

## SCHEDULES

### SCHEDULE 23

#### CORPORATION TAX RELIEF FOR EMPLOYEE SHARE ACQUISITION

##### PART 5

##### SUPPLEMENTARY PROVISIONS

##### *Transfer of business within a group*

- 23 (1) This paragraph applies where—
- (a) between the time when an award of shares, or the grant of an option to acquire shares, is made and the time of the relief-triggering event for those shares, there is a transfer of the whole, or substantially the whole, of the business for the purposes of which the award or grant was made (“the relevant business”),
  - (b) the transfer, or each of them if there is more than one, is a qualifying transfer, and
  - (c) as a result of the transfer or transfers, the whole or substantially the whole of the relevant business is carried on at the time of the relief-triggering event by a different company (“the successor company”) or by different companies (“the successor companies”) from the one by which it was carried on at the time of the award or grant.
- (2) For the purposes of sub-paragraph (1)—
- (a) the “relief-triggering event” for shares is the event that, in accordance with paragraph 10, 17 or 22, determines the accounting period for which relief under this Schedule is given in respect of them;
  - (b) there is a “qualifying transfer” of a business (or a part of one) where the business (or part) is transferred from one company to another company that is, or to two or more companies that are, members of the same group.
- (3) Where this paragraph applies—
- (a) relief under this Schedule in respect of the shares is given to the successor company or, as the case may be, to whichever one of the successor companies is jointly nominated by them, and
  - (b) the reference in paragraph 1(1)(a) or (b) to “that company” shall be read as a reference to the company by which the relevant business was carried on at the time of the award or grant.

##### *Relationship between relief and other deductions: priority of deductions under SIP code*

- 24 (1) Deductions available under any of the following provisions of Schedule 4AA to the Taxes Act 1988 (share incentive plans) are to be given in priority to relief under this Schedule—

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- (a) paragraph 2 (deduction for providing free or matching shares);
  - (b) paragraph 3 (deduction for expenses in providing partnership shares);
  - (c) paragraph 9 or 10(3) (deduction for contribution to plan trust).
- (2) No relief is available under this Schedule in respect of shares in relation to which a deduction is allowable, or has been made, under any of those provisions.

*Relationship between relief and other deductions: exclusion of other deductions*

- 25 (1) Where relief under this Schedule is available for any accounting period, no other deduction is allowed for any corporation tax purposes (whether for that or any other period) in respect of the cost of providing the shares.

This applies to any deduction, whether by the employing company or any other company, in computing chargeable profits for the purposes of corporation tax.

- (2) For this purpose the cost of providing the shares—
- (a) means expenses directly related to the provision of the shares, and
  - (b) includes, in a case where the shares are acquired under an employee share scheme, any amount paid or payable by the employing company in respect of the participation of the employee in that scheme.
- (3) The following are not regarded as part of the cost of providing the shares—
- (a) expenses incurred in establishing the employee share scheme under which the recipient acquires the shares;
  - (b) expenses incurred in meeting, or contributing to, the costs of administering the scheme;
  - (c) the costs of borrowing for the purposes of the scheme;
  - (d) fees, commission, stamp duty and similar incidental expenses of acquiring the shares.
- (4) In this paragraph “employee share scheme” means any scheme or arrangement for enabling shares to be acquired by reason of employees' employment.

*Meaning of “employment”*

- 26 For the purposes of this Schedule—
- (a) references to employment by a company include holding an office with that company, and related expressions have a corresponding meaning, and
  - (b) members of a company whose affairs are managed by the members themselves are treated as holding an office with the company.

*Exercise of option after death of employee or recipient*

- 27 (1) Where an option to acquire shares obtained by reason of the employee's employment is exercised by the recipient after the employee's death, the condition in paragraph 14 (income tax position of the employee) is treated as met if it would be met were the employee still alive.
- (2) Where an option to acquire shares obtained by reason of the employee's employment is exercised after the death of the recipient, paragraph 1(1)(b) and Part 3 of this Schedule, and sub-paragraph (1) above, apply as if the recipient were still alive and the option were exercised by him.

*Meaning of “group company” and “parent company”*

- 28 For the purposes of this Schedule—
- (a) a company is a “group company”, in relation to another company, if they are members of the same group,
  - (b) two companies are members of the same group if, and only if, one is a 51% subsidiary of the other or both are 51% subsidiaries of a third company, and
  - (c) a company is a “parent company” in relation to another company if that other is its 51% subsidiary.

*Meaning of “consortium” and “commercial association of companies”*

- 29 (1) For the purposes of this Schedule a company is a member of a consortium owning another company if it is one of five or fewer companies—
- (a) that between them beneficially own not less than 75% of the other company’s ordinary share capital, and
  - (b) each of which beneficially owns not less than 10% of that capital.

For this purpose the shareholdings of members of a group of companies shall be treated as held by a single company.

- (2) In this Schedule a “commercial association of companies” means a company together with such of its associated companies as carry on businesses that are of such a nature that the businesses of the company and the associated companies, taken together, may be reasonably considered to make up a single composite undertaking.

“Associated company” here has the meaning given by section 416 of the Taxes Act 1988.

*Minor definitions*

- 30 In this Schedule—
- “the Contributions and Benefits Act” means—
    - (a) the Social Security Contributions and Benefits Act 1992 (c. 4), or
    - (b) the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7);
  - “control” has the meaning given by section 840 of the Taxes Act 1988;
  - “insurance company” and “life assurance business” have the meanings given by section 431(2) of that Act;
  - “investment company” has the meaning given by section 130 of that Act;
  - “market value” has the same meaning as in the Taxation of Chargeable Gains Act 1992 (c. 12) (see sections 272 and 273 of that Act);
  - “option” includes any right to acquire shares;
  - “ordinary shares”, in relation to a company, means shares forming part of the company’s ordinary share capital;
  - “shares” includes—
    - (a) an interest in shares, and
    - (b) stock or an interest in stock.

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*Index of defined expressions*

31 In this Schedule the following expressions are defined or otherwise explained by the provisions indicated:

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commercial association of companies	paragraph 29(2)
consortium	paragraph 29(1)
Contributions and Benefits Act	paragraph 30
control	paragraph 30
employment and related expressions	paragraph 26
the employee	paragraph 1(3)
employing company	paragraph 1(3)
group	paragraph 28(b)
group company	paragraph 28(a)
insurance company	paragraph 30
investment company	paragraph 30
life assurance business	paragraph 30
market value	paragraph 30
option	paragraph 30
ordinary shares	paragraph 30
parent company	paragraph 28(c)
the recipient	paragraph 1(3)
shares	paragraph 30
subject to forfeiture	paragraph 19
within the charge to corporation tax (of a business)	paragraph 3(2)

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