

SCHEDULES

SCHEDULE 23

CORPORATION TAX RELIEF FOR EMPLOYEE SHARE ACQUISITION

PART 3

GRANT OF OPTION

Introduction

- 11 (1) The provisions of this Part of this Schedule apply in the case of the grant of an option to acquire shares.
- (2) Where the shares acquired in exercise of the option are subject to forfeiture, the provisions of this Part have effect subject to the provisions of Part 4 of this Schedule.

The company whose shares are acquired

- 12 The company whose shares are acquired in exercise of the option must be—
- (a) the employing company; or
 - (b) a company that, at the time the option is granted, is a parent company in relation to the employing company; or
 - (c) a company that, at that time, is a member of a consortium that owns the employing company or a company within paragraph (b); or
 - (d) where, at that time, the employing company or a company within paragraph (b) is a member of a consortium that owns another company (C), a company that, at that time—
 - (i) is a member of the consortium or a parent company in relation to a member of the consortium, and
 - (ii) is also a member of the same commercial association of companies as C; or
 - (e) a qualifying successor company (see paragraph 13).

Takeover of company whose shares are subject of option

- 13 (1) This paragraph applies where—
- (a) there is a takeover of a company whose shares are the subject of a qualifying option,
 - (b) the holder of the option, by agreement with the acquiring company, releases his rights under that option (“the old option”) in consideration of the grant to him of another option (“the new option”), and
 - (c) the new option relates to shares in a qualifying company.
- (2) Where those conditions are met—

Status: This is the original version (as it was originally enacted).

- (a) the company whose shares are the subject of the new option is a qualifying successor company for the purposes of paragraph 12 (requirement as to company whose shares are acquired),
 - (b) shares acquired in exercise of the new option are treated for the purposes of this Schedule as if they had been acquired in exercise of the old option, and
 - (c) in determining the amount of relief any consideration given in respect of the grant or exercise of the new option is treated as if it had been given in respect of the grant or exercise of the old option.
- (3) For the purposes of this paragraph—
- (a) there is a takeover of a company where another company (“the acquiring company”) acquires control of it; and
 - (b) an option is a “qualifying option” if the requirements of paragraph 12 would be met in relation to its exercise.
- (4) The following are qualifying companies for the purposes of this paragraph—
- (a) the acquiring company;
 - (b) a company that, at the time of the takeover, is a parent company in relation to the acquiring company;
 - (c) a company that, at that time, is a member of a consortium that owns the acquiring company or a company within paragraph (b);
 - (d) where, at that time, the acquiring company or a company within paragraph (b) is a member of a consortium that owns another company (C), a company that, at that time—
 - (i) is a member of the consortium or a parent company in relation to a member of the consortium, and
 - (ii) is also a member of the same commercial association of companies as C.

Income tax position of the employee

- 14 (1) It must be the case that the employee—
- (a) either—
 - (i) was subject to a charge to income tax under the Income Tax (Earnings and Pensions) Act 2003 (c. 1) in respect of the grant of the option, or
 - (ii) is subject to a charge to income tax under that Act by virtue of section 476 or 477 of that Act in respect of the gain realised by the exercise of the option, or
 - (b) would be subject to such a charge as is mentioned in paragraph (a)(ii) but for a relevant exemption, or
 - (c) would be within paragraph (a) or (b) if the conditions specified in sub-paragraph (3) were met.
- (2) In sub-paragraph (1)(b) a “relevant exemption” means an exemption under—
- (a) section 519, 520, 524 or 525 of the Income Tax (Earnings and Pensions) Act 2003 (exercise of option under approved SAYE scheme or approved CSOP scheme), or
 - (b) section 530 of that Act (exercise of qualifying option under EMI code).
- (3) The conditions mentioned in sub-paragraph (1)(c) are—

Status: This is the original version (as it was originally enacted).

- (a) that the employee was resident and ordinarily resident in the United Kingdom at all material times, and
- (b) that the duties of the employment by reason of which the option was granted were performed in the United Kingdom at all material times.

Amount of relief

- 15 (1) The amount of the relief is equal to the difference between—
- (a) the market value of the shares at the time the option is exercised, and
 - (b) the total amount or value of any consideration given, by the recipient or another, in respect of the grant or exercise of the option.
- (2) The consideration mentioned in sub-paragraph (1)(b) does not include—
- (a) the performance of any duties of, or in connection with, the employee's employment with the employing company, or
 - (b) any amount paid or payable by the employee in pursuance of—
 - (i) an agreement within paragraph 3A(2) of Schedule 1 to the Contributions and Benefits Act (agreement for recovery from earner of secondary Class 1 contributions in respect of share option gain), or
 - (ii) an election under paragraph 3B of that Schedule (election transferring to earner liability for secondary Class 1 contributions in respect of share option gain).
- (3) A just and reasonable apportionment shall be made for the purposes of this paragraph of any consideration given partly in respect of the grant or exercise of the option and partly in respect of other matters.
- (4) If the option was granted partly for the purposes of a business meeting the requirements of paragraph 3 (business must be within the charge to corporation tax) and partly for the purposes of a business in relation to which those requirements are not met, the amount of the relief shall be reduced to such extent as is just and reasonable.

How relief is given

- 16 (1) The amount of the relief is allowed as a deduction in computing for the purposes of corporation tax the profits of the business for the purposes of which the option was granted.
- (2) If the company carrying on the business is an investment company, the amount of the relief is treated as disbursed as expenses of management for the purposes of section 75 of the Taxes Act 1988.
- (3) If the company carrying on the business is an insurance company carrying on life assurance business, the amount of the relief is included among the amounts the company may treat as part of its expenses of management for the purposes of section 76 of the Taxes Act 1988.
- (4) If the option was granted for the purposes of more than one business within the charge to corporation tax, the amount of the deduction must be apportioned between them on a just and reasonable basis.

Status: This is the original version (as it was originally enacted).

Timing of relief

- 17 (1) The relief is given for the accounting period in which the shares are acquired in exercise of the option.
- (2) The time when the shares are acquired is when the recipient acquires a beneficial interest in the shares and not, if different, the time the shares are conveyed or transferred.