

Status: Point in time view as at 18/06/2004.

Changes to legislation: Income Tax (Earnings and Pensions) Act 2003, Part 10 is up to date with all changes known to be in force on or before 04 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 2

APPROVED SHARE INCENTIVE PLANS

PART 10

APPROVAL OF PLANS

Application for approval

- 81 (1) Where—
- (a) a SIP has been established, and
 - (b) the company makes an application to the Inland Revenue for approval of the plan,
- the Inland Revenue must approve the plan if they are satisfied that it meets the requirements of Parts 2 to 9 of this Schedule.
- (2) An application for approval must—
- (a) be in writing, and
 - (b) contain such particulars, and be supported by such evidence, as the Inland Revenue may require.
- (3) Once the Inland Revenue have decided whether or not to approve the plan, they must give notice of their decision to the company.

Appeal against refusal of approval

- 82 (1) If the Inland Revenue refuse to approve the plan, the company may appeal to the Special Commissioners.
- (2) The notice of appeal must be given to the Inland Revenue within 30 days after the date on which notice of their decision is given to the company.
- (3) If the Special Commissioners allow the appeal, they may direct the Inland Revenue to approve the plan with effect from a date specified by the Commissioners.
- (4) The date so specified must not be earlier than that of the application for approval.

Withdrawal of approval

- 83 (1) This paragraph applies if a disqualifying event (see paragraph 84) occurs in relation to an approved SIP.
- (2) The Inland Revenue may by a notice given to the company withdraw the approval with effect from—
- (a) the time at which the disqualifying event occurred, or

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- (b) a later time specified by the Inland Revenue in the notice.
- (3) The withdrawal of approval of a SIP does not affect the operation of the SIP code in relation to shares awarded to participants in the plan before the time with effect from which approval was withdrawn.
- (4) References in the SIP code to an approved SIP in relation to such shares are to a plan that was approved at the time when the shares were awarded.

Disqualifying events for purposes of paragraph 83

- 84 (1) The following are disqualifying events for the purposes of paragraph 83—
- (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) an 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 42 (method two), the setting of performance targets in respect of an award of shares which are not consistent targets (within the meaning given by paragraph 42(6));
 - (d) an 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 failing to furnish any information which they are required to furnish under paragraph 93 (power to require information);
 - (g) the company, or (in the case of a group plan) a company which is or has been a constituent company, failing to furnish any information which it is required to furnish under that paragraph.
- (2) For the purposes of sub-paragraph (1)(b) the Inland Revenue may not withhold their approval unless it appears to them at the time in question that the plan as proposed to be altered would not then be approved on an application under paragraph 81.
- (3) Sub-paragraph (1)(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.
- (4) Sub-paragraph (1)(e) does not, however, apply where the difference in treatment arises—
- (a) from a key feature of the plan, or
 - (b) from any of the participants' shares being subject to any provision for forfeiture.
- (5) Nor does it apply as a result only of the fact 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.

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- (6) For the purposes of this paragraph a “key feature” of a plan is a provision of the plan that is necessary in order to meet the requirements of this Schedule.

Appeal against withdrawal of approval

- 85 (1) This paragraph applies if a SIP has been approved by the Inland Revenue and they decide—
- (a) to withdraw approval of the plan, or
 - (b) to refuse approval under paragraph 84(1)(b) (approval of alteration of plan or plan trust), or
 - (c) to give a direction under paragraph 11 of Schedule 4AA to ICTA (withdrawal of corporation tax deductions on withdrawal of approval).
- (2) The company may appeal against the decision to the Special Commissioners.
- (3) The notice of appeal must be given to the Inland Revenue within 30 days after the date on which notice of their decision is given to the company.

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