

SCHEDULES

SCHEDULE 2

APPROVED SHARE INCENTIVE PLANS

PART 3

ELIGIBILITY OF INDIVIDUALS

Eligibility of individuals: introduction

- 13 A SIP must meet the plan requirements contained in—
paragraph 14 (time of eligibility to participate),
paragraph 15 (the employment requirement),
paragraph 18 (requirement not to participate in other SIPs), and
paragraph 19 (the “no material interest” requirement).

Time of eligibility to participate

- 14 (1) The plan must provide that an individual may only participate in an award of shares if the individual is eligible to participate in the award at the appropriate time mentioned below.
- (2) In the case of an award of free shares, the appropriate time is the time when the award is made.
- (3) In the case of an award of partnership shares where the plan does not provide for an accumulation period, the appropriate time is the time of the deduction of the partnership share money relating to the award.
- (4) In the case of an award of partnership shares where the plan does provide for an accumulation period, the appropriate time is the time of the first deduction of partnership share money relating to the award.
- (5) In the case of an award of matching shares where the plan does not provide for an accumulation period, the appropriate time is the time of the deduction of the partnership share money relating to the award of partnership shares to which the matching shares relate.
- (6) In the case of an award of matching shares where the plan does provide for an accumulation period, the appropriate time is the time of the first deduction of partnership share money relating to the award of partnership shares to which the matching shares relate.
- (7) For the purposes of this paragraph an individual is eligible to participate in an award of shares under the plan if and only if the requirements of the plan are met as to—
(a) employment (see paragraph 15),

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- (b) not participating in other SIPs (see paragraph 18), and
 - (c) not having a material interest (see paragraph 19).
- (8) In the case of an individual within paragraph 8(5) (all-employee nature of plan: non-UK resident taxpayer), the individual is not eligible to participate in an award of shares under the plan unless (in addition to the requirements mentioned in sub-paragraph (7)) any further eligibility requirements of the plan are met.

The employment requirement

- 15 (1) The plan must provide that an individual is not eligible to participate in an award of shares unless the individual meets the requirement in sub-paragraph (2).
- (2) The requirement is that the individual—
- (a) is an employee of—
 - (i) the company, or
 - (ii) in the case of a group plan, a constituent company, and
 - (b) if the plan provides for a qualifying period, has at all times during that period been an employee of a qualifying company.
- (3) In the SIP code “the employment requirement” means the requirement in sub-paragraph (2).
- (4) This paragraph is supplemented—
- (a) as regards qualifying periods, by paragraph 16, and
 - (b) as regards the meaning of “qualifying company”, by paragraph 17.

Qualifying periods

- 16 (1) This paragraph applies if the plan provides for a qualifying period in relation to an award.
- (2) In the case of an award of free shares, the qualifying period must be a period of not more than 18 months ending with the date on which the award is made.
- (3) In the case of an award of partnership shares where the plan does not provide for an accumulation period, the qualifying period must be a period of not more than 18 months ending with the deduction of partnership share money relating to the award.
- (4) In the case of an award of partnership shares where the plan does provide for an accumulation period, the qualifying period must be a period of not more than 6 months ending with the start of the accumulation period relating to the award.
- (5) In the case of an award of matching shares where the plan does not provide for an accumulation period, the qualifying period must be a period of not more than 18 months ending with the deduction of partnership share money relating to the award of partnership shares to which the matching shares relate.
- (6) In the case of an award of matching shares where the plan does provide for an accumulation period, the qualifying period must be a period of not more than 6 months ending with the start of the accumulation period relating to the award of partnership shares to which the matching shares relate.
- (7) In relation to an award, the same qualifying period must apply in relation to all employees—

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- (a) of the company, or
 - (b) in the case of a group plan, of the constituent companies.
- (8) The plan may authorise the company to specify different qualifying periods in respect of different awards of shares, but the requirements in sub-paragraphs (2) to (7) apply to periods so specified.

Meaning of “qualifying company”

- 17 (1) For the purposes of paragraph 15(2) “qualifying company” has the meaning given by this paragraph.
- (2) Except in the case of a group plan, “qualifying company” means—
- (a) the company, or
 - (b) a company that, when the individual was employed by it, was an associated company—
 - (i) of the company, or
 - (ii) of another company qualifying under this paragraph.
- (3) In the case of a group plan, “qualifying company” means—
- (a) a company that is a constituent company at the end of the qualifying period mentioned in paragraph 15(2),
 - (b) a company that, when the individual was employed by it, was a constituent company, or
 - (c) a company that, when the individual was employed by it, was an associated company of—
 - (i) a company qualifying under paragraph (a) or (b), or
 - (ii) another company qualifying under this paragraph.

Requirement not to participate in other SIPs

- 18 (1) The plan must provide that an individual is not eligible to participate in an award of free, matching or partnership shares under the plan in a tax year if the individual—
- (a) has in that year already participated, or
 - (b) is at the same time to participate,
- in an award of shares under another approved SIP established by the company or a connected company.
- (2) For the purposes of this paragraph an individual is to be treated as having participated in an award of free shares under a SIP if the individual would have participated in that award but for the individual’s failure to obtain a performance allowance (see paragraph 34).
- (3) In this paragraph “connected company” means—
- (a) a company which controls or is controlled by the company or which is controlled by a company which also controls the company, or
 - (b) a company which is a member of a consortium owning the company or which is owned in part by the company as a member of a consortium.

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The “no material interest” requirement

- 19 (1) The plan must provide that an individual is not eligible to participate in an award of shares on any date if the individual has on that date, or has had within the 12 months ending with that date, a material interest in—
- (a) a close company whose shares may be awarded under the plan, or
 - (b) a company which has control of such a company or is a member of a consortium which owns such a company.
- (2) For the purposes of this paragraph an individual is to be regarded as having a material interest in a company if—
- (a) the individual,
 - (b) the individual together with one or more of the individual’s associates, or
 - (c) any such associate, with or without any other such associates,
- has a material interest in the company.
- (3) This paragraph is supplemented—
- (a) as regards the meaning of “material interest”, by paragraphs 20 and 21, and
 - (b) as regards the meaning of “associate”, by paragraphs 22 to 24.

Meaning of “material interest”

- 20 (1) In paragraph 19 (the “no material interest” requirement) references to a “material interest” in a company are to—
- (a) a material interest in the share capital of the company, or
 - (b) where it is a close company, a material interest in its assets.
- (2) A material interest in the share capital of a company means—
- (a) beneficial ownership of, or
 - (b) the ability to control (directly or through the medium of other companies or by any other indirect means),
- more than 25% of the ordinary share capital of the company.
- (3) A material interest in the assets of a close company means—
- (a) possession of, or
 - (b) an entitlement to acquire,
- such rights as would, in the event of the winding up of the company or in any other circumstances, give an entitlement to receive more than 25% of the assets that would then be available for distribution among the participators.
- (4) In this paragraph—
- “close company” includes a company that would be a close company but for—
- (a) section 414(1)(a) of ICTA (exclusion of companies not resident in the United Kingdom), or
 - (b) section 415 of ICTA (exclusion of certain quoted companies), and
- “participator” has the meaning given by section 417(1) of ICTA.
- (5) This paragraph is supplemented by paragraph 21 (material interest: options and interests in SIPs).

Material interest: options and interests in SIPs

- 21 (1) This paragraph applies for the purposes of paragraph 20 (meaning of “material interest”).
- (2) A right to acquire shares (however arising) is to be treated as a right to control them.
- (3) Sub-paragraph (4) applies in a case where—
- (a) the shares to be attributed to an individual consist of or include shares which the individual or another person has a right to acquire, and
 - (b) the circumstances are such that, if that right were to be exercised, the shares acquired would be shares which were previously unissued and which the company would be contractually bound to issue in the event of the exercise of the right.
- (4) In determining at any time prior to the exercise of the right whether the number of shares to be attributed to the individual exceeds 25% of the ordinary share capital of the company, that ordinary share capital is to be treated as increased by the number of unissued shares referred to in sub-paragraph (3)(b).
- (5) The references in sub-paragraphs (3) and (4) to the shares to be attributed to an individual are to the shares which—
- (a) for the purposes of paragraph 20(2) (material interest in share capital), and
 - (b) in accordance with paragraph 19(2) (material interest can consist of or include that of the individual’s associates),
- fall to be brought into account in the individual’s case so that it can be determined whether their number exceeds 25% of the company’s ordinary share capital.
- (6) In applying paragraph 20 the following are to be disregarded—
- (a) the interest of the trustees of any approved SIP in any shares which are held by them in accordance with the plan but which have not been appropriated to, or acquired on behalf of, an individual, and
 - (b) any rights exercisable by the trustees as a result of that interest.

Meaning of “associate”

- 22 (1) In paragraph 19(2) (the “no material interest” requirement) “associate”, in relation to an individual, means—
- (a) any relative or partner of the individual,
 - (b) the trustee or trustees of any settlement in relation to which the individual, or any of the individual’s relatives (living or dead), is or was a settlor, and
 - (c) where the individual is interested in any shares or obligations of the company mentioned in paragraph 19(2) which are subject to any trust, or are part of the estate of a deceased person—
 - (i) the trustee or trustees of the settlement concerned, or
 - (ii) the personal representatives of the deceased,as the case may be.
- (2) Sub-paragraph (1)(c) needs to be read with paragraphs 23 and 24 (which relate to employee benefit trusts and discretionary trusts).
- (3) In this paragraph—
“relative” means—

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- (a) spouse,
 - (b) parent, child or remoter relation in the direct line, or
 - (c) brother or sister;
- “settlor” and “settlement” have the same meaning as in Chapter 1A of Part 15 of ICTA (see section 660G(1) and (2)).

Meaning of “associate”: trustees of employee benefit trust

- 23 (1) This paragraph applies for the purposes of paragraph 22(1)(c) (meaning of “associate”: trustees of settlement) where an individual is interested as a beneficiary of an employee benefit trust in shares or obligations of the company mentioned in paragraph 19(2).
- (2) The trustees of the employee benefit trust are not to be regarded as associates of the individual as a result only of the individual’s being so interested if neither—
- (a) the individual, nor
 - (b) the individual together with one or more of the individual’s associates, nor
 - (c) any such associate, with or without any other such associates,
- has at any time after 13th March 1989 been the beneficial owner of, or able (directly or through the medium of other companies or by any other indirect means) to control, more than 25% of the ordinary share capital of the company.
- (3) In sub-paragraph (2)(b) and (c) “associate” has the meaning given by paragraph 22(1), but does not include the trustees of an employee benefit trust as a result only of the individual’s having an interest in shares or obligations of the trust.
- (4) Chapter 11 of Part 7 of this Act (which deals with the attribution of interests in companies to beneficiaries of employee benefit trusts) applies for the purposes of sub-paragraph (2).
- (5) In this paragraph “employee benefit trust” has the same meaning as in that Chapter (see sections 550 and 551).

Meaning of “associate”: trustees of discretionary trust

- 24 (1) This paragraph applies for the purposes of paragraph 22(1)(c) (meaning of “associate”: trustees of settlement) where—
- (a) the individual (“the beneficiary”) is one of the objects of a discretionary trust,
 - (b) the property subject to the trust has at any time consisted of, or included, shares or obligations of the company mentioned in paragraph 19(2),
 - (c) the beneficiary has ceased to be eligible to benefit under the trust as a result of—
 - (i) an irrevocable disclaimer or release executed by the beneficiary, or
 - (ii) the irrevocable exercise by the trustees of a power to exclude the beneficiary from the objects of the trust,
 - (d) immediately after the beneficiary ceased to be so eligible, no associate of the beneficiary was interested in the shares or obligations of the company which were subject to the trust, and
 - (e) during the period of 12 months ending with the date on which the beneficiary ceased to be so eligible, neither the beneficiary nor any associate of the beneficiary received any benefit under the trust.

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- (2) The beneficiary is not, as a result only of the matters mentioned in sub-paragraph (1) (a) and (b), to be regarded as having been interested in the shares or obligations of the company at any time during that period of 12 months.
- (3) In sub-paragraph (1) “associate” has the meaning given by paragraph 22(1), but with the omission of paragraph (c) (trusts and estates).