

## SCHEDULES

### SCHEDULE 2

#### APPROVED SHARE INCENTIVE PLANS

#### PART 11

#### SUPPLEMENTARY PROVISIONS

##### *Company reconstructions*

- 86 (1) In this Part of this Schedule a “company reconstruction” means a transaction to which this paragraph applies.
- (2) This paragraph applies to a transaction which occurs in relation to any of a participant’s plan shares (“the original holding”) and—
- (a) results in a new holding being equated with the original holding for the purposes of capital gains tax, or
  - (b) would have that result but for the fact that what would be the new holding consists of or includes a qualifying corporate bond.
- (3) But where an excluded issue of shares is made—
- (a) that issue of shares does not by itself count as a transaction within sub-paragraph (2); and
  - (b) if made as part of a transaction within that sub-paragraph (that is, as part of a company reconstruction), the shares issued are to be regarded as not forming part of the new holding.
- (4) An “excluded issue of shares” means an issue of shares of any of the following descriptions (in respect of which a charge to income tax arises)—
- (a) redeemable shares or securities issued as mentioned in section 209(2)(c) of ICTA (distributions);
  - (b) share capital issued in circumstances such that section 210(1) of ICTA (bonus issues) applies;
  - (c) share capital to which section 249 of ICTA (stock dividends) applies.

##### *Consequences of company reconstructions*

- 87 (1) In the SIP code references to a participant’s plan shares in relation to a SIP are to be read, after the time of a company reconstruction—
- (a) as referring to the new shares, or
  - (b) as including those shares,
- as the case may be.

This is subject to the following provisions of this paragraph.

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- (2) For the purposes of the SIP code—
- (a) a company reconstruction is to be treated as not involving a disposal of the shares comprised in the original holding;
  - (b) new shares are to be treated as having been awarded to the participant on the date on which the corresponding old shares were awarded;
  - (c) the conditions in Part 4 of this Schedule (types of share that may be awarded) are to be treated as fulfilled with respect to any new shares if they were (or were treated as) fulfilled with respect to the corresponding old shares; and
  - (d) the provisions of—
    - (i) sections 489 to 514 (SIPs: income tax advantages and charges under this Act),
    - (ii) sections 68A to 68C and 251A to 251D of ICTA (SIPs: charges to tax under Case V of Schedule D or Schedule F),
    - (iii) sections 686B and 686C of ICTA (SIPs: income tax advantages for trustees), and
    - (iv) Part 1 of Schedule 7D to TCGA 1992 (SIPs: capital gains tax),
 apply in relation to the new shares as they would have applied in relation to the corresponding old shares.
- (3) If the corresponding old shares were dividend shares, the reference in sub-paragraph (2)(b) to the corresponding old shares being awarded is a reference to those shares being acquired on behalf of the participant.
- (4) Sub-paragraphs (1) to (3) are subject to paragraph 88 (treatment of shares acquired under rights issue).
- (5) For the purposes of the SIP code if, as part of a company reconstruction, trustees become entitled to a capital receipt, their entitlement to the capital receipt is to be taken to arise before the new holding comes into being.
- (6) In the SIP code, in the context of a new holding, “shares” includes securities and rights of any description which form part of the new holding for the purposes of Chapter 2 of Part 4 of TCGA 1992 (reorganisation of share capital etc.).
- (7) In this paragraph—
- (a) “new shares” means shares comprised in the new holding which were issued in respect of, or otherwise represent, shares comprised in the original holding;
  - (b) “the new holding” and “the original holding” mean respectively the new and original holdings mentioned in paragraph 86(2);
  - (c) “corresponding old shares”, in relation to any new shares, means the shares in respect of which the new shares are issued or which the new shares otherwise represent.

*Treatment of shares acquired under rights issue*

- 88 (1) This paragraph applies for the purposes of the SIP code where the trustees exercise rights arising under a rights issue and conferred in respect of a participant’s plan shares.
- (2) In such a case, any shares or securities or rights allotted are to be treated as if they were plan shares—

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- (a) identical to the shares in respect of which the rights were conferred, and
  - (b) appropriated to, or acquired on behalf of, the participant under the plan in the same way and at the same time as those shares.
- (3) If, however, either of the conditions set out in sub-paragraph (4) is met, sub-paragraph (5) applies instead.
- (4) The conditions are—
- (a) that the funds used by the trustees to exercise the rights are not provided by the exercise of the trustees' powers under paragraph 77 (trustees' powers to raise funds to subscribe for rights issue);
  - (b) that similar rights are not conferred in respect of all ordinary shares in the company.
- (5) If either of those conditions is met—
- (a) any shares, securities or rights allotted are not plan shares, and
  - (b) sections 127 to 130 of TCGA 1992 (reorganisation of share capital etc.) do not apply in relation to them.

#### *Termination of plan*

- 89 (1) The plan may provide for the company to issue a plan termination notice in respect of the plan in circumstances specified in the plan.
- (2) The plan must provide that, where a plan termination notice is issued, a copy of the notice must be given, without delay, to—
- (a) the Inland Revenue,
  - (b) the trustees,
  - (c) each individual who has plan shares, and
  - (d) each individual who has entered into a partnership share agreement which was in force immediately before the notice was issued.

#### *Effect of plan termination notice*

- 90 (1) This paragraph applies if the company has issued a plan termination notice under paragraph 89.
- (2) No further shares may be awarded to individuals under the plan.
- (3) The trustees must remove the plan shares from the plan as soon as practicable after whichever is the later of—
- (a) the end of the notice period, or
  - (b) the first date on which the shares may be removed from the plan without giving rise to a charge to income tax under sections 501 to 507 (SIPs: tax charges) on the participant on whose behalf they are held.
- (4) In sub-paragraph (3) “the notice period” means the period of 3 months beginning with the date on which the requirements imposed by the plan in accordance with paragraph 89(2) are met in respect of the plan termination notice.
- (5) The trustees may remove a participant’s shares from the plan at an earlier date with the participant’s consent.

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- (6) Any consent given by the participant before receiving a copy of the plan termination notice is to be disregarded for the purposes of sub-paragraph (5).
- (7) As soon as practicable after the plan termination notice is issued, the trustees must pay any money held on an individual's behalf to the individual.
- (8) In this paragraph references to the trustees removing the plan shares from the plan are to their doing the following in the case of each participant—
  - (a) transferring the shares to the participant on behalf of whom they are held, or to another person, at the participant's direction, or
  - (b) disposing of the shares and accounting (or holding themselves ready to account) for the proceeds to the participant or to another person at the participant's direction.
- (9) Where a participant has died, the references in this paragraph to a participant are to the participant's personal representatives.

*Jointly owned companies*

- 91
- (1) This paragraph applies for the purposes of the provisions of the SIP code relating to group plans.
  - (2) Each joint owner of a jointly owned company is to be treated as controlling every company within sub-paragraph (3).
  - (3) The companies within this sub-paragraph are—
    - (a) the jointly owned company, and
    - (b) any company controlled by that company.
  - (4) However, no company within sub-paragraph (3) may be—
    - (a) a constituent company in more than one group plan, or
    - (b) a constituent company in a particular group plan if another company within that sub-paragraph is a constituent company in a different group plan.
  - (5) In this paragraph a “jointly owned company” means a company—
    - (a) of which 50% of the issued share capital is owned by one person and 50% by another, and
    - (b) which is not controlled by any one person.
  - (6) This paragraph does not apply for the purposes of paragraph 27(1)(b) (requirement that plan shares are in a company not under another company's control).

*Determination of market value*

- 92
- (1) For the purposes of the SIP 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 35(3) (determination of value of shares subject to restrictions or risk of forfeiture).
  - (3) Where the market value of shares on any date has to be determined for the purposes of the SIP code, the Inland Revenue and the trustees may agree that it is to be determined by reference—
    - (a) to a date or dates, or

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- (b) to an average of the values on a number of dates, stated in the agreement.

*Power to require information*

- 93 (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 SIP 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—
- (a) information to enable the Inland Revenue—
    - (i) to decide whether to approve a SIP or to withdraw an approval already given, or
    - (ii) to determine the liability to tax, including capital gains tax, of any person who has participated in a plan, and
  - (b) information about the administration of a plan and any proposed alteration of the terms of a plan.
- (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.

*Meaning of “associated company”*

- 94 (1) For the purposes of the SIP code one company is an “associated company” of another company at a given time if—
- (a) one has control of the other, or
  - (b) both are under the control of the same person or persons.
- (2) Sub-paragraph (1) does not, however, apply for the purposes of paragraph 29 (prohibited shares).
- (3) For the purposes of sub-paragraph (1) the question whether a person controls a company is to be determined in accordance with section 416(2) to (6) of ICTA.

*Meaning of participant ceasing to be in relevant employment*

- 95 (1) This paragraph explains what is meant, for the purposes of the SIP code, by a participant ceasing to be in relevant employment.
- (2) For the purposes of the SIP code “relevant employment” means employment by the company or any associated company.
- (3) A participant who remains in the employment of the company or any associated company does not cease to be in relevant employment.

*Meaning of shares being withdrawn from plan*

- 96 (1) For the purposes of the SIP code plan shares are withdrawn from a SIP when—
- (a) they are transferred by the trustees to the participant, or another person, on the direction of the participant,

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- (b) the participant assigns, charges or otherwise disposes of the beneficial interest in the shares, or
- (c) they are disposed of by the trustees, on the direction of the participant, in circumstances where the trustees account (or hold themselves ready to account) for the proceeds to the participant or to another person.

(2) Where the participant has died, the references in sub-paragraph (1) to the participant are to the participant's personal representatives.

*Meaning of shares ceasing to be subject to plan*

- 97 (1) For the purposes of the SIP code plan shares cease to be subject to a SIP when—
- (a) they are withdrawn from the plan,
  - (b) the participant to whom the shares were awarded ceases to be in relevant employment at a time when the shares are subject to the plan, or
  - (c) the trustees dispose of the shares under provision made in accordance with paragraph 79 (meeting by trustees of PAYE obligations).
- (2) If an individual—
- (a) participates in an award of partnership shares, and
  - (b) ceases to be in relevant employment at any time during the acquisition period relating to that award,
- the individual is to be treated for the purposes of this paragraph as ceasing to be in relevant employment immediately after the shares are awarded.
- (3) In sub-paragraph (2) “the acquisition period” in relation to an award means—
- (a) where there was no accumulation period, the period beginning with the deduction of the partnership share money and ending with the acquisition date (as defined by paragraph 50(4)), and
  - (b) where there was an accumulation period, the period beginning with the end of that period and ending immediately before the acquisition date (as defined by paragraph 52(5)).
- (4) If a participant ceases to be in relevant employment, the participant's plan shares are to be treated as ceasing to be subject to the plan on the date of leaving.

*Meaning of “the specified retirement age”*

- 98 (1) In the SIP code, in relation to a SIP, “the specified retirement age” means the retirement age specified in the plan.
- (2) The age so specified—
- (a) must be the same for men and women, and
  - (b) must not be less than 50.

*Minor definitions*

- 99 (1) In the SIP code—
- “articles of association”, in relation to a company, includes any other written agreement between the shareholders of the company;
  - “company” means a body corporate;

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“group of companies” means a company and any other companies of which it has control, and “group company” has a corresponding meaning;

“participant’s plan shares”, in relation to a SIP, means plan shares that have been awarded to an individual participant;

“PAYE obligations” means (subject to paragraphs 79(2) and 80(2)) obligations of any person under—

- (a) Part 11 of this Act, or
- (b) PAYE regulations;

“plan shares”, in relation to a SIP, means—

- (a) free, partnership or matching shares which have been awarded to participants under the plan,
- (b) dividend shares which have been acquired on behalf of participants under the plan, and
- (c) shares in relation to which paragraph 87(1) applies (company reconstructions: new shares),

and which (in each case) remain subject to the plan;

“provision for forfeiture” means a provision to the effect that a participant ceases to be beneficially entitled to shares on the occurrence of certain events, and “forfeiture” is to be read accordingly;

“qualifying corporate bond” has the meaning given by section 117 of TCGA 1992;

“redundancy” has the same meaning as in ERA 1996 or ER(NI)O 1996;

“rights arising under a rights issue” means rights conferred in respect of a participant’s plan shares to be allotted, on payment, other shares or securities or rights of any description in the same company.

- (2) For the purposes of the SIP code references to “shares” include fractions of shares forming part of the share capital of a company registered in a foreign country the law of which recognises such fractions.
- (3) For the purposes of the SIP code a company is a member of a consortium owning another company if it is one of a number of companies—
  - (a) which between them beneficially own not less than 75% of the other company’s ordinary share capital, and
  - (b) each of which beneficially owns not less than 5% of that capital.

### *Index of defined expressions*

100 In the SIP code the following expressions are defined or otherwise explained by the provisions indicated below:

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|-----------------------------|--|
| accumulation period         | paragraph 51                             |
| approval, approved          | section 488(4) (and see paragraph 83(4)) |
| articles of association     | paragraph 99(1)                          |
| associated company          | paragraph 94 (and see paragraph 29(3))   |
| award of shares             | paragraph 5(1)                           |
| the Board of Inland Revenue | section 720(2)                           |

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|---|---|
| building society  | section 832(1) of ICTA                                  |
| ceasing to be in relevant employment (in relation to a participant) | paragraph 95  |
| ceasing to be subject to plan (in relation to shares)               | paragraph 97  |
| child   | section 832(5) of ICTA (and see section 721(6))         |
| close company   | section 832(1) of ICTA (and see paragraph 20(4))        |
| company   | paragraph 99(1)   |
| the company (in relation to a SIP)                                  | paragraph 2(2)  |
| company reconstruction (in Part 11 of this Schedule)                | paragraph 86(1)   |
| connected person  | section 718   |
| consortium (member of)  | paragraph 99(3)   |
| constituent company   | paragraph 4(3)  |
| control   | section 719 (and see paragraphs 29(5), 37(6) and 94(3)) |
| distribution  | section 832(1) of ICTA                                  |
| dividend shares   | paragraph 62(3)(b)                                      |
| earnings  | section 62 and see section 721(7)                       |
| eligible shares (in Part 4 of this Schedule)                        | paragraph 25(2)   |
| employee, employed, employer and employment                         | section 4   |
| the employment requirement  | paragraph 15(3)   |
| forfeiture, provision for   | paragraph 99(1)   |
| free shares   | paragraph 2(1)(a)                                       |
| group company   | paragraph 99(1)   |
| group of companies  | paragraph 99(1)   |
| group plan  | paragraph 4(2)  |
| holding period  | paragraph 36 (and see paragraph 67)                     |
| the Inland Revenue  | section 720(1)  |
| market value (of shares)  | paragraph 92  |
| matching shares   | paragraph 3(1)  |
| notice (except in paragraph 54 or 55)                               | section 832(1) of ICTA                                  |
| ordinary share capital  | section 832(1) of ICTA                                  |
| parent company  | paragraph 4(1)  |



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| participant (in relation to a SIP)       | paragraph 5(4)   |
| participant's plan shares                | paragraph 99(1) (and see paragraph 87(1))                              |
| participation in an award of shares      | paragraph 5(3)   |
| partnership share agreement              | paragraph 44   |
| partnership share money                  | paragraph 45(2)  |
| partnership shares                       | paragraph 2(1)(b)  |
| PAYE deduction                           | section 488(4)   |
| PAYE obligations                         | paragraph 99(1)  |
| PAYE regulations                         | section 684(8)   |
| performance allowances                   | paragraph 34(4)  |
| personal representatives                 | section 721(1)   |
| plan requirements (in relation to a SIP) | paragraph 2(2)   |
| plan shares (in relation to a SIP)       | paragraph 99(1) (and see paragraphs 86 to 88)                          |
| the plan trust                           | paragraph 71(3)  |
| provision for forfeiture                 | paragraph 99(1)  |
| qualifying corporate bond                | paragraph 99(1)  |
| qualifying employee                      | paragraph 8(6)   |
| recognised stock exchange                | section 841 of ICTA  |
| redundancy                               | paragraph 99(1)  |
| reinvestment                             | paragraph 62(3)(a)   |
| relevant employment                      | paragraph 95(2)  |
| rights arising under a rights issue      | paragraph 99(1)  |
| salary                                   | paragraph 43(4)  |
| share incentive plan ("SIP")             | section 488(4)   |
| shares                                   | paragraph 99(2) (and in the context of a new holding, paragraph 87(6)) |
| the SIP code                             | section 488(3)   |
| Special Commissioners                    | section 4 of TMA 1970  |
| the specified retirement age             | paragraph 98(1)  |
| tax                                      | section 832(3) of ICTA   |
| tax year                                 | section 721(1)   |
| the trustees                             | paragraphs 2(2), 71(1)   |
| the trust instrument                     | paragraph 71(3)  |
| withdrawal of shares from plan           | paragraph 96(1)  |

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