

Status: Point in time view as at 18/06/2004.

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SCHEDULES

SCHEDULE 5

ENTERPRISE MANAGEMENT INCENTIVES

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—
- (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.

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- (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
 - (b) if the applicant so elects (in accordance with section 46(1) of TMA 1970), to the Special Commissioners.

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- (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)
connected person	section 718

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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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