
Status: Point in time view as at 28/07/2000.

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SCHEDULES

SCHEDULE 8

EMPLOYEE SHARE OWNERSHIP PLANS

PART IV

FREE SHARES

Introduction

- 23 If the plan provides for free shares it must comply with the requirements of this Part of this Schedule.

Maximum annual award

- 24 (1) The plan must provide that the initial market value of the free shares awarded to a participant in any tax year cannot exceed £3,000.
- (2) For this purpose the “initial market value” of shares means their market value on the date on which they are awarded.
- (3) For the purposes of this paragraph the market value of shares subject to restrictions or risk of forfeiture shall be determined as if there were no such restriction or risk.

For this purpose shares are “subject to risk of forfeiture” if the interest that may be acquired is only conditional within the meaning of section 140C of the Taxes Act 1988.

Performance allowances

- 25 (1) Sub-paragraph (2) applies if the plan provides for performance allowances, that is for—
- (a) whether or not free shares will be awarded to an individual, or
 - (b) the number or value of free shares awarded,
- to be conditional on performance targets being met.
- (2) Where this sub-paragraph applies—
- (a) the requirements of—
 - paragraph 26 (performance allowances: general application),
 - paragraph 27 (performance measures and targets), and

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paragraph 28 (performance allowances: information to be given to employees), and
 (b) the requirements of either paragraph 29 (method one) or paragraph 30 (method two),
 must be complied with.

Performance allowances: general application

26 If the plan provides for performance allowances in relation to an award it must make provision for such allowances for all qualifying employees in relation to that award.

Performance allowances: measures and targets

- 27 (1) If the plan provides for performance allowances the following requirements must be met with respect to performance measures and performance targets.
- (2) The performance measures used must—
- (a) be based on business results or other objective criteria, and
 - (b) be fair and objective measures of the performance of the units to which they are or may be applied.
- (3) The performance targets must be set for performance units comprising one or more employees.
- (4) For the purposes of an award of free shares under the plan an employee must not be a member of more than one performance unit.

Performance allowances: information to be given to employees

- 28 (1) If the plan provides for performance allowances in relation to an award of shares, the plan must require the company—
- (a) to notify each employee participating in the award of the performance targets and measures which, under the plan, will be used to determine the number or value of free shares awarded to him; and
 - (b) to notify all qualifying employees of the company or, in the case of a group plan, of any participating company, in general terms, of the performance measures to be used to determine the number or value of free shares to be awarded to each employee participating in the award.
- (2) The notices must be given as soon as reasonably practicable.
- (3) The company may exclude from the notice mentioned in sub-paragraph (1)(b) any information the disclosure of which the company reasonably considers would prejudice commercial confidentiality.

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Performance allowances: method one

- 29 (1) The requirements of this paragraph are that if the plan provides for performance allowances in relation to an award of shares—
- (a) at least 20% of the shares in the award must be awarded without reference to performance in accordance with the requirement of paragraph 9 (participation on same terms),
 - (b) the remaining shares must be awarded by reference to performance, and
 - (c) the highest number of shares within paragraph (b) awarded to an individual must be not more than four times the highest number of shares within paragraph (a) awarded to an individual.
- (2) In determining for the purposes of sub-paragraph (1)(a) whether the requirement of paragraph 9 (participation on same terms) is met the shares to which sub-paragraph (1)(a) above applies are treated as a separate award of free shares.
- (3) Where the plan meets the requirements of sub-paragraph (1), the requirement of paragraph 9 (participation on same terms) does not apply to any provision of the plan relating to the awarding of shares within sub-paragraph (1)(b).
- (4) If free shares of different classes are awarded, the requirements of sub-paragraph (1) apply separately in relation to each class.

Performance allowances: method two

- 30 (1) The requirements of this paragraph are that in relation to an award of free shares under the plan—
- (a) some or all of the shares must be awarded by reference to performance; and
 - (b) the awarding of the shares to qualifying employees who are members of the same performance unit must meet the requirement of paragraph 9 (participation on same terms).
- (2) In determining for the purposes of sub-paragraph (1)(b) whether the requirement of paragraph 9 (participation on same terms) is met the free shares awarded in respect of each performance unit are treated as a separate award of free shares.
- (3) If this method is used nothing in paragraph 9 (participation on same terms) requires the awarding of shares to members of different performance units to be on the same terms.

The holding period

- 31 (1) The plan must require the company in respect of each award of free shares to specify a period (“the holding period”) during which a participant is bound by contract with the company—
- (a) to permit his free shares to remain in the hands of the trustees, and
 - (b) not to assign, charge or otherwise dispose of his beneficial interest in the shares.
- (2) The holding period—

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- (a) must be a period of at least three years but not more than five years, beginning with the date on which the shares in question are awarded to the participant, and
 - (b) must be the same in respect of all shares in the same award.
- (3) The plan may authorise the company to specify different holding periods from time to time.

But it must prevent the company from increasing the holding period specified in respect of free shares that have been awarded under the plan.

- (4) The participant's obligations with respect to the holding period—
- (a) come to an end if during the period he ceases to be in relevant employment, and
 - (b) are subject to—
 - paragraph 32 (power to authorise trustees to accept general offers etc.);
 - paragraph 73 (meeting PAYE obligations); and
 - paragraph 121(5) (termination of plan: early removal of shares with participant's consent).

Holding period: power to authorise trustees to accept general offers etc.

- 32 A participant may direct the trustees to do any of the following during the holding period—
- (a) to accept an offer for any of his free shares (“the original shares”) if the acceptance or agreement will result in a new holding being equated with the original shares for the purposes of capital gains tax; or
 - (b) to accept an offer of a qualifying corporate bond (whether alone or with other assets or cash or both) for his free shares if the offer forms part of such a general offer as is mentioned in paragraph (c); or
 - (c) to accept an offer of cash, with or without other assets, for his free shares if the offer forms part of a general offer which is made to holders of shares of the same class as his or of shares in the same company and which is made in the first instance on a condition such that if it is satisfied the person making the offer will have control of that company, within the meaning of section 416 of the Taxes Act 1988; or
 - (d) to agree to a transaction affecting his free shares or such of them as are of a particular class, if the transaction would be entered into pursuant to a compromise, arrangement or scheme applicable to or affecting—
 - (i) all the ordinary share capital of the company or, as the case may be, all the shares of the class in question, or
 - (ii) all the shares, or all the shares of the class in question, which are held by a class of shareholders identified otherwise than by reference to their employment or their participation in an approved employee share ownership plan.

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