

SCHEDULES

SCHEDULE 8

Section 176(9).

PROFIT-RELATED PAY SCHEMES: CONDITIONS FOR REGISTRATION

Form

- 1 The terms of the scheme must be set out in writing.

Employer and employment unit

- 2 The scheme must identify the scheme employer.
- 3 If the scheme employer does not pay the emoluments of all the employees to whom the scheme relates, the scheme must identify each of the persons who pays the emoluments of any of those employees.
- 4 (1) The scheme must identify the undertaking to which the scheme relates and that undertaking must be one which is carried on with a view to profit.
- (2) The references in sub-paragraph (1) above to an undertaking include references to part of an undertaking; and the provisions of a scheme identifying part of an undertaking must do so in such a way as to distinguish it, otherwise than by name only, from other parts of the undertaking.

Employees

- 5 The scheme must contain provisions by reference to which the employees to whom the scheme relates may be identified.
- 6 The scheme must contain provisions ensuring that no payments are made under it by reference to a profit period if the employees to whom the scheme relates constitute less than 80 per cent. of all the employees in the employment unit at the beginning of that profit period, but for this purpose any person who is at that time within paragraph 7 or 8 below shall not be counted.
- 7 (1) The scheme must contain provisions ensuring that no payments are made under it to any person who is employed in the employment unit by a company and who has, or is an associate of a person who has, a material interest in the company.
- (2) For the purposes of this paragraph a person shall be treated as having a material interest in a company—
- (a) if he, either on his own or with any one or more of his associates, or if any associate of his with or without such other associates, is the beneficial owner of, or able (directly or through the medium of other companies or by any other indirect means) to control, more than 25 per cent. of the ordinary share capital of the company; or
 - (b) if, in the case of a close company, on an amount equal to the whole distributable income of the company falling to be apportioned under Chapter

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III of Part XI for the purpose of computing total income, more than 25 per cent. of that amount could be apportioned to him together with his associates (if any), or to any associate of his, or to any such associates taken together.

(3) In this paragraph—

“associate” has the same meaning as in section 417(3) and (4); and

“control” has the meaning given by section 840;

and the definition of “control” in section 840 applies (with the necessary modifications) in relation to a company which is an unincorporated association as it applies in relation to one that is not.

8 The persons within this paragraph are any of the following employees who are excluded by the scheme from receiving any payment of profit-related pay—

(a) those who are not required under the terms of their employment to work in the employment unit for 20 hours or more a week;

(b) those who have not been employed by a relevant employer for a minimum period (of not more than three years) specified in the scheme;

and for this purpose “relevant employer” means the scheme employer or any person who pays the emoluments of any of the employees to whom the scheme relates.

Profit periods

9 The scheme must identify the accounting period or periods by reference to which any profit-related pay is to be calculated.

10 (1) Subject to sub-paragraphs (2) and (3) below, any such accounting period must be a period of 12 months.

(2) If the scheme is a replacement scheme, the first of two profit periods may be a period of less than 12 months, but the scheme may not provide for more than two profit periods.

(3) The scheme may make provision for a profit period to be abbreviated where registration of the scheme is cancelled with effect from a day after the beginning of the period; and a scheme making such provision may exclude the operation of all or any of the provisions of paragraph 13(4) and (5) or (as the case may be) paragraph 14(3)(b), (4) and (5) below in relation to the determination of the distributable pool for an abbreviated period.

(4) For the purposes of this paragraph, a scheme is a replacement scheme if—

(a) it succeeds another scheme (or two or more other schemes) registration of which was cancelled under section 178(1)(a) on the ground of a change in the employment unit or in the circumstances relating to the scheme; and

(b) that change occurred not more than three months before the beginning of the first (or only) profit period of the new scheme, and the Board are satisfied that it was not brought about with a view to the registration of the new scheme or in circumstances satisfying the conditions in section 177(1)(a), (b) and (c); and

(c) not less than one half of the employees to whom the new scheme relates were employees to whom the previous scheme (or any of the previous schemes) related at the time of that change.

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Distributable pool

- 11 The scheme must contain provisions by reference to which the aggregate sum that may be paid to employees in respect of a profit period (“the distributable pool”) may be determined.
- 12 Except where the scheme is a replacement scheme (within the meaning of paragraph 10 above), the provisions for the determination of the distributable pool must employ either the method specified in paragraph 13 below (“method A”) or the method specified in paragraph 14 below (“method B”).
- 13 (1) Method A is that the distributable pool is equal to a fixed percentage of the profits of the employment unit in the profit period.
- (2) That percentage must be such that, on the assumption as to profits mentioned in sub-paragraph (3) below, it will produce a distributable pool equal to not less than 5 per cent. of the standard pay of the employment unit.
- (3) The assumption referred to in sub-paragraph (2) above is that the profits in the profit period are the same as those in a base year specified in the scheme; and that base year must be a period of 12 months ending at a time within the period of two years immediately preceding the profit period, or the first of the profit periods, to which the scheme relates.
- (4) Notwithstanding sub-paragraph (1) above, a scheme employing method A may include provision for disregarding profits in the profit period so far as they exceed 160 per cent. (or such greater percentage as may be specified in the scheme) of—
- (a) if the profit period is the first or only period to which the scheme relates, the profits for the base year referred to in sub-paragraph (3) above;
- (b) in any other case, the profits for the previous profit period.
- (5) Notwithstanding sub-paragraph (1) above, a scheme employing method A may include provision to the effect that there shall be no distributable pool if the profits in the profit period are less than an amount specified in, or ascertainable by reference to, the scheme; but that amount must be less than the amount which would produce a distributable pool of 5 per cent. of the standard pay of the employment unit.
- (6) The references in this paragraph to the standard pay of the employment unit are references to the amount which the scheme employer, at the time when he applies for registration of the scheme, reasonably estimates will be the annual equivalent of the pay, at the beginning of the profit period or first profit period, of the employees to whom the scheme will then relate; and for this purpose an estimate shall (in the absence of evidence to the contrary) be taken to be a reasonable one if it is based on the most recent information available to the employer as to the monthly or annual pay of the relevant employees.
- 14 (1) Method B is that the distributable pool is—
- (a) if the profit period is the first or only profit period to which the scheme relates, a percentage of a notional pool of an amount specified in the scheme;
- (b) in any other case, a percentage of the distributable pool for the previous profit period.
- (2) The amount of the notional pool referred to in sub-paragraph (1) above must not be less than 5 per cent. of the standard pay of the employment unit.
- (3) The percentage referred to in sub-paragraph (1) above must be either—

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- (a) that arrived at by expressing the profits in the profit period as a percentage of the profits in the preceding period of 12 months; or
- (b) the percentage mentioned in paragraph (a) above reduced (if it is more than 100) or increased (if it is less than 100) by a specified fraction of the difference between it and 100;

and the reference in paragraph (b) above to a specified fraction is a reference to a fraction of not more than one half specified in the scheme.

- (4) Notwithstanding sub-paragraph (1) above, a scheme employing method B may include provision for disregarding profits in the profit period so far as they exceed 160 per cent. (or such greater percentage as may be specified in the scheme) of the profits in the preceding period of 12 months.
 - (5) Notwithstanding sub-paragraph (1) above, a scheme employing method B may include provision to the effect that there shall be no distributable pool if the profits in the profit period are less than an amount specified in, or ascertainable by reference to, the scheme; but that amount must be less than the amount which would produce a distributable pool of 5 per cent. of the standard pay of the employment unit.
 - (6) Where by virtue of a provision of the kind described in sub-paragraph (5) above there is no distributable pool for a profit period, any comparison required in accordance with sub-paragraph (1)(b) to be made with the distributable pool for that period shall be made with what would have been the pool but for sub-paragraph (5).
 - (7) In this paragraph “standard pay of the employment unit” has the same meaning as it has in paragraph 13 above.
- 15 If the scheme is a replacement scheme (within the meaning of paragraph 10 above), it must provide for the distributable pool for a profit period to be equal to a specified percentage of the profits for the period.

Payment from distributable pool etc.

- 16 The scheme must provide for the whole of the distributable pool to be paid to employees in the employment unit.
- 17 The scheme must make provision as to when payments will be made to employees.
- 18 (1) The provisions of the scheme must be such that employees participate in the scheme on similar terms.
- (2) For the purposes of sub-paragraph (1) above, the fact that the payments to employees vary according to the levels of their remuneration, the length of their service or similar factors shall not be regarded as meaning that they do not participate on similar terms.

Ascertainment of profits

- 19 (1) The scheme must provide for the preparation of a profit and loss account in respect of—
- (a) each profit period of the employment unit; and
 - (b) any other period the profits for which must be ascertained for the purposes of this Chapter.

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- (2) The profit and loss account must give a true and fair view of the profit or loss of the employment unit for the period to which it relates.
 - (3) Subject to sub-paragraph (2) above, the requirements of Schedule 4 to the Companies Act 1985 shall apply (with any necessary modifications) to a profit and loss account prepared for the purposes of the scheme as they apply to a profit and loss account of a company for a financial year.
 - (4) Notwithstanding the preceding provisions of this paragraph, a profit and loss account prepared for the purposes of the scheme must not make any deduction, in arriving at the profits or losses of the employment unit, for the remuneration of any person excluded from the scheme by virtue of paragraph 7 above.
 - (5) Notwithstanding the preceding provisions of this paragraph, if the scheme so provides in relation to any of the items listed in sub-paragraph (6) below, a profit and loss account prepared for the purposes of the scheme may, in arriving at the profits or losses of the employment unit—
 - (a) leave the item out of account notwithstanding that Schedule 4 to the Companies Act 1985 requires it to be taken into account; or
 - (b) take the item into account notwithstanding that Schedule 4 to the Companies Act 1985 requires it to be left out of account.
 - (6) The items referred to in sub-paragraph (5) above are—
 - (a) interest receivable and similar income;
 - (b) interest payable and similar charges;
 - (c) goodwill;
 - (d) tax on profit or loss on ordinary activities (but not any penalty under the Taxes Acts);
 - (e) research and development costs;
 - (f) profit-related pay payable under the scheme;
 - (g) extraordinary income;
 - (h) extraordinary charges;
 - (j) extraordinary profit or loss;
 - (k) tax on extraordinary profit or loss.
 - (7) References in this paragraph to Schedule 4 to the Companies Act 1985 shall be construed, in relation to Northern Ireland, as references to Schedule 4 to the Companies (Northern Ireland) Order 1986.
- 20 (1) The scheme must provide that, in preparing a profit and loss account for the purposes of this Schedule, no changes may be made from the accounting policies used in preparing accounts for any earlier period relevant for those purposes, or in the methods of applying those policies, if the effect of the changes (either singly or taken together) would be that the amount of profits (or losses) differed by more than 5 per cent. from what would be that amount if no changes were made.
- (2) Sub-paragraph (1) above has effect subject to paragraph 19(2) above.