
10 Employee share schemes

The Schedule contains miscellaneous minor amendments relating to employee share schemes.

SCHEDULE TO CLAUSE 10

EMPLOYEE SHARE SCHEMES: MINOR AMENDMENTS

Enterprise management incentives and employee ownership trusts

- 1 (1) In section 534 of ITEPA 2003 (disqualifying events relating to relevant company), at the end insert –
 - “(7) Subsection (1) does not apply where the relevant company is subject to an employee-ownership trust (within the meaning of paragraph 27(4) to (6) of Schedule 2).”
- (2) The amendment made by this paragraph is treated as having come into force on 1 October 2014.

Share incentive plan

- 2 (1) Schedule 2 to ITEPA 2003 (share incentive plans) is amended as follows.
- (2) In paragraph 1 (introduction), after sub-paragraph (4) insert –
 - “(5) Sub-paragraph (A1) is also subject to Part 10A of this Schedule (disqualifying events).”
- (3) After Part 10 insert –

“PART 10A

DISQUALIFYING EVENTS

- 85A (1) A SIP ceases to be a Schedule 2 SIP if (and with effect from the time when) a disqualifying event occurs.
- (2) The following are disqualifying events –
 - (a) an alteration being made in –
 - (i) the share capital of a company any of whose shares are subject to the plan trust, or
 - (ii) the rights attaching to any shares of such a company,
that materially affects the value of the shares that are subject to the plan trust;
 - (b) shares of a class of which shares are subject to the plan trust receiving different treatment in any respect from the other shares of that class.
 - (3) Sub-paragraph (2)(b) applies in particular to different treatment in respect of –
 - (a) the dividend payable,
 - (b) repayment, or
 - (c) any offer of substituted or additional shares, securities or rights of any description in respect of the shares.

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- (4) Sub-paragraph (2)(b) does not however apply where the difference in treatment arises from—
 - (a) a key feature of the plan, or
 - (b) any of the participants' shares being subject to any restriction.
 - (5) Nor does sub-paragraph (2)(b) apply as a result only of the fact that shares which have been newly issued receive, in respect of dividends payable with respect to a period beginning before the date on which they were issued, treatment less favourable than that accorded to shares issued before that date.
 - (6) For the purposes of this paragraph a “key feature” of a plan is a provision of it that is necessary to meet the requirements of this Schedule.
 - (7) This paragraph does not affect the operation of the SIP code in relation to shares awarded to participants in the plan before the disqualifying event occurred.”
- (4) The amendments made by this paragraph have effect in relation to disqualifying events occurring on or after the day on which this Act is passed.

Notification of plans and schemes to HMRC

- 3 (1) In Schedule 2 to ITEPA 2003 (share incentive plans), Part 10 (notification of plans etc) is amended as follows.
- (2) In paragraph 81A (notice of SIP to be given to HMRC), after sub-paragraph (5) insert—
- “(5A) Sub-paragraph (5) does not apply if the company satisfies HMRC (or, on an appeal under paragraph 81K, the Tribunal) that there is a reasonable excuse for failing to give notice on or before the initial notification deadline.
 - (5B) Paragraph 81C(9) (what constitutes a reasonable excuse) applies for the purposes of sub-paragraph (5A).
 - (5C) Where HMRC are required under sub-paragraph (5A) to consider whether there was a reasonable excuse, HMRC must notify the company of their decision within the period of 45 days beginning with the day on which HMRC received the company's request to consider the excuse.
 - (5D) Where HMRC are required to notify the company as specified in sub-paragraph (5C) but do not do so—
 - (a) HMRC are to be treated as having decided that there was no reasonable excuse, and
 - (b) HMRC must notify the company of the decision which they are treated as having made.”
- (3) In paragraph 81K (appeals)—
- (a) at the beginning insert—
 - “(A1) The company may appeal against a decision of HMRC under paragraph 81A(5A) that there was no reasonable

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- excuse for its failure to give notice on or before the initial notification deadline.”;
- (b) in sub-paragraph (6), before paragraph (a) insert –
- “(za) in the case of an appeal under sub-paragraph (A1), notice of HMRC’s decision is given to the company;”;
- (c) in sub-paragraph (7), after “sub-paragraph” insert “(A1),”.
- (4) The amendments made by this paragraph have effect in relation to notices given under paragraph 81A of Schedule 2 to ITEPA 2003 on or after 6 April 2016.
- 4 (1) In Schedule 3 to ITEPA 2003 (SAYE option schemes), Part 8 (notification of schemes etc) is amended as follows.
- (2) In paragraph 40A (notice of scheme to be given to HMRC), after sub-paragraph (5) insert –
- “(5A) Sub-paragraph (5) does not apply if the scheme organiser satisfies HMRC (or, on an appeal under paragraph 40K, the Tribunal) that there is a reasonable excuse for the failure to give notice on or before the initial notification deadline.
- (5B) Paragraph 40C(9) (what constitutes a reasonable excuse) applies for the purposes of sub-paragraph (5A).
- (5C) Where HMRC are required under sub-paragraph (5A) to consider whether there was a reasonable excuse, HMRC must notify the scheme organiser of their decision within the period of 45 days beginning with the day on which HMRC received the scheme organiser’s request to consider the excuse.
- (5D) Where HMRC are required to notify the scheme organiser as specified in sub-paragraph (5C) but do not do so –
- (a) HMRC are to be treated as having decided that there was no reasonable excuse, and
- (b) HMRC must notify the scheme organiser of the decision which they are treated as having made.”
- (3) In paragraph 40K (appeals) –
- (a) at the beginning insert –
- “(A1) The scheme organiser may appeal against a decision of HMRC under paragraph 40A(5A) that there was no reasonable excuse for the failure to give notice on or before the initial notification deadline.”;
- (b) in sub-paragraph (5), before paragraph (a) insert –
- “(za) in the case of an appeal under sub-paragraph (A1), notice of HMRC’s decision is given to the scheme organiser;”;
- (c) in sub-paragraph (6), after “sub-paragraph” insert “(A1),”.
- (4) The amendments made by this paragraph have effect in relation to notices given under paragraph 40A of Schedule 3 to ITEPA 2003 on or after 6 April 2016.

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- 5 (1) In Schedule 4 to ITEPA 2003 (CSOP schemes), Part 7 (notification of schemes etc) is amended as follows.
- (2) In paragraph 28A (notice of scheme to be given to HMRC), after sub-paragraph (5) insert—
- “(5A) Sub-paragraph (5) does not apply if the scheme organiser satisfies HMRC (or, on an appeal under paragraph 28K, the Tribunal) that there is a reasonable excuse for the failure to give notice on or before the initial notification deadline.
- (5B) Paragraph 28C(9) (what constitutes a reasonable excuse) applies for the purposes of sub-paragraph (5A).
- (5C) Where HMRC are required under sub-paragraph (5A) to consider whether there was a reasonable excuse, HMRC must notify the scheme organiser of their decision within the period of 45 days beginning with the day on which HMRC received the scheme organiser’s request to consider the excuse.
- (5D) Where HMRC are required to notify the scheme organiser as specified in sub-paragraph (5C) but do not do so—
- (a) HMRC are to be treated as having decided that there was no reasonable excuse, and
- (b) HMRC must notify the scheme organiser of the decision which they are treated as having made.”
- (3) In paragraph 28K (appeals)—
- (a) at the beginning insert—
- “(A1) The scheme organiser may appeal against a decision of HMRC under paragraph 28A(5A) that there was no reasonable excuse for the failure to give notice on or before the initial notification deadline.”;
- (b) in sub-paragraph (5), before paragraph (a) insert—
- “(za) in the case of an appeal under sub-paragraph (A1), notice of HMRC’s decision is given to the scheme organiser;”;
- (c) in sub-paragraph (6), after “sub-paragraph” insert “(A1),”.
- (4) The amendments made by this paragraph have effect in relation to notices given under paragraph 28A of Schedule 4 to ITEPA 2003 on or after 6 April 2016.

Price for acquisition of shares under share option

- 6 (1) In Schedule 3 to ITEPA 2003 (SAYE option schemes), paragraph 28 (requirements as to price for acquisition of shares) is amended as follows.
- (2) In sub-paragraph (1)—
- (a) in paragraph (b), for “at that time” substitute “—
- (i) at that time, or
- (ii) at such earlier time as may be determined in accordance with guidance issued by the Commissioners for Her Majesty’s Revenue and Customs.”

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- (b) for “sub-paragraphs (2) and (3)” substitute “sub-paragraph (3)”
 - (3) Omit sub-paragraph (2).
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- (1) In Schedule 4 to ITEPA 2003 (CSOP schemes), paragraph 22 (requirements as to price for acquisition of shares) is amended as follows.
 - (2) In sub-paragraph (1) –
 - (a) in paragraph (b), for “at the time when the option was granted” substitute “–
 - (i) at the time the option was granted, or
 - (ii) at such earlier time as may be determined in accordance with guidance issued by the Commissioners for Her Majesty’s Revenue and Customs.”;
 - (b) for “sub-paragraphs (2) and (3)” substitute “sub-paragraph (3)”.
 - (3) Omit sub-paragraph (2).

Tag-along rights

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- (1) In Schedule 5 to ITEPA 2003 (enterprise management incentives), in paragraph 39 (company re-organisations: introduction), in sub-paragraph (2)(c), after “982” insert “or 983 to 985”.
 - (2) The amendment made by this paragraph is treated as having come into force on 17 July 2013.

Exercise of EMI options after disqualifying event

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- (1) In Schedule 7D to TCGA 1992 (share schemes and share incentives), in paragraph 14(4) (time limit for exercise of option after disqualifying event), for “40” substitute “90”.
 - (2) The amendment made by this paragraph has effect in relation to disqualifying events occurring on or after the day on which this Act is passed.