

# Finance Bill

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**1 Corporation tax relief for employee share acquisitions**

Schedule 1 to this Act has effect with respect to deductions allowable for corporation tax purposes in respect of employee share acquisitions.

**2 Ending of relief for contributions to QUESTs**

- (1) Section 67 of the Finance Act 1989 (c. 26) (tax relief for contributions to trustees of qualifying employee share ownership trust) does not apply in relation to sums expended by a company in an accounting period of the company beginning on or after 1st January 2003.
- (2) In section 69 of that Act (chargeable events)—
  - (a) the definitions in subsections (3AC) and (3AD) (by virtue of which certain transfers of shares by trustees of an employee share ownership trust to a SIP trust are not chargeable events) have effect in relation to 26th November 2002 as they had effect in relation to 20th March 2000;
  - (b) in relation to shares that are relevant shares by virtue of paragraph (a) above, subsection (3AB) (deemed order of disposal of shares) has effect as if the reference there to 21st March 2000 were to 27th November 2002; and
  - (c) the other provisions of that section have effect accordingly.

## SCHEDULES

## SCHEDULE 1

Section 1

## CORPORATION TAX RELIEF FOR EMPLOYEE SHARE ACQUISITION

## PART 1

## GENERAL PROVISIONS

*Introduction*

- 1 (1) This Schedule provides for corporation tax relief for a company where a person—
- (a) acquires shares by reason of his, or another person's, employment with that company (an "award of shares": see Part 2 of this Schedule), or
  - (b) obtains by reason of his, or another person's, employment with that company an option to acquire shares and acquires shares in exercise of that option (the "grant of an option": see Part 3 of this Schedule).
- (2) Part 4 of this Schedule makes further provision for cases where the shares acquired are subject to forfeiture.
- (3) In this Schedule—
- "the employing company" means the company mentioned in subparagraph (1);
  - "the recipient" means the person acquiring the shares or obtaining the option; and
  - "the employee" means the person by reason of whose employment the shares are acquired or the option granted.

*Requirements for relief*

- 2 Relief under this Schedule is available only if the requirements of this Schedule are met as to—
- (a) the business for the purposes of which the award or grant is made (paragraph 3);
  - (b) the kind of shares acquired (paragraph 4);
  - (c) the company whose shares are acquired (paragraph 6 or 12); and
  - (d) the income tax position of the employee (paragraph 7, 14 or 20).

*Business must be within the charge to corporation tax*

- 3 (1) The business for the purposes of which the award or grant is made must—
- (a) be carried on by the employing company, and
  - (b) be within the charge to corporation tax.

- (2) A business is within the charge to corporation tax if, or to the extent that, it is carried on by a company that is within the charge to corporation tax in respect of the profits of the business.

*Kind of shares acquired*

- 4 (1) The shares acquired must meet the following requirements.
- (2) They must be ordinary shares that are fully paid-up and not redeemable.
- (3) They must be—
- (a) shares of a class listed on a recognised stock exchange, or
  - (b) shares in a company that is not under the control of another company, or
  - (c) shares in a company that is under the control of a company (other than a close company or a company that if resident in the United Kingdom would be a close company) whose shares are listed on a recognised stock exchange.

PART 2

AWARD OF SHARES

*Introduction*

- 5 (1) The provisions of this Part of this Schedule apply in the case of an award of shares.
- (2) Where the shares acquired are subject to forfeiture, the provisions of this Part have effect subject to the provisions of Part 4 of this Schedule.

*The company whose shares are acquired*

- 6 (1) The shares acquired must be shares in—
- (a) the employing company; or
  - (b) a company that, at the time of the award, is a parent company in relation to the employing company; or
  - (c) a company that, at the time of the award, is a member of a consortium that owns the employing company or a company within paragraph (b); or
  - (d) where at the time of the award the employing company or a company within paragraph (b) is a member of a consortium that owns another company (C), a company that at that time—
    - (i) is a member of the consortium or a parent company in relation to a member of the consortium, and
    - (ii) is also a member of the same commercial association of companies as C.

*Income tax position of employee*

- 7 (1) It must be the case that the employee—
- (a) is subject to a charge to income tax under section 19 of the Taxes Act 1988 (general charge on emoluments) in respect of the award, or

- (b) would be subject to such a charge if the conditions specified in sub-paragraph (2) were met.
- (2) The conditions mentioned in sub-paragraph (1)(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 were performed in the United Kingdom at all material times.

*Amount of relief*

- 8 (1) The amount of the relief is equal to the difference between—
- (a) the market value of the shares at the time of the award, and
  - (b) the total amount or value of any consideration given, by the recipient or another, in respect of the shares.
- (2) The consideration mentioned in sub-paragraph (1)(b) does not include the performance of any duties of, or in connection with, the employee's employment with the employing company.
- (3) A just and reasonable apportionment shall be made for the purposes of this paragraph of any consideration given partly in respect of the shares and partly in respect of other matters.
- (4) If the award 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.

*How relief is given*

- 9 (1) The amount of the relief is allowed as a deduction in computing for the purposes of corporation tax the profits of the business for the purposes of which the award was made.
- (2) If the company carrying on that business is an investment company, the amount of the relief is treated as disbursed as expenses of management for the purposes of section 75 of the Taxes Act 1988.
- (3) If the company carrying on that business is an insurance company carrying on life assurance business, the amount of the relief is included among the amounts the company may treat as part of its expenses of management for the purposes of section 76 of the Taxes Act 1988.
- (4) If the award was made for the purposes of more than one business within the charge to corporation tax, the amount of the deduction must be apportioned between them on a just and reasonable basis.

*Timing of relief*

- 10 (1) The relief is given for the accounting period in which the recipient acquires the shares.
- (2) The time when the shares are acquired is when the recipient acquires a beneficial interest in the shares and not, if different, the time the shares are conveyed or transferred.

PART 3

GRANT OF OPTION

*Introduction*

- 11 (1) The provisions of this Part of this Schedule apply in the case of the grant of an option to acquire shares.
- (2) Where the shares acquired in exercise of the option are subject to forfeiture, the provisions of this Part have effect subject to the provisions of Part 4 of this Schedule.

*The company whose shares are acquired*

- 12 The company whose shares are acquired in exercise of the option must be—
- (a) the employing company; or
  - (b) a company that, at the time the option is granted, is a parent company in relation to the employing company; or
  - (c) a company that, at that time, is a member of a consortium that owns the employing company or a company within paragraph (b); or
  - (d) where, at that time, the employing company or a company within paragraph (b) is a member of a consortium that owns another company (C), a company that, at that time—
    - (i) is a member of the consortium or a parent company in relation to a member of the consortium, and
    - (ii) is also a member of the same commercial association of companies as C; or
  - (e) a qualifying successor company (see paragraph 13).

*Takeover of company whose shares are subject of option*

- 13 (1) This paragraph applies where—
- (a) there is a takeover of a company whose shares are the subject of a qualifying option,
  - (b) the holder of the option, by agreement with the acquiring company, releases his rights under that option (“the old option”) in consideration of the grant to him of another option (“the new option”), and
  - (c) the new option relates to shares in a qualifying company.
- (2) Where those conditions are met—
- (a) the company whose shares are the subject of the new option is a qualifying successor company for the purposes of paragraph 12 (requirement as to company whose shares are acquired),
  - (b) shares acquired in exercise of the new option are treated for the purposes of this Schedule as if they had been acquired in exercise of the old option, and
  - (c) in determining the amount of relief any consideration given in respect of the grant or exercise of the new option is treated as if it had been given in respect of the grant or exercise of the old option.
- (3) For the purposes of this paragraph—

- (a) there is a takeover of a company where another company (“the acquiring company”) acquires control of it; and
  - (b) an option is a “qualifying option” if the requirements of paragraph 12 would be met in relation to its exercise.
- (4) The following are qualifying companies for the purposes of this paragraph—
- (a) the acquiring company;
  - (b) a company that, at the time of the takeover, is a parent company in relation to the acquiring company;
  - (c) a company that, at that time, is a member of a consortium that owns the acquiring company or a company within paragraph (b);
  - (d) where, at that time, the acquiring company or a company within paragraph (b) is a member of a consortium that owns another company (C), a company that, at that time—
    - (i) is a member of the consortium or a parent company in relation to a member of the consortium, and
    - (ii) is also a member of the same commercial association of companies as C.

*Income tax position of the employee*

- 14 (1) It must be the case that the employee—
- (a) either—
    - (i) was subject to a charge to income tax under section 19 of the Taxes Act 1988 (general charge on emoluments) in respect of the grant of the option, or
    - (ii) is subject to a charge to income tax under section 135 of that Act (share options gains) in respect of the gain realised by the exercise of the option, or
  - (b) would be subject to such a charge as is mentioned in paragraph (a)(ii) but for a relevant exemption, or
  - (c) would be within paragraph (a) or (b) if the conditions specified in sub-paragraph (3) were met.
- (2) In sub-paragraph (1)(b) a “relevant exemption” means an exemption under—
- (a) section 185(3)(a) of the Taxes Act 1988 (exercise of option under approved SAYE scheme or approved CSOP scheme), or
  - (b) paragraph 44 of Schedule 14 to the Finance Act 2000 (c. 17) (exercise of qualifying option under EMI code).
- (3) The conditions mentioned in sub-paragraph (1)(c) 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 option was granted were performed in the United Kingdom at all material times.

*Amount of relief*

- 15 (1) The amount of the relief is equal to the difference between—
- (a) the market value of the shares at the time the option is exercised, and

- (b) the total amount or value of any consideration given, by the recipient or another, in respect of the grant or exercise of the option.
- (2) The consideration mentioned in sub-paragraph (1)(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).
- (3) A just and reasonable apportionment shall be made for the purposes of this paragraph of any consideration given partly in respect of the grant or exercise of the option and partly in respect of other matters.
- (4) If the option was granted 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.

#### *How relief is given*

- 16 (1) The amount of the relief is allowed as a deduction in computing for the purposes of corporation tax the profits of the business for the purposes of which the option was granted.
- (2) If the company carrying on the business is an investment company, the amount of the relief is treated as disbursed as expenses of management for the purposes of section 75 of the Taxes Act 1988.
- (3) If the company carrying on the business is an insurance company carrying on life assurance business, the amount of the relief is included among the amounts the company may treat as part of its expenses of management for the purposes of section 76 of the Taxes Act 1988.
- (4) If the option was granted for the purposes of more than one business within the charge to corporation tax, the amount of the deduction must be apportioned between them on a just and reasonable basis.

#### *Timing of relief*

- 17 (1) The relief is given for the accounting period in which the shares are acquired in exercise of the option.
- (2) The time when the shares are acquired is when the recipient acquires a beneficial interest in the shares and not, if different, the time the shares are conveyed or transferred.

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 section 140A of the Taxes Act 1988—
      - (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 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.

PART 5

SUPPLEMENTARY PROVISIONS

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

- 23 (1) Deductions available under any of the following provisions of Schedule 8 to the Finance Act 2000 (c. 17) (share incentive plans) are to be given in priority to relief under this Schedule—
- (a) paragraph 106 (deduction for providing free or matching shares);
  - (b) paragraph 107 (deduction for expenses in providing partnership shares);
  - (c) paragraph 112A or 112B(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*

- 24 (1) Where relief under this Schedule is available, no other deduction is allowed for any corporation tax purposes 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”*

- 25 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*

- 26 (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, Part 2 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”*

- 27 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”*

- 28 (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*

- 29 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.

*Index of defined expressions*

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

commercial association of companies	paragraph 28(2)
consortium	paragraph 28(1)
Contributions and Benefits Act	paragraph 29
control	paragraph 29
employment and related expressions	paragraph 25
the employee	paragraph 1(3)
employing company	paragraph 1(3)
group	paragraph 27(b)
group company	paragraph 27(a)
insurance company	paragraph 29
investment company	paragraph 29
life assurance business	paragraph 29
market value	paragraph 29
option	paragraph 29
ordinary shares	paragraph 29
parent company	paragraph 27(c)
the recipient	paragraph 1(3)
shares	paragraph 29
subject to forfeiture	paragraph 19
within the charge to corporation tax (of a business)	paragraph 3(2)

PART 6

COMMENCEMENT AND TRANSITIONAL PROVISIONS

*Commencement*

31 This Schedule applies to accounting periods of the employing company beginning on or after 1st January 2003.

*Transitional provisions*

32 (1) Relief is not available under this Schedule in respect of shares if or to the extent that a deduction is available or has been made in respect of relevant expenses in computing the chargeable profits of the employing company or

any other company for the purposes of corporation tax for an accounting period beginning before 1st January 2003.

- (2) In sub-paragraph (1) “relevant expenses” means any expenses referable, directly or indirectly, to the provision of the shares in question.