

SCHEDULES

SCHEDULE 8

EMPLOYEE SHARE OWNERSHIP PLANS

PART XII

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.
- (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—

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- (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 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.

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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.

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.