

SCHEDULES

SCHEDULE 8

EMPLOYEE SHARE OWNERSHIP PLANS

PART III

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—
- (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—

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- (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).

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—

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- (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.
- (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.

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- (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, 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 “associate”: 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

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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 “associate”: trustees of discretionary trust

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- (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
 - (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).