

Status: Point in time view as at 13/08/2009.

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SCHEDULES

SCHEDULE 5

ENTERPRISE MANAGEMENT INCENTIVES

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

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- (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 [^{F1}applies (earnings for year when employee UK resident)], or
 - (b) would be general earnings within paragraph (a) if the employee were [^{F2}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 [^{F3}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

- F1** 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\(a\)](#)
- F2** 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\(b\)](#)
- F3** 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

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(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.

(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

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- (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 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 [^{F4}or civil partner] , or
 - (b) parent, child or remoter relation in the direct line;
 “settlor” and “settlement” have the same meaning as in [^{F5}Chapter 5 of Part 5 of ITTOIA 2005 (see section 620 of that Act)] .

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Textual Amendments

- F4** 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**
- F5** 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)

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

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- (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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