SCHEDULES

SCHEDULE 23

CORPORATION TAX RELIEF FOR EMPLOYEE SHARE ACQUISITION

PART 4

PROVISIONS APPLYING IN CASE OF SHARES SUBJECT TO FORFEITURE

Introduction

18 In the case of—

(a) an award of shares that are subject to forfeiture, or

(b) the acquisition in exercise of an option of shares that are subject to forfeiture,

the provisions of Part 2 or 3 have effect subject to the provisions of this Part of this Schedule.

Meaning of shares being "subject to forfeiture"

19 (1) This paragraph explains what is meant in this Schedule by shares being "subject to forfeiture".

(2) Subject to the following provisions of this paragraph, shares are "subject to forfeiture" for so long as the terms on which the recipient is entitled to them—

(a) provide that if certain circumstances arise, or do not arise, there will be a transfer, reversion or forfeiture as a result of which the recipient will cease to be entitled to any beneficial interest in the shares, and

(b) are not such that, in that event, he will be entitled to receive an amount that is equal to or more than the market value of the shares at that time.

(3) In sub-paragraph (2)—

(a) the reference to circumstances arising includes—

(i) the expiry of a period specified in, or determined under, the terms on which the recipient is entitled to the shares,

(ii) the exercise by any person of a power conferred on him by or under those terms, or

(iii) the death of any person; and

(b) the reference to the market value of the shares is to the market value determined as if there were no provision for transfer, reversion or forfeiture.

(4) Shares are not "subject to forfeiture"—

(a) because they are unpaid or partly paid and may be forfeited for non-payment of calls, provided there is no restriction on the meeting of calls by the recipient, or

(b) because the articles of association of the company require the shares to be offered for sale or transferred if the employee ceases to hold specified employment, or

(c) because the recipient may be required to offer the shares for sale or transfer them on the employee ceasing, as a result of misconduct, to hold specified employment.

(5) In sub-paragraph (4)—

(a) "articles of association" includes, in the case of a company incorporated under the law of a country outside the United Kingdom, any equivalent document;

(b) the references to the employee ceasing to hold specified employment are to his ceasing—

(i) to be an employee of the employing company, or

(ii) to be an employee of one or more group companies, or

(iii) to be an employee of any group company,

as specified by the terms on which he is entitled to the shares.

(6) References in this section to the terms on which the recipient is entitled to shares include terms imposed by any contract or arrangement or in any other way.

Income tax position of the employee in case of shares subject to forfeiture

20 (1) Where the recipient acquires shares that are subject to forfeiture, this paragraph applies in place of paragraph 7 or 14 (income tax position of the employee).

(2) It must be the case that the employee—

(a) is subject to a charge to income tax under the Income Tax (Earnings and Pensions) Act 2003 (c. 1) by virtue of section 427 of that Act—

(i) on the shares ceasing to be subject to forfeiture, or

(ii) on the recipient disposing of the shares, or dying, without the shares having ceased to be subject to forfeiture, or

(b) would be subject to such a charge if the conditions in sub-paragraph (3) were met.

(3) The conditions mentioned in sub-paragraph (2)(b) are—

(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 award was made or the option was granted were performed in the United Kingdom at all material times.

Amount of relief in case of shares subject to forfeiture

21 (1) Where the recipient acquires shares that are subject to forfeiture, this paragraph applies in place of paragraph 8 or 15 (amount of relief).

(2) The amount of the relief is equal to the difference between—

(a) the market value of the shares at the relevant time, and

(b) the total amount or value of any consideration given, by the recipient or another—

(i) in respect of the shares or, as the case may be, in respect of the grant or exercise of the option, or

(ii) in respect of the shares ceasing to be subject to forfeiture.

(3) For the purposes of sub-paragraph (2)(a)—

(a) the "relevant time" is the time at which the shares cease to be subject to forfeiture or, where the recipient disposes of the shares, or dies, without the shares having ceased to be subject to forfeiture, the time of the disposal or death; and

(b) the market value of the shares at that time is their market value immediately after they cease to be subject to forfeiture or, where the recipient disposes of the shares, or dies, without the shares having ceased to be subject to forfeiture, at the time of the disposal or death.

(4) The consideration mentioned in sub-paragraph (2)(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).

(5) For the purposes of this paragraph a just and reasonable apportionment shall be made of any consideration given partly in respect of the matters mentioned in sub-paragraph (2)(b) and partly in respect of other matters.

(6) If the award or grant was made 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.

Timing of relief in case of shares subject to forfeiture

22 (1) Where the recipient acquires shares that are subject to forfeiture, this paragraph applies in place of paragraph 10 or 17 (timing of relief).

(2) The relief is given for the accounting period in which—

(a) the shares cease to be subject to forfeiture, or

(b) the recipient disposes of the shares, or dies, without the shares having ceased to be subject to forfeiture.