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## SCHEDULES

### SCHEDULE 1

Section 2

#### ABBREVIATIONS AND DEFINED EXPRESSIONS

#### PART 1

#### ABBREVIATIONS OF ACTS AND INSTRUMENTS

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[ <sup>F1</sup> FA followed by a year	The Finance Act of that year
F(No.2)A followed by a year	The Finance (No.2) Act of that year.]
[ <sup>F2</sup> ETA(NI) 1950	The Employment and Training Act (Northern Ireland) 1950 (c. 29 (N.I.))]
TMA 1970	The Taxes Management Act 1970 (c. 9)
ICTA 1970	The Income and Corporation Taxes Act 1970 (c. 10)
F3	F3
...	...
F3	F3
...	...
[ <sup>F2</sup> ETA 1973	The Employment and Training Act 1973 (c. 50)]
OPA 1973	The Overseas Pensions Act 1973 (c. 21)
F3	F3
...	...
F3	F3
...	...
F3	F3
...	...
F3	F3
...	...
F3	F3
...	...
ICTA	The Income and Corporation Taxes Act 1988 (c. 1)
F3	F3
...	...
F3	F3

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...	...
SSCBA 1992	The Social Security Contributions and Benefits Act 1992 (c. 4)
SSCB(NI)A 1992	The Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7)
TCGA 1992	The Taxation of Chargeable Gains Act 1992 (c. 12)
VERA 1994	The Vehicle Excise and Registration Act 1994 (c. 22)
F3	F3
...	...
JSA 1995	The Jobseekers Act 1995 (c. 18)
CSA 1995	The Child Support Act 1995 (c. 34)
CS(NI)O 1995	The Child Support (Northern Ireland) Order 1995 (S.I. 1995/2702 (N.I. 13))
JS(NI)O 1995	The Jobseekers (Northern Ireland) Order 1995 (S.I. 1995/2705 (N.I. 15))
F3	F3
...	...
ERA 1996	The Employment Rights Act 1996 (c. 18)
ER(NI)O 1996	The Employment Rights (Northern Ireland) Order 1996 (S.I. 1996/1919 (N.I. 16))
F3	F3
...	...
WRPA 1999	The Welfare Reform and Pensions Act 1999 (c. 30)
WRP(NI)O 1999	The Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11))
F3	F3
...	...
CAA 2001	The Capital Allowances Act 2001 (c. 2)
F3	F3
...	...
SPCA 2002	The State Pension Credit Act 2002 (c. 16)
TCA 2002	The Tax Credits Act 2002 (c. 21)
SPCA(NI) 2002	The State Pension Credit Act (Northern Ireland) 2002 (c. 14 (N.I.))
F3	F3
...	...

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[ <sup>F4</sup> ITTOIA 2005	The Income Tax (Trading and Other Income) Act 2005]
F3	F3
...	...
[ <sup>F5</sup> ITA 2007	The Income Tax Act 2007]
[ <sup>F6</sup> WRA 2007	The Welfare Reform Act 2007]
[ <sup>F7</sup> CTA 2009	The Corporation Tax Act 2009]
[ <sup>F8</sup> CTA 2010	The Corporation Tax Act 2010]
[ <sup>F9</sup> TIOPA 2010	The Taxation (International and Other Provisions) Act 2010]

#### Textual Amendments

- F1** Words in Sch. 1 Pt. 1 inserted (21.7.2009) by [Finance Act 2009 \(c. 10\), s. 126\(3\)](#)
- F2** Words in Sch. 1 Pt. 1 inserted (with effect in accordance with s. 46(3) of the amending Act) by [Finance Act 2008 \(c. 9\), s. 46\(2\)](#)
- F3** Words in Sch. 1 Pt. 1 omitted (21.7.2009) by virtue of [Finance Act 2009 \(c. 10\), s. 126\(4\)](#)
- F4** Words in Sch. 1 Pt. 1 inserted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 616\(2\)](#) (with [Sch. 2](#))
- F5** Words in Sch. 1 Pt. 1 inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 445](#) (with [Sch. 2](#))
- F6** Words in Sch. 1 Pt. 1 inserted (18.3.2008 for specified purposes, 27.10.2008 in so far as not already in force) by [Welfare Reform Act 2007 \(c. 5\), s. 70\(2\), Sch. 3 para. 24\(6\)](#); [S.I. 2008/787, art. 2\(1\), Sch.; S.I. 2008/787, art. 2\(4\)\(f\)](#)
- F7** Words in Sch. 1 Pt. 1 inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 556\(a\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F8** Words in Sch. 1 Pt. 1 inserted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 395\(2\)](#) (with [Sch. 2](#))
- F9** Words in Sch. 1 Pt. 1 inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 323](#) (with [Sch. 9 paras. 1-9, 22](#))

## PART 2

### INDEX OF EXPRESSIONS DEFINED IN THIS ACT OR ICTA

*Note: this index does not apply to expressions used in any of Chapters 6 to 9 of Part 7 (share incentive plans and other arrangements for acquiring shares): separate indexes appear at the end of Schedules 2 to 5.*

accessory (in Chapter 6 of Part 3)	[ <sup>F10</sup> sections 125(2) and 125A(2)]
F11	F11
...	...
F11	F11

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...	...
F11	F11
...	...
[ <sup>F12</sup> the acquisition (in Chapters 1 to 4 of Part 7)	section 421B(8) (see also section 446Q(4))]
F11	F11
...	...
[ <sup>F12</sup> the acquisition (in Chapter 5 of Part 7)	section 471(5)]
F13	F13
...	...
[ <sup>F14</sup> adjusted net income (in Chapter 8 of Part 10)	section 681H]
age of a car F15	section 171(3)
... (in Chapter 6 of Part 3)	
agency contract (in Chapter 7 of Part 2)	section 47(1)
annual rental value (in Chapter 10 of Part 3)	section 207
annual value (in Chapter 5 of Part 3)	section 110
F13	F13
...	...
F13	F13
...	...
F13	F13
...	...
F11	F11
...	...
F11	F11
...	...
F11	F11
...	...
asset (in Chapter 4 of Part 11)	section 701
F11	F11
...	...
assignment (in the application of the Act to Scotland)	[ <sup>F16</sup> section 1008(1) of ITA 2007]

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associate (in Chapter 8 of Part 2)	section 60
[ <sup>F17</sup> associate (in Chapter 9 of Part 2)	section 61I (but see section 61C(4))]
associate (in Chapter 11 of Part 7)	section 549(4)
associated company (in Chapter 8 of Part 2)	section 61(1)
[ <sup>F12</sup> associated company (in section 421H(1) and Chapters 2 to 4 of Part 7)	section 421H(2)]
F11	F11
...	...
[ <sup>F12</sup> associated person (in Chapters 1 to 4 of Part 7)	section 421C]
[ <sup>F12</sup> associated person (in Chapter 5 of Part 7)	section 472]
available for private use (in Chapter 6 of Part 3)	section 118(1)
basic rate	[ <sup>F18</sup> section 6(2) of ITA 2007 (as applied by section 989 of that Act)]
benefit (in Chapter 10 of Part 3)	section 201(2)
benefit (in Chapter 3 of Part 6)	section 402
the benefits code (in the employment income Parts)	section 63(1)
[ <sup>F19</sup> the Commissioners for Her Majesty's Revenue and Customs]	section 720(2)
body of persons	[ <sup>F20</sup> section 989 of ITA 2007]
business (in Chapter 8 of Part 2)	section 61(1)
[ <sup>F17</sup> business (in Chapter 9 of Part 2)	section 61J]
business travel (in Chapter 6 of Part 3)	section 171(1)
business travel (in Chapter 2 of Part 4)	section 236(1)
capital allowance	[ <sup>F21</sup> section 989 of ITA 2007]

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car (in Chapter 6 of Part 3)	section 115(1)
car (in Chapter 2 of Part 4)	section 235(2)
car (in Chapter 3 of Part 4)	section 249
car is available to an employee (in Chapter 6 of Part 3)	section 116(1)
car first made available to an employee (in Chapter 6 of Part 3)	section 116(2)(a)
car made available by reason of employment (in Chapter 6 of Part 3)	section 117
car with a CO <sub>2</sub> emissions figure (in Chapter 6 of Part 3)	section 134(1)
car without a CO <sub>2</sub> emissions figure (in Chapter 6 of Part 3)	section 134(2)
cash voucher	section 721(1)
[ <sup>F12</sup> chargeable event (in Chapter 3B of Part 7)]	section 446P(5)]
charging provisions of Chapter 4 of Part 2 (in the employment income Parts)	section 14(3)
charging provisions of Chapter 5 of Part 2 (in the employment income Parts)	section 20(3)
cheque voucher (in Chapter 4 of Part 3)	section 84(4)
child, children	<sup>F22</sup> ... section 721(6)
[ <sup>F17</sup> the client (in Chapter 9 of Part 2)]	section 61D(4)]
close company	[ <sup>F23</sup> section 989 of ITA 2007]
company	[ <sup>F24</sup> section 992 of ITA 2007]
company (in Chapter 8 of Part 2)	section 61(1)
<sup>F11</sup> ...	<sup>F11</sup> ...
company vehicle (in Chapter 2 of Part 4)	section 236(2)
connected (in the context of “connected person” or one	[ <sup>F25</sup> section 993 of ITA 2007] (see section 718)

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person being “connected”  
with another)

[<sup>F12</sup>consideration (in Chapters sections 421(2) and 421A]  
2 to 5 of Part 7)

[<sup>F12</sup>consideration given for the section 421I]  
acquisition of employment-  
related securities (in Chapters  
2 to 3A of Part 7)

F11

F11

...

...

[<sup>F26</sup>the Contributions and  
Benefits Act

section 721(1)]

control

[<sup>F27</sup>section 995 of ITA 2007]  
(see section 719)

control (in the benefits code) section 69

F11

F11

...

...

[<sup>F12</sup>convertible securities (in section 436]  
Chapters 2 to 3A of Part 7)

cost of provision in relation section 87(3)  
to non-cash voucher (in  
Chapter 4 of Part 3)

credit-token section 721(1)

cycle (in Chapter 2 of Part 4) section 235(5)

date of first registration (in section 171(2)  
relation to a car

F15

...) (in Chapter 6 of Part 3)

deductible payment (in Part section 558  
8)

the deductibility provisions section 332  
(in Part 5)

[<sup>F28</sup>dependants' income section 579D]  
withdrawal (in Chapter 5A of  
Part 9)

F11

F11

...

...

diesel (in Chapter 6 of Part 3) section 171(1)

director (in the benefits code) section 67(1)

F13

F13

...

...

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F11	F11
. . .	. . .
F11	F11
. . .	. . .
F11	F11
. . .	. . .
F11	F11
. . .	. . .
director (in Chapter 10 of Part 7)	section 548(1)
director, full-time working (in the benefits code)	section 67(3)
disabled person's badge (in Chapter 6 of Part 3)	section 171(4)
distribution	[ <sup>F29</sup> section 989 of ITA 2007]
domiciled in the United Kingdom	section 721(3)
donations (in Part 12)	section 714(1)
earnings (in the employment income Parts)	section 62 and see section 721(7)
earnings (from which deductions are allowed) (in Part 5)	section 327(2)(a)
earnings charged on receipt (in Part 5)	section 335(4)
earnings charged on remittance (in Part 5)	section 335(4)
earnings "for" a tax year (in Chapter 4 of Part 2)	section 16
earnings "for" a tax year (in Chapter 5 of Part 2)	section 29
earnings-only exemption	section 227(2)
EC certificate of conformity (in Chapter 6 of Part 3)	section 171(1)
EC type-approval certificate (in Chapter 6 of Part 3)	section 171(1)
eligible period (in Chapter 6 of Part 5)	section 378(2)
employed (in the employment income Parts)	sections 4 and 5(2)(a)



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employed (in the benefits code)	section 66(1)(b)
employee (in the employment income Parts)	sections 4 and 5(2)(b)
employee (in the benefits code)	section 66(1)(b) (see also section 216(5))
employee (in Chapter 3 of Part 3)	section 70(4)
F11	F11
...	...
F11	F11
...	...
employee (in Chapter 10 of Part 3)	section 201(5)
F13	F13
...	...
F13	F13
...	...
[ <sup>F12</sup> the employee (in Chapters 1 to 4 of Part 7)	section 421B(8)]
F11	F11
...	...
F11	F11
...	...
F11	F11
...	...
F11	F11
...	...
F11	F11
...	...
F11	F11
...	...
F11	F11
...	...
[ <sup>F12</sup> the employee (in Chapter 5 of Part 7)	section 471(5)]
employee (in Chapter 10 of Part 7)	section 548(1)

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employee (in Chapter 11 of Part 7)	section 549(5)
employee (in Part 8)	section 562(2)
F13	F13
...	...
employee (in Chapter 13 of Part 9)	section 628(1)
employee (in Part 11)	section 712(1)
employee benefit trust (in Chapter 11 of Part 7)	section 550
[ <sup>F12</sup> employee-controlled (in Chapters 2 to 4 of Part 7)]	section 421H(1)]
F11	F11
...	...
F11	F11
...	...
the employee offer (in Chapter 10 of Part 7)	section 544(1)
employer (in the employment income Parts)	sections 4 and 5(2)(c)
employer (in the benefits code)	section 66(1)(b)
the employer (in the benefits code)	section 66(2)(b)
F13	F13
...	...
[ <sup>F12</sup> the employer (in Chapters 1 to 4 of Part 7)]	section 421B(8)]
[ <sup>F12</sup> the employer (in Chapter 5 of Part 7)]	section 471(5)]
employer (in Part 8)	section 562(2)
employer (in Part 11)	section 712(1)
[ <sup>F30</sup> employer-financed retirement benefits scheme (in Chapter 2 of Part 6)]	section 393A]
F11	F11
...	...
F11	F11
...	...
F11	F11

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...	...
employer's national insurance contributions (in Chapter 8 of Part 2)	section 61(1)
[ <sup>F17</sup> employer's national insurance contributions (in Chapter 9 of Part 2)]	section 61J]
employment (in the employment income Parts)	sections 4 and 5(1)
employment (in the benefits code)	section 66(1)(a)
the employment (in the benefits code)	section 66(2)(a)
F13	F13
...	...
[ <sup>F12</sup> the employment (in Chapters 1 to 4 of Part 7)]	section 421B(8)]
[ <sup>F12</sup> the employment (in Chapter 5 of Part 7)]	section 471(5)]
employment (in Part 8)	section 562(2)
employment (in Chapter 5 of Part 11)	section 707
employment as a seafarer (in Chapter 6 of Part 5)	section 384(1)
the employment change (in Chapter 7 of Part 4)	section 275
employment income	section 7(2)
the employment income Parts	section 3(2)
employment income exemption	section 227(3)
employment-related benefit (in Chapter 10 of Part 3)	section 201(2)
employment-related loan (in Chapter 7 of Part 3)	section 174
[ <sup>F12</sup> employment-related securities (in Chapters 1 to 5 of Part 7)]	section 421B(8) (see also section 484(4))]
[ <sup>F12</sup> employment-related securities option (in Chapter 5 of Part 7)]	section 471(5)]
F11	F11
...	...

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F11	F11
...	...
engagement to which Chapter 8 of Part 2 applies (in Chapter 8 of Part 2)	section 49(5)
excluded benefits (in Chapter 10 of Part 3)	section 202
excluded employment (in the benefits code)	section 63(4)
excluded employment (in Part 4)	section 239(9)
excluded services (in Chapter 7 of Part 2)	section 47(2)
F13	F13
...	...
exempt income (for the purposes of the employment income Parts)	section 8
exempt income (for the purposes of Part 9)	section 566(3)
exempt income (for the purposes of Part 10)	section 656(2)
F13	F13
...	...
F13	F13
...	...
foreign employer	section 721(1)
F13	F13
...	...
[ <sup>F31</sup> former civil partner (in Chapter 2 of Part 6)	section 588(1)
[ <sup>F31</sup> former civil partner (in Chapter 6 of Part 9)	section 588(1)
former employee (in Part 8)	section 562(1)
former employer (in relation to former employee) (in Part 8)	section 563
former employment (in relation to former employee) (in Part 8)	section 563
F32	F32
...	...

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general earnings	section 7(3)
[ <sup>F33</sup> generally accepted accounting practice	[ <sup>F34</sup> section 997 of ITA 2007]]
F11	F11
...	...
House of Commons Members' Fund (in Chapter 12 of Part 9)	section 620
the included amount (in Chapter 5 of Part 5)	section 369(2)
[ <sup>F28</sup> income withdrawal (in Chapter 5A of Part 9)	section 579D]
F13	F13
...	...
individual learning account training (in Chapter 4 of Part 4)	section 256
initial extra accessory (in Chapter 6 of Part 3)	section 126(2)
F35	F35
...	...
F36	F36
...	...
[ <sup>F12</sup> interest, in relation to securities (or shares) (in Chapters 1 to 5 of Part 7)	section 420(8)]
interest in residence (in Chapter 7 of Part 4)	section 276(3)
F11	F11
...	...
F11	F11
...	...
F11	F11
...	...
last day on which car available (in Chapter 6 of Part 3)	section 116(2)(b)
later accessory (in Chapter 6 of Part 3)	section 126(3)
the limitation day (in Chapter 7 of Part 4)	section 274

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list price (of a car) (in Chapter 6 of Part 3)	section 123(1)
list price (of accessories) (in Chapter 6 of Part 3)	section 127
listed provision (in Chapter 11 of Part 7)	section 549(2)
loan (in Chapter 7 of Part 3)	section 173(2)(a)
local authority	[ <sup>F37</sup> section 999 of ITA 2007]
lower-paid employment (in Chapter 11 of Part 3)	section 217
making a loan (in Chapter 7 of Part 3)	section 173(2)(b)
[ <sup>F17</sup> managed service company (in Chapter 9 of Part 2)	section 61B]
F11	F11
...	...
F11	F11
...	...
[ <sup>F12</sup> market value (in Chapters 1 to 5 of Part 7)	section 421(1)]
F11	F11
...	...
market value (of asset) (in Chapter 10 of Part 3)	section 208
material interest (in company) (in the benefits code)	section 68
members of a person's family	section 721(4)
member of a person's family or household	section 721(5)
mileage allowance payments (in Chapter 2 of Part 4)	section 229(2)
motor cycle (in Chapter 2 of Part 4)	section 235(4)
national insurance contributions (in Chapter 8 of Part 2)	section 61(1)
[ <sup>F17</sup> national insurance contributions (in Chapter 9 of Part 2)	section 61J]

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[ <sup>F38</sup> net income	section 23 of ITA 2007 (as applied by section 989 of that Act]
net taxable earnings (for the purposes of Part 2)	section 11
net taxable specific income (for the purposes of Part 2)	section 12
F13	F13
...	...
F13	F13
...	...
non-cash voucher	section 721(1)
[ <sup>F12</sup> non-commercial increase (in Chapter 3B of Part 7)	section 446K(4)]
[ <sup>F12</sup> non-commercial reduction (in Chapter 3B of Part 7)	section 446K(4)]
non-standard accessory (in Chapter 6 of Part 3)	section 125(4)
the normal self-assessment filing date	[ <sup>F39</sup> section 989 of ITA 2007]
notice	[ <sup>F40</sup> section 989 of ITA 2007]
[ <sup>F12</sup> the notional loan (in Chapter 3C of Part 7)	section 446S(1)]
notional price (of a car) (in Chapter 6 of Part 3)	section 124(1)
notional price (of accessories) (in Chapter 6 of Part 3)	section 130(1)
office (in the employment income Parts)	section 5(3)
office (in Part 8)	section 564(3)
official rate of interest (in Chapter 7 of Part 3)	section 181
[ <sup>F41</sup> offshore installation	[ <sup>F42</sup> sections 1001 and 1002 of ITA 2007]]
F11	F11
...	...
ordinary commuting (in Chapter 3 of Part 4)	section 249
ordinary share capital	[ <sup>F43</sup> section 989 of ITA 2007]
original pensioner (in Chapter 14 of Part 9)	section 630(1)

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passenger payments (in Chapter 2 of Part 4)	section 233(3)
[ <sup>F14</sup> partner (in Chapter 8 of Part 10)	section 681G]
PAYE income	section 683
PAYE provisions (in Chapter 8 of Part 2)	section 61(1)
[ <sup>F17</sup> PAYE provisions (in Chapter 9 of Part 2)	section 61J]
PAYE regulations	section 684(8)
F11	F11
...	...
pension (in Chapter 3 of Part 9)	section 570
pension (in Chapter 4 of Part 9)	section 574
pension (in Chapter 11 of Part 9)	section 615(7)
pension (in Chapter 18 of Part 9)	section 647(4)
pension income	section 566(2)
[ <sup>F44</sup> pension under a registered pension scheme (in Chapter 5A of Part 9)	section 579D]
permanent workplace (in Chapter 3 of Part 4)	section 249
permanent workplace (in Part 5)	section 339(2)
person involved in providing the accommodation (in Chapter 5 of Part 3)	section 112
person paying an amount (in Chapter 2 of Part 5)	section 333(2)
F13	F13
...	...
F13	F13
...	...
personal representatives	[ <sup>F45</sup> section 989 of ITA 2007]
persons providing a benefit (in Chapter 10 of Part 3)	section 209



*Status: Point in time view as at 01/03/2013.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003 is up to date with all changes known to be in force on or before 15 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)*

post-employment earnings (in relation to former employee) (in Part 8)	section 563
premium (in relation to qualifying insurance contract) (in Chapter 2 of Part 5)	section 346(3)(a)
premium (in relation to qualifying insurance contract) (in Part 8)	section 558(3)(a)
pre-1973 pension (in Chapter 14 of Part 9)	section 630(2)
prescribed (in Chapter 5 of Part 11)	section 707
price of a car (in Chapter 6 of Part 3)	section 122
private use (in Chapter 6 of Part 3)	section 118(2)
the property, in relation to living accommodation (in Chapter 5 of Part 3)	section 113
F13	F13
...	...
provision of cash voucher for employee (in Chapter 4 of Part 3)	section 74
provision of credit-token for employee (in Chapter 4 of Part 3)	section 91(a)
provision of non-cash voucher for employee (in Chapter 4 of Part 3)	section 83
F13	F13
...	...
the public offer (in Chapter 10 of Part 7)	section 544(1)
published price of the manufacturer, importer or distributor of the accessory (in Chapter 6 of Part 3)	section 129(1)
published price of the manufacturer, importer or distributor of the car (in relation to accessory) (in Chapter 6 of Part 3)	section 128(1)

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qualifying accessory (in Chapter 6 of Part 3)	section 125(1)
qualifying journey (in Chapter 3 of Part 4)	section 249
readily convertible asset (in Chapter 4 of Part 11)	section 702
receipt of cash voucher by employee (in Chapter 4 of Part 3)	section 74
receipt of money earnings (in Chapter 4 of Part 2)	section 18
F46	F46
...	...
receipt of non-cash voucher by employee (in Chapter 4 of Part 3)	section 83
receipt of non-money earnings (in Chapter 4 of Part 2)	section 19
F47	F47
...	...
[ <sup>F12</sup> recognised stock exchange	[ <sup>F48</sup> section 1005 of ITA 2007]]
[ <sup>F49</sup> registered pension scheme	[ <sup>F50</sup> section 150(2) of FA 2004 (as applied by section 989 of ITA 2007)]]
registrant discount (in Chapter 10 of Part 7)	section 547
F13	F13
...	...
F11	F11
...	...
F13	F13
...	...
[ <sup>F30</sup> relevant benefits (in Chapter 2 of Part 6)	section 393B]
[ <sup>F51</sup> relevant debt (in Part 11)	section 684(7AA)]
F13	F13
...	...
relevant engagements (in Chapter 8 of Part 2)	section 50(4)

*Status: Point in time view as at 01/03/2013.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003 is up to date with all changes known to be in force on or before 15 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)*

[ <sup>F12</sup> relevant period (in Chapter 3B of Part 7)	section 446O]
relevant retirement benefit (in relation to former employee) (in Part 8)	section 563
[ <sup>F17</sup> the relevant services (in Chapter 9 of Part 2)	section 61D(4)]
F13	F13
...	...
relevant taxes (in Chapter 6 of Part 3)	section 171(1)
remittance of earnings (in Chapter 5 of Part 2)	section 33
remuneration (in Chapter 7 of Part 2)	section 47(3)
residence, former residence and new residence (in Chapter 7 of Part 4)	section 276(1), (2)
[ <sup>F30</sup> responsible person (in Chapter 2 of Part 6)	section 399A]
[ <sup>F12</sup> restricted securities and restricted interest in securities (in Chapters 2, 3A and 3B of Part 7)	sections 423 and 424]
[ <sup>F12</sup> restriction (in Chapters 2, 3A and 3B of Part 7)	section 432(8)]
F13	F13
...	...
retirement benefits scheme (in Chapter 1 of Part 6)	section 387(1)
F13	F13
...	...
road fuel gas (in Chapter 6 of Part 3)	section 171(1)
F52	F52
...	...
F11	F11
...	...
[ <sup>F12</sup> secondary Class 1 contributions (in Chapter 5 of Part 7)	section 484(7)]

*Status: Point in time view as at 01/03/2013.*

**Changes to legislation:** *Income Tax (Earnings and Pensions) Act 2003 is up to date with all changes known to be in force on or before 15 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)*

[ <sup>F12</sup> securities (in Chapters 1 to 5 of Part 7)	section 420]
[ <sup>F12</sup> securities option (in Chapters 1 to 5 of Part 7)	section 420(8)]
F11	F11
...	...
F11	F11
...	...
[ <sup>F12</sup> shares (in Chapters 1 to 5 of Part 7)	section 420(8)]
F11	F11
...	...
F11	F11
...	...
F11	F11
...	...
F11	F11
...	...
F11	F11
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F11	F11
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F11	F11
...	...
F11	F11
...	...
F11	F11
...	...
shares (in Chapter 10 of Part 7)	section 548(1)
ship (in Chapter 6 of Part 5)	section 385
social security income	section 657(2)
F53	F53
...	...
specific employment income	section 7(4)
standard accessory (in Chapter 6 of Part 3)	section 125(4)
[ <sup>F31</sup> stepchild (in Parts 4 and 5	[ <sup>F54</sup> section 246 of the Civil Partnership Act 2004 (as

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*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003 is up to date with all changes known to be in force on or before 15 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)*

	applied by section 989 of ITA 2007]]
51% subsidiary	[ <sup>F55</sup> section 989 of ITA 2007]
Table A (in Part 10)	section 657(5)
Table B (in Part 10)	section 657(6)
tax	[ <sup>F56</sup> section 989 of ITA 2007]
tax credit	[ <sup>F57</sup> section 397(1) [ <sup>F58</sup> or 397A(1)] of ITTOIA 2005 (as applied by section 989 of ITA 2007)]
taxable benefit (in Chapter 5 of Part 11)	section 707
taxable benefits (in Part 10)	section 657(3)
taxable cheap loan (in Chapter 7 of Part 3)	section 175(2)
taxable earnings (in the employment income Parts)	section 10(2)
taxable employment under Part 2 (in the benefits code)	section 66(3)
taxable pension income (in Part 9)	section 567(3), (4)
the taxable period (in Chapter 5 of Part 3)	section 102(2)
taxable person (in Chapter 3 of Part 6)	section 403(6)
taxable social security income (in Part 10)	section 658(4)-(7)
taxable specific income (in the employment income Parts)	section 10(3)
tax year	[ <sup>F59</sup> section 4(2) of ITA 2007 (as applied by section 989 of that Act)]
the tax year (in Part 5)	section 327(2)(b)
the tax year 2003-04 etc.	[ <sup>F60</sup> section 4(4) of ITA 2007 (as applied by section 989 of that Act)]
F11	F11
...	...
F11	F11
...	...

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*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003 is up to date with all changes known to be in force on or before 15 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)*

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total income	[ <sup>F61</sup> section 23 of ITA 2007 (as applied by section 989 of that Act)]
trade	[ <sup>F62</sup> section 989 of ITA 2007]
transport voucher (in Chapter 4 of Part 3)	section 84(3)
[ <sup>F63</sup> tribunal	section 989 of ITA 2007]
United Kingdom	[ <sup>F64</sup> section 1013 of ITA 2007]
UK approval certificate (in Chapter 6 of Part 3)	section 171(1)
F52	F52
...	...
use of credit-token by employee (in Chapter 4 of Part 3)	section 91(b)
[ <sup>F12</sup> valuation date (in Chapter 3B of Part 7)	section 446O]
F11	F11
...	...
van (in Chapter 6 of Part 3)	section 115(1)
van (in Chapter 2 of Part 4)	section 235(3)
van is available to an employee (in Chapter 6 of Part 3)	section 116(1)
van made available by reason of employment (in Chapter 6 of Part 3)	section 117
[ <sup>F12</sup> variation, in relation to a restriction (in Chapter 2 of Part 7)	section 427(4)]
[ <sup>F14</sup> week (in Chapter 8 of Part 10)	section 681H]
[ <sup>F17</sup> the worker (in Chapter 9 of Part 2)	section 61D(4)]
workplace (in Chapter 3 of Part 4)	section 249
workplace (in Part 5)	section 339(1)
work-related training (in Chapter 4 of Part 4)	section 251(1)]]

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## Textual Amendments

- F10** Words in Sch. 1 Pt. 2 substituted (with effect in accordance with s. 14(5) of the amending Act) by [Finance Act 2012 \(c. 14\), s. 14\(4\)](#)
- F11** Sch. 1 Pt. 2 entries repealed (1.9.2003 with effect in accordance with Sch. 22 para. 42(4) of the amending Act) by [Finance Act 2003 \(c. 14\), Sch. 22 para. 42\(2\), Sch. 43 Pt. 3\(4\); S.I. 2003/1997, art. 2](#)
- F12** Words in Sch. 1 Pt. 2 inserted (1.9.2003 with effect in accordance with Sch. 22 para. 42(4) of the amending Act) by [Finance Act 2003 \(c. 14\), Sch. 22 para. 42\(3\); S.I. 2003/1997, art. 2](#)
- F13** Words in Sch. 1 Pt. 2 repealed (6.4.2006) by [Finance Act 2004 \(c. 12\), Sch. 42 Pt. 3 \(with Sch. 36\)](#)
- F14** Words in [Sch. 1 Pt. 2](#) inserted (with effect in accordance with Sch. 1 para. 7 of the amending Act) by [Finance Act 2012 \(c. 14\), Sch. 1 para. 5\(7\)](#)
- F15** Words in Sch. 1 Pt. 2 repealed (22.7.2004) by [Finance Act 2004 \(c. 12\), Sch. 42 Pt. 2\(9\)](#)
- F16** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 446\(2\) \(with Sch. 2\)](#)
- F17** Words in Sch. 1 Pt. 2 Table inserted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\), s. 25\(2\), Sch. 3 para. 8](#)
- F18** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 446\(3\) \(with Sch. 2\)](#)
- F19** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 4 para. 102\(2\); S.I. 2005/1126, art. 2\(2\)\(h\)](#)
- F20** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 446\(4\) \(with Sch. 2\)](#)
- F21** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 446\(5\) \(with Sch. 2\)](#)
- F22** Words in Sch. 1 Pt. 2 Table repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 446\(6\), Sch. 3 Pt. 1 \(with Sch. 2\)](#)
- F23** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 446\(7\) \(with Sch. 2\)](#)
- F24** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 446\(8\) \(with Sch. 2\)](#)
- F25** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 446\(9\) \(with Sch. 2\)](#)
- F26** Words in Sch. 1 Pt. 2 substituted (1.9.2004) by [Finance Act 2004 \(c. 12\), s. 85\(2\), Sch. 16 para. 7\(3\); S.I. 2004/1945, art. 2](#)
- F27** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 446\(10\) \(with Sch. 2\)](#)
- F28** Words in Sch. 1 Pt. 2 inserted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\), Sch. 16 para. 61](#)
- F29** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 446\(11\) \(with Sch. 2\)](#)
- F30** Words in Sch. 1 Pt. 2 inserted (6.4.2006) by [Finance Act 2004 \(c. 12\), ss. 249\(12\), 284\(1\) \(with Sch. 36\)](#)
- F31** Words in Sch. 1 Pt. 2 inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\), regs. 1\(1\), 169](#)
- F32** Sch. 1 Pt. 2 Table entry 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. 340\(2\)](#)
- F33** Words in Sch. 1 Pt. 2 inserted (with effect in accordance with Sch. 2 para. 2(8) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\), Sch. 2 para. 2\(7\)](#)
- F34** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 446\(12\) \(with Sch. 2\)](#)
- F35** Sch. 1 Pt. 2 entries repealed (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 4 para. 120, Sch. 5; S.I. 2005/1126, art. 2\(2\)\(h\)\(i\)](#)

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- F36** Sch. 1 Pt. 2 Table entry repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 446\(13\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F37** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 446\(14\)](#) (with [Sch. 2](#))
- F38** Words in Sch. 1 Pt. 2 Table inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 446\(15\)](#) (with [Sch. 2](#))
- F39** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 446\(16\)](#) (with [Sch. 2](#))
- F40** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 446\(17\)](#) (with [Sch. 2](#))
- F41** Words in Sch. 1 Pt. 2 inserted (with effect in accordance with Sch. 27 para. 16 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 27 para. 15](#)
- F42** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 446\(18\)](#) (with [Sch. 2](#))
- F43** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 446\(19\)](#) (with [Sch. 2](#))
- F44** Words in Sch. 1 Pt. 2 inserted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), s. 284(1), [Sch. 31 para. 15](#) (with [Sch. 36](#))
- F45** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 446\(20\)](#) (with [Sch. 2](#))
- F46** Sch. 1 entry omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 40\(a\)](#)
- F47** Sch. 1 entry omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 40\(b\)](#)
- F48** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 446\(21\)](#) (with [Sch. 2](#))
- F49** Words in Sch. 1 Pt. 2 inserted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), s. 284(1), [Sch. 35 para. 65\(3\)](#) (with [Sch. 36](#))
- F50** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 446\(22\)](#) (with [Sch. 2](#))
- F51** Words in Sch. 1 Pt. 2 inserted (20.7.2011) by [The Finance Act 2009 \(Consequential Amendments\) Order 2011 \(S.I. 2011/1583\)](#), arts. 1, [2\(11\)](#)
- F52** Sch. 1 Pt. 2 Table entries repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 556\(b\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2 Pts. 1, 2](#))
- F53** Sch. 1 Pt. 2 Table entry 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. 340\(3\)](#)
- F54** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 446\(24\)](#) (with [Sch. 2](#))
- F55** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 446\(25\)](#) (with [Sch. 2](#))
- F56** Words in Sch. 1 Pt. 2 substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 395\(3\)](#) (with [Sch. 2](#))
- F57** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 446\(27\)](#) (with [Sch. 2](#))
- F58** Words in Sch. 1 Pt. 2 Table inserted (with effect in accordance with Sch. 19 para. 14 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 19 para. 12](#)
- F59** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 446\(28\)](#) (with [Sch. 2](#))
- F60** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 446\(29\)](#) (with [Sch. 2](#))
- F61** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 446\(30\)](#) (with [Sch. 2](#))



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- F62** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 446\(31\)](#) (with [Sch. 2](#))
- F63** Words in Sch. 1 Pt. 2 Table 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. 340\(4\)](#)
- F64** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 446\(32\)](#) (with [Sch. 2](#))

### Textual Amendments

- F10** Words in Sch. 1 Pt. 2 substituted (with effect in accordance with s. 14(5) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), s. 14(4)
- F11** Sch. 1 Pt. 2 entries repealed (1.9.2003 with effect in accordance with Sch. 22 para. 42(4) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 42\(2\)](#), [Sch. 43 Pt. 3\(4\)](#); S.I. 2003/1997, art. 2
- F12** Words in Sch. 1 Pt. 2 inserted (1.9.2003 with effect in accordance with Sch. 22 para. 42(4) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 42\(3\)](#); S.I. 2003/1997, art. 2
- F13** Words in Sch. 1 Pt. 2 repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 3](#) (with [Sch. 36](#))
- F14** Words in [Sch. 1 Pt. 2](#) inserted (with effect in accordance with Sch. 1 para. 7 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 1 para. 5\(7\)](#)
- F15** Words in Sch. 1 Pt. 2 repealed (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(9\)](#)
- F16** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 446\(2\)](#) (with [Sch. 2](#))
- F17** Words in Sch. 1 Pt. 2 Table inserted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), s. 25(2), [Sch. 3 para. 8](#)
- F18** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 446\(3\)](#) (with [Sch. 2](#))
- F19** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(2\)](#); S.I. 2005/1126, art. 2(2)(h)
- F20** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 446\(4\)](#) (with [Sch. 2](#))
- F21** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 446\(5\)](#) (with [Sch. 2](#))
- F22** Words in Sch. 1 Pt. 2 Table repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 446\(6\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F23** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 446\(7\)](#) (with [Sch. 2](#))
- F24** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 446\(8\)](#) (with [Sch. 2](#))
- F25** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 446\(9\)](#) (with [Sch. 2](#))
- F26** Words in Sch. 1 Pt. 2 substituted (1.9.2004) by [Finance Act 2004 \(c. 12\)](#), s. 85(2), [Sch. 16 para. 7\(3\)](#); S.I. 2004/1945, art. 2
- F27** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 446\(10\)](#) (with [Sch. 2](#))
- F28** Words in Sch. 1 Pt. 2 inserted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 61](#)
- F29** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 446\(11\)](#) (with [Sch. 2](#))
- F30** Words in Sch. 1 Pt. 2 inserted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), ss. 249(12), 284(1) (with [Sch. 36](#))
- F31** Words in Sch. 1 Pt. 2 inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), 169
- F32** Sch. 1 Pt. 2 Table entry 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. 340\(2\)](#)

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- F33** Words in Sch. 1 Pt. 2 inserted (with effect in accordance with Sch. 2 para. 2(8) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 2 para. 2(7)**
- F34** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 446(12)** (with Sch. 2)
- F35** Sch. 1 Pt. 2 entries repealed (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), Sch. 4 para. 120, **Sch. 5**; S.I. 2005/1126, art. 2(2)(h)(i)
- F36** Sch. 1 Pt. 2 Table entry repealed (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), Sch. 1 para. 446(13), **Sch. 3 Pt. 1** (with Sch. 2)
- F37** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 446(14)** (with Sch. 2)
- F38** Words in Sch. 1 Pt. 2 Table inserted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 446(15)** (with Sch. 2)
- F39** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 446(16)** (with Sch. 2)
- F40** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 446(17)** (with Sch. 2)
- F41** Words in Sch. 1 Pt. 2 inserted (with effect in accordance with Sch. 27 para. 16 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 27 para. 15**
- F42** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 446(18)** (with Sch. 2)
- F43** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 446(19)** (with Sch. 2)
- F44** Words in Sch. 1 Pt. 2 inserted (6.4.2006) by Finance Act 2004 (c. 12), s. 284(1), **Sch. 31 para. 15** (with Sch. 36)
- F45** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 446(20)** (with Sch. 2)
- F46** Sch. 1 entry omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of Finance Act 2008 (c. 9), **Sch. 7 para. 40(a)**
- F47** Sch. 1 entry omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of Finance Act 2008 (c. 9), **Sch. 7 para. 40(b)**
- F48** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 446(21)** (with Sch. 2)
- F49** Words in Sch. 1 Pt. 2 inserted (6.4.2006) by Finance Act 2004 (c. 12), s. 284(1), **Sch. 35 para. 65(3)** (with Sch. 36)
- F50** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 446(22)** (with Sch. 2)
- F51** Words in Sch. 1 Pt. 2 inserted (20.7.2011) by The Finance Act 2009 (Consequential Amendments) Order 2011 (S.I. 2011/1583), arts. 1, **2(11)**
- F52** Sch. 1 Pt. 2 Table entries repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 556(b), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)
- F53** Sch. 1 Pt. 2 Table entry 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. 340(3)**
- F54** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 446(24)** (with Sch. 2)
- F55** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 446(25)** (with Sch. 2)
- F56** Words in Sch. 1 Pt. 2 substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 395(3)** (with Sch. 2)
- F57** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 446(27)** (with Sch. 2)
- F58** Words in Sch. 1 Pt. 2 Table inserted (with effect in accordance with Sch. 19 para. 14 of the amending Act) by Finance Act 2009 (c. 10), **Sch. 19 para. 12**

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- F59** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 446\(28\)](#) (with [Sch. 2](#))
- F60** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 446\(29\)](#) (with [Sch. 2](#))
- F61** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 446\(30\)](#) (with [Sch. 2](#))
- F62** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 446\(31\)](#) (with [Sch. 2](#))
- F63** Words in Sch. 1 Pt. 2 Table 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. 340\(4\)](#)
- F64** Words in Sch. 1 Pt. 2 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 446\(32\)](#) (with [Sch. 2](#))

## SCHEDULE 2

Section 488

### APPROVED SHARE INCENTIVE PLANS

#### PART 1

##### INTRODUCTION

###### *Approval of share incentive plans (SIPs)*

- 1 (1) This Schedule makes provision for—
- (a) the approval of share incentive plans (“SIPs”) by [<sup>F65</sup>an officer of Revenue and Customs], and
  - (b) the administration and operation of such plans.
- (2) Parts 2 to 9 of this Schedule contain requirements that have to be met in order for plans to be approved under this Schedule.
- (3) The requirements consist of general requirements (see Part 2) and requirements as to—
- the eligibility of individuals (see Part 3),
  - the types of shares that may be awarded (see Part 4),
  - free shares (see Part 5),
  - partnership shares (see Part 6),
  - matching shares (see Part 7),
  - cash dividends and dividend shares (see Part 8), and
  - the trustees (see Part 9).
- (4) Part 10 of this Schedule deals with the approval of plans and the withdrawal of approval.

#### Textual Amendments

- F65** 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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*SIPs: free shares and partnership shares*

- 2 (1) In the SIP code a “share incentive plan” (or “SIP” for short) means (in accordance with section 488(4)) a plan established by a company providing—
- (a) for shares to be appropriated to employees without payment (“free shares”), or
  - (b) for shares to be acquired on behalf of employees out of sums deducted from their salary (“partnership shares”).
- (2) In the SIP code, in relation to a SIP—
- “the company” means the company which established the plan;
  - “plan requirements” means requirements applying to the plan;
  - “the trustees” means the body of persons established under Part 9 to exercise functions in connection with the plan.

*Matching shares*

- 3 (1) A SIP that provides for partnership shares may also provide for shares to be appropriated without payment to employees in proportion to the partnership shares acquired by them (“matching shares”).
- (2) If a SIP contains provision for all, or more than one, of the following—
- free shares,
  - partnership shares, and
  - matching shares,
- the plan may provide for the company to decide when the provisions relating to each kind of share are to have effect.

*Group plans*

- 4 (1) A SIP established by a company that controls other companies (a “parent company”) may extend to all or any of those other companies.
- (2) In the SIP code a SIP established by a parent company which so extends is referred to as a “group plan”.
- (3) In relation to a group plan a “constituent company” means—
- (a) the parent company, or
  - (b) any other company to which for the time being the plan is expressed to extend.
- (4) Paragraph 91 deals with jointly owned companies and companies controlled by them.

*Meaning of “award of shares”, “participant” etc.*

- 5 (1) For the purposes of the SIP code an “award of shares” is made under a SIP on each occasion when in accordance with the plan—
- (a) free or matching shares are appropriated to employees, or
  - (b) partnership shares are acquired on behalf of employees.
- (2) Accordingly, references to shares awarded to an individual under a SIP are to—
- (a) free or matching shares appropriated to the individual, or

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- (b) partnership shares acquired on the individual's behalf, under the plan.
- (3) For the purposes of the SIP code an individual participates in an award of free, matching or partnership shares under a SIP if shares included in that award are—
  - (a) in the case of an award of free or matching shares, appropriated to the individual, or
  - (b) in the case of an award of partnership shares, acquired on the individual's behalf.
- (4) In the SIP code, in relation to a SIP, “participant” means an individual to whom shares have been awarded under the plan.

## PART 2

### GENERAL REQUIREMENTS

#### *General requirements for approval: introduction*

- 6 A SIP must meet the plan requirements contained in—
- paragraph 7 (the purpose of the plan),
  - paragraph 8 (all-employee nature of plan),
  - paragraph 9 (participation on same terms),
  - paragraph 10 (no preferential treatment for directors and senior employees),
  - paragraph 11 (no further conditions), and
  - paragraph 12 (no loan arrangements).

#### *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 of Part 3 of this Schedule (eligibility of individuals) in relation to an award of shares under the plan, and
  - (b) is a UK resident taxpayer,
- is eligible to participate in the award, and is invited to do so.

- [<sup>F66</sup>(2) An employee is a UK resident taxpayer if—
- (a) the employee's earnings from the employment by reference to which the employee meets the employment requirement are (or would be if there were any) general earnings to which section 15 applies (earnings for year when employee UK resident), and
  - (b) those general earnings are (or would be if there were any) earnings for a tax year in which the employee is ordinarily resident in the United Kingdom.]

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- (3) The plan must not contain any feature which has or is likely to have the effect of discouraging any description of employees within sub-paragraph (1) from participating in an award of shares under the plan.
- (4) Sub-paragraph (3) does not apply to any provision required or authorised by this Schedule.
- (5) The plan may provide that an employee who—
  - (a) meets the requirements of Part 3 of this Schedule (eligibility of individuals) in relation to an award of shares under the plan, but
  - (b) is not a UK resident taxpayer (see sub-paragraph (2)),
 is eligible to participate in the award, and may be invited to do so.
- (6) For the purposes of the SIP code an individual is a “qualifying employee”, in relation to an award of shares, if the individual—
  - (a) is eligible to participate in it under sub-paragraph (1), or
  - (b) is eligible to participate in it under sub-paragraph (5) and has been invited to do so.

#### **Textual Amendments**

**F66** Sch. 2 para. 8(2) substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 41](#)

#### *Participation on same terms*

- 9 (1) The requirement of this paragraph is that—
  - (a) every employee who is invited to participate in an award must be invited to participate on the same terms, and
  - (b) 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).
- (3) The requirement of this paragraph is not infringed by the awarding of free shares by reference to—
  - (a) an employee’s remuneration,
  - (b) an employee’s length of service, or
  - (c) hours worked by an employee;
 but this is subject to sub-paragraph (4).
- (4) If 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—
  - (a) paragraph 41 (performance allowances: method one), or

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(b) paragraph 42 (performance allowances: method two).

- (6) In sub-paragraph (5) “performance allowances” has the meaning given in paragraph 34(4).
- (7) In the case of an award of partnership shares, the requirement of this paragraph is not infringed by the operation of any percentage limit specified in or under paragraph 46(2) or (3) (maximum amount of deductions) so far as the application of that limit to employees with different levels of remuneration results in deductions of different amounts or in the award of different numbers of shares.

*No preferential treatment for directors and senior employees*

- 10 (1) The first requirement of this paragraph is that no feature of the plan has or is likely to have the effect of conferring benefits wholly or mainly—
- (a) on directors, or
  - (b) on employees receiving the higher or highest levels of remuneration.
- (2) The second requirement of this paragraph applies only if the plan is established by a company that is a member of a group.
- (3) The requirement is that the identity of the company (or, if it is a group plan, the constituent 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 the higher or highest levels of remuneration, or
  - (b) on directors of such companies.
- (4) The requirements of this paragraph are not infringed by the awarding of free shares in circumstances where (as a result of paragraph 9(3) and (4)) that would not constitute an infringement of the requirements of paragraph 9.

*No further conditions*

- 11 No conditions apart from those required or authorised by this Schedule may be imposed on an employee’s participation in an award of shares under the plan.

*No loan arrangements*

- 12 (1) The arrangements for the plan must not make any provision, or be associated in any way 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, of any constituent company.
- (2) The operation of the plan must not be associated in any way with such loans.
- (3) In sub-paragraph (1) “arrangements” includes any scheme, agreement, undertaking or understanding, whether or not legally enforceable.

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### PART 3

#### ELIGIBILITY OF INDIVIDUALS

##### *Eligibility of individuals: introduction*

- 13 A SIP must meet the plan requirements contained in—  
 paragraph 14 (time of eligibility to participate),  
 paragraph 15 (the employment requirement),  
 [<sup>F67</sup>paragraph 18 (requirement not to participate simultaneously in connected SIPs), paragraph 18A (successive participation in connected SIPs), and]  
 paragraph 19 (the “no material interest” requirement).

#### **Textual Amendments**

**F67** Words in Sch. 2 para. 13 substituted (10.7.2003) by [Finance Act 2003 \(c. 14\), Sch. 21 para. 3](#)

##### *Time of eligibility to participate*

- 14 (1) The plan must provide that an individual may only participate in an award of shares if the individual is eligible to participate in the award at the appropriate time mentioned below.
- (2) In the case of an award of free shares, the appropriate time is the time when the award is made.
- (3) In the case of an award of partnership shares where the plan does not provide for an accumulation period, the appropriate time is the time of the deduction of the partnership share money relating to the award.
- (4) In the case of an award of partnership shares where the plan does provide for an accumulation period, the appropriate time is the time of the first deduction of partnership share money relating to the award.
- (5) In the case of an award of matching shares where the plan does not provide for an accumulation period, the appropriate time is the time of the deduction of the partnership share money relating to the award of partnership shares to which the matching shares relate.
- (6) In the case of an award of matching shares where the plan does provide for an accumulation period, the appropriate time is the time of the first deduction of partnership share money relating to the award of partnership shares to which the matching shares relate.
- (7) For the purposes of this paragraph an individual is eligible to participate in an award of shares under the plan if and only if the requirements of the plan are met as to—  
 (a) employment (see paragraph 15),  
 [<sup>F68</sup>(b) not participating simultaneously in connected SIPs (see paragraph 18),  
 (ba) successive participation in connected SIPs (see paragraph 18A), and]  
 (c) not having a material interest (see paragraph 19).
- (8) In the case of an individual within paragraph 8(5) (all-employee nature of plan: non-UK resident taxpayer), the individual is not eligible to participate in an award



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of shares under the plan unless (in addition to the requirements mentioned in sub-paragraph (7)) any further eligibility requirements of the plan are met.

#### Textual Amendments

**F68** Sch. 2 para. 14(7)(b)(ba) substituted for Sch. 2 para. 14(7)(b) (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 21 para. 4](#)

#### *The employment requirement*

- 15 (1) The plan must provide that an individual is not eligible to participate in an award of shares unless the individual meets the requirement in sub-paragraph (2).
- (2) The requirement is that the individual—
- (a) is an employee of—
    - (i) the company, or
    - (ii) in the case of a group plan, a constituent company, and
  - (b) if the plan provides for a qualifying period, has at all times during that period been an employee of a qualifying company.
- (3) In the SIP code “the employment requirement” means the requirement in sub-paragraph (2).
- (4) This paragraph is supplemented—
- (a) as regards qualifying periods, by paragraph 16, and
  - (b) as regards the meaning of “qualifying company”, by paragraph 17.

#### *Qualifying periods*

- 16 (1) This paragraph applies if the plan provides for a qualifying period in relation to an award.
- (2) In the case of an award of free shares, the qualifying period must be a period of not more than 18 months ending with the date on which the award is made.
- (3) In the case of an award of partnership shares where the plan does not provide for an accumulation period, the qualifying period must be a period of not more than 18 months ending with the deduction of partnership share money relating to the award.
- (4) In the case of an award of partnership shares where the plan does provide for an accumulation period, the qualifying period must be a period of not more than 6 months ending with the start of the accumulation period relating to the award.
- (5) In the case of an award of matching shares where the plan does not provide for an accumulation period, the qualifying period must be a period of not more than 18 months ending with the deduction of partnership share money relating to the award of partnership shares to which the matching shares relate.
- (6) In the case of an award of matching shares where the plan does provide for an accumulation period, the qualifying period must be a period of not more than 6 months ending with the start of the accumulation period relating to the award of partnership shares to which the matching shares relate.

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- (7) In relation to an award, the same qualifying period must apply in relation to all employees—
- (a) of the company, or
  - (b) in the case of a group plan, of the constituent companies.
- (8) The plan may authorise the company to specify different qualifying periods in respect of different awards of shares, but the requirements in sub-paragraphs (2) to (7) apply to periods so specified.

*Meaning of “qualifying company”*

- 17 (1) For the purposes of paragraph 15(2) “qualifying company” has the meaning given by this paragraph.
- (2) Except in the case of a group plan, “qualifying company” means—
- (a) the company, or
  - (b) a company that, when the individual was employed by it, was an associated company—
    - (i) of the company, or
    - (ii) of another company qualifying under this paragraph.
- (3) In the case of a group plan, “qualifying company” means—
- (a) a company that is a constituent company at the end of the qualifying period mentioned in paragraph 15(2),
  - (b) a company that, when the individual was employed by it, was a constituent company, or
  - (c) a company that, when the individual was employed by it, was an associated company of—
    - (i) a company qualifying under paragraph (a) or (b), or
    - (ii) another company qualifying under this paragraph.

*Requirement not to participate in other SIPs*

- 18 (1) The plan must provide that an individual is not eligible to participate in an award of free, matching or partnership shares under the plan in a tax year if the individual—
- <sup>F69</sup>(a) .....
  - (b) is at the same time to participate,
- in an award of shares under another approved SIP established by the company or a connected company.
- (2) For the purposes of this paragraph an individual is to be treated as having participated in an award of free shares under a SIP if the individual would have participated in that award but for the individual’s failure to obtain a performance allowance (see paragraph 34).
- (3) 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.

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### Textual Amendments

**F69** Sch. 2 para. 18(1)(a) repealed (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 21 para. 5](#), [Sch. 43 Pt. 3\(3\)](#)

### *[<sup>F70</sup>Participation in more than one connected SIP in a tax year*

### Textual Amendments

**F70** Sch. 2 para. 18A and cross-heading inserted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 21 para. 2](#)

- 18A (1) The plan must provide that, if an individual participates in an award of shares under the plan in a tax year in which he has already participated in an award of shares under one or more other approved SIPs established by the company or a connected company—
- (a) paragraph 35 (maximum annual award of free shares),
  - (b) paragraph 46 (maximum amount of partnership share money deductions), and
  - (c) paragraph 64 (limit on amount reinvested),
- apply as if the plan and the other plan or plans were a single plan.
- (2) In this paragraph “connected company” has the same meaning as in paragraph 18.]

### *The “no material interest” requirement*

- 19 (1) The plan must provide that an individual is not eligible to participate in an award of shares on any date if the individual has on that date, or has had within the 12 months ending with that date, 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 to be regarded as having a material interest in a company if—
- (a) the individual,
  - (b) the individual together with one or more of the individual’s associates, or
  - (c) any such associate, 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 20 and 21, and
  - (b) as regards the meaning of “associate”, by paragraphs 22 to 24.

### *Meaning of “material interest”*

- 20 (1) In paragraph 19 (the “no material interest” requirement) references to a “material interest” in a company are to—
- (a) a material interest in the share capital of the company, or
  - (b) where it is a close company, a material interest in its assets.

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- (2) A material interest in the share capital of a company means—
- (a) beneficial ownership of, or
  - (b) 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.
- (3) A material interest in the assets of a close company means—
- (a) possession of, or
  - (b) an 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.
- (4) In this paragraph—
- “close company” includes a company that would be a close company but for—
- (a) [F71section 442(a) of CTA 2010] (exclusion of companies not resident in the United Kingdom), or
  - (b) [F72sections 446 and 447 of CTA 2010] (exclusion of certain quoted companies), and
- “participator” has the meaning given by [F73section 454 of CTA 2010].
- (5) This paragraph is supplemented by paragraph 21 (material interest: options and interests in SIPs).

#### Textual Amendments

- F71** Words in Sch. 2 para. 20(4) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 396(2)(a)(i)** (with Sch. 2)
- F72** Words in Sch. 2 para. 20(4) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 396(2)(a)(ii)** (with Sch. 2)
- F73** Words in Sch. 2 para. 20(4) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 396(2)(b)** (with Sch. 2)

#### *Material interest: options and interests in SIPs*

- 21 (1) This paragraph applies for the purposes of paragraph 20 (meaning of “material interest”).
- (2) A right to acquire shares (however arising) is to be treated as a right to control them.
- (3) Sub-paragraph (4) applies in a case where—
- (a) the shares to be attributed to an individual consist of or include shares which the individual 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 would be contractually bound to issue in the event of the exercise of the right.
- (4) In determining at any time prior to the exercise of the right whether the number of shares to be attributed to the individual exceeds 25% of the ordinary share capital of

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the company, that ordinary share capital is to be treated as increased by the number of unissued shares referred to in sub-paragraph (3)(b).

- (5) The references in sub-paragraphs (3) and (4) to the shares to be attributed to an individual are to the shares which—
- (a) for the purposes of paragraph 20(2) (material interest in share capital), and
  - (b) in accordance with paragraph 19(2) (material interest can consist of or include that of the individual’s associates),
- fall to be brought into account in the individual’s case so that it can be determined whether their number exceeds 25% of the company’s ordinary share capital.
- (6) In applying paragraph 20 the following are to be disregarded—
- (a) the interest of the trustees of any approved SIP in any shares which are held by them in accordance with the plan but which have not been appropriated to, or acquired on behalf of, an individual, and
  - (b) any rights exercisable by the trustees as a result of that interest.

*Meaning of “associate”*

- 22 (1) In paragraph 19(2) (the “no material interest” requirement) “associate”, in relation to an individual, means—
- (a) any relative or partner of the individual,
  - (b) the trustee or trustees of any settlement in relation to which the individual, or any of the individual’s relatives (living or dead), is or was a settlor, and
  - (c) where the individual is interested in any shares or obligations of the company mentioned in paragraph 19(2) which are subject to any trust, or are part of the estate of a deceased person—
    - (i) the trustee or trustees of the settlement concerned, or
    - (ii) the personal representatives of the deceased,as the case may be.
- (2) Sub-paragraph (1)(c) needs to be read with paragraphs 23 and 24 (which relate to employee benefit trusts and discretionary trusts).
- (3) In this paragraph—
- “relative” means—
- (a) spouse [<sup>F74</sup>or civil partner],
  - (b) parent, child or remoter relation in the direct line, or
  - (c) brother or sister;
- “settlor” and “settlement” have the same meaning as in [<sup>F75</sup>Chapter 5 of Part 5 of ITTOIA 2005 (see section 620 of that Act)].

**Textual Amendments**

**F74** Words in Sch. 2 para. 22(3) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **170**

**F75** Words in Sch. 2 para. 22(3) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 617\(2\)](#) (with Sch. 2)

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*Meaning of “associate”: trustees of employee benefit trust*

- 23 (1) This paragraph applies for the purposes of paragraph 22(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 the company mentioned in paragraph 19(2).
- (2) The trustees of the employee benefit trust are not to be regarded as associates of the individual as a result only of the individual’s being so interested if neither—
- (a) the individual, nor
  - (b) the individual together with one or more of the individual’s associates, nor
  - (c) any such associate, with or without any other such associates,
- has at any time after 13th 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 sub-paragraph (2)(b) and (c) “associate” has the meaning given by paragraph 22(1), but does not include the trustees of an employee benefit trust as a result only of the individual’s having an interest in shares or obligations of the trust.
- (4) Chapter 11 of Part 7 of this Act (which deals with the attribution of interests in companies to beneficiaries of employee benefit trusts) applies for the purposes of sub-paragraph (2).
- (5) In this paragraph “employee benefit trust” has the same meaning as in that Chapter (see sections 550 and 551).

*Meaning of “associate”: trustees of discretionary trust*

- 24 (1) This paragraph applies for the purposes of paragraph 22(1)(c) (meaning of “associate”: trustees of settlement) where—
- (a) the individual (“the beneficiary”) is one of the objects of a discretionary trust,
  - (b) the property subject to the trust has at any time consisted of, or included, shares or obligations of the company mentioned in paragraph 19(2),
  - (c) the beneficiary has ceased to be eligible to benefit under the trust as a result of—
    - (i) an irrevocable disclaimer or release executed by the beneficiary, or
    - (ii) the irrevocable exercise by the trustees of a power to exclude the beneficiary from the objects of the trust,
  - (d) immediately after the beneficiary ceased to be so eligible, no associate of the beneficiary was interested in the shares or obligations of the company which were subject to the trust, and
  - (e) during the period of 12 months ending with the date on which the beneficiary ceased to be so eligible, neither the beneficiary nor any associate of the beneficiary received any benefit under the trust.
- (2) The beneficiary is not, as a result only of the matters mentioned in sub-paragraph (1) (a) and (b), to be regarded as having been interested in the shares or obligations of the company at any time during that period of 12 months.
- (3) In sub-paragraph (1) “associate” has the meaning given by paragraph 22(1), but with the omission of paragraph (c) (trusts and estates).

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## PART 4

### TYPES OF SHARES THAT MAY BE AWARDED

#### *Types of share that may be awarded: introduction*

- 25 (1) The requirements of the following paragraphs must be met with respect to any shares that may be awarded under a SIP—
- paragraph 26 (shares must be part of ordinary share capital of certain companies),
  - paragraph 27 (requirement as to listing etc.),
  - paragraph 28 (shares must be fully paid up and not redeemable),
  - paragraph 29 (prohibited shares), and
  - paragraph 30 (only certain kinds of restriction allowed).
- (2) In this Part of this Schedule “eligible shares” means shares that may be awarded under the plan.

#### *Shares must be part of ordinary share capital of certain companies*

- 26 Eligible shares must form part of the ordinary share capital of—
- (a) the company,
  - (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.*

- 27 (1) Eligible shares must be—
- (a) shares of a class listed on a recognised stock exchange,
  - (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 listed company.
- (2) A “listed company” is a company whose shares are listed on a recognised stock exchange, other than—
- (a) a close company, or
  - (b) a company that would be a close company if resident in the United Kingdom.

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

- 28 (1) Eligible shares must be—
- (a) fully paid up, and
  - (b) not redeemable.
- (2) For the purposes of sub-paragraph (1)(a) shares are not to be regarded as fully paid up if there is an undertaking to pay cash at a future date to the company whose shares they are.
- (3) For the purposes of sub-paragraph (1)(b) “redeemable” shares include shares that may become redeemable at a future date.

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(4) Sub-paragraph (1)(b) does not apply to shares in a registered industrial and provident society which is a co-operative society.

(5) In sub-paragraph (4)—

“registered industrial and provident society” means a society registered or deemed to be registered under the Industrial and Provident Societies Act 1965 (c. 12) or the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24 (N.I.)), 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.

#### *Prohibited shares*

29 (1) Eligible shares must not be shares in—

- (a) a service company, or
- (b) a company that—
  - (i) has control of a service company, and
  - (ii) is under the control of a person or persons who fall within sub-paragraph (2)(b)(i) or (ii) as it applies to a service company.

(2) For the purposes of this paragraph a company is a “service 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 control of the company,
  - (ii) two or more persons who together have control of the company, or
  - (iii) a company associated with the company.

(3) For the purposes of sub-paragraph (2)(b)(iii) a company is 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) a partnership is to be treated as a single person; and
- (b) where a partner (alone or together with others) has control of a company, the partnership is to be treated as having (in the same way) control of that company.

(5) For the purposes of this paragraph the question whether a person controls a company is to be determined in accordance with [F76sections 450 and 451 of CTA 2010].

#### **Textual Amendments**

**F76** Words in Sch. 2 para. 29(5) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 396\(3\)](#) (with [Sch. 2](#))

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

30 (1) Eligible shares must not be subject to any restrictions other than—

- (a) those affecting all ordinary shares in the company,
- (b) those permitted by—



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- (i) paragraph 31 (voting rights),
  - (ii) paragraph 32 (provision for forfeiture), or
  - (iii) paragraph 33 (pre-emption conditions), or
  - (c) those involved in there being a holding period (see paragraphs 36, 61 and 67).
- (2) For the purposes of this paragraph shares are subject to 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 the person or to a person connected with the person.
- This is subject to sub-paragraphs (3) and (4).
- (3) Sub-paragraph (2) does not extend to 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 Financial Services and Markets Act 2000 (c. 8).
- (4) Any discretion of the directors under the articles of association of the company to refuse to accept the transfer of shares is to be disregarded for the purposes of this paragraph if the directors—
- (a) have undertaken to [<sup>F65</sup>an officer of Revenue and Customs] 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.

#### Textual Amendments

**F65** 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)

#### *Permitted restrictions: voting rights*

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

#### *Permitted restrictions: provision for forfeiture*

- 32 (1) Free or matching shares may be subject to provision 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 at any such time, or
  - (c) in the case of matching shares, on the participant withdrawing from the plan at any such time the partnership shares in respect of which those shares were awarded.
- (2) Sub-paragraph (1)(a) does not, however, authorise the making of provision for forfeiture on the participant ceasing to be in relevant employment—
- (a) because of injury or disability,

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- (b) on being dismissed by reason of redundancy,
  - (c) by reason of [<sup>F77</sup>a relevant transfer within the meaning of the Transfer of Undertakings (Protection of Employment) Regulations 2006],
  - (d) if the relevant employment is employment by an associated company (see paragraph 95(2)), by reason of a change of control or other circumstances ending that company’s status as an associated company,
  - (e) by reason of the participant’s retirement on or after reaching the specified retirement age (see paragraph 98), or
  - (f) on the participant’s death.
- (3) Forfeiture may not be linked to the performance of any person or persons.
- (4) The same provision for forfeiture must apply in relation to all free or matching shares included in the same award under the plan.
- (5) In this paragraph “the forfeiture period” means the forfeiture period specified in the plan, which must be a period of not more than 3 years beginning with the date on which the shares were awarded to the participant.

#### Textual Amendments

**F77** Words in Sch. 2 para. 32(2)(c) substituted (6.4.2006) by [The Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(S.I. 2006/246\)](#), reg. 1(2), **Sch. 2 para. 12(3)** (with reg. 21(1))

#### *Permitted restrictions: pre-emption conditions*

- 33 (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.

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## PART 5

### FREE SHARES

#### *Free shares: introduction*

- 34 (1) If a SIP provides for free shares, it must meet the plan requirements contained in—  
paragraph 35 (maximum annual award), and  
paragraph 36 (the holding period).
- (2) If a SIP provides for free shares and for performance allowances, the requirements of the following paragraphs also apply—  
paragraph 38 (performance allowances: general application),  
paragraph 39 (performance allowances: targets and measures),  
paragraph 40 (performance allowances: information to be given to employees),  
and  
either paragraph 41 or 42 (performance allowances: methods of awarding shares).
- (3) The plan must meet any plan requirements contained in those paragraphs.
- (4) For the purpose of the SIP code a plan provides for performance allowances if it provides 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.

#### *Maximum annual award*

- 35 (1) The plan must provide that the initial market value of the free shares awarded to a participant in a tax year is not to exceed £3,000.
- (2) The “initial market value” of shares means their market value on the date on which they are awarded.
- [<sup>F78</sup>(3) For the purposes of this paragraph the market value of restricted shares is to be determined as if they were not.
- (4) Shares are “restricted shares” if there is any contract, agreement, arrangement or condition which makes provision to which any of subsections (2) to (4) of section 423 (restricted securities) would apply if the references in those subsections to the employment-related securities were to the shares.]

#### **Textual Amendments**

**F78** Sch. 2 para. 35(3)(4) substituted (1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 43\(1\)\(2\)](#); [S.I. 2003/1997](#), [art. 2](#)

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*The holding period*

- 36 (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 the free shares awarded to the participant to remain in the hands of the trustees, and
  - (b) not to assign, charge or otherwise dispose of the beneficial interest in the shares.
- (2) The holding period—
- (a) must be a period of at least 3 years but not more than 5 years, beginning with the date on which the shares in question are awarded to the participant, and
  - (b) must be the same for all shares in the same award.
- (3) The plan—
- (a) may authorise the company to specify different holding periods from time to time, but
  - (b) 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 are subject to—
- (a) paragraph 37 (power to authorise trustees to accept general offers etc.),
  - (b) paragraph 79 (meeting by trustees of PAYE obligations), and
  - (c) paragraph 90(5) (termination of plan: early removal of shares with participant’s consent).
- (5) If at any time in the holding period the participant ceases to be in relevant employment, the participant’s obligations with respect to that period come to an end.

*Holding period: power of participant to direct trustees to accept general offers etc.*

- 37 (1) A participant may direct the trustees to do any of the following during the holding period.
- (2) The participant may direct the trustees to accept an offer for any of the participant’s 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.
  - (3) The participant may direct the trustees to agree to a transaction affecting the participant’s free shares, or such of them as are of a particular class, if the transaction would be entered into as a result of a compromise, arrangement or scheme applicable to or affecting—
    - (a) all the ordinary share capital of the company or, as the case may be, all the shares of the class in question, or
    - (b) 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 SIP.
  - (4) The participant may direct the trustees to accept an offer for the participant’s free shares of—
    - (a) cash, with or without other assets, or

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- (b) a qualifying corporate bond (whether alone or with other assets or cash or both),  
if the offer forms part of a general offer falling within sub-paragraph (5).
- (5) A general offer falls within this sub-paragraph if—
- (a) it is made to holders of shares of the same class as the participant's or to holders of shares in the same company, and
- (b) it 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.
- (6) In sub-paragraph (5) “control” has the meaning given by [F79]sections 450 and 451 of CTA 2010].

#### Textual Amendments

**F79** Words in Sch. 2 para. 37(6) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 396\(4\)](#) (with [Sch. 2](#))

#### *Performance allowances: general application*

- 38 A plan that provides for performance allowances in relation to an award must make provision for such allowances for all qualifying employees in relation to that award.

#### *Performance allowances: targets and measures*

- 39 (1) A plan that provides for performance allowances must comply with the following requirements with respect to performance targets and performance measures.
- (2) The performance targets must be set for performance units comprising one or more employees.
- (3) 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.
- (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*

- 40 (1) A plan that provides for performance allowances in relation to an award of shares must require the company—
- (a) to notify each qualifying employee who has accepted an invitation to participate 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 the employee, and
- (b) to notify all qualifying employees—
- (i) of the company, or
- (ii) in the case of a group plan, of any constituent company,

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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 whose disclosure the company reasonably considers would prejudice commercial confidentiality.

*Performance allowances: method one*

- 41 (1) The requirements of this paragraph are those contained in sub-paragraph (2).
- (2) In the case of an award in relation to which the plan provides for performance allowances—
- (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 not be more than four times the highest number of shares within paragraph (a) awarded to an individual.
- (3) In determining for the purposes of sub-paragraph (2)(a) whether the requirement of paragraph 9 is met, the shares to which sub-paragraph (2)(a) applies are to be treated as a separate award of free shares.
- (4) If the plan meets the requirements of this paragraph, the requirement of paragraph 9 does not apply to any provision of the plan relating to the awarding of shares within sub-paragraph (2)(b).
- (5) If free shares of different classes are awarded, the requirements of this paragraph apply separately in relation to each class.

*Performance allowances: method two*

- 42 (1) The requirements of this paragraph are those contained in sub-paragraphs (2) and (3).
- (2) In the case of an award in relation to which the plan provides for performance allowances—
- (a) some or all of the shares in the award 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).
- (3) The performance targets set in connection with such an award must be consistent targets (see sub-paragraph (6)).
- (4) In determining for the purposes of sub-paragraph (2)(b) whether the requirement of paragraph 9 is met, the free shares awarded in respect of each performance unit are to be treated as a separate award of free shares.

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- (5) If this method is used, nothing in paragraph 9 requires the awarding of shares to members of different performance units to be on the same terms.
- (6) In sub-paragraph (3) “consistent targets” means targets which, at the time when they are set in accordance with the plan, can reasonably be viewed as being comparable in terms of the likelihood of their being met by the performance units to which they apply.

## PART 6

### PARTNERSHIP SHARES

#### *Partnership shares: introduction*

- 43 (1) If a SIP provides for partnership shares, the following paragraphs apply—
- paragraph 44 (partnership share agreements),
  - paragraph 45 (deductions from salary),
  - paragraph 46 (maximum amount of deductions),
  - paragraph 47 (minimum amount of deductions),
  - paragraph 48 (notice of possible effect of deductions on benefit entitlement),
  - paragraph 49 (partnership share money held for employee),
  - paragraph 50 (application of money deducted where no accumulation periods),
  - paragraph 51 (accumulation periods),
  - paragraph 52 (application of money deducted in accumulation period),
  - paragraph 53 (restriction on number of shares awarded),
  - paragraph 54 (stopping and re-starting deductions),
  - paragraph 55 (withdrawal from partnership share agreement),
  - paragraph 56 (repayment of partnership share money on withdrawal of approval or termination), and
  - paragraph 57 (access to partnership shares).
- (2) The plan must meet any plan requirements contained in those paragraphs.
  - (3) References in the SIP code to the trustees acquiring partnership shares on behalf of an employee include their appropriating to an employee shares already held by them.
  - (4) In the SIP code references to an employee’s “salary” are to be read as follows—
    - (a) in the case of an individual within the scope of the charge to tax under Part 2 of this Act, they are to be read as references to such of the earnings of the eligible employment—
      - (i) as are liable to be paid under deduction of tax under PAYE regulations, after deducting any amounts included by virtue of the benefits code, or
      - (ii) as would be liable to be so paid apart from the SIP code;
    - (b) in the case of an individual not within the scope of the charge to tax under Part 2 of this Act, they are to be read as references to such of the earnings of the eligible employment as would have fallen within sub-paragraph (i) or (ii) of paragraph (a) if the individual had been within the scope of that charge to tax.

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- (5) In sub-paragraph (4) “the eligible employment” means the employment by reference to which the employee is eligible to participate in the plan.

*Partnership share agreements*

- 44 (1) The plan must provide for qualifying employees to enter into agreements with the company (“company A”) under which—
- (a) the employee authorises the employer company to deduct part of the employee’s salary for the purchase of partnership shares, and
  - (b) company A undertakes to arrange for partnership shares to be awarded to the employee in accordance with the plan.
- (2) Such agreements are referred to in the SIP code as “partnership share agreements”.
- (3) In sub-paragraph (1) “the employer company” means the company by reference to which the employee meets the employment requirement in relation to the plan.

*Deductions from salary*

- 45 (1) The plan must provide for a partnership share agreement to be given effect by deductions from the employee’s salary.
- (2) Amounts so deducted are referred to in the SIP code as “partnership share money”.
- (3) The partnership share agreement must specify—
- (a) what amounts are to be deducted, and
  - (b) at what intervals;
- but this does not prevent the employee and the company agreeing to vary those amounts or intervals.
- (4) For the purposes of sub-paragraph (3)(a) the agreement may specify a percentage of the employee’s salary.
- (5) The plan must require the employer company to calculate the amounts and intervals having regard to paragraph 46 (maximum amount of deductions from salary).
- (6) In sub-paragraph (5) “the employer company” means the company by reference to which the employee meets the employment requirement in relation to the plan.

*Maximum amount of deductions*

- 46 (1) The amount of partnership share money deducted from an employee’s salary must not exceed [<sup>F80</sup>£1,500 in any tax year.]
- (2) The amount of partnership share money deducted from an employee’s salary [<sup>F81</sup>for any tax year must not exceed 10% of the employee’s salary for the tax year.]
- (3) The plan may authorise the company to specify lower limits than those specified in sub-paragraphs (1) and (2).
- (4) If it does so, different limits may be specified in relation to different awards of shares.
- [<sup>F82</sup>(4A) A limit lower than that specified in sub-paragraph (2) may be framed—
- (a) as a proposition substituting a percentage lower than that so specified, or



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(b) as a proposition that a particular description of earnings is not to be regarded as forming part of an employee’s salary for the purposes of that sub-paragraph.]

(5) 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.

**Textual Amendments**

- F80** Words in Sch. 2 para. 46(1) substituted (with effect in accordance with Sch. 21 para. 7(5) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 21 para. 7\(2\)](#)
- F81** Words in Sch. 2 para. 46(2) substituted (with effect in accordance with Sch. 21 para. 7(5) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 21 para. 7\(3\)](#)
- F82** Sch. 2 para. 46(4A) inserted (10.7.2003) by virtue of [Finance Act 2003 \(c. 14\)](#), [Sch. 21 para. 7\(4\)](#)

*Minimum amount of deductions*

47 (1) The plan may provide that the amount to be deducted under a partnership share agreement [<sup>F83</sup>on any occasion] must not be less than a minimum amount specified in the plan.

(2) The specified minimum amount must not be greater than £10.

<sup>F84</sup>(3) .....

**Textual Amendments**

- F83** Words in Sch. 2 para. 47 substituted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 21 para. 8\(a\)](#)
- F84** Sch. 2 para. 47(3) repealed (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 21 para. 8\(b\)](#), [Sch. 43 Pt. 3\(3\)](#)

*Notice of possible effect of deductions on benefit entitlement*

48 (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 [<sup>F19</sup>the Commissioners for Her Majesty’s Revenue and Customs].

**Textual Amendments**

- F19** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(2\)](#); S.I. 2005/1126, art. 2(2)(h)

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*Partnership share money held for employee*

- 49 (1) The plan must provide that partnership share money deducted under a partnership share agreement is—
- (a) paid to the trustees as soon as practicable, and
  - (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.
- (2) Sub-paragraph (1) is subject to paragraphs 50(5)(b) and 52(6)(b) and (7) (obligations to pay money to the employee).
- (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) a person falling within [F85section 991(2)(b) of ITA 2007] (certain institutions permitted to accept deposits),
  - (b) a building society, or
  - (c) a firm falling within [F86section 991(2)(c) of ITA 2007] (EEA firms permitted to accept deposits).
- (4) The plan must provide for the trustees to account to an employee for the interest if the partnership share money held on behalf of the employee is held in an interest bearing account.

**Textual Amendments**

- F85** Words in Sch. 2 para. 49(3)(a) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 447\(2\)\(a\)](#) (with [Sch. 2](#))
- F86** Words in Sch. 2 para. 49(3)(c) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 447\(2\)\(b\)](#) (with [Sch. 2](#))

*Application of money deducted where no accumulation periods*

- 50 (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) The number of shares awarded to each employee must be determined in accordance with the market value of the shares on the acquisition date.
- (3) Sub-paragraphs (1) and (2) are subject to paragraph 53 (restriction on number of shares awarded).
- (4) In those sub-paragraphs “the acquisition date” means the date set by the trustees in relation to the award of partnership shares, which must be not later than 30 days after the last date on which the partnership share money to be applied in acquiring the shares was deducted.
- (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 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.

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### *Accumulation periods*

- 51 (1) The plan may provide for accumulation periods not exceeding 12 months.
- (2) If the plan does so, the following provisions apply.
- (3) The partnership share agreements—
- (a) must specify when each accumulation period begins and ends;
  - (b) may specify that an accumulation period comes to an end on the occurrence of a specified event.
- (4) However—
- (a) the beginning of the first accumulation period must not be later than the date on which the first deduction of partnership share money is made; and
  - (b) the accumulation period which applies in relation to each award of partnership shares must be the same for all individuals entering into the partnership share agreements.
- (5) The plan 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 consents,
- the partnership share agreement is to have effect after the time of the transaction as if it were an agreement for the purchase of the shares comprised in the new holding.

### *Application of money deducted in accumulation period*

- 52 (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 accumulation period under a partnership share agreement to be applied by the trustees in acquiring partnership shares on behalf of the employee on the acquisition date.
- (3) 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.
- (4) Sub-paragraphs (2) and (3) are subject to sub-paragraphs (7) and (8) and to paragraph 53 (restriction on number of shares awarded).
- (5) In sub-paragraphs (2) and (3) “the acquisition date” means the date set by the trustees in relation to the award of partnership shares, which must be not later than 30 days after the end of the accumulation period which applies in relation to the award.
- (6) 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.

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- (7) The plan must provide that where the employee ceases to be in relevant employment during an accumulation period, any partnership share money deducted in the period is to be paid over to the individual as soon as practicable.
- (8) 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.

*Restriction on number of shares awarded*

- 53 (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.
- (2) If the plan does so—
  - (a) a different number may be specified by the company in relation to different awards, and
  - (b) the following provisions apply to the plan.
- (3) The plan 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.
- (4) 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.
- (5) 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 acquired on behalf of each employee under paragraph 50(1) or 52(2) must be reduced proportionately.

*Stopping and re-starting deductions*

- 54 (1) The plan must provide that an employee may at any time give notice to the company to stop deductions under a partnership share agreement.
- (2) The plan must provide that, unless a later date is specified in the notice, the company must, on receiving a notice within sub-paragraph (1), ensure within 30 days after receipt of the notice that no further deductions are made by it under the partnership share agreement.
- (3) The plan must also provide that an employee who has stopped deductions—
  - (a) may subsequently give notice to the company to re-start deductions under the agreement, but
  - (b) may not make up deductions that have been missed.
- (4) 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.

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- (5) The plan must provide that, unless a later date is specified in the notice, the company must, on receiving a notice within sub-paragraph (3), re-start deductions under the partnership share agreement not later than the re-start date.
- (6) “The re-start date” means the date of the first deduction due under the partnership share agreement more than 30 days after receipt of the notice under sub-paragraph (3).
- (7) In this paragraph “notice” means notice in writing.

*Withdrawal from partnership share agreement*

- 55 (1) The plan must provide that an employee may at any time give notice to the company of the employee’s withdrawal from a partnership share agreement.
- (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 behalf of the employee is to be paid over to the employee as soon as practicable.
- (4) In this paragraph “notice” means notice in writing.

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

- 56 (1) The plan must provide that, where the approval of the plan is withdrawn (see paragraph 83), any partnership share money held on behalf of an employee is to be paid over to the employee.
- (2) The plan must require the payment to be made as soon as practicable after notice of the withdrawal of approval is given to the company.
- (3) The plan must provide that, where a plan termination notice is issued in respect of the plan (see paragraph 90), any partnership share money held on behalf of an employee is to be paid over to the employee.
- (4) The plan must require the payment to be made as soon as practicable after the plan termination notice is notified to the trustees under paragraph 89(2).

*Access to partnership shares*

- 57 (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) If the employee does so, there may be a charge to tax by virtue of section 506 (charge on partnership shares ceasing to be subject to plan).

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## PART 7

### MATCHING SHARES

#### *Matching shares: introduction*

- 58 If a SIP provides for matching shares it must meet the plan requirements contained in—
- paragraph 59 (general requirements for matching shares),
  - paragraph 60 (ratio of matching shares to partnership shares), and
  - paragraph 61 (holding period for matching shares).

#### *General requirements for matching shares*

- 59 (1) The plan must provide for the matching shares to be—
- (a) shares of the same class and carrying the same rights as the partnership shares to which they relate;
  - (b) awarded on the same day as the partnership shares to which they relate are awarded; and
  - (c) awarded to all employees who participate in the award on exactly the same basis.
- (2) Sub-paragraph (1) is subject to paragraph 32 (permitted restrictions: provision for forfeiture).

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

- 60 (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 the employee under the agreement.

#### *Holding period for matching shares*

- 61 Paragraphs 36 and 37 (the holding period and related matters) apply in relation to matching shares as they apply in relation to free shares.

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## PART 8

### CASH DIVIDENDS AND DIVIDEND SHARES

#### *Reinvestment of cash dividends*

- 62 (1) A SIP may provide that, where the company so directs, the trustees must apply all cash dividends in respect of plan shares held on behalf of—
- (a) all participants, or
  - (b) all participants who elect to reinvest their dividends, in acquiring further shares on their behalf.
- (2) Sub-paragraph (1) is subject to paragraph 63 (requirements to be met as regards cash dividends).
- (3) In the SIP code—
- (a) the application of cash dividends as mentioned in sub-paragraph (1) is referred to as “reinvestment”; and
  - (b) the further plan shares acquired are referred to as “dividend shares”.
- (4) The company may revoke a direction requiring the reinvestment of cash dividends.
- (5) References in the SIP code to the trustees acquiring dividend shares on behalf of a participant include their appropriating to a participant shares already held by them.

#### *Requirements to be met as regards cash dividends*

- 63 (1) If a SIP makes the provision authorised by paragraph 62(1) (reinvestment of cash dividends), the following paragraphs apply—
- paragraph 64 (limit on amount reinvested),
  - paragraph 65 (general requirements as to dividend shares),
  - paragraph 66 (acquisition of dividend shares),
  - paragraph 67 (holding period for dividend shares), and
  - paragraph 68 (reinvestment: amounts to be carried forward).
- (2) The plan must meet any plan requirements contained in those paragraphs.
- (3) A SIP must in any event meet the plan requirement contained in paragraph 69 (cash dividends not required to be reinvested).

#### *Limit on amount reinvested*

- 64 (1) The plan must provide that the total dividend reinvestment in respect of a participant must not exceed £1,500 in a 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 in acquiring dividend shares on behalf of the participant by the trustees of other approved SIPs that are established by the company or an associated company.

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- (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 as to dividend shares*

- 65 The plan must provide that dividend shares are to be shares—
- (a) which are in the same company and of the same class, and carry 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.

*Acquisition of dividend shares*

- 66 (1) The plan must provide that the trustees must treat participants fairly and equally in exercising their powers in relation to the acquisition of dividend shares.
- (2) The plan must provide for the trustees to acquire dividend shares on behalf of participants on the acquisition date.
- (3) 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.
- (4) In this paragraph “the acquisition date” means the date set by the trustees for the acquisition of dividend shares and falling not later than 30 days after the dividend is received by them.

*Holding period for dividend shares*

- 67 Paragraphs 36 and 37 (the holding period and related matters) apply in relation to dividend shares as they apply in relation to free shares, except that the holding period must be 3 years.

*Reinvestment: amounts to be carried forward*

- 68 (1) This paragraph applies where an amount 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.
- (2) The amount may be retained by the trustees and carried forward to be added to the amount of the next cash dividend to be reinvested.
- (3) If so retained, the trustees must hold the amount so as to be separately identifiable for the purposes of sub-paragraphs (4) and (5).
- (4) An amount retained under this paragraph must be paid over to the participant—
- (a) if or to the extent that it is not reinvested within the period of 3 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 (see paragraph 95), or
  - (c) if during that period a plan termination notice is issued in respect of the plan (see paragraph 90).



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- (5) An amount required to be paid over to the participant under sub-paragraph (4) must be paid over as soon as practicable.
- (6) For the purposes of this paragraph an amount carried forward under this paragraph derived from an earlier cash dividend is to be treated as reinvested before an amount derived from a later cash dividend.

*Cash dividends where no requirement to reinvest*

- 69
- (1) The plan must require any distributable cash dividends in respect of plan shares held on behalf of a participant to be paid over to the participant as soon as practicable.
  - (2) “Distributable cash dividends” means cash dividends which are not required to be reinvested under the plan.

**PART 9**

TRUSTEES

*Requirements etc. relating to trustees: introduction*

- 70
- (1) A SIP must meet the plan requirements contained in—  
paragraph 71(1) and (2) (establishment of trustees), and  
paragraph 79 (meeting by trustees of PAYE obligations).
  - (2) The following provisions also relate to the trustees—  
paragraph 71(3) to (6) (the trust instrument and classes of trustees)  
paragraph 72 (duty to act in accordance with participant’s directions),  
paragraph 73 (duty not to dispose of plan shares),  
paragraph 74 (duty to make payments to participants),  
paragraph 75 (duty to give notice of award of shares etc.),  
paragraph 76 (power to borrow),  
paragraph 77 (power to raise funds to subscribe for rights issue),  
paragraph 78 (acquisition of shares from employee share ownership trust), and  
paragraph 80 (other duties in relation to tax liabilities).

*Establishment of trustees*

- 71
- (1) The plan must provide for the establishment of a body of trustees consisting of persons resident in the United Kingdom (“the trustees”).
  - (2) The plan must provide that the trustees are required—
    - (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.

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- (3) 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 (“the trust instrument”).
- (4) The trust instrument must not contain any terms which are neither essential nor reasonably incidental to complying with the requirements of this Part of this Schedule.
- (5) The trust instrument may contain terms that—
- (a) define who is a professional trustee and who is a non-professional trustee;
  - (b) require the trustees to include at least one person who is a professional trustee and at least two who are non-professional trustees;
  - (c) require at least half of the non-professional trustees to have been, before being appointed as trustees, selected in accordance with a specified process of selection;
  - (d) require the trustees so selected to be persons who are employees of the company or, in the case of a group plan, of a participating company.
- (6) The terms mentioned in sub-paragraph (5) are to be regarded as reasonably incidental to complying with the requirements of this Part of this Schedule for the purposes of sub-paragraph (4).

*[<sup>F87</sup>Duty to monitor participants in connected schemes*

**Textual Amendments**

**F87** Sch. 2 para. 71A and cross-heading inserted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 21 para. 6](#)

- 71A The trust instrument must require the trustees to maintain records of participants who have participated in one or more other approved SIPs established by the company or a connected company.]

*Duty to act in accordance with participant’s directions*

- 72 (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 a participant’s plan shares to be allotted other shares, securities or rights of any description,
- only in accordance with a direction given by or on behalf of the participant.
- (2) Sub-paragraph (1) is subject to—
- (a) paragraph 73 (duty not to dispose of plan shares), and
  - (b) any provision in the plan made in accordance with paragraph 79 (meeting by trustees of PAYE obligations).
- (3) The plan may provide for participants to give such general directions, to such effect and in such terms, as are specified in the plan.

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*Duty not to dispose of plan shares*

- 73 (1) This paragraph applies to a participant's plan shares that are free, matching or dividend shares.
- (2) The trust instrument must prohibit the trustees from disposing of any of those shares (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.
- (3) Sub-paragraph (2) is subject to—
- (a) paragraph 37 (holding period: power to direct trustees to accept general offers etc.),
  - (b) paragraph 77 (power of trustees to raise funds to subscribe for rights issue),
  - (c) paragraph 79 (meeting by trustees of PAYE obligations), and
  - (d) paragraph 90(5) (termination of plan: early removal of shares with participant's consent).

*Duty to make payments to participants*

- 74 (1) The trust instrument must require the trustees to pay over to a participant as soon as practicable—
- (a) any money received by them in respect of, or by reference to, any of the participant's shares, or
  - (b) any money's worth so received unless it consists of new shares within the meaning of paragraph 87 (company reconstructions).
- (2) Sub-paragraph (1) is subject to—
- (a) paragraphs 62 to 69 (cash dividends and dividend shares),
  - (b) the trustees' obligations under sections 510 to 514 (PAYE: shares ceasing to be subject to plan; capital receipts), and
  - (c) the trustees' PAYE obligations.

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

- 75 (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 must give the employee 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 the employee, 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 must give the employee notice of the award—
- (a) specifying the number and description of those shares,
  - (b) stating the amount of partnership share money applied by the trustees in acquiring the shares on behalf of the employee, and
  - (c) stating their market value on the acquisition date (as defined by paragraph 50(4) or, if there is an accumulation period, by paragraph 52(5)).

*Status: Point in time view as at 01/03/2013.*

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- (4) It must provide that, as soon as practicable after any dividend shares have been acquired on behalf of a participant, the trustees must give the participant notice of the acquisition—
- (a) specifying the number and description of those shares,
  - (b) stating their market value on the acquisition date (as defined by paragraph 66(4)),
  - (c) stating the holding period applicable to them, and
  - (d) informing the participant of any amount carried forward under paragraph 68 (reinvestment: amounts to be carried forward).
- (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 must give the participant notice of the amount of any foreign tax deducted from the dividend before it was paid.
- (6) In sub-paragraph (5) “foreign cash dividend” means a cash dividend paid in respect of plan shares in a company not resident in the United Kingdom.

*Power of trustees to borrow*

- 76 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.

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

- 77 (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.
- (2) The power conferred by sub-paragraph (1) is subject to paragraph 72 (duty to act in accordance with participant’s directions).

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

- 78 (1) The trust instrument must provide that, where there is a qualifying transfer of shares to the trustees, the 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—
- (a) relevant shares (as defined by section 69(3AC) of FA 1989) 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 that Act (transfer of shares in, or shares purchased from money in, an employee share ownership trust immediately before 21st March 2000 [<sup>F88</sup>or, by virtue of section 142(2) of [<sup>F89</sup>FA] 2003, 27th November 2002]).

**Textual Amendments**

**F88** Words in Sch. 2 para. 78(2)(b) inserted (10.7.2003) by [Finance Act 2003 \(c. 14\), s. 142\(3\)](#)

*Status: Point in time view as at 01/03/2013.*

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**F89** Word in Sch. 2 para. 78(2)(b) substituted (21.7.2009) by [Finance Act 2009 \(c. 10\), s. 126\(5\)\(b\)](#)

*Meeting by trustees of PAYE obligations*

- 79 (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 any of those shares, or
  - (b) if there are any remaining plan shares of the participant, by disposing of any of those shares, or
  - (c) by the participant paying to the trustees a sum equal to the amount required to discharge the obligation.
- (2) A “PAYE obligation” includes an obligation under any of sections 510 to 512 (PAYE: shares ceasing to be subject to the plan).
- (3) For the purposes of sub-paragraph (1) any reference to the trustees disposing of shares includes a reference to their acquiring the shares as 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)(b) may give rise to a charge to tax under—
- section 505 (charge on free or matching shares ceasing to be subject to plan),
  - section 506 (charge on partnership shares ceasing to be subject to plan), or
  - [<sup>F90</sup>Chapter 3 or 4 of Part 4 of ITTOIA 2005 (dividends etc. from UK or non-UK resident companies etc.) as a result of section 394(2) or 407(2) of that Act (distribution or dividend payment when dividend shares cease to be subject to plan).]

**Textual Amendments**

**F90** Words in Sch. 2 para. 79(4) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 617\(3\)](#) (with Sch. 2)

*Other duties of trustees in relation to tax liabilities*

- 80 (1) The trust instrument must require the trustees to maintain such records as may be necessary for the purposes of—
- (a) their own PAYE obligations, or
  - (b) the PAYE obligations of the employer company so far as they relate to the plan.
- (2) In sub-paragraph (1)—
- “PAYE obligations”, in relation to the trustees, includes obligations under sections 510 to 514 (PAYE: shares ceasing to be subject to plan and capital receipts);
  - “the employer company” has the same meaning as in section 513.
- (3) The trust instrument must require the trustees, where the participant becomes liable to income tax under—
- (a) this Act, or

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- (b) [<sup>F91</sup>Chapter 3 or 4 of Part 4 of ITTOIA 2005 (dividends etc. from UK or non-UK resident companies etc.)],

by reason of the occurrence of any event, to inform the participant of any facts relevant to determining that liability.

- (4) [<sup>F92</sup>Sections 1105 to 1108 of CTA 2010 (information relating to distributions to be provided by nominee) apply] in relation to—

- (a) the balance of any cash dividend paid over to the participant under paragraph 64(3),
- (b) any amount paid over to a participant under paragraph 68(4) (dividend retained for reinvestment and later paid out), or
- (c) any relevant dividend (see sub-paragraph (5)),

as if it were a payment to which [<sup>F93</sup>section 1105(1)(b) of that Act] applied (and, in the case of an amount within paragraph (b) above, as if the cash dividend had been paid at the time of the payment to the participant under paragraph 68(4)).

- (5) In a case where dividend shares cease to be subject to the plan before the end of the period of 3 years beginning with the date on which they were acquired on a participant's behalf, the cash dividend applied to acquire dividend shares on the participant's behalf is a "relevant dividend" for the purposes of sub-paragraph (4)(c).

#### Textual Amendments

- F91** Words in Sch. 2 para. 80(3)(b) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 617\(4\)](#) (with Sch. 2)
- F92** Words in Sch. 2 para. 80(4) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 396\(5\)\(a\)](#) (with Sch. 2)
- F93** Words in Sch. 2 para. 80(4) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 396\(5\)\(b\)](#) (with Sch. 2)

## 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 [<sup>F65</sup>an officer of Revenue and Customs] for approval of the plan,
- [<sup>F65</sup>an officer of Revenue and Customs] must approve the plan if [<sup>F94</sup>the officer][<sup>F95</sup>is] 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 [<sup>F65</sup>an officer of Revenue and Customs] may require.

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- (3) Once [<sup>F65</sup>an officer of Revenue and Customs][<sup>F96</sup>has] decided whether or not to approve the plan, [<sup>F97</sup>the officer] must give notice of [<sup>F98</sup>the] decision to the company.

#### Textual Amendments

- F65** 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)
- F94** Words in Sch. 2 para. 81(1) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 103(1)(j)**; S.I. 2005/1126, art. 2(2)(h)
- F95** Word in Sch. 2 para. 81(1) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 121(a)(i)**; S.I. 2005/1126, art. 2(2)(h)
- F96** Word in Sch. 2 para. 81(3) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 121(a)(ii)**; S.I. 2005/1126, art. 2(2)(h)
- F97** Words in Sch. 2 para. 81(3) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 103(1)(j)**; S.I. 2005/1126, art. 2(2)(h)
- F98** Words in Sch. 2 para. 81(3) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 103(3)(a)**; S.I. 2005/1126, art. 2(2)(h)

#### *Appeal against refusal of approval*

- 82 (1) If [<sup>F65</sup>an officer of Revenue and Customs][<sup>F99</sup>refuses] to approve the plan, the company may appeal <sup>F100</sup>....
- (2) The notice of appeal must be given to [<sup>F65</sup>an officer of Revenue and Customs] within 30 days after the date on which notice of [<sup>F101</sup>the] decision is given to the company.
- (3) [<sup>F102</sup>If the appeal is notified to and allowed by the tribunal, the tribunal may direct][<sup>F65</sup>an officer of Revenue and Customs] to approve the plan with effect from a date specified by the [<sup>F103</sup>tribunal].
- (4) The date so specified must not be earlier than that of the application for approval.

#### Textual Amendments

- F65** 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)
- F99** Word in Sch. 2 para. 82(1) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 121(b)**; S.I. 2005/1126, art. 2(2)(h)
- F100** Words in Sch. 2 para. 82(1) 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. 341(2)**
- F101** Words in Sch. 2 para. 82(2) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 103(3)(b)**; S.I. 2005/1126, art. 2(2)(h)
- F102** Words in Sch. 2 para. 82(3) 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. 341(3)(a)**
- F103** Word in Sch. 2 para. 82(3) 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. 341(3)(b)**

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### *Withdrawal of approval*

- 83 (1) This paragraph applies if a disqualifying event (see paragraph 84) occurs in relation to an approved SIP.
- (2) [<sup>F65</sup>An officer of Revenue and Customs] may by a notice given to the company withdraw the approval with effect from—
- (a) the time at which the disqualifying event occurred, or
  - (b) a later time specified by [<sup>F65</sup>an officer of Revenue and Customs] 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.

#### **Textual Amendments**

**F65** 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)

### *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 [<sup>F65</sup>an officer of Revenue and Customs];
  - (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));
  - [<sup>F104</sup>(d) an alteration being made—
    - (i) in the share capital of a company any of whose shares are subject to the plan trust, or
    - (ii) in the rights attaching to any shares of such a company, that materially affects the value of shares that are subject to the plan trust;]
  - (e) shares of a class of which shares [<sup>F105</sup>are subject to the plan trust] 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) [<sup>F65</sup>an officer of Revenue and Customs] may not withhold <sup>F106</sup>... approval unless it appears to [<sup>F107</sup>the officer] at the time in question that the plan as proposed to be altered would not then be approved on an application under paragraph 81.



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- (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.
- (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.

#### Textual Amendments

- F65** 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)
- F104** Sch. 2 para. 84(1)(d) substituted (with effect in relation to events taking place on or after 24.3.2010 in accordance with s. 42(7) of the amending Act) by [Finance Act 2010 \(c. 13\), s. 42\(2\)](#)
- F105** Words in Sch. 2 para. 84(1)(e) substituted (with effect in relation to events taking place on or after 24.3.2010 in accordance with s. 42(7) of the amending Act) by [Finance Act 2010 \(c. 13\), s. 42\(3\)](#)
- F106** Word in Sch. 2 para. 84(2) repealed (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 4 para. 103\(4\)\(a\), Sch. 5](#); S.I. 2005/1126, art. 2(2)(h)(i)
- F107** Words in Sch. 2 para. 84(2) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 4 para. 103\(1\)\(k\)](#); S.I. 2005/1126, art. 2(2)(h)

#### *Appeal against withdrawal of approval*

- 85 (1) This paragraph applies if a SIP has been approved by [<sup>F65</sup>an officer of Revenue and Customs] and [<sup>F108</sup>the officer][<sup>F109</sup>decides] —
- (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 [<sup>F110</sup>section 998 of CTA 2009] (withdrawal of corporation tax deductions on withdrawal of approval).
- (2) The company may appeal against the decision <sup>F111</sup>....
- (3) The notice of appeal must be given to [<sup>F65</sup>an officer of Revenue and Customs] within 30 days after the date on which notice of [<sup>F112</sup>the officer's] decision is given to the company.

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### Textual Amendments

- F65** 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)
- F108** Words in Sch. 2 para. 85(1) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 4 para. 103\(1\)\(I\)](#); S.I. 2005/1126, art. 2(2)(h)
- F109** Word in Sch. 2 para. 85(1) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 4 para. 121\(c\)](#); S.I. 2005/1126, art. 2(2)(h)
- F110** Words in Sch. 2 para. 85(1)(c) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 557](#) (with Sch. 2 Pts. 1, 2)
- F111** Words in Sch. 2 para. 85(2) 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. 342](#)
- F112** Words in Sch. 2 para. 85(3) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 4 para. 103\(2\)\(b\)](#); S.I. 2005/1126, art. 2(2)(h)

## PART 11

### SUPPLEMENTARY PROVISIONS

#### *Company reconstructions*

- 86 (1) In this Part of this Schedule a “company reconstruction” means a transaction to which this paragraph applies.
- (2) This paragraph applies to a transaction which occurs in relation to any of a participant’s plan shares (“the original holding”) and—
- results in a new holding being equated with the original holding for the purposes of capital gains tax, or
  - would have that result but for the fact that what would be the new holding consists of or includes a qualifying corporate bond.
- (3) But where an excluded issue of shares is made—
- that issue of shares does not by itself count as a transaction within sub-paragraph (2); and
  - if made as part of a transaction within that sub-paragraph (that is, as part of a company reconstruction), the shares issued are to be regarded as not forming part of the new holding.
- (4) An “excluded issue of shares” means an issue of shares of any of the following descriptions (in respect of which a charge to income tax arises)—
- redeemable shares or securities issued as mentioned in <sup>F113</sup>paragraph C or D in section 1000(1) of CTA 2010] (distributions);
  - share capital issued in circumstances such that <sup>F114</sup>section 1022(3) of CTA 2010] (bonus issues) applies;
  - share capital to which <sup>F115</sup>section 410 of ITTOIA 2005 (stock dividends) applies that is issued in a case where subsection (2) or (3) of that section applies.]

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### Textual Amendments

- F113** Words in Sch. 2 para. 86(4)(a) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 396\(6\)\(a\)](#) (with Sch. 2)
- F114** Words in Sch. 2 para. 86(4)(b) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 396\(6\)\(b\)](#) (with Sch. 2)
- F115** Words in Sch. 2 para. 86(4)(c) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 396\(6\)\(c\)](#) (with Sch. 2)

### *Consequences of company reconstructions*

- 87 (1) In the SIP code references to a participant's plan shares in relation to a SIP are to be read, after the time of a company reconstruction—
- (a) as referring to the new shares, or
  - (b) as including those shares,
- as the case may be.

This is subject to the following provisions of this paragraph.

- (2) For the purposes of the SIP code—
- (a) a company reconstruction is to be treated as not involving a disposal of the shares comprised in the original holding;
  - (b) new shares are to be treated as having been awarded to the participant on the date on which the corresponding old shares were awarded;
  - (c) the conditions in Part 4 of this Schedule (types of share that may be awarded) are to be treated as fulfilled with respect to any new shares if they were (or were treated as) fulfilled with respect to the corresponding old shares; and
  - (d) the provisions of—
    - (i) sections 489 to 514 (SIPs: income tax advantages and charges under this Act),
    - [<sup>F116</sup>(ii) sections 392 to 395 and 405 to 408 of ITTOIA 2005 (SIPs: special rules for charges under Chapters 3 and 4 of Part 4 of that Act (dividends etc. from UK or non-UK resident companies etc.)) and section 770 of that Act (exemption for amounts applied by SIP trustees acquiring dividend shares or retained for reinvestment),]
    - (iii) sections 686B and 686C of ICTA (SIPs: income tax advantages for trustees), and
    - (iv) Part 1 of Schedule 7D to TCGA 1992 (SIPs: capital gains tax),apply in relation to the new shares as they would have applied in relation to the corresponding old shares.
- (3) If the corresponding old shares were dividend shares, the reference in sub-paragraph (2)(b) to the corresponding old shares being awarded is a reference to those shares being acquired on behalf of the participant.
- (4) Sub-paragraphs (1) to (3) are subject to paragraph 88 (treatment of shares acquired under rights issue).
- (5) For the purposes of the SIP code if, as part of a company reconstruction, trustees become entitled to a capital receipt, their entitlement to the capital receipt is to be taken to arise before the new holding comes into being.

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- (6) In the SIP code, in the context of a new holding, “shares” includes securities and rights of any description which form part of the new holding for the purposes of Chapter 2 of Part 4 of TCGA 1992 (reorganisation of share capital etc.).
- (7) In this paragraph—
- (a) “new shares” means shares comprised in the new holding which were issued in respect of, or otherwise represent, shares comprised in the original holding;
  - (b) “the new holding” and “the original holding” mean respectively the new and original holdings mentioned in paragraph 86(2);
  - (c) “corresponding old 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.

**Textual Amendments**

**F116** Sch. 2 para. 87(2)(d)(ii) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 617\(6\)](#) (with Sch. 2)

*Treatment of shares acquired under rights issue*

- 88 (1) This paragraph applies for the purposes of the SIP code where the trustees exercise rights arising under a rights issue and conferred in respect of a participant’s plan shares.
- (2) In such a case, any shares or securities or rights allotted are to be treated as if they were plan shares—
- (a) identical to the shares in respect of which the rights were conferred, and
  - (b) appropriated to, or acquired on behalf of, the participant under the plan in the same way and at the same time as those shares.
- (3) If, however, either of the conditions set out in sub-paragraph (4) is met, sub-paragraph (5) applies instead.
- (4) The conditions are—
- (a) that the funds used by the trustees to exercise the rights are not provided by the exercise of the trustees' powers under paragraph 77 (trustees' powers to raise funds to subscribe for rights issue);
  - (b) that similar rights are not conferred in respect of all ordinary shares in the company.
- (5) If either of those conditions is met—
- (a) any shares, securities or rights allotted are not plan shares, and
  - (b) sections 127 to 130 of TCGA 1992 (reorganisation of share capital etc.) do not apply in relation to them.

*Termination of plan*

- 89 (1) The plan may provide for the company to issue a plan termination notice in respect of the plan in circumstances specified in the plan.

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- (2) The plan must provide that, where a plan termination notice is issued, a copy of the notice must be given, without delay, to—
- (a) [<sup>F65</sup>an officer of Revenue and Customs],
  - (b) the trustees,
  - (c) each individual who has plan shares, and
  - (d) each individual who has entered into a partnership share agreement which was in force immediately before the notice was issued.

#### Textual Amendments

**F65** 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)

#### *Effect of plan termination notice*

- 90 (1) This paragraph applies if the company has issued a plan termination notice under paragraph 89.
- (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 whichever is the later of—
- (a) the end of the notice period, or
  - (b) the first date on which the shares may be removed from the plan without giving rise to a charge to income tax under sections 501 to 507 (SIPs: tax charges) on the participant on whose behalf they are held.
- (4) In sub-paragraph (3) “the notice period” means the period of 3 months beginning with the date on which the requirements imposed by the plan in accordance with paragraph 89(2) are met in respect of the plan termination notice.
- (5) The trustees may remove a participant’s shares from the plan at an earlier date with the participant’s consent.
- (6) Any consent given by the participant before receiving a copy of the plan termination notice is to be disregarded for the purposes of sub-paragraph (5).
- (7) As soon as practicable after the plan termination notice is issued, the trustees must pay any money held on an individual’s behalf to the individual.
- (8) In this paragraph references to the trustees removing the plan shares from the plan are to their doing the following in the case of each participant—
- (a) transferring the shares to the participant on behalf of whom they are held, or to another person, at the participant’s 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 the participant’s direction.
- (9) Where a participant has died, the references in this paragraph to a participant are to the participant’s personal representatives.

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### *Jointly owned companies*

- 91 (1) This paragraph applies for the purposes of the provisions of the SIP code relating to group plans.
- (2) Each joint owner of a jointly owned company is to be treated as controlling every company within sub-paragraph (3).
- (3) The companies within this sub-paragraph are—
- (a) the jointly owned company, and
  - (b) any company controlled by that company.
- (4) However, no company within sub-paragraph (3) may be—
- (a) a constituent company in more than one group plan, or
  - (b) a constituent company in a particular group plan if another company within that sub-paragraph is a constituent company in a different group plan.
- (5) In this paragraph 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.
- (6) This paragraph does not apply for the purposes of paragraph 27(1)(b) (requirement that plan shares are in a company not under another company’s control).

### *Determination of market value*

- 92 (1) For the purposes of the SIP code the “market value” of shares has the same meaning as it has for the purposes of TCGA 1992 by virtue of Part 8 of that Act.
- (2) Sub-paragraph (1) is subject to paragraph 35(3) (determination of value of shares subject to restrictions or risk of forfeiture).
- (3) Where the market value of shares on any date has to be determined for the purposes of the SIP code, [<sup>F65</sup>an officer of Revenue and Customs] and the trustees may agree that it is to be determined by reference—
- (a) to a date or dates, or
  - (b) to an average of the values on a number of dates, stated in the agreement.

#### **Textual Amendments**

**F65** 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)

### *Power to require information*

- 93 (1) [<sup>F65</sup>An officer of Revenue and Customs] may by notice require a person to provide [<sup>F117</sup>the officer] with information—
- (a) which [<sup>F117</sup>the officer] reasonably [<sup>F118</sup>requires] for the performance of [<sup>F119</sup>the officer's] functions under the SIP code, and

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- (b) which 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 [<sup>F65</sup>an officer of Revenue and Customs] —
    - (i) to decide whether to approve a SIP or to 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 period, which must not end earlier than 3 months after the date when the notice is given.

#### Textual Amendments

- F65** 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)
- F117** Words in Sch. 2 para. 93(1) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 4 para. 103\(1\)\(m\)](#); S.I. 2005/1126, art. 2(2)(h)
- F118** Word in Sch. 2 para. 93(1)(a) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 4 para. 121\(d\)](#); S.I. 2005/1126, art. 2(2)(h)
- F119** Words in Sch. 2 para. 93(1)(a) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 4 para. 103\(2\)\(c\)](#); S.I. 2005/1126, art. 2(2)(h)

#### *Meaning of “associated company”*

- 94 (1) For the purposes of the SIP code one company is an “associated company” of another company at a given time if—
- (a) one has control of the other, or
  - (b) both are under the control of the same person or persons.
- (2) Sub-paragraph (1) does not, however, apply for the purposes of paragraph 29 (prohibited shares).
- (3) For the purposes of sub-paragraph (1) the question whether a person controls a company is to be determined in accordance with [<sup>F120</sup>sections 450 and 451 of CTA 2010].

#### Textual Amendments

- F120** Words in Sch. 2 para. 94(3) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 396\(7\)](#) (with Sch. 2)

#### *Meaning of participant ceasing to be in relevant employment*

- 95 (1) This paragraph explains what is meant, for the purposes of the SIP code, by a participant ceasing to be in relevant employment.

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- (2) For the purposes of the SIP code “relevant employment” means employment by the company or any associated company.
- (3) A participant who remains in the employment of the company or any associated company does not cease to be in relevant employment.

*Meaning of shares being withdrawn from plan*

- 96 (1) For the purposes of the SIP code plan shares are withdrawn from a SIP 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 the 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 are to the participant’s personal representatives.

*Meaning of shares ceasing to be subject to plan*

- 97 (1) For the purposes of the SIP code plan shares cease to be subject to a SIP 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
  - (c) the trustees dispose of the shares under provision made in accordance with paragraph 79 (meeting by trustees of PAYE obligations).
- (2) If an individual—
- (a) participates in an award of partnership shares, and
  - (b) ceases to be in relevant employment at any time during the acquisition period relating to that award,
- the individual is to be treated for the purposes of this paragraph as ceasing to be in relevant employment immediately after the shares are awarded.
- (3) In sub-paragraph (2) “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 (as defined by paragraph 50(4)), and
  - (b) where there was an accumulation period, the period beginning with the end of that period and ending immediately before the acquisition date (as defined by paragraph 52(5)).
- (4) If a participant ceases to be in relevant employment, the participant’s plan shares are to be treated as ceasing to be subject to the plan on the date of leaving.

*Meaning of “the specified retirement age”*

- 98 (1) In the SIP code, in relation to a SIP, “the specified retirement age” means the retirement age specified in the plan.



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- (2) The age so specified—
- (a) must be the same for men and women, and
  - (b) must not be less than 50.

#### *Minor definitions*

- 99 (1) In the SIP code—
- “articles of association”, in relation to a company, includes any other written agreement between the shareholders of the company;
  - “company” means a body corporate;
  - “group of companies” means a company and any other companies of which it has control, and “group company” has a corresponding meaning;
  - “participant’s plan shares”, in relation to a SIP, means plan shares that have been awarded to an individual participant;
  - “PAYE obligations” means (subject to paragraphs 79(2) and 80(2)) obligations of any person under—
    - (a) Part 11 of this Act, or
    - (b) PAYE regulations;
  - “plan shares”, in relation to a SIP, means—
    - (a) free, partnership or matching shares which have been awarded to participants under the plan,
    - (b) dividend shares which have been acquired on behalf of participants under the plan, and
    - (c) shares in relation to which paragraph 87(1) applies (company reconstructions: new shares),
- and which (in each case) remain subject to the plan;
- “provision for forfeiture” means a provision to the effect that a participant ceases to be beneficially entitled to shares on the occurrence of certain events, and “forfeiture” is to be read accordingly;
  - “qualifying corporate bond” has the meaning given by section 117 of TCGA 1992;
  - “redundancy” has the same meaning as in ERA 1996 or ER(NI)O 1996;
  - “rights arising under a rights issue” means 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.
- (2) For the purposes of the SIP code 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.
- (3) For the purposes of the SIP code 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 75% of the other company’s ordinary share capital, and
  - (b) each of which beneficially owns not less than 5% of that capital.

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*Index of defined expressions*

100 In the SIP code the following expressions are defined or otherwise explained by the provisions indicated below:

accumulation period	paragraph 51
approval, approved	section 488(4) (and see paragraph 83(4))
articles of association	paragraph 99(1)
associated company	paragraph 94 (and see paragraph 29(3))
award of shares	paragraph 5(1)
F121	...
...	
building society	[ <sup>F122</sup> section 989 of ITA 2007]
ceasing to be in relevant employment (in relation to a participant)	paragraph 95
ceasing to be subject to plan (in relation to shares)	paragraph 97
child	[ <sup>F123</sup> section 721(6)]
close company	[ <sup>F124</sup> section 989 of ITA 2007] (and see paragraph 20(4))
company	paragraph 99(1)
the company (in relation to a SIP)	paragraph 2(2)
company reconstruction (in Part 11 of this Schedule)	paragraph 86(1)
connected person	section 718
consortium (member of)	paragraph 99(3)
constituent company	paragraph 4(3)
control	section 719 (and see paragraphs 29(5), 37(6) and 94(3))
distribution	[ <sup>F125</sup> section 989 of ITA 2007]
dividend shares	paragraph 62(3)(b)
earnings	section 62 and see section 721(7)
eligible shares (in Part 4 of this Schedule)	paragraph 25(2)
employee, employed, employer and employment	section 4
the employment requirement	paragraph 15(3)
forfeiture, provision for	paragraph 99(1)
free shares	paragraph 2(1)(a)

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group company	paragraph 99(1)
group of companies	paragraph 99(1)
group plan	paragraph 4(2)
holding period	paragraph 36 (and see paragraph 67)
F121	
. . .	
market value (of shares)	paragraph 92
matching shares	paragraph 3(1)
notice (except in paragraph 54 or 55)	[ <sup>F126</sup> section 989 of ITA 2007]
ordinary share capital	[ <sup>F127</sup> section 989 of ITA 2007]
parent company	paragraph 4(1)
participant (in relation to a SIP)	paragraph 5(4)
participant's plan shares	paragraph 99(1) (and see paragraph 87(1))
participation in an award of shares	paragraph 5(3)
partnership share agreement	paragraph 44
partnership share money	paragraph 45(2)
partnership shares	paragraph 2(1)(b)
PAYE deduction	section 488(4)
PAYE obligations	paragraph 99(1)
PAYE regulations	section 684(8)
performance allowances	paragraph 34(4)
personal representatives	[ <sup>F128</sup> section 989 of ITA 2007]
plan requirements (in relation to a SIP)	paragraph 2(2)
plan shares (in relation to a SIP)	paragraph 99(1) (and see paragraphs 86 to 88)
the plan trust	paragraph 71(3)
provision for forfeiture	paragraph 99(1)
qualifying corporate bond	paragraph 99(1)
qualifying employee	paragraph 8(6)
recognised stock exchange	[ <sup>F129</sup> section 1005 of ITA 2007]
redundancy	paragraph 99(1)
reinvestment	paragraph 62(3)(a)
relevant employment	paragraph 95(2)
rights arising under a rights issue	paragraph 99(1)
salary	paragraph 43(4)

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share incentive plan (“SIP”)	section 488(4)
shares	paragraph 99(2) (and in the context of a new holding, paragraph 87(6))
the SIP code	section 488(3)
F130	F130
...	...
the specified retirement age	paragraph 98(1)
tax	[ <sup>F131</sup> section 989 of ITA 2007]
[ <sup>F132</sup> tribunal	section 989 of ITA 2007]
tax year	[ <sup>F133</sup> section 4(2) of ITA 2007 (as applied by section 989 of that Act)]
the trustees	paragraphs 2(2), 71(1)
the trust instrument	paragraph 71(3)
withdrawal of shares from plan	paragraph 96(1)

#### Textual Amendments

- F121** Sch. 2 para. 100 entry repealed (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), Sch. 4 para. 121(e), Sch. 5; [S.I. 2005/1126](#), art. 2(2)(h)(i)
- F122** Words in Sch. 2 para. 100 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 447\(3\)\(a\)](#) (with [Sch. 2](#))
- F123** Words in Sch. 2 para. 100 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 447\(3\)\(b\)](#) (with [Sch. 2](#))
- F124** Words in Sch. 2 para. 100 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 447\(3\)\(c\)](#) (with [Sch. 2](#))
- F125** Words in Sch. 2 para. 100 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 447\(3\)\(d\)](#) (with [Sch. 2](#))
- F126** Words in Sch. 2 para. 100 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 447\(3\)\(e\)](#) (with [Sch. 2](#))
- F127** Words in Sch. 2 para. 100 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 447\(3\)\(f\)](#) (with [Sch. 2](#))
- F128** Words in Sch. 2 para. 100 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 447\(3\)\(g\)](#) (with [Sch. 2](#))
- F129** Words in Sch. 2 para. 100 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 447\(3\)\(h\)](#) (with [Sch. 2](#))
- F130** Words in Sch. 2 para. 100 Table 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. 343\(2\)](#)
- F131** Words in Sch. 2 para. 100 substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 396\(8\)](#) (with [Sch. 2](#))
- F132** Words in Sch. 2 para. 100 Table 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. 343\(3\)](#)
- F133** Words in Sch. 2 para. 100 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 447\(3\)\(j\)](#) (with [Sch. 2](#))

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## SCHEDULE 3

Section 516

### APPROVED SAYE OPTION SCHEMES

#### PART 1

##### INTRODUCTION

###### *Approval of SAYE option schemes*

- 1 (1) This Schedule makes provision for the approval of SAYE option schemes by [<sup>F65</sup>an officer of Revenue and Customs].
- (2) Parts 2 to 7 of this Schedule contain requirements that have to be met in order for schemes to be approved under this Schedule.
- (3) The requirements consist of general requirements (see Part 2) and requirements as to—
- the eligibility of individuals to participate in a scheme (see Part 3),
  - the shares to which schemes can apply (see Part 4),
  - the existence of a linked [<sup>F134</sup>savings arrangement] (see Part 5),
  - the share options that may be granted under the scheme (see Part 6), and
  - the exchange of share options (see Part 7).
- (4) Part 8 of this Schedule deals with the approval of schemes and the withdrawal of approval.

#### Textual Amendments

- F65** 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)
- F134** Words in Sch. 3 para. 1(3) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 618\(2\)](#) (with Sch. 2)

###### *SAYE option schemes*

- 2 (1) In the SAYE code an “SAYE option scheme” means (in accordance with section 516(4)) a scheme established by a company which provides—
- (a) for share options to be granted to employees and directors, and
  - (b) for the shares acquired by the exercise of the share options to be paid for in the way mentioned in paragraph 24 (payments for shares to be linked to approved [<sup>F135</sup>savings arrangements]).
- (2) In the SAYE code, in relation to an SAYE option scheme—
- “participant” means an individual who has been granted (but has not yet exercised) share options under the scheme (“the options”);
  - “participate” means obtain and exercise share options under the scheme;
  - “the scheme organiser” means the company which has established the scheme.

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### Textual Amendments

**F135** Words in Sch. 3 para. 2(1)(b) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 618\(3\)](#) (with Sch. 2)

### Group schemes

- 3
- (1) An SAYE option scheme established by a company that controls one or more other companies (a “parent scheme company”) may extend to all or any of those other companies.
  - (2) In the SAYE code an SAYE option scheme established by a parent scheme company which so extends is called a “group scheme”.
  - (3) In relation to a group scheme a “constituent company” means—
    - (a) the parent scheme company, or
    - (b) any other company to which for the time being the scheme is expressed to extend.
  - (4) Paragraph 46 deals with jointly owned companies and companies controlled by them.

## PART 2

### GENERAL REQUIREMENTS FOR APPROVAL

#### *General requirements for approval: introduction*

- 4
- An SAYE option scheme must meet the requirements of—  
 paragraph 5 (general restriction on contents of scheme),  
 paragraph 6 (all-employee nature of scheme),  
 paragraph 7 (participation on similar terms), and  
 paragraph 8 (no preferential treatment for directors and senior employees).

#### *General restriction on contents of scheme*

- 5
- The scheme must not contain features which are neither essential nor reasonably incidental to the purpose of providing benefits for employees and directors in the nature of share options.

#### *All-employee nature of scheme*

- 6
- (1) The scheme must provide that every person who meets the conditions in sub-paragraph (2) is eligible to participate in the scheme.
  - (2) A person (“E”) meets the conditions in this sub-paragraph if—
    - (a) E is an employee or a full-time director of the scheme organiser or (in the case of a group scheme) of a constituent company,
    - (b) E has been such an employee or director at all times during a qualifying period of not more than 5 years,

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- [<sup>F136</sup>(c) E's earnings from the office or employment within paragraph (a) are (or would be if there were any) general earnings to which section 15 applies (earnings for year when employee UK resident),
- (ca) those general earnings are (or would be if there were any) earnings for a tax year in which E is ordinarily resident in the United Kingdom, and]
- (d) E is not ineligible under paragraph 11 (the “no material interest” requirement).
- (3) The scheme must not contain any feature which has or is likely to have the effect of discouraging any description of persons who—
- (a) meet the conditions in sub-paragraph (2), or
- (b) met those conditions before ceasing to be persons within sub-paragraph (2) (a),
- from actually participating in the scheme.
- (4) Sub-paragraph (3) does not apply to any provision required or authorised by a provision of this Schedule.

#### Textual Amendments

**F136** Sch. 3 para. 6(2)(c)(ca) substituted for Sch. 3 para. 6(2)(c) (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 42](#)

#### *Participation on similar terms*

- 7 (1) The requirements of this paragraph are—
- (a) that every person who meets the conditions in paragraph 6(2) (all-employee nature of scheme) must be eligible to participate in the scheme on similar terms, and
- (b) that every person who participates in the scheme must actually do so on similar terms.
- (2) The requirements of this paragraph are not infringed by the fact that the rights of those participating in the scheme to obtain and exercise share options vary according to—
- (a) the levels of their remuneration,
- (b) the length of their service, or
- (c) any similar factors.

#### *No preferential treatment for directors and senior employees*

- 8 (1) The requirement of this paragraph is that, if the scheme organiser is a member of a group of companies, the scheme does not and is not likely to have the effect of conferring benefits wholly or mainly—
- (a) on directors of companies in the group, or
- (b) on employees of companies in the group who receive the higher or highest levels of remuneration.
- (2) “A group of companies” means a company and any other companies of which it has control.

*Status: Point in time view as at 01/03/2013.*

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### PART 3

#### ELIGIBILITY OF INDIVIDUALS TO PARTICIPATE IN SCHEME

##### *Requirements relating to the eligibility of individuals: introduction*

- 9 An SAYE option scheme must meet the requirements of—  
paragraph 10 (the employment requirement), and  
paragraph 11 (the “no material interest” requirement).

##### *The employment requirement*

- 10 (1) The scheme must ensure that an individual is not eligible to participate in the scheme at a particular time unless the individual is then a director or employee of—  
(a) the scheme organiser, or  
(b) in the case of a group scheme, a constituent company.
- (2) The requirement of this paragraph is not infringed by a provision of the scheme required or authorised by a provision of this Schedule.

##### *The “no material interest” requirement*

- 11 (1) The scheme must ensure that an individual is not eligible to participate in the scheme on any date if the individual has on that date, or has had within the 12 months ending with that date, a material interest in a close company—  
(a) whose shares may be acquired as a result of exercising share options granted under the scheme, or  
(b) which has control of a company whose shares may be acquired as a result of exercising share options granted under the scheme, or  
(c) which is a member of a consortium which owns a company within paragraph (b).
- (2) For the purposes of this paragraph an individual is to be regarded as having a material interest in a company if—  
(a) the individual, or  
(b) the individual together with one or more of the individual’s associates, or  
(c) any such associate, 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 12 and 13, and  
(b) as regards the meaning of “associate”, by paragraph 14 (read with paragraphs 15 and 16).
- (4) In this paragraph and paragraph 12 “close company” includes a company that would be a close company but for—  
(a) [F137section 442(a) of CTA 2010] (exclusion of companies not resident in the United Kingdom), or  
(b) [F138sections 446 and 447 of CTA 2010] (exclusion of certain quoted companies).



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#### Textual Amendments

- F137** Words in Sch. 3 para. 11(4)(a) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 397(2)(a)** (with Sch. 2)
- F138** Words in Sch. 3 para. 11(4)(b) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 397(2)(b)** (with Sch. 2)

#### *Meaning of “material interest”*

- 12 (1) In paragraph 11 (the “no material interest” requirement) references to a “material interest” in a company are to—
- (a) a material interest in the share capital of the company, or
  - (b) a material interest in its assets.
- (2) A material interest in the share capital of a company means—
- (a) beneficial ownership of, or
  - (b) 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.
- (3) A material interest in the assets of a company means—
- (a) possession of, or
  - (b) an 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.
- (4) In this paragraph “participator” has the meaning given by <sup>F139</sup>section 454 of CTA 2010].
- (5) This paragraph is supplemented by paragraph 13 (material interest: options etc.).

#### Textual Amendments

- F139** Words in Sch. 3 para. 12(4) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 397(3)** (with Sch. 2)

#### *Material interest: options and interests in SIPs*

- 13 (1) For the purposes of paragraph 12 (meaning of “material interest”) a right to acquire shares (however arising) is to be treated as a right to control them.
- (2) Sub-paragraph (3) also applies for the purposes of paragraph 12 in a case where—
- (a) the shares to be attributed to an individual consist of or include shares which the individual 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 would be contractually bound to issue in the event of the exercise of the right.

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- (3) In determining at any time prior to the exercise of the right whether the number of shares to be attributed to the individual exceeds 25% of the ordinary share capital of the company, that ordinary share capital is to be treated as increased by the number of unissued shares referred to in sub-paragraph (2)(b).
- (4) The references in sub-paragraphs (2) and (3) to the shares to be attributed to an individual are to the shares which—
- (a) for the purposes of paragraph 12(2) (material interest in share capital), and
  - (b) in accordance with paragraph 11(2) (material interest can consist of or include that of individual's associates),
- fall to be brought into account in the individual's case so that it can be determined whether their number exceeds 25% of the company's ordinary share capital.
- (5) In applying paragraph 12 the following are to be disregarded—
- (a) the interest of the trustees of any approved SIP (within the meaning of the SIP code: see section 488(4)) in any shares which are held by them in accordance with the plan but which have not been appropriated to, or acquired on behalf of, an individual, and
  - (b) any rights exercisable by the trustees as a result of that interest.

*Meaning of “associate”*

- 14 (1) In paragraph 11(2) (the “no material interest” requirement) “associate”, in relation to an individual, means—
- (a) any relative or partner of that individual,
  - (b) the trustee or trustees of any settlement in relation to which that individual, or any of the individual's relatives (living or dead), is or was a settlor, or
  - (c) where that individual is interested in any shares or obligations of the company mentioned in paragraph 11(2) which are subject to any trust or are part of the estate of a deceased person—
    - (i) the trustee or trustees of the settlement concerned, or
    - (ii) the personal representatives of the deceased,
 as the case may be.
- (2) Sub-paragraph (1)(c) needs to be read with paragraphs 15 and 16 (which relate to employee benefit trusts and discretionary trusts).
- (3) In this paragraph—
- “relative” means—
- (a) spouse [<sup>F140</sup>or civil partner],
  - (b) parent, child or remoter relation in the direct line, or
  - (c) brother or sister;
- “settlor” and “settlement” have the same meaning as in [<sup>F141</sup>Chapter 5 of Part 5 of ITTOIA 2005 (see section 620 of that Act)].

**Textual Amendments**

**F140** Words in Sch. 3 para. 14(3) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **171**

*Status: Point in time view as at 01/03/2013.*

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**F141** Words in Sch. 3 para. 14(3) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 618\(4\)](#) (with Sch. 2)

*Meaning of “associate”: trustees of employee benefit trust*

- 15 (1) This paragraph applies for the purposes of paragraph 14(1)(c) (meaning of “associate”: trustees of settlement) where the individual is interested as a beneficiary of an employee benefit trust in shares or obligations of the company mentioned in paragraph 11(2).
- (2) The trustees of the employee benefit trust are not to be regarded as associates of the individual as a result only of the individual’s being so interested if neither—
- (a) the individual, nor
  - (b) the individual together with one or more of the individual’s associates, nor
  - (c) any such associate, with or without any other such associates,
- has at any time after 13th March 1989 been the beneficial owner of, or been 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 sub-paragraph (2)(b) and (c) “associate” has the meaning given by paragraph 14(1), but does not include the trustees of an employee benefit trust as a result only of the individual’s having an interest in shares or obligations of the trust.
- (4) Chapter 11 of Part 7 of this Act (which deals with the attribution of interests in companies to beneficiaries of employee benefit trusts) applies for the purposes of sub-paragraph (2).
- (5) In this paragraph “employee benefit trust” has the same meaning as in that Chapter (see sections 550 and 551).

*Meaning of “associate”: trustees of discretionary trust*

- 16 (1) This paragraph applies for the purposes of paragraph 14(1)(c) (meaning of “associate”: trustees of settlement) where—
- (a) the individual (“the beneficiary”) is one of the objects of a discretionary trust,
  - (b) the property subject to the trust has at any time consisted of, or included, shares or obligations of the company mentioned in paragraph 11(2),
  - (c) the beneficiary has ceased to be eligible to benefit under the trust as a result of—
    - (i) an irrevocable disclaimer or release executed by the beneficiary, or
    - (ii) the irrevocable exercise by the trustees of a power to exclude the beneficiary from the objects of the trust,
  - (d) immediately after the beneficiary ceased to be so eligible, no associate of the beneficiary was interested in the shares or obligations of the company that were subject to the trust, and
  - (e) during the period of 12 months ending with the date on which the beneficiary ceased to be so eligible, neither the beneficiary nor any associate of the beneficiary received any benefit under the trust.
- (2) The beneficiary is not, as a result only of the matters referred to in sub-paragraph (1) (a) and (b), to be regarded as having been interested in the shares or obligations of the company at any time during that period of 12 months.

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- (3) In sub-paragraph (1) “associate” has the meaning given by paragraph 14(1) but with the omission of paragraph (c).

#### PART 4

##### SHARES TO WHICH SCHEMES CAN APPLY

###### *Requirements relating to shares that may be subject to share options: introduction*

- 17 (1) An SAYE option scheme must meet the requirements of—  
 paragraph 18 (shares must be ordinary shares of certain companies),  
 paragraph 19 (requirements as to listing),  
 paragraph 20 (shares must be fully paid up and not redeemable),  
 paragraph 21 (only certain kinds of restrictions allowed), and  
 paragraph 22 (requirements as to other shareholdings).
- (2) In this Part “eligible shares” means shares which may be acquired by the exercise of share options under the scheme.

###### *Shares must be ordinary shares of certain companies*

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

###### *Requirements as to listing*

- 19 (1) Eligible shares must be—  
 (a) shares of a class listed on a recognised stock exchange,  
 (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 listed company.
- (2) A “listed company” is a company whose shares are listed on a recognised stock exchange, other than—  
 (a) a close company, or  
 (b) a company that would be a close company if resident in the United Kingdom.

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

- 20 Eligible shares must be—  
 (a) fully paid up, and  
 (b) not redeemable.

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*Only certain kinds of restriction allowed*

- 21 (1) Eligible shares must not be subject to any restrictions (see sub-paragraph (4)) other than—
- (a) those attaching to all shares of the same class, or
  - (b) those permitted by sub-paragraph (2).
- (2) If the conditions of sub-paragraph (3) are met, eligible shares may be subject to a restriction imposed by the company's articles of association—
- (a) requiring all shares held by directors or employees—
    - (i) of the company, or
    - (ii) of any other company of which it has control,to be disposed of, or offered for sale, on ceasing to be so held, and
  - (b) requiring all shares acquired, as a result of rights or interests obtained by such directors or employees, by persons who—
    - (i) are not such directors or employees, or
    - (ii) have ceased to be such directors or employees,to be disposed of, or offered for sale, when they are acquired.
- (3) The conditions of this sub-paragraph are—
- (a) that a disposal required by the restriction will be by way of sale for a consideration in money on terms specified in the articles of association, and
  - (b) that under general conditions contained in the articles of association anyone disposing of shares of the same class (whether or not held or acquired as mentioned in sub-paragraph (2)) may be required to sell them on terms which are the same as those mentioned in paragraph (a).
- (4) For the purposes of this paragraph shares are subject to 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 the person or to a person connected with the person.
- This is subject to sub-paragraphs (5) and (6).
- (5) Sub-paragraph (4) does not extend to 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 Financial Services and Markets Act 2000 (c. 8).
- (6) Any discretion of the directors under the articles of association of the company to refuse to accept the transfer of shares is to be disregarded for the purposes of this paragraph if the directors—
- (a) have undertaken to [<sup>F65</sup>an officer of Revenue and Customs] not to exercise it in such a way as to discriminate against persons participating in the scheme, and
  - (b) have notified all those who are eligible to do so of the existence of the undertaking.

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- (7) In this paragraph “articles of association” includes, in the case of a company incorporated under the law of a country outside the United Kingdom, any equivalent document relating to the company.

**Textual Amendments**

**F65** 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)

*Requirements as to other shareholdings*

- 22 (1) The majority of the issued shares of the same class as the eligible shares must be—
- (a) employee-control shares, or
  - (b) open market shares,
- unless the eligible shares are shares in a company whose ordinary share capital consists of shares of one class only.
- (2) Shares in a company are “employee-control shares” if—
- (a) the persons holding the shares are, by virtue of their holding, together able to control the company, and
  - (b) those persons are or have been employees or directors of the company or of another company which is under the control of the company.
- (3) Shares in a company are “open market shares” if the persons holding the shares are not—
- (a) persons who acquired their shares as a result of a right conferred on them or an opportunity afforded to them as a director or employee of the scheme organiser or any other company, and not as a result of an offer to the public, or
  - (b) trustees holding shares on behalf of persons who acquired their beneficial interests in the shares as mentioned in paragraph (a), or
  - (c) in the case of shares which—
    - (i) are not of a class listed on a recognised stock exchange, and
    - (ii) are in a company which is under the control of a listed company (as defined by paragraph 19(2)),
 companies which have control of the company whose shares are in question or of which that company is an associated company.

**PART 5**

REQUIREMENT FOR LINKED SAVINGS [F142 ARRANGEMENT]

**Textual Amendments**

**F142** Word in Sch. 3 Pt. 5 heading substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 618\(5\)\(a\)](#) (with Sch. 2)

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*Requirements as to linked savings [F143 arrangement] : introduction*

**Textual Amendments**

**F143** Word in Sch. 3 para. 23 heading substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 618\(5\)\(a\)](#) (with Sch. 2)

- 23 An SAYE option scheme must meet the requirements of—  
paragraph 24 (payments for shares to be linked to approved [F144 savings arrangements]), and  
paragraph 25 (requirements as to contributions to [F144 savings arrangements]).

**Textual Amendments**

**F144** Words in Sch. 3 para. 23 substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 618\(5\)\(b\)](#) (with Sch. 2)

*Payments for shares to be linked to approved savings [F145 arrangements]*

**Textual Amendments**

**F145** Word in Sch. 3 para. 24 heading substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 618\(6\)\(a\)](#) (with Sch. 2)

- 24 (1) The scheme must provide for shares acquired by the exercise of share options granted under the scheme to be paid for with money not exceeding the amount of repayments made and any interest paid under a [F146 certified SAYE savings arrangement] which has been approved by [F65 an officer of Revenue and Customs] for the purposes of this Schedule [F147 (“the approved savings arrangement”)].

<sup>F148</sup>(2) .....

**Textual Amendments**

**F65** 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)

**F146** Words in Sch. 3 para. 24(1) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 618\(6\)\(b\)](#) (with Sch. 2)

**F147** Words in Sch. 3 para. 24(1) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 618\(6\)\(c\)](#) (with Sch. 2)

**F148** Sch. 3 para. 24(2) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 618\(7\), Sch. 3](#) (with Sch. 2)

*Status: Point in time view as at 01/03/2013.*

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*Requirements as to contributions to savings [F149 arrangements]*

**Textual Amendments**

**F149** Word in Sch. 3 para. 25 heading substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 618\(8\)\(a\)](#) (with Sch. 2)

- 25 (1) The scheme must provide for a person's contributions under the [F150 the approved savings arrangement] to be of an amount that will secure, as nearly as possible, repayment of an amount equal to the option price.
- (2) The "option price" means the amount payable, on exercising share options granted under the scheme, in order to acquire the maximum number of shares that may be acquired under them (see paragraph 28).
- (3) The scheme must neither—
- (a) permit the aggregate amount of a person's contributions under [F151 certified SAYE savings arrangements linked to approved SAYE option schemes] to exceed £250 per month, nor
  - (b) impose a minimum on the amount of a person's contributions which exceeds £10 per month.
- (4) The Treasury may by order amend sub-paragraph (3) by substituting for any amount for the time being specified there an amount specified in the order.

**Textual Amendments**

**F150** Words in Sch. 3 para. 25(1) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 618\(8\)\(b\)](#) (with Sch. 2)

**F151** Words in Sch. 3 para. 25(3)(a) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 618\(8\)\(c\)](#) (with Sch. 2)

*Repayments under a savings [F152 arrangement] : whether bonuses included*

**Textual Amendments**

**F152** Word in Sch. 3 para. 26 heading substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 618\(9\)\(a\)](#) (with Sch. 2)

- 26 (1) For the purposes of this Schedule repayments under a [F153 certified SAYE savings arrangement] may be taken as including, or as not including, a bonus.
- (2) The bonus may either be the maximum bonus under that [F154 arrangement] or a lesser bonus.
- (3) An SAYE option scheme must require the question whether repayments are to be taken as including bonuses to be determined at the time when share options are granted.



*Status: Point in time view as at 01/03/2013.*

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### Textual Amendments

- F153** Words in Sch. 3 para. 26(1) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 618\(9\)\(b\)](#) (with Sch. 2)
- F154** Word in Sch. 3 para. 26(2) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 618\(9\)\(c\)](#) (with Sch. 2)

## PART 6

### REQUIREMENTS ETC. RELATING TO SHARE OPTIONS

#### *Requirements etc. relating to share options: introduction*

- 27 (1) An SAYE option scheme must meet the requirements of—  
paragraph 28 (requirements as to price for acquisition of shares),  
paragraph 29 (share options must not be transferable),  
paragraph 30 (time for exercising options: general),  
paragraph 31 (requirement to have a “specified age”),  
paragraph 32 (exercise of options: death),  
paragraph 33 (exercise of options: reaching specified age without retiring), and  
paragraph 34 (exercise of options: scheme-related employment ends).
- (2) An SAYE option scheme may make any provision authorised by—  
paragraph 36 (exercise of options: employment in associated company at bonus date), and  
paragraph 37 (exercise of options: company events).

#### *Requirements as to price for acquisition of shares*

- 28 (1) The price at which shares may be acquired by the exercise of a share option granted under the scheme—  
(a) must be stated at the time when the option is granted, and  
(b) must not be manifestly less than 80% of the market value of shares of the same class at that time.

This is subject to sub-paragraphs (2) and (3).

- (2) [<sup>F65</sup>An officer of Revenue and Customs] and the scheme organiser may agree in writing that sub-paragraph (1)(b) is to apply as if the reference to the time when the option is granted were to an earlier time or times stated in the agreement.
- (3) The scheme may provide for one or more of the following—  
(a) the price at which shares may be acquired by the exercise of a share option granted under the scheme,  
(b) the number of shares which may be so acquired, or  
(c) the description of shares which may be so acquired,  
to be varied so far as necessary to take account of a variation in the share capital of which the shares form part.

*Status: Point in time view as at 01/03/2013.*

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- (4) But the scheme must provide that no such variation is to be made without the prior approval of [<sup>F65</sup>an officer of Revenue and Customs].

#### Textual Amendments

**F65** 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)

#### *Share options must not be transferable*

- 29 (1) The scheme must ensure that share options granted to a participant are not capable of being transferred by the participant.
- (2) Paragraph 32 provides for the exercise of the options where the participant has died.

#### *Time for exercising options: general*

- 30 (1) The scheme must ensure that share options granted under it must not be capable of being exercised—
- (a) before the bonus date, or
  - (b) later than 6 months after that date.
- (2) However, in sub-paragraph (1)—
- (a) paragraph (a) is subject to paragraphs 32 to 34 and 37 (exercise of options in the event of death, reaching the specified age without retiring, scheme-related employment ending or certain events occurring in relation to the company), and
  - (b) paragraph (b) is subject to paragraph 32.
- (3) In the SAYE code “the bonus date” means the date on which repayments under [<sup>F155</sup>the approved savings arrangement] are due.
- (4) For this purpose repayments are to be regarded as due as follows—
- (a) if the repayments are to be taken as including the maximum bonus (see paragraph 26(2)), on the earliest date on which that bonus is payable, and
  - (b) in any other case, on the earliest date on which a bonus is payable.

#### Textual Amendments

**F155** Words in Sch. 3 para. 30(3) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 618\(10\)](#) (with Sch. 2)

#### *Requirement to have a “specified age”*

- 31 (1) The scheme must specify the age that is to be the specified age for the purposes of the scheme (see paragraphs 33(1) and 34(2)).
- (2) The age specified must be—
- (a) the same for men and women,
  - (b) not less than 60, and

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- (c) not more than 75.

*Exercise of options: death*

- 32 The scheme must provide that, if a participant dies before exercising the options, they may be exercised on or after the date of death but not later than—
- (a) 12 months after the date of death, in a case where the participant dies before the bonus date, or
  - (b) 12 months after the bonus date, in a case where the participant dies on or within 6 months after that date.

*Exercise of options: reaching specified age without retiring*

- 33 (1) The scheme must provide that, if a participant (“P”) continues to hold the office or employment by reference to which P satisfies the condition in paragraph 10(1) (the employment requirement) after the date on which P reaches the specified age, P may exercise the options within 6 months of that date.
- (2) This paragraph has effect subject to paragraph 30(1)(b) (options must not be capable of being exercised later than 6 months after bonus date).

*Exercise of options: scheme-related employment ends*

- 34 (1) The scheme must provide that, if a participant (“P”) no longer holds scheme-related employment (see paragraph 35), the options are exercisable as set out in sub-paragraphs (2) to (4).
- (2) In a case where P ceases to hold the scheme-related employment because of—
- (a) injury or disability or redundancy within the meaning of ERA 1996 [F156 or ER(NIO) 1996 ], or
  - (b) retirement on reaching the specified age, or any other age at which P is bound to retire in accordance with the terms of P’s contract of employment,
- the options may only be exercised within 6 months after the termination date.
- (3) In a case where P ceases to hold the scheme-related employment for any other reason, share options granted more than 3 years before the termination date either—
- (a) may not be exercised, or
  - (b) may only be exercised within 6 months after the termination date,
- according to which of these alternatives is specified in the scheme.
- (4) Subject to any provision made under sub-paragraph (5), in a case where P ceases to hold the scheme-related employment for any reason other than one within sub-paragraph (2)(a) or (b), share options granted 3 years or less before the termination date may not be exercised at all.
- (5) The scheme may [F157 make provision about the time when the options may be exercised] in a case where P ceases to hold the scheme-related employment only because—
- (a) it is in a company of which the scheme organiser ceases to have control, or
  - (b) it relates to a business or part of a business which is transferred to a person who is not an associated company of the scheme organiser.

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- [<sup>F159</sup>(5A) If the scheme makes provision by virtue of sub-paragraph (5), the provision must be either—
- (a) that the options may be exercised within 6 months after the termination date, or
  - (b) that the options may be exercised within 6 months after the date (if any) when P ceases to hold the employment which (before the termination date) was the scheme-related employment for a reason within sub-paragraph (2) (a) or (b).]
- (6) This paragraph has effect subject to paragraph 30(1)(b) (options must not be capable of being exercised later than 6 months after bonus date).
- (7) In this paragraph—
- “scheme-related employment” means the office or employment by reference to which the person satisfies the condition in paragraph 10(1) (“the employment requirement”);
  - “the termination date” means the date when P ceases to hold the scheme-related employment (see paragraph 35).

#### Textual Amendments

- F156** Words in Sch. 3 para. 34(2)(a) inserted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 21 para. 11\(2\)](#)
- F157** Words in Sch. 3 para. 34(5) substituted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 21 para. 11\(3\)\(a\)](#)
- F158** Words in Sch. 3 para. 34(5) repealed (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 21 para. 11\(3\)\(b\)](#), [Sch. 43 Pt. 3\(3\)](#)
- F159** Sch. 3 para. 34(5A) inserted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 21 para. 11\(4\)](#)

#### *Time when scheme-related employment ends*

- 35 (1) This paragraph applies for the purposes of paragraph 34 (exercise of options: scheme-related employment ends).
- (2) Unless sub-paragraph (3) applies, a participant (“P”) is to be regarded as ceasing to hold scheme-related employment on the date when the office or employment in question terminates.
- (3) If—
- (a) P’s scheme-related employment terminates, but
  - (b) P continues to hold an office or employment in the scheme organiser or any associated company,
- P is to be regarded as ceasing to hold the scheme-related employment on the date when P no longer holds any office or employment within paragraph (b), and not at any earlier time.
- (4) For the purposes of sub-paragraph (3) 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;
- and for this purpose the question of whether a person controls a company is to be determined in accordance with [<sup>F160</sup>sections 450 and 451 of CTA 2010] (“control” in the context of close companies).

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- (5) Nothing in paragraph 34 or this paragraph applies where a person's scheme-related employment terminates on that person's death (see instead paragraph 32).
- (6) In this paragraph "scheme-related employment" has the same meaning as in paragraph 34.

#### Textual Amendments

**F160** Words in Sch. 3 para. 35(4) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 397(4)** (with Sch. 2)

#### *Exercise of options: employment in associated company at bonus date*

- 36 The scheme may provide that if at the bonus date a participant holds an office or employment in a company which is—
- (a) an associated company of the scheme organiser, but
  - (b) not a constituent company,
- the options may be exercised within 6 months after that date.

#### *Exercise of options: company events*

- 37 (1) The scheme may provide that share options relating to shares in a company may be exercised within 6 months after the relevant date for the purposes of sub-paragraph (2), (4) or (5).
- (2) The relevant date for the purposes of this sub-paragraph is the date when—
- (a) a person has obtained control of the company as a result of making an offer falling within sub-paragraph (3), and
  - (b) any condition subject to which the offer is made has been satisfied.
- (3) An offer falls within this sub-paragraph if it is—
- (a) a general offer to acquire the whole of the issued ordinary share capital of the company, which is made on a condition such that, if it is met, the person making the offer will have control of the company, or
  - (b) a general offer to acquire all the shares in the company which are of the same class as the shares in question obtained under the scheme.
- (4) The relevant date for the purposes of this sub-paragraph is the date when the court sanctions under [<sup>F161</sup>section 899 of the Companies Act 2006 (court sanction for compromise or arrangement)] a compromise or arrangement proposed for the purposes of or in connection with a scheme for the reconstruction or amalgamation of the company.
- (5) The relevant date for the purposes of this sub-paragraph is the date when the company passes a resolution for voluntary winding up.
- (6) The scheme may provide that share options relating to shares in a company may be exercised at any time when any person is bound or entitled to acquire shares in the company under [<sup>F162</sup>sections 979 to 982 of the Companies Act 2006 (takeover offers: right of offeror to buy out minority shareholder)].
- (7) For the purposes of this paragraph—

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- (a) “share options” means share options granted under the scheme; and
  - (b) a person is to be treated as obtaining control of a company if that person and others acting in concert together obtain control of it.
- (8) This paragraph has effect subject to paragraph 30(1)(b) (options must not be capable of being exercised later than 6 months after bonus date).

#### Textual Amendments

- F161** Words in Sch. 3 para. 37(4) substituted for Sch. 3 para. 37(4)(a)(b) (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments\) \(Taxes and National Insurance\) Order 2008 \(S.I. 2008/954\)](#), arts. 1(1), **32(2)** (with art. 4)
- F162** Words in Sch. 3 para. 37(6) substituted for Sch. 3 para. 37(6)(a)(b) (6.4.2007) by [The Companies Act 2006 \(Commencement No. 2, Consequential Amendments, Transitional Provisions and Savings\) Order 2007 \(S.I. 2007/1093\)](#), **Sch. 3 para. 3** (with art. 11(1))

## PART 7

### EXCHANGE OF SHARE OPTIONS

#### *Exchange of options on company reorganisation*

- 38 (1) An SAYE option scheme may provide that if—
- (a) there is a company reorganisation affecting a scheme company (that is, a company whose shares may be acquired by the exercise of share options obtained under the scheme: see paragraph 18), and
  - (b) a participant has obtained share options under the scheme which are to acquire shares of the scheme company (“the old options”),
- the participant may agree with the acquiring company to release the old options in consideration of the participant being granted new share options.
- (2) For the purposes of this paragraph there is a company reorganisation affecting a scheme company if another company (“the acquiring company”)—
- (a) obtains control of the scheme company—
    - (i) as a result of making a general offer to acquire the whole of the issued ordinary share capital of the scheme company which is made on a condition such that, if it is met, the person making the offer will have control of that company, or
    - (ii) as a result of making a general offer to acquire all the shares in the scheme company which are of the same class as those subject to the old options;
  - <sup>[F163]</sup>(b) obtains control of the scheme company as a result of a compromise or arrangement sanctioned by the court under section 899 of the Companies Act 2006 (court sanction for compromise or arrangement); or
  - (c) becomes bound or entitled to acquire shares in the scheme company under sections 979 to 982 of that Act (takeover offers: right of offeror to buy out minority shareholder).]
- (3) A scheme that makes provision under sub-paragraph (1) must require the agreement referred to in that sub-paragraph to be made—

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- (a) where control is obtained in the way set out in sub-paragraph (2)(a)(i) or (ii), within the period of 6 months beginning with the time when the acquiring company obtains control and any condition subject to which the offer is made is met,
- (b) where control is obtained in the way set out in sub-paragraph (2)(b), within the period of 6 months beginning with the time when the court sanctions the compromise or arrangement, and
- (c) where sub-paragraph (2)(c) applies, within the period during which the acquiring company remains bound or entitled as mentioned in that provision.

#### Textual Amendments

**F163** Sch. 3 para. 38(2)(b)(c) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments\) \(Taxes and National Insurance\) Order 2008 \(S.I. 2008/954\)](#), arts. 1(1), **32(3)** (with art. 4)

#### *Requirements about share options granted in exchange*

- 39 (1) This paragraph applies to a scheme that makes provision under paragraph 38 (exchange of options on company reorganisation).
- (2) The scheme must require the new share options to relate to shares in a company which—
- (a) is different from the company whose shares are subject to the old options, and
  - (b) is either the acquiring company itself or some other company within sub-paragraph (b) or (c) of paragraph 18 (shares must be ordinary shares of certain companies), namely—
    - (i) a company which has control of the scheme organiser, or
    - (ii) a company which is, or has control of a company which is, a member of a consortium owning either the scheme organiser or a company having control of the scheme organiser.
- For this purpose the control in question may be through the medium of the acquiring company.
- (3) The scheme must also require the new share options to be equivalent to the old options.
- (4) For the new options to be regarded as equivalent to the old options—
- (a) the shares to which they relate must meet the conditions in paragraphs 18 to 22 (types of share that may be used),
  - (b) they must be exercisable in the same manner as the old options and subject to the provisions of the scheme as it had effect immediately before the release of the old options,
  - (c) the total market value of the shares subject to the old options immediately before the release of those options by the participant must equal the total market value, immediately after the grant of the new options to the participant, of the shares subject to those options, and
  - (d) the total amount payable by the participant for the acquisition of shares under the new options must be equal to the total amount that would have been so payable under the old options.

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- (5) For the purposes of the SAYE code, new share options granted under the terms of a provision included in a scheme under paragraph 38 are to be treated as having been granted at the time when the corresponding old options were granted.
- (6) This also applies for the purposes of the provisions of the scheme in their operation, after the grant of the new options, by virtue of a condition complying with subparagraph (4)(b).

## PART 8

### APPROVAL OF SCHEMES

#### *Application for approval*

- 40 (1) Where—
- (a) an SAYE option scheme has been established, and
  - (b) the scheme organiser makes an application to [<sup>F65</sup>an officer of Revenue and Customs] for approval of the scheme,
- [<sup>F65</sup>an officer of Revenue and Customs] must approve the scheme if [<sup>F164</sup>the officer][<sup>F165</sup>is] satisfied that it meets the requirements of Parts 2 to 7 of this Schedule.
- (2) An application for approval—
- (a) must be in writing, and
  - (b) must contain such particulars and be supported by such evidence as [<sup>F65</sup>an officer of Revenue and Customs] may require.
- (3) Once [<sup>F65</sup>an officer of Revenue and Customs][<sup>F166</sup>has] decided whether or not to approve the scheme, [<sup>F167</sup>the officer] must give notice of [<sup>F168</sup>the] decision to the scheme organiser.

#### Textual Amendments

- F65** 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)
- F164** Words in Sch. 3 para. 40(1) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 103(1)(n)**; S.I. 2005/1126, art. 2(2)(h)
- F165** Word in Sch. 3 para. 40(1) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 122(a)(i)**; S.I. 2005/1126, art. 2(2)(h)
- F166** Word in Sch. 3 para. 40(3) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 122(a)(ii)**; S.I. 2005/1126, art. 2(2)(h)
- F167** Words in Sch. 3 para. 40(3) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 103(1)(n)**; S.I. 2005/1126, art. 2(2)(h)
- F168** Words in Sch. 3 para. 40(3) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 103(3)(d)**; S.I. 2005/1126, art. 2(2)(h)

#### *Appeal against refusal of approval*

- 41 (1) If [<sup>F65</sup>an officer of Revenue and Customs][<sup>F169</sup>refuses] to approve the scheme, the scheme organiser may appeal <sup>F170</sup>....



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- (2) The notice of appeal must be given to [<sup>F65</sup>an officer of Revenue and Customs ] within 30 days after the date on which notice of [<sup>F171</sup>the officer's] decision was given to the scheme organiser.
- (3) [<sup>F172</sup>If the appeal is notified to and allowed by the tribunal, the tribunal may direct][<sup>F65</sup>an officer of Revenue and Customs] to approve the scheme with effect from a date specified by the [<sup>F173</sup>tribunal].
- (4) The date so specified must not be earlier than that of the application for approval.

#### Textual Amendments

- F65** 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)
- F169** Word in Sch. 3 para. 41(1) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 122(b)**; S.I. 2005/1126, art. 2(2)(h)
- F170** Words in Sch. 3 para. 41(1) 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. 345(2)**
- F171** Words in Sch. 3 para. 41(2) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 103(2)(d)**; S.I. 2005/1126, art. 2(2)(h)
- F172** Words in Sch. 3 para. 41(3) 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. 345(3)(a)**
- F173** Word in Sch. 3 para. 41(3) 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. 345(3)(b)**

#### *Withdrawal of approval*

- 42 (1) If any disqualifying event occurs in connection with an approved SAYE option scheme, [<sup>F65</sup>an officer of Revenue and Customs] may by a notice given to the scheme organiser withdraw the approval with effect from—
- (a) the time at which the disqualifying event occurred, or
  - (b) a later time specified by [<sup>F65</sup>an officer of Revenue and Customs] in the notice.
- (2) A “disqualifying event” occurs in connection with a scheme if—
- (a) any of the requirements of Parts 2 to 7 of this Schedule ceases to be met;
  - <sup>F174</sup>(aa) an alteration is made in a key feature of the scheme without the approval of [<sup>F65</sup>an officer of Revenue and Customs];] or
  - (b) the scheme organiser fails to provide information requested by [<sup>F65</sup>an officer of Revenue and Customs] under paragraph 45.
- <sup>F175</sup>(2A) For the purposes of sub-paragraph (2)(aa) [<sup>F65</sup>an officer of Revenue and Customs] may not withhold <sup>F176</sup>... approval unless it appears to [<sup>F177</sup>the officer] at the time in question that the scheme as proposed to be altered would not then be approved on an application under paragraph 40.
- (2B) For the purposes of that sub-paragraph a “key feature” of a scheme is a provision of the scheme which is necessary in order to meet the requirements of this Schedule.]
- (3) If share options granted under an SAYE option scheme before the withdrawal of approval under this paragraph are exercised after the withdrawal, the scheme is to be treated for the purposes of—

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- (a) section 519 (exemption in respect of exercise of share option), and  
<sup>F178</sup>(b) section 421G(b) (exemption from Chapters 2 to 4 of Part 7),]  
 in their application to such options, as if it were still approved at the time of the exercise.

#### Textual Amendments

- F65** 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)  
**F174** Sch. 3 para. 42(2)(aa) inserted (10.7.2003) by [Finance Act 2003 \(c. 14\), Sch. 21 para. 12\(2\)](#)  
**F175** Sch. 3 para. 42(2A)(2B) inserted (10.7.2003) by [Finance Act 2003 \(c. 14\), Sch. 21 para. 12\(3\)](#)  
**F176** Word in Sch. 3 para. 42(2A) repealed (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 4 para. 103\(4\)\(b\), Sch. 5](#); S.I. 2005/1126, art. 2(2)(h)(i)  
**F177** Words in Sch. 3 para. 42(2A) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 4 para. 103\(1\)\(o\)](#); S.I. 2005/1126, art. 2(2)(h)  
**F178** Sch. 3 para. 42(3)(b) substituted (with effect in accordance with Sch. 22 para. 44(2) of the amending Act) by [Finance Act 2003 \(c. 14\), Sch. 22 para. 44\(1\)](#)

#### <sup>F179</sup>Notice of decision about alteration

#### Textual Amendments

- F179** Sch. 3 para. 43 and crossheading substituted (10.7.2003) by [Finance Act 2003 \(c. 14\), Sch. 21 para. 12\(4\)](#)

- 43 Where <sup>F65</sup>an officer of Revenue and Customs] —  
 (a) <sup>F180</sup>has] been requested to approve any alteration in a SAYE option scheme that has been approved, and  
 (b) <sup>F180</sup>has] decided whether or not to approve the alteration,  
<sup>F181</sup>the officer] must give notice of <sup>F182</sup>the] decision to the scheme organiser.]

#### Textual Amendments

- F65** 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)  
**F180** Word in Sch. 3 para. 43 substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 4 para. 122\(c\)](#); S.I. 2005/1126, art. 2(2)(h)  
**F181** Words in Sch. 3 para. 43 substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 4 para. 103\(1\)\(p\)](#); S.I. 2005/1126, art. 2(2)(h)  
**F182** Words in Sch. 3 para. 43 substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 4 para. 103\(3\)\(e\)](#); S.I. 2005/1126, art. 2(2)(h)

#### *Appeal against withdrawal of approval etc.*

- 44 (1) This paragraph applies if an SAYE option scheme has been approved by <sup>F65</sup>an officer of Revenue and Customs] and <sup>F183</sup>the officer] —  
 (a) <sup>F184</sup>decides] to withdraw approval of the scheme under paragraph 42, or  
<sup>F185</sup>(b) <sup>F184</sup>decides] to refuse approval under paragraph 42(2)(aa).]

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- (2) The scheme organiser may appeal against the decision <sup>F186</sup>....
- (3) The notice of appeal must be given to [<sup>F65</sup>an officer of Revenue and Customs] within 30 days after the date on which notice of [<sup>F187</sup>the officer's] decision was given to the scheme organiser.

#### Textual Amendments

- F65** 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)
- F183** Words in Sch. 3 para. 44(1) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 103(1)(q)**; S.I. 2005/1126, art. 2(2)(h)
- F184** Word in Sch. 3 para. 44(1) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 122(d)**; S.I. 2005/1126, art. 2(2)(h)
- F185** Sch. 3 para. 44(1)(b) substituted (10.7.2003) by Finance Act 2003 (c. 14), **Sch. 21 para. 12(5)**
- F186** Words in Sch. 3 para. 44(2) 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. 346**
- F187** Words in Sch. 3 para. 44(3) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 103(2)(e)**; S.I. 2005/1126, art. 2(2)(h)

## PART 9

### SUPPLEMENTARY PROVISIONS

#### *Power to require information*

- 45 (1) [<sup>F65</sup>An officer of Revenue and Customs] may by notice require any person to provide [<sup>F188</sup>the officer] with any information—
- (a) which [<sup>F188</sup>the officer] reasonably [<sup>F189</sup>requires] for the performance of [<sup>F190</sup>the officer's] functions under the SAYE code, and
- (b) which 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 [<sup>F65</sup>an officer of Revenue and Customs] —
- (i) to decide whether to approve an SAYE option scheme or to 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 scheme, and
- (b) information about the administration of a scheme and any alteration of the terms of a scheme.
- (3) The notice must require the information to be provided within a specified time, which must not end earlier than 3 months after the date when the notice is given.

#### Textual Amendments

- F65** 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)

*Status: Point in time view as at 01/03/2013.*

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- F188** Words in Sch. 3 para. 45(1) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 103(1)(r)**; S.I. 2005/1126, art. 2(2)(h)
- F189** Word in Sch. 3 para. 45(1) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 122(e)**; S.I. 2005/1126, art. 2(2)(h)
- F190** Words in Sch. 3 para. 45(1) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 103(2)(f)**; S.I. 2005/1126, art. 2(2)(h)

#### *Jointly owned companies*

- 46 (1) This paragraph applies for the purposes of the provisions of the SAYE code relating to group schemes.
- (2) Each joint owner of a jointly owned company is to be treated as controlling every company within sub-paragraph (3).
- (3) The companies within this sub-paragraph are—
- the jointly owned company, and
  - any company controlled by that company.
- (4) However, no company within sub-paragraph (3) may be—
- a constituent company in more than one group scheme, or
  - a constituent company in a particular group scheme if another company within that sub-paragraph is a constituent company in a different group scheme.
- (5) In this paragraph a “jointly owned company” means a company which (apart from sub-paragraph (2)) is not controlled by any one person and—
- of which 50% of the issued share capital is owned by one person and 50% by another, or
  - which is otherwise controlled by two persons taken together.
- (6) In this paragraph “joint owner” means one of the persons mentioned in sub-paragraph (5)(a) or (b).

#### *Meaning of “associated company”*

- 47 (1) For the purposes of the SAYE code, except in paragraph 35(3) (time when “scheme-related employment” ends), one company is an “associated company” of another company at a given time if, at that time or at any other time within one year previously—
- one has control of the other, or
  - both are under the control of the same person or persons.
- (2) For the purposes of sub-paragraph (1) the question whether a person controls a company is to be determined in accordance with [F191]sections 450 and 451 of CTA 2010].

#### **Textual Amendments**

- F191** Words in Sch. 3 para. 47(2) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 397(5)** (with Sch. 2)

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### *Minor definitions*

- 48 (1) In the SAYE code—
- “<sup>[F192]</sup>certified SAYE savings arrangement” has the meaning given in <sup>[F193]</sup>section 703(1) of ITTOIA 2005;
  - “company” means a body corporate;
  - “market value” has the same meaning as it has for the purposes of TCGA 1992 by virtue of Part 8 of that Act.
- (2) For the purposes of the SAYE code 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 75% of the other company’s ordinary share capital, and
  - (b) each of which beneficially owns not less than 5% of that capital.

#### **Textual Amendments**

**F192** Words in Sch. 3 para. 48(1) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 618\(11\)\(a\)](#) (with Sch. 2)

**F193** Words in Sch. 3 para. 48(1) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 618\(11\)\(b\)](#) (with Sch. 2)

### *Index of defined expressions*

- 49 In the SAYE code the following expressions are defined or otherwise explained by the provisions indicated below:

approved	section 516(4) (and see paragraph 42(3))
associated company	paragraph 47(1)
the bonus date	paragraph 30(3)
<sup>[F194]</sup> certified SAYE savings arrangement]	paragraph 48(1)
child	<sup>[F195]</sup> section 721(6)]
close company	<sup>[F196]</sup> section 989 of ITA 2007], (and see paragraph 11(4))
company	paragraph 48(1)
connected person	section 718
constituent company	paragraph 3(3)
control	section 719 (and see paragraphs 35(4) and 47(2))
distribution	<sup>[F197]</sup> section 989 of ITA 2007]
earnings	section 62 and see section 721(7)
eligible shares (in Part 4 of this Schedule)	paragraph 17(2)

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employee and employment	section 4
group scheme	paragraph 3(2) (and see paragraph 46)
F198	F198
...	...
F199	F199
...	...
market value	paragraph 48(1)
member of a consortium	paragraph 48(2)
notice	[ <sup>F200</sup> section 989 of ITA 2007]
the options (in relation to a participant)	paragraph 2(2)
ordinary share capital	[ <sup>F201</sup> section 989 of ITA 2007]
participant	paragraph 2(2)
participate	paragraph 2(2)
personal representatives	[ <sup>F202</sup> section 989 of ITA 2007]
recognised stock exchange	[ <sup>F203</sup> section 1005 of ITA 2007]
the SAYE code	section 516(3)
SAYE option scheme	section 516(4)
the scheme organiser	paragraph 2(2)
share option	section 516(4)
shares	section 516(4)
F204	F204
...	...
specified age	paragraph 31
tax	[ <sup>F205</sup> section 989 of ITA 2007]
[ <sup>F206</sup> tribunal	section 989 of ITA 2007]
F207	F207
...	...

#### Textual Amendments

- F194** Words in Sch. 3 para. 49 substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\)](#), [Sch. 1 para. 618\(12\)](#) (with [Sch. 2](#))
- F195** Words in Sch. 3 para. 49 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\)](#), [Sch. 1 para. 448\(a\)](#) (with [Sch. 2](#))
- F196** Words in Sch. 3 para. 49 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\)](#), [Sch. 1 para. 448\(b\)](#) (with [Sch. 2](#))
- F197** Words in Sch. 3 para. 49 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\)](#), [Sch. 1 para. 448\(c\)](#) (with [Sch. 2](#))
- F198** Sch. 3 para. 49 entry repealed (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\)](#), [Sch. 4 para. 122\(f\)](#), [Sch. 5](#); S.I. 2005/1126, art. 2(2)(h)(i)

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- F199** Sch. 3 para. 49 Table entry repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 448\(d\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F200** Words in Sch. 3 para. 49 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 448\(e\)](#) (with [Sch. 2](#))
- F201** Words in Sch. 3 para. 49 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 448\(f\)](#) (with [Sch. 2](#))
- F202** Words in Sch. 3 para. 49 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 448\(g\)](#) (with [Sch. 2](#))
- F203** Words in Sch. 3 para. 49 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 448\(h\)](#) (with [Sch. 2](#))
- F204** Words in Sch. 3 para. 49 Table 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. 347\(2\)](#)
- F205** Words in Sch. 3 para. 49 Table substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 397\(6\)](#) (with [Sch. 2](#))
- F206** Words in Sch. 3 para. 49 Table 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. 347\(3\)](#)
- F207** Sch. 3 para. 49 Table entry repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 448\(j\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

## SCHEDULE 4

Section 521

### APPROVED CSOP SCHEMES

#### PART 1

##### INTRODUCTION

###### *Approval of CSOP schemes*

- 1 (1) This Schedule makes provision for the approval of CSOP schemes by [<sup>F65</sup>an officer of Revenue and Customs].
- (2) Parts 2 to 6 of this Schedule contain requirements that have to be met in order for schemes to be approved under this Schedule.
- (3) The requirements consist of general requirements (see Part 2) and requirements as to—
- the eligibility of individuals to participate in a scheme (see Part 3),
  - the shares to which a scheme can apply (see Part 4),
  - the share options which may be granted under a scheme (see Part 5), and
  - the exchange of share options (see Part 6).
- (4) Part 7 of this Schedule deals with the approval of schemes and the withdrawal of approval.

#### Textual Amendments

- F65** 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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### *CSOP schemes*

- 2 (1) In the CSOP code a “CSOP scheme” means (in accordance with section 521(4)) a scheme which—
- (a) is established by a company,
  - (b) provides for share options to be granted to employees and directors, and
  - (c) is not an SAYE option scheme (within the meaning of the SAYE code: see section 516(4)).
- (2) In the CSOP code, in relation to a CSOP scheme—
- “participant” means an individual who has been granted (but has not yet exercised) share options under the scheme (“the options”);
- “participate” means obtain and exercise share options under the scheme;
- “the scheme organiser” means the company which has established the scheme.

### *Group schemes*

- 3 (1) A CSOP scheme established by a company that controls one or more other companies (a “parent scheme company”) may extend to all or any of those other companies.
- (2) In the CSOP code a CSOP scheme established by a parent scheme company which so extends is called a “group scheme”.
- (3) In relation to a group scheme a “constituent company” means—
- (a) the parent scheme company, or
  - (b) any other company to which for the time being the scheme is expressed to extend.
- (4) Paragraph 34 deals with jointly owned companies and companies controlled by them.

## **PART 2**

### GENERAL REQUIREMENTS FOR APPROVAL

#### *General requirements for approval: introduction*

- 4 A CSOP scheme must meet the requirements of—
- paragraph 5 (general restriction on contents of scheme), and
- paragraph 6 (limit on value of shares subject to options).

#### *General restriction on contents of scheme*

- 5 The scheme must not contain features which are neither essential nor reasonably incidental to the purpose of providing benefits for employees and directors in the nature of share options.

#### *Limit on value of shares subject to options*

- 6 (1) The scheme must provide that an individual may not be granted share options under it which would at the time when they are granted cause the aggregate market value



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- of the shares which the individual may acquire by exercising share options granted under—
- (a) the scheme, or
  - (b) any other approved CSOP scheme established by the scheme organiser or an associated company of the scheme organiser,
- to exceed or further exceed £30,000.
- (2) For the purposes of sub-paragraph (1) share options that have already been exercised are to be left out of account.
- (3) For the purposes of sub-paragraph (1) the market value of shares is to be calculated as at—
- (a) the time when the options relating to them were granted, or
  - (b) if an agreement relating to them has been made under paragraph 22 (requirements as to price for acquisition of shares) the earlier time or times stated in the agreement.

### PART 3

#### ELIGIBILITY OF INDIVIDUALS TO PARTICIPATE IN SCHEME

##### *Requirements relating to the eligibility of individuals: introduction*

- 7 A CSOP scheme must meet the requirements of—
- paragraph 8 (the employment requirement), and
  - paragraph 9 (the “no material interest” requirement).

##### *The employment requirement*

- 8 (1) The scheme must ensure that an individual is not eligible to be granted share options under the scheme at a particular time unless the individual is then a full-time director or a qualifying employee of—
- (a) the scheme organiser, or
  - (b) in the case of a group scheme, a constituent company.
- (2) A “qualifying employee”, in relation to a company, means an employee of the company other than one who is a director of—
- (a) the company, or
  - (b) in the case of a group scheme, a constituent company.

##### *The “no material interest” requirement*

- 9 (1) The scheme must ensure that an individual is not eligible to participate in the scheme on any date if the individual has on that date, or has had within the 12 months preceding that date, a material interest in a close company—
- (a) whose shares may be acquired as a result of exercising share options granted under the scheme, or
  - (b) which has control of a company whose shares may be acquired as a result of exercising share options granted under the scheme, or

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- (c) which is a member of a consortium which owns a company within paragraph (b).
- (2) For the purposes of this paragraph an individual is to be regarded as having a material interest in a company if—
- (a) the individual, or
  - (b) the individual together with one or more of the individual’s associates, or
  - (c) any such associate, 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 10 and 11, and
  - (b) as regards the meaning of “associate”, by paragraph 12 (read with paragraphs 13 and 14).
- (4) In this paragraph and paragraph 10 “close company” includes a company that would be a close company but for—
- (a) [F208 section 442(a) of CTA 2010] (exclusion of companies not resident in the United Kingdom), or
  - (b) [F209 sections 446 and 447 of CTA 2010] (exclusion of certain quoted companies).

#### Textual Amendments

**F208** Words in Sch. 4 para. 9(4)(a) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), Sch. 1 para. 398(2)(a) (with Sch. 2)

**F209** Words in Sch. 4 para. 9(4)(b) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), Sch. 1 para. 398(2)(b) (with Sch. 2)

#### Meaning of “material interest”

- 10 (1) In paragraph 9 (the “no material interest” requirement) references to a “material interest” in a company are to—
- (a) a material interest in the share capital of the company, or
  - (b) a material interest in its assets.
- (2) A material interest in the share capital of a company means—
- (a) beneficial ownership of, or
  - (b) the ability to control (directly or through the medium of other companies or by any other indirect means),
- more than [F210 25%] of the ordinary share capital of the company.
- (3) A material interest in the assets of a company means—
- (a) possession of, or
  - (b) an 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 [F211 25%] of the assets that would then be available for distribution among the participators.

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(4) In this paragraph “participator” has the meaning given by [<sup>F212</sup>section 454 of CTA 2010].

(5) This paragraph is supplemented by paragraph 11 (material interest: options etc.).

#### Textual Amendments

**F210** Word in Sch. 4 para. 10(2) substituted (with effect in accordance with Sch. 21 para. 16(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 21 para. 16\(1\)](#)

**F211** Word in Sch. 4 para. 10(3) substituted (with effect in accordance with Sch. 21 para. 16(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 21 para. 16\(1\)](#)

**F212** Words in Sch. 4 para. 10(4) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 398\(3\)](#) (with [Sch. 2](#))

#### *Material interest: options and interests in SIPs*

11 (1) For the purposes of paragraph 10 (meaning of “material interest”) a right to acquire shares (however arising) is to be treated as a right to control them.

(2) Sub-paragraph (3) also applies for the purposes of paragraph 10 in a case where—  
(a) the shares to be attributed to an individual consist of or include shares which the individual 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 would be contractually bound to issue in the event of the exercise of the right.

(3) In determining at any time prior to the exercise of the right whether the number of shares to be attributed to the individual exceeds [<sup>F213</sup>25%] of the ordinary share capital of the company, that ordinary share capital is to be treated as increased by the number of unissued shares referred to in sub-paragraph (2)(b).

(4) The references in sub-paragraphs (2) and (3) to the shares to be attributed to an individual are to the shares which—  
(a) for the purposes of paragraph 10(2) (material interest in share capital), and  
(b) in accordance with paragraph 9(2) (material interest can consist of or include that of individual’s associates),

fall to be brought into account in the individual’s case so that it can be determined whether their number exceeds [<sup>F214</sup>25%] of the company’s ordinary share capital.

(5) In applying paragraph 10 the following are to be disregarded—  
(a) the interest of the trustees of any approved SIP (within the meaning of the SIP code: see section 488(4)) in any shares which are held by them in accordance with the plan but which have not been appropriated to, or acquired on behalf of, an individual, and  
(b) any rights exercisable by the trustees as a result of that interest.

#### Textual Amendments

**F213** Word in Sch. 4 para. 11(3) substituted (with effect in accordance with Sch. 21 para. 16(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 21 para. 16\(1\)](#)

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**F214** Word in Sch. 4 para. 11(4) substituted (with effect in accordance with Sch. 21 para. 16(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 21 para. 16\(1\)](#)

*Meaning of “associate”*

- 12 (1) In paragraph 9(2) (the “no material interest” requirement) “associate”, in relation to an individual, means—
- (a) any relative or partner of that individual,
  - (b) the trustee or trustees of any settlement in relation to which that individual, or any of the individual’s relatives (living or dead), is or was a settlor, or
  - (c) where that individual is interested in any shares or obligations of the company mentioned in paragraph 9(2) which are subject to any trust or are part of the estate of a deceased person—
    - (i) the trustee or trustees of the settlement concerned, or
    - (ii) the personal representatives of the deceased,
 as the case may be.
- (2) Sub-paragraph (1)(c) needs to be read with paragraphs 13 and 14 (which relate to employee benefit trusts and discretionary trusts).
- (3) In this paragraph—
- “relative” means—
- (a) spouse [<sup>F215</sup>or civil partner],
  - (b) parent, child or remoter relation in the direct line, or
  - (c) brother or sister;
- “settlor” and “settlement” have the same meaning as in [<sup>F216</sup>Chapter 5 of Part 5 of ITTOIA 2005 (see section 620 of that Act)].

**Textual Amendments**

**F215** Words in Sch. 4 para. 12(3) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), [regs. 1\(1\)](#), [172](#)

**F216** Words in Sch. 4 para. 12(3) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), [s. 883\(1\)](#), [Sch. 1 para. 619](#) (with Sch. 2)

*Meaning of “associate”: trustees of employee benefit trust*

- 13 (1) This paragraph applies for the purposes of paragraph 12(1)(c) (meaning of “associate”: trustees of settlement) where the individual is interested as a beneficiary of an employee benefit trust in shares or obligations of the company mentioned in paragraph 9(2).
- (2) The trustees of the employee benefit trust are not to be regarded as associates of the individual as a result only of the individual’s being so interested if neither—
- (a) the individual, nor
  - (b) the individual together with one or more of the individual’s associates, nor
  - (c) any such associate, with or without any other such associates,

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has at any time after 13th March 1989 been the beneficial owner of, or been able (directly or through the medium of other companies or by any other indirect means) to control, more than [<sup>F217</sup>25%] of the ordinary share capital of the company.

- (3) In sub-paragraph (2)(b) and (c) “associate” has the meaning given by paragraph 12(1), but does not include the trustees of an employee benefit trust as a result only of the individual’s having an interest in shares or obligations of the trust.
- (4) Chapter 11 of Part 7 of this Act (which deals with the attribution of interests in companies to beneficiaries of employee benefit trusts) applies for the purposes of sub-paragraph (2).
- (5) In this paragraph “employee benefit trust” has the same meaning as in that Chapter (see sections 550 and 551).

#### Textual Amendments

**F217** Word in Sch. 4 para. 13(2) substituted (with effect in accordance with Sch. 21 para. 16(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 21 para. 16\(1\)](#)

#### *Meaning of “associate”: trustees of discretionary trust*

- 14 (1) This paragraph applies for the purposes of paragraph 12(1)(c) (meaning of “associate”: trustees of settlement) where—
  - (a) the individual (“the beneficiary”) is one of the objects of a discretionary trust,
  - (b) the property subject to the trust has at any time consisted of, or included, shares or obligations of the company mentioned in paragraph 9(2),
  - (c) the beneficiary has ceased to be eligible to benefit under the trust as a result of—
    - (i) an irrevocable disclaimer or release executed by the beneficiary, or
    - (ii) the irrevocable exercise by the trustees of a power to exclude the beneficiary from the objects of the trust,
  - (d) immediately after the beneficiary ceased to be so eligible, no associate of the beneficiary was interested in the shares or obligations of the company that were subject to the trust, and
  - (e) during the period of 12 months ending with the date on which the beneficiary ceased to be so eligible, neither the beneficiary nor any associate of the beneficiary received any benefit under the trust.
- (2) The beneficiary is not, as a result only of the matters referred to in sub-paragraph (1) (a) and (b), to be regarded as having been interested in the shares or obligations of the company at any time during that period of 12 months.
- (3) In sub-paragraph (1) “associate” has the meaning given by paragraph 12(1) but with the omission of paragraph (c).

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**PART 4**

SHARES TO WHICH SCHEMES CAN APPLY

*Requirements relating to shares that may be subject to share options: introduction*

- 15 (1) A CSOP scheme must meet the requirements of—
  - paragraph 16 (shares must be ordinary shares of certain companies),
  - paragraph 17 (requirements as to listing),
  - paragraph 18 (shares must be fully paid up and not redeemable),
  - paragraph 19 (only certain kinds of restrictions allowed), and
  - paragraph 20 (requirements as to other shareholdings).
- (2) In this Part “eligible shares” means shares which may be acquired by the exercise of share options under the scheme.

*Shares must be ordinary shares of certain companies*

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

*Requirements as to listing*

- 17 (1) Eligible shares must be —
  - (a) shares of a class listed on a recognised stock exchange, [<sup>F218</sup>or]
  - (b) shares in a company which is not under the control of another company, <sup>F219</sup>...
  - <sup>F220</sup>(c) .....
- <sup>F221</sup>(2) .....

**Textual Amendments**

**F218** Word in Sch. 4 para. 17(1)(a) inserted (24.9.2010 with effect in accordance with s. 39(3)-(9) of the amending Act) by [Finance Act 2010 \(c. 13\), s. 39\(2\)\(a\)\(i\)\(3\)\(a\)](#)

**F219** Word in Sch. 4 para. 17(1)(b) omitted (24.9.2010 with effect in accordance with s. 39(3)-(9) of the amending Act) by virtue of [Finance Act 2010 \(c. 13\), s. 39\(2\)\(a\)\(ii\)\(3\)\(a\)](#)

**F220** Sch. 4 para. 17(1)(c) omitted (24.9.2010 with effect in accordance with s. 39(3)-(9) of the amending Act) by virtue of [Finance Act 2010 \(c. 13\), s. 39\(1\)\(3\)\(a\)](#)

**F221** Sch. 4 para. 17(2) omitted (24.9.2010 with effect in accordance with s. 39(3)-(9) of the amending Act) by virtue of [Finance Act 2010 \(c. 13\), s. 39\(2\)\(a\)\(iii\)\(3\)\(a\)](#)

*Shares must be fully paid up and not redeemable*

- 18 Eligible shares must be—
  - (a) fully paid up, and
  - (b) not redeemable.

*Status: Point in time view as at 01/03/2013.*

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*Only certain kinds of restriction allowed*

- 19 (1) Eligible shares must not be subject to any restrictions (see sub-paragraph (4)) other than—
- (a) those attaching to all shares of the same class, or
  - (b) those permitted by sub-paragraph (2).
- (2) If the conditions of sub-paragraph (3) are met, eligible shares may be subject to a restriction imposed by the company’s articles of association—
- (a) requiring all shares held by directors or employees—
    - (i) of the company, or
    - (ii) of any other company of which it has control,to be disposed of, or offered for sale, on ceasing to be so held, and
  - (b) requiring all shares acquired, as a result of rights or interests obtained by such directors or employees, by persons who—
    - (i) are not such directors or employees, or
    - (ii) have ceased to be such directors or employees,to be disposed of, or offered for sale, when they are acquired.
- (3) The conditions of this sub-paragraph are—
- (a) that a disposal required by the restriction will be by way of sale for a consideration in money on terms specified in the articles of association, and
  - (b) that under general conditions contained in the articles of association anyone disposing of shares of the same class (whether or not held or acquired as mentioned in sub-paragraph (2)) may be required to sell them on terms which are the same as those mentioned in paragraph (a).
- (4) For the purposes of this paragraph shares are subject to 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 the person or to a person connected with the person.
- This is subject to sub-paragraphs (5) to (7).
- (5) Sub-paragraph (4) does not extend to 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 Financial Services and Markets Act 2000 (c. 8).
- (6) Sub-paragraph (4) also does not apply to any terms of a loan making provision about how it is to be repaid or the security to be given for it.
- (7) Any discretion of the directors under the articles of association of the company to refuse to accept the transfer of shares is to be disregarded for the purposes of this paragraph if the directors—
- (a) have undertaken to [F65 an officer of Revenue and Customs] not to exercise it in such a way as to discriminate against persons participating in the scheme, and

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(b) have notified all those who are eligible to do so of the existence of the undertaking.

(8) In this paragraph “articles of association” includes, in the case of a company incorporated under the law of a country outside the United Kingdom, any equivalent document relating to the company.

**Textual Amendments**  
**F65** 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)

*Requirements as to other shareholdings*

- 20 (1) The majority of the issued shares of the same class as the eligible shares must be—
  - (a) employee-control shares, or
  - (b) open market shares,
 unless the eligible shares are shares in a company whose ordinary share capital consists of shares of one class only.
- (2) Shares in a company are “employee-control shares” if—
  - (a) the persons holding the shares are, by virtue of their holding, together able to control the company, and
  - (b) those persons are or have been employees or directors of the company or of another company which is under the control of the company.
- (3) Shares in a company are “open market shares” if the persons holding the shares are not—
  - (a) persons who acquired their shares as a result of a right conferred on them or an opportunity afforded to them as a director or employee of the scheme organiser or any other company, and not as a result of an offer to the public, or
  - (b) trustees holding shares on behalf of persons who acquired their beneficial interests in the shares as mentioned in paragraph (a), <sup>F222</sup>...
  - <sup>F222</sup>(c) .....

**Textual Amendments**  
**F222** Sch. 4 para. 20(3)(c) and preceding word omitted (24.9.2010 with effect in accordance with s. 39(3)-(9) of the amending Act) by virtue of [Finance Act 2010 \(c. 13\)](#), s. [39\(2\)\(b\)\(3\)\(a\)](#)

**PART 5**

REQUIREMENTS ETC. RELATING TO SHARE OPTIONS

*Requirements etc. relating to share options: introduction*

- 21 (1) A CSOP scheme must meet the requirements of—
  - paragraph 22 (requirements as to price for acquisition of shares), and
  - paragraph 23 (share options may not be transferred).



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- (2) A CSOP scheme may make any provision authorised by—  
paragraph 24 (exercise of options: ceasing to be director or employee), or  
paragraph 25 (exercise of options: death).

*Requirements as to price for acquisition of shares*

- 22 (1) The price at which shares may be acquired by the exercise of a share option granted under the scheme—
- (a) must be stated at the time when the option is granted, and
  - (b) must not be manifestly less than the market value of shares of the same class at that time.

This is subject to sub-paragraphs (2) and (3).

- (2) [<sup>F65</sup>An officer of Revenue and Customs] and the scheme organiser may agree in writing that sub-paragraph (1)(b) is to apply as if the reference to the time when the option is granted were to an earlier time or times stated in the agreement.
- (3) The scheme may provide for one or more of the following—
- (a) the price at which shares may be acquired by the exercise of a share option granted under the scheme,
  - (b) the number of shares which may be so acquired, or
  - (c) the description of shares which may be so acquired,
- to be varied so far as necessary to take account of a variation in the share capital of which the shares form part.
- (4) But the scheme must provide that no such variation is to be made without the prior approval of [<sup>F65</sup>an officer of Revenue and Customs].

**Textual Amendments**

**F65** 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)

*Share options must not be transferable*

- 23 (1) The scheme must ensure that share options granted to a participant are not capable of being transferred by the participant.
- (2) Paragraph 25 provides for the exercise of the options where the participant has died.

*Exercise of options: ceasing to be director or employee*

- 24 (1) The scheme may provide that an individual may exercise share options under it after ceasing to be a full-time director or qualifying employee.
- (2) “Qualifying employee” has the same meaning as in paragraph 8 (the employment requirement).

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*Exercise of options: death*

- 25 The scheme may provide that, if a participant dies before exercising the options, they may be exercised on or after the date of death but not later than 12 months after that date.

**PART 6**

EXCHANGE OF SHARE OPTIONS

*Exchange of options on company reorganisation*

- 26 (1) A CSOP scheme may provide that if—
- (a) there is a company reorganisation affecting a scheme company (that is, a company whose shares may be acquired by the exercise of share options obtained under the scheme: see paragraph 16), and
  - (b) a participant has obtained share options under the scheme which are to acquire shares of the scheme company (“the old options”),
- the participant may agree with the acquiring company to release the old options in consideration of the participant being granted new share options.
- (2) For the purposes of this paragraph there is a company reorganisation affecting a scheme company if another company (“the acquiring company”)—
- (a) obtains control of the scheme company—
    - (i) as a result of making a general offer to acquire the whole of the issued ordinary share capital of the scheme company which is made on a condition such that, if it is met, the person making the offer will have control of that company, or
    - (ii) as a result of making a general offer to acquire all the shares in the scheme company which are of the same class as those subject to the old options;
  - <sup>[F223]</sup>(b) obtains control of the scheme company as a result of a compromise or arrangement sanctioned by the court under section 899 of the Companies Act 2006 (court sanction for compromise or arrangement);]
  - <sup>[F224]</sup>(c) becomes bound or entitled to acquire shares in the scheme company under sections 979 to 982 of the Companies Act 2006 (takeover offers: right of offeror to buy out minority shareholder).]
- (3) A scheme that makes provision under sub-paragraph (1) must require the agreement referred to in that sub-paragraph to be made—
- (a) where control is obtained in the way set out in sub-paragraph (2)(a)(i) or (ii), within the period of 6 months beginning with the time when the acquiring company obtains control and any condition subject to which the offer is made is met,
  - (b) where control is obtained in the way set out in sub-paragraph (2)(b), within the period of 6 months beginning with the time when the court sanctions the compromise or arrangement, and
  - (c) where sub-paragraph (2)(c) applies, within the period during which the acquiring company remains bound or entitled as mentioned in that provision.

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### Textual Amendments

- F223** Sch. 4 para. 26(2)(b) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments\) \(Taxes and National Insurance\) Order 2008 \(S.I. 2008/954\)](#), arts. 1(1), **33** (with art. 4)
- F224** Sch. 4 para. 26(2)(c) substituted (1.10.2007) by [The Companies Act 2006 \(Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings\) Order 2007 \(S.I. 2007/2194\)](#), **Sch. 4 para. 100** (with art. 12)

### *Requirements about share options granted in exchange*

- 27 (1) This paragraph applies to a scheme that makes provision under paragraph 26 (exchange of options on company reorganisation).
- (2) The scheme must require the new share options to relate to shares in a company which—
- (a) is different from the company whose shares are subject to the old options, and
  - (b) is either the acquiring company itself or some other company within subparagraph (b) or (c) of paragraph 16 (shares must be ordinary shares of certain companies), namely—
    - (i) a company which has control of the scheme organiser, or
    - (ii) a company which is, or has control of a company which is, a member of a consortium owning either the scheme organiser or a company having control of the scheme organiser.
- For this purpose the control in question may be through the medium of the acquiring company.
- (3) The scheme must also require the new share options to be equivalent to the old options.
- (4) For the new options to be regarded as equivalent to the old options—
- (a) the shares to which they relate must meet the conditions in paragraphs 16 to 20 (types of share that may be used),
  - (b) they must be exercisable in the same manner as the old options and subject to the provisions of the scheme as it had effect immediately before the release of the old options,
  - (c) the total market value of the shares subject to the old options immediately before the release of those options by the participant must equal the total market value, immediately after the grant of the new options to the participant, of the shares subject to those options, and
  - (d) the total amount payable by the participant for the acquisition of shares under the new options must be equal to the total amount that would have been so payable under the old options.
- (5) For the purposes of the CSOP code, new share options granted under the terms of a provision included in a scheme under paragraph 26 are to be treated as having been granted at the time when the corresponding old options were granted.
- (6) This also applies for the purposes of the provisions of the scheme in their operation, after the grant of the new options, by virtue of a condition complying with subparagraph (4)(b).

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#### Modifications etc. (not altering text)

- C1** Sch. 4 para. 27(5) excluded (24.9.2010 with effect in accordance with s. 39(3)-(9) of the amending Act) by [Finance Act 2010 \(c. 13\)](#), **s. 39(8)**

## PART 7

### APPROVAL OF SCHEMES

#### *Application for approval*

- 28 (1) Where—
- (a) a CSOP scheme has been established, and
  - (b) the scheme organiser makes an application to [<sup>F65</sup>an officer of Revenue and Customs] for approval of the scheme,
- [<sup>F65</sup>an officer of Revenue and Customs] must approve the scheme if [<sup>F225</sup>the officer][<sup>F226</sup>is] satisfied that it meets the requirements of Parts 2 to 6 of this Schedule.
- (2) An application for approval—
- (a) must be in writing, and
  - (b) must contain such particulars and be supported by such evidence as [<sup>F65</sup>an officer of Revenue and Customs] may require.
- (3) Once [<sup>F65</sup>an officer of Revenue and Customs][<sup>F227</sup>has] decided whether or not to approve the scheme, [<sup>F225</sup>the officer] must give notice of [<sup>F228</sup>the] decision to the scheme organiser.

#### Textual Amendments

- F65** 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)
- F225** Words in Sch. 4 para. 28(1)(3) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), **Sch. 4 para. 103(1)(s)**; S.I. 2005/1126, art. 2(2)(h); S.I. 2005/1126, art. 2(2)(h)
- F226** Word in Sch. 4 para. 28(1) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), **Sch. 4 para. 123(a)(i)**; S.I. 2005/1126, art. 2(2)(h)
- F227** Word in Sch. 4 para. 28(3) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), **Sch. 4 para. 123(a)(ii)**; S.I. 2005/1126, art. 2(2)(h)
- F228** Word in Sch. 4 para. 28(3) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), **Sch. 4 para. 103(3)(f)**; S.I. 2005/1126, art. 2(2)(h)

#### *Appeal against refusal of approval*

- 29 (1) If [<sup>F65</sup>an officer of Revenue and Customs][<sup>F229</sup>refuses] to approve the scheme, the scheme organiser may appeal <sup>F230</sup>....
- (2) The notice of appeal must be given to [<sup>F65</sup>an officer of Revenue and Customs] within 30 days after the date on which notice of [<sup>F231</sup>the officer's] decision was given to the scheme organiser.

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- (3) [<sup>F232</sup>If the appeal is notified to and allowed by the tribunal, the tribunal may direct][<sup>F65</sup>an officer of Revenue and Customs] to approve the scheme with effect from a date specified by the [<sup>F233</sup>tribunal].
- (4) The date so specified must not be earlier than that of the application for approval.

#### Textual Amendments

- F65** 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)
- F229** Word in Sch. 4 para. 29(1) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 123(b)**; S.I. 2005/1126, art. 2(2)(h)
- F230** Words in Sch. 4 para. 29(1) 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. 349(2)**
- F231** Words in Sch. 4 para. 29(2) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 103(2)(g)**; S.I. 2005/1126, art. 2(2)(h)
- F232** Words in Sch. 4 para. 29(3) 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. 349(3)(a)**
- F233** Word in Sch. 4 para. 29(3) 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. 349(3)(b)**

#### *Withdrawal of approval*

- 30 (1) If any disqualifying event occurs in connection with an approved CSOP scheme, [<sup>F65</sup>an officer of Revenue and Customs] may by a notice given to the scheme organiser withdraw the approval with effect from—
- (a) the time at which the disqualifying event occurred, or
- (b) a later time specified by [<sup>F65</sup>an officer of Revenue and Customs] in the notice.
- (2) A “disqualifying event” occurs in connection with a scheme if—
- (a) any of the requirements of Parts 2 to 6 of this Schedule ceases to be met;
- [<sup>F234</sup>(aa) an alteration is made in a key feature of the scheme without the approval of [<sup>F65</sup>an officer of Revenue and Customs];] or
- (b) the scheme organiser fails to provide information requested by [<sup>F65</sup>an officer of Revenue and Customs] under paragraph 33.
- [<sup>F235</sup>(3) For the purposes of sub-paragraph (2)(aa) [<sup>F65</sup>an officer of Revenue and Customs] may not withhold <sup>F236</sup>... approval unless it appears to [<sup>F237</sup>the officer] at the time in question that the scheme as proposed to be altered would not then be approved on an application under paragraph 28.
- (4) For the purposes of that sub-paragraph a “key feature” of a scheme is a provision of the scheme which is necessary in order to meet the requirements of this Schedule.]

#### Textual Amendments

- F65** 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)
- F234** Sch. 4 para. 30(2)(aa) inserted (10.7.2003) by Finance Act 2003 (c. 14), **Sch. 21 para. 17(2)**
- F235** Sch. 4 para. 30(3)(4) inserted (10.7.2003) by Finance Act 2003 (c. 14), **Sch. 21 para. 17(3)**

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**F236** Word in Sch. 4 para. 30(3) repealed (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), Sch. 4 para. 103(4)(c), **Sch. 5**; S.I. 2005/1126, art. 2(2)(h)(i)

**F237** Words in Sch. 4 para. 30(3) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 103(1)(t)**; S.I. 2005/1126, art. 2(2)(h)

### *<sup>F238</sup>Notice of decision about alteration*

#### Textual Amendments

**F238** Sch. 4 para. 31 and crossheading substituted (10.7.2003) by Finance Act 2003 (c. 14), **Sch. 21 para. 17(4)**

- 31 Where [<sup>F65</sup>an officer of Revenue and Customs] —
- (a) [<sup>F239</sup>has] been requested to approve any alteration in a CSOP scheme that has been approved, and
  - (b) [<sup>F239</sup>has] decided whether or not to approve the alteration,
- [<sup>F240</sup>the officer] must give notice of [<sup>F241</sup>the] decision to the scheme organiser.]

#### Textual Amendments

**F65** 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)

**F239** Word in Sch. 4 para. 31 substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 123(c)**; S.I. 2005/1126, art. 2(2)(h)

**F240** Words in Sch. 4 para. 31 substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 103(1)(u)**; S.I. 2005/1126, art. 2(2)(h)

**F241** Word in Sch. 4 para. 31 substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 103(3)(g)**; S.I. 2005/1126, art. 2(2)(h)

### *Appeal against withdrawal of approval etc.*

- 32 (1) This paragraph applies if a CSOP scheme has been approved by [<sup>F65</sup>an officer of Revenue and Customs] and [<sup>F242</sup>the officer] —
- (a) [<sup>F243</sup>decides] to withdraw approval of the scheme under paragraph 30, or
  - [<sup>F244</sup>(b) [<sup>F243</sup>decides] to refuse approval under paragraph 30(2)(aa).]
- (2) The scheme organiser may appeal against the decision <sup>F245</sup>....
- (3) The notice of appeal must be given to [<sup>F65</sup>an officer of Revenue and Customs] within 30 days after the date on which notice of [<sup>F246</sup>the officer's] decision was given to the scheme organiser.

#### Textual Amendments

**F65** 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)

**F242** Words in Sch. 4 para. 32(1) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 103(1)(v)**; S.I. 2005/1126, art. 2(2)(h)

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- F243** Words in Sch. 4 para. 32(1) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 123(d)**; S.I. 2005/1126, art. 2(2)(h)
- F244** Sch. 4 para. 32(1)(b) substituted (10.7.2003) by Finance Act 2003 (c. 14), **Sch. 21 para. 17(5)**
- F245** Words in Sch. 4 para. 32(2) 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. 350**
- F246** Words in Sch. 4 para. 32(3) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 103(2)(h)**; S.I. 2005/1126, art. 2(2)(h)

## PART 8

### SUPPLEMENTARY PROVISIONS

#### *Power to require information*

- 33 (1) [<sup>F65</sup>An officer of Revenue and Customs] may by notice require any person to provide [<sup>F247</sup>the officer] with any information—
- (a) which [<sup>F247</sup>the officer] reasonably [<sup>F248</sup>requires] for the performance of [<sup>F249</sup>the officer's] functions under the CSOP code, and
  - (b) which 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 [<sup>F65</sup>an officer of Revenue and Customs] —
    - (i) to decide whether to approve a CSOP scheme or to 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 scheme, and
  - (b) information about the administration of a scheme and any alteration of the terms of a scheme.
- (3) The notice must require the information to be provided within a specified time, which must not end earlier than 3 months after the date when the notice is given.

#### Textual Amendments

- F65** 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)
- F247** Words in Sch. 4 para. 33(1) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 103(1)(w)**; S.I. 2005/1126, art. 2(2)(h)
- F248** Word in Sch. 4 para. 33(1)(a) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 123(e)**; S.I. 2005/1126, art. 2(2)(h)
- F249** Words in Sch. 4 para. 33(1) 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)

#### *Jointly owned companies*

- 34 (1) This paragraph applies for the purposes of the provisions of the CSOP code relating to group schemes.

*Status: Point in time view as at 01/03/2013.*

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- (2) Each joint owner of a jointly owned company is to be treated as controlling every company within sub-paragraph (3).
- (3) The companies within this sub-paragraph are—
  - (a) the jointly owned company, and
  - (b) any company controlled by that company.
- (4) However, no company within sub-paragraph (3) may be—
  - (a) a constituent company in more than one group scheme, or
  - (b) a constituent company in a particular group scheme if another company within that sub-paragraph is a constituent company in a different group scheme.
- (5) In this paragraph a “jointly owned company” means a company which (apart from sub-paragraph (2)) is not controlled by any one person and—
  - (a) of which 50% of the issued share capital is owned by one person and 50% by another, or
  - (b) which is otherwise controlled by two persons taken together.
- (6) In this paragraph “joint owner” means one of the persons mentioned in sub-paragraph (5)(a) or (b).

*Meaning of “associated company”*

- 35 (1) For the purposes of the CSOP code one company is an “associated company” of another company at a given time if, at that time or at any other time within one year previously—
- (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 sub-paragraph (1) the question whether a person controls a company is to be determined in accordance with [<sup>F250</sup>sections 450 and 451 of CTA 2010].

**Textual Amendments**

**F250** Words in Sch. 4 para. 35(2) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 398(4)** (with Sch. 2)

*[<sup>F251</sup>Retirement age*

**Textual Amendments**

**F251** Sch. 4 para. 35A and cross-heading inserted (10.7.2003) by Finance Act 2003 (c. 14), **Sch. 21 para. 15(2)**

- 35A A retirement age specified in a CSOP scheme—
- (a) must be the same for men and women, and
  - (b) must not be less than 55.]



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### *Minor definitions*

- 36 (1) In the CSOP code—
- “company” means a body corporate;
  - “market value” has the same meaning as it has for the purposes of TCGA 1992 by virtue of Part 8 of that Act.
- (2) For the purposes of the CSOP code 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 75% of the other company’s ordinary share capital, and
  - (b) each of which beneficially owns not less than 5% of that capital.

### *Index of defined expressions*

- 37 In the CSOP code the following expressions are defined or otherwise explained by the provisions indicated below:

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approved	section 521(4)
associated company	paragraph 35(1)
child	[ <sup>F252</sup> section 721(6)]
close company	[ <sup>F253</sup> section 989 of ITA 2007], (and see paragraph 9(4))
company	paragraph 36(1)
connected person	section 718
constituent company	paragraph 3(3)
control	section 719 (and see paragraph 35(2))
the CSOP code	section 521(3)
CSOP scheme	section 521(4)
distribution	[ <sup>F254</sup> section 989 of ITA 2007]
eligible shares (in Part 4 of this Schedule)	paragraph 15(2)
employee and employment	section 4
group scheme	paragraph 3(2) (and see paragraph 34)
<sup>F255</sup>	<sup>F255</sup>
. . .	. . .
market value	paragraph 36(1)
member of a consortium	paragraph 36(2)
notice	[ <sup>F256</sup> section 989 of ITA 2007]
the options (in relation to a participant)	paragraph 2(2)
ordinary share capital	[ <sup>F257</sup> section 989 of ITA 2007]
participant	paragraph 2(2)

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participate	paragraph 2(2)
personal representatives	[ <sup>F258</sup> section 989 of ITA 2007]
recognised stock exchange	[ <sup>F259</sup> section 1005 of ITA 2007]
the scheme organiser	paragraph 2(2)
share option	section 521(4)
shares	section 521(4)
[ <sup>F260</sup> tribunal	section 989 of ITA 2007]
<b>F261</b>	<b>F261</b>
...	...
<b>F262</b>	<b>F262</b>
...	...

#### Textual Amendments

- F252** Words in Sch. 4 para. 37 substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 449(a)** (with [Sch. 2](#))
- F253** Words in Sch. 4 para. 37 substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 449(b)** (with [Sch. 2](#))
- F254** Words in Sch. 4 para. 37 substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 449(c)** (with [Sch. 2](#))
- F255** Words in Sch. 4 para. 37 repealed (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 123\(f\)](#), **Sch. 5**; [S.I. 2005/1126](#), art. 2(2)(h)(i)
- F256** Words in Sch. 4 para. 37 substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 449(d)** (with [Sch. 2](#))
- F257** Words in Sch. 4 para. 37 substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 449(e)** (with [Sch. 2](#))
- F258** Words in Sch. 4 para. 37 substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 449(f)** (with [Sch. 2](#))
- F259** Words in Sch. 4 para. 37 substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 449(g)** (with [Sch. 2](#))
- F260** Words in Sch. 4 para. 37 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. 351(3)**
- F261** Words in Sch. 4 para. 37 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. 351(2)**
- F262** Words in Sch. 4 para. 37 repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 449\(h\)](#), **Sch. 3 Pt. 1** (with [Sch. 2](#))

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## SCHEDULE 5

Section 527

### ENTERPRISE MANAGEMENT INCENTIVES

#### PART 1

##### INTRODUCTION

###### *Enterprise management incentives: qualifying options*

- 1 (1) This Schedule makes provision for establishing what is a qualifying option for the purposes of the EMI code.
- (2) In the EMI code a “qualifying option” means (in accordance with section 527(4)) a share option—
- (a) in relation to which the requirements of this Schedule are met at the time when the option is granted, and
  - (b) which is notified to [<sup>F65</sup>an officer of Revenue and Customs] in accordance with Part 7.
- (3) The requirements of this Schedule are—
- (a) the general requirements in Part 2,
  - (b) that the company whose shares are the subject of the option (“the relevant company”) is a qualifying company (see Part 3),
  - (c) that the individual to whom it is granted is an eligible employee in relation to that company (see Part 4),
  - (d) that the option is granted to the employee by reason of the employee’s employment—
    - (i) with that company, or
    - (ii) if that company is a parent company, with that company or another member of the group, and
  - (e) the requirements of Part 5 as to the terms of the option, the types of shares that may be subject to it, and other matters.
- (4) In the EMI code, as it applies to a share option, “the appropriate time” means the time when the option is granted.

#### Textual Amendments

**F65** 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)

###### *Meaning of “the relevant company” and “the employer company”*

- 2 In the EMI code, in relation to a share option—
- “the relevant company” means (in accordance with paragraph 1(3)(b)) the company whose shares are subject to the option;
  - “the employer company” means the company by reference to which the requirement in paragraph 1(3)(d) (the employment requirement) is met.

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## PART 2

### GENERAL REQUIREMENTS

#### *General requirements: introduction*

- 3 A share option is not a qualifying option unless the requirements of this Part of this Schedule as to the following are met at the appropriate time—
- the purpose for which the option is granted (see paragraph 4),
  - the maximum entitlement of an employee (see paragraphs 5 and 6),
  - the maximum value of the relevant company's shares in respect of which unexercised options can exist (see paragraph 7).

#### *Purpose of granting the option*

- 4 To be a qualifying option a share option must be granted for commercial reasons in order to recruit or retain an employee in a company, and not as part of a scheme or arrangement the main purpose (or one of the main purposes) of which is the avoidance of tax.

#### *Maximum entitlement of employee: financial limit on unexercised options*

- 5 (1) An employee may not hold unexercised qualifying options which—
- (a) are in respect of shares with a total value of more than [<sup>F263</sup>£250,000], and
  - (b) were granted by reason of the employee's employment—
    - (i) with one company, or
    - (ii) with two or more companies which are members of the same group of companies.
- (2) A share option cannot be a qualifying option if the limit in sub-paragraph (1) is already exceeded at the time when it is granted.
- (3) If the grant of a share option causes that limit to be exceeded, the option cannot be a qualifying option so far as it relates to the excess.
- (4) Where, at the time when a share option is granted to an employee ("E"), E holds unexercised CSOP options granted by reason of E's employment—
- (a) with the employer company, or
  - (b) if it is a member of a group of companies, with any member of that group,
- those options are to be treated for the purposes of this paragraph as if they were unexercised qualifying options.
- (5) A "CSOP option" is an option to acquire shares under a scheme approved under Schedule 4 (CSOP schemes).
- (6) For the purposes of this paragraph—
- (a) "the value" of shares in respect of which a particular share option is or has been granted means the market value, at the time when the option is or was granted, of issued shares of the same class as those that may be acquired by exercise of the option; and
  - (b) a share option is to be treated as granted in respect of the maximum number of shares that may be acquired under it.

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[<sup>F264</sup>(7) For the purposes of this paragraph the market value of restricted shares is to be determined as if they were not.

(8) Shares are “restricted shares” if there is any contract, agreement, arrangement or condition which makes provision to which any of subsections (2) to (4) of section 423 (restricted securities) would apply if the references in those subsections to the employment-related securities were to the shares.]

#### Textual Amendments

**F263** Word in Sch. 5 para. 5(1)(a) substituted (16.6.2012) by [The Income Tax \(Limits for Enterprise Management Incentives\) Order 2012 \(S.I. 2012/1360\)](#), arts. 1, **2(2)(a)**

**F264** Sch. 5 para. 5(7)(8) substituted (1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 45\(2\)\(4\)](#); [S.I. 2003/1997](#), art. 2

#### *Maximum entitlement of employee: further limit of 3 years*

- 6 (1) Sub-paragraph (2) applies if an employee (“E”) has already been granted, by reason of E’s employment with one company, qualifying options in respect of shares with a total value of [<sup>F265</sup>£250,000] .
- (2) Any further option granted by reason of E’s employment—
- (a) with that company, or
  - (b) if it is a member of a group of companies, with any member of that group, within the 3-year restriction period cannot be a qualifying option.
- (3) Sub-paragraph (4) applies if an employee (“E”) has already been granted, by reason of E’s employment with two or more companies which are members of the same group of companies, qualifying options in respect of shares with a total value of [<sup>F266</sup>£250,000] .
- (4) Any further option granted, by reason of E’s employment with any member of that group, within the 3-year restriction period cannot be a qualifying option.
- (5) Sub-paragraph (2) or (4) applies whether or not the qualifying options already granted have been exercised or released.
- (6) In those sub-paragraphs “the 3-year restriction period” means the period of three years after the date of the grant of the last qualifying option.
- (7) Paragraph 5(6) to (8) (determination of value of shares) apply for the purposes of this paragraph as they apply for the purposes of paragraph 5.

#### Textual Amendments

**F265** Word in Sch. 5 para. 6(1) substituted (16.6.2012) by [The Income Tax \(Limits for Enterprise Management Incentives\) Order 2012 \(S.I. 2012/1360\)](#), arts. 1, **2(2)(b)**

**F266** Word in Sch. 5 para. 6(3) substituted (16.6.2012) by [The Income Tax \(Limits for Enterprise Management Incentives\) Order 2012 \(S.I. 2012/1360\)](#), arts. 1, **2(2)(b)**

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*Maximum value of options in respect of relevant company's shares*

- 7 (1) The total value of shares in the relevant company in respect of which unexercised qualifying options exist must not exceed £3 million.
- (2) A share option cannot be a qualifying option if the limit in sub-paragraph (1) is already exceeded at the time when it is granted.
- (3) If the grant of a share option causes that limit to be exceeded, the option cannot be a qualifying option so far as it relates to the excess.
- (4) If the grant of two or more options at the same time causes that limit to be exceeded, sub-paragraph (5) applies.
- (5) For the purpose of determining which part of each option relates to the excess, the amount of the excess is to be divided pro rata among the options according to the value of the shares in respect of which each option was granted.
- (6) Paragraph 5(6) to (8) (determination of value of shares) apply for the purposes of this paragraph as they apply for the purposes of paragraph 5.

**PART 3**

QUALIFYING COMPANIES

*Qualifying companies: introduction*

- 8 A “qualifying company” is a company in relation to which the requirements of this Part of this Schedule as to the following are met at the appropriate time—
- independence (see paragraph 9),
  - having only qualifying subsidiaries (see paragraphs 10 and 11),
  - [<sup>F267</sup>property managing subsidiaries (see paragraphs 11A and 11B),]
  - gross assets (see paragraph 12), <sup>F268</sup> ...
  - [<sup>F269</sup>number of employees (see paragraph 12A), <sup>F270</sup> ...]
  - trading activities (see paragraphs 13 and 14, read with paragraphs 15 to 23)[<sup>F271</sup>,
  - and
  - UK permanent establishment (see paragraph 14A).]

**Textual Amendments**

- F267** Words in Sch. 5 para. 8 inserted (with effect in accordance with s. 96(6) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 96\(2\)](#)
- F268** Word in Sch. 5 para. 8 omitted (with effect in accordance with s. 33(6) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\), s. 33\(2\)](#)
- F269** Words in Sch. 5 para. 8 inserted (with effect in accordance with s. 33(6) of the amending Act) by [Finance Act 2008 \(c. 9\), s. 33\(2\)](#)
- F270** Word in Sch. 5 para. 8 omitted (with effect in accordance with s. 6(5) of the amending Act) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\), s. 6\(2\)](#)
- F271** Words in Sch. 5 para. 8 inserted (with effect in accordance with s. 6(5) of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\), s. 6\(2\)](#)

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*The independence requirement*

- 9 (1) The independence requirement consists of two conditions.
- (2) The first condition is that the company is not—
- (a) a 51% subsidiary of another company, or
  - (b) a company which is under the control of—
    - (i) another company, or
    - (ii) another company and any other person connected with that other company,without being a 51% subsidiary of that other company.
- (3) The second condition is that no arrangements are in existence by virtue of which the company could become such a subsidiary or fall under such control.
- (4) Arrangements with a view to a qualifying exchange of shares (see paragraph 40) do not count for the purposes of the second condition.

*The qualifying subsidiaries requirement*

- 10 (1) A company that has one or more subsidiaries is not a qualifying company unless every subsidiary of the company is a qualifying subsidiary (see paragraph 11).
- [<sup>F272</sup>(2) In this paragraph “subsidiary” means any company which the company controls, either on its own or together with any person connected with it.
- (3) For the purpose of sub-paragraph (2), the question whether a person controls a company is to be determined in accordance with [<sup>F273</sup>sections 450 and 451 of CTA 2010] (“control” in the context of close companies).]

**Textual Amendments**

**F272** Sch. 5 para. 10(2)(3) substituted for Sch. 5 para. 10(2) (with effect in accordance with s. 96(6) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 96\(3\)](#)

**F273** Words in Sch. 5 para. 10(3) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 399\(2\)](#) (with Sch. 2)

*Meaning of “qualifying subsidiary”*

- 11 (1) A company (“the subsidiary”) is a qualifying subsidiary of a company (“the holding company”) if the following conditions are met.
- (2) The conditions are—
- <sup>F274</sup>(a) .....
  - <sup>F274</sup>(b) .....
  - <sup>F274</sup>(c) .....
  - [<sup>F275</sup>(ca) that the subsidiary is a 51% subsidiary of the holding company;]
  - (d) that no person other than the holding company [<sup>F276</sup>or another of its subsidiaries] has control of the subsidiary; and
  - (e) that no arrangements are in existence by virtue of which [<sup>F277</sup>either of the conditions in paragraphs (ca) and] (d) would cease to be met.

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- <sup>F278</sup>(3) .....
- (4) Sub-paragraph (5) applies at a time when the subsidiary or another company is being wound up.
- (5) The subsidiary is not to be regarded as having ceased, on account of the winding up, to be a company in relation to which the conditions in sub-paragraph (2) are met if—
- (a) the conditions in that sub-paragraph would be met apart from the winding up, and
  - (b) the winding up is for commercial reasons and is not part of a scheme or arrangement the main purpose (or one of the main purposes) of which is the avoidance of tax.
- (6) Sub-paragraph (7) applies at a time when arrangements are in existence for the disposal by—
- (a) the holding company, or
  - (b) another subsidiary of the holding company,
- of all of its interest in the subsidiary.
- (7) The subsidiary is not to be regarded as having ceased, on account of those arrangements, to be a company in relation to which the conditions in sub-paragraph (2) are met if the disposal is to be for commercial reasons and is not to be part of a scheme or arrangement the main purpose (or one of the main purposes) of which is the avoidance of tax.
- <sup>F279</sup>(8) Sub-paragraph (9) applies at a time when the subsidiary or another company is in administration or receivership.
- (9) The subsidiary is not to be regarded, by reason only of anything done as a consequence of the company concerned being in administration or receivership, as having ceased to be a company in relation to which the conditions in sub-paragraph (2) are met if—
- (a) the entry into administration or receivership, and
  - (b) everything done as a consequence of the company concerned being in administration or receivership,
- is for commercial reasons and is not part of a scheme or arrangement the main purpose (or one of the main purposes) of which is the avoidance of tax.
- (10) <sup>F280</sup>[Section 252 of ITA 2007] (meaning of being in administration or receivership) applies for the purposes of sub-paragraphs (8) and (9) as it applies for the purposes of <sup>F281</sup>[Part 5 of ITA 2007] (enterprise investment scheme).]

#### Textual Amendments

- F274** Sch. 5 para. 11(2)(a)-(c) repealed (with effect in accordance with s. 96(6) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 96\(4\)\(a\), Sch. 42 Pt. 2\(13\)](#)
- F275** Sch. 5 para. 11(2)(ca) inserted (with effect in accordance with s. 96(6) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 96\(4\)\(b\)](#)
- F276** Words in Sch. 5 para. 11(2)(d) inserted (with effect in accordance with s. 96(6) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 96\(4\)\(c\)](#)
- F277** Words in Sch. 5 para. 11(2)(e) substituted (with effect in accordance with s. 96(6) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 96\(4\)\(d\)](#)



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- F278** Sch. 5 para. 11(3) repealed (with effect in accordance with s. 96(6) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 96\(4\)\(e\)](#), **Sch. 42 Pt. 2(13)**
- F279** Sch. 5 para. 11(8)-(10) inserted (with effect in accordance with s. 96(6) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 96\(4\)\(f\)](#)
- F280** Words in Sch. 5 para. 11(10) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 450\(2\)\(a\)](#) (with Sch. 2)
- F281** Words in Sch. 5 para. 11(10) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 450\(2\)\(b\)](#) (with Sch. 2)

### *[<sup>F282</sup>The property managing subsidiaries requirement*

#### **Textual Amendments**

- F282** Sch. 5 paras. 11A, 11B and cross-headings inserted (with effect in accordance with s. 96(6) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 96\(5\)](#)

- 11A (1) A company is not a qualifying company if it has a property managing subsidiary which is not a qualifying 90% subsidiary of the company (see paragraph 11B).
- (2) “Property managing subsidiary” means a qualifying subsidiary of a company whose business consists wholly or mainly in the holding or managing of land or any property deriving its value from land.
- [<sup>F283</sup>(3) In sub-paragraph (2) “property deriving its value from land” has the meaning given by section 188(3) of ITA 2007.]

#### **Textual Amendments**

- F283** Sch. 5 para. 11A(3) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 399\(3\)](#) (with Sch. 2)

### *Meaning of “qualifying 90% subsidiary”*

- 11B (1) A company (“the subsidiary”) is a qualifying 90% subsidiary of a company (“the holding company”) if the following conditions are met.
- (2) The conditions are—
- that the holding company possesses not less than 90% of the issued share capital of, and not less than 90% of the voting power in, the subsidiary;
  - that the holding company would—
    - in the event of a winding up of the subsidiary, or
    - in any other circumstances,be beneficially entitled to not less than 90% of the assets of the subsidiary which would then be available for distribution to the shareholders of the subsidiary;
  - that the holding company is beneficially entitled to not less than 90% of any profits of the subsidiary which are available for distribution to the shareholders of the subsidiary;
  - that no person other than the holding company has control of the subsidiary; and

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- (e) that no arrangements are in existence by virtue of which any of the conditions in paragraphs (a) to (d) would cease to be met.
- (3) Sub-paragraphs (4) to (10) of paragraph 11 (but not sub-paragraph (6)(b)) apply in relation to the conditions in sub-paragraph (2) above as they apply in relation to the conditions in sub-paragraph (2) of that paragraph.]

*The gross assets requirement*

- 12 (1) The gross assets requirement in the case of a single company is that the value of the company's gross assets does not exceed £30 million.
- (2) The gross assets requirement in the case of a parent company is that the value of the group assets does not exceed £30 million.
- (3) The "value of the group assets" means the aggregate of the values of the gross assets of each of the members of the group, disregarding any that consist in rights against, or shares in or securities of, another member of the group.

*[<sup>F284</sup>The number of employees requirement*

**Textual Amendments**

**F284** Sch. 5 para. 12A and cross-heading inserted (with effect in accordance with s. 33(6) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), s. 33(3)

- 12A (1) The number of employees requirement in the case of a single company is that the full-time equivalent employee number for it is less than 250.
- (2) The number of employees requirement in the case of a parent company is that the sum of—
- (a) the full-time equivalent employee number for it, and
  - (b) the full-time equivalent employee numbers for each of its qualifying subsidiaries,
- is less than 250.
- (3) The full-time equivalent employee number for a company is calculated as follows—
- Step 1*
- Find the number of full-time employees of the company.
- Step 2*
- Add, for each employee of the company who is not a full-time employee, such fraction as is just and reasonable.
- The result is the full-time equivalent employee number.
- (4) In this paragraph references to an employee—
- (a) include a director, but
  - (b) do not include—
    - (i) an employee on maternity or paternity leave, or
    - (ii) a student on vocational training.]

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*The trading activities requirement: single company*

- 13 (1) The trading activities requirement in the case of a single company is that the company—
- (a) disregarding any purposes within sub-paragraph (2), exists wholly for the purpose of carrying on one or more qualifying trades, and
  - (b) is carrying on a qualifying trade or preparing to do so.
- (2) The purposes referred to in sub-paragraph (1)(a) are—
- (a) the holding and managing of property used by the company for one or more qualifying trades carried on by it, and
  - (b) any purposes having no significant effect (other than in relation to incidental matters) on the extent of the company’s activities.
- (3) This paragraph is supplemented by paragraph 15 (meaning of “qualifying trade”) read with paragraphs 16 to 23 (excluded activities).

*The trading activities requirement: parent company*

- 14 (1) The trading activities requirement in the case of a parent company is that—
- (a) at least one group company—
    - (i) disregarding any purposes within sub-paragraph (4), exists wholly for the purpose of carrying on one or more qualifying trades, and
    - (ii) is carrying on a qualifying trade or preparing to do so, and
  - (b) the business of the group does not consist (either wholly or as to a substantial part) in the carrying on of non-qualifying activities.
- (2) The “business of the group” means what would be the business of the group if the activities of the group companies taken together were regarded as one business.
- (3) For the purpose of determining the business of a group, activities of a group company are to be disregarded to the extent that they consist in—
- (a) the holding of shares in or securities of, or the making of loans to, another group company,
  - (b) the holding and managing of property used by a group company for the purposes of one or more qualifying trades carried on by a group company, or
  - (c) incidental activities of a company which meets the trading activities requirement for a single company (see paragraph 13).
- (4) The purposes referred to in sub-paragraph (1)(a)(i) are—
- (a) the carrying on of any activities within sub-paragraph (3), and
  - (b) any purposes having no significant effect (other than in relation to incidental matters) on the extent of the company’s activities.
- (5) In this paragraph—
- (a) “group company” means any member of the group;
  - (b) “incidental activities” means activities carried on in pursuance of purposes having no significant effect (other than in relation to incidental matters) on the extent of the company’s activities;
  - (c) “non-qualifying activities” means—
    - (i) excluded activities, or
    - (ii) activities carried on otherwise than in the course of a trade.

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- (6) This paragraph is supplemented by paragraph 15 (meaning of “qualifying trade”) read with paragraphs 16 to 23 (excluded activities).

<sup>F285</sup> *The UK permanent establishment requirement*

**Textual Amendments**

**F285** Sch. 5 para. 14A and cross-heading inserted (with effect in accordance with s. 6(5) of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\), s. 6\(3\)](#)

- 14A (1) The UK permanent establishment requirement is met if condition A or B is met.
- (2) Condition A is that the company has a permanent establishment in the United Kingdom.
- (3) Condition B is that—
- (a) the company is a parent company, and
  - (b) any other member of the group—
    - (i) meets the conditions in paragraph 14(1)(a) (trading activities requirement), and
    - (ii) has a permanent establishment in the United Kingdom.]

*Meaning of “qualifying trade”*

- 15 (1) A trade is a qualifying trade if—
- <sup>F286</sup>(a) .....
  - (b) it is conducted on a commercial basis and with a view to the realisation of profits, and
  - (c) it does not consist (either wholly or as to a substantial part) in the carrying on of excluded activities.
- (2) The carrying on of activities of research and development from which it is intended that a connected qualifying trade will be derived or benefit counts as the carrying on of a qualifying trade.
- (3) But preparing to carry on such activities does not count as preparing to carry on a qualifying trade.
- (4) In sub-paragraph (2) “connected qualifying trade” means a qualifying trade carried on—
- (a) by the company carrying on the activities of research and development, or
  - (b) if that company is a member of a group, by any other member of the group.

**Textual Amendments**

**F286** Sch. 5 para. 15(1)(a) omitted (with effect in accordance with s. 6(5) of the amending Act) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\), s. 6\(4\)](#)

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*Excluded activities*

- 16 The following are excluded activities—
- (a) dealing in land, in commodities or futures or in shares, securities or other financial instruments;
  - (b) dealing in goods otherwise than in the course of an ordinary trade of wholesale or retail distribution (see also paragraph 17);
  - (c) banking, insurance, money-lending, debt-factoring, hire-purchase financing or other financial activities;
  - (d) leasing, including letting ships on charter or other assets on hire (see also paragraph 18);
  - (e) receiving royalties or licence fees (see also paragraph 19);
  - (f) providing legal or accountancy services;
  - (g) property development (see also paragraph 20);
  - (h) farming or market gardening;
  - (i) holding, managing or occupying woodlands, any other forestry activities or timber production;
  - [<sup>F287</sup>(ia) shipbuilding (see also paragraph 20A);
  - (ib) producing coal (see also paragraph 20B);
  - (ic) producing steel (see also paragraph 20C);]
  - (j) operating or managing hotels or comparable establishments, or managing property used as a hotel or comparable establishment (see also paragraph 21);
  - (k) operating or managing nursing homes or residential care homes, or managing property used as a nursing home or residential care home (see also paragraph 22);
  - (l) any activities which are excluded activities under paragraph 23.

**Textual Amendments**

**F287** Sch. 5 para. 16(ia)-(ic) inserted (with effect in accordance with s. 33(6) of the amending Act) by [Finance Act 2008 \(c. 9\), s. 33\(4\)](#)

*Excluded activities: wholesale and retail distribution*

- 17 (1) This paragraph supplements paragraph 16(b).
- (2) A trade of wholesale distribution is one in which the goods are offered for sale and sold to persons—
- (a) for resale by them, or
  - (b) for processing and resale by them,
- to members of the general public for their use or consumption.
- (3) A trade of retail distribution is one in which the goods are offered for sale and sold to members of the general public for their use or consumption.
- (4) A trade is not an ordinary trade of wholesale or retail distribution if—
- (a) it consists, to a substantial extent—
    - (i) in dealing in goods of a kind which are collected or held as an investment, or

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- (ii) in that activity and any other excluded activity taken together, and
  - (b) a substantial proportion of those goods are held by the company for a period which is significantly longer than the period for which a vendor would reasonably be expected to hold them while endeavouring to dispose of them at their market value.
- (5) In determining whether a trade carried on by any person (“P”) is an ordinary trade of wholesale or retail distribution, consideration must be given to the extent to which it has the following features—
- (a) the goods are bought by P in quantities larger than those in which P sells them;
  - (b) the goods are bought and sold by P in different markets;
  - (c) P employs staff and incurs expenses in the trade in addition—
    - (i) to the cost of the goods, and
    - (ii) in the case of a trade carried on by a company, to any remuneration paid to any person connected with it;
  - (d) there are purchases or sales from or to persons who are connected with P;
  - (e) purchases are matched with forward sales or vice versa;
  - (f) the goods are held by P for longer than is normal for goods of the kind in question;
  - (g) the trade is carried on otherwise than at a place or places commonly used for wholesale or retail trade;
  - (h) P does not take physical possession of the goods.
- (6) The features in sub-paragraph (5)(a) to (c) are indications that the trade is such an ordinary trade.
- (7) Those in sub-paragraph (5)(d) to (h) are indications to the contrary.

*Excluded activities: leasing of certain ships*

- 18 (1) This paragraph supplements paragraph 16(d) so far as it relates to the leasing of ships other than [F<sup>288</sup>offshore installations] or pleasure craft.
- (2) In the following provisions “ship” accordingly means a ship other than an [F<sup>289</sup>offshore installation] or a pleasure craft.
- (3) If the requirements of sub-paragraph (4) are met, a trade is not to be regarded as consisting in the carrying on of excluded activities within paragraph 16(d) as a result only of its consisting in the letting of ships on charter.
- (4) The requirements of this sub-paragraph are that—
- (a) every ship let on charter by the company carrying on the trade is beneficially owned by the company;
  - (b) every ship beneficially owned by the company is registered in the United Kingdom;
  - (c) the company is solely responsible for arranging the marketing of the services of its ships; and
  - (d) the conditions mentioned in sub-paragraph (5) are satisfied in relation to every letting of a ship on charter by the company.
- (5) The conditions are that—

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- (a) the letting is for a period not exceeding 12 months and no provision is made at any time (in the charterparty or otherwise) for extending it beyond that period otherwise than at the option of the charterer;
  - (b) during the period of the letting there is no provision in force (as a result of being contained in the charterparty or otherwise) for the grant of a new letting to end, otherwise than at the option of the charterer, more than 12 months after that provision is made;
  - (c) the letting is by way of a bargain made at arm's length between the company and a person who is not connected with it;
  - (d) under the terms of the charter the company is responsible as principal—
    - (i) for taking, throughout the period of the charter, management decisions in relation to the ship, other than those of a kind generally regarded by persons engaged in trade of the kind in question as matters of husbandry, and
    - (ii) for defraying all expenses in connection with the ship throughout that period, or substantially all such expenses, other than those directly incidental to a particular voyage or to the employment of the ship during that period; and
  - (e) no arrangements exist as a result of which a person other than the company may be appointed to be responsible for the matters mentioned in paragraph (d) on behalf of the company.
- (6) If in the case of a letting by the company carrying on the trade (“the letting company”) the charterer is also a company and—
- (a) the charterer is a qualifying subsidiary of the letting company, or
  - (b) the letting company is a qualifying subsidiary of the charterer, or
  - (c) both companies are qualifying subsidiaries of a third company,
- sub-paragraph (5) has effect with the omission of paragraph (c).
- (7) Where any of the requirements in sub-paragraph (4) is not met in relation to any lettings, the trade is not, as a result, to be treated as consisting in the carrying on of excluded activities if those lettings and any other excluded activities do not, taken together, amount to a substantial part of the trade.
- (8) In this paragraph—
- F290**  
.....  
“pleasure craft” means any ship of a kind primarily used for sport or recreation.

**Textual Amendments**

**F288** Words in Sch. 5 para. 18(1) substituted (with effect in accordance with Sch. 27 para. 17(6)(7) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 27 para. 17\(2\)](#)

**F289** Words in Sch. 5 para. 18(2) substituted (with effect in accordance with Sch. 27 para. 17(6)(7) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 27 para. 17\(3\)](#)

**F290** Words in Sch. 5 para. 18(8) repealed (with effect in accordance with Sch. 27 para. 17(6)(7) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 27 para. 17\(4\)](#), [Sch. 42 Pt. 2\(19\)](#)

*Excluded activities: receipt of royalties or licence fees*

- 19 (1) This paragraph supplements paragraph 16(e) (receipt of royalties or licence fees).

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- (2) If the requirement of sub-paragraph (3) is met, a trade is not to be regarded as consisting in the carrying of excluded activities within paragraph 16(e) as a result only of its consisting to a substantial extent in the receiving of royalties or licence fees.
- (3) The requirement of this sub-paragraph is that the royalties or licence fees (or all of them except for a part that is not substantial in terms of value) are attributable to the exploitation of relevant intangible assets.
- (4) For this purpose a “relevant intangible asset” is an intangible asset the whole or greater part of which (in terms of value) has been created—
- [<sup>F291</sup>(a) by the relevant company, or
- (b) by a company which was a qualifying subsidiary of the relevant company throughout a period during which it created the whole or greater part (in terms of value) of the intangible asset.]
- (5) In the case of an intangible asset which is intellectual property, any reference in sub-paragraph (4) to the creation of the asset by a company is to its creation in circumstances in which the right to exploit it vests in the company (either alone or jointly with others).
- (6) In sub-paragraph (5) “intellectual property” means—
- (a) any patent, trade mark, registered design, copyright, design right, performer’s right or plant breeder’s right; or
- (b) any rights under the law of a country or territory outside the United Kingdom which correspond or are similar to those falling within paragraph (a).
- (7) In this paragraph “intangible asset” means any asset which falls to be treated as an intangible asset in accordance with generally accepted accounting practice.
- [<sup>F292</sup>(8) If—
- (a) the relevant company acquired all the shares (“old shares”) in another company (“the old company”) at a time when the only shares issued in the relevant company were subscriber shares, and
- (b) the consideration for the old shares consisted wholly of the issue of shares in the relevant company,
- references in sub-paragraph (4) to the relevant company include the old company.]

#### Textual Amendments

**F291** Sch. 5 para. 19(4)(a)(b) substituted (with effect in accordance with s. 61(2)-(6) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 61\(1\)\(a\)](#)

**F292** Sch. 5 para. 19(8) inserted (with effect in accordance with s. 61(2)-(6) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 61\(1\)\(b\)](#)

#### *Excluded activities: property development*

- 20 (1) This paragraph supplements paragraph 16(g).
- (2) “Property development” means the development of land—
- (a) by a company which has, or at any time has had, an interest in the land, and



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- (b) with the sole or main object of realising a gain from the disposal of an interest in the land when it is developed.
- (3) For this purpose “interest in land” means—
  - (a) any estate, interest or right in or over land, including any right affecting the use or disposition of land, or
  - (b) any right to obtain such an estate, interest or right from another which is conditional on the other’s ability to grant it.
- (4) References in this paragraph to an interest in land do not, however, include—
  - (a) the interest of a creditor (other than a creditor in respect of a rentcharge) whose debt is secured by way of mortgage, an agreement for a mortgage or a charge of any kind over land, or
  - (b) in the case of land in Scotland, the interest of a creditor in a charge or security of any kind over land.

*[<sup>F293</sup>Excluded activities: shipbuilding*

#### **Textual Amendments**

**F293** Sch. 5 paras. 20A-20C and cross-heading inserted (with effect in accordance with s. 33(6) of the amending Act) by [Finance Act 2008 \(c. 9\), s. 33\(5\)](#)

- 20A In paragraph 16(ia) “shipbuilding” has the same meaning as in the Framework on state aid to shipbuilding (2003/C 317/06), published in the Official Journal on 30 December 2003.

*Excluded activities: producing coal*

- 20B (1) This paragraph supplements paragraph 16(ib).
- (2) “Coal” has the meaning given by Article 2 of Council Regulation [\(EC\) No. 1407/2002](#) (state aid to coal industry).
- (3) The production of coal includes the extraction of it.

*Excluded activities: producing steel*

- 20C In paragraph 16(ic) “steel” means any of the steel products listed in Annex 1 to the Guidelines on national regional aid (2006/C 54/08), published in the Official Journal on 4 March 2006.]

*Excluded activities: hotels and comparable establishments*

- 21 (1) This paragraph supplements paragraph 16(j).
- (2) A “comparable establishment” means a guest house, hostel or other establishment offering overnight accommodation.
- (3) An establishment offers overnight accommodation if the main purpose of maintaining it is the provision of facilities for such accommodation (with or without catering services).

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- (4) The activities of a person are not to be taken to fall within paragraph 16(j) unless that person has an estate or interest in, or is in occupation of, the hotel or comparable establishment in question.

*Excluded activities: nursing homes and residential care homes*

- 22 (1) This paragraph supplements paragraph 16(k).
- (2) “Nursing home” means an establishment that exists wholly or mainly for the provision of nursing care—
- (a) for persons suffering from sickness, injury or infirmity, or
  - (b) for women who are pregnant or have given birth to children.
- (3) “Residential care home” means an establishment that exists wholly or mainly for the provision of residential accommodation, together with board and personal care, for persons in need of personal care by reason of—
- (a) old age,
  - (b) mental or physical disability,
  - (c) past or present dependence on alcohol or drugs,
  - (d) any past illness, or
  - (e) past or present mental disorder.
- (4) The activities of a person are not to be taken to fall within paragraph 16(k) unless that person has an estate or interest in, or is in occupation of, the nursing home or residential care home in question.

*Excluded activities: provision of facilities for another business*

- 23 (1) This paragraph applies where a company (“the service provider”) provides services or facilities for a business carried on by another person.
- (2) Providing those services or facilities is an excluded activity if—
- (a) the business consists to a substantial extent in carrying on excluded activities within any of sub-paragraphs (a) to (k) of paragraph 16, and
  - (b) a controlling interest in the business is held by a person (other than a company of which the service provider is a subsidiary) who also has a controlling interest in the business carried on by the service provider.
- (3) Sub-paragraphs (4) to (6) explain what is meant by a controlling interest in a business for the purposes of sub-paragraph (2)(b).
- (4) In the case of a business carried on by a company, a person (“P”) has a controlling interest in the business if—
- (a) P controls the company,
  - (b) the company is a close company and P, or an associate of P's, is a director of the company and either—
    - (i) is the beneficial owner of more than 30% of the ordinary share capital of the company, or
    - (ii) is able (directly or through the medium of other companies or by any other indirect means) to control more than 30% of that share capital, or

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- (c) not less than half of the business could, in accordance with [F294]section 942 of CTA 2010 (options for purposes of ownership condition)], be regarded as belonging to him for the purposes of [F295]section 941 of that Act (trade transfers without change of ownership: ownership condition)].
- (5) In any other case, a person has a controlling interest in a business if that person is entitled to not less than half—
- (a) of the assets used for the business, or
- (b) of the income arising from it.
- (6) For the purposes of sub-paragraph (4)(a) the question whether a person controls a company is to be determined in accordance with [F296]sections 450 and 451 of CTA 2010] (“control” in the context of close companies).
- (7) For the purposes of this paragraph any rights or powers of a person who is an associate of another person are to be attributed to that other person.
- (8) In this paragraph—
- “associate” has the meaning given [F297]by section 448 of CTA 2010] (expressions relating to close companies), except that in [F298]that section as it applies] for the purposes of this paragraph “relative” does not include a brother or sister;
- “business” includes any trade, profession or vocation;
- “director” is to be construed in accordance with [F299]section 452 of CTA 2010] (expressions relating to close companies).

#### Textual Amendments

- F294** Words in Sch. 5 para. 23(4)(c) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 399\(4\)\(a\)\(i\)](#) (with [Sch. 2](#))
- F295** Words in Sch. 5 para. 23(4)(c) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 399\(4\)\(a\)\(ii\)](#) (with [Sch. 2](#))
- F296** Words in Sch. 5 para. 23(6) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 399\(4\)\(b\)](#) (with [Sch. 2](#))
- F297** Words in Sch. 5 para. 23(8) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 399\(4\)\(c\)\(i\)](#) (with [Sch. 2](#))
- F298** Words in Sch. 5 para. 23(8) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 399\(4\)\(c\)\(ii\)](#) (with [Sch. 2](#))
- F299** Words in Sch. 5 para. 23(8) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 399\(4\)\(d\)](#) (with [Sch. 2](#))

## PART 4

### ELIGIBLE EMPLOYEES

#### *Eligible employees: introduction*

- 24 An individual is an “eligible employee” in relation to the relevant company if the requirements of this Part of this Schedule as to the following are met at the appropriate time—

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employment (see paragraph 25),  
commitment of working time (see paragraphs 26 and 27), and  
having no material interest (see paragraphs 28 to 33).

*The employment requirement*

- 25 To be an eligible employee in relation to the relevant company an individual must be an employee—
- (a) of that company, or
  - (b) if that company is a parent company, of that company or a qualifying subsidiary of that company.

*The requirement as to commitment of working time*

- 26 (1) For an individual (“the employee”) to be an eligible employee in relation to the relevant company the average amount per week of the employee’s committed time must equal or exceed the statutory threshold, that is—
- (a) 25 hours a week, or
  - (b) if less, 75% of the employee’s working time (see paragraph 27).
- (2) The employee’s “committed time” means the time that the employee is required, as an employee in relevant employment, to spend—
- (a) on the business of the relevant company, or
  - (b) if the relevant company is a parent company, on the business of the group.
- (3) It includes any time which the employee would have been required to spend as mentioned in sub-paragraph (2) but for—
- (a) injury, ill-health or disability,
  - (b) pregnancy, childbirth, maternity or paternity leave or parental leave,
  - (c) reasonable holiday entitlement, or
  - (d) not being required to work during a period of notice of termination of employment.
- (4) In this paragraph “relevant employment” means employment—
- (a) by the relevant company, or
  - (b) where the relevant company is a parent company, by any member of the group.

*Meaning of “working time”*

- 27 (1) In paragraph 26 “working time” means—
- (a) time spent on remunerative work as an employee or self-employed person, or
  - (b) time which would have been so spent but for any of the reasons set out in paragraph 26(3)(a) to (d).
- (2) In sub-paragraph (1)(a) “remunerative work”, in the context of work undertaken as an employee, means work the earnings from which—
- (a) are general earnings to which section 15 [<sup>F300</sup>applies (earnings for year when employee UK resident)], or

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- (b) would be general earnings within paragraph (a) if the employee were [<sup>F301</sup>UK resident (and none of sections 809B, 809D and 809E of ITA 2007 (remittance basis) applied to the employee).]
- (3) In sub-paragraph (1)(a) “remunerative work”, in the context of work undertaken as a self-employed person, means work which is undertaken with a view to profit and the profits (if any) from which—
  - (a) are (or would be) chargeable to tax [<sup>F302</sup>as the profits of a trade, profession or vocation carried on wholly or partly in the United Kingdom], or
  - (b) would be so chargeable if the employee were resident and ordinarily resident in the United Kingdom.

#### Textual Amendments

- F300** Words in Sch. 5 para. 27(2)(a) substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 43\(a\)](#)
- F301** Words in Sch. 5 para. 27(2)(b) substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 43\(b\)](#)
- F302** Words in Sch. 5 para. 27(3)(a) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 620\(2\)](#) (with Sch. 2)

#### *The “no material interest” requirement*

- 28 (1) An individual is not an eligible employee in relation to the relevant company if the individual has a material interest—
  - (a) in that company, or
  - (b) if that company is a parent company, in any member of the group.
- (2) For the purposes of this paragraph an individual is to be regarded as having a material interest in a company if—
  - (a) the individual,
  - (b) the individual together with one or more of the individual’s associates, or
  - (c) any such associate, 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 29 and 30; and
  - (b) as regards the meaning of “associate” by paragraph 31 (read with paragraphs 32 and 33).

#### *Meaning of “material interest”*

- 29 (1) In paragraph 28 (the “no material interest” requirement) references to a “material interest” in a company are to—
  - (a) a material interest in the share capital of the company, or
  - (b) where it is a close company, a material interest in its assets.
- (2) A material interest in the share capital of a company means—
  - (a) beneficial ownership of, or

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- (b) the ability to control (directly or through the medium of other companies or by any other indirect means),  
more than 30% of the ordinary share capital of the company.
- (3) A material interest in the assets of a close company means—
- (a) possession of, or
- (b) an 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 30% of the assets that would then be available for distribution among the participators.
- (4) In this paragraph—  
“close company” includes a company that would be a close company but for—
- (a) [F303 section 442(a) of CTA 2010] (exclusion of companies not resident in the United Kingdom), or
- (b) [F304 sections 446 and 447 of CTA 2010] (exclusion of certain quoted companies);  
“participator” has the meaning given by [F305 section 454 of CTA 2010] (expressions relating to close companies).
- (5) This paragraph is supplemented by paragraph 30 (options and interests in SIPs).

#### Textual Amendments

- F303** Words in Sch. 5 para. 29(4) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 399\(5\)\(a\)\(i\)](#) (with [Sch. 2](#))
- F304** Words in Sch. 5 para. 29(4) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 399\(5\)\(a\)\(ii\)](#) (with [Sch. 2](#))
- F305** Words in Sch. 5 para. 29(4) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 399\(5\)\(b\)](#) (with [Sch. 2](#))

#### *Material interest: options and interests in SIPs*

- 30 (1) This paragraph applies for the purposes of paragraph 29 (meaning of “material interest”).
- (2) A right to acquire shares (however arising) is to be treated as a right to control them.
- (3) However, shares that an individual may acquire under a qualifying option are to be left out of account until such time as they are actually acquired.
- (4) Sub-paragraph (5) applies in a case where—
- (a) the shares to be attributed to an individual consist of or include shares which the individual 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 would be contractually bound to issue in the event of the exercise of the right.
- (5) In determining at any time prior to the exercise of the right whether the number of shares to be attributed to the individual exceeds 30% of the ordinary share capital of

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the company, that ordinary share capital is to be treated as increased by the number of unissued shares referred to in sub-paragraph (4)(b).

(6) The references in sub-paragraphs (4) and (5) to the shares to be attributed to an individual are to the shares which—

- (a) for the purposes of paragraph 29(2) (material interest in share capital), and
- (b) in accordance with paragraph 28(2) (material interest can consist of or include that of individual's associates),

fall to be brought into account in the individual's case so that it can be determined whether their number exceeds 30% of the company's ordinary share capital.

(7) In applying paragraph 29 the following are to be disregarded—

- (a) the interest of the trustees of any share incentive plan approved under Schedule 2 (SIPs) in any shares which are held by them in accordance with the plan but which have not been appropriated to, or acquired on behalf of, an individual, and
- (b) any rights exercisable by the trustees as a result of that interest.

#### *Meaning of “associate”*

31 (1) In paragraph 28(2) (the “no material interest” requirement) “associate”, in relation to an individual, means—

- (a) any relative or partner of that individual,
- (b) the trustee or trustees of any settlement in relation to which that individual, or any of that individual's relatives (living or dead), is or was a settlor, and
- (c) where that individual is interested in any shares or obligations of the company mentioned in paragraph 28(2) which are subject to any trust, or are part of the estate of a deceased person—

- (i) the trustee or trustees of the settlement concerned, or
- (ii) the personal representatives of the deceased,

as the case may be.

(2) Sub-paragraph (1)(c) needs to be read with paragraphs 32 and 33 (which relate to employee benefit trusts and discretionary trusts).

(3) In this paragraph—

“relative” means—

- (a) spouse [<sup>F306</sup>or civil partner], or
- (b) parent, child or remoter relation in the direct line;

“settlor” and “settlement” have the same meaning as in [<sup>F307</sup>Chapter 5 of Part 5 of ITTOIA 2005 (see section 620 of that Act)].

#### **Textual Amendments**

**F306** Words in Sch. 5 para. 31(3) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **173**

**F307** Words in Sch. 5 para. 31(3) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 620\(3\)](#) (with Sch. 2)

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*Meaning of “associate”: trustees of employee benefit trust*

- 32 (1) This paragraph applies for the purposes of paragraph 31(1)(c) (meaning of “associate”: trustees of settlement) where the individual is interested as a beneficiary of an employee benefit trust in shares or obligations of the company mentioned in paragraph 28(2).
- (2) The trustees of the employee benefit trust are not to be regarded as associates of the beneficiary by reason only of the individual’s being so interested if neither—
- (a) the individual, nor
  - (b) the individual together with one or more of the individual’s associates, nor
  - (c) any such associate, with or without any other such associates,
- has at any time after 13th 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 30% of the ordinary share capital of the company.
- (3) In sub-paragraph (2)(b) and (c) “associate” has the meaning given by paragraph 31(1), but does not include the trustees of an employee benefit trust as a result only of the individual’s having an interest in shares or obligations of the trust.
- (4) Chapter 11 of Part 7 of this Act (which deals with the attribution of interests in companies to beneficiaries of employee benefit trusts) applies for the purposes of sub-paragraph (2).
- (5) In this paragraph “employee benefit trust” has the same meaning as in that Chapter (see sections 550 and 551).

*Meaning of “associate”: trustees of discretionary trust*

- 33 (1) This paragraph applies for the purposes of paragraph 31(1)(c) (meaning of “associate”: trustees of settlement) where—
- (a) the individual (“the beneficiary”) is one of the objects of a discretionary trust,
  - (b) the property subject to the trust has at any time consisted of or included shares or obligations of the company mentioned in paragraph 28(2),
  - (c) the beneficiary has ceased to be eligible to benefit under the trust as a result of—
    - (i) an irrevocable disclaimer or release executed by the beneficiary, or
    - (ii) the irrevocable exercise by the trustees of a power to exclude the beneficiary from the objects of the trust,
  - (d) immediately after the beneficiary ceased to be so eligible, no associate of the beneficiary was interested in the shares or obligations of the company which were subject to the trust, and
  - (e) during the period of 12 months ending with the date on which the beneficiary ceased to be so eligible, neither the beneficiary nor any associate of the beneficiary received any benefit under the trust.
- (2) The beneficiary is not, as a result only of the matters mentioned in sub-paragraph (1) (a) and (b), to be regarded as having been interested in the shares or obligations of the company at any time during that period of 12 months.
- (3) In sub-paragraph (1) “associate” has the meaning given by paragraph 31, but with the omission of sub-paragraph (1)(c) of that paragraph (trusts and estates).



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## PART 5

### REQUIREMENTS RELATING TO OPTIONS

#### *Requirements relating to options: introduction*

- 34 A share option is not a qualifying option unless the requirements of this Part of this Schedule as to the following are met at the appropriate time—
- the type of shares that may be acquired (see paragraph 35),
  - when the option is capable of being exercised (see paragraph 36),
  - the terms being agreed in writing (see paragraph 37), and
  - the non-assignability of rights (see paragraph 38).

#### *Type of shares that may be acquired*

- 35 (1) The option must confer a right to acquire shares that—
- (a) form part of the ordinary share capital of the relevant company,
  - (b) are fully paid up, and
  - (c) are not redeemable.
- (2) Shares are not fully paid up for the purposes of sub-paragraph (1)(b) if there is any undertaking to pay cash to the relevant company at a future date.
- (3) For the purposes of sub-paragraph (1)(c) “redeemable” shares include shares that may become redeemable at a future date.

#### *Option to be capable of exercise within 10 years*

- 36 (1) The option must be capable of being exercised within the period of 10 years beginning with the date on which it is granted.
- (2) Where the exercise of the option is dependent on the fulfilment of conditions, the option is to be taken to be capable of being exercised within the period mentioned in sub-paragraph (1) if the conditions may be fulfilled within that period.

#### *Terms of option to be agreed in writing*

- 37 (1) The option must take the form of a written agreement between the person granting the option and the employee which meets the following requirements.
- (2) The agreement must state—
- (a) the date on which the option is granted;
  - (b) that it is granted under the provisions of this Schedule;
  - (c) the number, or maximum number, of shares that may be acquired;
  - (d) the price (if any) payable by the employee to acquire them, or the method by which that price is to be determined; and
  - (e) when and how the option may be exercised.
- (3) The agreement must set out any conditions, such as performance conditions, affecting the terms or extent of the employee’s entitlement.
- [<sup>F308</sup>(4) Where the shares that may be acquired by the employee are restricted shares, the agreement must contain details of the restrictions.

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- (5) For the purposes of sub-paragraph (4)—
- (a) shares are “restricted shares” if there is any contract, agreement, arrangement or condition which makes provision to which any of subsections (2) to (4) of section 423 (restricted securities) would apply if the references in those subsections to the employment-related securities were to the shares, and
  - (b) “restrictions” means that provision.]

<sup>F308</sup>(6) .....

#### Textual Amendments

**F308** Sch. 5 para. 37(4)(5) substituted for Sch. 5 para. 37(4)-(6) (1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 45\(3\)\(4\)](#); [S.I. 2003/1997](#), art. 2

#### *Non-assignability of rights*

- 38 The terms on which the option is granted—
- (a) must prohibit the person to whom it is granted from transferring any of that person’s rights under it, and
  - (b) if they permit it to be exercised after that person’s death, must not permit it to be exercised more than one year after the date of the death.

## PART 6

### COMPANY REORGANISATIONS

#### *Company reorganisations: introduction*

- 39 (1) This Part applies in connection with company reorganisations.
- (2) For the purposes of this Part there is a “company reorganisation” where a company (“the acquiring company”)—
- (a) obtains control of a company whose shares are subject to an outstanding qualifying option—
    - (i) as a result of making a general offer to acquire the whole of the issued share capital of that company which is made on a condition such that, if it is met, the person making the offer will have control of the company, or
    - (ii) as a result of making a general offer to acquire all the shares in the company which are of the same class as those to which the option relates;
  - <sup>F309</sup>(b) obtains control of such a company as a result of a compromise or arrangement sanctioned by the court under section 899 of the Companies Act 2006 (court sanction for compromise or arrangement);]
  - <sup>F310</sup>(c) becomes bound or entitled to acquire shares in the scheme company under sections 979 to 982 of the Companies Act 2006 (takeover offers: right of offeror to buy out minority shareholder).]

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- (d) obtains all the shares of a company whose shares are subject to an outstanding qualifying option as a result of a qualifying exchange of shares (see paragraph 40).
- (3) In sub-paragraph (2) “outstanding qualifying option” means a qualifying option that has yet to be exercised.

#### Textual Amendments

- F309** Sch. 5 para. 39(2)(b) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments\) \(Taxes and National Insurance\) Order 2008 \(S.I. 2008/954\)](#), arts. 1(1), **34** (with art. 4)
- F310** Sch. 5 para. 39(2)(c) substituted (1.10.2007) by [The Companies Act 2006 \(Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings\) Order 2007 \(S.I. 2007/2194\)](#), **Sch. 4 para. 101** (with art. 12)

#### *Meaning of “qualifying exchange of shares”*

- 40 (1) For the purposes of the EMI code there is a “qualifying exchange of shares” where—
- (a) arrangements are made in accordance with which a company (“the new company”) acquires all the shares (“old shares”) in another company (“the old company”), and
- (b) the following conditions are met.
- (2) The conditions are that—
- (a) the consideration for the old shares consists wholly of the issue of shares (“new shares”) in the new company;
- (b) new shares are issued in consideration of old shares only at times when there are no issued shares in the new company other than—
- (i) subscriber shares, and
- (ii) new shares previously issued in consideration of old shares;
- (c) the consideration for new shares of each description consists wholly of old shares of the corresponding description;
- (d) new shares of each description are issued to holders of old shares of the corresponding description in respect of, and in proportion to, their holdings; and
- (e) by virtue of the CGT capital reorganisation provisions, the exchange of shares is not treated as involving a disposal of the old shares or an acquisition of the new shares.
- (3) For the purposes of this paragraph old shares and new shares are of a corresponding description if, on the assumption that they were shares in the same company, they would be of the same class and carry the same rights.
- (4) In this paragraph—
- (a) references to “shares”, except in the expression “subscriber shares”, include securities; and
- (b) “the CGT capital reorganisation provisions” means section 127 of TCGA 1992, as applied by section 135(3) of that Act (exchange of securities).

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*Grant of replacement option*

- 41 (1) This paragraph applies if both of the following conditions are met in connection with a company reorganisation.
- (2) The first condition is that the holder of a qualifying option, by agreement with the acquiring company, releases the holder's rights under that option ("the old option") in consideration of the granting to him of rights ("the new option") which are equivalent but relate to shares in the acquiring company.
- (3) The second condition is that the requirements of the following paragraphs are met—  
paragraph 42 (period within which replacement option must be granted), and  
paragraph 43 (further requirements to be met as to replacement option).
- (4) If this paragraph applies, the new option is to be treated for the purposes of the EMI code as a "replacement option".
- (5) Except where the contrary is indicated—
- (a) references in the EMI code to a qualifying option include a replacement option, and
  - (b) a replacement option is to be treated for the purposes of the EMI code as if it had been granted on the date on which the old option was granted.
- (6) For the purposes of any of paragraphs 5 to 7 or section 536(1)(e), the total value of the shares in the acquiring company that are subject to the replacement option is to be taken to be equal to—
- (a) the total value (as calculated in accordance with paragraph 5(6) to (8)) of the shares that were subject to the old option immediately before the release of rights under that option, or
  - (b) if the replacement option has been partially exercised, the proportion of that total value which corresponds to the proportion which the number of shares that remain subject to the option bears to the number of shares that were subject to it at the time when it was granted as a new option (see sub-paragraph (2) above).
- (7) In the EMI code references to "the old option" or "the new option" are to be construed in accordance with this paragraph.

*Period within which replacement option must be granted*

- 42 (1) To qualify as a replacement option the new option must be granted within the required period (see sub-paragraphs (2) to (4)).
- (2) If the company reorganisation falls within paragraph 39(2)(a), the required period is the period of 6 months after the date on which—
- (a) the person making the offer has obtained control of the company, and
  - (b) any condition subject to which the offer is made is met.
- (3) If the company reorganisation falls within paragraph 39(2)(b) or (d), the required period is the period of 6 months after the date on which the acquiring company obtains control of the company whose shares are subject to the old option.
- (4) If the company reorganisation falls within paragraph 39(2)(c), the required period is the period during which the acquiring company remains bound or entitled as mentioned in that provision.

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*Further requirements to be met as to replacement option*

- 43 (1) For the new option to qualify as a replacement option the following requirements must also be met.
- (2) The new option must be granted to the holder of the old option by reason of the holder's employment—
- (a) with the acquiring company, or
  - (b) if that company is a parent company, with that company or another member of the group.
- (3) The requirements of—
- (a) paragraph 4 (purpose of granting option),
  - (b) paragraph 7 (maximum value of options in respect of relevant company) (as it has effect under sub-paragraph (4)), and
  - (c) Part 5 (requirements as to options),
- must be met in relation to the new option at the time of the release of rights under the old option (“the relevant time”).
- (4) For the purposes of paragraph 7 (as applied by sub-paragraph (3)(b)) the total value of the shares in the acquiring company that are subject to the new option is to be taken to be equal to the total value (as calculated in accordance with paragraph 5(6) to (8)) of the shares that were subject to the old option immediately before the relevant time.
- (5) In addition to the requirements mentioned in sub-paragraph (3)—
- (a) the independence requirement and the trading activities requirement must be met in relation to the acquiring company at the relevant time, and
  - (b) the individual to whom the new option is granted must be an eligible employee in relation to the acquiring company at that time.
- (6) The total market value, immediately before the relevant time, of the shares which were subject to the old option must be equal to the total market value, immediately after the grant of the new option, of the shares in respect of which that option is granted.
- (7) The total amount payable by the employee for the acquisition of the shares under the new option must be equal to the total amount that would have been payable for the acquisition of shares under the old option.

**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 [F65an 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 [F65an officer of Revenue and Customs].

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- (3) The notice must contain, or be supported by, such information as [<sup>F65</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

**F65** 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)

#### *Correction of notice by Inland Revenue*

- 45 (1) [<sup>F65</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 [<sup>F65</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 [<sup>F65</sup>an officer of Revenue and Customs] rejecting the correction.

#### Textual Amendments

**F65** 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.

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- (2) [<sup>F65</sup>An officer of Revenue and Customs] may enquire into the option if [<sup>F311</sup>the officer][<sup>F312</sup>gives] notice to the employer company of [<sup>F313</sup>the officer's] intention to do so in accordance with this paragraph.
- (3) [<sup>F65</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 [<sup>F314</sup>the officer][<sup>F312</sup>gives] that individual notice of [<sup>F313</sup>the officer's] intention to do so in accordance with this paragraph.
- (4) [<sup>F65</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 [<sup>F65</sup>an officer of Revenue and Customs][<sup>F315</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).

#### Textual Amendments

- F65** 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)
- F311** 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)
- F312** 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)
- F313** 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)
- F314** 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)
- F315** 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>F65</sup>an officer of Revenue and Customs][<sup>F316</sup>gives] the employer company a notice—
- (a) informing the company that [<sup>F317</sup>the officer][<sup>F316</sup>has] completed [<sup>F318</sup>the] enquiry, and
  - (b) stating [<sup>F319</sup>the officer's] decision as to whether the requirements of this Schedule are met in relation to the option.

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- (2) If [<sup>F65</sup>an officer of Revenue and Customs][<sup>F320</sup>concludes] that the requirements of this Schedule are not so met, [<sup>F317</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>F65</sup>an officer of Revenue and Customs][<sup>F321</sup>gives] the individual concerned and the employer company a notice—
- (a) informing the recipients that [<sup>F317</sup>the officer][<sup>F321</sup>has] completed [<sup>F322</sup>the] enquiry, and
  - (b) stating [<sup>F323</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

- F65** 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)
- F316** 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)
- F317** 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)
- F318** 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)
- F319** 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)
- F320** 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)
- F321** 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)
- F322** 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)
- F323** 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>F324</sup>to the tribunal] under this paragraph for a direction requiring [<sup>F65</sup>an officer of Revenue and Customs] to give a closure notice within a specified period.
- (2) The application may be made—
- (a) by the employer company, or
  - (b) in a case within paragraph 46(3), by the individual concerned.

<sup>F325</sup>(3) . . . . .



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- [<sup>F326</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>F327</sup>The tribunal] must give a direction unless <sup>F328</sup>... satisfied that [<sup>F65</sup>an officer of Revenue and Customs][<sup>F329</sup>has] reasonable grounds for not giving a closure notice within a specified period.

#### Textual Amendments

- F65** 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)
- F324** 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\(2\)](#)
- F325** 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\(3\)](#)
- F326** 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\(4\)](#)
- F327** 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\(5\)\(a\)](#)
- F328** 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\(5\)\(b\)](#)
- F329** 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>F65</sup>an officer of Revenue and Customs][<sup>F330</sup>does] not give a notice of enquiry, the requirements of this Schedule are taken to be met in relation to the option.
- (2) If [<sup>F65</sup>an officer of Revenue and Customs][<sup>F330</sup>does] give a notice of enquiry, [<sup>F331</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—
- if [<sup>F331</sup>the officer's] decision is that the requirements are not met, to the outcome of any appeal against that decision under paragraph 50;
  - 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

- F65** 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)
- F330** 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)
- F331** 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\(2\)\(l\)](#); S.I. 2005/1126, art. 2(2)(h)

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### Appeals

- 50 (1) The employer company may appeal against a decision of [<sup>F65</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>F65</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>F65</sup>an officer of Revenue and Customs] within 30 days after the date when the closure notice is given to the appellant.
- <sup>F332</sup>(4) .....

#### Textual Amendments

- F65** 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)
- F332** 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](#)

## PART 8

### SUPPLEMENTARY PROVISIONS

#### Power to require information

- 51 (1) [<sup>F65</sup>An officer of Revenue and Customs] may by notice require a person to provide [<sup>F333</sup>the officer] with information—
- (a) which [<sup>F333</sup>the officer] reasonably [<sup>F334</sup>requires] for the performance of [<sup>F335</sup>the officer's] functions under the EMI code, and
  - (b) which the person to whom the notice is addressed has or can reasonably obtain.
- (2) The power conferred by this paragraph extends, in particular, to information to enable [<sup>F65</sup>an officer of Revenue and Customs] —
- (a) to decide whether a share option is a qualifying option, or
  - (b) to determine the liability to tax, including capital gains tax, of any person who has been granted a qualifying option.
- (3) The notice must require the information to be provided within a specified period, which must not end earlier than 3 months after the date when the notice is given.

#### Textual Amendments

- F65** 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)

*Status:* Point in time view as at 01/03/2013.

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- F333** Words in Sch. 5 para. 51(1) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 4 para. 103\(1\)\(aa\)](#); S.I. 2005/1126, art. 2(2)(h)
- F334** Word in Sch. 5 para. 51(1) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 4 para. 124\(e\)](#); S.I. 2005/1126, art. 2(2)(h)
- F335** Words in Sch. 5 para. 51(1) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 4 para. 103\(2\)\(m\)](#); S.I. 2005/1126, art. 2(2)(h)

#### *Annual returns*

- 52 (1) A company whose shares are subject to a qualifying option at any time during a tax year must deliver a return to [<sup>F65</sup>an officer of Revenue and Customs].
- (2) The return must—
- contain such information as [<sup>F65</sup>an officer of Revenue and Customs] may require, and
  - be made before 7th July in the tax year following that to which it relates.

#### **Textual Amendments**

- F65** 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)

#### *Compliance with time limits*

- 53 (1) For the purposes of this Part and Part 7 a person is not to be regarded as having failed to do anything required to be done within a particular period of time if—
- the person had a reasonable excuse for not doing it within that period, and
  - if the excuse ceased to exist, the person did it without unreasonable delay after the excuse ceased to exist.
- (2) Where sub-paragraph (1)(b) applies, any further time limit running from the end of the period concerned is instead to run from the time when the thing in question was actually done.

#### *Power to amend by Treasury order*

- 54 (1) The Treasury may by order amend the EMI code—
- to make such amendments of paragraphs 13 to 23 (the trading activities requirement and related provisions) as they consider expedient;
  - to substitute different sums of money for those for the time being specified in—
    - paragraphs 5(1) and 6(1) and (3) (maximum entitlement of employee);
    - paragraph 12(1) and (2) (the gross assets requirement).
- (2) An order under sub-paragraph (1)(b) which amends paragraphs 5(1) and 6(1) and (3) may amend section 536(1)(e) (other disqualifying events) so as to substitute the same sum for the one that is for the time being specified there.

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*Meaning of “market value” of shares*

- 55 (1) For the purposes of the EMI code the “market value” of shares has the same meaning as it has for the purposes of TCGA 1992 by virtue of Part 8 of that Act.
- (2) Sub-paragraph (1) is subject to paragraph 5(7) (valuation of shares subject to restriction or risk of forfeiture) as it applies for the purposes of any provision of the EMI code.

*Determination of market value of shares*

- 56 (1) This paragraph applies to the determination of the market value of shares for the purposes of the EMI code.
- (2) Unless—
- (a) it is agreed between the employer company and [<sup>F65</sup>an officer of Revenue and Customs], or
  - (b) a reference is made under sub-paragraph (4),
- the market value of shares is to be determined by [<sup>F65</sup>an officer of Revenue and Customs].
- (3) Where the market value of shares on any date needs to be determined for the purposes of the EMI code, [<sup>F65</sup>an officer of Revenue and Customs] and the employer company may agree that it is to be determined by reference to a date or dates, or to the average of the values on a number of dates, stated in the agreement.
- (4) At any time before notice of [<sup>F65</sup>an officer of Revenue and Customs] determination has been given to the employer company, [<sup>F336</sup>the company may apply to the tribunal for the question of the market value of the shares to be determined].
- <sup>F337</sup>(5) .....
- [<sup>F338</sup>(6) 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).]

**Textual Amendments**

- F65** 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)
- F336** Words in Sch. 5 para. 56(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. 355(2)**
- F337** Sch. 5 para. 56(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. 355(3)**
- F338** Sch. 5 para. 56(6) 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. 355(4)**

*Appeal against determination of market value of shares*

- 57 (1) The employer company may appeal against any determination by [<sup>F65</sup>an officer of Revenue and Customs] under paragraph 56.

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(2) Notice of appeal must be given to [<sup>F65</sup>an officer of Revenue and Customs] within 30 days after the date when notice of their determination is given to the employer company.

<sup>F339</sup>(3) . . . . .

**Textual Amendments**

**F65** 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)

**F339** Sch. 5 para. 57(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. 356](#)

*Minor definitions*

58 In the EMI code—

“arrangements” includes any scheme, agreement or understanding, whether it is legally enforceable or not;

“company” means a body corporate;

“group of companies” means a parent company and its 51% subsidiaries;

“the group”, in relation to a parent company, means that company and its 51% subsidiaries;

“parent company” means a company that has one or more 51% subsidiaries and “single company” means a company that does not;

“research and development” has the meaning given by [<sup>F340</sup>section 1006 of ITA 2007];

“shares” includes stock.

**Textual Amendments**

**F340** Words in Sch. 5 para. 58 substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\)](#), [Sch. 1 para. 450\(3\)](#) (with [Sch. 2](#))

*Index of defined expressions*

59 In the EMI code the following expressions are defined or otherwise explained by the provisions indicated below:

the appropriate time	paragraph 1(4)
arrangements	paragraph 58(1)
child	[ <sup>F341</sup> section 721(6)]
close company	[ <sup>F342</sup> section 989 of ITA 2007], (and see paragraph 29(4))
closure notice	paragraph 47(4)
company	paragraph 58

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company reorganisation (in Part 6 of this Schedule)	paragraph 39(2)
connected person	section 718
control	section 719 (and see paragraphs 10(2) and 23(6))
disqualifying event	see sections 532 to 539
distribution	[ <sup>F343</sup> section 989 of ITA 2007]
earnings	section 62 and see section 721(7)
the EMI code	section 527(3)
employee and employment	section 4
eligible employee	paragraph 24
employer company	paragraph 2
excluded activities	paragraph 16
farming	[ <sup>F344</sup> section 996 of ITA 2007]
<sup>F345</sup>	<sup>F345</sup>
. . .	. . .
generally accepted accounting practice	[ <sup>F346</sup> section 997 of ITA 2007]
group of companies	paragraph 58
the group	paragraph 58
<sup>F347</sup>	<sup>F347</sup>
. . .	...
market value	paragraph 55 (and see paragraph 5(7))
met (in Part 7 of this Schedule)	paragraph 44(7)
new option	paragraph 41(7)
notice	[ <sup>F348</sup> section 989 of ITA 2007]
[ <sup>F349</sup> offshore installation]	[ <sup>F350</sup> sections 1001 and 1002 of ITA 2007]
old option	paragraph 41(7)
ordinary share capital	[ <sup>F351</sup> section 989 of ITA 2007]
original option	section 529(3)
parent company	paragraph 58
personal representative	[ <sup>F352</sup> section 989 of ITA 2007]
qualifying company	paragraph 8
qualifying option	section 527(4) (and see paragraph 41(5))
qualifying subsidiary	paragraph 11

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qualifying trade	paragraph 15
relevant company	paragraph 2
replacement option	section 527(4)
the requirements of this Schedule	section 527(4)
research and development	paragraph 58
share option	section 527(4)
shares	paragraph 58 (and see paragraph 40(4)(a))
single company	paragraph 58
F353	F353
...	...
51% subsidiary	[ <sup>F354</sup> section 989 of ITA 2007]
tax	[ <sup>F355</sup> section 989 of ITA 2007]
tax year	[ <sup>F356</sup> section 4(2) of ITA 2007 (as applied by section 989 of that Act)]
trade	[ <sup>F357</sup> section 989 of ITA 2007]
[ <sup>F358</sup> tribunal	section 989 of ITA 2007]
United Kingdom	[ <sup>F359</sup> section 1013 of ITA 2007]

### Textual Amendments

- F341** Words in Sch. 5 para. 59 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\)](#), [Sch. 1 para. 450\(4\)\(a\)](#) (with [Sch. 2](#))
- F342** Words in Sch. 5 para. 59 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\)](#), [Sch. 1 para. 450\(4\)\(b\)](#) (with [Sch. 2](#))
- F343** Words in Sch. 5 para. 59 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\)](#), [Sch. 1 para. 450\(4\)\(c\)](#) (with [Sch. 2](#))
- F344** Words in Sch. 5 para. 59 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\)](#), [Sch. 1 para. 450\(4\)\(d\)](#) (with [Sch. 2](#))
- F345** Sch. 5 para. 59 Table entry 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. 357\(2\)](#)
- F346** Words in Sch. 5 para. 59 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\)](#), [Sch. 1 para. 450\(4\)\(e\)](#) (with [Sch. 2](#))
- F347** Words in Sch. 5 para. 59 repealed (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 124\(f\)](#), [Sch. 5](#); [S.I. 2005/1126](#), art. 2(2)(h)(i)
- F348** Words in Sch. 5 para. 59 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\)](#), [Sch. 1 para. 450\(4\)\(f\)](#) (with [Sch. 2](#))
- F349** Words in Sch. 5 para. 59 inserted (with effect in accordance with [Sch. 27 para. 17\(6\)\(7\)](#) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 27 para. 17\(5\)](#)
- F350** Words in Sch. 5 para. 59 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\)](#), [Sch. 1 para. 450\(4\)\(g\)](#) (with [Sch. 2](#))
- F351** Words in Sch. 5 para. 59 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\)](#), [Sch. 1 para. 450\(4\)\(h\)](#) (with [Sch. 2](#))

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- F352** Words in Sch. 5 para. 59 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\)](#), [Sch. 1 para. 450\(4\)\(i\)](#) (with [Sch. 2](#))
- F353** Sch. 5 para. 59 Table entry 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. 357\(3\)](#)
- F354** Words in Sch. 5 para. 59 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\)](#), [Sch. 1 para. 450\(4\)\(j\)](#) (with [Sch. 2](#))
- F355** Words in Sch. 5 para. 59 substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\)](#), [Sch. 1 para. 399\(6\)](#) (with [Sch. 2](#))
- F356** Words in Sch. 5 para. 59 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\)](#), [Sch. 1 para. 450\(4\)\(l\)](#) (with [Sch. 2](#))
- F357** Words in Sch. 5 para. 59 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\)](#), [Sch. 1 para. 450\(4\)\(m\)](#) (with [Sch. 2](#))
- F358** Words in Sch. 5 para. 59 Table 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. 357\(4\)](#)
- F359** Words in Sch. 5 para. 59 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\)](#), [Sch. 1 para. 450\(4\)\(n\)](#) (with [Sch. 2](#))

SCHEDULE 6

Section 722

CONSEQUENTIAL AMENDMENTS

PART 1

INCOME AND CORPORATION TAXES ACT 1988

1 The Income and Corporation Taxes Act 1988 (c. 1) is amended as follows.

**F360**<sub>2</sub> .....

**Textual Amendments**

**F360** Sch. 6 para. 2 repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

3 In section 4(1) (construction of references in Income Tax Acts to deduction of tax) for “in pursuance of section 203” substitute “ under PAYE regulations ”.

**F361**<sub>4</sub> .....

**Textual Amendments**

**F361** Sch. 6 para. 4 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2 Pts. 1, 2](#))

**F362**<sub>5</sub> .....

**Textual Amendments**

**F362** Sch. 6 para. 5 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2 Pts. 1, 2](#))



*Status: Point in time view as at 01/03/2013.*

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- 6 Omit section 19 (Schedule E).
- 7 In section 21A(2) (computation of amount chargeable)—
  - (a) for “sections 588 and 589” substitute “ section 588 ”;
  - (b) for “sections 589A and 589B” substitute “ section 589A ”;
  - (c) for “1989 (deductions in respect of certain emoluments)” substitute “ 1989 (Schedule D: computation) ”.
- 8 Omit section 58 (foreign pensions).

F363<sup>9</sup> .....

**Textual Amendments**

**F363** Sch. 6 para. 9 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 3](#) (with [Sch. 2](#))

F364<sup>10</sup> .....

**Textual Amendments**

**F364** Sch. 6 para. 10 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 3](#) (with [Sch. 2](#))

F365<sup>11</sup> .....

**Textual Amendments**

**F365** Sch. 6 para. 11 repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 10 Pt. 12](#) (with [Sch. 9 paras. 1-9, 22](#))

F366<sup>12</sup> .....

**Textual Amendments**

**F366** Sch. 6 para. 12 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 3 Pt. 1](#) (with [Sch. 2 Pts. 1, 2](#))

F367<sup>13</sup> .....

**Textual Amendments**

**F367** Sch. 6 para. 13 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 3 Pt. 1](#) (with [Sch. 2 Pts. 1, 2](#))

- 14 Omit sections 131 to 134 (miscellaneous provisions relating to the Schedule E charge).
- 15 Omit sections 135 to 137 (provisions relating to gains by directors and employees from share options).
- 16 (1) Amend section 138 (share acquisitions by directors and employees) as follows.

*Status: Point in time view as at 01/03/2013.*

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- (2) In subsection (1)(b) for “Schedule E” substitute “ the employment income Parts of ITEPA 2003 ”.
- (3) In subsection (4)(b) for “Case I of Schedule E” substitute “ section 15 or 21 of ITEPA 2003 (earnings of employee resident and ordinarily resident in the UK) ”.
- 17 Omit section 140 (further interpretation of sections 135 to 139).
- 18 Omit sections 140A to 140H (further provisions relating to share acquisitions by directors and employees).
- 19 Omit sections 141 to 144 (vouchers and credit-tokens).
- 20 Omit section 144A (payments received free of tax).
- 21 Omit sections 145 to 147 (living accommodation).
- 22 Omit sections 148 to 151A (payments on retirement, sick pay and certain social security benefits).
- F368 23 .....

#### Textual Amendments

**F368** Sch. 6 para. 23 repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 10 Pt. 12](#) (with [Sch. 9 paras. 1-9, 22](#))

- 24 Omit sections 153 to 159AC and sections 160 to 168G (employees earning £8,500 or more and directors: expenses and benefits in kind).
- 25 Omit section 185 (approved share option schemes).
- 26 (1) Amend section 186 (approved profit sharing schemes) as follows.
- (2) In subsection (3)—
- (a) omit “the participant shall be chargeable to income tax under Schedule E for the year of assessment in which the entitlement arises on”, and
- (b) at the end add “ counts as employment income of the participant for the year of assessment in which the entitlement arises ”.
- (3) In subsection (4)—
- (a) omit “the participant shall be chargeable to income tax under Schedule E for the year of assessment in which the disposal takes place on”, and
- (b) at the end add “ counts as employment income of the participant for the year of assessment in which the disposal takes place ”.
- (4) In subsection (5)(a), for the words from “chargeable to income tax” to “those shares” substitute “entitled to a capital receipt (within the meaning of subsection (3) above) which is referable to those shares and—
- (i) an amount calculated by reference to that capital receipt counts as his employment income by virtue of subsection (3) above, or
- (ii) if the entitlement to the capital receipt arose before 6th April 2003, he was chargeable to income tax by virtue of that subsection (as it had effect before that date) in respect of that capital receipt.”.

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- 27 In section 187 (interpretation of sections 185 and 186 and Schedules 9 and 10) omit subsections (1) to (4), (6) and (7), except so far as relating to profit sharing schemes.
- 28 Omit the following provisions (which give relief from income tax on various kinds of income)—
- (a) section 187A;
  - (b) sections 189 to 198;
  - (c) sections 199 to 202.
- 29 Omit sections 202A and 202B (assessment on receipts basis).
- 30 Omit sections 203 to 204 (pay as you earn).
- 31 Omit sections 205 and 206 (assessments).
- 32 Omit section 206A (PAYE settlement agreements).
- 33 Omit section 207 (disputes as to domicile or ordinary residence).
- F369<sup>34</sup> .....

**Textual Amendments**

**F369** Sch. 6 para. 34 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\)](#), [Sch. 3](#) (with [Sch. 2](#))

F370<sup>35</sup> .....

**Textual Amendments**

**F370** Sch. 6 para. 35 omitted (with effect in accordance with Sch. 1 para. 7 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 1 para. 6\(1\)](#)

36 After section 266 insert—

**“266A Life assurance premiums paid by employer**

- (1) This section applies if—
- (a) pursuant to a non-approved retirement benefits scheme, the employer in any year of assessment pays a sum with a view to the provision of any relevant benefits for or in respect of any employee of that employer, and
  - (b) the payment is made under such an insurance or contract as is mentioned in section 266.

This section applies whether or not the accrual of the relevant benefits is dependent on any contingency.

- (2) Relief, if not otherwise allowable, shall be given to that employee under section 266 in respect of the payment to the extent, if any, to which such relief would have been allowable to him if—
- (a) the payment had been made by him, and
  - (b) the insurance or contract under which the payment is made had been made with him.

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- (3) For the purposes of subsection (1)(a)—
  - (a) a retirement benefits scheme is “non-approved” unless it is—
    - (i) an approved scheme,
    - (ii) a relevant statutory scheme, or
    - (iii) a scheme set up by a government outside the United Kingdom for the benefit of its employees or primarily for their benefit, and
  - (b) benefits are provided in respect of an employee if they are provided for the employee’s spouse, widow or widower, children, dependants or personal representatives.
- (4) Sections 611, 611A and 612 apply for the purposes of this section as they apply for the purposes of Chapter 1 of Part 14.
- (5) Section 388 of ITEPA 2003 (apportionment of payments in respect of more than one employee) applies in relation to a sum within subsection (1) as it applies in relation to a sum within section 386 of that Act (charge on payments to non-approved retirement benefits schemes).
- (6) This section does not apply in any case where either of the following provisions of ITEPA 2003 provides for section 386 of that Act not to apply—
  - (a) section 389 (employments where earnings charged on remittance basis), and
  - (b) section 390 (non-domiciled employees with foreign employers).”

F371 37 .....

**Textual Amendments**  
 F371 Sch. 6 para. 37 repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 3 Pt. 2](#) (with [Sch. 2](#))

F372 38 .....

**Textual Amendments**  
 F372 Sch. 6 para. 38 repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 3 Pt. 2](#) (with [Sch. 2](#))

39 Omit section 313 (taxation of consideration for certain restrictive undertakings).

F373 40 .....

**Textual Amendments**  
 F373 Sch. 6 para. 40 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))

41 Omit sections 315 to 318 (pensions etc. paid in respect of military or war service etc.).

42 Omit section 319 (crown servants: foreign service allowance).

43 Omit section 321 (consuls and other official agents).

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F374 44 .....

**Textual Amendments**

F374 Sch. 6 para. 44 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 3](#) (with [Sch. 2](#))

F375 45 .....

**Textual Amendments**

F375 Sch. 6 para. 45 repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 3 Pt. 1](#) (with [Sch. 2](#))

46 Omit section 330 (compensation for National-Socialist persecution).

47 (1) Amend section 332 (expenditure and houses of ministers of religion) as follows.

(2) Omit subsections (1) and (2).

F376 (3) .....

(4) Omit subsections (3A), (3B) and (4).

**Textual Amendments**

F376 Sch. 6 para. 47(3) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 3](#) (with [Sch. 2](#))

F377 48 .....

**Textual Amendments**

F377 Sch. 6 para. 48 repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 3 Pt. 1](#) (with [Sch. 2](#))

F378 49 .....

**Textual Amendments**

F378 Sch. 6 para. 49 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 3](#) (with [Sch. 2](#))

F379 50 .....

**Textual Amendments**

F379 Sch. 6 para. 50 repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 3 Pt. 1](#) (with [Sch. 2](#))

F380 51 .....

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**Textual Amendments**

**F380** Sch. 6 para. 51 repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 3 Pt. 1** (with [Sch. 2](#))

52 In section 376(2) (qualifying borrowers and qualifying lenders) for the words from “an office or employment” to “Schedule E” substitute “ an office or employment which would, but for some special exemption or immunity from tax, be a taxable employment under Part 2 of ITEPA 2003 (as defined by section 66(3) of that Act) ”.

**F381**53 .....

**Textual Amendments**

**F381** Sch. 6 para. 53 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), **Sch. 3** (with [Sch. 2](#))

**F382**54 .....

**Textual Amendments**

**F382** Sch. 6 para. 54 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), **Sch. 3** (with [Sch. 2](#))

**F383**55 .....

**Textual Amendments**

**F383** Sch. 6 para. 55 repealed (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 3 Pt. 1** (with [Sch. 2](#))

**F384**56 .....

**Textual Amendments**

**F384** Sch. 6 para. 56 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), **Sch. 3** (with [Sch. 2](#))

**F385**57 .....

**Textual Amendments**

**F385** Sch. 6 para. 57 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), **Sch. 3** (with [Sch. 2](#))

**F386**58 .....

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**Textual Amendments**

**F386** Sch. 6 para. 58 repealed (with effect in accordance with s. 77 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(7\)](#)

**F387** 59 .....

**Textual Amendments**

**F387** Sch. 6 para. 59 repealed (with effect in accordance with s. 77 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(7\)](#)

**F388** 60 .....

**Textual Amendments**

**F388** Sch. 6 para. 60 repealed (with effect in accordance with s. 77 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(7\)](#)

**F389** 61 .....

**Textual Amendments**

**F389** Sch. 6 para. 61 repealed (with effect in accordance with s. 77 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(7\)](#)

**F390** 62 .....

**Textual Amendments**

**F390** Sch. 6 paras. 62-64 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 3 Pt. 1](#) (with [Sch. 2 Pts. 1, 2](#))

**F390** 63 .....

**Textual Amendments**

**F390** Sch. 6 paras. 62-64 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 3 Pt. 1](#) (with [Sch. 2 Pts. 1, 2](#))

**F390** 64 .....

**Textual Amendments**

**F390** Sch. 6 paras. 62-64 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 3 Pt. 1](#) (with [Sch. 2 Pts. 1, 2](#))

**F391** 65 .....

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**Textual Amendments**

**F391** Sch. 6 para. 65 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))

<sup>F392</sup>66 . . . . .

**Textual Amendments**

**F392** Sch. 6 para. 66 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))

<sup>F393</sup>67 . . . . .

**Textual Amendments**

**F393** Sch. 6 para. 67 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 3 Pt. 1](#) (with [Sch. 2 Pts. 1, 2](#))

68 Omit section 589 (qualifying courses of training etc.).

<sup>F394</sup>69 . . . . .

**Textual Amendments**

**F394** Sch. 6 para. 69 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 3 Pt. 1](#) (with [Sch. 2 Pts. 1, 2](#))

<sup>F395</sup>70 . . . . .

**Textual Amendments**

**F395** Sch. 6 para. 70 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 3 Pt. 1](#) (with [Sch. 2 Pts. 1, 2](#))

71 In section 591D (provisions supplementary to section 591C) omit subsection (6).

<sup>F396</sup>72 . . . . .

**Textual Amendments**

**F396** Sch. 6 para. 72 repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 3](#) (with [Sch. 36](#))

<sup>F397</sup>73 . . . . .

**Textual Amendments**

**F397** Sch. 6 para. 73 repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 3](#) (with [Sch. 36](#))

74 Omit sections 595 and 596 (payments by employer to retirement benefits scheme).



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- 75 Omit sections 596A to 596C (benefits under non-approved retirement benefits schemes).
- 76 Omit section 597 (charge to tax: pensions).
- 77 In section 599A (charge to tax: payments out of surplus funds) omit subsections (5), (6) and (8).
- 78 Omit section 600 (charge to tax: unauthorised payments to or for employees).
- F39879 .....

**Textual Amendments**

**F398** Sch. 6 para. 79 repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 3](#) (with [Sch. 36](#))

- 80 F399(1) .....
- F399(2) .....
- F399(3) .....
- F399(4) .....
- F399(5) .....
- (6) Omit subsection (3)(b)(iv) and the word “and” preceding it.

**Textual Amendments**

**F399** Sch. 6 para. 80(1)-(5) repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 3](#) (with [Sch. 36](#))

- 81 In section 608 (charge to tax on annuities paid out of superannuation funds approved before 6th April 1980) omit subsection (4).
- F40082 .....

**Textual Amendments**

**F400** Sch. 6 para. 82 repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 3](#) (with [Sch. 36](#))

- 83 In section 613 (Parliamentary pension funds) omit subsections (1) to (3).
- 84 In section 614(3) (exemptions and reliefs in respect of income tax from investments etc. of certain pension schemes) for “paragraph (b), (c), (d) or (f) of subsection (2) of section 615” substitute “ section 648, 649, 650 or 651 of ITEPA 2003 ”.
- 85 In section 615 (exemption from tax in respect of certain pensions) omit subsections (1), (2), (4), (5) and (8).
- 86 Omit section 616 (other overseas pensions).
- F40187 .....

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**Textual Amendments**

**F401** Sch. 6 para. 87 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

88 Omit section 617A (tax credits under Part 1 of Tax Credits Act 2002 (c. 21)).  
F40289 .....

**Textual Amendments**

**F402** Sch. 6 para. 89 repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **Sch. 42 Pt. 3** (with Sch. 36)

F40390 .....

**Textual Amendments**

**F403** Sch. 6 para. 90 repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **Sch. 42 Pt. 3** (with Sch. 36)

91 (1) Section 643 (employer’s contributions and personal pension income etc.) is amended as follows.  
(2) Omit subsection (1).  
(3) In subsection (5) omit “shall be assessable to tax under Schedule E (and section 203 shall apply accordingly) and”.

F40492 .....

**Textual Amendments**

**F404** Sch. 6 paras. 92-95 repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **Sch. 42 Pt. 3** (with Sch. 36)

F40493 .....

**Textual Amendments**

**F404** Sch. 6 paras. 92-95 repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **Sch. 42 Pt. 3** (with Sch. 36)

F40494 .....

**Textual Amendments**

**F404** Sch. 6 paras. 92-95 repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **Sch. 42 Pt. 3** (with Sch. 36)

F40495 .....

**Textual Amendments**

**F404** Sch. 6 paras. 92-95 repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **Sch. 42 Pt. 3** (with Sch. 36)

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96 Omit sections 647 to 648A (personal pensions: unauthorised payments, contributions under unapproved arrangements and annuities).

F405<sup>97</sup> .....

**Textual Amendments**

**F405** Sch. 6 para. 97 repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **Sch. 42 Pt. 3** (with Sch. 36)

F406<sup>98</sup> .....

**Textual Amendments**

**F406** Sch. 6 para. 98 repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **Sch. 42 Pt. 3** (with Sch. 36)

F407<sup>99</sup> .....

**Textual Amendments**

**F407** Sch. 6 para. 99 repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **Sch. 42 Pt. 3** (with Sch. 36)

F408<sup>100</sup> .....

**Textual Amendments**

**F408** Sch. 6 para. 100 repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 3 Pt. 1** (with Sch. 2)

F409<sup>101</sup> .....

**Textual Amendments**

**F409** Sch. 6 paras. 101, 102 repealed (other than for corporation tax purposes) (1.4.2010) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), **Sch. 10 Pt. 9** (with Sch. 9 paras. 1-9, 22) and Sch. 6 paras. 101, 102 repealed (for corporation tax purposes with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 3 Pt. 2** (with Sch. 2)

F409<sup>102</sup> .....

**Textual Amendments**

**F409** Sch. 6 paras. 101, 102 repealed (other than for corporation tax purposes) (1.4.2010) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), **Sch. 10 Pt. 9** (with Sch. 9 paras. 1-9, 22) and Sch. 6 paras. 101, 102 repealed (for corporation tax purposes with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 3 Pt. 2** (with Sch. 2)

F410<sup>103</sup> .....

*Status: Point in time view as at 01/03/2013.*

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**Textual Amendments**

**F410** Sch. 6 para. 103 repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), **Sch. 10 Pt. 1** (with Sch. 9 paras. 1-9, 22)

104 In section 824(4A) (repayment supplement: individuals and others) for “section 203” substitute “PAYE regulations”.

<sup>F411</sup>105 .....

**Textual Amendments**

**F411** Sch. 6 para. 105 repealed (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 3 Pt. 1** (with Sch. 2)

106 In section 830 (territorial sea and designated areas) omit subsection (5).

107 In section 831(3) (interpretation of ICTA) before the entry relating to “the Management Act” insert—

““ITEPA 2003” means the Income Tax (Earnings and Pensions) Act 2003;”.

<sup>F412</sup>108 .....

**Textual Amendments**

**F412** Sch. 6 para. 108 repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 3 Pt. 1** (with Sch. 2)

<sup>F413</sup>109 .....

**Textual Amendments**

**F413** Sch. 6 para. 109 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

110 Omit Schedules 6 and 6A (taxation of directors and others: cars and vans).

111 Omit Schedules 7 and 7A (taxation of benefit of loans).

112 (1) Amend Schedule 9 (approved share option schemes and profit sharing schemes) as follows.

(2) Omit Parts 1, 2 and 6 except so far as relating to profit sharing schemes.

(3) Omit Parts 3 and 4.

113 (1) Amend Schedule 10 (further provisions relating to profit sharing schemes) as follows.

(2) In paragraphs 3(1) and 6(4) for “charging an individual to income tax under Schedule E” substitute “under which an amount counts as employment income of an individual”.

(3) In paragraph 7—

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- (a) in sub-paragraph (1), for “a participant in the scheme is chargeable to income tax under Schedule E” substitute “an amount counts as employment income of the participant ”,
  - (b) in sub-paragraph (6), for the words from “section 203” to “Schedule E” substitute “ section 684 of ITEPA 2003 (PAYE regulations) and PAYE regulations as PAYE income payable to the recipient ”, and
  - (c) in sub-paragraph (7)(b)—
    - (i) omit second “to”, and
    - (ii) for “the participant is chargeable” substitute “ is charged on the participant ”.
- 114 Omit Schedule 11 (payments and other benefits in connection with termination of employment etc.).
- 115 Omit Schedule 11A (removal benefits and expenses).
- 116 Omit Schedule 12 (foreign earnings).
- 117 Omit Schedule 12AA (mileage allowances).
- 118 Omit Schedule 12A (ordinary commuting and private travel).
- 119 In Schedule 14 (modification of section 266 in certain cases), in paragraph 5 for “section 595” substitute “ section 386 of ITEPA 2003 (payments to non-approved retirement benefits schemes) ”.

F414 120 .....

**Textual Amendments**

F414 Sch. 6 para. 120 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))

F415 121 .....

**Textual Amendments**

F415 Sch. 6 para. 121 repealed (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

**PART 2**

OTHER ENACTMENTS

*Finance Act 1969 (c. 32)*

- 122 (1) Section 58 of the Finance Act 1969 (disclosure of information for statistical purposes by Board of Inland Revenue) is amended as follows.
- (2) In subsection (1)(a)—
- (a) for “section 203 of the Taxes Act 1988 (pay as you earn)” substitute “ PAYE regulations ”;

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- (b) for “emoluments to which that section applies” substitute “ earnings or amounts treated as earnings from an employment ”.
- (3) In subsection (1)(b) for “emoluments” substitute “ earnings or amounts treated as earnings ”.
- (4) After subsection (1) insert—
  - “(1A) In subsection (1) “earnings or amounts treated as earnings” means earnings or amounts treated as earnings which constitute employment income (see section 7(2)(a) or (b) of the Income Tax (Earnings and Pensions) Act 2003).”

*Taxes Management Act 1970 (c. 9)*

- 123 The Taxes Management Act 1970 is amended as follows.
- 124 In section 7(4) and (5) (notice of liability to income tax and capital gains tax) for “section 203 of the principal Act” substitute “ PAYE regulations ”.
- 125 (1) Amend section 9 (returns to include self-assessment) as follows.
  - (2) In subsection (1) for “, 547(5) or 599A(5) of the principal Act” substitute “ or 547(5) of the principal Act or section 626 of ITEPA 2003 ”.
  - F416(3) .....

**Textual Amendments**  
**F416** Sch. 6 para. 125(3) repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 3](#) (with [Sch. 36](#))

- 126 (1) Amend section 15 (return of employee’s emoluments etc.) as follows.
  - (2) For the sidenote to the section substitute “ Return of employees' earnings etc. ”
  - (3) In subsection (3)(a) for “employment to which Chapter II of Part V of the principal Act applies” substitute “ employment which, for the purposes of the benefits code in ITEPA 2003, is a taxable employment under Part 2 of that Act (see section 66) but is not an excluded employment (see section 63 of that Act) ”.
  - (4) In subsection (8)(a) for “the relevant sections, that is to say, sections 141, 142, 143, 144A, 145, 146 and 154 to 165 of the principal Act” substitute “ the relevant provisions, that is to say, Chapters 4 to 10 of Part 3 and sections 222 and 223 of ITEPA 2003 ”.
  - (5) In subsection (9)(a) for “the relevant sections” substitute “ the relevant provisions ”.
  - (6) In subsection (11)—
    - (a) for “the relevant sections”, in each place, substitute “ the relevant provisions ”; and
    - (b) in paragraph (a)(ii) for “section 141(3), 142(2), 145(3) or 156(8) of the principal Act” substitute “ section 328(1), 362, 363, 364 or 365 of ITEPA 2003 ”.
  - (7) In subsection (13)—

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- (a) in the definition of “employee”, for “whose emoluments fall to be assessed under Schedule E” substitute “ whose earnings are within the charge to tax under ITEPA 2003 ”; and
- (b) for the definition of “the relevant sections” substitute—  
““the relevant provisions” has the meaning given by section (8)(a) above.”

127 For section 16A substitute—

**“16A Agency workers**

- (1) This section applies where—
  - (a) any services which an individual provides or is obliged to provide under an agency contract are treated under section 44(2) of ITEPA 2003 as the duties of an office or employment held by him with the agency, or
  - (b) any remuneration receivable under or in consequence of arrangements falling within section 45 of that Act is treated as earnings from an office or employment held by an individual with the agency.
- (2) Where this section applies—
  - (a) section 15 above shall apply as if the individual were employed by the agency, and
  - (b) section 16 above shall not apply to any payments made to the individual under or in consequence of the agency contract or the arrangements.
- (3) In this section “agency contract” and “remuneration” have the same meaning as in Chapter 7 of Part 2 of ITEPA 2003.”

128 In section 42(3) (procedure for making claims etc.) for “section 203 of the principal Act” substitute “ PAYE regulations ”.

F417 129 .....

**Textual Amendments**

**F417** Sch. 6 para. 129 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. 358**

- 130 In section 59A (payments on account of income tax)—
  - (a) in subsection (8)(b) for “section 203 of the principal Act” substitute “ PAYE regulations ”; and
  - (b) in subsection (10) for “Regulations under section 203 of the principal Act (PAYE)” substitute “ PAYE regulations ”.
- 131 (1) Amend section 59B (payment of income tax and capital gains tax) as follows.
  - (2) In subsection (1) for “, 547(5) or 599A(5) of the principal Act” substitute “ or 547(5) of the principal Act or section 626 of ITEPA 2003 ”.
  - (3) In subsection (2)(a) for “section 203 of the principal Act” substitute “ PAYE regulations ”.

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- (4) In subsection (8) for “Regulations under section 203 of the principal Act (PAYE)” substitute “ PAYE regulations ”.
- 132 In section 62(1A)(a) (priority of claim for tax)—
- (a) for “emoluments” substitute “ taxable earnings (as defined by section 10 of ITEPA 2003) ”;
- (b) for “section 203 of the principal Act (pay as you earn)” substitute “ PAYE regulations ”.
- 133 In section 63(3)(a) (recovery of tax in Scotland) for “section 203 of the principal Act (pay as you earn)” substitute “ PAYE regulations ”.
- 134 In section 64(1A)(a) (priority of claim for tax in Scotland)—
- (a) for “emoluments” substitute “ taxable earnings (as defined by section 10 of ITEPA 2003) ”;
- (b) for “section 203 of the principal Act (pay as you earn)” substitute “ PAYE regulations ”.
- 135 (1) Amend section 70 (evidence) as follows.
- <sup>F418</sup>(2) . . . . .
- (3) In subsection (4) for “emoluments” in both places where it occurs substitute “ earnings or amounts treated as earnings ”.
- (4) After subsection (4) insert—
- “(5) In subsection (4) “earnings or amounts treated as earnings” means earnings or amounts treated as earnings which constitute employment income (see section 7(2)(a) or (b) of ITEPA 2003).”

#### Textual Amendments

**F418** Sch. 6 para. 135(2) omitted (21.7.2008) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 44 para. 11\(f\)](#)

- 136 In section 91(3)(c) (effect on interest of reliefs) for “section 203 of the principal Act” substitute “ PAYE regulations ”.
- 137 (1) Amend the Table in section 98 (special returns, etc.) as follows.
- (2) Omit from the first column of the Table the entries relating to—
- (a) regulations under section 202 of ICTA;
- (b) paragraph 117 of Schedule 8 to FA 2000;
- (c) paragraph 64 of Schedule 14 to FA 2000.
- (3) At the end of the first column of the Table insert the following entries—

“Regulations under section 589 of ITEPA 2003.

Regulations under section 715 of ITEPA 2003.

Paragraph 93 of Schedule 2 to ITEPA 2003.

Paragraph 45 of Schedule 3 to ITEPA 2003.



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Paragraph 33 of Schedule 4 to ITEPA 2003.

Paragraph 51 of Schedule 5 to ITEPA 2003.”

(4) Omit from the second column of the Table the entries relating to—

- (a) section 136(6) of ICTA;
- (b) section 140G of ICTA;
- (c) regulations under section 202 of ICTA;
- (d) regulations under section 203 of ICTA;
- (e) section 313(5) of ICTA;
- (f) section 85(1) and (2) of FA 1988;
- (g) paragraph 65 of Schedule 14 to FA 2000.

(5) At the end of the second column of the Table insert the following entries—

“

Sections 432 and 433 of ITEPA 2003.

Section 445 of ITEPA 2003.

Sections 465 and 466 of ITEPA 2003.

Section 486 of ITEPA 2003.

Regulations under section 589 of ITEPA 2003.

Regulations under section 715 of ITEPA 2003.

PAYE regulations.

Paragraph 52 of Schedule 5 to ITEPA 2003.”

138 In section 98A(1) (special penalties in the case of certain returns) for “Regulations under section 203(2) (PAYE) or” substitute “ PAYE regulations or regulations under section ”.

139 In section 118 (interpretation) after the entry relating to “inspector” insert—  
““ITEPA 2003” means the Income Tax (Earnings and Pensions) Act 2003,”.

140 In section 119(4) (construction of the Act) after “1992 Act” insert “ and ITEPA 2003 ”.

141 In paragraph 4(1A) of Schedule 1A (claims etc. not included in returns) for “section 203 of the principal Act” substitute “ PAYE regulations ”.

F419 142 .....

#### Textual Amendments

**F419** Sch. 6 para. 142 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. 358**

143 In Schedule 3A (electronic lodgement of tax returns etc.) in paragraph 2(4) (returns to which the Schedule applies) after “the principal Act” insert “ or under ITEPA 2003 ”.

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*Finance Act 1973 (c. 51)*

F420 144 .....

**Textual Amendments**

**F420** Sch. 6 paras. 144-147 repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), **Sch. 10 Pt. 12** (with Sch. 9 paras. 1-9, 22)

F420 145 .....

**Textual Amendments**

**F420** Sch. 6 paras. 144-147 repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), **Sch. 10 Pt. 12** (with Sch. 9 paras. 1-9, 22)

F420 146 .....

**Textual Amendments**

**F420** Sch. 6 paras. 144-147 repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), **Sch. 10 Pt. 12** (with Sch. 9 paras. 1-9, 22)

*Finance Act 1974 (c. 30)*

F420 147 .....

**Textual Amendments**

**F420** Sch. 6 paras. 144-147 repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), **Sch. 10 Pt. 12** (with Sch. 9 paras. 1-9, 22)

*Interpretation Act 1978 (c. 30)*

148 In Schedule 1 to the Interpretation Act 1978 (words and expressions defined) after the definition of “Parliamentary election” insert—

““PAYE income” has the meaning given by section 683 of the Income Tax (Earnings and Pensions) Act 2003.

“PAYE regulations” means regulations under section 684 of that Act.”

*Education (Scotland) Act 1980 (c. 44)*

149 In section 73B of the Education (Scotland) Act 1980 (grants and loans: Scotland)—

(a) in subsection (3)(g) for “regulations under section 203 of the Income and Corporation Taxes Act 1988 (PAYE)” substitute “PAYE regulations”; and

(b) in subsection (4) for “income assessable to income tax under Schedule E” substitute “PAYE income”.

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*Inheritance Tax Act 1984 (c. 51)*

150 The Inheritance Tax Act 1984 is amended as follows.

- 151 (1) Amend the following provisions as provided in sub-paragraph (2)—
- (a) section 13(4)(c) (dispositions by close companies for benefit of employees),
  - (b) section 72(4A) (property leaving employee trusts and newspaper trusts), and
  - (c) section 86(3)(c) (trusts for benefit of employees).
- (2) In each of those provisions, for “an employee share ownership plan approved under Schedule 8 to the Finance Act 2000” substitute “ a share incentive plan approved under Schedule 2 to the Income Tax (Earnings and Pensions) Act 2003 ”.

152 In section 14(1) (waiver of remuneration), for “would be assessable to income tax under Schedule E” substitute “ would be earnings, or would be treated as earnings, and would constitute employment income (see section 7(2)(a) or (b) of the Income Tax (Earnings and Pensions) Act 2003 )”.

*Bankruptcy (Scotland) Act 1985 (c. 66)*

153 In paragraph 1(1) of Schedule 3 to the Bankruptcy (Scotland) Act 1985 (preferred debts) for “section 203 of the Income and Corporation Taxes Act 1988 (pay as you earn)” substitute “ PAYE regulations ”.

*Insolvency Act 1986 (c. 45)*

154 In paragraph 1 of Schedule 6 to the Insolvency Act 1986 (the categories of preferential debts)—

- (a) for “emoluments” substitute “ taxable earnings (as defined by section 10 of the Income Tax (Earnings and Pensions) Act 2003 )”; and
- (b) for “section 203 of the Income and Corporation Taxes Act 1988 (pay as you earn)” substitute “ PAYE regulations ”.

*Finance Act 1988 (c. 39)*

155 (1) Section 73 of the Finance Act 1988 (consideration for certain restrictive undertakings) is amended as follows.

(2) In subsection (2) for “any sum to which section 313 of that Act applies” substitute “ any payment which is treated as earnings of an employee by virtue of section 225 of the Income Tax (Earnings and Pensions) Act 2003 (payments for restrictive undertakings) ”.

(3) In subsection (3) for “Any sum to which section 313 of the Taxes Act 1988 applies” substitute “ Any payment which is treated as earnings of an employee by virtue of section 225 of the Income Tax (Earnings and Pensions) Act 2003 ”.

*Finance Act 1989 (c. 26)*

156 The Finance Act 1989 is amended as follows.

157 For section 43 substitute—

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#### **“43 Schedule D: computation**

- (1) In calculating profits or gains of a trade to be charged under Schedule D for a period of account, no deduction is allowed for an amount charged in the accounts in respect of employees' remuneration, unless the remuneration is paid before the end of the period of 9 months immediately following the end of the period of account.
- (2) For the purposes of subsection (1) above an amount charged in the accounts in respect of employees' remuneration includes an amount—
  - (a) for which provision is made in the accounts, or
  - (b) which is held by an intermediary,
 with a view to its becoming employees' remuneration.
- (3) Subsection (1) above applies whether the amount is in respect of particular employments or in respect of employments generally.
- (4) If the remuneration is paid after the end of the period of 9 months mentioned in subsection (1) above, any deduction allowed in respect of it is allowed for the period of account in which it is paid and not for any other period of account.
- (5) If the profits of the trade are calculated before the end of the period of 9 months mentioned in subsection (1) above—
  - (a) it must be assumed, in making the calculation, that any remuneration which is unpaid when the calculation is made will not be paid before the end of that period, but
  - (b) if the remuneration is subsequently paid before the end of that period, the calculation is adjusted if a claim to adjust it is made to an officer of the Board within 2 years beginning with the end of the period of account.
- (6) For the purposes of this section, remuneration is paid when it—
  - (a) is treated as received by an employee for the purposes of the Income Tax (Earnings and Pensions) Act 2003 by section 18, 19, 31 or 32 of that Act (receipt of money and non-money earnings), or
  - (b) would be so treated if it were not exempt income.
- (7) In this section—
 

“employee” includes an office-holder and “employment” correspondingly includes an office, and

“remuneration” means an amount which is or is treated as earnings for the purposes of the Income Tax (Earnings and Pensions) Act 2003.”

158

For section 44 substitute—

#### **“44 Investment and insurance companies: computation**

- (1) In calculating the profits of an investment company for a period of account, no deduction is allowed for an amount charged in the accounts in respect of employees' remuneration, unless the remuneration is paid before the end

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of the period of 9 months immediately following the end of the period of account.

- (2) For the purposes of subsection (1) above an amount charged in the accounts in respect of employees' remuneration includes an amount—
  - (a) for which provision is made in the accounts, or
  - (b) which is held by an intermediary,  
with a view to its becoming employees' remuneration.
- (3) Subsection (1) above applies whether the amount is in respect of particular employments or in respect of employments generally.
- (4) If the remuneration is paid after the end of the period of 9 months mentioned in subsection (1) above, any deduction allowed in respect of it is allowed for the period of account in which it is paid and not for any other period of account.
- (5) If the profits of the trade are calculated before the end of the period of 9 months mentioned in subsection (1) above—
  - (a) it must be assumed, in making the calculation, that any remuneration which is unpaid when the calculation is made will not be paid before the end of that period, but
  - (b) if the remuneration is subsequently paid before the end of that period, the calculation is adjusted if a claim to adjust it is made to an officer of the Board by or on behalf of the company within 2 years beginning with the end of the period of account.
- (6) For the purposes of this section, remuneration is paid when it—
  - (a) is treated as received by an employee for the purposes of the Income Tax (Earnings and Pensions) Act 2003 by section 18, 19, 31 or 32 of that Act (receipt of money and non-money earnings), or
  - (b) would be so treated if it were not exempt income.
- (7) Where the profits of a company carrying on life assurance business are not charged under Case I of Schedule D, this section shall apply in calculating the profits as it applies in calculating the profits of an investment company; and in any such case—
  - (a) subsection (4) above shall have effect subject to section 86 below, and
  - (b) in construing section 86 below the remuneration shall be treated as expenses for the accounting period.
- (8) In this section—

“employee” includes an office-holder and “employment” correspondingly includes an office,  
“investment company” has the same meaning as in Part 4 of the Taxes Act 1988, and  
“remuneration” means an amount which is or is treated as earnings for the purposes of Parts 2 to 7 of the Income Tax (Earnings and Pensions) Act 2003.”

159

In section 53(2)(f) (amendments consequential on the substitution of a new section 167 of ICTA) for “sections 332(2)(c) and 418(3)(a)” substitute “section 418(3)(a)”.

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- 160 (1) Amend section 69 (chargeable events in relation to employee share ownership trusts) as follows.
- (2) In subsection (3AA)—
- (a) in paragraph (a) for “an employee share ownership” substitute “ a share incentive ”, and
  - (b) in paragraph (b) for “Schedule 8 to the Finance Act 2000” substitute “ Schedule 2 to the Income Tax (Earnings and Pensions) Act 2003 ”.
- (3) In the definition of “market value” in subsection (3AC), for “in Schedule 8 to the Finance Act 2000” substitute “ it has for the purposes of the SIP code (see paragraph 92 of Schedule 2 to the Income Tax (Earnings and Pensions) Act 2003) ”.
- (4) In subsection (4ZA)(b)—
- (a) for “a savings-related share option scheme within the meaning of Schedule 9 to the Taxes Act 1988” substitute “ an SAYE option scheme within the meaning of the SAYE code (see section 516(4) of the Income Tax (Earnings and Pensions) Act 2003) ”, and
  - (b) in sub-paragraph (ii) for “that Schedule” substitute “ Schedule 3 to that Act ”.

<sup>F421</sup>161 .....

#### Textual Amendments

**F421** Sch. 6 para. 161 repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 3](#) (with [Sch. 36](#))

- 162 In section 178(2) (setting of rates of interest)—
- (a) in paragraph (m) omit the words “160,”,
  - (b) at the end of the first paragraph (p) omit the word “and”,
  - (c) renumber the second paragraph (p) as paragraph (q), and
  - (d) at the end of paragraph (r) insert “, and
  - (s) Chapter 7 of Part 3 of the Income Tax (Earnings and Pensions) Act 2003.”.
- 163 (1) Amend Schedule 5 (employee share ownership trusts) as follows.
- (2) In paragraph 4(2A) (beneficiaries)—
- (a) for “a savings-related share option scheme within the meaning of Schedule 9 to the Taxes Act 1988” substitute “ an SAYE option scheme ”, and
  - (b) in paragraph (b), for “that Schedule” substitute “ Schedule 3 to the Income Tax (Earnings and Pensions) Act 2003 ”.
- (3) In paragraph 9(2ZA)(b) (transfers of securities on qualifying terms)—
- (a) for “a savings-related share option scheme within the meaning of Schedule 9 to the Taxes Act 1988” substitute “ an SAYE option scheme ”, and
  - (b) in sub-paragraph (ii), for “that Schedule” substitute “ Schedule 3 to the Income Tax (Earnings and Pensions) Act 2003 ”.
- (4) In paragraph 10 (other features)—
- (a) for “savings-related share option schemes approved under Schedule 9 to the Taxes Act 1988” substitute “ SAYE option schemes approved under Schedule 3 to the Income Tax (Earnings and Pensions) Act 2003 ”; and
  - (b) for “that Schedule” substitute “ Schedule 9 to the Taxes Act 1988 ”.

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(5) After paragraph 17 insert—

“18 For the purposes of this Schedule “SAYE option scheme” has the same meaning as in the SAYE code (see section 516 of the Income Tax (Earnings and Pensions) Act 2003 (approved SAYE option schemes)).”

*Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19))*

164 In paragraph 1 of Schedule 4 to the Insolvency (Northern Ireland) Order 1989 (the categories of preferential debts)—

- (a) in sub-paragraph (1), for “emoluments” substitute “ taxable earnings (as defined by section 10 of the Income Tax (Earnings and Pensions) Act 2003) ”; and
- (b) in sub-paragraph (2), for “section 203 of the Income and Corporation Taxes Act 1988 (pay as you earn)” substitute “ regulations made under section 684 of that Act (PAYE regulations) ”.

*Finance Act 1990 (c. 29)*

165 The Finance Act 1990 is amended as follows.

<sup>F422</sup>166 .....

**Textual Amendments**

**F422** Sch. 6 para. 166 repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

167 (1) Amend paragraph 4 of Schedule 14 (amendments of sections 322 and 323 of ICTA) as follows.

- (2) In sub-paragraph (1) for “sections 322(1)(a) and (2) and 323(1)” substitute “ section 322(1)(a) ”.
- (3) Omit sub-paragraph (2).

*Finance Act 1991 (c. 31)*

168 (1) Amend section 38 of the Finance Act 1991 (employee share schemes: non-discrimination) as follows.

- (2) Omit subsection (2).
- (3) In subsection (6) for “Subsections (2) and” substitute “ Subsection ”.

*Social Security Contributions and Benefits Act 1992 (c. 4)*

169 The Social Security Contributions and Benefits Act 1992 is amended as follows.

170 In section 1 (outline of contributory system), in subsection (2)(bb) for “emoluments” substitute “ general earnings ”.

171 In section 2 (categories of earners), in subsection (1)(a) for “emoluments chargeable to income tax under Schedule E” substitute “ general earnings ”.

172 (1) Amend section 4 (payments treated as remuneration and earnings) as follows.

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- (2) For subsection (4)(a) substitute—
- “**(a)** the amount of any gain calculated under section 479 or 480 of ITEPA 2003 in respect of which an amount counts as employment income of the earner under section 476 or 477 of that Act (charge on exercise, assignment or release of share option);”.
- (3) In subsection (4)(b) for “section 313 of the 1988 Act” substitute “ section 225 or 226 of ITEPA 2003 ”.
- (4) In subsection (6)(a) for “Schedule E” substitute “ the employment income Parts of ITEPA 2003 ”.
- 173 In section 7(1)(b) (meaning of “secondary contributor”) for “emoluments” in both places where it occurs substitute “ general earnings ”.
- 174 (1) Amend section 10 (Class 1A National Insurance contributions: benefits in kind etc.) as follows.
- (2) For subsection (1)(a) substitute—
- “**(a)** for any tax year an earner is chargeable to income tax under ITEPA 2003 on an amount of general earnings received by him from any employment (“the relevant employment”),”.
- (3) For subsection (1)(b) substitute—
- “**(b)** the relevant employment is both—
- (i) employed earner’s employment, and
- (ii) an employment, other than an excluded employment, within the meaning of the benefits code (see Chapter 2 of Part 3 of ITEPA 2003),”.
- (4) In subsection (1)(c) for “emolument” substitute “ general earnings ”.
- (5) In subsection (1) in the words after paragraph (c) for “emolument” substitute “ general earnings ”.
- (6) In subsection (2)(b) for “emolument” substitute “ general earnings ”.
- (7) In subsection (4)—
- (a) for “emolument” substitute “ general earnings ”;
- (b) for “it” substitute “ them ”.
- (8) In subsection (6) for “emolument as is taken” substitute “ general earnings as are taken ”.
- (9) For subsection (7) substitute—
- “(7) In calculating for the purposes of this section the amount of general earnings received by an earner from an employment, a deduction under any of the excluded provisions is to be disregarded.
- This subsection does not apply in relation to a deduction if subsection (7A) applies in relation to it.
- (7A) Where—
- (a) a deduction in respect of a matter is allowed under an excluded provision, and



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- (b) the amount deductible is at least equal to the whole of any corresponding amount which would (but for this section) fall by reference to that matter to be included in the general earnings mentioned in subsection (7),  
the whole of the corresponding amount shall be treated as not included.
- (7B) For the purposes of subsections (7) and (7A) “excluded provision” means—
  - (a) any provision of Chapter 2 of Part 5 of ITEPA 2003 (deductions for employee’s expenses), other than section 352 (limited deduction for agency fees paid by entertainers), and
  - (b) any provision of Chapter 5 of Part 5 of ITEPA 2003 (deductions for earnings representing benefits or reimbursed expenses).”
- (10) For subsection (8)(a) substitute—
  - “(a) modify the effect of subsections (7) and (7A) above by amending subsection (7B) so as to include any enactment contained in the Income Tax Acts within the meaning of “excluded provision”; or”.
- (11) In subsection (8)(b)—
  - (a) for “subsection (7)” substitute “ subsections (7) to (7B) ”;
  - (b) for “under Schedule E” substitute “ on employment income ”.
- (12) In subsection (9)(a) for “emoluments” substitute “ general earnings ”.
- (13) Omit subsection (10).
- 175 (1) Amend section 10ZA (liability of third party provider of benefits in kind) as follows.
  - (2) In subsection (1)(a) for “an emolument” substitute “ general earnings ”.
  - (3) Amend subsection (1)(b) as follows—
    - (a) for “the emolument, in so far as it is one in respect of which” substitute “ the general earnings, in so far as they are ones in respect of which ”;
    - (b) for “consists” substitute “ consist ”.
  - (4) In subsection (2), in the words after paragraph (b) for “an emolument” substitute “ general earnings ”.
  - (5) In subsection (6) for “section 168(4) of the Income and Corporation Taxes Act 1988” substitute “ section 721(5) of ITEPA 2003 ”.
- 176 (1) Amend section 10ZB (non-cash vouchers provided by third parties) as follows.
  - (2) In subsection (2)(a) for the words from “employment” to the end of the paragraph substitute “ employment which is an excluded employment for the purposes of the benefits code, and ”.
  - (3) In subsection (2)(b) for “if that Chapter did apply to that employment” substitute “ if that employment were not an excluded employment ”.
  - (4) In subsection (2), in the words following paragraph (b) for “as if that employment were employment to which that Chapter applied” substitute “ as if that employment were not an excluded employment ”.
  - (5) In subsection (3) for “section 141 of the Income and Corporation Taxes Act 1988” substitute “ section 84 of ITEPA 2003 ”.

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- 177 (1) Amend section 10A (Class 1B National Insurance contributions) as follows.
- (2) In subsection (1) for “emoluments” substitute “ general earnings ”.
- (3) In subsection (2)(a) for “the emoluments included” substitute “ the general earnings included ”.
- (4) In subsection (4) for “Emoluments are chargeable emoluments” substitute “ General earnings are chargeable emoluments ”.
- (5) In subsection (5) for “emoluments” in both places where it occurs substitute “ general earnings ”.
- 178 (1) Amend section 122(1) (interpretation of Parts 1 to 6 and supplementary provisions) as follows.
- (2) Insert the following definitions in the appropriate places—
- ““the benefits code” has the meaning given by section 63(1) of ITEPA 2003;”
- ““the employment income Parts of ITEPA 2003” means Parts 2 to 7 of that Act;”
- ““excluded employment” has the meaning given by section 63(4) of ITEPA 2003;”
- ““general earnings” has the meaning given by section 7 of ITEPA 2003 and accordingly sections 3 and 112 of this Act do not apply in relation to the word “earnings” when used in the expression “general earnings”;”
- ““ITEPA 2003” means the Income Tax (Earnings and Pensions) Act 2003;”.
- (3) In the definition of “PAYE settlement agreement” for “section 206A of the Income and Corporation Taxes Act 1988” substitute “ Chapter 5 of Part 11 of ITEPA 2003 ”.
- 179 In section 126(5)(a)(ii) (trade disputes) for “emoluments in pursuance of section 203 of the Income and Corporation Taxes Act 1988 (PAYE)” substitute “ taxable earnings (as defined by section 10 of the Income Tax (Earnings and Pensions) Act 2003) under PAYE regulations ”.
- 180 (1) Amend section 150(2) (interpretation of Part 10) as follows.
- (2) In paragraph (b) of the definition of “unemployability supplement or allowance”—
- (a) in sub-paragraph (ii) for “section 315(1) of the Income and Corporation Taxes Act 1988” substitute “ section 641 of the Income Tax (Earnings and Pensions) Act 2003 ”;
- (b) omit sub-paragraph (v).
- (3) In paragraph (b) of the definition of “war disablement pension” for “subsection (1) of section 315 of the Income and Corporation Taxes Act 1988” substitute “ any of paragraphs (a) to (f) of section 641(1) of the Income Tax (Earnings and Pensions) Act 2003 ”.
- (4) In the definition of “war widow’s pension” for “subsection (2)(e) of the said section 315” substitute “ section 641(1)(e) or (f) of the Income Tax (Earnings and Pensions) Act 2003 ”.

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- 181 In section 163(1) (interpretation of Part 11), in paragraph (a) of the definition of “employee” for “emoluments chargeable to income tax under Schedule E” substitute “general earnings (as defined by section 7 of the Income Tax (Earnings and Pensions) Act 2003)”.
- 182 In section 171(1) (interpretation of Part 12), in paragraph (a) of the definition of “employee” for “emoluments chargeable to income tax under Schedule E” substitute “general earnings (as defined by section 7 of the Income Tax (Earnings and Pensions) Act 2003)”.
- 183 In section 171ZJ(2)(a) (Part 12ZA: supplementary) for “emoluments chargeable to income tax under Schedule E” substitute “general earnings (as defined by section 7 of the Income Tax (Earnings and Pensions) Act 2003)”.
- 184 In section 171ZS(2)(a) (Part 12ZB: supplementary) for “emoluments chargeable to income tax under Schedule E” substitute “general earnings (as defined by section 7 of the Income Tax (Earnings and Pensions) Act 2003)”.
- 185 In Schedule 1 (supplementary provisions relating to contributions of Classes 1, 1A, 1B, 2 and 3)—
- (a) in paragraph 6(1)(a) for “regulations under section 203 of the Income and Corporation Taxes Act 1988 (PAYE)” substitute “PAYE regulations”;
  - (b) in paragraph 6(1)(b) for “regulations under that section” substitute “PAYE regulations”;
  - (c) in paragraph 6(7) for “regulations made under section 203 of the Income and Corporation Taxes Act 1988 (PAYE)” substitute “PAYE regulations”;
  - (d) in paragraph 7(1)(a) for “regulations made by [<sup>F65</sup>an officer of Revenue and Customs] under section 203(2) or” substitute “PAYE regulations or regulations made under section”; and
  - (e) in paragraph 7B(1) for “regulations under section 203 of the Income and Corporation Taxes Act 1988 (PAYE)” substitute “PAYE regulations”.

#### Textual Amendments

**F65** 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)

#### *Social Security Administration Act 1992 (c. 5)*

- 186 The Social Security Administration Act 1992 is amended as follows.
- 187 (1) Amend section 139(11) (definitions used in provisions relating to arrangements for council tax benefit) as follows.
- (2) In paragraph (b) of the definition of “war disablement pension” for “subsection (1) of section 315 of the Income and Corporation Taxes Act 1988” substitute “any of paragraphs (a) to (f) of section 641(1) of the Income Tax (Earnings and Pensions) Act 2003”.
  - (3) In the definition of “war widow’s pension” for “section 315(2)(e) of the Income and Corporation Taxes Act 1988” substitute “section 641(1)(e) or (f) of the Income Tax (Earnings and Pensions) Act 2003”.
- 188 (1) Amend section 159B(6) (effect of alterations affecting state pension credit) as follows.

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- (2) In paragraph (b) of the definition of “war disablement pension” for “subsection (1) of section 315 of the Income and Corporation Taxes Act 1988 (c. 1)” substitute “ any of paragraphs (a) to (f) of section 641(1) of the Income Tax (Earnings and Pensions) Act 2003 ”.
- (3) In paragraph (b) of the definition of “war widow’s or widower’s pension” for “section 315(2)(e) of the Income and Corporation Taxes Act 1988” substitute “ section 641(1)(e) or (f) of the Income Tax (Earnings and Pensions) Act 2003 ”.
- 189 (1) Amend section 162(5) (destination of national insurance contributions) as follows.
- (2) In paragraph (c) for “emoluments” substitute “ general earnings ”.
- (3) In paragraph (ca) for “emoluments” substitute “ general earnings ”.

*Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7)*

- 190 The Social Security Contributions and Benefits (Northern Ireland) Act 1992 is amended as follows.
- 191 In section 1 (outline of contributory system), in subsection (2)(bb) for “emoluments” substitute “ general earnings ”.
- 192 In section 2 (categories of earners), in subsection (1)(a) for “emoluments chargeable to income tax under Schedule E” substitute “ general earnings ”.
- 193 (1) Amend section 4 (payments treated as remuneration and earnings) as follows.
- (2) For subsection (4)(a) substitute—
- “ (a) the amount of any gain calculated under section 479 or 480 of ITEPA 2003 in respect of which an amount counts as employment income of the earner under section 476 or 477 of that Act (charge on exercise, assignment or release of share option);”.
- (3) In subsection (4)(b) for “section 313 of the 1988 Act” substitute “ section 225 or 226 of ITEPA 2003 ”.
- (4) In subsection (6)(a) for “Schedule E” substitute “ the employment income Parts of ITEPA 2003 ”.
- 194 In section 7(1)(b) (meaning of “secondary contributor”) for “emoluments” in both places where it occurs substitute “ general earnings ”.
- 195 (1) Amend section 10 (Class 1A National Insurance contributions: benefits in kind etc.) as follows.
- (2) For subsection (1)(a) substitute—
- “ (a) for any tax year an earner is chargeable to income tax under ITEPA 2003 on an amount of general earnings received by him from any employment (“the relevant employment”),”.
- (3) For subsection (1)(b) substitute—
- “ (b) the relevant employment is both—
- (i) employed earner’s employment, and
- (ii) an employment, other than an excluded employment, for the purposes of the benefits code (see Chapter 2 of Part 3 of ITEPA 2003),”.

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- (4) In subsection (1)(c) for “emolument” substitute “ general earnings ”.
- (5) In subsection (1), in the words after paragraph (c) for “emolument” substitute “ general earnings ”.
- (6) In subsection (2)(b) for “emolument” substitute “ general earnings ”.
- (7) In subsection (4)—
- (a) for “emolument” substitute “ general earnings ”;
  - (b) for “it” substitute “ them ”.
- (8) In subsection (6) for “emolument” substitute “ general earnings ”.
- (9) For subsection (7) substitute—
- “(7) In calculating for the purposes of this section the amount of general earnings received by an earner from an employment, a deduction under any of the excluded provisions is to be disregarded.
- This subsection does not apply in relation to a deduction if subsection (7A) applies in relation to it.
- (7A) Where—
- (a) a deduction in respect of a matter is allowed under an excluded provision, and
  - (b) the amount deductible is at least equal to the whole of any corresponding amount which would (but for this section) fall by reference to that matter to be included in the general earnings mentioned in subsection (7),
- the whole of the corresponding amount shall be treated as not included.
- (7B) For the purposes of subsections (7) and (7A) “excluded provision” means—
- (a) any provision of Chapter 2 of Part 5 of ITEPA 2003 (deductions for employee’s expenses) other than section 352 (limited deduction for agency fees paid by entertainers), and
  - (b) any provision of Chapter 5 of Part 5 of ITEPA 2003 (deductions for earnings representing benefits or reimbursed expenses).”
- (10) For subsection (8)(a) substitute—
- “(a) modify the effect of subsections (7) and (7A) above by amending subsection (7B) so as to include any enactment contained in the Income Tax Acts within the meaning of “excluded provision”; or”.
- (11) In subsection (8)(b)—
- (a) for “subsection (7)” substitute “ subsections (7) to (7B) ”;
  - (b) for “under Schedule E” substitute “ on employment income ”.
- (12) In subsection (9)(a) for “emoluments” substitute “ general earnings ”.
- (13) Omit subsection (10).
- 196 (1) Amend section 10ZA (liability of third party provider of benefits in kind) as follows.
- (2) In subsection (1)(a) for “an emolument” substitute “ general earnings ”.
  - (3) Amend subsection (1)(b) as follows—

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- (a) for “the emolument, in so far as it is one in respect of which” substitute “ the general earnings, in so far as they are ones in respect of which ”;
- (b) for “consists” substitute “ consist ”.
- (4) In subsection (2), in the words after paragraph (b) for “an emolument” substitute “ general earnings ”.
- (5) In subsection (6) for “section 168(4) of the Income and Corporation Taxes Act 1988” substitute “ section 721(5) of ITEPA 2003 ”.
- 197 (1) Amend section 10ZB (non-cash vouchers provided by third parties) as follows.
- (2) In subsection (2)(a) for the words from “employment” to the end of the paragraph substitute “ employment which is an excluded employment for the purposes of the benefits code, and ”.
- (3) In subsection (2)(b) for “if that Chapter did apply to that employment” substitute “ if that employment were not an excluded employment ”.
- (4) In subsection (2), in the words following paragraph (b) for “as if that employment were employment to which that Chapter applied” substitute “ as if that employment were not an excluded employment ”.
- (5) In subsection (3) for “section 141 of the Income and Corporation Taxes Act 1988” substitute “ section 84 of ITEPA 2003 ”.
- 198 (1) Amend section 10A (Class 1B National Insurance contributions) as follows.
- (2) In subsection (1) for “emoluments” substitute “ general earnings ”.
- (3) In subsection (2)(a) for “the emoluments included” substitute “ the general earnings included ”.
- (4) In subsection (4) for “Emoluments are chargeable emoluments” substitute “ General earnings are chargeable emoluments ”.
- (5) In subsection (5) for “emoluments” in both places where it occurs substitute “ general earnings ”.
- 199 (1) Amend section 121(1) (interpretation of Parts 1 to 6 and supplementary provisions) as follows.
- (2) Insert the following definitions in the appropriate places—
- ““the benefits code” has the meaning given by section 63(1) of ITEPA 2003;”
- ““the employment income Parts of ITEPA 2003” means Parts 2 to 7 of that Act;”
- ““excluded employment” has the meaning given by section 63(4) of ITEPA 2003;”
- ““general earnings” has the meaning given by section 7 of ITEPA 2003 and accordingly sections 3 and 112 of this Act do not apply in relation to the word “earnings” when used in the expression “general earnings”;”
- ““ITEPA 2003” means the Income Tax (Earnings and Pensions) Act 2003;”.

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- (3) In the definition of “PAYE settlement agreement” for “section 206A of the Income and Corporation Taxes Act 1988” substitute “ Chapter 5 of Part 11 of ITEPA 2003 ”.
- 200 In section 125(5)(a)(ii) (trade disputes) for “emoluments in pursuance of section 203 of the Income and Corporation Taxes Act 1988 (PAYE)” substitute “ taxable earnings (as defined by section 10 of the Income Tax (Earnings and Pensions) Act 2003) under PAYE regulations ”.
- 201 (1) Amend section 146(2) (interpretation of Part 10) as follows.
- (2) In paragraph (b) of the definition of “unemployability supplement or allowance”—
- (a) in sub-paragraph (ii) for “section 315(1) of the Income and Corporation Taxes Act 1988” substitute “ section 641 of the Income Tax (Earnings and Pensions) Act 2003 ”;
- (b) omit sub-paragraph (v).
- (3) In paragraph (b) of the definition of “war disablement pension”, for “subsection (1) of section 315 of the Income and Corporation Taxes Act 1988” substitute “ any of paragraphs (a) to (f) of section 641(1) of the Income Tax (Earnings and Pensions) Act 2003 ”.
- (4) In the definition of “war widow’s pension” for “subsection (2)(e) of the said section 315” substitute “ section 641(1)(e) or (f) of the Income Tax (Earnings and Pensions) Act 2003 ”.
- 202 In section 159(1) (interpretation of Part 11), in paragraph (a) of the definition of “employee” for “emoluments chargeable to income tax under Schedule E” substitute “ general earnings (as defined by section 7 of the Income Tax (Earnings and Pensions) Act 2003) ”.
- 203 In section 167(1) (interpretation of Part 12), in paragraph (a) of the definition of “employee” for “emoluments chargeable to income tax under Schedule E” substitute “ general earnings (as defined by section 7 of the Income Tax (Earnings and Pensions) Act 2003) ”.
- 204 In Schedule 1 (supplementary provisions relating to contributions of Classes 1, 1A, 1B, 2 and 3)—
- (a) in paragraph 6(1)(a) for “regulations under section 203 of the Income and Corporation Taxes Act 1988 (PAYE)” substitute “ PAYE regulations ”;
- (b) in paragraph 6(1)(b) for “regulations under that section” substitute “ PAYE regulations ”;
- (c) in paragraph 6(7) for “regulations made under section 203 of the Income and Corporation Taxes Act 1988 (PAYE)” substitute “ PAYE regulations ”;
- (d) in paragraph 7(1)(a) for “regulations made by [<sup>F65</sup>an officer of Revenue and Customs] under section 203(2) or” substitute “ PAYE regulations or regulations made under section ”; and
- (e) in paragraph 7B(1) for “regulations under section 203 of the Income and Corporation Taxes Act 1988 (PAYE)” substitute “ PAYE regulations ”.

#### Textual Amendments

**F65** 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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*Social Security Administration (Northern Ireland) Act 1992 (c. 8)*

- 205 (1) Section 139B(6) of the Social Security Administration (Northern Ireland) Act 1992 (effect of alterations affecting state pension credit) is amended as follows.
- (2) b) of the definition of “war disablement pension” for “subsection (1) of section 315 of the Income and Corporation Taxes Act 1988 (c. 1)” substitute “ any of paragraphs (a) to (f) of section 641(1) of the Income Tax (Earnings and Pensions) Act 2003 ”.
- (3) In paragraph (b) of the definition of “war widow’s or widower’s pension” for “section 315(2)(e) of the Income and Corporation Taxes Act 1988” substitute “ section 641(1)(e) or (f) of the Income Tax (Earnings and Pensions) Act 2003 ”.
- 206 In section 142(5) of that Act (destination of national insurance contributions)—
- (a) in paragraph (c) for “emoluments” substitute “ general earnings ”;
- (b) in paragraph (ca) for “emoluments” substitute “ general earnings ”

*Taxation of Chargeable Gains Act 1992 (c. 12)*

207 The Taxation of Chargeable Gains Act 1992 is amended as follows.

<sup>F423</sup>208 .....

**Textual Amendments**

**F423** Sch. 6 para. 208 omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 79\(a\)](#)

- 209 In section 11(1) (visiting forces, agents-general etc.)—
- (a) for “section 323(1) of the Taxes Act” substitute “ section 303(1) of ITEPA 2003 ”; and
- (b) for “subsection (2) of section 323 and subsections (4) to (8) of that section shall apply accordingly” substitute “ section 303(2) to (6) of that Act and section 323(2) of the Taxes Act ”.
- 210 (1) Amend section 120 (increased expenditure by reference to tax charged in relation to shares etc.) as follows.
- (2) For subsection (1) substitute—
- “(1) Subsection (1A) applies where—
- (a) a person (“the employee”) has acquired shares or an interest in shares as mentioned in section 447(1) of ITEPA 2003, and
- (b) an amount counts as employment income of the employee under Chapter 4 of Part 7 of that Act in respect of the shares.
- (1A) On the first disposal of the shares after the acquisition occurs, the employment income amount shall be treated for the purposes of section 38(1)
- (a) as consideration given by the person making the disposal for the acquisition of the shares.
- (1B) For the purposes of subsections (1) and (1A)—
- (a) the “employment income amount” means the amount counting as employment income of the employee under that Chapter in respect of the shares, and



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- (b) it is immaterial whether the disposal of the shares mentioned in subsection (1A) is made by the employee or another person.”
- (3) In subsection (3)—
- (a) for “is chargeable to tax by virtue of section 162(5) of the Taxes Act” substitute “ is treated as earnings under section 195(2) of ITEPA 2003 ”, and
- (b) for “so chargeable” substitute “ so treated as earnings ”.
- (4) In subsection (4)—
- (a) for “chargeable to tax under section 135(1) or (6) of the Taxes Act” substitute “ counting as employment income under section 476 or 477 of ITEPA 2003 ”, and
- (b) for “so chargeable to tax” substitute “ so counting as employment income ”.
- (5) In subsection (5A)—
- (a) for “is chargeable to tax under section 140A of the Taxes Act” substitute “ counts as employment income under Chapter 2 of Part 7 of ITEPA 2003 ”, and
- (b) for “so chargeable” substitute “ so counting as employment income ”.
- (6) In subsection (5B)—
- (a) for “is chargeable to tax under section 140D of the Taxes Act” substitute “ counts as employment income under Chapter 3 of Part 7 of ITEPA 2003 ”, and
- (b) for “so chargeable” substitute “ so counting as employment income ”.
- (7) Omit subsection (6).
- (8) For subsection (7) substitute—

“(7) Each of the provisions of this section mentioned in the first column of the following table is to be construed as if it were contained in the Chapter of ITEPA 2003 specified in the corresponding entry in the second column—

<i>Provision of this section</i>	<i>Chapter of ITEPA 2003</i>
subsections (1), (1A) and (1B)	Chapter 4 of Part 7
subsection (3)	Chapter 8 of Part 3
subsection (4)	Chapter 5 of Part 7
subsection (5A)	Chapter 2 of Part 7
subsection (5B)	Chapter 3 of Part 7;

and subsection (5) of this section is to be construed as one with section 138 of the Taxes Act.”

- (9) After subsection (7) insert—

“(7A) In relation to events that gave rise to amounts chargeable to income tax before 6th April 2003, this section is to be read as if any reference to an amount mentioned in the first column of the following table included a reference to an amount mentioned in the corresponding entry in the second column—

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<i>Amount mentioned in this section</i>	<i>Amount chargeable before 6th April 2003</i>
an amount counting as employment income under Chapter 4 of Part 7 of ITEPA 2003	an amount chargeable to tax under Chapter 2 of Part 3 of the Finance Act 1988
an amount treated as earnings under section 195(2) of ITEPA 2003	an amount chargeable to tax under section 162(5) of the Taxes Act
an amount counting as employment income under section 476 or 477 of ITEPA 2003	an amount chargeable to tax under section 135(1) or (6) of the Taxes Act
an amount which counts as employment income under Chapter 2 of Part 7 of ITEPA 2003	an amount chargeable to tax under section 140A of the Taxes Act
an amount which counts as employment income under Chapter 3 of Part 7 of ITEPA 2003	an amount chargeable to tax under section 140D of the Taxes Act.”
(10) In subsection (8) for “section 140A of the Taxes Act” substitute “ Chapter 2 of Part 7 of ITEPA 2003 ”.	
211 (1) Amend section 149B (employee incentive schemes: conditional interests in shares) as follows.	
(2) In subsection (1) for “section 140A of the Taxes Act” substitute “ Chapter 2 of Part 7 of ITEPA 2003 (conditional interests in shares) ”.	
(3) In subsection (2) for “section 140B of the Taxes Act” substitute “ section 429 of ITEPA 2003 ”.	
(4) In subsection (4)—	
(a) for “section 140A of the Taxes Act” substitute “ Chapter 2 of Part 7 of ITEPA 2003 ”, and	
(b) for “that section” substitute “ that Chapter ”.	
212 After section 149B insert—	
<b>“149C Priority share allocations</b>	
Section 17(1) shall not apply to an acquisition of shares if section 542 or 544 of ITEPA 2003 applies in relation to it.”	
213 In section 222(8D)(b) (relief on disposal of private residence), for “the same meanings as they have for the purposes of Chapter II of Part V of the Taxes Act” substitute “ the meanings given by Chapter 2 of Part 3 of ITEPA 2003 ”.	
214 In section 236A (employee share ownership plans), and in the sidenote and in the italic heading immediately before the section, for “employee share ownership” wherever it occurs substitute “ share incentive ”.	
215 In section 238(2)(a) (approved profit sharing and share option schemes), for “is chargeable to income tax” substitute “ counts as employment income (or was chargeable to income tax for the year 2002-03 or an earlier year of assessment ”.	

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216 After section 238 insert—

**“238A Approved share schemes and share incentives**

- (1) Schedule 7D (approved share schemes and share incentives) shall have effect.
- (2) Schedule 7D relates—
  - (a) in Part 1, to approved share incentive plans (SIPs) (see section 488 of ITEPA 2003),
  - (b) in Part 2, to approved SAYE option schemes (see section 516 of that Act),
  - (c) in Part 3, to approved CSOP schemes (CSOPs) (see section 521 of that Act), and
  - (d) in Part 4, to enterprise management incentives (see section 527 of that Act).”

217 After section 263 insert—

**“263ZA Former employees: employment-related liabilities**

- (1) This section applies if—
  - (a) a deduction of the amount of one or more deductible payments may be made under section 555 of ITEPA 2003 (former employee entitled to deduction from total income in respect of liabilities related to the former employment) when computing a former employee’s total income for a tax year, and
  - (b) the total amount which may be deducted exceeds the total income for that year.
- (2) In this section “excess relief” means the amount of the difference between—
  - (a) the total amount which may be deducted, and
  - (b) the total income.
- (3) The amount of the excess relief may be treated as an allowable loss accruing to the former employee for that tax year.

This subsection applies only if the former employee makes a claim for the purpose.
- (4) But no relief is available under subsection (3) in respect of any amount of the excess relief that exceeds the maximum amount.
- (5) For the purposes of this section the “maximum amount”, in relation to the excess relief for a tax year, means the amount on which the former employee would be chargeable to capital gains tax for that year if the following were disregarded—
  - (a) any relief available under this section,
  - (b) any allowable losses falling to be carried forward to that year from a previous year for the purposes of section 2(2),
  - (c) section 3(1) (the annual exempt amount),
  - (d) any relief against capital gains tax under section 72 of the Finance Act 1991 (deduction of trading losses), and

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- (e) any relief against capital gains tax under section 90(4) of the Finance Act 1995 (relief for post-cessation expenditure).
- (6) A former employee may make a claim under subsection (3) and a claim under section 555(3) of ITEPA 2003 in the same notice.”
- 218 In section 271 (other miscellaneous exemptions), for subsection (1)(c) substitute—
- “(c) any gain accruing to a person from his acquisition and disposal of assets held by him as part of a fund—
- (i) mentioned in section 614(2) of the Taxes Act,
- (ii) to which section 615(3) of the Taxes Act applies, or
- (iii) mentioned in section 648, 649, 650, 651 or 653 of ITEPA 2003;”.
- 219 (1) Amend section 288(1) (interpretation) as follows.
- (2) In the entry relating to “allowable loss” for “and 16” substitute “ , 16 and 263ZA ”.
- (3) After the entry relating to “investment trust” insert—
- ““ITEPA 2003” means the Income Tax (Earnings and Pensions) Act 2003;”.
- 220 (1) Amend Schedule 7C (relief for transfers to approved share plans) as follows.
- (2) In paragraph 1(1) (introductory) for “an employee share ownership” substitute “ a share incentive ”.
- (3) In paragraph 2 (conditions relating to the disposal)—
- (a) in sub-paragraph (1) for “Schedule 8 to the Finance Act 2000” substitute “ Schedule 2 to ITEPA 2003 ”,
- (b) in sub-paragraph (2)—
- (i) for “Part VIII” substitute “ Part 4 ”,
- (ii) for “used in plan” substitute “ awarded ”, and
- (iii) for “61(a) and (c)” substitute “ 27(1)(a) and (c) and (2) ”,
- (c) in sub-paragraph (4) for “of Schedule 8 to the Finance Act 2000” substitute “ given by paragraph 97 of Schedule 2 to ITEPA 2003 ”.
- 221 After Schedule 7C insert—

“SCHEDULE  
7D

Section 238A

APPROVED SHARE SCHEMES AND SHARE INCENTIVES

**PART 1**

APPROVED SHARE INCENTIVE PLANS

*Introductory*

- 1 (1) The provisions of this Part of this Schedule apply for capital gains tax purposes in relation to an approved share incentive plan (“the plan”).

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- (2) This Part of this Schedule forms part of the SIP code (see section 488 of ITEPA 2003 (approved share incentive plans)).
- (3) Accordingly, expressions used in this Part of this Schedule and contained in the index at the end of Schedule 2 to that Act (approved share incentive plans) have the meaning indicated by the index.
- (4) In particular, for the purposes of paragraphs 5 and 7 of this Schedule “market value” has the meaning given by paragraph 92 of Schedule 2 to that Act (determination of market value); and Part 8 of this Act has effect subject to this paragraph.

#### *Gains accruing to trustees*

- 2 (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 4 of Schedule 2 to ITEPA 2003 (approved share incentive plans: types of shares that may be awarded) 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 any of the shares in the company in question are readily convertible assets at the time the shares are acquired by the trustees, the relevant period is the period of two years beginning with the date on which the shares were acquired by the trustees.

This is subject to sub-paragraph (4).
- (3) 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 relevant period is—
  - (a) the period of five years beginning with the date on which the shares were acquired by the trustees, or
  - (b) if within that period any of the shares in that company become readily convertible assets, the period of two years beginning with the date on which they did so,whichever ends first.

This is subject to sub-paragraph (4).
- (4) If the shares are acquired by the trustees by virtue of a payment in respect of which a deduction is allowed under paragraph 9 of Schedule 4AA to the Taxes Act (deduction for contribution to plan trust), the relevant period is the period of ten years beginning with the date of acquisition.
- (5) For the purposes of determining whether shares are awarded to a participant within the relevant period, 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) Sub-paragraph (5) is subject to paragraph 78(1) of Schedule 2 to ITEPA 2003 (acquisition by trustees of shares from employee share ownership trust).

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- (7) For the purposes of this paragraph “readily convertible assets” has the meaning given by sections 701 and 702 of that Act (readily convertible assets).

This is subject to sub-paragraph (8).

- (8) In determining for the purposes of this paragraph 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.
- (9) In relation to shares acquired by the trustees before 11th May 2001 this paragraph has effect with the substitution—
- (a) in sub-paragraph (2), of “If the shares are readily convertible assets at the time they” for the words before “are acquired”, and
  - (b) in sub-paragraph (3)—
    - (i) of “If at the time of their acquisition by the trustees the shares are not readily convertible assets” for the words before “the relevant period”, and
    - (ii) in paragraph (b), of “the shares in question” for “any of the shares in that company”.

*Participant absolutely entitled as against trustees*

- 3 (1) Sub-paragraph (2) applies to any shares awarded to a participant under the plan.
- (2) The participant is treated for capital gains tax purposes as absolutely entitled to those shares as against the trustees.
- (3) Sub-paragraph (2) applies notwithstanding anything in the plan or the trust instrument.

*Different classes of shares*

- 4 (1) For the purposes of Chapter 1 of Part 4 of this Act (shares, securities, options etc: general) 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 to which sub-paragraph (3) applies shall be treated as of a different class from any shares to which sub-paragraph (4) applies, even if they would otherwise fall to be treated as of the same class.
- (3) This sub-paragraph applies to any shares transferred to the trustees of the plan trust by a qualifying transfer that have not been awarded to participants under the plan.
- (4) This sub-paragraph applies to any shares held by the trustees that were not transferred to them by a qualifying transfer.

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- (5) In this paragraph “qualifying transfer” has the meaning given in paragraph 78(2) of Schedule 2 to ITEPA 2003 (acquisition by trustees of shares from employee share ownership trust).
- (6) For the purposes of Chapter 1 of Part 4 of this Act any shares which—
- (a) were acquired by the trustees by virtue of a payment in respect of which a deduction is allowed under paragraph 9 of Schedule 4AA to the Taxes Act (deduction for contribution to plan trust), and
  - (b) have not been awarded under the plan,
- shall be treated as of a different class from any shares held by the trustees that were not so acquired by them, even if they would otherwise fall to be treated as of the same class.

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

- 5 (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.

*Deemed disposal by trustees on disposal of beneficial interest*

- 6 (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 the SIP code as having 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 the SIP code to be equal to the market value of the shares at the time of the disposal.

*Treatment of forfeited shares*

- 7 (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.

*Disposal of rights under rights issue*

- 8 (1) Any gain accruing on the disposal of rights under paragraph 77 of Schedule 2 to ITEPA 2003 (power of trustees to raise funds to subscribe for rights issue) is not a chargeable gain.

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- (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 2

### APPROVED SAYE OPTION SCHEMES

#### *Introductory*

- 9 (1) This Part of this Schedule forms part of the SAYE code (see section 516 of ITEPA 2003 (approved SAYE option schemes)).
- (2) Accordingly, expressions used in this Part of this Schedule and contained in the index at the end of Schedule 3 to that Act (approved SAYE option schemes) have the meaning indicated by the index.

#### *Market value rule not to apply*

- 10 (1) This paragraph applies where—
- (a) a share option (“the option”) has been granted to an individual—
    - (i) in accordance with the provisions of an approved SAYE option scheme, and
    - (ii) by reason of the individual’s office or employment as a director or employee of a company,
  - (b) the individual exercises the option in accordance with the provisions of the SAYE option scheme at a time when the scheme is approved, and
  - (c) condition A or condition B in section 519(2) or (3) of ITEPA 2003 (no charge in respect of exercise of option) is met.
- (2) The company mentioned in sub-paragraph (1)(a)(ii) may be—
- (a) the company whose shares are the subject of the option, or
  - (b) some other company.
- (3) If the option—
- (a) was granted under the SAYE option scheme before the withdrawal of approval under paragraph 42 of Schedule 3 to ITEPA 2003, but
  - (b) is exercised after the withdrawal of approval,
- then, for the purposes of sub-paragraph (1)(b) above in its application to the option, the scheme is to be treated as if it were still approved at the time of the exercise.
- (4) Section 17(1) (disposals and acquisitions treated as made at market value) shall not apply in calculating the consideration for—
- (a) the individual’s acquisition of shares by the exercise of the option, or
  - (b) any corresponding disposal of those shares to the individual.
- (5) References in sub-paragraphs (1)(b) and (4) above to the individual include references to a person exercising the option in accordance with provision included in the scheme by virtue of paragraph 32 of Schedule 3 to ITEPA



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2003 (exercise of options: death); and sub-paragraph (1)(c) above does not apply in relation to a person so exercising the option.

### PART 3

#### APPROVED CSOP SCHEMES

##### *Introductory*

- 11 (1) This Part of this Schedule forms part of the CSOP code (see section 521 of ITEPA 2003 (approved CSOP schemes)).
- (2) Accordingly, expressions used in this Part of this Schedule and contained in the index at the end of Schedule 4 to that Act (approved CSOP schemes) have the meaning indicated by the index.
- (3) This Part of this Schedule applies where—
- (a) a share option (“the option”) has been granted to an individual—
    - (i) in accordance with the provisions of an approved CSOP scheme, and
    - (ii) by reason of the individual’s office or employment as a director or employee of a company, and
  - (b) shares (“the relevant shares”) are acquired by the exercise of the option.
- (4) The company mentioned in sub-paragraph (3)(a)(ii) may be—
- (a) the company whose shares are the subject of the option, or
  - (b) some other company.

##### *Relief where income tax charged in respect of grant of option*

- 12 (1) This paragraph applies where an amount (the “employment income amount”) counted as employment income of the individual under section 526 of ITEPA 2003 (charge where option granted at a discount) in respect of the option.
- (2) For the purposes of section 38(1)(a) (acquisition and disposal costs etc.), that part of the employment income amount which is attributable to the relevant shares shall be treated as consideration given for the acquisition of the relevant shares.
- (3) This paragraph also applies where the individual was chargeable to income tax on an amount in respect of the option under—
- (a) subsection (6) of section 185 of ICTA (as it had effect before 1st January 1992),
  - (b) subsection (6A) of that section (as it had effect in relation to options obtained on or after 1st January 1992 but before 29th April 1996), or
  - (c) subsection (6) of that section (as it had effect in relation to options obtained on or after 29th April 1996);

and in such a case the “employment income amount” means the amount on which the individual was so chargeable.

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- (4) This paragraph applies whether or not—
- (a) the exercise of the option is in accordance with the provisions of the CSOP scheme, or
  - (b) the CSOP scheme is approved at the time of the exercise.

*Market value rule not to apply*

- 13 (1) This paragraph applies where—
- (a) the individual exercises the option in accordance with the provisions of the CSOP scheme at a time when the scheme is approved, and
  - (b) the condition in section 524(2) of ITEPA 2003 (no charge in respect of exercise of option) is met.
- (2) Section 17(1) (disposals and acquisitions treated as made at market value) shall not apply in calculating the consideration for—
- (a) the individual’s acquisition of the relevant shares by the exercise of the option, or
  - (b) any corresponding disposal of the relevant shares to the individual.
- (3) Sub-paragraph (2) also applies where the option is exercised at a time when the scheme is approved in accordance with provision included in the scheme by virtue of paragraph 25 of Schedule 4 to ITEPA 2003 (exercise of options: death); and references in that sub-paragraph to the individual are to be read accordingly.

## PART 4

### ENTERPRISE MANAGEMENT INCENTIVES

#### *Introductory*

- 14 (1) This Part of this Schedule forms part of the EMI code (see section 527 of ITEPA 2003 (enterprise management incentives: qualifying options)).
- (2) Accordingly, expressions used in this Part of this Schedule and contained in the index at the end of Schedule 5 to that Act (enterprise management incentives) have the meaning indicated by the index.
- (3) In this Part of this Schedule, “qualifying shares”—
- (a) means shares acquired by the exercise of a qualifying option, subject to sub-paragraphs (4) and (5), and
  - (b) includes shares (“replacement shares”) which—
    - (i) are treated under section 127 (equation of original shares and new holding) as the same asset as a holding of qualifying shares, and
    - (ii) meet the requirements of paragraph 35 of Schedule 5 to ITEPA 2003 (type of shares that may be acquired).
- (4) If a disqualifying event occurs in relation to a qualifying option (whether the original option or a replacement option), shares acquired by the exercise

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of that option are qualifying shares only if the option is exercised within 40 days of that event.

- (5) References in this Part of this Schedule to “the original option”, where there has been one or more replacement options, are to the option that the replacement option (or, if there has been more than one, the first of them) replaced.

*Taper relief on disposal of qualifying shares*

- 15 For the purposes of computing taper relief on a disposal of qualifying shares, the shares are treated as if they had been acquired when the original option was granted.

*Rights issues in respect of qualifying shares*

- 16 Where—
- (a) an individual holds qualifying shares, and
  - (b) there is, by virtue of any such allotment for payment as is mentioned in section 126(2)(a) (allotment in proportion to shareholdings), a reorganisation affecting that holding,
- sections 127 to 130 (which relate to reorganisation or reduction of share capital) shall not apply in relation to that holding.”

*Pension Schemes Act 1993 (c. 48)*

- 222 In section 181(1) of the Pension Schemes Act 1993 (general interpretation), in the definition of “employee” for “emoluments chargeable to income tax under Schedule E” substitute “ general earnings (as defined by section 7 of the Income Tax (Earnings and Pensions) Act 2003) ”.

*Pension Schemes (Northern Ireland) Act 1993 (c. 49)*

- 223 In section 176(1) of the Pension Schemes (Northern Ireland) Act 1993 (general interpretation), in the definition of “employee” for “emoluments chargeable to income tax under Schedule E” substitute “ general earnings (as defined by section 7 of the Income Tax (Earnings and Pensions) Act 2003) ”.

*Finance Act 1994 (c. 9)*

- 224 (1) In the Finance Act 1994, paragraph 27 of Schedule 24 (provisions relating to the Railways Act 1993 — employee benefits: transport vouchers) is amended as follows.
- (2) In sub-paragraph (3) for “Subsection (6) of section 141 of the Taxes Act 1988” substitute “ Section 86 of ITEPA 2003 (exception for certain transport vouchers) ”.
- (3) In sub-paragraph (3)(c) for “paragraphs (a) to (d) of that subsection” substitute “ section 86(2)(a) to (d) of ITEPA 2003 ”.
- (4) In sub-paragraph (12) after the definition of “the former transport voucher benefits for comparable employees” insert—
- ““ITEPA 2003” means the Income Tax (Earnings and Pensions) Act 2003.”

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(5) For sub-paragraph (13) substitute—

“(13) Subject to paragraph 1(1) and sub-paragraph (12) above, expressions used in this paragraph and in section 86 of ITEPA 2003 have the same meaning in this paragraph as in that section.

This does not apply in relation to the reference to a transport voucher in sub-paragraph (1) above.”

*Finance Act 1995 (c. 4)*

225 The Finance Act 1995 is amended as follows.

F424 226 .....

**Textual Amendments**

**F424** Sch. 6 para. 226 repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

227 In section 137(7) (part-time workers: miscellaneous provisions) for “Subsections (2) to” substitute “ Subsection ”.

*Jobseekers Act 1995 (c. 18)*

228 The Jobseekers Act 1995 is amended as follows.

229 In section 15(2)(c)(i) (effect on other claimants) for “emoluments in pursuance of section 203 of the Income and Corporation Taxes Act 1988 (PAYE)” substitute “ taxable earnings (as defined by section 10 of the Income Tax (Earnings and Pensions) Act 2003) under PAYE regulations ”.

230 In section 26(3) (the back to work bonus) for the words from “Subject to section 617” to “not to be taxable)” substitute “ Subject to section 677 of the Income Tax (Earnings and Pensions) Act 2003 (which provides for a back to work bonus not to be taxable) ”.

*Child Support Act 1995 (c. 34)*

231 For section 10(4) of the Child Support Act 1995 (child maintenance bonus) substitute—

“(4) Subsection (3) is subject to section 677 of the Income Tax (Earnings and Pensions) Act 2003 (which provides for a back to work bonus not to be taxable).”

*Child Support (Northern Ireland) Order 1995 (S.I. 1995/2702 (N.I. 13))*

232 For Article 4(4) of the Child Support (Northern Ireland) Order 1995 (child maintenance bonus) substitute—

“(4) Paragraph (3) is subject to section 677 of the Income Tax (Earnings and Pensions) Act 2003 (which provides for a back to work bonus not to be taxable).”

*Status: Point in time view as at 01/03/2013.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003 is up to date with all changes known to be in force on or before 15 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)*

*Jobseekers (Northern Ireland) Order 1995 (S.I. 1995/2705 (N.I. 15))*

- 233 The Jobseekers (Northern Ireland) Order 1995 is amended as follows.
- 234 In Article 17(2)(c)(i) (effect on other claimants) for “emoluments in pursuance of section 203 of the Income and Corporation Taxes Act 1988 (PAYE)” substitute “taxable earnings (as defined by section 10 of the Income Tax (Earnings and Pensions) Act 2003 under regulations made under section 684 of that Act (PAYE regulations)”.
- 235 In Article 28(3) (the back to work bonus) for the words from “Subject to section 617” to “not to be taxable)” substitute “Subject to section 677 of the Income Tax (Earnings and Pensions) Act 2003 (which provides for a back to work bonus not to be taxable)”.

*Teaching and Higher Education Act 1998 (c. 30)*

- 236 In section 22 of the Teaching and Higher Education Act 1998 (new arrangements for giving financial support to students)—
- (a) in subsection (5)(g) for “regulations under section 203 of the Income and Corporation Taxes Act 1988 (PAYE)” substitute “PAYE regulations”; and
  - (b) in subsection (6)(a) for “income assessable to income tax under Schedule E” substitute “PAYE income”.

*Scotland Act 1998 (c. 46)*

- 237 In section 79(3) of the Scotland Act 1998 (supplemental powers to modify enactments) for “section 203 of the Income and Corporation Taxes Act 1988 (PAYE)” substitute “PAYE regulations”.

*Education (Student Support) (Northern Ireland) Order 1998 (S.I. 1998/1760 (N.I. 14))*

- 238 In Article 3 of the Education (Student Support) (Northern Ireland) Order 1998 (new arrangements for giving financial support to students)—
- (a) in paragraph (5)(g) for “section 203 of the Income and Corporation Taxes Act 1988 (PAYE)” substitute “section 684 of the Income Tax (Earnings and Pensions) Act 2003 (PAYE regulations)”;
  - (b) in paragraph (6)(a) for “income assessable to income tax under Schedule E” substitute “PAYE income (as defined in section 683 of the Income Tax (Earnings and Pensions) Act 2003”.

*Tax Credits Act 1999 (c. 10)*

- 239 The Tax Credits Act 1999 is amended as follows.
- 240 In section 6(1) (payment of tax credit by employers etc.) for “income assessable to income tax under Schedule E” substitute “PAYE income”.
- 241 In paragraph 10(1) of Schedule 2 (transfer of functions), in paragraph (b) of the subsection which, in any case where the overpayment was made in respect of tax credit, is treated as substituted for—
- (a) subsection (8) of section 71 of the Social Security Administration Act 1992 (c. 5), and

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(b) subsection (8) of section 69 of the Social Security Administration (Northern Ireland) Act 1992 (c. 8),  
 for “section 203(2)(a) of the Income and Corporation Taxes Act 1988 (PAYE)”  
 substitute “PAYE regulations”.

*Finance Act 2000 (c. 17)*

242 The Finance Act 2000 is amended as follows.

<sup>F425</sup>243 .....

**Textual Amendments**  
**F425** Sch. 6 para. 243 repealed (19.7.2011) by [Finance Act 2011 \(c. 11\)](#), [Sch. 26 para. 3\(2\)\(a\)](#)

<sup>F426</sup>244 .....

**Textual Amendments**  
**F426** Sch. 6 para. 244 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 3 Pt. 1](#) (with [Sch. 2 Pts. 1, 2](#))

<sup>F427</sup>245 .....

**Textual Amendments**  
**F427** Sch. 6 para. 245 repealed (with effect in accordance with Sch. 17 para. 5(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(12\)](#)

*Capital Allowances Act 2001 (c. 2)*

246 The Capital Allowances Act 2001 is amended as follows.

247 (1) Amend section 4 (capital expenditure) as follows.

(2) For subsection (2)(b) substitute—

“(b) any expenditure or sum that may be allowed as a deduction under a relevant provision from the taxable earnings from an employment or office held by the person.”

(3) After subsection (2) insert—

“(2A) In subsection (2)—

“relevant provision” means any of the following—

- (a) section 262;
- (b) section 232 of ITEPA 2003 (giving effect to mileage allowance relief);
- (c) Chapters 2 to 6 of Part 5 of that Act (general deductions allowed from earnings); and
- (d) sections 613(1), 619 and 639 of ICTA (contributions to pensions funds etc.), and

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“taxable earnings” has the meaning given by section 10 of ITEPA 2003.”

- (4) In subsection (3) for “emoluments” substitute “ earnings ”.
- 248 (1) Amend section 20 (employments and offices) as follows.
- (2) In subsection (2)—
- (a) for “emoluments” substitute “ earnings ”; and
  - (b) for “do not fall within Case I or II of Schedule E” substitute “ fall within section 22 or 26 of ITEPA 2003 ”.
- (3) In subsection (3)—
- (a) for “those emoluments” substitute “ those earnings ”; and
  - (b) for “other emoluments” substitute “ other taxable earnings (as defined by section 10 of ITEPA 2003) ”.
- 249 In section 61(2) (disposal events and disposal values), in entry 2(b) of the Table, for “Schedule E” substitute “ ITEPA 2003 ”.
- 250 In section 63(1) (cases in which disposal value is nil) for “Schedule E” substitute “ ITEPA 2003 ”.
- 251 In section 72(3) (disposal values), in entry 2(b) of the Table, for “Schedule E” substitute “ ITEPA 2003 ”.
- 252 In section 88(c) (sales at under-value) for “Schedule E” substitute “ ITEPA 2003 ”.
- 253 In section 262 (employments and offices)—
- (a) in paragraph (a) for “an amount to be deducted from the emoluments of” substitute “ a deduction from the taxable earnings from ”; and
  - (b) in paragraph (b) for “an emolument” substitute “ earnings ”.
- 254 In section 423(1) (disposal value for sections 421 and 422), in entry 2(b) of the Table, for “Schedule E” substitute “ ITEPA 2003 ”.
- 255 At the end of Part 1 of Schedule 1 (abbreviations) insert—

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“ITEPA 2003	The Income Tax (Earnings and Pensions) Act 2003”.
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F428 256 .....

**Textual Amendments**

**F428** Sch. 6 para. 256 repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

*Finance Act 2001 (c. 9)*

- 257 For section 95 of the Finance Act 2001 (exemptions in relation to employee share ownership plans) substitute—

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### “95 Exemptions in relation to approved share incentive plans

- (1) This section forms part of the SIP code (see section 488 of the Income Tax (Earnings and Pensions) Act 2003 (approved share incentive plans)).
- (2) Accordingly, expressions used in this section and contained in the index at the end of Schedule 2 to that Act (approved share incentive plans) have the meaning indicated by that index.
- (3) Where, under an approved share incentive 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.
- (4) But subsection (3) does not apply to—
  - (a) any instrument executed (within the meaning of the Stamp Act 1891) before 6th April 2003, or
  - (b) any agreement to transfer shares made before that date.”

F429 258 .....

#### Textual Amendments

**F429** Sch. 6 para. 258 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 3 Pt. 1](#) (with [Sch. 2 Pts. 1, 2](#))

#### *Social Security Contributions (Share Options) Act 2001 (c. 20)*

- 259 The Social Security Contributions (Share Options) Act 2001 is amended as follows.
- 260 In section 2(3)(b) (effect of notice under section 1) for “section 135(3)(a) of the Income and Corporation Taxes Act 1988” substitute “ section 479 of the Income Tax (Earnings and Pensions) Act 2003 ”.
- 261 (1) Amend section 3 (special provision for roll-overs) as follows.
- (2) In subsection (4)(a) for “section 136(1) of the Income and Corporation Taxes Act 1988” substitute “ section 485(1) to (4) of the Income Tax (Earnings and Pensions) Act 2003 ”.
  - (3) In subsection (4)(b)(i) for “section 135(3)(a)” substitute “ section 479 ”.
  - (4) For subsection (6) substitute—
    - “(6) Subject to subsection (7), in relation to the replacement right or any subsequent right, section 485(1) to (3) of the Income Tax (Earnings and Pensions) Act 2003 (application of Chapter 5 of Part 7 where share option exchanged for another) shall be deemed to have effect (or, as the case may be, to have had effect) for the purposes of the determination mentioned in subsection (5) of this section—



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- (a) as if that section had effect (or, as the case may be, had had effect) in relation to that right to the extent only that it is a right to acquire additional shares; and
  - (b) as if the value of the consideration for the grant of the original right had been nil.”
- (5) In subsection (7)(b) for “section 135 of the Income and Corporation Taxes Act 1988” substitute “ Chapter 5 of Part 7 of the Income Tax (Earnings and Pensions) Act 2003 ”.
- (6) In subsection (11)(a) for “section 135(3)(a) of the Income and Corporation Taxes Act 1988” substitute “ section 479 of the Income Tax (Earnings and Pensions) Act 2003 ”.
- 262 In section 5(2)(c) (interpretation)—
- (a) for “subsection (8) of section 135 of the Income and Corporation Taxes Act 1988 (c. 1)” substitute “ section 483(1) of the Income Tax (Earnings and Pensions) Act 2003 ”; and
  - (b) for “that section” substitute “ Chapter 5 of Part 7 of that Act ”.

*State Pension Credit Act 2002 (c. 16)*

- 263 (1) Section 17(1) of the State Pension Credit Act 2002 (other interpretation provisions) is amended as follows.
- (2) In paragraph (b) of the definition of “foreign war disablement pension” for “subsection (1) of section 315 of the Income and Corporation Taxes Act 1988 (c. 1)” substitute “ section 641 of the Income Tax (Earnings and Pensions) Act 2003 ”.
  - (3) In paragraph (b) of the definition of “foreign war widow’s or widower’s pension” for “section 315(2)(e) of the Income and Corporation Taxes Act 1988” substitute “ section 641(1)(e) or (f) of the Income Tax (Earnings and Pensions) Act 2003 ”.
  - (4) In paragraph (b) of the definition of “war disablement pension”, for “subsection (1) of section 315 of the Income and Corporation Taxes Act 1988 (c. 1)” substitute “ any of paragraphs (a) to (f) of section 641(1) of the Income Tax (Earnings and Pensions) Act 2003 ”.
  - (5) In paragraph (b) of the definition of “war widow’s or widower’s pension” for “section 315(2)(e) of the Income and Corporation Taxes Act 1988” substitute “ section 641(1)(e) or (f) of the Income Tax (Earnings and Pensions) Act 2003 ”.

*Tax Credits Act 2002 (c. 21)*

- 264 The Tax Credits Act 2002 is amended as follows.
- 265 (1) Amend section 25 (payments of working tax credit by employers) as follows.
- (2) In subsection (1) for “Schedule E payments” substitute “ payments of, or on account of, PAYE income ”.
  - (3) In subsection (5) for “Schedule E payment” substitute “ payment of, or on account of, PAYE income ”.
  - (4) Omit subsection (6).

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- 266 In section 29(5) (recovery of overpayments) for “regulations under section 203(2) (a) of the Income and Corporation Taxes Act 1988 (c. 1) (PAYE)” substitute “PAYE regulations”.

*State Pension Credit Act (Northern Ireland) 2002 (c. 14 (N.I.))*

- 267 (1) Section 17(1) of the State Pension Credit Act (Northern Ireland) 2002 (other interpretation provisions) is amended as follows.
- (2) In paragraph (b) of the definition of “foreign war disablement pension” for “subsection (1) of section 315 of the Income and Corporation Taxes Act 1988 (c. 1)” substitute “ section 641 of the Income Tax (Earnings and Pensions) Act 2003 ”.
- (3) In paragraph (b) of the definition of “foreign war widow’s or widower’s pension” for “section 315(2)(e) of the Income and Corporation Taxes Act 1988” substitute “ section 641(1)(e) or (f) of the Income Tax (Earnings and Pensions) Act 2003 ”.
- (4) In paragraph (b) of the definition of “war disablement pension”, for “subsection (1) of section 315 of the Income and Corporation Taxes Act 1988 (c. 1)” substitute “ any of paragraphs (a) to (f) of section 641(1) of the Income Tax (Earnings and Pensions) Act 2003 ”.
- (5) In paragraph (b) of the definition of “war widow’s or widower’s pension” for “section 315(2)(e) of the Income and Corporation Taxes Act 1988” substitute “ section 641(1)(e) or (f) of the Income Tax (Earnings and Pensions) Act 2003 ”.

*Certain corresponding Northern Ireland provision*

- 268 (1) This paragraph applies if provision is made for Northern Ireland which corresponds to section 171ZJ of the Social Security Contributions and Benefits Act 1992 (c. 4) (Part 12ZA — statutory paternity pay: supplementary) (which was inserted by section 2 of the Employment Act 2002 (c. 22)).
- (2) In the Northern Ireland provision any reference to emoluments chargeable to income tax under Schedule E is to be construed as a reference to general earnings (as defined by section 7 of this Act).
- 269 (1) This paragraph applies if provision is made for Northern Ireland which corresponds to section 171ZS of the Social Security Contributions and Benefits Act 1992 (Part 12ZA — statutory adoption pay: supplementary) (which was inserted by section 4 of the Employment Act 2002).
- (2) In the Northern Ireland provision any reference to emoluments chargeable to income tax under Schedule E is to be construed as a reference to general earnings (as defined by section 7 of this Act).

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## SCHEDULE 7

Section 723

### TRANSITIONALS AND SAVINGS

#### PART 1

##### CONTINUITY OF THE LAW

- 1 The repeal of provisions and their enactment in a rewritten form in this Act does not affect the continuity of the law.
- 2 Paragraph 1 does not apply to any change in the law made by this Act.
- 3 Any subordinate legislation or other thing which—
  - (a) has been made or done, or has effect as if made or done, under or for the purposes of a repealed provision, and
  - (b) is in force or effective immediately before the commencement of the corresponding rewritten provision,has effect after that commencement as if made or done under or for the purposes of the rewritten provision.
- 4 Any reference (express or implied) in any enactment, instrument or document to—
  - (a) a rewritten provision, or
  - (b) things done or falling to be done under or for the purposes of a rewritten provision,is to be read as including, in relation to times, circumstances or purposes in relation to which any corresponding repealed provision had effect, a reference to the repealed provision or (as the case may be) things done or falling to be done under or for the purposes of the repealed provision.
- 5 Any reference (express or implied) in any enactment, instrument or document to—
  - (a) a repealed provision, or
  - (b) things done or falling to be done under or for the purposes of a repealed provision,is to be read as including, in relation to times, circumstances or purposes in relation to which any corresponding rewritten provision has effect, a reference to the rewritten provision or (as the case may be) things done or falling to be done under or for the purposes of the rewritten provision.
- 6 Paragraphs 1 to 5 have effect instead of section 17(2) of the Interpretation Act 1978 (c. 30) (but are without prejudice to any other provision of that Act).
- 7 Paragraphs 4 and 5 apply only in so far as the context permits.

#### PART 2

##### EMPLOYMENT INCOME: CHARGE TO TAX

###### *Taxable earnings*

- 8 (1) The charging provisions of Chapters 4 and 5 of Part 2—

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- (a) apply for the purpose of determining taxable earnings from an employment in the tax year 2003-04 or any later tax year, and
  - (b) accordingly apply where (for the purposes of those Chapters) general earnings are received, or remitted to the United Kingdom, in that or any later tax year.
- (2) But they apply to general earnings for a tax year before the tax year 2003-04, as well as to those for that or any later year.

This is subject to sub-paragraph (3).

- (3) If—
- (a) any general earnings within subsection (1) of section 22 (chargeable overseas earnings) or 26 (foreign earnings of resident employee) are for a tax year before 1989-90,
  - (b) the earnings are remitted to the United Kingdom in the tax year 2003-04 or any later tax year (“the remittance year”), and
  - (c) either—
    - (i) the employee is not resident in the United Kingdom in the remittance year, or
    - (ii) the employment is not held in the remittance year,
 subsection (2) of section 22 or 26 does not apply to the earnings.
- (4) Section 30 (treatment of earnings for year in which employment not held) does not apply where any of the tax years mentioned in subsection (2) or (3) of that section is a tax year before the tax year 1989-90.

*Relief for delayed remittances*

F430<sub>9</sub> .....

**Textual Amendments**  
**F430** Sch. 7 paras. 9-12 omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of Finance Act 2008 (c. 9), Sch. 7 para. 44

F430<sub>10</sub> .....

**Textual Amendments**  
**F430** Sch. 7 paras. 9-12 omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of Finance Act 2008 (c. 9), Sch. 7 para. 44

F430<sub>11</sub> .....

**Textual Amendments**  
**F430** Sch. 7 paras. 9-12 omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of Finance Act 2008 (c. 9), Sch. 7 para. 44

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*Disputes as to domicile or ordinary residence*

F430 12 .....

**Textual Amendments**

**F430** Sch. 7 paras. 9-12 omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of Finance Act 2008 (c. 9), Sch. 7 para. 44

*Application of provisions to agency workers*

- 13 In relation to times before 6th April 2003, Chapter 7 of Part 2 applies with the following modifications—
- (a) references to “employment income of the worker” are to be read as references to “income of the worker chargeable to tax under Schedule E”,
  - (b) references to “earnings” are to be read as references to “emoluments”, and
  - (c) references to “this Chapter” are to be read as references to “section 134 of ICTA”.
- 14 Section 44(2) does not apply in relation to—
- (a) payments made before 6th April 1998 other than payments made in respect of services provided on or after that date, or
  - (b) payments made on or after that date in respect of services provided before that date,
- if in providing the services the worker is or would be a sub-contractor within the meaning of section 560 of ICTA (sub-contractors in the construction industry).

**PART 3**

EMPLOYMENT INCOME: EARNINGS AND BENEFITS ETC. TREATED AS EARNING

*Taxable benefits: dispensations relating to benefits within provisions not applicable to lower-paid employments*

- 15 (1) An existing notification—
- (a) is not affected by any of the repeals made by this Act, but
  - (b) continues in force as if it were a dispensation given under section 65 (dispensations relating to benefits within provisions not applicable to lower-paid employment),
- and accordingly, where an existing notification is revoked under that section for any period before 6th April 2003, subsection (8) or (9) of that section extends to tax years before the tax year 2003-04.
- (2) In this paragraph an “existing notification”—
- (a) means a notification which, immediately before 6th April 2003, was in force under section 166(1) of ICTA (notice of nil liability in respect of payments, benefits or facilities); and
  - (b) includes a notification whose validity was preserved by subsection (4) of that section (notifications given under section 199 of FA 1970);

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but a notification within paragraph (b) only continues to have effect under this paragraph in respect of any liability to tax arising by virtue of Chapter 3 (expenses) or 10 (residual liability to charge) of Part 3.

- 16 (1) This paragraph applies if—
- (a) mileage allowance payments are made to an employee in respect of the use of a vehicle that is not a company vehicle, or
  - (b) mileage allowance relief is available in respect of the use by an employee of a vehicle.
- (2) Any notification under section 166(1) of ICTA (notice of nil liability in respect of payments, benefits or facilities) which—
- (a) was in force immediately before 6th April 2002, and
  - (b) has effect as a dispensation under section 65 (dispensations relating to benefits within provisions not applicable to lower-paid employment),
- does not apply in relation to payments made, or benefits or facilities provided, in respect of expenses incurred in connection with the use of the vehicle by the employee for business travel.
- (3) In this paragraph “business travel”, “company vehicle” and “mileage allowance payment” have the same meanings as in Chapter 2 of Part 4.

*Taxable benefits: the benefits code*

- 17 (1) In relation to times before 6th April 2003, references in the benefits code to “employment”, “employed”, “employee” and “employer” are to be read in accordance with this paragraph.
- (2) In relation to the Chapters of the benefits code listed in section 216(4) (provisions not applicable to lower-paid employments), the references mentioned in sub-paragraph (1) are to be read in accordance with section 66 (meaning of employment and related expressions) but as if in subsection (1)(a) there were substituted “an employment to which Chapter 2 of Part 5 of ICTA applies” for “a taxable employment under Part 2”.
- (3) In relation to any other Chapters of the benefits code, the references mentioned in sub-paragraph (1) are to be read in accordance with section 66 but as if in subsection (1)(a) there were substituted “an employment the emoluments of which fall to be assessed under Schedule E” for “a taxable employment under Part 2”.
- (4) Where this paragraph applies, Chapter 11 of Part 3 (exclusion of lower-paid employments from parts of benefits code) does not apply.
- (5) This paragraph is subject to paragraphs 18(2), 24, 27(3), 29(4) and 31(2) of this Schedule.

*Taxable benefits: vouchers and credit-tokens*

F43118 .....

*Status: Point in time view as at 01/03/2013.*

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### Textual Amendments

**F431** Sch. 7 para. 18 omitted (with effect in accordance with Sch. 39 para. 50(3) of the amending Act) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 39 para. 50\(2\)\(b\)](#)

- 19 (1) This paragraph applies to a notification which, immediately before 6th April 2003, was in force under section 144(1) of ICTA (notice of nil liabilities in respect of vouchers or credit-tokens).
- (2) The notification—
- (a) is not affected by any repeals made by this Act, but
  - (b) continues in force as if it were a dispensation given under section 96 (dispensations relating to vouchers or credit-tokens),
- and accordingly, where the notification is revoked under that section for any period before 6th April 2003, subsection (7) or (8) of that section extends to tax years before the tax year 2003-04.
- 20 (1) This paragraph applies if—
- (a) mileage allowance payments are made to an employee in respect of the use of a vehicle that is not a company vehicle, or
  - (b) mileage allowance relief is available in respect of the use by an employee of a vehicle.
- (2) Any notification under section 144(1) of ICTA (notice of nil liability in respect of vouchers or credit-tokens) which—
- (a) was in force immediately before 6th April 2002, and
  - (b) has effect as a dispensation under section 96 (dispensations relating to vouchers or credit-tokens),
- does not apply in relation to cash vouchers, non-cash vouchers or credit-tokens provided in respect of expenses incurred in connection with the use of the vehicle by the employee for business travel.
- (3) In this paragraph “business travel”, “company vehicle” and “mileage allowance payment” have the same meanings as in Chapter 2 of Part 4.

#### *Taxable benefits: living accommodation*

- 21 (1) Section 107 (special rule for calculating cost of providing accommodation) does not apply if the employee first occupied the living accommodation before 31st March 1983.
- (2) Nothing in this paragraph affects the operation of section 107 as applied by section 398(2)(b) or 415(2)(b).

#### *Taxable benefits: cars, vans and related benefits*

- 22 (1) In relation to a capital sum contributed by the employee before 6th April 2003, section 132 (cars: capital contributions by employee) applies with the following modifications.
- (2) In subsection (1)(b) substitute “under sections 168A to 168C of ICTA in determining the price of the car as regards a year” for “in calculating the cash equivalent of the benefit of the car”.

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- (3) In subsection (2)—
- (a) omit paragraph (a), and
  - (b) in paragraph (b) substitute “ the tax years after the tax year in which the contribution was made which are ” for “subsequent”.
- 23 (1) In relation to a capital sum contributed by the employee before 6th April 2003, section 147 (classic cars: 15 years of age or more) applies with the following modifications.
- (2) In subsection (5)(b) substitute “under section 168F(3) of ICTA in determining the price of the car as regards a year” for “in determining the market value of the car”.
- (3) In subsection (6)—
- (a) omit paragraph (a), and
  - (b) in paragraph (b) substitute “ the tax years after the tax year in which the contribution was made which are ” for “subsequent”.

F432<sup>24</sup> .....

#### Textual Amendments

F432 Sch. 7 para. 24 repealed (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(9\)](#)

#### *Taxable benefits: loans*

- 25 (1) Chapter 7 of Part 3 applies to a loan made at any time, including one made before 29th July 1976 (the date on which FA 1976 was passed).
- (2) But section 188 (loan released or written off: amount treated as earnings) does not apply to benefits received in pursuance of arrangements made at any time with a view to protecting the holder of shares acquired before 6th April 1976 from a fall in their market value.
- 26 (1) This paragraph relates to the operation of section 183 (alternative method of calculation) in relation to section 177(2) (exceptions for loans at fixed rate of interest) in the case of a loan made before 6th April 2003.
- (2) Where section 183 applies, then for the purpose of calculating under section 177(2) the amount of interest that would have been payable on the loan at the official rate of interest for the year in which the loan was made, in step 3 in section 183(3) for “the number of days in the tax year” substitute “ 365 ”.
- 27 (1) Subject to paragraph 25(2), where a loan is made before 6th April 2003, section 188 (loan released or written off: amount treated as earnings) applies with the following modifications.
- (2) References to the employment in relation to which a loan is an employment-related loan are to be read, in relation to times before 6th April 2003, as references to the employment referred to in section 174 (employment-related loans) as modified by paragraph 17.
- (3) In relation to times before 6th April 2003—
- (a) in subsection (2)(c), substitute “an employment to which Chapter 2 of Part 5 of ICTA applies” for “not an excluded employment”, and



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- (b) in subsection (3)(a), substitute “ an employment to which Chapter 2 of Part 5 of ICTA does not apply ” for “excluded employment”.

*Taxable benefits: notional loans in respect of acquisitions of shares*

28 Chapter 8 of Part 3 does not apply in relation to acquisitions on or before 6th April 1976.

29 (1) This paragraph relates to the operation of Chapter 8 of Part 3 in relation to an acquisition made before 6th April 2003.

(2) If—

- (a) the acquisition gave rise to a notional loan under section 162(1) of ICTA, and  
(b) the notional loan has not terminated under section 162(4) of ICTA before 6th April 2003,

the condition in section 193(1) (notional loan where acquisition for less than market value) is taken to be met and section 193(3) and (4) apply accordingly.

(3) In such a case, the amount initially outstanding of the notional loan for the purposes of Chapter 8 of Part 3 is taken to be the amount initially outstanding calculated under section 162 of ICTA in relation to the tax year 2002-03.

(4) In such a case, section 195(3)(c) (discharge of notional loan: amount treated as earnings) applies, in relation to times before 6th April 2003, with the substitution of “an employment to which Chapter 2 of Part 5 of ICTA applies” for “not an excluded employment”.

*Taxable benefits: disposals of shares for more than market value*

F433 30 .....

**Textual Amendments**

**F433** Sch. 7 para. 30 repealed (with effect in accordance with Sch. 22 para. 46(26)(a) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 46\(2\)](#), [Sch. 43 Pt. 3\(4\)](#)

F434 31 .....

**Textual Amendments**

**F434** Sch. 7 para. 31 repealed (with effect in accordance with Sch. 22 para. 46(26)(a) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 46\(2\)](#), [Sch. 43 Pt. 3\(4\)](#)

*Taxable benefits: residual liability to charge*

32 (1) This paragraph applies in relation to Chapter 10 of Part 3.

(2) In section 206, the references in subsection (4) and step 2 in subsection (5) to the cost of a benefit determined under section 205 are to be read as including a reference to the cost of a benefit determined under section 156(5) of ICTA.

(3) Sections 212, 213 and 215 do not have effect in relation to any payment if—

- (a) it is made in respect of a scholarship awarded before 15th March 1983,

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- (b) the first payment in respect of the scholarship was made before 6th April 1984, and
  - (c) in relation to payments made after 5th April 1989, the person holding the scholarship (“the scholar”) is receiving full-time instruction at the university, college, school or other educational establishment at which the scholar was receiving such instruction on—
    - (i) 15th March 1983, in a case where the first payment in respect of the scholarship was made before that date, or
    - (ii) the date on which the first such payment was made, in any other case.
- (4) For the purposes of sub-paragraph (3)(c), a payment made before 6th April 1989 in respect of any period beginning on or after that date is treated as made at the beginning of that period.

#### PART 4

##### EMPLOYMENT INCOME: EXEMPTIONS

###### *Incidental overnight expenses and benefits*

- 33 In determining whether section 240(1) or (2) or 268 applies—
- (a) in the case of a period of absence which began before 6th April 2003 and ends on or after that date, or
  - (b) in the case of a period of absence which begins on or after that date and incidentally to which goods, services or money are obtained using a non-cash voucher in relation to which section 141(6C) of ICTA applies,
- the question whether for the purposes of section 241 the exemption provisions total exceeds the permitted amount is to be determined as if this Act had applied at any relevant time before that date.
- 34 In determining—
- (a) whether section 141(6C) and (6D), 142(3C) and (3D), 155(1B) and (1C) or section 200A of ICTA applies in the case of a period of absence which began before 6th April 2003 and ends on or after that date, or
  - (b) whether section 141(6C) and (6D) applies in the case of a period of absence which begins on or after that date,
- the question whether the authorised maximum (as defined in section 200A(4) of ICTA) is exceeded in relation to the absence is to be determined as if in section 200A(5) after the words “exceeded by” there were inserted the words “the aggregate of the exemption provisions total in respect of the period (as defined in section 241 of ITEPA 2003) and”.

###### *Removal benefits and expenses*

- 35 (1) Section 287 (limit on exemption for removal benefits and expenses) applies with the modification in sub-paragraph (2) where—
- (a) a benefit is provided on or after 6th April 2003 in connection with a change of an employee’s residence, or
  - (b) expenses are incurred on or after that day in connection with such a change,

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and any such benefits have been provided or expenses incurred before that date in connection with that change.

(2) In subsection (2) before paragraph (a) insert—

“(aa) the total value to the employee immediately before 6th April 2003, as defined in paragraph 24(2) of Schedule 11A to ICTA,”.

36 A direction under paragraph 6(2) of Schedule 11A to ICTA (directions as to meaning of “the relevant day”) by virtue of which a day on or after 6th April 2003 was directed to be the relevant day in relation to a change of residence—

- (a) is not affected by any repeals made by this Act, but
- (b) continues in force as respects any benefit provided or expenses incurred on or after that date as if it were a direction given under section 274(2) (directions as to the limitation day), directing that day to be the limitation day.

#### *Retraining courses*

37 (1) The repeal of sections 588(5)(a) and 589(3) and (4) of ICTA does not affect—

- (a) the operation of section 588(5) of ICTA by virtue of paragraph (a) of that provision where liability for a tax year before 2003-04 is determined,
- (b) the operation of section 588(5) of ICTA by virtue of paragraph (b) of that provision where liability is determined on the assumption that the person undertaking the course fell within section 588(1) of ICTA in such a tax year, or
- (c) the operation of section 588(6) <sup>F435</sup> ... of ICTA as they apply by virtue of subparagraph (2).

(2) In any case where there has been such a determination as is mentioned in subparagraph (1)(a) or (b), section 588(6) [<sup>F436</sup>applies as if it] referred to a failure to comply with any provision of section 589(3) or (4) of ICTA instead of a failure to meet such a condition as is mentioned in section 312(1)(b)(i) or (ii) of this Act.

#### **Textual Amendments**

**F435** Words in Sch. 7 para. 37(1)(c) omitted (13.8.2009) by virtue of The Finance Act 2009, Schedule 47 (Consequential Amendments) Order 2009 (S.I. 2009/2035), art. 1, Sch. para. 40(a)

**F436** Words in Sch. 7 para. 37(2) substituted (13.8.2009) by The Finance Act 2009, Schedule 47 (Consequential Amendments) Order 2009 (S.I. 2009/2035), art. 1, Sch. para. 40(b)

#### *Suggestion awards*

38 (1) This paragraph applies for the purpose of determining the extent, if any, to which section 321(2) (exemption of suggestion awards) applies in respect of a financial benefit award for a suggestion (“the later award”) in a case where such an award (“the earlier award”) has been made for the same suggestion on a previous occasion or occasions before the tax year 2003-04.

(2) For the purposes of the application of section 322(3) in relation to the later award, “the residue of the suggestion maximum” means the suggestion maximum, as defined in section 322(4), less the aggregate of—

*Status: Point in time view as at 01/03/2013.*

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- (a) the total of the amounts exempted from income tax under section 321 in respect of financial benefit awards for the same suggestion made on previous occasions, and
- (b) the total of the earlier awards.

**PART 5**

EMPLOYMENT INCOME: DEDUCTIONS

*Earnings charged on remittance*

39 In relation to expenses incurred before the tax year 2003-04, section 353 (deductions from earnings charged on remittance) applies as if the condition in subsection (3) of that section were that the expenses would have been deductible under section 193, 194, 195 or 198(1) of ICTA from emoluments of the office or employment if those emoluments had been chargeable under Case I of Schedule E for the tax year in which the expenses were incurred.

*Non-domiciled employee’s travel costs and expenses: “qualifying arrival date”*

40 In relation to any time before 6th April 2003, section 375 (meaning of “qualifying arrival date”) has effect as if the references in subsections (1)(a) and (4) to the person receiving earnings for duties performed in the United Kingdom included a reference to the person receiving emoluments for such duties.

**PART 6**

EMPLOYMENT INCOME: INCOME WHICH IS NOT EARNINGS OR [<sup>F437</sup>RELATED TO SECURITIES]

**Textual Amendments**

**F437** Words in Sch. 7 Pt. 6 heading substituted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 46\(3\)](#)

*Benefits from non-approved pension schemes*

<sup>F438</sup>41 .....

**Textual Amendments**

**F438** [Sch. 7 para. 41](#) repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 3](#) (with [Sch. 36](#))

*Payments and benefits on termination of employment etc.*

42 Section 403 (charge on payment or other benefit) does not apply in relation to payments or other benefits received on or after 6th April 2003 that were brought into charge to tax before 6th April 1998.

43 (1) This paragraph applies for the purpose of determining how the £30,000 threshold referred to in sections 403 and 404 operates where—

*Status: Point in time view as at 01/03/2013.*

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- (a) payments or other benefits to which Chapter 3 of Part 6 apply are received, and
  - (b) payments or benefits to which section 148 of ICTA applied were received in respect of the same person—
    - (i) in respect of the same employment, or
    - (ii) in respect of different employments with the same employer or associated employers.
- (2) For the purposes of section 403(4) and (5), section 415 (valuation of benefits) does not apply to the payments and benefits referred to in sub-paragraph (1)(b), and their aggregate amount is to be taken to be their aggregate amount immediately before 6th April 2003.
- (3) The references in sections 403(4) and (5) and 404(3)(b) to payments or benefits to which Chapter 3 of Part 6 applies include references to the payments and benefits referred to in sub-paragraph (1)(b).
- (4) Section 404(2) (when employers are associated) applies for the purposes of this paragraph.

## PART 7

EMPLOYMENT INCOME: [<sup>F439</sup>INCOME RELATED TO SECURITIES]

### Textual Amendments

**F439** Words in Sch. 7 Pt. 7 heading substituted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 46\(4\)](#)

*[<sup>F440</sup>Pre-6th April 2003 acquisitions*

### Textual Amendments

**F440** Sch. 7 para. 43A and cross-heading inserted (16.4.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 46\(5\)\(26\)\(b\)](#)

- 43A (1) This paragraph relates to the operation of section 421E (exclusions from Chapters 2 to 4 of Part 7: residence) in relation to an acquisition made before 6th April 2003.
- (2) Section 421E(1) has effect with the substitution of “ the employee was not chargeable under Case I of Schedule E in respect of the employment ” for the words from “the earnings”.
- (3) Section 421E(2) has effect with the substitution of “ the emoluments of the employment did not fall to be charged to income tax under Schedule E ” for the words from “the earnings”.]

*Conditional interests in shares*

- 44 Chapter 2 of Part 7 [<sup>F441</sup>, as originally enacted,] does not apply in relation to interests acquired before 17th March 1998.

*Status: Point in time view as at 01/03/2013.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003 is up to date with all changes known to be in force on or before 15 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)*

**Textual Amendments**

**F441** Words in Sch. 7 para. 44 inserted (1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 46\(6\)\(26\)\(c\)](#); [S.I. 2003/1997, art. 2](#)

- 45 (1) This paragraph relates to the operation of section 425 (cases where Chapter 2 of Part 7 does not apply) [<sup>F442</sup>, as originally enacted.]
- (2) Section 425(1) applies in relation to any acquisition made before 6th April 2003 with the substitution of “if the person was not chargeable under Case I of Schedule E in respect of the office or employment in question” for the words from “if the earnings” onwards.

**Textual Amendments**

**F442** Words in Sch. 7 para. 45(1) inserted (1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 46\(7\)\(26\)\(c\)](#); [S.I. 2003/1997, art. 2](#)

- 46 (1) This paragraph relates to the operation of section 428 (amount of charge where interest in shares ceases to be only conditional or on disposal) [<sup>F443</sup>, as originally enacted.] in relation to an acquisition made before 6th April 2003.
- (2) For the purposes of section 428(1) each of the following is a “deductible amount”—
- (a) any amounts on which the employee has become chargeable to tax under Schedule E in respect of the acquisition of the employee’s interest; and
  - (b) any amount on which the employee has become chargeable to tax in respect of the shares under section 78 or 79 of FA 1988 (unapproved employee share schemes) by reference to an event that occurred before 6th April 2003.

**Textual Amendments**

**F443** Words in Sch. 7 para. 46(1) inserted (1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 46\(8\)\(26\)\(c\)](#); [S.I. 2003/1997, art. 2](#)

<sup>F444</sup>47 .....

**Textual Amendments**

**F444** Sch. 7 para. 47 repealed (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 46\(9\)](#), [Sch. 43 Pt. 3\(4\)](#)

<sup>F445</sup>48 .....

**Textual Amendments**

**F445** Sch. 7 para. 48 repealed (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 46\(9\)](#), [Sch. 43 Pt. 3\(4\)](#)

*Convertible shares*

- 49 Chapter 3 of Part 7 does not apply in relation to [<sup>F446</sup>securities] acquired before 17th March 1998.

*Status: Point in time view as at 01/03/2013.*

**Changes to legislation:** Income Tax (Earnings and Pensions) Act 2003 is up to date with all changes known to be in force on or before 15 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)

**Textual Amendments**

**F446** Word in Sch. 7 para. 49 substituted (1.9.2003) by Finance Act 2003 (c. 14), Sch. 22 para. 46(10)(26)(c); S.I. 2003/1997, art. 2

**F447** 50 .....

**Textual Amendments**

**F447** Sch. 7 paras. 50-52 repealed (1.9.2003) by Finance Act 2003 (c. 14), Sch. 22 para. 46(11)(26)(c), Sch. 43 Pt. 3(4); S.I. 2003/1997, art. 2

**F447** 51 .....

**Textual Amendments**

**F447** Sch. 7 paras. 50-52 repealed (1.9.2003) by Finance Act 2003 (c. 14), Sch. 22 para. 46(11)(26)(c), Sch. 43 Pt. 3(4); S.I. 2003/1997, art. 2

**F447** 52 .....

**Textual Amendments**

**F447** Sch. 7 paras. 50-52 repealed (1.9.2003) by Finance Act 2003 (c. 14), Sch. 22 para. 46(11)(26)(c), Sch. 43 Pt. 3(4); S.I. 2003/1997, art. 2

**F448** 53 .....

**Textual Amendments**

**F448** Sch. 7 para. 53 repealed (10.7.2003) by Finance Act 2003 (c. 14), Sch. 22 para. 46(12), Sch. 43 Pt. 3(4)

*Post-acquisition benefits from shares*

54 Chapter 4 of Part 7<sup>[F449]</sup>, both as originally enacted and as substituted by <sup>[F450]</sup>FA 2003,] does not apply in relation to shares or an interest in shares acquired before 26th October 1987, except to the extent provided by paragraph 55 (read with paragraph 56).

**Textual Amendments**

**F449** Words in Sch. 7 para. 54 inserted (16.4.2003) by Finance Act 2003 (c. 14), Sch. 22 para. 46(13)(26)(b)  
**F450** Word in Sch. 7 para. 54 substituted (21.7.2009) by Finance Act 2009 (c. 10), s. 126(5)(b)

55 (1) Chapter 4 of Part 7 <sup>[F451]</sup>, as originally enacted,] applies in relation to shares or an interest in shares acquired before 26th October 1987 if the company was not a dependent subsidiary on that date.

(2) But it so applies—

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- F452 (a) .....
- (b) subject to paragraph 56.

**Textual Amendments**

- F451 Words in Sch. 7 para. 55 inserted (16.4.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 46\(14\)\(a\)\(26\)\(b\)](#)
- F452 Sch. 7 para. 55(2)(a) repealed (16.4.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 46\(14\)\(b\)\(26\)\(b\)](#), [Sch. 43 Pt. 3\(4\)](#)

56 The removal or variation of a restriction applying to shares or an interest in shares acquired before 26th October 1987 is not a chargeable event for the purposes of section 449 [F453, as originally enacted,] if paragraph 7 of Schedule 8 to FA 1973 (requirement for disposal to nominees at price not exceeding market value on termination of employment) would have applied to it.

**Textual Amendments**

- F453 Words in Sch. 7 para. 56 inserted (16.4.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 46\(15\)\(26\)\(b\)](#)

F454 57 .....

**Textual Amendments**

- F454 Sch. 7 para. 57 omitted (with effect in accordance with s. 50(3) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [s. 50\(2\)\(b\)](#)

- 58 (1) This paragraph relates to the operation of section 448 (cases where Chapter 4 of Part 7 does not apply) [F455, as originally enacted].
- (2) Section 448(1) applies in relation to any acquisition made before 6th April 2003 with the substitution of “if the person was not chargeable under Case I of Schedule E in respect of the office or employment in question” for the words “if the earnings” onwards.
- (3) Section 448(3) and (4) do not apply in relation to any acquisition made before 16th January 1991.

**Textual Amendments**

- F455 Words in Sch. 7 para. 58(1) inserted (16.4.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 46\(16\)\(26\)\(b\)](#)

F456 59 .....

**Textual Amendments**

- F456 Sch. 7 para. 59 repealed (16.4.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 46\(17\)\(26\)\(b\)](#), [Sch. 43 Pt. 3\(4\)](#)

F457 60 .....



*Status: Point in time view as at 01/03/2013.*

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**Textual Amendments**

**F457** Sch. 7 para. 60 repealed (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 46\(18\)](#), [Sch. 43 Pt. 3\(4\)](#)

<sup>F458</sup>61 .....

**Textual Amendments**

**F458** Sch. 7 para. 61 repealed (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 46\(18\)](#), [Sch. 43 Pt. 3\(4\)](#)

*<sup>F459</sup>Securities disposed of for more than market value*

**Textual Amendments**

**F459** Sch. 7 para. 61A and cross-heading inserted (with effect in accordance with Sch. 22 para. 46(26)(a) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 46\(19\)](#)

61A Chapter 3D of Part 7 does not apply in relation to securities, or an interest in securities, acquired on or before 6th April 1976.]

*Share options*

<sup>F460</sup>62 .....

**Textual Amendments**

**F460** Sch. 7 para. 62 repealed (1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 46\(20\)\(26\)\(c\)](#), [Sch. 43 Pt. 3\(4\)](#); [S.I. 2003/1997, art. 2](#)

<sup>F461</sup>63(1) This paragraph relates to the operation of section 474 (exclusions from Chapter 5 of Part 7: residence) in relation to an acquisition made before 6th April 2003.

(2) Section 474(1) has effect with the substitution of “ the employee was not chargeable under Case I of Schedule E in respect of the employment ” for the words from “the earnings”.]

**Textual Amendments**

**F461** Sch. 7 para. 63 substituted (16.4.2003 for specified purposes, otherwise 1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 46\(21\)\(26\)\(d\)](#); [S.I. 2003/1997, art. 2](#)

64 (1) This paragraph relates to the operation of section 478 (amount of charges) in relation to a <sup>F462</sup>[securities] option <sup>F463</sup>[acquired] before 6th April 2003.

(2) For the purposes of section 478(1), any amount charged to tax under Schedule E in respect of the <sup>F464</sup>[acquisition] of the <sup>F462</sup>[securities] option is a deductible amount.

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#### Textual Amendments

- F462** Word in Sch. 7 para. 64 substituted (16.4.2003 for specified purposes, otherwise 1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 46\(22\)\(a\)\(26\)\(d\)](#); S.I. 2003/1997, art. 2
- F463** Word in Sch. 7 para. 64 substituted (16.4.2003 for specified purposes, otherwise 1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 46\(22\)\(b\)\(26\)\(d\)](#); S.I. 2003/1997, art. 2
- F464** Word in Sch. 7 para. 64 substituted (16.4.2003 for specified purposes, otherwise 1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 46\(22\)\(c\)\(26\)\(d\)](#); S.I. 2003/1997, art. 2

- 65 (1) This paragraph relates to the operation of section [F465 478 in relation to an event that is a chargeable event by virtue of section 477(3)(a) or (b) (acquisition of securities pursuant to an option and assignment and release of option) in the case of a share option acquired] before 6th April 2003.
- (2) For the purposes of section [F466 478(1)], if an amount was chargeable to tax under section 185(6) of ICTA (charge where option under approved share option scheme granted at a discount) in respect of the share option, so much of that amount as is attributable to the shares in question is a deductible [F466 amount].

#### Textual Amendments

- F465** Words in Sch. 7 para. 65(1) substituted (1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 46\(23\)\(a\)\(26\)\(c\)](#); S.I. 2003/1997, art. 2
- F466** Word in Sch. 7 para. 65(2) substituted (1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 46\(23\)\(b\)\(26\)\(c\)](#); S.I. 2003/1997, art. 2

F467 66 .....

#### Textual Amendments

- F467** Sch. 7 para. 66 repealed (1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 46\(24\)\(26\)\(c\)](#), [Sch. 43 Pt. 3\(4\)](#); S.I. 2003/1997, art. 2

F468 67 .....

#### Textual Amendments

- F468** Sch. 7 para. 67 repealed (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 46\(25\)](#), [Sch. 43 Pt. 3\(4\)](#)

#### *Approved share incentive plans*

- 68 (1) This paragraph applies where, immediately before 6th April 2003, an employee share ownership plan was approved under Schedule 8 to FA 2000 (employee share ownership plans).
- (2) On and after that date the plan is to be treated as a share incentive plan (or “SIP”) approved by [F65 an officer of Revenue and Customs] under Schedule 2 to this Act.
- (3) Sub-paragraph (2) has effect even if the provisions of the plan do not wholly conform with the provisions of Schedule 2 to this Act, but it has effect without prejudice to—
- (a) paragraphs 83 and 84 of that Schedule (withdrawal of approval),

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- (b) paragraphs 89 and 90 of that Schedule (termination of plan), and
  - (c) any alteration of the plan.
- (4) For the purposes of paragraph 84(1)(a) of Schedule 2, as it applies to the plan, nothing is to be regarded as a disqualifying event because of a contravention of any of the requirements of that Schedule if the requirement in question does not correspond to any of the requirements of Schedule 8 to FA 2000.
- (5) Nothing in this Act affects the validity of—
- (a) any provision of the plan which was included in it at any time before 6th April 2003 in accordance with the provisions of Schedule 8 to FA 2000 as then in force, or
  - (b) any award of shares under the plan which was made at any such time in accordance with the provisions of that Schedule as then in force.
- (6) In this paragraph—
- “award of shares” means the appropriation of shares to, or the acquisition of shares on behalf of, a person;
  - “employee share ownership plan” has the meaning given by paragraph 1(1) of Schedule 8 to FA 2000.

#### Textual Amendments

**F65** 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)

- 69 (1) Any reference in any enactment, instrument or document—
- (a) to an employee share ownership plan, or
  - (b) to an employee share ownership plan approved under Schedule 8 to FA 2000,
- is to be read as including, in relation to times after 5th April 2003, a reference to a share incentive plan or to a share incentive plan approved under Schedule 2 to this Act.
- (2) Any reference in any enactment, instrument or document—
- (a) to a share incentive plan (or SIP), or
  - (b) to a share incentive plan (or SIP) approved under Schedule 2 to this Act,
- is to be read as including, in relation to times before 6th April 2003, a reference to an employee share ownership plan or to an employee share ownership plan approved under Schedule 8 to FA 2000.
- (3) Accordingly any reference in the SIP code to shares awarded under an approved SIP is to be read as including, in relation to times before 6th April 2003, a reference to shares awarded under a plan approved under Schedule 8 to FA 2000.
- (4) Any reference in a plan within paragraph 68(1) to a person chargeable to tax under Case I of Schedule E is to be read as including, in relation to times after 5th April 2003, a reference to a person whose earnings fall within paragraph 8(2) of Schedule 2 to this Act.
- (5) This paragraph—
- (a) is without prejudice to Part 1 of this Schedule, and
  - (b) applies only in so far as the context permits.

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- (6) In this paragraph—  
     “awarded” means appropriated to, or acquired on behalf of, a person;  
     “employee share ownership plan” has the same meaning as in paragraph 68.
- 70      Nothing in paragraph 91(4) of Schedule 2 to this Act (jointly owned companies) prevents a company being a constituent company in a group plan (within the meaning of that Schedule) if it was a participating company in that plan (within the meaning of Schedule 8 to FA 2000) immediately before 24th July 2002.

*Approved SAYE option schemes*

- 71      (1) This paragraph applies where, immediately before 6th April 2003, a savings-related share option scheme was approved under Schedule 9 to ICTA (approved share option schemes and profit-sharing schemes).
- (2) On and after that date the scheme is to be treated as an SAYE option scheme approved by [<sup>F65</sup>an officer of Revenue and Customs] under Schedule 3 to this Act.
- (3) Sub-paragraph (2) has effect even if the provisions of the scheme do not wholly conform with the provisions of Schedule 3 to this Act, but it has effect without prejudice to—  
         (a) paragraphs 42 and 43 of that Schedule (withdrawal or loss of approval), and  
         (b) any approved alteration of the scheme.
- (4) For the purposes of paragraph 42 of Schedule 3, as it applies to the scheme, nothing is to be regarded as a disqualifying event if it would not have resulted in any of the former approval requirements ceasing to be met.
- The “former approval requirements” means the requirements of Schedule 9 to ICTA by reference to which the scheme was approved.
- (5) Nothing in this Act affects the validity of—  
         (a) any provision of the scheme which was included in it at any time before 6th April 2003 in accordance with the provisions of Schedule 9 to ICTA as then in force, or  
         (b) any rights obtained under the scheme which were obtained at any such time in accordance with the provisions of that Schedule as then in force.
- (6) In this paragraph “savings-related share option scheme” has the meaning given by paragraph 1(1) of Schedule 9 to ICTA.

**Textual Amendments**

**F65** 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)

- 72      (1) Any reference in the SAYE code to a share option granted in accordance with the provisions of an approved SAYE option scheme is to be read as including, in relation to times before 6th April 2003, a reference to a right to acquire shares obtained in accordance with the provisions of a savings-related share option scheme approved under Schedule 9 to ICTA.

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- (2) Any reference in a scheme within paragraph 71(1) to a person chargeable to tax under Case I of Schedule E is to be read as including, in relation to times after 5th April 2003, a reference to a person whose earnings fall within paragraph 6(2)(c) of Schedule 3 to this Act.
- (3) This paragraph—
  - (a) is without prejudice to Part 1 of this Schedule, and
  - (b) applies only in so far as the context permits.
- (4) In this paragraph “savings-related share option scheme” has the same meaning as in paragraph 71.

#### *Approved CSOP schemes*

- 73
- (1) This paragraph applies where, immediately before 6th April 2003, a discretionary share option scheme was approved under Schedule 9 to ICTA (approved share option schemes and profit-sharing schemes).
  - (2) On and after that date the scheme is to be treated as a CSOP scheme approved by <sup>F65</sup>[an officer of Revenue and Customs] under Schedule 4 to this Act.
  - (3) Sub-paragraph (2) has effect even if the provisions of the scheme do not wholly conform with the provisions of Schedule 4 to this Act, but they are without prejudice to—
    - (a) paragraphs 30 and 31 of that Schedule (withdrawal or loss of approval), and
    - (b) any approved alteration of the scheme.
  - (4) For the purposes of paragraph 30 of Schedule 4, as it applies to the scheme, nothing is to be regarded as a disqualifying event if it would not have resulted in any of the former approval requirements ceasing to be met.  
  
The “former approval requirements” means the requirements of Schedule 9 to ICTA by reference to which the scheme was approved.
  - (5) Nothing in this Act affects the validity of—
    - (a) any provision of the scheme which was included in it at any time before 6th April 2003 in accordance with the provisions of Schedule 9 to ICTA as then in force, or
    - (b) any rights obtained under the scheme which were obtained at any such time in accordance with the provisions of that Schedule as then in force.
  - (6) In this paragraph “discretionary share option scheme” means a share option scheme other than a savings-related share option scheme (as defined by paragraph 1(1) of Schedule 9 to ICTA).

#### **Textual Amendments**

**F65** 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)

- 74
- (1) Any reference in the CSOP code to a share option granted in accordance with the provisions of an approved CSOP scheme is to be read as including, in relation to times before 6th April 2003, a reference to a right to acquire shares obtained in accordance

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with the provisions of a discretionary share option scheme approved under Schedule 9 to ICTA.

- (2) This paragraph—
- (a) is without prejudice to Part 1 of this Schedule,
  - (b) applies only in so far as the context permits, and
  - (c) has effect subject to paragraph 75.
- (3) In this paragraph “discretionary share option scheme” has the same meaning as in paragraph 73.
- 75 (1) This paragraph has effect where, immediately before 6th April 2003, a discretionary share option scheme which was approved before 29th April 1996—
- (a) is approved under Schedule 9 to ICTA, and
  - (b) has effect subject to the modifications made by paragraphs 2 and 3 of Schedule 16 to FA 1996 (scheme to have effect, despite anything included in it to the contrary, as if it contained provisions required by paragraphs 28 and 29 of Schedule 9 to ICTA: limit of £30,000 on value of shares subject to outstanding options and requirements as to price for acquisition of shares).
- (2) On and after 6th April 2003 the scheme is to continue to have effect as if it provided—
- (a) that an individual may not be granted share options under it which would at the time when they are granted cause the aggregate market value of the shares which the individual may acquire by exercising share options granted under—
    - (i) the scheme, or
    - (ii) any other approved CSOP scheme established by the scheme organiser or an associated company of the scheme organiser, to exceed or further exceed £30,000 (leaving out of account share options that have already been exercised), and
  - (b) that the price at which shares may be acquired by the exercise of a share option granted under the scheme must not be manifestly less than the market value of shares of the same class at that time (or, if <sup>F19</sup>the Commissioners for Her Majesty’s Revenue and Customs] and the scheme organiser agree in writing, at an earlier time or times stated in the agreement).
- (3) For the purposes of sub-paragraph (2)(a), the market value of shares is to be calculated as at—
- (a) the time when the options relating to them were granted, or
  - (b) if an agreement relating to them has been made under paragraph 22 of Schedule 4 (requirements as to price for acquisition of shares) the earlier time or times stated in the agreement.
- (4) Sub-paragraph (2) is subject to any amendment to the scheme made after 28th April 1996 (whether before or after 6th April 2003).
- (5) In this paragraph “discretionary share option scheme” has the same meaning as in paragraph 73.
- (6) Other expressions used in this paragraph and contained in the index at the end of Schedule 4 (index of expressions defined in the CSOP code) have the meaning indicated by that index.

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### Textual Amendments

**F19** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 4 para. 102\(2\)](#); S.I. 2005/1126, art. 2(2)(h)

- 76 (1) This paragraph applies to any right obtained by an individual—
- (a) under a discretionary share option scheme approved under Schedule 9 to ICTA, and
  - (b) during the period beginning with 17th July 1995 and ending with 28th April 1996,
- if, by virtue of section 115 of FA 1996 (transitional provisions which gave retrospective effect to certain amendments relating to discretionary share option schemes), the right was, immediately before 6th April 2003, treated for the purposes of sections 185 to 187 of and Schedule 9 to ICTA as having been obtained otherwise than in accordance with the provisions of a discretionary share option scheme approved under that Schedule.
- (2) For the purposes of the CSOP code, the right is to be treated as having been granted otherwise than in accordance with the provisions of an approved CSOP scheme.
- (3) In this paragraph “discretionary share option scheme” has the same meaning as in paragraph 73.

### *Enterprise management incentives*

- 77 (1) This paragraph applies where, immediately before 6th April 2003, a share option was a qualifying option for the purposes of Schedule 14 to FA 2000 (enterprise management incentives).
- (2) On and after that date the share option is to be treated as a qualifying option for the purposes of the EMI code.
- (3) Sub-paragraph (2) has effect even if the requirements that had to be met in order for the share option, or any share option replaced by it, to be a qualifying option for the purposes of Schedule 14 to FA 2000 differed to any extent from those set out in Schedule 5.
- (4) In this paragraph “share option” means a right to acquire shares.
- 78 (1) In section 535 (disqualifying events relating to employee), subsections (2) to (6) apply to the tax year 2003-04 and later tax years (in accordance with section 723(1)).
- (2) In Schedule 14 to FA 2000 (enterprise management incentives), paragraph 52 (disqualifying events: actual relevant working time) continues to apply in relation to April 2003 for the purpose of calculating, in accordance with sub-paragraphs (3) to (5) of that paragraph, whether a disqualifying event is to be taken to have occurred at the end of the tax year 2002-03.
- (3) If a disqualifying event is to be taken to have so occurred, it (like anything else which under that Schedule is a disqualifying event immediately before 6th April 2003) is a disqualifying event for the purposes of Schedule 5 to this Act.
- 79 (1) Section 536 (other disqualifying events) has effect in relation to any alteration made to the share capital of a company before 11th May 2001 with the following modification.

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- (2) In subsection (1), for paragraphs (b) and (c) substitute—
- “(b) any alteration to the share capital of the relevant company to which section 537 applies and is made without the prior approval of [<sup>F65</sup>an officer of Revenue and Customs] ;”.

#### Textual Amendments

**F65** 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)

- 80 (1) Section 537 (alteration of share capital for purposes of section 536) has effect in relation to any alteration made to the share capital of a company before 11th May 2001 with the following modifications.
- (2) In subsection (1), omit “and (c)”.
- (3) In subsection (2), substitute “ This section ” for “This subsection”.
- (4) Omit subsection (3).
- 81 In a case where the qualifying option was granted before 6th April 2003, section 540(2) (no charge on acquisition of shares as taxable benefit) applies in relation to the time when the option was granted with the substitution of “the employee was chargeable to tax under Case I of Schedule E” for the words from “the earnings” onwards.
- 82 (1) This paragraph relates to the operation of section 541(2) (effects on tax charges where shares cease to be conditional only or are converted) in relation to an FA 2000 option which was exercised before 6th April 2003.
- (2) The references to a qualifying option include an FA 2000 option which was so exercised; but in relation to such an option sub-paragraph (3) applies instead of section 541(3).
- (3) For the purposes of section 541(2) “the amount of relief on the exercise of the option” means the difference between—
- (a) the amount on which tax would have been chargeable under section 135 of ICTA (charge on exercise etc. of option) in respect of the exercise of the option apart from Schedule 14 to FA 2000 (enterprise management incentives), and
- (b) the amount (if any) in fact so chargeable in accordance with that Schedule.
- (4) In this paragraph an “FA 2000 option” means a qualifying option for the purposes of Schedule 14 to FA 2000.
- 83 In Schedule 5 (enterprise management incentives), paragraph 41(6) (like other provisions of that paragraph) applies to replacement options whenever granted.

#### *Employee benefit trusts*

- 84 In relation to times before 6th April 2003, section 549(5) (definition of “employee” for purposes of Chapter 11 of Part 7) is to be read as referring to a person holding an office or employment whose emoluments were chargeable under Schedule E.



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## PART 8

### APPROVED PROFIT SHARING SCHEMES

#### *Trustees' duty to provide information*

- 85 Any obligation imposed in accordance with paragraph 34(b) of Schedule 9 to ICTA (trustees' duties to provide information) on the trustees of a profit sharing scheme approved under that Schedule is to be construed as an obligation, where an amount counts as employment income of a participant by reason of the occurrence of any event, to inform the participant of any facts relevant to determining the participant's resulting liability to tax.

#### *Share incentive plans*

- 86 (1) Where the trustees of an approved share incentive plan acquire shares from the trustees of an approved profit sharing scheme, the disposal and the acquisition by the trustees are treated for capital gains tax purposes 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 2 of Schedule 7D to TCGA 1992 is determined as if the shares had been acquired by the trustees of the share incentive plan at the time they were acquired by the trustees of the other trust.
- F469 ...
- (3) In this paragraph—  
“approved profit sharing scheme” means a profit sharing scheme approved under Schedule 9 to ICTA, and  
“approved share incentive plan” means a share incentive plan approved under Schedule 2 to this Act.

#### **Textual Amendments**

**F469** Words in [Sch. 7 para. 86\(2\)](#) omitted (with effect in accordance with [Sch. 2 para. 56\(3\)](#) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 52](#)

#### *Other share schemes: eligibility of individuals and material interests*

- 87 (1) In applying any of the provisions specified in sub-paragraph (2) (which deal with the meaning of “material interest” for the purpose of determining eligibility to participate in share schemes, etc.) the following are to be disregarded—
- the interest of the trustees of any profit sharing scheme approved under Schedule 9 to ICTA in any shares which are held by them in accordance with the plan but which have not been appropriated to an individual, and
  - any rights exercisable by the trustees as a result of that interest.
- (2) The provisions referred to in sub-paragraph (1) are—
- paragraph 20 of Schedule 2 (approved share incentive plans);
  - paragraph 12 of Schedule 3 (approved SAYE option schemes);
  - paragraph 10 of Schedule 4 (approved CSOP schemes);
  - paragraph 29 of Schedule 5 (enterprise management incentives).

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## PART 9

### SOCIAL SECURITY INCOME

#### *Disabled person's and working families' tax credits*

- 88 (1) This paragraph applies if, on 6th April 2003, the repeals made by TCA 2002 of the provisions listed in sub-paragraph (3) have not come fully into force.
- (2) Until the repeal of those provisions has come fully into force, Table B in section 677(1) of this Act is to be read as if it included references to disabled person's tax credit and working families' tax credit.
- (3) The provisions referred to in this paragraph are—
- (a) in SSCBA 1992, section 128 (working families' tax credit) and section 129 (disabled person's tax credit), and
  - (b) in SSCB(NI)A 1992, section 127 (working families' tax credit) and section 128 (disabled person's tax credit).

## PART 10

### PAYE

#### *PAYE regulations*

- 89 (1) In relation to any time before the commencement of the repeals in Part 7 of Schedule 20 to FA 1999, section 684(2) (PAYE regulations) has effect with the following modification.
- (2) At the end of item 5 insert “ including the proving of the contents or transmission of anything that the regulations allow to be transmitted to any person in electronic form or by electronic means ”.

## PART 11

### CONSEQUENCES FOR CORPORATION TAX

- 90 (1) This paragraph applies where—
- (a) a company is charged to corporation tax by reference to an accounting period which begins before and ends on or after 6th April 2003, and
  - (b) because of a change in the law made by this Act, the income tax law relating to the accounting period is different from what it would have been if that change had not been made.
- (2) If the company so elects, this Act applies with such modifications as may be necessary to secure that the income tax law relating to the accounting period is the same as it would have been if the change in the law had not been made.
- (3) An election under this paragraph must be made by notice given to [<sup>F65</sup>an officer of Revenue and Customs] no later than the end of the period of two years beginning with the day following the last day of the accounting period.
- (4) In this paragraph “income tax law” has the same meaning as in section 9 of ICTA.

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### Textual Amendments

**F65** 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\(2\)\(h\)](#)

- 91 (1) This paragraph applies in relation to corporation tax charged by reference to an accounting period which begins before and ends on or after 6th April 2003.
- (2) In its application for the purposes of corporation tax, any provision of this Schedule is to be read as if—
- (a) any reference to the tax year 2003-04 were a reference to that accounting period, and
  - (b) any reference to 6th April 2003 were a reference to the first day of that accounting period.
- 92 (1) The provisions of this Act mentioned in sub-paragraph (2) do not have effect for corporation tax purposes for so much of any accounting period as falls before 6th April 2003.
- (2) The provisions are—
- (a) in Schedule 6 (consequential amendments)—
    - (i) paragraph 11 (which replaces references in section 84A of ICTA to share option schemes approved under Schedule 9 to that Act with references to SAYE option schemes and CSOP schemes approved under this Act), and
    - (ii) paragraphs 12 and 109 (which insert Schedule 4AA to ICTA (share incentive plans: corporation tax deductions)), and
  - (b) the repeal by Schedule 8 (repeals) of—
    - (i) Part 12 of Schedule 8 to FA 2000 (corporation tax deductions in relation to employee share option plans), and
    - (ii) so much of any other provision of Schedule 8 to that Act as is necessary for the operation of Part 12.
- (3) This paragraph has effect as an exception to the provision made by section 723(1)(b) (commencement of this Act for purposes of corporation tax).

## SCHEDULE 8

Section 724

### REPEALS AND REVOCATIONS

#### PART 1

#### ACTS OF PARLIAMENT

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Taxes Management Act 1970 (c. 9)	In section 98, the entries in the first column of the Table relating to— <ul style="list-style-type: none"><li>(a) regulations under section 202 of ICTA;</li></ul>

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- (b) paragraph 117 of Schedule 8 to FA 2000;
- (c) paragraph 64 of Schedule 14 to that Act.

In section 98, the entries in the second column of the Table relating to—

- (a) section 136(6) of ICTA;
- (b) section 140G of ICTA;
- (c) regulations under section 202 of ICTA;
- (d) regulations under section 203 of ICTA;
- (e) section 313(5) of ICTA;
- (f) section 85(1) and (2) of FA 1988;
- (g) paragraph 65 of Schedule 14 to FA 2000.

Income and Corporation Taxes Act 1988  
(c. 1)

Section 19.

Section 58.

In section 65(2), the words “Subject to section 330,”.

Sections 131 to 137.

Sections 140 to 151A.

Sections 153 to 159AC.

Sections 160 to 168G.

Section 185.

In section 186—

- (a) in subsection (3), the words “the participant shall be chargeable to income tax under Schedule E for the year of assessment in which the entitlement arises on”;
- (b) in subsection (4), the words “the participant shall be chargeable to income tax under Schedule E for the year of assessment in which the disposal takes place on”.

In section 187, subsections (1) to (4), (6) and (7), except so far as relating to profit sharing schemes.

Section 187A.

Sections 189 to 198.

Sections 199 to 207.

Section 313.

Sections 315 to 319.

Section 321.

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Section 322(2).

In section 323—

- (a) subsection (1);
- (b) in subsection (6), paragraph (b) and the word “and” preceding it;
- (c) subsection (7).

Section 330.

Section 332(1), (2), (3A), (3B) and (4).

In section 577—

- (a) in subsection (1), paragraph (b) and the word “and” preceding it;
- (b) in subsection (3), the words from “but where-” to the end.

Section 579(1).

Section 580(3).

In section 585—

- (a) in subsection (1), the words “, or under Case III of Schedule E,”;
- (b) in subsection (9), paragraph (b) and the word “and” preceding it.

In section 588, in subsection (5), paragraph (a) and the word “or” preceding paragraph (b).

Section 589.

Section 589A(2) to (6), (10).

In section 589B—

- (a) subsections (1) to (4A);
- (b) in subsection (5), the words “this section or”.

Section 591D(6).

Section 595.

Section 596.

Sections 596A to 596C.

Section 597.

Section 599A(5), (6) and (8).

Section 600.

In section 607(3)(b), sub-paragraph (iv) and the word “and” preceding it.

Section 608(4).

Section 613(1) to (3).

Section 615(1), (2), (4), (5) and (8).

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*Status: Point in time view as at 01/03/2013.*

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Section 616.

Section 617(1) and (2).

Section 617A.

In section 638(13), the definition of “employee share ownership plan”.

In section 643—

- (a) subsection (1);
- (b) in subsection (5), the words “shall be assessable to tax under Schedule E (and section 203 shall apply accordingly) and”.

Sections 647 to 648A.

Section 830(5).

Schedules 6, 6A, 7 and 7A.

In Schedule 9—

- (a) Parts 1, 2 and 6, except so far as relating to profit sharing schemes;
- (b) Parts 3 and 4.

In Schedule 10, in paragraph 7(7)(b), the second “to”.

Schedules 11, 11A, 12, 12AA and 12A.

In Schedule 29, paragraph 6.

Social Security Act 1988 (c. 7)

In Schedule 4, paragraph 1.

Finance Act 1988 (c. 39)

Section 46.

Section 47(1).

Section 48(1).

Section 49(1).

Section 57.

Section 68.

Section 69.

Section 73(1).

Sections 77 to 88.

In section 89—

- (a) in paragraph (a), the words “section 185(3)(a) (approved share option schemes) and”;
- (b) paragraph (b).

Section 128.

In Schedule 3, paragraph 4.

In Schedule 13, paragraph 3.

*Status: Point in time view as at 01/03/2013.*

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Finance Act 1989 (c. 26)	Sections 36 to 42. Section 45. Sections 50 to 52. Section 53, except subsection (2)(f) so far as relating to section 418(3) of ICTA. Section 62. Sections 64 and 66. In section 178(2)— (a) in paragraph (m), the words “160,”; (b) at the end of the first paragraph (p), the word “and”. Section 179(1)(g) and (5). In Schedule 6— (a) paragraphs 7 to 9; (b) paragraph 13; (c) in paragraph 18(1), the words “8(2)(b)”; (d) paragraph 18(5) to (7). In Schedule 12, paragraph 8.
Companies Act 1989 (c. 40)	In Schedule 18, paragraph 46.
Finance Act 1990 (c. 29)	Section 21. Section 77. Section 79. In Schedule 14, paragraph 4(2).
Oversea Superannuation Act 1991 (c. 16)	Section 2.
Disability Living Allowance and Disability Working Allowance Act 1991 (c. 21)	In Schedule 2, paragraph 18.
Finance Act 1991 (c. 31)	Section 38(2). Sections 39 to 40. Section 44. Section 69. In Schedule 6, paragraphs 1 and 3.
Social Security Contributions and Benefits Act 1992 (c. 4)	Section 10(10).  In section 150(2), in paragraph (b) of the definition of “unemployability supplement or allowance”, sub-paragraph (v).
Social Security (Consequential Provisions) Act 1992 (c. 6)	In Schedule 2, paragraph 93.
Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7)	Section 10(10).

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	In section 146(2), in paragraph (b) of the definition of “unemployability supplement or allowance”, sub-paragraph (v).
Social Security (Consequential Provisions) (Northern Ireland) Act 1992 (c. 9)	In Schedule 2, paragraph 33.
Taxation of Chargeable Gains Act 1992 (c. 12)	Section 120(6).
	In Schedule 10, paragraphs 14(9) to (12) and 16(3) to (5).
Finance (No. 2) Act 1992 (c. 48)	Section 37. Section 54.
Finance Act 1993 (c. 34)	Section 68. Sections 73 to 76. Section 105(1) and (2). Section 124. Schedules 3, 4 and 5.
Finance Act 1994 (c. 9)	Sections 88 and 89. Section 108(1) to (6) and (7)(b). Sections 109 and 110. Sections 125 to 132. Section 139.
Vehicle Excise and Registration Act 1994 (c. 22)	In Schedule 3, paragraph 22.
Finance Act 1995 (c. 4)	Sections 43 to 45. Sections 91 to 93. Section 108. Section 111. Section 137(2), (3) and (8). Section 141.
Jobseekers Act 1995 (c. 18)	In Schedule 2, paragraphs 12, 14 and 16.
Child Support Act 1995 (c. 34)	In Schedule 3, paragraph 1.
Finance Act 1996 (c. 8)	Sections 106 to 110. Sections 113 to 115. Section 120(11)(b). Section 152. In Schedule 7, paragraph 5. Schedule 16.



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	In Schedule 20, paragraphs 6 to 10, 41 and 42.
Finance Act 1997 (c. 16)	Sections 62 and 63. In Schedule 18, in Part 6(3), Note 3(b).
Finance Act 1998 (c. 36)	Sections 49 to 53. Section 55(1). Section 58. Sections 60 and 61. Sections 63 to 69. Section 93. Schedules 9 and 10.
Tax Credits Act 1999 (c. 10)	In Schedule 1, paragraph 6(c).
Finance Act 1999 (c. 16)	Sections 42 to 45. Sections 48 to 51. In Schedule 5, paragraphs 1 to 3. In Schedule 10, paragraphs 4, 5, 6 and 8.
Welfare Reform and Pensions Act 1999 (c. 30)	In Schedule 8, paragraph 1(2). In Schedule 12, paragraph 75.
Care Standards Act 2000 (c. 14)	In Schedule 4, paragraph 13.
Finance Act 2000 (c. 17)	Section 38(5) and (7). Section 47. Sections 56 to 60. Section 62. Schedules 8, 10 and 11. Schedule 12, except paragraphs 17 and 18. Schedule 14.
Capital Allowances Act 2001 (c. 2)	In Schedule 2, paragraphs 24, 25, 51(1) and 107.
Finance Act 2001 (c. 9)	Section 57(1) and (2). Section 58. Sections 60 to 62. In Schedule 12— (a) Part 1; (b) in Part 2, paragraphs 1 to 10 and 12 to 16. Schedules 13 and 14.

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	In Schedule 22, in paragraph 16(5), the definition of “PAYE regulations”.
Social Security Contributions (Share Options) Act 2001 (c. 20)	Section 4.
International Development Act 2002 (c. 1)	In Schedule 3, paragraph 10.
State Pension Credit Act 2002 (c. 16)	In Schedule 2, paragraph 28.
Tax Credits Act 2002 (c. 21)	Section 25(6). In Schedule 3, paragraph 14.
Finance Act 2002 (c. 23)	Sections 33 to 37. Section 38(2) and (3). Section 39. Section 41. In section 103(4)(f), the words “in Schedule 14, paragraph 22(4),”. Schedule 6. In Schedule 13, in paragraph 27(1), the definition of “PAYE regulations”.
Employee Share Schemes Act 2002 (c. 34)	The whole Act.

## PART 2

### SUBORDINATE LEGISLATION

<i>Reference and title</i>	<i>Extent of revocation</i>
Disability Living Allowance and Disability Working Allowance (Northern Ireland Consequential Amendments) Order 1991 (S.I. 1991/2874)	Article 5.
Income Tax (Car Benefits) (Replacement Accessories) Regulations 1994 (S.I. 1994/777)	The whole Regulations.
Income Tax (Replacement Cars) Regulations 1994 (S.I. 1994/778)	The whole Regulations.
Income Tax (Employments) (Notional Payments) Regulations 1994 (S.I. 1994/1212)	In regulation 2— (a) in paragraph (1), all definitions except that of “the principal Regulations”; (b) paragraph (2). Regulations 3 to 8A.
Income Tax (Employments) (Notional Payments) (Amendment) Regulations 1996 (S.I. 1996/2969)	The whole Regulations.

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Income Tax (Employments) (Notional Payments) (Amendment) Regulations 1998 (S.I. 1998/1891)	Regulations 4 to 6.
Income Tax (Car Benefits) (Reduction of Value of Appropriate Percentage) Regulations 2001 (S.I. 2001/1123)	Regulation 8.
Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629)	Article 107.
Enterprise Management Incentives (Gross Asset Requirement) Order 2001 (S.I. 2001/3799)	The whole Order.

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