

Govt 159 + Govt 160 + Govt 161 + Govt 162 + Govt 163 + Govt 164

Mr Stephen Timms

**159, Clause 60, page 41, line 5,**

leave out '19(4)' and insert '19'

Mr Stephen Timms

**160, Clause 60, page 41, line 6,**

after 'fees)' insert '-

(a) in sub-paragraph (4),'

Mr Stephen Timms

**161, Clause 60, page 41, line 9,**

leave out from 'company' to end of line 10 and insert 'throughout a period during which it created the whole or greater part (in terms of value) of the intangible asset.', and

(b) after sub-paragraph (7) insert-

“(8) If-

(a) the relevant company acquired all the shares (“old shares”) in another company (“the old company”) at a time when the only shares issued in the relevant company were subscriber shares, and

Govt 159 + Govt 160 + Govt 161 + Govt 162 + Govt 163 + Govt 164

(b) the consideration for the old shares consisted wholly of the issue of shares in the relevant company,

references in sub-paragraph (4) to the relevant company include the old company.”.

Mr Stephen Timms

**162, Clause 60, page 41, line 11,**

leave out ‘amendment made by subsection (1) has’ and insert ‘amendments made by subsection (1) have’.

Mr Stephen Timms

**163, Clause 60, page 41, line 13,**

leave out ‘It also has’ and insert ‘They also have’.

Mr Stephen Timms

**164, Clause 60, page 41, line 30**

leave out ‘amendment’ and insert ‘amendments’.

Govt 159 + Govt 160 + Govt 161 + Govt 162 + Govt 163 + Govt 164

## EXPLANATORY NOTE

### SUMMARY

1. Amendments 159 to 164 make changes to Clause 60 which modify the provisions in Enterprise Management Incentives (EMI) legislation relating to the receipt of royalties and licence fees arising from a relevant intangible asset.

### DETAILS

2. Clause 60 provides for a change to the definition of a relevant intangible asset for companies issuing EMI tax-advantaged share options. These provisions are designed to align the rules relating to the transfer of a trade involving the exploitation of intangible assets with those relating to other qualifying trades.
3. The Government amendments to Clause 60 modify the definition of a relevant intangible asset to include an asset the greater part of which (in terms of value) has been created by a qualifying subsidiary of the relevant company during the period in which it was a qualifying subsidiary.
4. The amendments also extend the definition to an asset the whole or greater part of which (in terms of value) was created by a company when it was not a qualifying subsidiary, providing that it became a qualifying subsidiary under a certain type of company reconstruction.
5. **Amendments 159, 160, 162, 163 and 164** are necessary to provide for the substantive Amendment 161 to be made to Clause 60.
6. **Amendment 161** makes two changes to Clause 60. Firstly, it amends paragraph 19(4) Schedule 5 Income Tax Earnings and

Govt 159 + Govt 160 + Govt 161 + Govt 162 + Govt 163 + Govt 164

Pensions Act 2003 (ITEPA) so that an asset can be a relevant intangible asset if the whole or greater part of it (in terms of value) has been created by a company which was a qualifying subsidiary of the relevant company throughout a period during which it created the whole or greater part (in terms of value) of the intangible asset.

7. Secondly, it inserts a new sub-paragraph (8) in paragraph 19 of Schedule 5 ITEPA.
8. **New sub-paragraph (8)** provides that where a relevant company acquired all the shares (the “old shares”) in another company (“the old company”), at a time when the only shares issued in the relevant company were subscriber shares, and the consideration for the old shares consisted wholly of the issue of shares in the relevant company, then references in Paragraph 19(4) Schedule 5 ITEPA to the relevant company include “the old company”.

Govt 159 + Govt 160 + Govt 161 + Govt 162 + Govt 163 + Govt 164

### **BACKGROUND NOTE TO AMENDMENTS**

1. EMI is a tax and NIC advantaged share option incentive introduced in Finance Act 2000. It is aimed at smaller, high-risk companies to help them recruit and retain key workers. In order to qualify for EMI, a company has to meet conditions with respect to its size, independence and trading activities.
2. Certain trading activities are excluded, such as the receipt of income from licence fees and royalties, except when these are derived from “relevant intangible assets”.
3. Paragraph 19(4) of Schedule 5 to ITEPA defines these relevant intangible assets. Currently, these are assets created by the company carrying on the trade, or by a company which was a parent or qualifying subsidiary of that company when the assets were created. The new definition of relevant intangible assets means that these will now be assets created by the company granting the option, or by a company which was its subsidiary when the assets were created.
4. Under the new definition provided in Clause 60, assets can be transferred to a subsidiary which was not in the group at the time the assets were created without qualifying status being lost as a result. This will remove an unintended effect of the excluded activities rule in the EMI legislation.
5. Representations on Clause 60 suggest that in some circumstances the proposed Clause would still not deliver the intended effect. Where a new holding company is inserted above a company that had developed the relevant intangible assets then it would lose its EMI status and would not be able to issue new qualifying options. Amendments 159 to 164 respond to these representations by extending the changes to

Govt 159 + Govt 160 + Govt 161 + Govt 162 + Govt 163 + Govt 164

cover this scenario. It will also ensure that EMI status is not lost where a relevant intangible asset has been partially developed by a company but the greater part of it in terms of value is developed after it is has been acquired.