These notes refer to the Finance Act 2010 (c.13) which received Royal Assent on 8 April 2010

FINANCE ACT 2010

EXPLANATORY NOTES

INTRODUCTION

Section 42: Approved Share Incentive Plans

Details of the Section

5. Subsection (1) introduces amendments to the provisions for SIPs in Schedule 2 (Approved Share Incentive Plans) to the Income Tax (Earnings and Pensions) Act 2003 (ITEPA).

6. Subsection (2) amends paragraph 84(1) of Schedule 2, which sets out various “disqualifying events” allowing HMRC to withdraw approval of a SIP. It substitutes a revised provision for the current sub-paragraph (d), which is concerned with alterations to the share capital of a company or to the rights attaching to a company’s shares that materially affect the value of SIP shares.

7. The key element of the new sub-paragraph (d) is that it applies to alterations materially affecting the value of shares “that are subject to the plan trust”. This puts it beyond doubt that the provision is effective even if no shares have been appropriated to participants under the SIP at the time the alterations occur.

8. Subsection (3) amends sub-paragraph (e) of paragraph 84(1), which is concerned with SIP shares receiving different treatment from other shares of that class. The condition that shares “have been awarded to participants” is replaced by “are subject to the plan trust”. This puts it beyond doubt that there is a disqualifying event even if no shares have been awarded to participants under the SIP at the time the difference in treatment occurs.

9. Subsection (4) introduces amendments to section 989 of the Corporation Tax Act 2009 (CTA), which sets out the conditions for companies to receive CT deductions for payments made to SIP trustees to acquire shares for use in the SIP.

10. Subsection (5) inserts a new paragraph (aa) in section 989(1). A further condition for a CT deduction to be allowed is that the payment is not made as part of “tax avoidance arrangements”.

11. Subsection (6) inserts new subsections (6A) and (6B) in section 989. These explain the meaning of “tax avoidance arrangements” in the new section 989(1)(aa).

12. New subsections (6A) and (6B) provide that a payment is made as part of “tax avoidance arrangements” if it is made as part of arrangements entered into by the paying company, and the main purpose, or one of the main purposes, of the company in entering into the arrangements was to obtain a deduction or increased deduction for CT. The term “arrangements” is given a wide meaning.

13. Subsections (7) and (8) provide for the amendments made by subsections (1) to (3) of the section have effect in relation to events taking place on or after 24 March 2010, and those made by subsections (4) to (6) to have effect in relation to payments made on or after that date.