SCHEDULES

[F1SCHEDULE 7D

APPROVED SHARE SCHEMES AND SHARE INCENTIVES

Textual Amendments

F1 Sch. 7D inserted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 723, **Sch. 6 para. 221** (with Sch. 7)

PART 1

APPROVED SHARE INCENTIVE PLANS

Modifications etc. (not altering text)

C1 Sch. 7D Pt. 1 applied (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 723, **Sch. 2 para. 87** (with Sch. 7)

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").

(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 **[**[F2]section 989 of CTA 2009**]** (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).

(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".

Textual Amendments

F2 Words in Sch. 7D para. 2(4) 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. 387** (with Sch. 2 Pts. 1, 2)

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.

(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.

(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.**]**