

## SCHEDULES

### SCHEDULE 37

#### COMPANIES OWNED BY EMPLOYEE-OWNERSHIP TRUSTS

#### PART 2

##### EMPLOYMENT INCOME EXEMPTION

- 5 In Part 4 of ITEPA 2003 (employment income: exemptions), after Chapter 10 insert—

#### “CHAPTER 10A

##### EXEMPTIONS: BONUS PAYMENTS BY CERTAIN EMPLOYERS

#### **312A Limited exemption for qualifying bonus payments**

- (1) This section applies in relation to qualifying bonus payments made, in a tax year (“the tax year”), by an employer which is a company to an employee or former employee of the employer.
- (2) No liability to income tax arises in respect of the qualifying bonus payments if, or to the extent that, the total chargeable amount in respect of those payments does not exceed £3,600 (“the exempt amount”).
- (3) If qualifying bonus payments are made to the same person by two or more employers in the tax year, subsection (2) applies separately in relation to the total payments made by each employer, unless subsection (4) applies.
- (4) If two or more employers are members of the same group at the time each of them first makes a qualifying bonus payment to the employee or former employee in the tax year, subsection (2) applies as if the reference to the qualifying bonus payments were to all the qualifying bonus payments made by those employers to the employee or former employee in that tax year.
- (5) If, in a tax year—
  - (a) an employer makes a payment when it is a member of a group, and
  - (b) later in that tax year the employer ceases to be a member of that group,the employer is treated for the purposes of this section as remaining a member of that group for the remainder of the tax year (without prejudice to it also being a member of any other group).
- (6) In applying subsection (2)—

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- (a) the exempt amount is set against payments in the order in which they are made, and
  - (b) if two or more payments are made on the same day, which together take the total payments made in the tax year over the exempt amount, subsection (7) applies to determine the amount of each of those payments which is exempt.
- (7) In a case within subsection (6)(b), the amount of a payment which is exempt is given by the formula—
- $$\frac{P}{SP} \times \text{REA}$$
- where—
- P is the amount of the payment,
  - SP is the sum of that payment and the other payments made on the same day, and
  - REA is so much of the exempt amount as remains after taking account of any qualifying bonus payments previously made in the tax year.
- (8) Where subsection (2) applies separately to different payments by virtue of subsection (3), subsections (6) and (7) also apply to those payments separately.
- (9) The Treasury may by order increase or reduce the sum of money specified in subsection (2).
- (10) A statutory instrument containing an order under this section which reduces the sum of money specified may not be made unless a draft of it has been laid before and approved by a resolution of the House of Commons.
- (11) In this section “chargeable amount”, in respect of a qualifying bonus payment, means the amount of employment income which would be charged to tax in respect of that qualifying bonus payment, apart from this section.

### **312B “Qualifying bonus payments”**

- (1) A payment made by an employer (“E”) to an employee or former employee is a qualifying bonus payment if—
- (a) it does not consist of regular salary or wages,
  - (b) it is awarded under a scheme which meets the participation requirement and the equality requirement (see section 312C),
  - (c) E meets the trading requirement (see section 312D) throughout the qualifying period,
  - (d) E meets the indirect employee-ownership requirement (see section 312E) throughout the qualifying period,
  - (e) E meets the office-holder requirement (see section 312F) at the time the payment is made and on at least the requisite number of days in the qualifying period (whether or not those days are consecutive),
  - (f) E is not a service company (see section 312G),
  - (g) the payment is not excluded (see section 312H), and

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- (h) where it is a payment to a former employee, it is made in the period of 12 months beginning with the day the employment ceased.
- (2) In this section “the qualifying period”, in relation to a payment, means the period of 12 months ending with the day on which the payment is made.
- (3) But in a case where E meets the indirect employee-ownership requirement on the day on which the payment is made—
  - (a) if the controlling interest requirement was first met during that 12 month period, the qualifying period does not include any time before it was met, and
  - (b) if the all-employee benefit requirement was first met during that 12 month period, the qualifying period does not include any time before that requirement was met.
- (4) In this section “the requisite number of days” means—
  - (a) if the qualifying period is 12 months, the number of days in that period reduced by 90, and
  - (b) if the qualifying period is a shorter period by virtue of subsection (3), the number of days in that period reduced by the corresponding fraction of 90 days.

### **312C Section 312B: the participation and equality requirements**

- (1) For the purposes of section 312B—
  - (a) the participation requirement is that all persons in relevant employment when the award is determined must be eligible to participate in that and any other award under the scheme, and
  - (b) the equality requirement is that every employee who participates in an award under the scheme must do so on the same terms.
- (2) A person is in “relevant employment” if—
  - (a) where E is a member of a group, the person is employed by any company which is a member of the group, and
  - (b) in any other case, the person is employed by E.
- (3) The participation requirement is not infringed by reason of a person in relevant employment being excluded from participating in an award because, at the time the award is determined, the person has less than the minimum period of continuous service in relevant employment required by E.

But the minimum period required by E for this purpose must not exceed 12 months.
- (4) The participation requirement is not infringed—
  - (a) by reason of a person being excluded from participating in an award where—
    - (i) disciplinary proceedings have been taken against the person by E which have resulted in a finding of gross misconduct against the person, and
    - (ii) that finding was made in the period of 12 months immediately before the time the award is determined,

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- (b) by reason of a person's eligibility to participate in an award being conditional, in a case where the person is at the time of the award subject to disciplinary proceedings taken by E, upon those proceedings being concluded and no finding of gross misconduct being made against that person, or
  - (c) by a person being treated as never having been eligible to participate in an award where, after the award was made but before the payment is made—
    - (i) a finding of gross misconduct is made against that person in disciplinary proceedings taken by E after the award was made, or
    - (ii) that person is summarily dismissed from the employment.
- (5) The equality requirement is infringed if the amount of an award to an employee under the scheme is determined by reference to factors other than those mentioned in subsection (6).
- (6) The equality requirement is not infringed by reason of the amount of an award under the scheme to employees participating in the award being determined by reference to—
  - (a) an employee's remuneration,
  - (b) an employee's length of service, or
  - (c) hours worked by an employee;but this is subject to subsections (7) and (8).
- (7) The equality requirement is infringed if an award is made on terms such that some (but not all) of the employees participating in the award receive nothing.
- (8) If the amount of an award is determined by reference to more than one of the factors mentioned in subsection (6), the equality requirement is infringed unless—
  - (a) each factor gives rise to a separate entitlement related to the level of remuneration, length of service or (as the case may be) hours worked, and
  - (b) the total entitlement is the sum of those separate entitlements.
- (9) Subject to subsection (6), the equality requirement is infringed if any feature of the scheme has, or is likely to have, the effect of conferring benefits wholly or mainly on those participating in the award who are—
  - (a) directors or former directors, or
  - (b) employees receiving the higher or highest levels of remuneration, or
  - (c) employees who—
    - (i) are employed in a particular part of the business carried on by E or, if E is a member of a group, the group, or
    - (ii) carry on particular kinds of activities.
- (10) In subsections (1)(b), (5), (6), (7) and (9) references to an employee include a former employee, so, when applying those subsections in relation to a former employee, any reference to remuneration, length of service, hours worked, being employed in a particular part of a business or carrying on particular activities is to be read as relating to that former employment.

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### **312D Section 312B: the trading requirement**

- (1) For the purposes of section 312B, a company meets the trading requirement if—
  - (a) it is a trading company which is not a member of a group, or
  - (b) it is a member of a trading group.
- (2) “Trading company” means a company carrying on trading activities whose activities do not include to a substantial extent activities other than trading activities.
- (3) “Trading group” means a group—
  - (a) one or more of whose members carry on trading group activities, and
  - (b) the activities of whose members, taken together, do not include to a substantial extent activities other than trading group activities.
- (4) In this section—

“trading activities” means activities carried on by the company in the course of, or for the purposes of, a trade being carried on by it;

“trading group activities” means activities carried on by a member of the group in the course of, or for the purposes of, a trade being carried on by any member of the group.
- (5) For the purposes of determining whether a company is a trading company or a member of a trading group—
  - (a) the activities of the members of a group are to be treated as one business (with the result that activities are disregarded to the extent that they are intra-group activities), and
  - (b) a business carried on by a company in partnership with one or more other persons is to be treated as not being a trading activity.

### **312E Section 312B: the indirect employee-ownership requirement**

- (1) For the purposes of section 312B, a company meets the indirect employee-ownership requirement if—
  - (a) a settlement meets the controlling interest requirement in respect of—
    - (i) the company, or
    - (ii) if the company is a member of a trading group, but not the principal company, that principal company, and
  - (b) the settlement meets the all-employee benefit requirement.
- (2) For this purpose—
  - (a) section 236M of TCGA 1992 applies to determine if a settlement meets the controlling interest requirement in respect of the company mentioned in subsection (1)(a)(i) or (ii) (as the case may be), and
  - (b) sections 236J and 236K of that Act apply to determine if the settlement meets the all-employee benefit requirement (but see subsection (3)).

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- (3) If a settlement would not otherwise meet the all-employee benefit requirement at any time during the qualifying period, section 236L of TCGA 1992 applies for the purposes of subsection (1)(b), unless the all-employee benefit requirement has (ignoring that section) previously been met at any time in the period—
- (a) beginning with 10 December 2013, and
  - (b) ending immediately before that time.
- (4) For the purposes of subsections (2) and (3)—
- (a) in sections 236I to 236M of TCGA 1992 references to C are to be read as references to the company in respect of which the settlement is required to meet the controlling interest requirement (see subsection (1)(a)), and
  - (b) section 236L of that Act applies as if the reference in subsection (1)(c) of that section to the period of 12 months ending with the time in question were a reference to the period of 12 months ending with the date the payment is made (even if the qualifying period is a period of less than 12 months by virtue of section 312B(3)).

### **312F Section 312B: the office-holder requirement**

- (1) For the purposes of section 312B, a company meets the officer-holder requirement if the appropriate fraction does not exceed 2/5.
- (2) “The appropriate fraction” means—

$$\frac{ND}{NE}$$

where—

ND is the number of persons who are one or both of the following—

- (a) a director or other office-holder of the company;
- (b) an employee of the company connected with a person within paragraph (a);

NE is the number of persons who are employees (or office-holders) of the company.

### **312G “Service company”**

- (1) For the purposes of section 312B, “service company” means—
- (a) a managed service company within the meaning of section 61B, or
  - (b) a company (“SC”) in respect of which Conditions A and B are met.
- (2) Condition A is that the business carried on by SC consists substantially of the provision of the services of persons employed by it.
- (3) Condition B is that the majority of those services are provided to persons—
- (a) to whom subsection (4) applies, but
  - (b) who are not members of the same group as the company which makes the payment.
- (4) This subsection applies to—

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- (a) a person who controls or has controlled, or two or more persons who together control or have controlled, SC or any company of which SC is a 51% subsidiary at the time the payment is made,
  - (b) a person who, or two or more persons who together, at any time before the time the payment is made—
    - (i) employed all or a majority of the employees of SC, or
    - (ii) employed all or a majority of the employees of SC and other companies which are members of the same group as SC at the time the payment is made (taken together), and
  - (c) any company which is a 51% subsidiary of, controlled by or connected or associated with, any person within paragraph (a) or (b).
- (5) For the purposes of subsection (4)—
- (a) a partnership is to be treated as a single person, and
  - (b) where a partner (alone or together with others) has control of a company, the partnership is to be treated as having (in the same way) control of that company.
- (6) The following provisions apply for the purposes of this section—
- (a) section 449 of CTA 2010 (“associated company”);
  - (b) section 995 of ITA 2007 (meaning of “control”);
  - (c) section 286 of TCGA 1992 (connected persons: interpretation).

### **312H Excluded payments**

- (1) For the purposes of section 312B, a payment is “excluded” if the employee is a party to arrangements (whether made before or after the beginning of the employee’s employment) under which—
- (a) the employee gives up the right to receive an amount of general earnings or specific employment income in return for the provision of the payment, or
  - (b) the employee and employer agree that the employee is to receive the payment rather than receive some other description of employment income.
- (2) In this section references to an employee include a former employee.

### **312I Interpretation of Chapter 10A**

- (1) In this Chapter—
- “company” has the meaning given by section 170(9) of TCGA 1992;
  - “trade” means any trade which is conducted on a commercial basis and with a view to the realisation of profits.
- (2) In this Chapter—
- (a) references to a group, to membership of a group, to the principal company of a group or to being members of the same group, are to be construed in accordance with section 170 of TCGA 1992, and

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- (b) references to a group are to be construed with any necessary modifications where applied to a company incorporated under the law of a country or territory outside the United Kingdom.
- (3) For the purposes of this Chapter, a payment is treated as made when it would be treated as received for the purposes of Chapter 4 of Part 2 if it were not a qualifying bonus payment (see section 18).
- (4) In this Chapter references to a payment to an employee or former employee include a payment to the personal representatives of an employee or former employee who has died if the payment is made within the period of 12 months beginning with the date of death.”