership share agreement more than 30 days after receipt of the notice within sub-paragraph (2).

*Withdrawal from partnership share agreement*

- 45 (1) The plan must provide that an employee may withdraw from a partnership share agreement at any time by notice in writing to the company.
- (2) The plan must provide that, unless a later date is specified in the notice, a notice of withdrawal takes effect 30 days after it is received by the company.
- (3) The plan must provide that where an employee withdraws from a partnership share agreement, any partnership share money held on his behalf is to be paid over to him as soon as practicable.

*Repayment of partnership share money on withdrawal of approval or termination*

- 46 (1) The plan must provide that where—
- (a) the approval of the plan is withdrawn (see paragraph 118), or
  - (b) a plan termination notice is issued in respect of the plan (see paragraph 120),
- any partnership share money held on behalf of an employee is paid over to him.
- (2) The plan must require the payment to be made—
- (a) in a case within sub-paragraph (1)(a), as soon as practicable after notice of the withdrawal is given to the company, and
  - (b) in a case within sub-paragraph (1)(b), as soon as practicable after the plan termination notice is notified to the trustees under paragraph 120(2).

*Access to partnership shares*

- 47 (1) The plan must provide that when partnership shares have been awarded to an employee, the employee may at any time withdraw any or all of the partnership shares from the plan.
- (2) There may be a charge to tax under paragraph 86 (charge on partnership shares ceasing to be subject to plan).

*Meaning of “salar”y*

- 48 References in this Part of this Schedule to an employee’s “salary” are to such of the emoluments of the employment by reference to which he is eligible to participate in the plan as are liable to be paid under deduction of tax pursuant to section 203 of the Taxes Act 1988 (PAYE), after deducting amounts included by virtue of Chapter II of Part V of that Act (expenses and benefits in kind), or would be so liable apart from this Schedule.

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## PART VI U.K.

### MATCHING SHARES

#### *Introduction*

- 49 If the plan provides for matching shares it must comply with the requirements of this Part of this Schedule.

#### *General requirements for matching shares*

- 50 (1) The plan must provide for the matching shares—
- (a) to be shares of the same class and carrying the same rights as the partnership shares to which they relate;
  - (b) to be awarded on the same day as the partnership shares to which they relate are awarded; and
  - (c) to be awarded to all employees who participate in the award on exactly the same basis.
- (2) Sub-paragraph (1) is subject to paragraph 65 (permitted restrictions: provision for forfeiture).

#### *Ratio of matching shares to partnership shares*

- 51 (1) The partnership share agreement must specify—
- (a) the ratio of matching shares to partnership shares for the time being offered by the company, and
  - (b) the circumstances and manner in which the ratio may be changed by the company.
- (2) The ratio must not exceed 2:1 and must be applied by reference to the number of shares.
- (3) A partnership share agreement must provide for the employee to be informed by the company if the ratio offered by the company changes before partnership shares are awarded to him under the agreement.

#### *Application of provisions relating to holding period etc.*

- 52 The provisions of paragraphs 31 and 32 as to the holding period and related matters apply in relation to matching shares as they apply to free shares.

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## PART VII U.K.

### REINVESTMENT OF CASH DIVIDENDS

#### *Reinvestment*

- 53 (1) The plan may provide that where the company so directs—
- (a) all cash dividends in respect of plan shares held on behalf of participants must be applied in acquiring further shares on their behalf, or
  - (b) all cash dividends in respect of plan shares held on behalf of participants who elect to reinvest their dividends must be applied in acquiring further shares on their behalf.

This is referred to in this Part of this Schedule as “reinvestment” and the further plan shares acquired are referred to in this Schedule as “dividend shares”.

- (2) The company may revoke a direction.
- (3) Where cash dividends in respect of plan shares held on behalf of a participant are not required to be reinvested under the plan, the plan must require the dividends to be paid over to the participant as soon as practicable.
- (4) This paragraph is subject to paragraph 54 (limit on amount reinvested).

#### *Limit on amount reinvested*

- 54 (1) The plan must provide that the total dividend reinvestment in respect of any participant cannot exceed £1,500 in any tax year.
- (2) For this purpose “the total dividend reinvestment” in respect of a participant is the sum of—
- (a) the amount applied by the trustees in acquiring dividend shares on behalf of the participant under the plan, and
  - (b) the amount applied by the trustees of other employee share ownership plans that are—
    - (i) established by the company or an associated company, and
    - (ii) approved under this Schedule,in acquiring dividend shares on his behalf.
- (3) If the amounts received by the trustees exceed the limit in sub-paragraph (1), the plan must provide for the balance to be paid over to the participant as soon as practicable.

#### *General requirements for dividend shares*

- 55 The plan must provide that dividend shares are shares—
- (a) of the same class and carrying the same rights as the shares in respect of which the dividend is paid, and
  - (b) which are not subject to any provision for forfeiture.

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### *Acquisition of dividend shares*

- 56 (1) The plan must provide that in exercising their powers in relation to the acquisition of dividend shares the trustees must treat participants fairly and equally.
- (2) The plan must provide for the trustees to apply a cash dividend in acquiring further shares on behalf of participants on the acquisition date.
- This does not affect the carrying forward under paragraph 58 of any such amount as is mentioned in sub-paragraph (1) of that paragraph (amounts remaining after acquisition of shares).
- (3) For this purpose “the acquisition date” means the date set by the trustees in relation to the acquisition of dividend shares, being a date within 30 days after the dividend is received by them.
- (4) The number of dividend shares acquired on behalf of each participant must be determined in accordance with the market value of the shares on the acquisition date.
- (5) References in this Part of this Schedule to the trustees acquiring dividend shares on behalf of a participant include their appropriating to a participant shares already held by them.

### *Holding period for dividend shares*

- 57 The provisions of paragraphs 31 and 32 (holding period and related matters) apply in relation to dividend shares as they apply to free shares, except that the holding period must be three years.

### *Certain amounts not reinvested to be carried forward*

- 58 (1) Any amount that is not reinvested—
- (a) because the amount of the cash dividend to which the participant is entitled is not sufficient to acquire a share, or
  - (b) because there is an amount remaining after acquiring one or more dividend shares on the participant’s behalf,
- may be retained by the trustees and carried forward to be added to the amount of the next cash dividend to be reinvested, but shall be held by them so as to be separately identifiable for the purposes of sub-paragraphs (2) and (3).
- (2) An amount retained under this paragraph shall be paid over to the participant—
- (a) if or to the extent that it is not reinvested within the period of three years beginning with the date on which the dividend was paid, or
  - (b) if during that period the participant ceases to be in relevant employment, or
  - (c) if during that period a plan termination notice is issued in respect of the plan.
- (3) An amount required to be paid over to the participant under sub-paragraph (2) shall be paid over as soon as practicable.

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- (4) For the purposes of this paragraph an amount carried forward under this paragraph derived from an earlier cash dividend is treated as reinvested before an amount derived from a later cash dividend.

## PART VIII U.K.

### TYPES OF SHARE THAT MAY BE USED

#### *Introduction*

- 59 The requirements of the following paragraphs must be met with respect to any shares that may be awarded under the plan (“eligible shares”)—
- paragraph 60 (must be ordinary share capital);
  - paragraph 61 (requirement as to listing etc.);
  - paragraph 62 (shares must be fully paid up and not redeemable);
  - paragraph 63 (only certain kinds of restriction allowed);
  - paragraph 67 (prohibited companies).

#### *Must be ordinary share capital*

- 60 Eligible shares must form part of the ordinary share capital of—
- (a) the company; or
  - (b) a company which has control of the company; or
  - (c) a company which either is, or has control of, a company which is a member of a consortium owning either the company or a company having control of the company.

#### *Requirement as to listing etc.*

- 61 Eligible shares must be—
- (a) shares of a class listed on a recognised stock exchange; or
  - (b) shares in a company which is not under the control of another company; or
  - (c) shares in a company which is under the control of a company (other than a company which is, or would if resident in the United Kingdom be, a close company) whose shares are listed on a recognised stock exchange.

#### *Shares must be fully paid up and not redeemable*

- 62 (1) Eligible shares must be—
- (a) fully paid up, and

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- (b) not redeemable.
- (2) Shares are not regarded as fully paid up for the purposes of sub-paragraph (1)(a) if there is any undertaking to pay cash to the company at a future date.
- (3) For the purposes of sub-paragraph (1)(b) “redeemable” shares include shares that may become redeemable at a future date.
- (4) Sub-paragraph (1)(b) does not apply in relation to shares in a co-operative.
- (5) In sub-paragraph (4) “co-operative” means a registered industrial and provident society which is a co-operative society.

For this purpose—

“registered industrial and provident society” means a society registered or deemed to be registered under the <sup>M2</sup>Industrial and Provident Societies Act 1965 or the <sup>M3</sup>Industrial and Provident Societies Act (Northern Ireland) 1969; and

“co-operative society” has the same meaning as in section 1 of the 1965 Act or, as the case may be, the 1969 Act.

#### Marginal Citations

**M2** 1965 c. 22.

**M3** 1969 c. 24 (N.I.).

#### *Only certain kinds of restriction allowed*

- 63 (1) Eligible shares must not be subject to any restrictions other than—
- (a) those involved in there being a holding period (see paragraphs 31, 52 and 57); or
  - (b) those affecting all ordinary shares in the company; or
  - (c) those permitted by—
    - paragraph 64 (voting rights),
    - paragraph 65 (provision for forfeiture), or
    - paragraph 66 (pre-emption conditions).
- (2) For this purpose there is a restriction if there is any contract, agreement, arrangement or condition—
- (a) by which a person’s freedom to dispose of the shares or of any interest in them or of the proceeds of their sale or to exercise any right conferred by them is restricted, or
  - (b) by which such a disposal or exercise may result in any disadvantage to him or to a person connected with him,
- subject to sub-paragraphs (3) and (4).
- (3) Any discretion of the directors under the articles of association of the company to refuse to accept the transfer of shares shall be disregarded for the purposes of this paragraph if the directors—



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- (a) have undertaken to the Inland Revenue not to exercise it in such a way as to discriminate against participants, and
  - (b) have notified all qualifying employees of the existence of the undertaking.
- (4) There shall also be disregarded for the purposes of this paragraph so much of any contract, agreement, arrangement or condition as contains provisions similar in purpose and effect to any of the provisions of the Model Code as (for the time being) set out in the listing rules issued by the competent authority for listing in the United Kingdom under section 74(4) of the <sup>M4</sup>Financial Services and Markets Act 2000.

**Marginal Citations**

M4 2000 c. 8.

*Permitted restrictions: voting rights*

- 64 Eligible shares may be shares carrying no voting rights or limited voting rights.

*Permitted restrictions: provision for forfeiture*

- 65 (1) Free or matching shares may be subject to provision for forfeiture in the following circumstances.
- (2) Provision may be made for forfeiture—
- (a) on the participant ceasing to be in relevant employment at any time in the forfeiture period,
  - (b) on the participant withdrawing the shares from the plan in that period, or
  - (c) in the case of matching shares, on the participant withdrawing the partnership shares in respect of which those shares were awarded from the plan within that period,
- otherwise than by reason of an event within paragraph 87(2) (circumstances in which there is no charge to tax on shares ceasing to be subject to plan).
- (3) In sub-paragraph (2) “the forfeiture period” means the forfeiture period specified in the plan being a period of not more than three years beginning with the date on which the shares were awarded to the participant.
- (4) Forfeiture may not be linked to the performance of any person or persons.
- (5) The same provision for forfeiture must apply in relation to all free or matching shares included in the same award under the plan.
- (6) In this Schedule “provision for forfeiture” means any provision to the effect that a participant shall cease to be beneficially entitled to the shares on the occurrence of certain events, and references to forfeiture shall be construed accordingly.

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*Permitted restrictions: pre-emption conditions*

- 66 (1) If the requirements of this paragraph are met, eligible shares may be subject to provision requiring shares—
- (a) that were awarded to an employee under the plan, and
  - (b) that are held by an employee or a permitted transferee,
- to be offered for sale on the employee ceasing to be in relevant employment.
- (2) For the purposes of sub-paragraph (1)(b) a “permitted transferee” means a person to whom, under the articles of association of the company, the employee is permitted to transfer the shares.
- (3) The requirements of this paragraph are that under the articles of association of the company—
- (a) the same provision applies to all employees of the company or, in the case of a parent company, to all employees of that company or any company of which that company has control;
  - (b) the shares are required to be offered for sale at a specified consideration; and
  - (c) anyone disposing of shares of the same class (whether or not as an employee) is required to offer the shares for sale on no better terms.

*Prohibited companies*

- 67 (1) Eligible shares must not be shares—
- (a) in an employer company, or
  - (b) in a company that—
    - (i) has control of an employer company, and
    - (ii) is under the control of a person or persons within sub-paragraph (2)(b)(i) in relation to an employer company.
- (2) For the purposes of this paragraph a company is “an employer company” if—
- (a) the business carried on by it consists substantially in the provision of the services of persons employed by it, and
  - (b) the majority of those services are provided to—
    - (i) a person who has, or two or more persons who together have, control of the company, or
    - (ii) a company associated with the company.
- (3) For the purposes of sub-paragraph (2)(b)(ii) a company shall be treated as associated with another company if both companies are under the control of the same person or persons.
- (4) For the purposes of sub-paragraphs (1) to (3)—
- (a) references to a person include a partnership, and
  - (b) where a partner, alone or together with others, has control of a company, the partnership shall be treated as having like control of that company.
- (5) For the purposes of this paragraph the question whether a person controls a company shall be determined in accordance with section 416(2) to (6) of the Taxes Act 1988.

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## PART IX U.K.

### THE TRUSTEES

#### *Establishment of trustees*

- 68 (1) The plan must provide for the establishment of a body of persons resident in the United Kingdom (“the trustees”) who are required by the plan—
- (a) in the case of free or matching shares, to acquire shares and appropriate them to employees in accordance with the plan;
  - (b) in the case of partnership shares, to apply partnership share money in acquiring shares on behalf of employees in accordance with the plan; and
  - (c) in the case of dividend shares, to apply cash dividends in acquiring shares on behalf of participants in accordance with the plan.
- (2) The functions of the trustees with respect to shares held by them must be regulated by a trust (“the plan trust”)—
- (a) which is constituted under the law of a part of the United Kingdom, and
  - (b) the terms of which are embodied in an instrument which complies with the requirements of this Part of this Schedule.
- (3) The instrument must not contain any terms which are neither essential nor reasonably incidental to complying with the requirements of this Part of this Schedule.

#### *Power of trustees to borrow*

- 69 The trust instrument may provide that the trustees have power to borrow—
- (a) to acquire shares for the purposes of the plan, and
  - (b) for such other purposes as may be specified in the trust instrument.

#### *Duty to give notice of award of shares etc.*

- 70 (1) The trust instrument must make the following provision regarding notices.
- (2) It must provide that, as soon as practicable after any free or matching shares have been awarded to an employee, the trustees shall give him notice of the award—
- (a) specifying the number and description of those shares,
  - (b) stating their market value on the date on which they were awarded to him, and
  - (c) stating the holding period applicable to them.
- (3) It must provide that, as soon as practicable after any partnership shares have been awarded to an employee, the trustees shall give him notice of the award—
- (a) specifying the number and description of those shares, and
  - (b) stating—
    - (i) the amount of partnership share money applied by the trustees in acquiring the shares on his behalf, and

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- (ii) their market value on the acquisition date (within the meaning of paragraph 40(2) or, if there is an accumulation period, paragraph 42(3)).
- (4) It must provide that, as soon as practicable after any dividend shares have been acquired on behalf of a participant, the trustees shall give him notice of the acquisition—
- (a) specifying the number and description of those shares,
  - (b) stating their market value on the acquisition date (within the meaning of paragraph 56(3)),
  - (c) stating the holding period applicable to them, and
  - (d) informing him of any amount carried forward under paragraph 58 (certain amounts not reinvested).
- (5) It must provide that, where any foreign cash dividend is received in respect of plan shares held on behalf of a participant, the trustees shall give him notice of the amount of any foreign tax deducted from the dividend before it was paid.

*General duties of trustees*

- 71 (1) The trust instrument must require the trustees—
- (a) to dispose of a participant's plan shares, and
  - (b) to deal with any right conferred in respect of any of his plan shares to be allotted other shares, securities or rights of any description,
- only pursuant to a direction given by or on behalf of the participant.
- This is subject to sub-paragraph (3) and to any provision made in the plan in accordance with paragraph 73 (meeting PAYE obligations).
- (2) The plan may provide for participants to give such general directions, to such effect and in such terms, as are specified in the plan.
- (3) The trust instrument must, in the case of a participant's plan shares that are free, matching or dividend shares, prohibit the trustees from disposing of any of those shares (whether to the participant or otherwise) at any time during the holding period, unless the participant has at that time ceased to be in relevant employment.
- This is subject to—
- paragraph 32 (holding period: power to authorise trustees to accept general offers etc.);
- paragraph 72 (power of trustees to raise funds to subscribe for rights issue);
- paragraph 73 (meeting PAYE obligations);
- paragraph 121(5) (termination of plan: early removal of shares with participant's consent).
- (4) The trust instrument must require the trustees to pay over to the participant as soon as practicable any money or money's worth received by them in respect of or by reference to any of his shares, other than money's worth consisting of new shares within the meaning of paragraph 115 (company reconstructions).

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This is subject to—

- (a) the provisions of Part VII (reinvestment of cash dividends);
- (b) the trustees' obligations under paragraphs 95 and 96 (PAYE: shares ceasing to be subject to the plan and capital receipts); and
- (c) the trustees' PAYE obligations.

*Power of trustees to raise funds to subscribe for rights issue*

- 72 (1) The trustees may dispose of some of the rights arising under a rights issue in order to be able to obtain sufficient funds to exercise other such rights.

This power is subject to paragraph 71(1) (duty to act in accordance with participant's directions).

- (2) In this paragraph references to rights arising under a rights issue are to rights conferred in respect of a participant's plan shares to be allotted, on payment, other shares or securities or rights of any description in the same company.

*Meeting PAYE obligations*

- 73 (1) The plan must make provision to ensure that, where a PAYE obligation is imposed on the trustees as a result of any of a participant's plan shares ceasing to be subject to the plan, the trustees are able to meet that obligation—

- (a) by disposing of—
  - (i) any of those shares, or
  - (ii) any of the participant's remaining plan shares (if any), or
- (b) by virtue of the participant paying to the trustees a sum equal to the amount required to discharge the obligation.

- (2) In sub-paragraph (1) the reference to a PAYE obligation includes an obligation under paragraph 95 (PAYE: shares ceasing to be subject to the plan).

- (3) In sub-paragraph (1)(a) the reference to disposing of shares includes the acquisition of the shares by the trustees for the purposes of the trust.

- (4) A disposal of any of the participant's plan shares in accordance with provision made under sub-paragraph (1)(a)(ii) may give rise to a charge to tax under—

paragraph 81 (charge on free or matching shares ceasing to be subject to plan);  
paragraph 86 (charge on partnership shares ceasing to be subject to plan); or  
paragraph 93 (charge on dividend shares ceasing to be subject to plan).

*Deemed disposal by trustees on disposal of beneficial interest*

- 74 (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 this Schedule as having

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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 this Schedule to be equal to the market value of the shares at the time of the disposal.

*Duties of trustees in relation to tax liabilities*

- 75 (1) The trust instrument must require the trustees—
- (a) to maintain such records as may be necessary for the purposes of—
    - (i) their own PAYE obligations, or
    - (ii) the PAYE obligations of the employer company so far as they relate to the plan,
  - (b) where the participant becomes liable to income tax under Case V of Schedule D, Schedule E or Schedule F by reason of the occurrence of any event, to inform him of any facts relevant to determining that liability.
- (2) For the purposes of this paragraph—
- “employer company” has the same meaning as in paragraph 95 (PAYE: shares ceasing to be subject to the plan); and
- “PAYE obligations” includes obligations conferred on the trustees by paragraphs 95 and 96 (PAYE: shares ceasing to be subject to plan and capital receipts).

*Acquisition by trustees of shares from employee share ownership trust*

- 76 (1) The trust instrument must provide that, where there is a qualifying transfer of shares to the trustees, those shares—
- (a) must not be awarded to participants under the plan as partnership shares, and
  - (b) must be included in any award of free or matching shares made after the date of the transfer in priority to other shares available for inclusion in that award.
- (2) For the purposes of this paragraph there is a qualifying transfer of shares to the trustees if relevant shares—
- (a) are transferred to them by the trustees of an employee share ownership trust, and
  - (b) the transfer is a qualifying transfer within section 69(3AA) of the <sup>M5</sup>Finance Act 1989 (transfer of shares in, or shares purchased from money in, an employee share ownership trust immediately before 21st March 2000).

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**Marginal Citations**

M5 1989 c. 26.

**PART X U.K.**

INCOME TAX

*Introduction*

- 77 (1) The provisions of this Part of this Schedule apply for income tax purposes in relation to an approved employee share ownership plan.

This is subject to sub-paragraph (2).

- (2) Nothing in this Part applies to an individual if, at the time of the award in question, he is not chargeable to tax under Schedule E in respect of the employment by reference to which he meets the requirement of paragraph 14 (the employment requirement) in relation to the plan.

*No charge on award of shares etc.*

- 78 (1) Notwithstanding that the beneficial interest in the shares passes to the employee—  
(a) on the award to him of free, matching or partnership shares under the plan, or  
(b) on the acquisition on his behalf of dividend shares under the plan,  
the value of that interest at the time of the award or acquisition is not treated as income of his chargeable to tax.
- (2) An employee is not chargeable to tax under Schedule E by virtue of section 162(1) of the Taxes Act 1988 (deemed loan in case of shares acquired at an under-value) in respect of the award to him of shares under the plan.

This does not affect any charge to tax under section 162(6) of that Act (stop-loss provision).

*Capital receipts in respect of participant's shares*

- 79 (1) Where—  
(a) a capital receipt is received by a participant in respect of or by reference to any of his plan shares, and  
(b) the plan shares in respect of or by reference to which it is received are—  
(i) free, matching or partnership shares that were awarded to the participant fewer than five years before he received the capital receipt, or  
(ii) dividend shares that were acquired on his behalf fewer than three years before he received that receipt,

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the participant is chargeable to income tax under Schedule E for the tax year in which the capital receipt is received by him on the amount or value of the receipt.

- (2) For the purposes of this paragraph any money or money's worth is a "capital receipt" subject to the following provisions.
- (3) Money or money's worth is not a capital receipt for the purposes of this paragraph to the extent that—
  - (a) it constitutes income in the hands of the recipient for the purposes of income tax (or would do so but for this Part of this Schedule), or
  - (b) it consists of the proceeds of disposal of the shares, or
  - (c) it consists of new shares within the meaning of paragraph 115 (company reconstructions).
- (4) If, pursuant to a direction given by or on behalf of the participant for the purposes of paragraph 72(1), the trustees—
  - (a) dispose of some of the rights under a rights issue, and
  - (b) use the proceeds of that disposal to exercise other such rights,
 the money or money's worth that constitutes the proceeds of that disposal is not a capital receipt for the purposes of this paragraph.  
 The references in this sub-paragraph to rights under a rights issue are to rights, conferred in respect of a participant's plan shares, to be allotted, on payment, other shares or securities or rights of any description in the same company.
- (5) This paragraph does not apply in relation to a capital receipt referable to the shares of a participant if it is received by the participant's personal representative after his death.

*Exclusion of certain charges in relation to participant's shares*

- 80 (1) There is no charge to tax on the participant under—
  - (a) section 140A of the <sup>M6</sup>Taxes Act 1988 (charge on conditional acquisition of shares), or
  - (b) section 78 of the Finance Act 1988 (charge on removal of restriction),
 when any provision for forfeiture to which the shares are subject, in accordance with paragraph 65 (permitted restrictions: provision for forfeiture), is varied or removed.
- (2) A participant is not chargeable to tax under Schedule E by virtue of section 78 of the Finance Act 1988 (charge on removal of restriction) if the chargeable event (within the meaning of that section) is the ending of the holding period in relation to his free, matching or dividend shares.
- (3) A participant is not chargeable to tax under Schedule E by virtue of section 79 of that Act (charge on chargeable increase in value) in respect of any shares of his that are subject to the plan at the end of the period for which the chargeable increase is determined for the purposes of that section.



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**Marginal Citations**

**M6** 1988 c. 39.

*Charge on free or matching shares ceasing to be subject to plan*

- 81 (1) When free or matching shares cease to be subject to the plan, income tax may be chargeable depending on the period that has elapsed between—
- (a) the date on which the shares were awarded to the participant, and
  - (b) the date on which they cease to be subject to the plan.
- (2) If the period is less than three years, the participant is chargeable to tax under Schedule E on the market value of the shares when they cease to be subject to the plan.
- (3) If the period is three years or more but less than five years, the participant is chargeable to tax under Schedule E on—
- (a) the market value of the shares at the date they were awarded to him, or
  - (b) the market value of the shares when they cease to be subject to the plan, whichever is less.
- (4) Where the participant is charged to tax under sub-paragraph (3)(a) the tax due shall be reduced by the amount or aggregate amount of any tax paid on any capital receipts within paragraph 79 in respect of those shares.
- (5) There is no charge to tax under this paragraph on the forfeiture of free or matching shares.
- (6) This paragraph has effect subject to—
- paragraph 82 (charge to tax on disposal of beneficial interest in shares during the holding period); and
  - paragraph 87 (circumstances in which there is no charge to tax on shares ceasing to be subject to plan).
- (7) Except as provided by this paragraph and paragraph 82 there is no charge to tax on free or matching shares ceasing to be subject to the plan.

*Charge on disposal of beneficial interest during the holding period*

- 82 (1) Where free or matching shares cease to be subject to the plan by virtue of a participant, in breach of his obligations under paragraph 31(1)(b), assigning, charging or otherwise disposing of his beneficial interest in those shares—
- (a) paragraph 81 does not apply, and
  - (b) the participant is chargeable to income tax under Schedule E on the market value of the shares when they cease to be subject to the plan.

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- [<sup>F1</sup>(2) Where the participant is charged to tax under sub-paragraph (1) the tax due shall be reduced by the amount or aggregate amount of any tax paid on any capital receipts within paragraph 79 in respect of those shares.]

**Textual Amendments**

**F1** Sch. 8 para. 82(2) repealed (*retrospectively*) by 2001 c. 9, ss. 61, 110, Sch. 13 para. 5(1), **Sch. 33 Pt. 2(2)**

*Partnership share money deducted before tax*

- 83 (1) Partnership share money deducted from an employee's salary in accordance with a partnership share agreement is not regarded as income of the employee chargeable to tax under Schedule E.
- (2) The deduction of partnership share money shall be disregarded for the purpose of ascertaining the amount of—
- (a) the employee's remuneration for the purposes of Chapter I of Part XIV of the Taxes Act 1988 (retirement benefit schemes), or
  - (b) the employee's relevant earnings for the purposes of Chapter III or IV of that Part (retirement annuities or personal pension schemes).

*Charge on partnership share money paid over to employee*

- 84 (1) An individual is chargeable to income tax under Schedule E on any amount paid over to him under—
- paragraph 36(4) (deductions in excess of permitted maximum amount);
  - paragraph 40(4)(b) or 42(5)(b) (surplus partnership share money remaining after acquisition of shares);
  - paragraph 42(6) (partnership share money paid over on individual leaving relevant employment);
  - paragraph 42(7) (partnership share money paid over where accumulation period brought to an end by event specified in plan);
  - paragraph 45(3) (partnership share money paid over on withdrawal from partnership share agreement); or
  - paragraph 46 (partnership share money paid over on withdrawal of plan approval or termination of plan).
- (2) A charge to tax under sub-paragraph (1) arises at the time the amount is paid over.

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*Charge on cancellation payments in respect of partnership share agreement*

- 85 An individual is chargeable to tax under Schedule E on the amount or value of any money or money's worth received by him in respect of the cancellation of a partnership share agreement entered into by him.

*Charge on partnership shares ceasing to be subject to plan*

- 86 (1) When partnership shares cease to be subject to the plan, income tax may be chargeable depending on the period that has elapsed between—
- (a) the acquisition date in respect of those shares (as defined by paragraph 40(2) or, as the case may be, 42(3)), and
  - (b) the date on which they cease to be subject to the plan.
- (2) If the period is less than three years, the employee is chargeable to income tax under Schedule E on an amount equal to the market value of the shares when they cease to be subject to the plan.
- (3) If the period is three years or more but less than five years, the employee is chargeable to income tax under Schedule E on—
- (a) the amount of partnership share money used to acquire the shares, or
  - (b) the market value of the shares when they cease to be subject to the plan, whichever is less.
- (4) Where the participant is charged to tax under sub-paragraph (3)(a) the tax due shall be reduced by the amount or aggregate amount of any tax paid on any capital receipts within paragraph 79 in respect of those shares.
- (5) This paragraph has effect subject to paragraph 87 (circumstances in which there is no charge on shares ceasing to be subject to plan).
- (6) Except as provided by this paragraph, there is no charge to income tax on the employee on partnership shares ceasing to be subject to the plan.

*Circumstances in which there is no charge on shares ceasing to be subject to plan*

- 87 (1) There is no charge to tax on shares ceasing to be subject to the plan on the occurrence of any of the following events.
- (2) Those events are the participant ceasing to be in relevant employment—
- (a) because of injury or disability;
  - (b) on being dismissed by reason of redundancy;
  - (c) by reason of a transfer to which the <sup>M7</sup>Transfer of Undertakings (Protection of Employment) Regulations 1981 apply;
  - (d) by reason of a change of control or other circumstances ending the associated company status of the company by which he is employed;
  - (e) by reason of his retirement on or after he reaches retirement age; or
  - (f) on his death.

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- (3) In sub-paragraph (2)(b) “redundancy” has the same meaning as in the <sup>M8</sup>Employment Rights Act 1996 or the <sup>M9</sup>Employment Rights (Northern Ireland) Order 1996.
- (4) In sub-paragraph (2)(e) “retirement age” means the retirement age specified in the plan, which—
- (a) must be the same for men and women, and
  - (b) must be not less than 50.

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**Marginal Citations**

**M7** S.I. 1981/1794.

**M8** 1996 c. 18.

**M9** SI. 1996/1919 (N.I. 16).

*Dividends etc. in respect of unappropriated shares*

- 88 (1) This paragraph applies to income of the trustees consisting of dividends or other distributions in respect of shares held by them in relation to which the requirements of Part VIII are met.
- (2) Income to which this paragraph applies is income to which section 686 of the Taxes Act 1988 (accumulation and discretionary trusts: special rates of tax) applies only if and when—
- (a) the period applicable to the shares under the following provisions comes to an end without the shares being awarded to a participant in accordance with the plan, or
  - (b) if earlier, the shares are disposed of by the trustees.
- (3) Subject to sub-paragraph (4), the period applicable to the shares is the period of two years beginning with the date on which the shares were acquired by the trustees.
- (4) 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 period within which the shares must be awarded is—
- (a) five years beginning with the date on which the shares were acquired by the trustees, or
  - (b) if within that period the shares in question become readily convertible assets, two years beginning with the date on which they did so,
- whichever ends first.
- (5) For the purposes of determining whether shares are awarded to a participant within the period applicable under the above provisions, 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) For the purposes of this paragraph shares which are subject to provision for forfeiture are treated as acquired by the trustees if and when the forfeiture occurs.
- (7) In this paragraph references to the shares being awarded include references to shares being acquired on behalf of a participant as dividend shares.

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*Reinvestment of cash dividend on behalf of participant*

- 89 (1) The amount applied by the trustees in acquiring dividend shares on behalf of a participant is not treated as income of the participant for any tax purposes.
- (2) The participant has no entitlement to a tax credit in respect of the amounts of dividends so applied.
- (3) Sub-paragraphs (1) and (2) do not affect—
- (a) any charge under paragraph 93(1) (charge on dividend shares ceasing to be subject to plan), or
  - (b) any entitlement to a tax credit in respect of the amount so charged.
- (4) Section 234A(4) of the Taxes Act 1988 (information relating to distributions to be provided by nominee) shall not apply in relation to any amount applied by the trustees in acquiring dividend shares on behalf of a participant.

This is subject to paragraph 93(4).

*Repayment of excess cash dividend*

- 90 Section 234A(4) to (11) of the Taxes Act 1988 (information relating to distributions to be provided by nominee) shall apply in relation to the balance of any cash dividend paid over to the participant under paragraph 54(3) as if it were a payment to which subsection (4)(b) of that section applies.

*Treatment of cash dividend retained for reinvestment*

- 91 (1) An amount retained under paragraph 58(1) (amount of cash dividend not reinvested) shall not be treated as income of the participant for any tax purposes.
- (2) The participant has no entitlement to a tax credit in respect of any such amount.
- (3) This paragraph does not affect any charge—
- (a) under paragraph 92 (treatment of cash dividend retained and then later paid out), or
  - (b) paragraph 93 (charge on dividend shares ceasing to be subject to plan), or any tax credit in respect of an amount so charged.

*Treatment of cash dividend retained and then later paid out*

- 92 (1) Where a cash dividend is paid over to a participant under paragraph 58(2) (cash dividend paid over if not reinvested), the participant is chargeable to tax on that amount—
- (a) under Schedule F, or
  - (b) to the extent that the dividend is a foreign cash dividend, under Case V of Schedule D,
- for the tax year in which the dividend is paid over to him.

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- (2) For the purposes of determining the tax credit (if any) to which the participant is entitled under section 231 of the Taxes Act 1988 (tax credits for certain recipients of qualifying distributions), the reference in subsection (1) of that section to the tax credit fraction in force when the distribution is made shall be read as a reference to the fraction in force when the dividend is paid over to him.
- (3) Section 234A(4) to (11) of the Taxes Act 1988 (information relating to distributions to be provided by nominee) shall apply in relation to an amount paid under paragraph 58(2) as if—
- (a) it were a payment to which subsection (4)(b) of that section applies, and
  - (b) the cash dividend had been paid when the payment was paid over to the participant under paragraph 58(2).

*Charge on dividend shares ceasing to be subject to plan*

- 93 (1) If dividend shares cease to be subject to the plan before the end of the period of three years beginning with the date on which the shares were acquired on his behalf, the participant is chargeable to tax on the amount of the relevant dividend—
- (a) under Schedule F, or
  - (b) to the extent that the amount represents a foreign cash dividend, under Case V of Schedule D,

for the tax year in which the shares cease to be subject to the plan.

For this purpose “the relevant dividend” is the cash dividend applied to acquire those shares on the participant’s behalf.

- (2) For the purposes of determining the tax credit (if any) to which the participant is entitled under section 231 of the Taxes Act 1988 (tax credits for certain recipients of qualifying distributions), the reference in subsection (1) of that section to the tax credit fraction in force when the distribution is made shall be read as a reference to the fraction in force<sup>F2</sup>when the shares cease to be subject to the plan].
- (3) Where the participant is charged to tax under this paragraph the tax due shall be reduced by the amount or aggregate amount of any tax paid on any capital receipts within paragraph 79 in respect of those shares.

For this purpose “the tax due” means the amount of tax due after deduction of the tax credit determined under sub-paragraph (2).

- (4) Section 234A(4) to (11) of the Taxes Act 1988 (information relating to distributions to be provided by nominee) shall apply in relation to the relevant dividend as if it were a payment to which subsection (4)(b) of that section applies.
- (5) This paragraph has effect subject to paragraph 87 (circumstances in which there is no charge on shares ceasing to be subject to plan).
- (6) Except as provided by this paragraph there is no charge to tax on dividend shares ceasing to be subject to the plan.

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**Textual Amendments**

**F2** Words in [Sch. 8 para. 93\(2\)](#) substituted (*retrospectively*) by [2001 c. 9, s. 62 Sch. 13 para. 7](#)

*PAYE: shares ceasing to be subject to plan*

- 94 Where as a result of shares ceasing to be subject to the plan a participant is chargeable to tax under this Part of this Schedule, subsection (3) of section 203F of the Taxes Act 1988 (PAYE: tradeable assets) shall have effect as if the reference in that subsection to the amount of income likely to be chargeable to tax under Schedule E in respect of the provision of the asset were a reference to the amount on which tax is likely to be chargeable under this Part of this Schedule by virtue of the shares ceasing to be subject to the plan.

*PAYE: shares ceasing to be subject to the plan*

- 95 (1) Sub-paragraphs (2) to (5) apply where as a result of any shares (“the relevant shares”) ceasing to be subject to the plan—
- (a) a participant is chargeable to income tax under Schedule E in accordance with this Part of this Schedule, and
  - (b) an obligation to make a PAYE deduction arises in respect of that charge.
- (2) The trustees must pay to the employer company a sum which is sufficient to enable the employer company to discharge that obligation.
- This is subject to sub-paragraphs (3) and (7).
- (3) Sub-paragraph (2) only applies where, or to the extent that, the plan does not require the participant to pay the employer company a sum that is sufficient to discharge the obligation mentioned in sub-paragraph (1)(b).
- (4) Section 203J(1) of the Taxes Act 1988 (sections 203B to 203I: accounting for tax) shall have effect as if it required the deduction of income tax to be made from any sum or sums received by the employer—
- (a) from the trustees under sub-paragraph (2), or
  - (b) from the participant in accordance with the plan, as mentioned in sub-paragraph (3).
- (5) After making the necessary PAYE deduction from the sum or sums received as mentioned in sub-paragraph (4), the employer company shall pay any remaining amounts to the participant.
- (6) For the purposes of this paragraph “the employer company” means a company—
- (a) of which the participant is an employee at the time when the relevant shares cease to be subject to the plan, and
  - (b) to whom the PAYE regulations (within the meaning of section 203L(3) of the Taxes Act 1988) at that time apply.
- (7) Where, as a result of any shares ceasing to be subject to the plan, a participant is chargeable to income tax under Schedule E in accordance with this Part and either—

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- (a) there is no company which falls within sub-paragraph (6), or
  - (b) the Inland Revenue are of the opinion that it is impracticable for the company which falls within that sub-paragraph to make a PAYE deduction and accordingly direct that this sub-paragraph shall apply,
- then sub-paragraph (2) shall not apply and the trustees shall make a PAYE deduction in respect of an amount equal to that on which income tax is payable as if the participant were a former employee of the trustees.
- (8) In a case where sub-paragraph (7) applies, section 203C of the Taxes Act 1988 (PAYE: employee of non-UK employer) does not apply.
- (9) Where—
- (a) a participant disposes of his beneficial interest in any of his plan shares to the trustees, and
  - (b) the trustees are deemed by virtue of paragraph 74 to have disposed of the shares in question,
- this paragraph shall apply as if the consideration payable by the trustees to the participant on the disposal had been received by the trustees as the proceeds of disposal of plan shares.
- (10) For the purposes of this paragraph “PAYE deduction” means a deduction required by regulations under section 203 of the Taxes Act 1988.

*PAYE: capital receipts*

- 96 (1) Where the trustees receive a sum of money which constitutes (or forms part of) a capital receipt in respect of which a participant is chargeable to income tax under Schedule E, in accordance with this Part of this Schedule, when it is received by him—
- (a) the trustees shall pay out of that sum of money to the employer company an amount equal to that on which income tax is so payable, and
  - (b) the employer company shall then pay over that amount to the participant, but in so doing shall make a PAYE deduction.
- This is subject to sub-paragraph (3).
- (2) For the purposes of this paragraph “the employer company” means the company—
- (a) of which the participant is an employee at the time the trustees receive the sum of money referred to in sub-paragraph (1), and
  - (b) to whom the PAYE regulations (within the meaning of section 203L(3) of the Taxes Act 1988) at that time apply.
- (3) Where the trustees receive a sum of money to which sub-paragraph (1) applies but—
- (a) there is no company which falls within sub-paragraph (2), or
  - (b) the Inland Revenue are of the opinion that it is impracticable for the company which falls within that sub-paragraph to make a PAYE deduction and accordingly direct that this sub-paragraph shall apply,
- then, in paying over to the participant the capital receipt, the trustees shall make a PAYE deduction in respect of an amount equal to that on which income tax is payable as mentioned in sub-paragraph (1) as if the participant were a former employee of the trustees.



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- (4) In a case where sub-paragraph (3) applies, section 203C of the Taxes Act 1988 (PAYE: employee of non-UK employer) does not apply.
- (5) For the purposes of this paragraph “PAYE deduction” means a deduction required by regulations under section 203 of the Taxes Act 1988.

## **PART XI U.K.**

### CAPITAL GAINS TAX

#### *Introduction*

- 97 The provisions of this Part apply for capital gains tax purposes in relation to an approved employee share ownership plan.

#### *Gains accruing to trustees*

- 98 (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 VIII 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.
- (2) If the shares are readily convertible assets at the time they are acquired by the trustees, the relevant period is the period of two years beginning with the date on which the shares are acquired by the trustees.
- (3) If at the time of their acquisition by the trustees the shares are not readily convertible assets, the relevant period is—
- (a) the period of five years beginning with the date on which the shares were acquired, or
  - (b) if within that period the shares in question become readily convertible assets, the period of two years beginning with the date on which they did so,
- whichever ends first.
- (4) For the purposes of determining whether shares are awarded to employees within the relevant period, shares acquired by the trustees at an earlier time are taken to be awarded to employees before shares of the same class acquired by the trustees at a later time.

This is subject to paragraph 76(1) (treatment of shares acquired from an employee share ownership trust).

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

- 99 (1) A participant is treated for capital gains tax purposes as absolutely entitled as against the trustees to any shares awarded to him under the plan.
- (2) This applies notwithstanding anything in the plan or the trust instrument.

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### *Different classes of shares*

- 100 (1) For the purposes of Chapter I of Part IV of the <sup>M10</sup>Taxation of Chargeable Gains Act 1992 (identification of shares etc.) 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 transferred to the trustees of the plan trust by a qualifying transfer that have not been awarded to participants under the plan shall (notwithstanding that they would otherwise fall to be treated as of the same class) be treated as of a different class from any shares held by the trustees that were not transferred to them by a qualifying transfer.
- (3) In sub-paragraph (2) "qualifying transfer" has the meaning given in paragraph 76 (acquisition by trustees of shares from employee share ownership trust).

#### **Marginal Citations**

**M10** 1992 c. 12.

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

- 101 (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.

### *Treatment of forfeited shares*

- 102 (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.

### *Acquisition by trustees of shares from profit sharing scheme*

- 103 (1) Where the trustees acquire shares from the trustees of an approved profit sharing scheme, the disposal and the acquisition by the trustees are treated as being made for such consideration as to secure that neither a gain nor a loss accrues on the disposal.
- (2) In such a case the relevant period for the purposes of paragraph 98 is determined as if the shares had been acquired by the trustees at the time they were acquired by the trustees of the other trust.

This does not affect the date on which the trustees are treated as acquiring the shares for the purposes of taper relief.

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### *Disposal of rights under rights issue*

- 104 (1) Any gain accruing on the disposal of rights under paragraph 72 (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 XII U.K.**

### CORPORATION TAX DEDUCTIONS

#### *Introduction*

- 105 References in this Part of this Schedule to deductions are to deductions by a company in calculating for the purposes of corporation tax the profits of a trade carried on by it.

This is subject to paragraph 114 (application of provisions to expenses of management of investment companies etc.).

#### *Deduction for providing free or matching shares*

- 106 (1) Where, under an approved employee share ownership plan, shares are awarded to employees as free or matching shares by reason of their employment with a company, a deduction is allowed under this paragraph to that company.
- (2) Any such deduction—
- (a) is of an amount equal to the market value of the shares at the time they are acquired by the trustees, and
  - (b) must be made for the period of account in which the shares are awarded to employees in accordance with the plan.

- (3) Except as provided by sub-paragraph (1), no deduction may be made by that company or any associated company in respect of the provision of those shares.

This is subject to paragraphs 111 (deduction for costs of setting up the plan) and 112 (deductions for contributions to running expenses of plan).

- (4) Where the shares are awarded under a group plan, the market value of the shares at the time they are acquired by the trustees shall for the purposes of this paragraph be taken to be the relevant proportion of the total market value of the shares included in the award.

For this purpose “the relevant proportion” means the proportion that the number of shares in the award awarded to the employees of the company concerned bears to the total number of shares in the award.

- (5) In determining the market value of any shares for the purposes of this paragraph, if shares have been acquired by the trustees on different days it shall be assumed that

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those acquired on an earlier day are awarded to employees under the plan before those acquired by the trustees on a later day.

- (6) If a deduction is made under this paragraph by a company, no deduction may be made by any other company under this paragraph in respect of the provision of the shares.
- (7) This paragraph has effect subject to paragraph 108 (cases in which no deduction is allowed).

*Deduction for additional expenses in providing partnership shares*

- 107 (1) Where under an approved employee share ownership plan—
- (a) partnership shares are awarded to employees by reason of their employment with a company, and
  - (b) the market value of those shares at the time they are acquired by the trustees exceeds the partnership share money paid by the participants to acquire those shares,
- a deduction is allowed under this paragraph to that company.
- (2) Any such deduction—
- (a) is of an amount equal to the amount of the excess referred to in sub-paragraph (1)(b), and
  - (b) must be made for the period of account in which the shares are awarded to employees in accordance with the plan.
- (3) Except as provided by sub-paragraph (1), no deduction may be made by that company or any associated company in respect of the provision of those shares.
- This is subject to paragraphs 111 (deduction for costs of setting up the plan) and 112 (deductions for contributions to running expenses of plan).
- (4) If a deduction is made under this paragraph by a company, no deduction may be made by any other company under this paragraph in respect of the provision of the shares.
- (5) This paragraph has effect subject to paragraph 108 (cases in which no deduction is allowed).

*Cases in which no deduction is allowed*

- 108 (1) No deduction is allowed under paragraph 106 or 107 in the following cases.
- (2) No deduction is allowed in respect of shares awarded to an individual who is not a Schedule E taxpayer at the date the shares are awarded to him under the plan.
- A “Schedule E taxpayer” means an individual who—
- (a) is chargeable to tax under Schedule E in respect of emoluments from the employment by reference to which he is eligible to participate in the award, or
  - (b) would be so chargeable if any such emoluments were remitted to the United Kingdom.

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- (3) No deduction is allowed in respect of shares that are liable to depreciate substantially in value for reasons that do not apply generally to shares in the company.
- (4) No deduction is allowed if a deduction has been made—
- (a) by the company, or
  - (b) by an associated company of the company,
- in respect of the provision of the same shares for this or another trust.
- This applies whatever the nature or purpose of the other trust and whatever the basis on which the deduction was made.
- (5) For the purposes of determining whether the same shares have been provided to more than one trust, if shares have been acquired by the trustees of the plan trust on different days it shall be assumed that those acquired on an earlier day are awarded under the plan before those acquired by the trustees on a later day.

*No deduction for expenses in providing dividend shares*

- 109 (1) No deduction is allowed for expenses in providing shares that are acquired on behalf of individuals under an approved employee share ownership plan as dividend shares.
- (2) This is subject to paragraph 112 (deductions for contributions to running expenses of plan).

*Treatment of forfeited shares*

- 110 If any of a participant's plan shares are forfeited—
- (a) the shares are treated for the purposes of this Part as acquired by the trustees—
    - (i) when the forfeiture occurs, and
    - (ii) for no consideration, and
  - (b) no deduction is allowed under paragraph 106 or 107 in respect of any subsequent award of those shares under the plan.

*Deduction for costs of setting up the plan*

- 111 (1) A deduction is allowed under this paragraph for expenses incurred by a company in establishing an employee share ownership plan which is approved by the Inland Revenue.
- (2) No deduction may be made under this paragraph if—
- (a) any employee acquires rights under the plan, or
  - (b) the trustees acquire any shares for the purposes of the plan, before the Inland Revenue approve the plan.
- (3) If Inland Revenue approval of the plan is given more than nine months after the end of that period of account in which the expenses are incurred, the expenses are treated

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for the purposes of this paragraph as incurred in the period in which the approval is given.

- (4) No other deduction is allowed in respect of expenses for which a deduction is allowed under this paragraph.

*Deductions for contributions to running expenses of plan*

- 112 (1) Nothing in this Part of this Schedule affects any deduction for expenses incurred by a company in contributing to the expenses of the trustees in operating an approved employee share ownership plan.
- (2) For this purpose the expenses of the trustees in operating the plan—
- (a) do not include expenses in acquiring shares for the purposes of the trust, other than incidental acquisition costs, but
  - (b) do include the payment of interest on money borrowed by them for that purpose.
- (3) In sub-paragraph (2)(a) “incidental acquisition costs” means any fees, commission, stamp duty and similar incidental costs attributable to the acquisition of the shares.

VALID FROM 06/04/2003

*Deduction for contribution to plan trust*

- <sup>F3</sup>112(1) A deduction is allowed to a company under this paragraph where—
- (a) on or after the day on which this paragraph comes into force the company makes a payment to the trustees of an approved employee share ownership plan in order to enable them to acquire shares in the company or a company which controls it,
  - (b) the payment is applied by the trustees to acquire such shares,
  - (c) the shares are not acquired from a company, and
  - (d) the condition in sub-paragraph (2) is met in relation to the company in which the shares are acquired.
- (2) The condition in this sub-paragraph is that, at the end of the period of twelve months beginning with the date of the acquisition, the trustees hold shares in the company for the plan trust that—
- (a) constitute not less than 10 per cent of the ordinary share capital of the company; and
  - (b) carry rights to not less than 10 per cent of—
    - (i) any profits available for distribution to shareholders of the company;
    - (ii) any assets of that company available for distribution to its shareholders in the event of a winding-up.
- (3) For the purposes of sub-paragraph (2), shares that have been appropriated to, and acquired on behalf of, an individual under the plan shall continue to be treated as held by the trustees of the plan trust for the beneficiaries of that trust until such time as they cease to be subject to the plan (within the meaning of this Schedule).

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- (4) A deduction allowed under this paragraph—
- (a) is of an amount equal to the amount of the payment referred to in sub-paragraph (1), and
  - (b) must be made for the period of account in which the condition in sub-paragraph (2) is met.
- (5) No other deduction is allowed for any amount in respect of which a deduction has been made under this paragraph (except as specified in paragraph 112B(3)).]

#### Textual Amendments

**F3** Sch. 8 para. 112A, inserted (6.4.2003) by 2002 c. 34, ss. 1(3), 5

VALID FROM 06/04/2003

#### *Withdrawal of deduction under paragraph 112A*

- [<sup>F4</sup>112B(1)] The Inland Revenue may by notice direct that the benefit of a deduction made under paragraph 112A is withdrawn where—
- (a) 30 per cent of the shares acquired by virtue of the payment in respect of which the deduction is made have not been awarded under the plan before the end of the period of five years beginning with the date of acquisition, or
  - (b) all the shares acquired by virtue of that payment have not been so awarded before the end of the period of ten years beginning with that date.
- (2) The effect of a direction under sub-paragraph (1)(a) or (b) is that the amount of the deduction is treated as a trading receipt of the company for the period of account in which the direction is given.
- (3) However, where—
- (a) the Inland Revenue give a direction under sub-paragraph (1)(a) or (b) in respect of any deduction, and
  - (b) at any time after the giving of the direction, all the shares acquired by virtue of the payment in respect of which the deduction was made are awarded under the plan,
- a further deduction is allowed under this sub-paragraph to the company which made the payment.
- (4) A deduction under sub-paragraph (3)—
- (a) is of an amount equal to the amount of the payment referred to in that sub-paragraph, and
  - (b) must be made for the period of account in which sub-paragraph (3)(b) is first satisfied.
- (5) No other deduction is allowed in respect of any amount for which a deduction has been made under sub-paragraph (3).
- (6) Where—
- (a) a deduction is made under paragraph 112A or sub-paragraph (3) in respect of a payment for the acquisition of shares, but

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- (b) shares are awarded under the plan to an individual who at the time is not a Schedule E taxpayer (as defined by paragraph 108(2)), an amount equal to the appropriate proportion of the deduction is treated as a trading receipt of the company for the period of account in which the shares are so awarded.
- (7) For the purposes of sub-paragraph (6), the appropriate proportion of the deduction is the proportion which the number of shares awarded to the individual bears to the total number of shares acquired by virtue of the payment.
- (8) For the purposes of this paragraph, where shares are acquired by the trustees on different days, it shall be assumed that those acquired on an earlier day are awarded to employees under the plan before those acquired by the trustees on a later day.]

#### Textual Amendments

F4 Sch. 8 para. 112B inserted (6.4.2003) by 2002 c. 34, ss. 1(4), 5

#### *Withdrawal of deductions on withdrawal of approval*

- 113 (1) If approval of an employee share ownership plan is withdrawn the Inland Revenue may by notice to a company direct that the benefit of any deductions under paragraph 106 (deduction for providing free or matching shares) or 107 (deduction for contributing to additional expenses in providing partnership shares) in relation to the plan is also withdrawn.
- (2) The effect of the direction is that the aggregate amount of the deductions is treated as a trading receipt of that company for the period of account in which the Inland Revenue give notice of the withdrawal of approval.

#### *Application of provisions to expenses of management of investment companies etc.*

- 114 (1) The provisions of this Part apply in relation to—
- (a) investment companies, and
  - (b) companies to which section 75 of the Taxes Act 1988 (management expenses) applies by virtue of section 76 of that Act (insurance companies), in accordance with the following provisions.
- (2) The provisions of this Part which allow a deduction in calculating the profits of a trade apply to treat amounts as disbursed as expenses of management.
- (3) Paragraph 113(2) (effect of direction as to withdrawal of deductions) applies as if the reference to a trading receipt for the period of account in which the Inland Revenue give notice of the withdrawal of approval were a reference to profits or gains chargeable to tax under Case VI of Schedule D arising when the Inland Revenue give notice of the withdrawal.



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## PART XIII U.K.

### SUPPLEMENTARY PROVISIONS

#### *Company reconstructions*

- 115 (1) This paragraph applies where there occurs in relation to any of the participant's plan shares ("the original holding")—
- (a) a transaction which results in a new holding being equated with the original holding for the purposes of capital gains tax, or
  - (b) a transaction that would have that result but for the fact that what would be the new holding consists of or includes a qualifying corporate bond, other than a transaction within sub-paragraph (2).
- A transaction in relation to which this paragraph applies is referred to below as a "company reconstruction".
- (2) Where an issue of shares of any of the following descriptions (in respect of which a charge to income tax arises) is made as part of a company reconstruction, those shares shall be treated for the purposes of this paragraph as not forming part of the new holding—
- (a) redeemable shares or securities issued as mentioned in section 209(2)(c) of the Taxes Act 1988;
  - (b) share capital issued in circumstances such that section 210(1) of that Act applies;
  - (c) share capital to which section 249 of that Act applies.
- (3) In this paragraph—
- “corresponding shares”, in relation to any new shares, means the shares in respect of which the new shares are issued or which the new shares otherwise represent;
- “new shares” means shares comprised in the new holding which were issued in respect of, or otherwise represent, shares comprised in the original holding;
- “original holding” has the meaning given by sub-paragraph (1).
- (4) Subject to the following provisions of this paragraph, in relation to an employee share ownership plan, references in this Schedule to a participant's plan shares shall be construed, after the time of the company reconstruction, as being or, as the case may be, as including references to any new shares.
- (5) For the purposes of this Schedule—
- (a) a company reconstruction shall be treated as not involving a disposal of shares comprised in the original holding,
  - (b) the date on which any new shares are to be treated as having been awarded to the participant shall be that on which the corresponding shares were awarded,
  - (c) the conditions in Part VIII shall be treated as fulfilled with respect to any new shares if they were (or were treated as) fulfilled with respect to the corresponding shares, and

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- (d) the provisions of Part X (income tax) and Part XI (capital gains tax) shall apply in relation to the new shares as they would have applied to the corresponding shares.

Where the corresponding shares were dividend shares, the reference in paragraph (b) to the shares being awarded shall be read as a reference to the shares being acquired on behalf of the participant.

- (6) Sub-paragraphs (4) and (5) are subject to paragraph 116 (treatment of shares acquired under rights issue).
- (7) For the purposes of this Schedule if, as part of a company reconstruction, trustees become entitled to a capital receipt, their entitlement to the capital receipt shall be taken to arise before the new holding comes into being.
- (8) In the context of a new holding, any reference in this Schedule to shares includes securities and rights of any description which form part of the new holding for the purposes of Chapter II of Part IV of the <sup>M11</sup>Taxation of Chargeable Gains Act 1992.

#### Marginal Citations

M11 1992 c. 12.

#### *Treatment of shares acquired under rights issue*

- 116 (1) Where the trustees exercise rights under a rights issue conferred in respect of a participant's plan shares, any shares or securities or rights allotted as a result shall be treated for the purposes of this Schedule as if they were plan shares—
- identical to the shares in respect of which the rights were conferred, and
  - appropriated to, or acquired on behalf of, the participant under the plan in the same way and at the same time as those shares.

This is subject to sub-paragraphs (2) to (4).

- (2) Where the funds used by the trustees to exercise rights under a rights issue are provided otherwise than by virtue of the exercise by the trustees of their powers under paragraph 72 (power of trustees to raise funds to subscribe for rights issue)—
- any shares, securities or rights allotted are not plan shares, and
  - sections 127 to 130 of the Taxation of Chargeable Gains Act 1992 shall not apply in relation to them.
- (3) Sub-paragraph (1) does not apply in relation to rights arising under a rights issue unless similar rights are conferred in respect of all ordinary shares in the company.
- (4) Where sub-paragraph (1) does not apply by virtue of sub-paragraph (3)—
- any shares, securities or rights allotted are not plan shares, and
  - sections 127 to 130 of the Taxation of Chargeable Gains Act 1992 shall not apply in relation to them.
- (5) In this paragraph references to rights arising under a rights issue are to be construed in accordance with paragraph 72(2).

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VALID FROM 11/05/2001

*Exemptions from stamp duty and stamp duty reserve tax*

- [<sup>F5</sup>116A Where, under an approved employee share ownership plan, partnership shares or dividend shares are transferred by the trustees to an employee—
- (a) no ad valorem stamp duty is chargeable on any instrument by which the transfer is made, and
  - (b) no stamp duty reserve tax is chargeable on any agreement by the trustees to make the transfer.]

**Textual Amendments**

- F5** Section S. 116A inserted (11.5.2001 with effect as mentioned in [s. 95\(3\)](#) of the amending Act) by [2001 c. 9, S. 95](#)

*Power to require information*

*Exemptions from stamp duty and stamp duty reserve tax*

- 117 (1) The Inland Revenue may by notice require any person to provide them with such information as they reasonably require for the performance of their functions under this Schedule and as the person to whom the notice is addressed has or can reasonably obtain.
- (2) The power conferred by this paragraph extends, in particular, to—
- (a) information to enable the Inland Revenue—
    - (i) to decide whether to approve an employee share ownership plan or withdraw an approval already given, or
    - (ii) to determine the liability to tax, including capital gains tax, of any person who has participated in a plan; and
  - (b) information about the administration of a plan and any proposed alteration of the terms of a plan.
- (3) The notice must require the information to be provided within a specified time, which must not be less than three months.
- (4) In section 98 of the <sup>M12</sup>Taxes Management Act 1970 (penalties in connection with returns, etc.), in the first column of the table, after the final entry insert— “ paragraph 117 of Schedule 8 to the Finance Act 2000 ”.

**Marginal Citations**

- M12** [1970 c. 9.](#)

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### *Withdrawal of approval*

- 118 (1) If any disqualifying event occurs in relation to an approved employee share ownership plan, the Inland Revenue may by notice to the company withdraw the approval with effect from the time at which the disqualifying event occurred or such later time as the Inland Revenue may specify.
- (2) The following are disqualifying events—
- (a) a contravention in relation to the operation of the plan of any of the requirements of this Schedule, the plan itself or the plan trust;
  - (b) any alteration being made in a key feature of the plan, or in the terms of the plan trust, without the approval of the Inland Revenue;
  - (c) if the plan provides for performance allowances in accordance with paragraph 30 (method two), the setting, in respect of an award of shares, of performance targets that, at the time they are set in accordance with the plan, cannot reasonably be viewed as being comparable;
  - (d) any alteration being made in the share capital of the company whose shares are the subject of the plan, or in the rights attaching to any shares of that company, that materially affects the value of participants' plan shares;
  - (e) shares of a class of which shares have been awarded to participants receiving different treatment in any respect from the other shares of that class;
  - (f) the trustees, the company or, in the case of a group plan, a company which is or has been a participating company failing to furnish any information which they are or it is required to furnish under paragraph 117.
- (3) For the purposes of sub-paragraph (2)(b)—
- (a) an alteration is an alteration of a "key feature" of the plan if it relates to a provision that is necessary in order to meet the requirements of this Schedule; and
  - (b) the Inland Revenue shall not withhold their approval unless it appears to them that the plan as proposed to be altered would not now be approved on an application under paragraph 4.
- (4) For the purposes of sub-paragraph (2)(c) performance targets are comparable if they are comparable in terms of the likelihood of their being met by the performance units to which they apply.
- (5) Sub-paragraph (2)(e) applies, in particular, to different treatment in respect of—
- (a) the dividend payable;
  - (b) repayment;
  - (c) the restrictions attaching to the shares; or
  - (d) any offer of substituted or additional shares, securities or rights of any description in respect of the shares.
- This is subject to sub-paragraph (6).
- (6) Sub-paragraph (2)(e) does not apply—
- (a) where the difference in treatment arises from—
    - (i) a key feature of the plan, or
    - (ii) any of the participants' shares being subject to provision for forfeiture, or

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- (b) on the ground only that shares which have been newly issued receive, in respect of dividends payable with respect to a period beginning before the date on which they were issued, treatment less favourable than that accorded to shares issued before that date.
- (7) The withdrawal of approval of an employee share ownership plan does not affect the operation of this Schedule in relation to shares awarded to participants in the plan before the time with effect from which approval was withdrawn.

References in this Schedule to an approved employee share ownership plan in relation to such shares are to a plan that was approved at the time the shares were awarded.

#### *Appeal against withdrawal of approval*

- 119 (1) The company may appeal against a decision of the Inland Revenue—
- (a) to withdraw approval of an employee share ownership plan, or
  - (b) to give a direction under paragraph 113 (withdrawal of corporation tax deductions on withdrawal of approval), or
  - (c) to refuse approval under paragraph 118(2)(b) (approval of alteration of plan or plan trust).
- (2) The appeal lies to the Special Commissioners.
- (3) Notice of appeal must be given to the Inland Revenue within 30 days after notice of their decision is given to the company.

#### *Termination of plan*

- 120 (1) The plan may provide for the company to issue a plan termination notice in respect of the plan in such circumstances as are specified in the plan.
- (2) The plan must provide that, where a plan termination notice is issued, a copy of the notice is to be given, without delay, to—
- (a) the Inland Revenue,
  - (b) the trustees, and
  - (c) each individual—
    - (i) who has plan shares, or
    - (ii) who has entered a partnership share agreement which was in force immediately before the notice was issued.

#### *Effect of plan termination notice*

- 121 (1) This paragraph applies where the company has issued a plan termination notice under paragraph 120.
- (2) No further shares may be awarded to individuals under the plan.
- (3) The trustees must remove the plan shares from the plan as soon as practicable after—

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- (a) the end of the notice period, or
- (b) if later, the first date on which the shares may be removed from the plan without giving rise to a charge to income tax under Part X of this Schedule on the participant on whose behalf they are held.

Paragraph 46 (repayment of partnership share money) and paragraph 58(2) (cash dividend paid over if not reinvested) provide for the payment to employees of money held on their behalf.

- (4) In sub-paragraph (3) “the notice period” means the period of three months beginning with the date on which the requirements imposed by the plan in accordance with paragraph 120(2) (copy of termination notice to Inland Revenue, participants etc.) are met in respect of the plan termination notice.
- (5) The trustees may remove the participant’s shares from the plan at an earlier date with the participant’s consent.
- (6) Any consent given by the participant before he receives a copy of the plan termination notice shall be disregarded for this purpose.
- (7) The trustees must as soon as practicable after the plan termination notice is issued pay to an individual any money held on his behalf.
- (8) In this paragraph references to the trustees removing the plan shares from the plan are to their—
  - (a) transferring the shares to the participant on behalf of whom they are held, or to another person, at his direction, or
  - (b) disposing of the shares and accounting (or holding themselves ready to account) for the proceeds to the participant or to another person at his direction.
- (9) Where the participant has died, the references in sub-paragraph (8) to the participant shall be read as references to his personal representatives.

*Meaning of shares being withdrawn from or ceasing to be subject to plan*

- 122 (1) For the purposes of this Schedule shares are withdrawn from the plan when—
- (a) they are transferred by the trustees to the participant, or another person, on the direction of the participant,
  - (b) the participant assigns, charges or otherwise disposes of his beneficial interest in the shares, or
  - (c) they are disposed of by the trustees, on the direction of the participant, in circumstances where the trustees account (or hold themselves ready to account) for the proceeds to the participant or to another person.
- (2) Where the participant has died, the references in sub-paragraph (1) to the participant shall be read as references to his personal representatives.
- (3) For the purposes of this Schedule plan shares cease to be subject to the plan when—
- (a) they are withdrawn from the plan,
  - (b) the participant to whom the shares were awarded ceases to be in relevant employment at a time when the shares are subject to the plan, or

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- (c) the trustees dispose of the shares under provision made in accordance with paragraph 73 (meeting PAYE obligations).
- (4) Where an individual participates in an award of partnership shares, if he ceases to be in relevant employment at any time during the acquisition period relating to that award, he shall be treated for the purposes of sub-paragraphs (3) and (7) as ceasing to be in such employment immediately after the shares are awarded to him.
- (5) In sub-paragraph (4) “the acquisition period” in relation to an award means—
  - (a) where there was no accumulation period, the period beginning with the deduction of the partnership share money and ending with the acquisition date (within the meaning of paragraph 40(2)); and
  - (b) where there was an accumulation period, the period beginning with the end of that period and ending immediately before the acquisition date (within the meaning of paragraph 42(3)).
- (6) For the purposes of determining the charge to income tax (if any) arising on any of the participant’s shares ceasing to be subject to the plan—
  - (a) shares shall be taken to cease to be subject to the plan in the order in which they were awarded to the participant under the plan,
  - (b) where shares are awarded to the participant on the same day, the shares shall be treated as ceasing to be subject to the plan in the order which gives rise to the lowest charge to income tax on the participant.
- (7) Where a participant ceases to be in relevant employment his plan shares shall be treated as ceasing to be subject to the plan on the date of leaving.

*Meaning of participant ceasing to be in relevant employment*

- 123 (1) This paragraph explains what is meant by a participant ceasing to be in relevant employment.
- (2) Relevant employment means employment by the company or any associated company.
- (3) A participant does not cease to be in relevant employment if he remains in the employment of the company or any associated company.

*Exercise of functions conferred on “the Inland Revenue”*

- 124 References in this Schedule to “the Inland Revenue” are to any officer of the Board.

*Determination of market value*

- 125 (1) For the purposes of this Schedule the “market value” of shares has the same meaning as, for the purposes of the <sup>M13</sup>Taxation of Chargeable Gains Act 1992, it has by virtue of Part VIII of that Act.

This is subject to paragraph 24(3) (determination of value of shares subject to restriction or risk of forfeiture).

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- (2) Where for the purposes of this Schedule the market value of shares on any date falls to be determined, the Inland Revenue and the trustees may agree that it shall be determined by reference to such date or dates, or to an average of the values on a number of dates, as may be provided in the agreement.

**Marginal Citations**

M13 1992 c. 12.

*Meaning of “associated company”*

- 126 (1) For the purposes of this Schedule one company is an “associated company” of another company if—
- (a) one has control of the other, or
  - (b) both are under the control of the same person or persons.
- (2) For the purposes of this paragraph the question of whether a person controls a company shall be determined in accordance with section 416(2) to (6) of the Taxes Act 1988.
- (3) This paragraph is subject to paragraph 67(3).

*Jointly owned companies*

- 127 (1) For the purposes of the provisions of this Schedule relating to group plans, each joint owner of a jointly owned company is treated as controlling—
- (a) the jointly owned company, and
  - (b) any company controlled by that company.
- This paragraph does not apply for the purposes of paragraph 61(b) (requirement that plan shares are in a company not under another company’s control).
- (2) A “jointly owned company” means a company—
- (a) of which 50% of the issued share capital is owned by one person and 50% by another, and
  - (b) which is not controlled by any one person.
- (3) A jointly owned company may not be a participating company in more than one group plan.

*Meaning of “readily convertible asset”*

- 128 (1) For the purposes of this Schedule “readily convertible asset” has the same meaning as in section 203F of the Taxes Act 1988 (PAYE: tradeable assets).
- This is subject to sub-paragraph (2).



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- (2) In determining for the purposes of this Schedule 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.

#### *Minor definitions*

- 129 (1) In this Schedule—

“approved employee share ownership plan” means an employee share ownership plan approved under this Schedule;

“approved profit sharing scheme” means a profit sharing scheme approved under Schedule 9 to the Taxes Act 1988;

“articles of association”, in relation to a company, includes any other written agreement between the shareholders of the company;

“company” means a body corporate;

“control”, unless otherwise indicated, has the same meaning as in section 840 of the Taxes Act 1988;

“foreign cash dividend” means a cash dividend paid in respect of plan shares in a company not resident in the United Kingdom;

“group of companies” means a company and any other companies of which it has control, and “group company” has a corresponding meaning;

“ordinary share capital” has the meaning given in section 832(1) of the Taxes Act 1988;

“participant’s plan shares”, in relation to an employee share ownership plan, means plan shares that have been awarded to an individual participant;

“PAYE obligations” means obligations of any person under—

- (a) sections 203 to 203L of the Taxes Act 1988, or
- (b) regulations under section 203 of that Act;

“plan shares”, in relation to a plan, means—

- (a) free, partnership or matching shares that have been awarded to participants under the plan,
- (b) dividend shares that have been acquired on behalf of participants under the plan, and
- (c) shares in relation to which paragraph 115(5) applies (company reconstructions: new shares)),

that remain subject to the plan;

“qualifying corporate bond” has the meaning given by section 117 of the <sup>M14</sup>Taxation of Chargeable Gains Act 1992;

“tax year” means a year of assessment.

- (2) Section 839 of the Taxes Act 1988 (connected persons) applies for the purposes of this Schedule.

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- (3) For the purposes of this Schedule references to “shares” include fractions of shares forming part of the share capital of a company registered in a foreign country the law of which recognises such fractions.
- (4) For the purposes of this Schedule a company is a member of a consortium owning another company if it is one of a number of companies—
- (a) which between them beneficially own not less than three-quarters of the other company’s ordinary share capital, and
  - (b) each of which beneficially owns not less than one-twentieth of that capital.

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**Marginal Citations**

M14 1992 c. 12.

*Index of defined expressions*

130 In this Schedule the following expressions are defined or otherwise explained by the provisions indicated—

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approved employee share ownership plan	paragraph 129(1) (and see paragraph 118(7))
approved profit sharing scheme	paragraph 129(1)
articles of association	paragraph 129(1)
associated company	paragraph 126 (and see paragraph 67(3))
award of shares	paragraph 3(1)
ceasing to be in relevant employment (in relation to a participant)	paragraph 123
ceasing to be subject to plan (in relation to shares)	paragraph 122
company	paragraph 129(1)
the company (in relation to an employee share ownership plan)	paragraph 1(4)
connected person	paragraph 129(2)
consortium (member of)	paragraph 129(4)
control	paragraph 129(1) (and see paragraph 127)
deduction (in Part XII)	paragraph 105
dividend shares	paragraph 53(1)
eligible shares (in Part VIII)	paragraph 59
employee share ownership plan	paragraph 1(1)

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foreign cash dividend	paragraph 129(1)
forfeiture (provision for)	paragraph 65(6)
free shares	paragraph 1(1)(a)
group of companies	paragraph 129(1)
group plan	paragraph 2(1)
holding period	paragraph 31
the Inland Revenue	paragraph 124
market value (of shares)	paragraph 125
matching shares	paragraph 1(2)
ordinary share capital	paragraph 129(1)
parent company	paragraph 2(1)
participant (in relation to an employee share ownership plan)	paragraph 3(3)
participant's plan shares	paragraph 129(1) (and see paragraph 115(4))
participating company (in relation to a group plan)	paragraph 2(2)
participation in an award of shares	paragraph 3(2)
partnership share agreement	paragraph 34
partnership shares	paragraph 1(1)(b)
PAYE obligations	paragraph 129(1)
performance allowance	paragraph 25
plan shares	paragraph 129(1) (and see paragraphs 115 and 116)
the plan trust	paragraph 68(2)
qualifying corporate bond	paragraph 129(1)
qualifying employee	paragraph 8(4)
readily convertible asset	paragraph 128
reinvestment (in Part VII)	paragraph 53(1)
relevant employment	paragraph 123(2)
salary (in Part V)	paragraph 48
shares	paragraph 129(3) (and in the context of a new holding paragraph 115(8))
tax year	paragraph 129(1)
the trustees	paragraph 68(1)
withdrawal of shares from plan	paragraph 122(1)

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