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## SCHEDULES

### SCHEDULE 5

#### ENTERPRISE MANAGEMENT INCENTIVES

#### PART 7

#### NOTIFICATION OF OPTION TO INLAND REVENUE

##### *Notice of option to be given to Inland Revenue*

- 44 (1) For a share option to be a qualifying option, notice of the option must be given to [<sup>F1</sup>an officer of Revenue and Customs] within 92 days after the date of the grant of the option.
- (2) The notice must—
- (a) be given by the employer company, and
  - (b) be in a form required or authorised by [<sup>F1</sup>an officer of Revenue and Customs]
- (3) The notice must contain, or be supported by, such information as [<sup>F1</sup>an officer of Revenue and Customs] may require for the purpose of determining whether the requirements of this Schedule are met.
- (4) The notice must also contain a declaration within each of sub-paragraphs (5) and (6).
- (5) A declaration within this sub-paragraph is a declaration by a director, or the secretary, of the employer company—
- (a) that in the opinion of that person the requirements of this Schedule are met in relation to the option, and
  - (b) that the information provided is, to the best of that person's knowledge, correct and complete.
- (6) A declaration within this sub-paragraph is a declaration by the individual to whom the option has been granted that the individual meets the requirement of paragraph 26 (commitment of working time) in relation to the option.
- (7) Any reference in this Part of this Schedule to the requirements (or any of the requirements) of this Schedule being met in relation to a share option is a reference to the requirements or requirement being met in relation to it at the appropriate time.

#### Textual Amendments

- F1** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(1\)](#); S.I. 2005/1126, art. 2(2)(h)

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### *Correction of notice by Inland Revenue*

- 45 (1) [F<sup>1</sup>An officer of Revenue and Customs] may amend a notice given under paragraph 44 so as to correct obvious errors or omissions in the notice.
- (2) A correction under this paragraph must be made by a notice given to the employer company.
- (3) No correction may be made under this paragraph more than 9 months after the day on which the notice under paragraph 44 was given to [F<sup>1</sup>an officer of Revenue and Customs] .
- (4) A correction under this paragraph is of no effect if the employer company, within 3 months after the date of issue of the notice of correction, gives notice to [F<sup>1</sup>an officer of Revenue and Customs] rejecting the correction.

#### **Textual Amendments**

- F1** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(1\)](#); S.I. 2005/1126, art. 2(2)(h)

### *Notice of enquiry*

- 46 (1) This paragraph applies where notice of a share option is given under paragraph 44.
- (2) [F<sup>1</sup>An officer of Revenue and Customs] may enquire into the option if [F<sup>2</sup>the officer][F<sup>3</sup>gives] notice to the employer company of [F<sup>4</sup>the officer's] intention to do so in accordance with this paragraph.
- (3) [F<sup>1</sup>An officer of Revenue and Customs] may enquire into whether the requirement of paragraph 26 (commitment of working time) is met in relation to the option by the individual to whom it has been granted if [F<sup>5</sup>the officer][F<sup>3</sup>gives] that individual notice of [F<sup>4</sup>the officer's] intention to do so in accordance with this paragraph.
- (4) [F<sup>1</sup>An officer of Revenue and Customs] must give a copy of a notice under sub-paragraph (3) to the employer company.
- (5) Unless given by virtue of sub-paragraph (6), a notice of enquiry may not be given more than 12 months after the end of the period of 92 days mentioned in paragraph 44(1) (the period within which a notice under that paragraph must be given).
- (6) A notice of enquiry may be given at any time if [F<sup>1</sup>an officer of Revenue and Customs][F<sup>6</sup>discovers] that any of the information provided in or in connection with the notice under paragraph 44 was false or misleading in a material respect.
- (7) An option that has been the subject of one notice of enquiry under sub-paragraph (2) or (3) may not be the subject of another notice under that sub-paragraph, unless the notice is given by virtue of sub-paragraph (6).
- (8) In this paragraph a “notice of enquiry” means a notice given under sub-paragraph (2) or (3).

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### Textual Amendments

- F1** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 4 para. 102\(1\)](#); S.I. 2005/1126, art. 2(2)(h)
- F2** Words in Sch. 5 para. 46(2) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 4 para. 103\(1\)\(x\)](#); S.I. 2005/1126, art. 2(2)(h)
- F3** Word in Sch. 5 para. 46(2)(3) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 4 para. 124\(a\)\(i\)](#); S.I. 2005/1126, art. 2(2)(h); S.I. 2005/1126, art. 2(2)(h)
- F4** Words in Sch. 5 para. 46(2)(3) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 4 para. 103\(2\)\(j\)](#); S.I. 2005/1126, art. 2(2)(h); S.I. 2005/1126, art. 2(2)(h)
- F5** Words in Sch. 5 para. 46(3) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 4 para. 103\(1\)\(y\)](#); S.I. 2005/1126, art. 2(2)(h)
- F6** Word in Sch. 5 para. 46(6) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 4 para. 124\(a\)\(ii\)](#); S.I. 2005/1126, art. 2(2)(h)

### *Completion of enquiry: closure notices*

- 47 (1) An enquiry under paragraph 46(2) is completed when [<sup>F1</sup>an officer of Revenue and Customs][<sup>F7</sup>gives] the employer company a notice—
- informing the company that [<sup>F8</sup>the officer][<sup>F7</sup>has] completed [<sup>F9</sup>the] enquiry, and
  - stating [<sup>F10</sup>the officer's] decision as to whether the requirements of this Schedule are met in relation to the option.
- (2) If [<sup>F1</sup>an officer of Revenue and Customs][<sup>F11</sup>concludes] that the requirements of this Schedule are not so met, [<sup>F8</sup>the officer] must also give notice of that decision to the person to whom the option has been granted.
- (3) An enquiry under paragraph 46(3) is completed when [<sup>F1</sup>an officer of Revenue and Customs][<sup>F12</sup>gives] the individual concerned and the employer company a notice—
- informing the recipients that [<sup>F8</sup>the officer][<sup>F12</sup>has] completed [<sup>F13</sup>the] enquiry, and
  - stating [<sup>F14</sup>the officer's] decision as to whether the requirement of paragraph 26 (commitment of working time) is met by that individual in relation to the option.
- (4) References in the EMI code to a “closure notice” are to a notice under subparagraph (1) or (3).
- (5) A closure notice takes effect when it is issued.

### Textual Amendments

- F1** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 4 para. 102\(1\)](#); S.I. 2005/1126, art. 2(2)(h)
- F7** Word in Sch. 5 para. 47(1) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 4 para. 124\(b\)\(i\)](#); S.I. 2005/1126, art. 2(2)(h)
- F8** Words in Sch. 5 para. 47 substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 4 para. 103\(1\)\(z\)](#); S.I. 2005/1126, art. 2(2)(h)
- F9** Word in Sch. 5 para. 47(1)(a) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 4 para. 103\(3\)\(h\)](#); S.I. 2005/1126, art. 2(2)(h)

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- F10** Words in Sch. 5 para. 47(1)(b) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 103(2)(k)**; S.I. 2005/1126, art. 2(2)(h)
- F11** Word in Sch. 5 para. 47(2) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 124(b)(ii)**; S.I. 2005/1126, art. 2(2)(h)
- F12** Word in Sch. 5 para. 47(3) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 124(b)(iii)**; S.I. 2005/1126, art. 2(2)(h)
- F13** Word in Sch. 5 para. 47(3)(a) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 103(3)(h)**; S.I. 2005/1126, art. 2(2)(h)
- F14** Words in Sch. 5 para. 47(3)(b) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 103(2)(k)**; S.I. 2005/1126, art. 2(2)(h)

*Completion of enquiry: application for closure notice to be given*

- 48 (1) An application may be made [<sup>F15</sup>to the tribunal] under this paragraph for a direction requiring [<sup>F1</sup>an officer of Revenue and Customs] to give a closure notice within a specified period.
- (2) The application may be made—
- by the employer company, or
  - in a case within paragraph 46(3), by the individual concerned.
- <sup>F16</sup>(3) .....
- [<sup>F17</sup>(4) Any such application is to be subject to the relevant provisions of Part 5 of TMA 1970 (see, in particular, section 48(2)(b) of that Act).]
- (5) [<sup>F18</sup>The tribunal] must give a direction unless <sup>F19</sup>... satisfied that [<sup>F1</sup>an officer of Revenue and Customs][<sup>F20</sup>has] reasonable grounds for not giving a closure notice within a specified period.

#### Textual Amendments

- F1** Words in Act substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 102(1)**; S.I. 2005/1126, art. 2(2)(h)
- F15** Words in Sch. 5 para. 48(1) inserted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 353(2)**
- F16** Sch. 5 para. 48(3) omitted (1.4.2009) by virtue of The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 353(3)**
- F17** Sch. 5 para. 48(4) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 353(4)**
- F18** Words in Sch. 5 para. 48(5) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 353(5)(a)**
- F19** Words in Sch. 5 para. 48(5) omitted (1.4.2009) by virtue of The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 353(5)(b)**
- F20** Word in Sch. 5 para. 48(5) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 124(c)**; S.I. 2005/1126, art. 2(2)(h)

*Effect of enquiry*

- 49 (1) If [<sup>F1</sup>an officer of Revenue and Customs][<sup>F21</sup>does] not give a notice of enquiry, the requirements of this Schedule are taken to be met in relation to the option.

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- (2) If [<sup>F1</sup>an officer of Revenue and Customs][<sup>F21</sup>does] give a notice of enquiry, [<sup>F22</sup>the officer's] decision stated in the closure notice is conclusive as to whether the requirements of this Schedule are met in relation to the option.
- (3) But this is subject—
- (a) if [<sup>F22</sup>the officer's] decision is that the requirements are not met, to the outcome of any appeal against that decision under paragraph 50;
  - (b) if their decision is that the requirements are met, to the outcome of any subsequent enquiry under paragraph 46(6) (enquiry arising from discovery of false or misleading information).
- (4) This paragraph does not affect the provisions of sections 532 to 539 (which relate to disqualifying events).

#### Textual Amendments

- F1** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 4 para. 102\(1\)](#); S.I. 2005/1126, art. 2(2)(h)
- F21** Word in Sch. 5 para. 49(1)(2) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 4 para. 124\(d\)](#); S.I. 2005/1126, art. 2(2)(h)
- F22** Words in Sch. 5 para. 49(2)(3) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 4 para. 103\(2\)\(I\)](#); S.I. 2005/1126, art. 2(2)(h)

#### Appeals

- 50 (1) The employer company may appeal against a decision of [<sup>F1</sup>an officer of Revenue and Customs] —
- (a) that notice of the grant of the option was not given in accordance with paragraph 44, or
  - (b) that the requirements of this Schedule are not met in relation to the option.
- (2) An individual may appeal against a decision of [<sup>F1</sup>an officer of Revenue and Customs] that the individual does not meet the requirement of paragraph 26 (commitment of working time).
- (3) Notice of the appeal must be given to [<sup>F1</sup>an officer of Revenue and Customs] within 30 days after the date when the closure notice is given to the appellant.
- <sup>F23</sup>(4) .....

#### Textual Amendments

- F1** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 4 para. 102\(1\)](#); S.I. 2005/1126, art. 2(2)(h)
- F23** Sch. 5 para. 50(4) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 354](#)

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