

SCHEDULES

SCHEDULE 14

ENTERPRISE MANAGEMENT INCENTIVES

PART IV

ELIGIBLE EMPLOYEES

Introduction

- 27 An individual is an eligible employee in relation to the relevant company if the requirements of this Part of this Schedule are met as to—
- (a) employment (see paragraph 28),
 - (b) commitment of working time (see paragraph 29), and
 - (c) no material interest (see paragraph 30).

The employment requirement

- 28 An employee is an eligible employee in relation to the relevant company only if he is 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

- 29 (1) An employee is an eligible employee in relation to the relevant company only if his committed time amounts to—
- (a) at least 25 hours a week, or
 - (b) if less, 75% of his working time.
- (2) An employee's "committed time" means the time that he 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.

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(4) For the purposes of this paragraph an employee is in “relevant employment” if he is employed—

- (a) by the relevant company, or
- (b) where the relevant company is a parent company, by any group company.

References to an employee beginning or ceasing to be in relevant employment are to his becoming or no longer being so employed.

(5) In sub-paragraph (1)(b) “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 specified in sub-paragraph (3)(a) to (d).

(6) In sub-paragraph (5)(a) “remunerative work” means—

- (a) work the income from which is chargeable to tax under Case I of Schedule E, and
- (b) work undertaken with a view to profit the profits (if any) from which are (or would be) chargeable to tax under Case I or II of Schedule D,

or, in either case, which would be so chargeable if the employee were resident and ordinarily resident in the United Kingdom.

The “no material interest” requirement

30 (1) An individual is not an eligible employee in relation to the relevant company if he has a material interest in—

- (a) that company, or
- (b) if that company is a parent company, any group company.

(2) For the purposes of this paragraph an individual is regarded as having a material interest in a company if—

- (a) the individual,
- (b) the individual together with one or more associates of his, or
- (c) any associate of the individual's, with or without any other such associates,

has a material interest in the company.

(3) No account shall be taken for the purposes of this paragraph of shares that an individual may acquire under a qualifying option, but once such shares have been acquired they are taken into account.

(4) This paragraph is supplemented—

- (a) as regards the meaning of “material interest”, by paragraphs 31 to 33; and
- (b) as regards the meaning of “associate”, by paragraph 34 (read with paragraphs 35 and 36).

Meaning of “material interest”

31 (1) For the purposes of paragraph 30 a material interest in a company means—

- (a) beneficial ownership of, or 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; or

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(b) where the company is a close company, possession of or 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.

(2) In this paragraph—

“close company” includes a company that would be a close company but for—

(a) section 414(1)(a) of the Taxes Act 1988 (exclusion of companies not resident in the United Kingdom), or

(b) section 415 of that Act (exclusion of certain quoted companies);

“participator” has the meaning given by section 417(1) of that Act.

(3) This paragraph is supplemented by paragraph 32 (options etc.) and paragraph 33 (shares held by trustees of approved profit-sharing schemes).

Material interest: options etc.

32 (1) For the purposes of paragraph 31 (meaning of “material interest”) a right to acquire shares (however arising) is treated as a right to control them.

(2) In any case where—

(a) the shares attributed to an individual consist of or include shares which he 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 is contractually bound to issue in the event of the exercise of the right,

then in determining at any time prior to the exercise of the right whether the number of shares attributed to the individual exceeds a particular percentage of the ordinary share capital of the company, that ordinary share capital shall be taken to be increased by the number of unissued shares referred to in paragraph (b).

(3) The references in sub-paragraph (2) to the shares attributed to an individual are to the shares which in accordance with paragraph 31(1)(a) fall to be brought into account in his case to determine whether their number exceeds a particular percentage of the company’s ordinary share capital.

Material interest: shares held by trustees of approved profit-sharing schemes etc.

33 In applying paragraph 31 (meaning of “material interest”) there shall be disregarded—

(a) the interest of the trustees of—

(i) any profit-sharing scheme approved under Schedule 9 to the Taxes Act 1988, or

(ii) any employee share ownership plan approved under Schedule 8 to this Act,

in any shares which are held by them in accordance with the scheme or plan but which have not been appropriated to, or acquired on behalf of, an individual; and

(b) any rights exercisable by those trustees by virtue of any such interest.

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Meaning of “associate”

- 34 (1) In paragraph 30 (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 relative of his (living or dead), is or was a settlor, and
 - (c) where that individual is interested in any shares or obligations of the company which are subject to any trust, or are part of the estate of a deceased person, the trustee or trustees of the settlement concerned or, as the case may be, the personal representatives of the deceased.
- (2) In sub-paragraph (1)(a) and (b) “relative” means husband or wife, parent or remoter forebear, or child or remoter issue.
- (3) In sub-paragraph (1)(b) “settlor” and “settlement” have the same meaning as in Chapter IA of Part XV of the Taxes Act 1988 (see section 660G(1) and (2)).

Meaning of “associate”: trustees of employee benefit trust

- 35 (1) This paragraph applies for the purposes of paragraph 34(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 a company (“the company”) in relation to which it falls to be determined whether that individual has an interest.
- (2) The trustees of the employee benefit trust are not regarded as associates of the individual by reason only of his being so interested if neither—
- (a) the individual, nor
 - (b) the individual together with one or more associates of his, nor
 - (c) any associate of the individual's, with or without any other such associates, has at any time on or after 14th 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 this paragraph “employee benefit trust” has the same meaning as in paragraph 7 of Schedule 8 to the Taxes Act 1988.
- (4) Sub-paragraphs (9) to (12) of that paragraph apply for the purposes of this paragraph in relation to an individual as they apply for the purposes of that paragraph in relation to an employee.
- (5) In sub-paragraph (2)(b) and (c) “associate” does not include the trustees of an employee benefit trust by reason only that the individual has an interest in shares or obligations of the trust.

Meaning of “associate”: trustees of discretionary trust

- 36 (1) This paragraph applies for the purposes of paragraph 34(1)(c) (meaning of “associate”: trustees of settlement) where—
- (a) an individual (“the beneficiary”) is one of the objects of a discretionary trust, and
 - (b) the property subject to the trust has at any time consisted of or included shares or obligations of the company (“the company”) in relation to which it falls to be determined whether that individual has an interest.

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(2) If—

- (a) the beneficiary has ceased to be eligible to benefit under the discretionary trust by reason of—
 - (i) an irrevocable disclaimer or release executed by him, or
 - (ii) the irrevocable exercise by the trustees of a power to exclude him from the objects of the trust,
- (b) immediately after the beneficiary ceased to be so eligible, no associate of his was interested in the shares or obligations of the company which were subject to the trust, and
- (c) during the period of twelve months ending with the date when the beneficiary ceases to be so eligible, neither he nor any associate of his received any benefit under the trust,

the beneficiary is not regarded by reason only of the matters mentioned in sub-paragraph (1) as having been interested in the shares or obligations of the company at any time during the period of twelve months mentioned in paragraph (c) above.

- (3) In sub-paragraph (2) “associate” has the meaning given by paragraph 34, but with the omission of sub-paragraph (1)(c) of that paragraph (trusts and estates).