

## SCHEDULE 11 Profit Sharing Schemes

Section 510.

FA82 Sch3; FA90 s136; FA95 s16; FA97 s50(c)

### PART 1

#### Interpretation

1. In this Schedule, “control” shall be construed in accordance with section 432.

2. For the purposes of this Schedule, a company shall be a member of a consortium owning another company if it is one of not more than 5 companies which between them beneficially own not less than 75 per cent of the other company's ordinary share capital and each of which beneficially owns not less than 5 per cent of that capital.

### PART 2

#### Approval of schemes

3. (1) On the application of a body corporate (in this Schedule referred to as “the company concerned”) which has established a profit sharing scheme which complies with subparagraphs (3) and (4), the Revenue Commissioners shall, subject to section 511, approve of the scheme—

(a) if they are satisfied in accordance with paragraph 4, and

(b) unless it appears to them that there are features of the scheme which are neither essential nor reasonably incidental to the purpose of providing for employees and directors benefits in the nature of interests in shares.

(2) Where the company concerned has control of another company or companies, the scheme may be expressed to extend to all or any of the companies of which it has control, and in this Schedule a scheme which is expressed so to extend is referred to as a “group scheme” and, in relation to a group scheme, “participating company” means the company concerned or a company of which for the time being the company concerned has control and to which for the time being the scheme is expressed to extend.

(3) The scheme shall provide for the establishment of a body of persons resident in the State (in this Schedule referred to as “the trustees”)—

(a) who, out of moneys paid to them by the company concerned or, in the case of a group scheme, by a participating company, are required by the scheme to acquire shares in respect of which the conditions in Part 3 of this Schedule are fulfilled,

(b) who are under a duty to appropriate shares acquired by them to individuals who participate in the scheme, not being individuals ineligible by virtue of Part 4 of this Schedule, and

(c) whose functions with respect to shares held by them are regulated by a trust which is constituted under the law of the State and the terms of which are embodied in an instrument which complies with Part 5 of this Schedule.

(4) The scheme shall provide that the total of the initial market values of the shares appropriated to any one participant in a year of assessment will not exceed £10,000.

(5) An application under subparagraph (1) shall be made in writing and shall contain such particulars and be supported by such evidence as the Revenue Commissioners may require.

4. (1) The Revenue Commissioners shall be satisfied that at any time every person who—

(a) (i) as respects a profit sharing scheme approved before the 10th day of May, 1997, is then a full-time employee or director of the company concerned or, in the case of a group scheme, of a participating company, or

(ii) as respects a profit sharing scheme approved on or after the 10th day of May, 1997, is then an employee or full-time director of the company concerned or, in the case of a group scheme, of a participating company,

(b) has been such an employee or director at all times during a qualifying period, not exceeding 5 years, ending at that time, and

(c) is chargeable to income tax in respect of his or her office or employment under Schedule E,

will then be eligible, subject to Part 4 of this Schedule, to participate in the scheme on similar terms.

(2) For the purposes of subparagraph (1), the fact that the number of shares to be appropriated to the participants in a scheme varies by reference to the levels of their remuneration, the length of their service or similar factors shall not be regarded as meaning that the participants are not eligible to participate in the scheme on similar terms.

5. (1) Where at any time after the Revenue Commissioners have approved of a scheme—

(a) a participant is in breach of any of his or her obligations under paragraphs (a), (c) and (d) of section 511 (4),

(b) there is, with respect to the operation of the scheme, any contravention of any provision of Chapter 1 of Part 17, the scheme itself of the terms or the trust referred to in paragraph 3(3) (c),

(c) any shares of a class of which shares have been appropriated to participants receive different

treatment in any respect from the other shares of that class, being in particular different treatment in respect of—

(i) the dividend payable,

(ii) repayment,

(iii) the restrictions attaching to the shares, or

(iv) any offer of substituted or additional shares, securities or rights of any description in respect of the shares,

or

(d) the Revenue Commissioners cease to be satisfied in accordance with paragraph 4,

then, the Revenue Commissioners may, subject to subparagraph (3), withdraw the approval with effect from that time or from such later time as they may specify.

(2) Where at any time after the Revenue Commissioners have approved of a scheme an alteration is made in the scheme or the terms of the trust referred to in paragraph 3(3) (c), the approval shall not have effect after the date of the alteration unless the Revenue Commissioners have approved of the alteration.

(3) It shall not be a ground for withdrawal of approval of a scheme that shares which have been newly issued receive, in respect of dividends payable with respect to a period beginning before the date on which the shares were issued, treatment less favourable than that accorded to shares issued before that date.

6. (1) Where the company concerned is aggrieved by—

(a) the failure of the Revenue Commissioners to approve of a scheme,

(b) the failure of the Revenue Commissioners to approve of an alteration as mentioned in paragraph 5(2),  
or

(c) the withdrawal of approval,

the company may, by notice in writing given to the Revenue Commissioners within 30 days from the date on which it is notified of their decision, make an application to have its claim for relief heard and determined by the Appeal Commissioners.

(2) Where an application is made under subparagraph (1), the Appeal Commissioners shall hear and determine the claim in the like manner as an appeal made to them against an assessment, and the provisions of the Income Tax Acts relating to such an appeal (including the provisions relating to the rehearing of an appeal and to the statement of a case for the opinion of the High Court on a point of law) shall apply accordingly with any necessary modifications.

7. The Revenue Commissioners may nominate any of their officers, including an inspector, to perform any acts and discharge any functions authorised by this Schedule to be performed or discharged by them.

### PART 3

#### Conditions as to the shares

8. The shares shall form part of the ordinary share capital of—

(a) the company concerned,

(b) a company which has control of the company concerned, or

(c) a company which either is or has control of a company which—

(i) is a member of a consortium owning either the company concerned or a company having control of that company, and

(ii) beneficially owns not less than 15 per cent of the ordinary share capital of the company so owned.

9. The shares shall be—

(a) shares of a class quoted on a recognised stock exchange,

(b) shares in a company not under the control of another company, or

(c) shares in a company under the control of a company ) whose shares are quoted on a recognised stock exchange.

10. (1) The shares shall be—

(a) fully paid up,

(b) not redeemable, and

(c) not subject to any restrictions other than restrictions which attach to all shares of the same class or, as respects a profit sharing scheme approved on or after the 10th day of May, 1997, a restriction authorised by subparagraph (2).

(2) Subject to subparagraphs (3) and (4), the shares may be subject to a restriction imposed by the company's articles of association—

(a) requiring all shares held by directors or employees of the company or of any other company of which it has control to be disposed of on ceasing to be so held, and

(b) requiring all shares acquired, in pursuance of rights or interests obtained by such directors or employees, by persons who are not, or have ceased to be, such directors or employees to be disposed of when they are acquired.

(3) A restriction is not authorised by subparagraph (2) unless—

(a) any disposal required by the restriction will be by means of sale for a consideration in money on terms specified in the articles of association, and

(b) the articles also contain general provisions by virtue of which any person disposing of shares of the same class (whether or not held or acquired as mentioned in subparagraph (2)) may be required to sell them on terms which are the same as those mentioned in paragraph (a).

(4) Nothing in subparagraph (2) authorises a restriction which would require a person, before the release date, to dispose of his or her beneficial interest in shares the ownership of which has not been transferred to him or her.

11. Except where the shares are in a company whose ordinary share capital, at the time of the acquisition of the shares by the trustees, consists of shares of one class only, the majority of the issued shares of the same class shall be held by persons other than—

(a) persons who acquired their shares—

(i) in pursuance of a right conferred on them or an opportunity afforded to them as a director or employee of the company concerned or any other company, and

(ii) not in pursuance of an offer to the public,

(b) trustees holding shares on behalf of persons who acquired their beneficial interests in the shares in pursuance of a right or opportunity mentioned in subparagraph (a), and

(c) in a case where the shares are within paragraph 9(c) and are not within paragraph 9(a), companies which have control of the company whose shares are in question or of which that company is an associated company within the meaning of section 432.

## PART 4

### Individuals ineligible to participate

12. An individual shall not be eligible to have shares appropriated to him or her under the scheme at any time unless he or she is at that time or was within the preceding 18 months a director or employee of the company concerned or, if the scheme is a group scheme, of a participating company.

13. An individual shall not be eligible to have shares appropriated to him or her under the scheme at any time in a year of assessment if in that year of assessment shares have been appropriated to him or her

under another approved scheme established by the company concerned or by—

(a) a company which controls or is controlled by the company concerned or which is controlled by a company which also controls the company concerned, or

(b) a company which is a member of a consortium owning the company concerned or which is owned in part by the company concerned as a member of a consortium.

14. (1) An individual shall not be eligible to have shares appropriated to him or her under the scheme at any time if at that time he or she has, or at any time within the preceding 12 months had, a material interest in a close company which is—

(a) the company whose shares are to be appropriated, or

(b) a company which has control of that company or is a member of a consortium which owns that company.

(2) Subparagraph (1) shall apply in relation to a company which would be a close company but for section 430 (1) (a) or 431.

(3) (a) In this paragraph, “close company” has the meaning assigned to it by section 430.

(b) For the purpose of this paragraph—

(i) subsection (3) of section 433 shall apply—

(I) in a case where the scheme in question is a group scheme, with the substitution of a reference to all participating companies for the first reference to the company in paragraph (c) (ii) of that subsection, and

(II) with the substitution of a reference to 15 per cent for the reference in that paragraph to 5 per cent, and

(ii) section 437 (2) shall apply, with the substitution of a reference to 15 per cent for the reference in that section to 5 per cent, for the purpose of determining whether a person has or had a material interest in a company.

## PART 5

### Provisions as to the trust instrument

15. The trust instrument shall provide that, as soon as practicable after any shares have been appropriated to a participant, the trustees will give him or her notice in writing of the appropriation—

(a) specifying the number and description of those shares, and

(b) stating their initial market value.

16. (1) The trust instrument shall contain a provision prohibiting the trustees from disposing of any shares, except as mentioned in paragraphs (a), (b) or (c) of section 511 (6), during the period of retention (whether by transfer to the participant or otherwise).

(2) The trust instrument shall contain a provision prohibiting the trustees from disposing of any shares after the end of the period of retention and before the release date except—

(a) pursuant to a direction given by or on behalf of the participant or any person in whom the beneficial interest in the participant's shares is for the time being vested, and

(b) by a transaction which would not involve a breach of the participant's obligation under paragraph (c) or (d) of section 511 (4).

17. The trust instrument shall contain a provision requiring the trustees—

(a) subject to any direction referred to in section 513 (3), to pay over to the participant any money or money's worth received by them in respect of, or by reference to, any of the participant's shares, other than money consisting of a sum referred to in section 511 (4) (c) or money's worth consisting of new shares within the meaning of section 514, and

(b) to deal only pursuant to a direction given by or on behalf of the participant (or any person referred to in paragraph 16(2) (a)) with any right conferred in respect of any of the participant's shares to be allotted other shares, securities or rights of any description.

18. The trust instrument shall impose an obligation on the trustees—

(a) to maintain such records as may be necessary to enable the trustees to carry out their obligations under Chapter 1 of Part 17, and

(b) where the participant becomes liable to income tax under Schedule E by reason of the occurrence of any event, to inform the participant of any facts relevant to determining that liability.