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*Status: Point in time view as at 28/07/2000.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2000, Part VI. (See end of Document for details)*

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## SCHEDULES

### SCHEDULE 14

#### ENTERPRISE MANAGEMENT INCENTIVES

##### PART VI

##### INCOME TAX

##### *Introduction*

- 42 (1) The provisions of this Part of this Schedule give relief from income tax in respect of the grant or exercise of a qualifying option.
- (2) Relief in respect of the exercise of a qualifying option applies only to exercise within the period of ten years after—
- (a) the grant of the option, or
  - (b) if it is a replacement option, the grant of the original option.
- (3) In this Part the references to the “original option”, where there has been one or more replacement options, are to the option that the replacement option (or, if there has been more than one, the first of them) replaced.

##### *Exclusion of charge on grant*

- 43 Tax is not chargeable under any provision of the Tax Acts in respect of the grant of the option.

##### *Exercise of option to acquire shares at market value*

- 44 (1) This paragraph applies if the option is to acquire shares at not less than their market value—
- (a) at the time the option is granted, or
  - (b) if it is a replacement option, at the time the original option was granted.
- (2) In that case no amount is chargeable to income tax under section 135 of the Taxes Act 1988 (taxation of share options) in respect of the exercise of the option.
- (3) This paragraph has effect subject to paragraph 53 (effect of disqualifying event).

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*Exercise of option to acquire shares at less than market value*

- 45 (1) This paragraph applies if the option is to acquire shares at less than their market value—
- (a) at the time the option is granted, or
  - (b) if it is a replacement option, at the time the original option was granted.
- (2) In that case for the purposes of section 135 of the Taxes Act 1988 (taxation of share options) the amount of the gain realised by the exercise of the option is taken to be—
- (a) the amount of the discount, or
  - (b) if lower, the amount by which the market value of the shares at the time the option is exercised exceeds the amount for which they are acquired.
- (3) The amount of the discount means the amount by which the market value of the shares—
- (a) at the time the option was granted, or
  - (b) if it is a replacement option, at the time the original option was granted, exceeds the amount for which they are acquired.
- (4) If the market value of the shares at the time the option is exercised does not exceed the amount for which they are acquired, no amount is chargeable to income tax under section 135 of the Taxes Act 1988 (taxation of share options) in respect of the exercise of the option.
- (5) This paragraph has effect subject to paragraph 53 (effect of disqualifying event).

*Exercise of option to acquire shares at nil cost*

- 46 (1) This paragraph applies if the option is to acquire shares at a nil cost.
- (2) In that case for the purposes of section 135 of the Taxes Act 1988 (taxation of share options) the amount of the gain realised by the exercise of the option is taken to be—
- (a) the market value of the shares—
    - (i) at the time the option was granted, or
    - (ii) if it is a replacement option, at the time the original option was granted, or
  - (b) if lower, the market value of the shares at the time the option is exercised.
- (3) This paragraph has effect subject to paragraph 53 (effect of disqualifying event).

*Main disqualifying events*

- 47 (1) The following are “disqualifying events” in relation to a qualifying option—
- (a) the relevant company—
    - (i) becoming a 51% subsidiary of another company, or
    - (ii) coming under the control of another company (or of another company and any other person connected with that other company), without being a 51% subsidiary of that other company;

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- (b) the relevant company ceasing to meet the trading activities requirement;
  - (c) the employee ceasing to be an eligible employee in relation to the relevant company by reason of ceasing to meet—
    - (i) the requirement in paragraph 28 (the employment requirement), or
    - (ii) the requirement in paragraph 29 (the requirement as to commitment of working time);
  - (d) any variation of the terms of the option the effect of which is—
    - (i) to increase the market value of the shares that are the subject of the option, or
    - (ii) that the requirements of this Schedule would no longer be met in relation to the option;
  - (e) any alteration to the share capital of the relevant company that is within paragraph 49 and is made without the prior approval of the Inland Revenue;
  - (f) a conversion of any of the shares to which the option relates into shares of a different class, except in a case within paragraph 50; and
  - (g) the grant to the employee of a relevant CSOP option, if immediately after it is granted the employee holds unexercised employee options in respect of shares with a total value of more than £100,000.
- (2) A disqualifying event is treated as occurring in relation to a qualifying option if—
- (a) the relevant company was a qualifying company at the time the option was granted by reason only of preparations to carry on a qualifying trade, and
  - (b) either—
    - (i) the preparations cease to be carried on, or
    - (ii) the period of two years from the grant of the original option comes to an end,without the relevant company or, if it is the parent company of a group, any group company beginning to carry on that qualifying trade.
- (3) A disqualifying event is also treated as occurring in relation to a qualifying option if in any tax year the employee's relevant working time amounts to less than 25 hours a week or, if less, 75% of his working time.
- (4) This paragraph is supplemented by the following provisions—
- paragraph 48 (company reorganisation);
  - paragraph 49 (alterations of share capital);
  - paragraph 50 (conversion of shares);
  - paragraph 51 (grant of CSOP option); and
  - paragraph 52 (actual relevant working time).

*Disqualifying events: company reorganisation*

- 48           Where a replacement option has been granted (see paragraph 61), if an event within paragraph 47(1)(a) (loss of independence) has occurred in relation to the old option at any time during the period—

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- (a) beginning at the same time as the period within which the replacement option had to be granted (see paragraph 62), and
  - (b) ending with the release of the rights under the old option,
- that event shall not be regarded as a disqualifying event in relation to the old option.

*Disqualifying events: alterations of share capital*

- 49 (1) An alteration of the share capital of the relevant company is within this paragraph if—
- (a) it affects (or but for the occurrence of some other event would affect) the value of the shares which are the subject of the qualifying option, and
  - (b) it consists of or includes—
    - (i) the creation, variation or removal of a right relating to any shares in the relevant company,
    - (ii) the imposition of a restriction relating to any such shares, or
    - (iii) the variation or removal of a restriction to which any such shares are subject.

For this purpose references to restrictions relating to shares or to which shares are subject, or to rights relating to shares, include restrictions imposed or rights conferred by any contract or arrangement or in any other way.
- (2) The Inland Revenue shall not withhold their approval under paragraph 47(1)(e) unless it appears to them that the effect of the alteration would be—
- (a) to increase the market value of the shares that are the subject of the qualifying option, or
  - (b) that the requirements of this Schedule would no longer be met in relation to the option.
- (3) Where the Inland Revenue withhold their approval the employer company may appeal against that decision.
- (4) Notice of appeal must be given to the Inland Revenue within 30 days after their notice of their decision was given to the employer company.
- (5) An appeal under this paragraph lies to the General Commissioners or, if the employer company so elects (in accordance with section 46(1) of the <sup>M1</sup>Taxes Management Act 1970), to the Special Commissioners.

**Marginal Citations**

**M1** 1970 c. 9.

*Disqualifying events: conversion of shares*

- 50 (1) A conversion of shares is not a disqualifying event if—
- (a) the conversion is a conversion of shares of one class only (“the original class”) into shares of one other class only (“the new class”);

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- (b) all shares of the original class are converted into shares of the new class; and
  - (c) one of the conditions in sub-paragraph (2) is fulfilled.
- (2) The conditions are—
- (a) that immediately before the conversion the majority of the relevant company's shares of the original class are held otherwise than by or for the benefit of—
    - (i) directors or employees of the relevant company,
    - (ii) an associated company of the relevant company, or
    - (iii) directors or employees of such an associated company; and
  - (b) that immediately before the conversion the relevant company is employee-controlled by virtue of holdings of shares of the original class.
- (3) For the purposes of this paragraph “director”, “employee”, “associated company” and “employee-controlled” have the same meaning as in section 140D of the Taxes Act 1988 (convertible shares).

*Disqualifying events: grant of CSOP option*

- 51
- (1) This paragraph applies where it falls to be determined whether a disqualifying event within sub-paragraph (1)(g) of paragraph 47 has occurred in relation to a qualifying option (“the qualifying option”) granted to an employee.
  - (2) For the purposes of that sub-paragraph and this paragraph “CSOP option” has the meaning given in paragraph 10(6).
  - (3) A CSOP option is a “relevant” CSOP option if it is granted to the employee by reason of his employment with—
    - (a) the employer company, or
    - (b) if that company is a member of a group, any member of that group.
  - (4) An option is an “employee option” if it is—
    - (a) the qualifying option,
    - (b) another qualifying option granted to the employee by reason of his employment with the employer company or, if that company is a member of a group, any member of that group, or
    - (c) a relevant CSOP option.
  - (5) Paragraph 10(7) and (8) (determination of value of shares) apply for the purposes of paragraph 47(1)(g) as they apply for the purposes of paragraph 10.

*Disqualifying events: actual relevant working time*

- 52
- (1) For the purposes of paragraph 47(3) an employee's relevant working time means the time that he in fact spends as an employee in relevant employment—
    - (a) on the business of the relevant company, or
    - (b) if the relevant company is a parent company, on the business of the group.
  - (2) The time at which the disqualifying event is taken to have occurred is determined in accordance with the following provisions.

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- (3) Subject to sub-paragraphs (4) and (5), the time at which the disqualifying event occurred is determined as follows:

*Method*

- (1) For each calendar month calculate whether over the tax year to date the employee's relevant working time amounts to less than 25 hours a week or, if less, 75% of his working time.
- (2) If it does, the disqualifying event is taken to have occurred—
- (a) at the end of the previous calendar month, or
  - (b) if the calendar month for which the calculation is done is April, at the end of the previous tax year.
- (4) In the case of an employee who begins or ceases to be in relevant employment during the tax year, the references in sub-paragraph (3) above and paragraph 47(3) to that tax year shall be construed as references to the part of the tax year in which he is in relevant employment.
- (5) If the time determined under sub-paragraph (3) or (4) falls before the grant of the option, the option is treated for the purposes of this Schedule as if it had never been a qualifying option.
- (6) Expressions used in paragraph 47(3) or this paragraph that are defined for the purposes of paragraph 29 (requirement as to commitment of working time) have the same meaning as in that paragraph.

*Effect of disqualifying event*

- 53 (1) This paragraph applies where—
- (a) a disqualifying event occurs in relation to a qualifying option before the option is exercised, and
  - (b) the option is not exercised within 40 days of that event.
- (2) For the purposes of section 135 of the Taxes Act 1988 (taxation of share options) the amount of the gain realised on the exercise of the option is taken—
- (a) where paragraph 44 applies (option to acquire shares at market value), to be, and
  - (b) where paragraph 45 or 46 applies (option to acquire shares at less than market value or for nil cost), to be increased by,
- the amount (if any) by which the market value of the shares when the option is exercised exceeds their market value immediately before the disqualifying event.

This is subject to sub-paragraph (3).

- (3) Paragraphs 44 to 46 and sub-paragraph (2) of this paragraph do not apply if the amount chargeable under section 135 of the Taxes Act 1988 on the exercise of the option would, in the absence of those provisions, be less than the amount so chargeable by virtue of those provisions.

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*Exclusion of charge on acquisition at under-value*

- 54 (1) Section 162(1) of the Taxes Act 1988 (deemed employment-related loan in case of acquisition of shares at an undervalue), as it applies in relation to an employee chargeable to tax under Case I of Schedule E, does not apply in relation to the acquisition of shares by the exercise of a qualifying option.
- (2) This does not affect any charge to tax under section 162(6) of that Act (stop-loss provisions).

*Saving for other income tax charges*

- 55 (1) Nothing in this Part of this Schedule affects—
- (a) any charge to tax under section 135 of the Taxes Act 1988 (taxation of share options) in respect of the release of rights conferred by a qualifying option;
  - (b) any charge to tax under section 78 or 80 of the <sup>M2</sup>Finance Act 1988 (charge on removal of restrictions etc. or on special benefits) in respect of shares acquired under a qualifying option; or
  - (c) subject to sub-paragraph (2), any charge to tax under—
    - (i) section 140A of the Taxes Act 1988 (charge on interest in shares ceasing to be only conditional), or
    - (ii) section 140D of that Act (convertible shares),in respect of shares acquired under a qualifying option.
- (2) The amount of relief under this Schedule shall be treated as a deductible amount for the purposes of any charge to tax under section 140A or 140D of the Taxes Act 1988 in respect of shares acquired under a qualifying option.

The amount of relief means the difference between the amount on which tax would have been chargeable under section 135 of that Act in respect of the exercise of the option apart from this Schedule and the amount (if any) in fact so chargeable.

**Marginal Citations**

**M2** 1988 c. 39.

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