

Status: Point in time view as at 18/06/2004.

Changes to legislation: Income Tax (Earnings and Pensions) Act 2003, Part 6 is up to date with all changes known to be in force on or before 13 September 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

ENTERPRISE MANAGEMENT INCENTIVES

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.

Status: Point in time view as at 18/06/2004.

Changes to legislation: Income Tax (Earnings and Pensions) Act 2003, Part 6 is up to date with all changes known to be in force on or before 13 September 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)

Meaning of “qualifying exchange of shares”

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

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—

Status: Point in time view as at 18/06/2004.

Changes to legislation: Income Tax (Earnings and Pensions) Act 2003, Part 6 is up to date with all changes known to be in force on or before 13 September 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)

- (a) references in the EMI code to a qualifying option include a replacement option, and
 - (b) a replacement option is to be treated for the purposes of the EMI code as if it had been granted on the date on which the old option was granted.
- (6) For the purposes of any of paragraphs 5 to 7 or section 536(1)(e), the total value of the shares in the acquiring company that are subject to the replacement option is to be taken to be equal to—
- (a) the total value (as calculated in accordance with paragraph 5(6) to (8)) of the shares that were subject to the old option immediately before the release of rights under that option, or
 - (b) if the replacement option has been partially exercised, the proportion of that total value which corresponds to the proportion which the number of shares that remain subject to the option bears to the number of shares that were subject to it at the time when it was granted as a new option (see sub-paragraph (2) above).
- (7) In the EMI code references to “the old option” or “the new option” are to be construed in accordance with this paragraph.

Period within which replacement option must be granted

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

Further requirements to be met as to replacement option

- 43 (1) For the new option to qualify as a replacement option the following requirements must also be met.
- (2) The new option must be granted to the holder of the old option by reason of the holder’s employment—
- (a) with the acquiring company, or
 - (b) if that company is a parent company, with that company or another member of the group.
- (3) The requirements of—
- (a) paragraph 4 (purpose of granting option),
 - (b) paragraph 7 (maximum value of options in respect of relevant company) (as it has effect under sub-paragraph (4)), and

Status: Point in time view as at 18/06/2004.

Changes to legislation: Income Tax (Earnings and Pensions) Act 2003, Part 6 is up to date with all changes known to be in force on or before 13 September 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)

- (c) Part 5 (requirements as to options),
must be met in relation to the new option at the time of the release of rights under the old option (“the relevant time”).
- (4) For the purposes of paragraph 7 (as applied by sub-paragraph (3)(b)) the total value of the shares in the acquiring company that are subject to the new option is to be taken to be equal to the total value (as calculated in accordance with paragraph 5(6) to (8)) of the shares that were subject to the old option immediately before the relevant time.
- (5) In addition to the requirements mentioned in sub-paragraph (3)—
- (a) the independence requirement and the trading activities requirement must be met in relation to the acquiring company at the relevant time, and
 - (b) the individual to whom the new option is granted must be an eligible employee in relation to the acquiring company at that time.
- (6) The total market value, immediately before the relevant time, of the shares which were subject to the old option must be equal to the total market value, immediately after the grant of the new option, of the shares in respect of which that option is granted.
- (7) The total amount payable by the employee for the acquisition of the shares under the new option must be equal to the total amount that would have been payable for the acquisition of shares under the old option.

Status:

Point in time view as at 18/06/2004.

Changes to legislation:

Income Tax (Earnings and Pensions) Act 2003, Part 6 is up to date with all changes known to be in force on or before 13 September 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.