

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 8. (See end of Document for details)

SCHEDULES

SCHEDULE 5

ENTERPRISE MANAGEMENT INCENTIVES

PART 8

SUPPLEMENTARY PROVISIONS

Power to require information

- 51 (1) [^{F1}An officer of Revenue and Customs] may by notice require a person to provide [^{F2}the officer] with information—
- (a) which [^{F2}the officer] reasonably [^{F3}requires] for the performance of [^{F4}the officer's] 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 [^{F1}an officer of Revenue and Customs] —
- (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.

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)
- F2** Words in Sch. 5 para. 51(1) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 4 para. 103\(1\)\(aa\)](#); S.I. 2005/1126, art. 2(2)(h)
- F3** Word in Sch. 5 para. 51(1) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 4 para. 124\(e\)](#); S.I. 2005/1126, art. 2(2)(h)
- F4** Words in Sch. 5 para. 51(1) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 4 para. 103\(2\)\(m\)](#); S.I. 2005/1126, art. 2(2)(h)

Annual returns

- [^{F5}52 (1) This paragraph applies in relation to a company whose shares are (or have been) subject to qualifying options.
- (2) The company must give to Her Majesty's Revenue and Customs (“HMRC”) a return for each tax year falling (wholly or partly) in the company's qualifying option period.

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 8. (See end of Document for details)

- (3) The company's “qualifying option period” is the period—
- (a) beginning when the first qualifying option to which the company's shares are subject is granted, and
 - (b) ending when the termination condition is met.
- (4) “The termination condition” is met when the company's shares—
- (a) are no longer subject to qualifying options, and
 - (b) will no longer become subject to qualifying options.
- (5) The return for a tax year must—
- (a) contain, or be accompanied by, such information as HMRC may require, and
 - (b) be given on or before 6 July in the following tax year.
- (6) The information which may be required under sub-paragraph (5)(a) includes (in particular) information to enable HMRC to determine the liability to tax, including capital gains tax, of any person who has been granted a qualifying option to which the company's shares are subject.
- (7) If the company becomes aware that—
- (a) anything which should have been included in, or should have accompanied, a return for a tax year was not included in, or did not accompany, the return,
 - (b) anything which should not have been included in, or should not have accompanied, a return for a tax year was included in, or accompanied, the return, or
 - (c) any other error or inaccuracy has occurred in relation to a return for a tax year,
- the company must give an amended return correcting the position to HMRC without delay.]

Textual Amendments

F5 Sch. 5 paras. 52, 52A substituted for Sch. 5 para. 52 (with effect in accordance with Sch. 8 para. 224 of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 8 paras. 218, 222](#)

[^{F5}52A(1) A return under paragraph 52, and any information accompanying the return, must be given electronically.

- (2) But, if HMRC consider it appropriate to do so, HMRC may allow a company to give a return or any accompanying information in another way; and, if HMRC do so, the return or information must be given in that other way.
- (3) The Commissioners for Her Majesty's Revenue and Customs—
- (a) must prescribe how returns and accompanying information are to be given electronically;
 - (b) may make different provision for different cases or circumstances.]

Textual Amendments

F5 Sch. 5 paras. 52, 52A substituted for Sch. 5 para. 52 (with effect in accordance with Sch. 8 para. 224 of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 8 paras. 218, 222](#)

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 8. (See end of Document for details)

Compliance with time limits

- 53 (1) For the purposes of this Part and Part 7 a person [^{F6}“P”] is not to be regarded as having failed to do anything required to be done within a particular period of time if—
- (a) [^{F7}P] had a reasonable excuse for not doing it within that period, and
 - (b) if the excuse ceased to exist, [^{F7}P] did it without unreasonable delay after the excuse ceased to exist.
- (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.
- [^{F8}(3) For the purposes of sub-paragraph (1)—
- (a) an insufficiency of funds is not a reasonable excuse, unless attributable to events outside P's control, and
 - (b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure.]

Textual Amendments

- F6** Word in Sch. 5 para. 53(1) inserted (6.4.2014) by Finance Act 2014 (c. 26), Sch. 8 paras. 219(2)(a), 222
- F7** Word in Sch. 5 para. 53(1)(a)(b) substituted (6.4.2014) by Finance Act 2014 (c. 26), Sch. 8 paras. 219(2)(b), 222
- F8** Sch. 5 para. 53(3) inserted (6.4.2014) by Finance Act 2014 (c. 26), Sch. 8 paras. 219(3), 222 (with Sch. 8 para. 225)

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.

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 8. (See end of Document for details)

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 [^{F1}an officer of Revenue and Customs], or
 - (b) a reference is made under sub-paragraph (4),
- the market value of shares is to be determined by [^{F1}an officer of Revenue and Customs].
- (3) Where the market value of shares on any date needs to be determined for the purposes of the EMI code, [^{F1}an officer of Revenue and Customs] 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 [^{F1}an officer of Revenue and Customs] determination has been given to the employer company, [^{F9}the company may apply to the tribunal for the question of the market value of the shares to be determined].
- ^{F10}(5)
- [^{F11}(6) Any such application is to be subject to the relevant provisions of Part 5 of TMA 1970 (see, in particular, section 48(2)(b) of that Act).]

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)
- F9** Words in Sch. 5 para. 56(4) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 355(2)**
- F10** Sch. 5 para. 56(5) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 355(3)**
- F11** Sch. 5 para. 56(6) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 355(4)**

Appeal against determination of market value of shares

- 57 (1) The employer company may appeal against any determination by [^{F1}an officer of Revenue and Customs] under paragraph 56.
- (2) Notice of appeal must be given to [^{F1}an officer of Revenue and Customs] within 30 days after the date when notice of their determination is given to the employer company.
- ^{F12}(3)

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)

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 8. (See end of Document for details)

F12 Sch. 5 para. 57(3) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 356](#)

F¹³ Penalties

Textual Amendments

F13 Sch. 5 paras. 57A-57E and cross-heading inserted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 8 paras. 220, 222](#)

F14 57A

Textual Amendments

F14 Sch. 5 para. 57A omitted (with effect in accordance with s. 17(5)-(9) of the amending Act) by virtue of [Finance \(No. 2\) Act 2023 \(c. 30\)](#), [s. 17\(4\)](#)

- 57B** (1) This paragraph applies if a company fails to give a return for a tax year (containing, or accompanied by, all required information) on or before the date mentioned in paragraph 52(5)(b) (“the date for delivery”).
- (2) The company is liable for a penalty of £100.
- (3) If the company's failure continues after the end of the period of 3 months beginning with the date for delivery, the company is liable for a further penalty of £300.
- (4) If the company's failure continues after the end of the period of 6 months beginning with the date for delivery, the company is liable for a further penalty of £300.
- (5) The company is liable for a further penalty under this sub-paragraph if—
- (a) the company's failure continues after the end of the period of 9 months beginning with the date for delivery,
 - (b) HMRC decide that such a penalty should be payable, and
 - (c) HMRC give notice to the company specifying the period in respect of which the penalty is payable.
- (The company may be liable for more than one penalty under this sub-paragraph.)
- (6) The penalty under sub-paragraph (5) is £10 for each day that the failure continues during the period specified in the notice under sub-paragraph (5)(c).
- (7) The period specified in the notice under sub-paragraph (5)(c)—
- (a) may begin earlier than the date on which the notice is given, but
 - (b) may not begin until after the end of the period mentioned in sub-paragraph (5)(a) or, if relevant, the end of any period specified in any previous notice under sub-paragraph (5)(c) given in relation to the failure.
- 57C** (1) This paragraph applies if a return under paragraph 52, or any information accompanying such a return—
- (a) is given otherwise than in accordance with paragraph 52A, or
 - (b) contains a material inaccuracy—
 - (i) which is careless or deliberate, or
 - (ii) which is not corrected as required by paragraph 52(7).

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 8. (See end of Document for details)

- (2) The company is liable for a penalty of an amount decided by HMRC.
 - (3) The penalty must not exceed £5,000.
 - (4) For the purposes of sub-paragraph (1)(b)(i) an inaccuracy is careless if it is due to a failure by the company to take reasonable care.
- 57D
- (1) This paragraph applies if a company is liable for a penalty under this Part.
 - (2) HMRC must assess the penalty and notify the company of the assessment.
 - (3) Subject to sub-paragraph (4), the assessment must be made no later than 12 months after the date on which the company becomes liable for the penalty.
 - (4) In the case of a penalty under paragraph 57C(1)(b), the assessment must be made no later than—
 - (a) 12 months after the date on which HMRC become aware of the inaccuracy, and
 - (b) 6 years after the date on which the company becomes liable for the penalty.
 - (5) A penalty payable under this Part must be paid—
 - (a) no later than 30 days after the date on which the notice under sub-paragraph (2) is given to the company, or
 - (b) if notice of appeal is given against the penalty under paragraph 57E(1) or (2), no later than 30 days after the date on which the appeal is determined or withdrawn.
 - (6) The penalty may be enforced as if it were corporation tax or, if the company is not within the charge to corporation tax, income tax charged in an assessment and due and payable.
 - (7) Sections 100 to 103 of TMA 1970 do not apply to a penalty under this Part.
- 57E
- (1) A company may appeal against a decision of HMRC that the company is liable for a penalty under this Part.
 - (2) A company may appeal against a decision of HMRC as to the amount of a penalty payable by the company under this Part.
 - (3) Notice of appeal must be given to HMRC no later than 30 days after the date on which the notice under paragraph 57D(2) is given to the company.
 - (4) On an appeal under sub-paragraph (1) which is notified to the tribunal, the tribunal may affirm or cancel the decision.
 - (5) On an appeal under sub-paragraph (2) which is notified to the tribunal, the tribunal may—
 - (a) affirm the amount of the penalty decided, or
 - (b) substitute another amount for that amount.
 - (6) Subject to this paragraph and paragraph 57D, the provisions of Part 5 of TMA 1970 relating to appeals have effect in relation to an appeal under this paragraph as they have effect in relation to an appeal against an assessment to corporation tax or, if the company is not within the charge to corporation tax, income tax.]

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 8. (See end of Document for details)

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 [^{F15}section 1006 of ITA 2007];
 - “shares” includes stock.

Textual Amendments

F15 Words in Sch. 5 para. 58 substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 450\(3\)](#) (with [Sch. 2](#))

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	[^{F16} section 721(6)]
close company	[^{F17} section 989 of ITA 2007], (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
control	section 719 (and see paragraphs 10(2) and 23(6))
disqualifying event	see sections 532 to 539
distribution	[^{F18} section 989 of ITA 2007]
earnings	section 62 and see section 721(7)
the EMI code	section 527(3)
employee and employment	section 4
eligible employee	paragraph 24

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 8. (See end of Document for details)

employer company	paragraph 2
excluded activities	paragraph 16
farming	[^{F19} section 996 of ITA 2007]
F20	F20
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generally accepted accounting practice	[^{F21} section 997 of ITA 2007]
group of companies	paragraph 58
the group	paragraph 58
F22	F22
.
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	[^{F23} section 989 of ITA 2007]
[^{F24} offshore installation]	[^{F25} sections 1001 and 1002 of ITA 2007]
old option	paragraph 41(7)
ordinary share capital	[^{F26} section 989 of ITA 2007]
original option	section 529(3)
parent company	paragraph 58
personal representative	[^{F27} section 989 of ITA 2007]
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)
shares	paragraph 58 (and see paragraph 40(4) (a))
single company	paragraph 58
F28	F28
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Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 8. (See end of Document for details)

51% subsidiary	[^{F29} section 989 of ITA 2007]
tax	[^{F30} section 989 of ITA 2007]
tax year	[^{F31} section 4(2) of ITA 2007 (as applied by section 989 of that Act)]
trade	[^{F32} section 989 of ITA 2007]
[^{F33} tribunal	section 989 of ITA 2007]
United Kingdom	[^{F34} section 1013 of ITA 2007]

Textual Amendments

- F16** Words in Sch. 5 para. 59 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\)](#), [Sch. 1 para. 450\(4\)\(a\)](#) (with [Sch. 2](#))
- F17** Words in Sch. 5 para. 59 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\)](#), [Sch. 1 para. 450\(4\)\(b\)](#) (with [Sch. 2](#))
- F18** Words in Sch. 5 para. 59 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\)](#), [Sch. 1 para. 450\(4\)\(c\)](#) (with [Sch. 2](#))
- F19** Words in Sch. 5 para. 59 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\)](#), [Sch. 1 para. 450\(4\)\(d\)](#) (with [Sch. 2](#))
- F20** Sch. 5 para. 59 Table entry omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 357\(2\)](#)
- F21** Words in Sch. 5 para. 59 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\)](#), [Sch. 1 para. 450\(4\)\(e\)](#) (with [Sch. 2](#))
- F22** Words in Sch. 5 para. 59 repealed (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 124\(f\)](#), [Sch. 5](#); [S.I. 2005/1126](#), art. 2(2)(h)(i)
- F23** Words in Sch. 5 para. 59 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\)](#), [Sch. 1 para. 450\(4\)\(f\)](#) (with [Sch. 2](#))
- F24** Words in Sch. 5 para. 59 inserted (with effect in accordance with [Sch. 27 para. 17\(6\)\(7\)](#) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 27 para. 17\(5\)](#)
- F25** Words in Sch. 5 para. 59 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\)](#), [Sch. 1 para. 450\(4\)\(g\)](#) (with [Sch. 2](#))
- F26** Words in Sch. 5 para. 59 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\)](#), [Sch. 1 para. 450\(4\)\(h\)](#) (with [Sch. 2](#))
- F27** Words in Sch. 5 para. 59 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\)](#), [Sch. 1 para. 450\(4\)\(i\)](#) (with [Sch. 2](#))
- F28** Sch. 5 para. 59 Table entry omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 357\(3\)](#)
- F29** Words in Sch. 5 para. 59 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\)](#), [Sch. 1 para. 450\(4\)\(j\)](#) (with [Sch. 2](#))
- F30** Words in Sch. 5 para. 59 substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 399\(6\)](#) (with [Sch. 2](#))
- F31** Words in Sch. 5 para. 59 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\)](#), [Sch. 1 para. 450\(4\)\(l\)](#) (with [Sch. 2](#))
- F32** Words in Sch. 5 para. 59 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\)](#), [Sch. 1 para. 450\(4\)\(m\)](#) (with [Sch. 2](#))
- F33** Words in Sch. 5 para. 59 Table inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 357\(4\)](#)
- F34** Words in Sch. 5 para. 59 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\)](#), [Sch. 1 para. 450\(4\)\(n\)](#) (with [Sch. 2](#))

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