

Status: Point in time view as at 18/04/2005.

Changes to legislation: Income Tax (Earnings and Pensions) Act 2003, Paragraph 109 is up to date with all changes known to be in force on or before 20 July 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 6

CONSEQUENTIAL AMENDMENTS

PART 1

INCOME AND CORPORATION TAXES ACT 1988

109 After Schedule 4 insert—

“SCHEDULE
4AA

Section 85B

SHARE INCENTIVE PLANS: CORPORATION TAX DEDUCTIONS

Introductory

- 1 (1) This Schedule forms part of the SIP code (see section 488 of ITEPA 2003 (approved share incentive plans)).
- (2) Accordingly, expressions used in this Schedule and contained in the index at the end of Schedule 2 to that Act (approved share incentive plans) have the meaning indicated by that index.
- (3) References in this Schedule to deductions are to deductions by a company in calculating for the purposes of corporation tax the profits of a trade carried on by it.
- (4) Sub-paragraph (3) is subject to paragraph 13 (application of provisions to expenses of management of investment companies etc.).

Deduction for providing free or matching shares

- 2 (1) Where, under an approved share incentive plan, shares are awarded to employees as free or matching shares by reason of their employment with a company, a deduction is allowed under this paragraph to that company.
- (2) Any such deduction—
 - (a) is of an amount equal to the market value of the shares at the time they are acquired by the trustees, and
 - (b) must be made for the period of account in which the shares are awarded to employees in accordance with the plan.
- (3) Except as provided by sub-paragraph (1), no deduction may be made by the company or any associated company in respect of the provision of those shares.

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This is subject to paragraphs 7 and 8 (deductions for costs of setting up, and contributions to running expenses of, plan).

- (4) Where the shares are awarded under a group plan, the market value of the shares at the time they are acquired by the trustees shall for the purposes of this paragraph be taken to be the relevant proportion of the total market value of the shares included in the award.
- (5) For the purposes of sub-paragraph (4) “the relevant proportion” means the proportion that the number of shares in the award awarded to the employees of the company concerned bears to the total number of shares in the award.
- (6) In determining the market value of any shares for the purposes of this paragraph, if shares have been acquired by the trustees on different days it shall be assumed that those acquired on an earlier day are awarded to employees under the plan before those acquired by the trustees on a later day.
- (7) If a deduction is made under this paragraph by a company, no deduction may be made by any other company under this paragraph in respect of the provision of the shares.
- (8) This paragraph has effect subject to paragraph 4 (cases in which no deduction is allowed).

Deduction for additional expenses in providing partnership shares

- 3 (1) Where under an approved share incentive plan—
 - (a) partnership shares are awarded to employees by reason of their employment with a company, and
 - (b) the market value of those shares at the time they are acquired by the trustees exceeds the partnership share money paid by the participants to acquire those shares,
 a deduction is allowed under this paragraph to that company.
- (2) Any such deduction—
 - (a) is of an amount equal to the amount of the excess referred to in sub-paragraph (1)(b), and
 - (b) must be made for the period of account in which the shares are awarded to employees in accordance with the plan.
- (3) Except as provided by sub-paragraph (1), no deduction may be made by that company or any associated company in respect of the provision of those shares.

This is subject to paragraphs 7 and 8 (deductions for costs of setting up, and contributions to running expenses of, plan).

- (4) If a deduction is made under this paragraph by a company, no deduction may be made by any other company under this paragraph in respect of the provision of the shares.
- (5) This paragraph has effect subject to paragraph 4 (cases in which no deduction is allowed).

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Cases in which no deduction is allowed

- 4 (1) No deduction is allowed under paragraph 2 or 3 (deductions for providing free or matching shares or for additional expenses in providing partnership shares) in the following cases.
- (2) No deduction is allowed in respect of shares awarded to an individual under the plan unless, at the time of the award, any earnings from the required employment are (or would be) chargeable earnings.
- (3) In sub-paragraph (2)—
“chargeable earnings” means general earnings to which any of the charging provisions of Chapter 4 or 5 of Part 2 of ITEPA 2003 apply, and
the “required employment” means the employment by reference to which the individual is eligible to participate in the award.
- (4) In sub-paragraph (3), the reference to any of the charging provisions of Chapter 4 or 5 of Part 2 of that Act has the same meaning as it has in the employment income Parts of ITEPA 2003 (see sections 14(3) and 20(3) of that Act).
- (5) No deduction is allowed in respect of shares that are liable to depreciate substantially in value for reasons that do not apply generally to shares in the company.
- (6) No deduction is allowed if a deduction has been made—
(a) by the company, or
(b) by an associated company of the company,
in respect of the provision of the same shares for this or another trust.
- (7) Sub-paragraph (6) applies whatever the nature or purpose of the other trust and whatever the basis on which the deduction was made.
- (8) For the purposes of determining whether the same shares have been provided to more than one trust, if shares have been acquired by the trustees of the plan trust on different days it shall be assumed that those acquired on an earlier day are awarded under the plan before those acquired by the trustees on a later day.
- (9) No deduction is allowed in respect of the award of shares acquired by the trustees by virtue of a payment in respect of which a deduction has been made under paragraph 9 (deduction for contribution to plan trust) or 10(3) (further deduction where deduction under paragraph 9 withdrawn).

No deduction for expenses in providing dividend shares

- 5 (1) No deduction is allowed for expenses in providing shares that are acquired on behalf of individuals under an approved share incentive plan as dividend shares.
- (2) This is subject to paragraph 8 (deductions for contributions to running expenses of plan).

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Treatment of forfeited shares

- 6 (1) This paragraph applies if any of a participant's plan shares are forfeited.
- (2) The shares are treated for the purposes of this Schedule as acquired by the trustees—
- (a) when the forfeiture occurs, and
 - (b) for no consideration.
- (3) No deduction is allowed under paragraph 2 or 3 (deductions for providing free or matching shares or for additional expenses in providing partnership shares) in respect of any subsequent award of those shares under the plan.

Deduction for costs of setting up the plan

- 7 (1) A deduction is allowed under this paragraph for expenses incurred by a company in establishing a share incentive plan which is approved by [^{F1}an officer of Revenue and Customs] .
- (2) No deduction may be made under this paragraph if—
- (a) any employee acquires rights under the plan, or
 - (b) the trustees acquire any shares for the purposes of the plan,
- before [^{F1}an officer of Revenue and Customs] approve the plan.
- (3) If Inland Revenue approval of the plan is given more than nine months after the end of the period of account in which the expenses are incurred, the expenses are treated for the purposes of this paragraph as incurred in the period in which the approval is given.
- (4) No other deduction is allowed in respect of expenses for which a deduction is allowed under this paragraph.

Deductions for contributions to running expenses of plan

- 8 (1) Nothing in this Schedule affects any deduction for expenses incurred by a company in contributing to the expenses of the trustees in operating an approved share incentive plan.
- (2) For this purpose the expenses of the trustees in operating the plan—
- (a) do not include expenses in acquiring shares for the purposes of the trust, other than incidental acquisition costs, but
 - (b) do include the payment of interest on money borrowed by them for that purpose.
- (3) In sub-paragraph (2)(a) “incidental acquisition costs” means any fees, commission, stamp duty and similar incidental costs attributable to the acquisition of the shares.

Deduction for contribution to plan trust

- 9 (1) A deduction is allowed to a company under this paragraph where—

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- (a) on or after 6th April 2003, that company makes a payment to the trustees of an approved share incentive plan in order to enable them to acquire shares in that company or a company which controls it,
 - (b) the payment is applied by the trustees to acquire such shares,
 - (c) the shares are not acquired from a company, and
 - (d) the condition in sub-paragraph (2) is met in relation to the company in which the shares are acquired.
- (2) The condition in this sub-paragraph is that, at the end of the period of 12 months beginning with the date of the acquisition, the trustees hold shares in the company for the plan trust that—
 - (a) constitute not less than 10 per cent of the ordinary share capital of the company, and
 - (b) carry rights to not less than 10 per cent of—
 - (i) any profits available for distribution to shareholders of the company,
 - (ii) any assets of that company available for distribution to its shareholders in the event of a winding-up.
- (3) For the purposes of sub-paragraph (2), shares that have been appropriated to, and acquired on behalf of, an individual under the plan shall continue to be treated as held by the trustees of the plan trust for the beneficiaries of that trust until such time as they cease to be subject to the plan (within the meaning of the SIP code).
- (4) A deduction allowed under this paragraph—
 - (a) is of an amount equal to the amount of the payment referred to in sub-paragraph (1), and
 - (b) must be made for the period of account in which the condition in sub-paragraph (2) is met.
- (5) No other deduction is allowed for any amount in respect of which a deduction has been made under this paragraph (except as specified in paragraph 10).

Withdrawal of deduction under paragraph 9

- 10 (1) [^{F1}An officer of Revenue and Customs] may by notice direct that the benefit of a deduction made under paragraph 9 is withdrawn where—
 - (a) fewer than 30 per cent of the shares acquired by virtue of the payment in respect of which the deduction is made have been awarded under the plan before the end of the period of 5 years beginning with the date of acquisition, or
 - (b) not all the shares acquired by virtue of that payment have been so awarded before the end of the period of 10 years beginning with that date.
- (2) The effect of a direction under sub-paragraph (1)(a) or (b) is that the amount of the deduction is treated as a trading receipt of the company for the period of account in which the direction is given.
- (3) However, where—

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- (a) [^{F1}an officer of Revenue and Customs] give a direction under sub-paragraph (1)(a) or (b) in respect of any deduction, and
 - (b) at any time after the giving of the direction, all the shares acquired by virtue of the payment in respect of which the deduction was made are awarded under the plan,
- a further deduction is allowed under this sub-paragraph to the company which made the payment.
- (4) A deduction under sub-paragraph (3)—
 - (a) is of an amount equal to the amount of the payment referred to in that sub-paragraph, and
 - (b) must be made for the period of account in which sub-paragraph (3) (b) is first satisfied.
 - (5) No other deduction is allowed in respect of any amount for which a deduction has been made under sub-paragraph (3).
 - (6) Sub-paragraph (8) applies where—
 - (a) a deduction is made under paragraph 9 (deduction for contribution to plan trust) or sub-paragraph (3) in respect of a payment for the acquisition of shares, but
 - (b) shares are awarded under the plan to an individual at a time when the earnings from the required employment are not (or would not be if there were any) chargeable earnings.
 - (7) In sub-paragraph (6) “required employment” and “chargeable earnings”, in relation to an individual, have the same meanings as they have in paragraph 4(2) (cases in which no deduction is allowed).
 - (8) An amount equal to the appropriate proportion of the deduction is treated as a trading receipt of the company for the period of account in which the shares are so awarded.
 - (9) For the purposes of sub-paragraph (8), the appropriate proportion of the deduction is the proportion which the number of shares awarded to the individual bears to the total number of shares acquired by virtue of the payment.
 - (10) For the purposes of this paragraph, where shares are acquired by the trustees on different days, it shall be assumed that those acquired on an earlier day are awarded to employees under the plan before those acquired by the trustees on a later day.

Withdrawal of deductions on withdrawal of approval

- 11 (1) If approval of a share incentive plan is withdrawn [^{F1}an officer of Revenue and Customs] may by notice to a company direct that the benefit of—
 - (a) any deductions under paragraph 2 (deduction for providing free or matching shares),
 - (b) any deductions under paragraph 3 (deduction for additional expenses in providing partnership shares),

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- (c) any deductions under paragraph 9 (deduction for contribution to plan trust) (in so far as not already withdrawn under paragraph 10), or
 - (d) any deductions under paragraph 10(3) (further deduction where deduction under paragraph 9 withdrawn),
- in relation to the plan is also withdrawn.
- (2) The effect of the direction is that the aggregate amount of the deductions is treated as a trading receipt of that company for the period of account in which [^{F1}an officer of Revenue and Customs] give notice of the withdrawal of approval.

Termination of plan: shares acquired as mentioned in paragraph 9 but not yet awarded

- 12 (1) This paragraph applies where the company has issued a plan termination notice under paragraph 89 of Schedule 2 to ITEPA 2003 (termination of plan).
- (2) In a case where—
- (a) by virtue of a payment made to the trustees by the company, the trustees acquire shares in the company, or a company which controls it,
 - (b) a deduction under paragraph 9 (deduction for contribution to plan trust) has been made in respect of that payment (and has not been withdrawn under paragraph 10), and
 - (c) not all the shares acquired by virtue of the payment have been awarded under the plan before issue of the plan termination notice,
- an amount equal to the appropriate proportion of the deduction is treated as a trading receipt of the company for the period of account in which the plan termination notice is given.
- (3) For the purposes of sub-paragraph (2), the appropriate proportion of the deduction is the proportion which the number of shares acquired by virtue of the payment and not awarded as specified in sub-paragraph (2)(c) bears to the total number of shares so acquired.

Application of provisions to expenses of management of investment companies etc.

- 13 (1) The provisions of this Schedule apply in relation to—
- (a) investment companies, and
 - (b) companies to which section 75 (expenses of management: investment companies) applies by virtue of section 76 (expenses of management: insurance companies),
- in accordance with the following provisions.
- (2) The provisions of this Schedule which allow a deduction in calculating the profits of a trade apply to treat amounts as disbursed as expenses of management.
- (3) Paragraph 11(2) applies as if the reference to a trading receipt for the period of account in which [^{F1}an officer of Revenue and Customs] give notice of

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the withdrawal of approval were a reference to profits or gains chargeable to tax under Case VI of Schedule D arising when [^{F1}an officer of Revenue and Customs] give notice of the withdrawal.”

Textual Amendments

F1 Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(1\)](#); S.I. 2005/1126, art. 2(2)(h)

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