

INCOME TAX (EARNINGS AND PENSIONS) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Omitted material

Schedule 2: Approved Share Incentive Plans

Overview

Part 8: Cash dividends and dividend shares

3135. This Part is the seventh of eight that deal with the requirements that a SIP must meet before it may be approved. This Part, which consists of paragraphs 62 to 69, deals with the treatment of cash dividends. The SIP may provide that, where the company so directs, the cash dividends must be applied in acquiring further plan shares, known as “dividend shares”. The application of cash dividends in this way is referred to as “reinvestment” in the SIP code.
3136. Although it would be more consistent to begin each Part of this Schedule by listing the plan requirements that must be met, there are difficulties in beginning this Part in this way. The plan may or may not contain a direction authorising reinvestment; and the company may or may not give a direction for reinvestment to take place. The list of provisions that apply if the trustees are authorised to carry out reinvestment is therefore postponed until paragraph 63.

Paragraph 62: Reinvestment of cash dividends

3137. This paragraph sets out propositions that are of central importance for this Part of this Schedule. A SIP may provide that, where the company so directs, the trustees must apply all cash dividends in respect of plan shares in acquiring further plan shares on behalf of participants. This application of cash dividends is referred to as “reinvestment” in the SIP code, and the further plan shares acquired are referred to as “dividend shares”.
3138. *Sub-paragraphs (1) to (4)* of this paragraph derive from sub-paragraphs (1), (2) and (4) of paragraph 53 of Schedule 8; and *sub-paragraph (5)* derives from paragraph 56(5) of that Schedule. (Paragraph 53(3) of Schedule 8 is the source for paragraph 69 in this Schedule.).
3139. Sub-paragraph (1) contains a reference to “the trustees”, so permitting the use of a verb in the active, and not the passive, voice; and sub-paragraph (4) contains additional concluding words to make its meaning easier to grasp.
3140. *Sub-paragraph (5)* consists of a proposition placed considerably earlier than in the corresponding Part of Schedule 8, in the interests of user-friendliness.

Paragraph 63: Requirements to be met as regards cash dividends

3141. This paragraph lists the paragraphs in this Part that apply if the trustees of the SIP are directed to apply cash dividends in acquiring further plan shares. It is new.
3142. *Sub-paragraph (3)* provides that the SIP must in any event meet the requirement contained in paragraph 69.

Paragraph 64: Limit on amount reinvested

3143. This paragraph specifies a limit for total dividend reinvestment that must be included in the plan. It derives from paragraph 54 of Schedule 8.
3144. *Sub-paragraph (2)(b)* has new wording, including a mention of “approved SIPs”, and this has permitted the removal of the two further sub-paragraphs from the source legislation.

Paragraph 65: General requirements as to dividend shares

3145. This paragraph sets out the general requirements relating to dividend shares that the plan must meet. It derives from paragraph 55 of Schedule 8.
3146. In *paragraph (a)*, the words “in the same company” have been added at the beginning. It is likely that these words would be implied if the point ever arose; but the addition of these words put the point beyond any doubt. See *Note 66* in Annex 2.

Paragraph 66: Acquisition of dividend shares

3147. This paragraph sets out the conditions relating to the acquisition of dividend shares that a SIP must meet. The acquisition must take place on “the acquisition date”. The paragraph derives from sub-paragraphs (1) to (4) of paragraph 56 of Schedule 8. (Paragraph 56(5) of Schedule 8 is the source of paragraph 62(5) of this Schedule.)
3148. The definition of “the acquisition date” has now been placed at the end of this paragraph (in *sub-paragraph (4)*); and there have been changes in the detail of the wording at various places in this paragraph.
3149. The second sentence of paragraph 56(2) of Schedule 8 has been omitted. This sentence merely stated a proposition that was true in any case, and has accordingly been removed on the basis that it is unnecessary.

Paragraph 67: Holding period for dividend shares

3150. This paragraph applies the provisions relating to the holding period for free shares to dividend shares. It derives from paragraph 57 of Schedule 8.
3151. The paragraph is more closely aligned with paragraph 61 of this Schedule than is the case with the corresponding provisions in Schedule 8.

Paragraph 68: Reinvestment: amounts to be carried forward

3152. This paragraph contains provisions that apply when an amount is not reinvested. The paragraph derives from paragraph 58 of Schedule 8.
3153. *Sub-paragraphs (1) to (3)* all derive from paragraph 58(1) of Schedule 8. In order to make the legislation easier to understand that provision is divided into a number of separate propositions; and, as a result, there have been changes in the detail of the wording. In *sub-paragraphs (4)(b)* and *(c)*, cross-references have been added.

Paragraph 69: Cash dividends where no requirement to reinvest

- 3154. This paragraph sets out the provision that a SIP must make for cash dividends that are not required to be reinvested under the plan. The dividends must be paid over to participants as soon as practicable.
- 3155. This paragraph derives from paragraph 53(3) of Schedule 8; but that sub-paragraph is now dealt with separately to take account of the circumstances in which it applies (see paragraph 63(3) of this Schedule).
- 3156. The material in paragraph 53(3) of Schedule 8 has been reorganised and divided into two sub-paragraphs to make it easier to understand. The definition of “distributable cash dividends” is new.