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Changes to legislation: Income Tax (Earnings and Pensions) Act 2003, SCHEDULE 5 is up to date with all changes known to be in force on or before 12 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 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 the Inland Revenue 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.

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 £100,000, 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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[^{F1}(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

F1 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 £100,000.
 - (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 £100,000.
 - (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.

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.

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- (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),
 - gross assets (see paragraph 12), and
 - trading activities (see paragraphs 13 and 14, read with paragraphs 15 to 23).

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).
- (2) For this purpose—
- (a) “subsidiary” means any company which the company controls, either on its own or together with any person connected with it, and
 - (b) the question whether a person controls a company is to be determined in accordance with section 416(2) to (6) of ICTA (“control” in the context of close companies).

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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—
- (a) that the holding company possesses not less than 75% of the issued share capital of, and not less than 75% of the voting power in, the subsidiary;
 - (b) that the holding company would—
 - (i) in the event of a winding up of the subsidiary, or
 - (ii) in any other circumstances, be beneficially entitled to receive not less than 75% of the assets of the subsidiary which would then be available for distribution to the shareholders of the subsidiary;
 - (c) that the holding company is beneficially entitled to not less than 75% of any profits of the subsidiary which are available for distribution to the shareholders of the subsidiary;
 - (d) that no person other than the holding company has control of the subsidiary; and
 - (e) that no arrangements are in existence by virtue of which the conditions in paragraphs (a) to (d) would cease to be met.
- (3) In sub-paragraph (2) any reference to the holding company is to be read as a reference to—
- (a) the holding company by itself,
 - (b) the holding company and one or more other subsidiaries of the holding company, or
 - (c) one or more other subsidiaries of the holding company.
- (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.

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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.

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

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

Meaning of “qualifying trade”

- 15 (1) A trade is a qualifying trade if—
- (a) it is carried on wholly or mainly in the United Kingdom,
 - (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.

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;

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- (i) holding, managing or occupying woodlands, any other forestry activities or timber production;
- (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.

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
 - (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.

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(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 oil rigs or pleasure craft.

(2) In the following provisions “ship” accordingly means a ship other than an oil rig 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—

- (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—

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- (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—

“oil rig” means any ship which is an offshore installation for the purposes of the Mineral Workings (Offshore Installations) Act 1971 (c. 61); and

“pleasure craft” means any ship of a kind primarily used for sport or recreation.

Excluded activities: receipt of royalties or licence fees

- 19 (1) This paragraph supplements paragraph 16(e) (receipt of royalties or licence fees).
- (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—
- (a) by the company carrying on the trade, or
 - (b) by a company which, for the whole of the period during which it created the asset, was—
 - (i) the parent company of the company carrying on the trade, or
 - (ii) a qualifying subsidiary of that parent company.
- (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.

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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
 - (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.

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).
- (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.

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- (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
 - (c) not less than half of the business could, in accordance with section 344(2) of ICTA (company reconstructions: supplemental), be regarded as belonging to him for the purposes of section 343 of that Act (company reconstructions without a change of ownership).
- (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 section 416(2) to (6) of ICTA (“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 in section 417(3) and (4) of ICTA (expressions relating to close companies), except that in those subsections as they apply for the purposes of this paragraph “relative” does not include a brother or sister;
- “business” includes any trade, profession or vocation;

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“director” is to be construed in accordance with section 417(5) of ICTA (expressions relating to close companies).

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—
- 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.

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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 or 21 applies (earnings for year when employee resident or ordinarily resident in the United Kingdom), or
 - (b) would be general earnings within paragraph (a) if the employee were resident and ordinarily resident in the United Kingdom.
- (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 under Case I or II of Schedule D, or
 - (b) would be so chargeable if the employee were resident and ordinarily resident in the United Kingdom.

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
 - (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.

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- (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) section 414(1)(a) of ICTA (exclusion of companies not resident in the United Kingdom), or
 - (b) section 415 of ICTA (exclusion of certain quoted companies);
 - “participator” has the meaning given by section 417(1) of ICTA (expressions relating to close companies).
- (5) This paragraph is supplemented by paragraph 30 (options and interests in SIPs).

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 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

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- 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, or
 - (b) parent, child or remoter relation in the direct line;
- “settlor” and “settlement” have the same meaning as in Chapter 1A of Part 15 of ICTA (see section 660G(1) and (2)).

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).

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- (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).

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.

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- (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.
- [^{F2}(4) Where the shares that may be acquired by the employee are restricted shares, the agreement must contain details of the restrictions.
- (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.]
- ^{F2}(6)

Textual Amendments

F2 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—

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- (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;
 - (b) obtains control of such a company as a result of a compromise or arrangement sanctioned by the court under—
 - (i) section 425 of the Companies Act 1985 (c. 6) (power to compromise with creditors and members), or
 - (ii) Article 418 of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) (corresponding provision for Northern Ireland);
 - (c) becomes bound or entitled under—
 - (i) sections 428 to 430 of that Act (power to acquire shares of shareholders dissenting from schemes or contract approved by majority), or
 - (ii) Articles 421 to 423 of that Order (corresponding provision for Northern Ireland),to acquire shares of the same class as shares that are subject to an outstanding qualifying option; or
 - (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.

Meaning of “qualifying exchange of shares”

- 40 (1) For the purposes of the EMI code there is a “qualifying exchange of shares” where—

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- (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).

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.

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- (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 subparagraph (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.

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 subparagraph (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”).

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- (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 the Inland Revenue 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 the Inland Revenue.
- (3) The notice must contain, or be supported by, such information as the Inland Revenue 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.

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Correction of notice by Inland Revenue

- 45
- (1) The Inland Revenue 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 the Inland Revenue.
 - (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 the Inland Revenue rejecting the correction.

Notice of enquiry

- 46
- (1) This paragraph applies where notice of a share option is given under paragraph 44.
 - (2) The Inland Revenue may enquire into the option if they give notice to the employer company of their intention to do so in accordance with this paragraph.
 - (3) The Inland Revenue 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 they give that individual notice of their intention to do so in accordance with this paragraph.
 - (4) The Inland Revenue 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 the Inland Revenue discover 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).

Completion of enquiry: closure notices

- 47
- (1) An enquiry under paragraph 46(2) is completed when the Inland Revenue give the employer company a notice—
 - (a) informing the company that they have completed their enquiry, and
 - (b) stating their decision as to whether the requirements of this Schedule are met in relation to the option.
 - (2) If the Inland Revenue conclude that the requirements of this Schedule are not so met, they must also give notice of that decision to the person to whom the option has been granted.

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- (3) An enquiry under paragraph 46(3) is completed when the Inland Revenue give the individual concerned and the employer company a notice—
- (a) informing the recipients that they have completed their enquiry, and
 - (b) stating their 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 sub-paragraph (1) or (3).
- (5) A closure notice takes effect when it is issued.

Completion of enquiry: application for closure notice to be given

- 48 (1) An application may be made under this paragraph for a direction requiring the Inland Revenue 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.
- (3) The application must be made—
- (a) to the General Commissioners, or
 - (b) if the applicant so elects (in accordance with section 46(1) of TMA 1970), to the Special Commissioners.
- (4) The Commissioners hearing the application must hear and determine it in the same way as an appeal.
- (5) Those Commissioners must give a direction unless they are satisfied that the Inland Revenue have reasonable grounds for not giving a closure notice within a specified period.

Effect of enquiry

- 49 (1) If the Inland Revenue do not give a notice of enquiry, the requirements of this Schedule are taken to be met in relation to the option.
- (2) If the Inland Revenue do give a notice of enquiry, their decision stated in the closure notice is conclusive as to whether the requirements of this Schedule are met in relation to the option.
- (3) But this is subject—
- (a) if their decision is that the requirements are not met, to the outcome of any appeal against that decision under paragraph 50;
 - (b) if their decision is that the requirements are met, to the outcome of any subsequent enquiry under paragraph 46(6) (enquiry arising from discovery of false or misleading information).
- (4) This paragraph does not affect the provisions of sections 532 to 539 (which relate to disqualifying events).

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Appeals

- 50 (1) The employer company may appeal against a decision of the Inland Revenue—
- (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 the Inland Revenue that the individual does not meet the requirement of paragraph 26 (commitment of working time).
- (3) Notice of the appeal must be given to the Inland Revenue within 30 days after the date when the closure notice is given to the appellant.
- (4) The appeal lies—
- (a) to the General Commissioners, or
 - (b) if the employer company or individual so elects (in accordance with section 46(1) of TMA 1970), to the Special Commissioners.

PART 8

SUPPLEMENTARY PROVISIONS

Power to require information

- 51 (1) The Inland Revenue may by notice require a person to provide them with information—
- (a) which they reasonably require for the performance of their 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 the Inland Revenue—
- (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.

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 the Inland Revenue.
- (2) The return must—
- (a) contain such information as the Inland Revenue may require, and
 - (b) be made before 7th July in the tax year following that to which it relates.

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—

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- (a) the person had a reasonable excuse for not doing it within that period, and
 - (b) 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—
- (a) to make such amendments of paragraphs 13 to 23 (the trading activities requirement and related provisions) as they consider expedient;
 - (b) to substitute different sums of money for those for the time being specified in—
 - (i) paragraphs 5(1) and 6(1) and (3) (maximum entitlement of employee);
 - (ii) 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.

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 the Inland Revenue, or
 - (b) a reference is made under sub-paragraph (4),
- the market value of shares is to be determined by the Inland Revenue.
- (3) Where the market value of shares on any date needs to be determined for the purposes of the EMI code, the Inland Revenue 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 the Inland Revenue’s determination has been given to the employer company, the company may give the Inland Revenue a notice requiring the question of the market value of the shares to be referred to the Commissioners.
- (5) Any reference under sub-paragraph (4) must be made—
- (a) to the General Commissioners, or

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- (b) if the applicant so elects (in accordance with section 46(1) of TMA 1970), to the Special Commissioners.
- (6) The Commissioners to whom the reference is made must determine it in the same way as an appeal.

Appeal against determination of market value of shares

- 57 (1) The employer company may appeal against any determination by the Inland Revenue under paragraph 56.
- (2) Notice of appeal must be given to the Inland Revenue within 30 days after the date when notice of their determination is given to the employer company.
- (3) An appeal under this paragraph lies—
- (a) to the General Commissioners, or
- (b) if the applicant so elects (in accordance with section 46(1) of TMA 1970), to the Special Commissioners.

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 section 837A of ICTA;
- “shares” includes stock.

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	section 832(5) of ICTA, (and see section 721(6) of this Act)
close company	section 832(1) of ICTA, (and see paragraph 29(4))
closure notice	paragraph 47(4)
company	paragraph 58
company reorganisation (in Part 6 of this Schedule)	paragraph 39(2)

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connected person	section 718
control	section 719 (and see paragraphs 10(2) and 23(6))
disqualifying event	see sections 532 to 539
distribution	section 832(1) of ICTA
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	section 832(1) of ICTA
General Commissioners	section 2 of TMA 1970
generally accepted accounting practice	section 836A of ICTA
group of companies	paragraph 58
the group	paragraph 58
the Inland Revenue	section 720(1)
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	section 832(1) of ICTA
old option	paragraph 41(7)
ordinary share capital	section 832(1) of ICTA
original option	section 529(3)
parent company	paragraph 58
personal representatives	section 721(1)
qualifying company	paragraph 8
qualifying option	section 527(4) (and see paragraph 41(5))
qualifying subsidiary	paragraph 11
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)

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shares	paragraph 58 (and see paragraph 40(4)(a))
single company	paragraph 58
Special Commissioners	section 4 of TMA 1970
51% subsidiary	section 838(1) of ICTA
tax	section 832(3) of ICTA
tax year	section 721(1)
trade	section 832(1) of ICTA
United Kingdom	section 830 of ICTA

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