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## SCHEDULES

### SCHEDULE 8 **U.K.**

Section 51

#### EMPLOYEE SHARE SCHEMES

#### PART 1 **U.K.**

#### SHARE INCENTIVE PLANS

##### *Amendments to Chapter 6 of Part 7 of ITEPA 2003*

- 1 Chapter 6 of Part 7 of ITEPA 2003 (employment income: income and exemptions relating to securities: share incentive plans) is amended as follows.
- 2 In the title omit “APPROVED”.
- 3 (1) Section 488 (introduction to share incentive plans) is amended as follows.
  - (2) In the heading omit “**Approved**”.
  - (3) In subsection (1)—
    - (a) omit paragraph (a), and
    - (b) in paragraph (b) for “those plans” substitute “share incentive plans (“SIPs”) which are Schedule 2 SIPs”.
  - (4) Omit subsection (2).
  - (5) In subsection (4)—
    - (a) omit the definitions of “approved” and “approval”, and
    - (b) after the definition of “PAYE deduction” insert—

““Schedule 2 SIP” is to be read in accordance with paragraph 1 and Part 10 of Schedule 2;”.
- 4 (1) Section 489 (operation of tax advantages) is amended as follows.
  - (2) In the heading for “**approved**” substitute “**Schedule 2**”.
  - (3) In subsection (1) for “an approved” substitute “a Schedule 2”.
- 5 In section 498 (no charge on shares ceasing to be subject to plan in certain circumstances) in subsection (9)(b) for “an approved” substitute “a Schedule 2”.
- 6 (1) Section 500 (operation of tax charges) is amended as follows.
  - (2) In the heading for “**approved**” substitute “**Schedule 2**”.
  - (3) In subsection (1) for “an approved” substitute “a Schedule 2”.

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- 7 In section 503 (charge on partnership share money) in subsection (2), in the entry for paragraph 56, for “withdrawal of plan approval” substitute “ plan ceasing to be a Schedule 2 SIP ”.
- 8 (1) Section 506 (charge on partnership shares ceasing to be subject to plan) is amended as follows.
- (2) In subsection (2) for “market value of the shares at the exit date” substitute “ relevant amount ”.
- (3) After subsection (2) insert—
- “(2A) Subject to subsection (2B), in subsection (2) “the relevant amount” means the market value of the shares at the exit date.
- (2B) If the shares cease to be subject to the plan by virtue of a provision of the kind mentioned in paragraph 43(2B) of Schedule 2 (provision requiring partnership shares to be offered for sale), in subsection (2) “the relevant amount” means the lesser of—
- (a) the amount of partnership share money used to acquire the shares, and
- (b) the market value of the shares at the time they are offered for sale.
- (2C) Paragraph 92(2) of Schedule 2 (market value of shares subject to a restriction) applies for the purposes of subsection (2B)(b).”
- (4) After subsection (3) insert—
- “(3A) If the shares cease to be subject to the plan by virtue of a provision of the kind mentioned in paragraph 43(2B) of Schedule 2, in subsection (3)(b) the reference to the market value of the shares at the exit date is to be read as a reference to the market value of the shares at the time they are offered for sale (as determined in accordance with paragraph 92(2) of Schedule 2 if relevant).”
- 9 In section 509 (modification of section 696) in subsection (1)(a) for “an approved” substitute “ a Schedule 2 ”.
- 10 In section 510 (payments by trustees) in subsection (1) for “an approved” substitute “ a Schedule 2 ”.
- 11 In section 511 (deductions to be made by trustees) in subsection (1) for “an approved” substitute “ a Schedule 2 ”.
- 12 In section 515 (tax advantages and charges under other Acts) in subsection (2)(a) and (d) for “an approved” substitute “ a Schedule 2 ”.
- 13 Schedule 2 is amended as follows.
- 14 In the title omit “APPROVED”.
- 15 In the cross-heading before paragraph 1 for “*Approval of*” substitute “ *Introduction to Schedule 2* ”.
- 16 (1) Paragraph 1 (introduction) is amended as follows.
- (2) For sub-paragraphs (1) and (2) substitute—

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“(A1) For the purposes of the SIP code a share incentive plan (a “SIP”) is a Schedule 2 SIP if the requirements of Parts 2 to 9 of this Schedule are met in relation to the SIP.”

(3) For sub-paragraph (4) substitute—

“(4) Sub-paragraph (A1) is subject to Part 10 of this Schedule which—

- (a) requires notice of a plan to be given to Her Majesty's Revenue and Customs (“HMRC”) in order for the plan to be a Schedule 2 SIP (see paragraph 81A(1)),
- (b) provides for a plan in relation to which such notice is given to be a Schedule 2 SIP (see paragraph 81A(4)), and
- (c) gives power to HMRC to enquire into a plan and to decide that the plan should not be a Schedule 2 SIP (see paragraphs 81F to 81I).”

17 In the cross-heading before paragraph 6 omit “*for approval*”.

18 (1) Paragraph 6 (general requirements for SIPs) is amended as follows.

(2) Make the existing text sub-paragraph (1).

(3) After the new sub-paragraph (1) insert—

“(2) The requirements of this Part are also to be taken to include the requirements of paragraphs 89 and 90 (plan termination notices etc).”

19 (1) Paragraph 7 (the purpose of the plan) is amended as follows.

(2) In sub-paragraph (1)—

- (a) after “provide” insert “, in accordance with this Schedule, ”, and
- (b) for “nature” substitute “ form ”.

(3) After sub-paragraph (1) insert—

“(1A) The plan must not provide benefits to employees otherwise than in accordance with this Schedule.

(1B) For example, the plan must not provide cash to employees as an alternative to shares.

(1C) Sub-paragraph (1A) does not prohibit an employee receiving a benefit from a company as a result of any shares in that company being held on the employee's behalf under the plan where the employee would have received the same benefit from the company had the shares been acquired by the employee otherwise than by virtue of the plan.”

(4) Omit sub-paragraph (2).

20 In paragraph 18 (requirement not to participate in other SIPs) in sub-paragraph (1) for “approved” substitute “ Schedule 2 ”.

21 In paragraph 18A (participation in more than one connected SIP) in sub-paragraph (1) for “approved” substitute “ Schedule 2 ”.

22 In paragraph 37 (holding period: power of participant to direct trustees) in sub-paragraph (3)(b) for “an approved” substitute “ a Schedule 2 ”.

23 In paragraph 43 (partnership shares: introduction) after sub-paragraph (2A) insert—

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- “(2B) Partnership shares may (notwithstanding sub-paragraph (2A) if relevant) be subject to provision requiring partnership shares acquired on behalf of an employee to be offered for sale but only if the requirement of sub-paragraph (2C) is met.
- (2C) The consideration at which the shares are required to be offered for sale must be at least equal to—
- (a) the amount of partnership share money applied in acquiring the shares on behalf of the employee, or
  - (b) if lower, the market value of the shares at the time they are offered for sale.”
- 24 In the cross-heading before paragraph 56 for “*withdrawal of approval*” substitute “*plan ceasing to be a Schedule 2 SIP*”.
- 25 (1) Paragraph 56 (repayment of partnership share money) is amended as follows.
- (2) In sub-paragraph (1) for “approval of the plan is withdrawn (see paragraph 83)” substitute “plan is not to be a Schedule 2 SIP by virtue of paragraph 81H or 81I”.
- (3) In sub-paragraph (2) for the words from “notice” to the end substitute “the relevant day”.
- (4) After sub-paragraph (2) insert—
- “(2A) If the plan is not to be a Schedule 2 SIP by virtue of paragraph 81H, in sub-paragraph (2) “the relevant day” means—
- (a) the last day of the period in which notice of an appeal under paragraph 81K(2)(a) may be given, or
  - (b) if notice of such an appeal is given, the day on which the appeal is determined or withdrawn.
- (2B) If the plan is not to be a Schedule 2 SIP by virtue of paragraph 81I, in sub-paragraph (2) “the relevant day” means—
- (a) the last day of the period in which notice of an appeal under paragraph 81K(3) may be given, or
  - (b) if notice of such an appeal is given, the day on which the appeal is determined or withdrawn.”
- 26 (1) Paragraph 65 (general requirements as to dividend shares) is amended as follows.
- (2) Make the existing text sub-paragraph (1).
- (3) After the new sub-paragraph (1) insert—
- “(2) Dividend shares may (notwithstanding sub-paragraph (1)(b) if relevant) be subject to provision requiring dividend shares acquired on behalf of an employee to be offered for sale but only if the requirement of sub-paragraph (3) is met.
- (3) The consideration at which the shares are required to be offered for sale must be at least equal to—
- (a) the amount of the cash dividends applied in acquiring the shares on behalf of the employee, or
  - (b) if lower, the market value of the shares at the time they are offered for sale.”

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- 27 In paragraph 71A (duty to monitor participants) for “approved” substitute “  
Schedule 2”.
- 28 For Part 10 substitute—

## “PART 10 U.K.”

### NOTIFICATION OF PLANS, ANNUAL RETURNS AND ENQUIRIES

#### *Notice of SIP to be given to HMRC*

81A(1) For a SIP to be a Schedule 2 SIP, notice of the SIP must be given to Her Majesty's Revenue and Customs (“HMRC”).

- (2) The notice must—
- (a) be given by the company,
  - (b) contain, or be accompanied by, such information as HMRC may require, and
  - (c) contain a declaration within sub-paragraph (3) made by such persons as HMRC may require.
- (3) A declaration within this sub-paragraph is a declaration—
- (a) that the requirements of Parts 2 to 9 of this Schedule are met in relation to the SIP, and
  - (b) if the declaration is made after the first date on which awards of shares are made under the SIP (“the first award date”), that those requirements—
    - (i) were met in relation to those awards of shares, and
    - (ii) have otherwise been met in relation to the SIP at all times on or after the first award date when shares appropriated to, or acquired on behalf of, individuals under the SIP have been held under the SIP.
- (4) If notice is given under this paragraph in relation to a SIP, for the purposes of the SIP code the SIP is to be a Schedule 2 SIP at all times on and after the relevant date (but not before that date).
- (5) But if the notice is given after the initial notification deadline, the SIP is to be a Schedule 2 SIP only from the beginning of the relevant tax year.
- (6) For the purposes of this Part—
- “the initial notification deadline” is 6 July in the tax year following that in which the first award date falls,
- “the relevant date” is—
- (a) the date on which the declaration within sub-paragraph (3) is made, or
  - (b) if that declaration is made after the first award date, the first award date, and
- “the relevant tax year” is—
- (a) the tax year in which the notice under this paragraph is given, or

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(b) if that notice is given on or before 6 July in that tax year, the preceding tax year.

(7) Sub-paragraph (4) is subject to the following paragraphs of this Part.

*Annual returns*

81B (1) This paragraph applies if notice is given in relation to a SIP under paragraph 81A.

(2) The company must give to HMRC a return for the tax year in which the relevant date falls and for each subsequent tax year (subject to sub-paragraph (9)).

(3) If paragraph 81A(5) applies in relation to the SIP, in sub-paragraph (2) the reference to the tax year in which the relevant date falls is to be read as a reference to the relevant tax year.

(4) A return for a tax year must—

- (a) contain, or be accompanied by, such information as HMRC may require, and
- (b) be given on or before 6 July in the following tax year.

(5) The information which may be required under sub-paragraph (4)(a) includes (in particular) information to enable HMRC to determine the liability to tax, including capital gains tax, of—

- (a) any person who has participated in the SIP, or
- (b) any other person whose liability to tax the operation of the SIP is relevant to.

(6) If during a tax year an alteration is made in a key feature of—

- (a) the SIP, or
- (b) the plan trust,

the return for the tax year must contain a declaration within sub-paragraph (7) made by such persons as HMRC may require.

(7) A declaration within this sub-paragraph is a declaration that the alteration has not caused the requirements of Parts 2 to 9 of this Schedule not to be met in relation to the SIP.

(8) For the purposes of sub-paragraph (6) a “key feature” of a SIP or plan trust is a provision of the SIP or plan trust which is necessary in order for the requirements of Parts 2 to 9 of this Schedule to be met in relation to the SIP.

(9) A return is not required for any tax year following that in which the termination condition is met in relation to the SIP.

(10) For the purposes of this Part “the termination condition” is met in relation to a SIP when—

- (a) a plan termination notice has been issued in relation to it under paragraph 89, and
- (b) all the requirements under paragraphs 56(3), 68(4)(c) and 90 have been met by the trustees.

(11) If the company becomes aware that—

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- (a) anything which should have been included in, or should have accompanied, a return for a tax year was not included in, or did not accompany, the return,
  - (b) anything which should not have been included in, or should not have accompanied, a return for a tax year was included in, or accompanied, the return, or
  - (c) any other error or inaccuracy has occurred in relation to a return for a tax year,
- the company must give an amended return correcting the position to HMRC without delay.
- 81C (1) This paragraph applies if the company fails to give a return for a tax year (containing, or accompanied by, all required information and declarations) on or before the date mentioned in paragraph 81B(4)(b) (“the date for delivery”).
- (2) The company is liable for a penalty of £100.
  - (3) If the company's failure continues after the end of the period of 3 months beginning with the date for delivery, the company is liable for a further penalty of £300.
  - (4) If the company's failure continues after the end of the period of 6 months beginning with the date for delivery, the company is liable for a further penalty of £300.
  - (5) The company is liable for a further penalty under this sub-paragraph if—
    - (a) the company's failure continues after the end of the period of 9 months beginning with the date for delivery,
    - (b) HMRC decide that such a penalty should be payable, and
    - (c) HMRC give notice to the company specifying the period in respect of which the penalty is payable.

(The company may be liable for more than one penalty under this sub-paragraph.)
  - (6) The penalty under sub-paragraph (5) is £10 for each day that the failure continues during the period specified in the notice under sub-paragraph (5)(c).
  - (7) The period specified in the notice under sub-paragraph (5)(c)—
    - (a) may begin earlier than the date on which the notice is given, but
    - (b) may not begin until after the end of the period mentioned in sub-paragraph (5)(a) or, if relevant, the end of any period specified in any previous notice under sub-paragraph (5)(c) given in relation to the failure.
  - (8) Liability for a penalty under this paragraph does not arise if the company satisfies HMRC (or, on an appeal under paragraph 81K, the tribunal) that there is a reasonable excuse for its failure.
  - (9) For the purposes of sub-paragraph (8)—
    - (a) an insufficiency of funds is not a reasonable excuse, unless attributable to events outside the company's control,

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- (b) where the company relies on any other person to do anything, that is not a reasonable excuse unless the company took reasonable care to avoid the failure, and
- (c) where the company had a reasonable excuse for the failure but the excuse ceased, the company is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

*Notices and returns to be given electronically etc*

81D(1) A notice under paragraph 81A, and any information accompanying the notice, must be given electronically.

(2) A return under paragraph 81B, and any information accompanying the return, must be given electronically.

(3) But, if HMRC consider it appropriate to do so, HMRC may allow the company to give a notice or return or any accompanying information in another way; and, if HMRC do so, the notice, return or information must be given in that other way.

(4) The Commissioners for Her Majesty's Revenue and Customs—

- (a) must prescribe how notices, returns and accompanying information are to be given electronically;
- (b) may make different provision for different cases or circumstances.

81E (1) This paragraph applies if a return under paragraph 81B, or any information accompanying such a return—

- (a) is given otherwise than in accordance with paragraph 81D, or
- (b) contains a material inaccuracy—
  - (i) which is careless or deliberate, or
  - (ii) which is not corrected as required by paragraph 81B(11).

(2) The company is liable for a penalty of an amount decided by HMRC.

(3) The penalty must not exceed £5,000.

(4) For the purposes of sub-paragraph (1)(b)(i) an inaccuracy is careless if it is due to a failure by the company to take reasonable care.

*Enquiries*

81F (1) This paragraph applies if notice is given in relation to a SIP under paragraph 81A.

(2) HMRC may enquire into the SIP if HMRC give notice to the company of HMRC's intention to do so no later than—

- (a) 6 July in the tax year following the tax year in which the initial notification deadline falls, or
- (b) if the notice under paragraph 81A is given after the initial notification deadline, 6 July in the second tax year following the relevant tax year.



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- (3) HMRC may enquire into the SIP if HMRC give notice to the company of HMRC's intention to do so no later than 12 months after the date on which a declaration within paragraph 81B(7) is given to HMRC.
  - (4) Sub-paragraph (5) applies if (at any time) HMRC have reasonable grounds for believing that requirements of Parts 2 to 9 of this Schedule—
    - (a) are not met in relation to the SIP, or
    - (b) have not been met in relation to the SIP.
  - (5) HMRC may enquire into the SIP if HMRC give notice to the company of HMRC's intention to do so.
  - (6) Notice may be given, and an enquiry may be conducted, under sub-paragraph (2), (3) or (5) even though the termination condition has been met in relation to the SIP.
- 81G(1) An enquiry under paragraph 81F(2), (3) or (5) is completed when HMRC give the company a notice (a “closure notice”) stating—
- (a) that HMRC have completed the enquiry, and
  - (b) that—
    - (i) paragraph 81H is to apply,
    - (ii) paragraph 81I is to apply, or
    - (iii) neither paragraph 81H nor paragraph 81I is to apply.
- (2) If the company receives notice under paragraph 81F(2), (3) or (5), the company may make an application to the tribunal for a direction requiring a closure notice for the enquiry to be given within a specified period.
  - (3) The application is to be subject to the relevant provisions of Part 5 of TMA 1970 (see, in particular, section 48(2)(b) of that Act).
  - (4) The tribunal must give a direction unless satisfied that HMRC have reasonable grounds for not giving the closure notice within the specified period.
- 81H(1) This paragraph applies if HMRC decide—
- (a) that requirements of Parts 2 to 9 of this Schedule—
    - (i) are not met in relation to the SIP, or
    - (ii) have not been met in relation to the SIP, and
  - (b) that the situation is, or was, so serious that this paragraph should apply.
- (2) If this paragraph applies—
    - (a) the SIP is not to be a Schedule 2 SIP with effect from—
      - (i) such relevant time as is specified in the closure notice, or
      - (ii) if no relevant time is specified, the time of the giving of the closure notice, and
    - (b) the company is liable for a penalty of an amount decided by HMRC.
  - (3) Sub-paragraph (2)(a) does not affect the operation of the SIP code in relation to shares appropriated to, or acquired on behalf of, an individual under the SIP before the time mentioned in sub-paragraph (2)(a)(i) or (ii) (as the case may be).

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- (4) In particular, if the SIP was a Schedule 2 SIP when the shares were appropriated to, or acquired on behalf of, the individual, the SIP is to continue to be a Schedule 2 SIP in relation to those shares.
- (5) The penalty under sub-paragraph (2)(b) must not exceed an amount equal to twice HMRC's reasonable estimate of—
- (a) the total income tax for which participants in the SIP have not been liable, or will not be liable in the future, and
  - (b) the total contributions under Part 1 of SSCBA 1992 or SSCB(NI)A 1992 for which any persons have not been liable, or will not be liable in the future,
- in consequence of the SIP having been a Schedule 2 SIP at any relevant time before the time mentioned in sub-paragraph (2)(a)(i) or (ii) (as the case may be).
- (6) The liabilities covered by sub-paragraph (5) include liabilities for income tax or contributions which a person has not had, or will not have, in consequence of sub-paragraphs (3) and (4).
- (7) In this paragraph “relevant time” means any time before the giving of the closure notice when requirements of Parts 2 to 9 of this Schedule were not met in relation to the SIP.
- 81I (1) This paragraph applies if HMRC decide—
- (a) that requirements of Parts 2 to 9 of this Schedule—
    - (i) are not met in relation to the SIP, or
    - (ii) have not been met in relation to the SIP, but
  - (b) that the situation is not, or was not, so serious that paragraph 81H should apply.
- (2) If this paragraph applies, the company—
- (a) is liable for a penalty of an amount decided by HMRC, and
  - (b) must, no later than 90 days after the relevant day, secure that the requirements of Parts 2 to 9 of this Schedule are met in relation to the SIP.
- (3) The penalty under sub-paragraph (2)(a) must not exceed £5,000.
- (4) In sub-paragraph (2)(b) “the relevant day” means—
- (a) the last day of the period in which notice of an appeal under paragraph 81K(2)(b) may be given, or
  - (b) if notice of such an appeal is given, the day on which the appeal is determined or withdrawn.
- (5) Sub-paragraph (2)(b) does not apply if the termination condition was met in relation to the SIP before the giving of the closure notice or is met before the end of the 90 day period mentioned in sub-paragraph (2)(b).
- (6) If the company fails to comply with sub-paragraph (2)(b), HMRC may give the company a notice stating that that is the case (a “default notice”).
- (7) If the company is given a default notice—
- (a) the SIP is not to be a Schedule 2 SIP with effect from—

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- (i) such relevant time as is specified in the default notice, or
    - (ii) if no relevant time is specified, the time of the giving of the default notice, and
  - (b) the company is liable for a further penalty of an amount decided by HMRC.
- (8) Sub-paragraph (7)(a) does not affect the operation of the SIP code in relation to shares appropriated to, or acquired on behalf of, an individual under the SIP before the time mentioned in sub-paragraph (7)(a)(i) or (ii) (as the case may be).
- (9) In particular, if the SIP was a Schedule 2 SIP when the shares were appropriated to, or acquired on behalf of, the individual, the SIP is to continue to be a Schedule 2 SIP in relation to those shares.
- (10) The penalty under sub-paragraph (7)(b) must not exceed an amount equal to twice HMRC's reasonable estimate of—
- (a) the total income tax for which participants in the SIP have not been liable, or will not be liable in the future, and
  - (b) the total contributions under Part 1 of SSCBA 1992 or SSCB(NI)A 1992 for which any persons have not been liable, or will not be liable in the future,
- in consequence of the SIP having been a Schedule 2 SIP at any relevant time before the time mentioned in sub-paragraph (7)(a)(i) or (ii) (as the case may be).
- (11) The liabilities covered by sub-paragraph (10) include liabilities for income tax or contributions which a person has not had, or will not have, in consequence of sub-paragraphs (8) and (9).
- (12) In this paragraph “relevant time” means any time before the giving of the default notice when requirements of Parts 2 to 9 of this Schedule were not met in relation to the SIP.

#### *Assessment of penalties*

- 81J (1) This paragraph applies if the company is liable for a penalty under this Part.
- (2) HMRC must assess the penalty and notify the company of the assessment.
  - (3) Subject to sub-paragraphs (4) and (5), the assessment must be made no later than 12 months after the date on which the company becomes liable for the penalty.
  - (4) In the case of a penalty under paragraph 81E(1)(b), the assessment must be made no later than—
    - (a) 12 months after the date on which HMRC become aware of the inaccuracy, and
    - (b) 6 years after the date on which the company becomes liable for the penalty.
  - (5) In the case of a penalty under paragraph 81H(2)(b) or 81I(2)(a) or (7)
    - (b) where notice of appeal is given under paragraph 81K(2) or (3), the

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assessment must be made no later than 12 months after the date on which the appeal is determined or withdrawn.

- (6) A penalty payable under this Part must be paid—
  - (a) no later than 30 days after the date on which the notice under sub-paragraph (2) is given to the company, or
  - (b) if notice of appeal is given against the penalty under paragraph 81K(1) or (4), no later than 30 days after the date on which the appeal is determined or withdrawn.
- (7) The penalty may be enforced as if it were corporation tax or, if the company is not within the charge to corporation tax, income tax charged in an assessment and due and payable.
- (8) Sections 100 to 103 of TMA 1970 do not apply to a penalty under this Part.

### *Appeals*

- 81K(1) The company may appeal against a decision of HMRC that the company is liable for a penalty under paragraph 81C or 81E.
- (2) The company may appeal against—
  - (a) a decision of HMRC mentioned in paragraph 81H(1) or a decision of HMRC to specify, or not to specify, a relevant time in the closure notice;
  - (b) a decision of HMRC mentioned in paragraph 81I(1).
- (3) The company may appeal against a decision of HMRC—
  - (a) to give the company a default notice under paragraph 81I;
  - (b) to specify, or not to specify, a relevant time in the default notice.
- (4) The company may appeal against a decision of HMRC as to the amount of a penalty payable by the company under this Part.
- (5) The company may appeal against a decision of an officer of Revenue and Customs to give a direction under section 998 of CTA 2009 (withdrawal of corporation tax deductions in relation to a Schedule 2 SIP).
- (6) Notice of appeal must be given to HMRC no later than 30 days after the date on which—
  - (a) in the case of an appeal under sub-paragraph (1) or (4), the notice under paragraph 81J(2) is given to the company;
  - (b) in the case of an appeal under sub-paragraph (2), the closure notice is given;
  - (c) in the case of an appeal under sub-paragraph (3), the default notice is given;
  - (d) in the case of an appeal under sub-paragraph (5), notice of the officer's decision is given to the company.
- (7) On an appeal under sub-paragraph (1), (3)(a) or (5) which is notified to the tribunal, the tribunal may affirm or cancel the decision.
- (8) On an appeal under sub-paragraph (2) or (3)(b) which is notified to the tribunal, the tribunal may—

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- (a) affirm or cancel the decision, or
    - (b) substitute for the decision another decision which HMRC had power to make.
  - (9) On an appeal under sub-paragraph (4) which is notified to the tribunal, the tribunal may—
    - (a) affirm the amount of the penalty decided, or
    - (b) substitute another amount for that amount.
  - (10) Subject to this paragraph and paragraph 81J, the provisions of Part 5 of TMA 1970 relating to appeals have effect in relation to an appeal under this paragraph as they have effect in relation to an appeal against an assessment to corporation tax or, if the company is not within the charge to corporation tax, income tax.”
- 29 In paragraph 89 (termination of plan) in sub-paragraph (2) omit paragraph (a).
- 30 In paragraph 90 (effect of plan termination notice) in sub-paragraph (2) for “awarded to” substitute “appropriated to, or acquired on behalf of, ”.
- 31 (1) Paragraph 93 (power to require information) is amended as follows.
- (2) For sub-paragraph (1) substitute—
    - “(1) An officer of Revenue and Customs may by notice require a person to provide the officer with any information—
      - (a) which the officer reasonably requires for the performance of any functions of Her Majesty's Revenue and Customs or an officer of Revenue and Customs under the SIP code, and
      - (b) which the person to whom the notice is addressed has or can reasonably obtain.”
  - (3) In sub-paragraph (2)(a)—
    - (a) for sub-paragraph (i) substitute—
      - “(i) to check anything contained in a notice under paragraph 81A or a return under paragraph 81B or to check any information accompanying such a notice or return, or”, and”
    - (b) in sub-paragraph (ii) after “plan” insert “ or any other person whose liability to tax the operation of a plan is relevant to ”.
- 32 In paragraph 100 (index of defined expressions)—
  - (a) omit the entries for “approval” and “approved”, and
  - (b) at the appropriate place insert—

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“Schedule 2 SIP paragraph 1 and Part 10 of this Schedule”.

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*Other amendments: TCGA 1992*

- 33 TCGA 1992 is amended as follows.
- 34 In section 236A (relief for transfers to share incentive plans) for “an approved” substitute “ a Schedule 2 ”.
- 35 (1) Section 238A (share schemes and share incentives) is amended as follows.

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- (2) In the heading omit “**Approved**”.
- (3) In subsection (1) omit “approved”.
- (4) In subsection (2)(a) for “approved” substitute “ Schedule 2 ”.
- 36 Schedule 7C (relief for transfers to share plans) is amended as follows.
- 37 In the title for “APPROVED” substitute “ SCHEDULE 2 ”.
- 38 In paragraph 2 (conditions relating to disposal) in sub-paragraph (1) for “approved” substitute “ a Schedule 2 SIP ”.
- 39 Schedule 7D (share schemes and share incentives) is amended as follows.
- 40 In the title omit “APPROVED”.
- 41 In the title of Part 1 for “APPROVED” substitute “ SCHEDULE 2 ”.
- 42 (1) Paragraph 1 (introduction to Part 1) is amended as follows.
  - (2) In sub-paragraph (1) for “an approved” substitute “ a Schedule 2 ”.
  - (3) In sub-paragraphs (2) and (3) omit “approved”.
- 43 In paragraph 2 (gains accruing to trustees) in sub-paragraph (1)(a) omit “approved”.
- Other amendments: ITEPA 2003 and Part 4 of FA 2004*
- 44 ITEPA 2003 is amended as follows.
  - 45 In section 227 (scope of Part 4) in subsection (4)(c) omit “approved”.
  - 46 In section 417 (scope of Part 7) in subsection (2), in the entry for Chapter 6, omit “approved”.
- 47 (1) Section 431A (provision relating to restricted securities) is amended as follows.
  - (2) In the heading for “**approved**” substitute “ **tax advantaged** ”.
  - (3) In subsection (2)(a) for “an approved” substitute “ a Schedule 2 ”.
- 48 In section 549 (application of Chapter 11 of Part 7) in subsection (2)(a) omit “approved”.
- 49 (1) Section 554E (exclusions under Part 7A) is amended as follows.
  - (2) In subsections (1)(a) and (3)(a)(i) and (b)(i) for “an approved” substitute “ a Schedule 2 ”.
  - (3) In subsection (4)(a) and (b) for the first “approved” substitute “ Schedule 2 ”.
- 50 In paragraph 11 of Schedule 4 (CSOP schemes: material interest) in sub-paragraph (5)(a) for “approved” substitute “ Schedule 2 ”.
- 51 In paragraph 30 of Schedule 5 (enterprise management incentives: material interest) in sub-paragraph (7)(a) for “share incentive plan approved under Schedule 2 (SIPs)” substitute “ Schedule 2 SIP (see Schedule 2) ”.
- 52 In section 195 of FA 2004 (pensions: transfer of certain shares to be treated as payment of contribution) in subsection (5), in the definition of “share incentive plan”, omit “approved”.

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*Other amendments: ITTOIA 2005*

53 Chapter 3 of Part 4 of ITTOIA 2005 (savings and investment income: dividends etc from UK resident companies) is amended as follows.

54 In section 382 (contents of Chapter 3) in subsection (1)(c) for “an approved” substitute “ a Schedule 2 ”.

55 In the cross-heading before section 392 for “*approved*” substitute “ *Schedule 2* ”.

56 In section 392 (SIP shares: introduction) in subsection (1) for “an approved” substitute “ a Schedule 2 ”.

57 (1) Section 394 (distribution when dividend shares cease to be subject to SIP) is amended as follows.

(2) In subsection (1) for “an approved” substitute “ a Schedule 2 ”.

(3) After subsection (3) insert—

“(3A) But if the shares cease to be subject to the plan by virtue of a provision of the kind mentioned in paragraph 65(2) of Schedule 2 to ITEPA 2003 (provision requiring dividend shares to be offered for sale), the amount of the distribution treated as made is the amount equal to the relevant fraction of the market value of the shares at the time they are offered for sale if that amount is less than the amount given by subsection (3).

(3B) For the purposes of subsection (3A) “the relevant fraction” is—

$$\frac{A}{B}$$

where—

A is so much of the amount of the cash dividend applied to acquire the shares on the participant's behalf as represents a cash dividend paid in respect of plan shares in a UK resident company, and

B is the amount of the cash dividend applied to acquire the shares on the participant's behalf.

(3C) Paragraph 92(2) of Schedule 2 to ITEPA 2003 (market value of shares subject to a restriction) applies for the purposes of subsection (3A).”

(4) In subsection (7) for “approved” substitute “ Schedule 2 ”.

58 In section 395 (reduction in tax due in cases within section 394) in subsections (1) (b) and (4) for “approved” substitute “ Schedule 2 ”.

59 In section 396 (interpretation) in subsections (1) and (2) omit “approved”.

60 Chapter 4 of Part 4 of ITTOIA 2005 (savings and investment income: dividends etc from non-UK resident companies) is amended as follows.

61 In the cross-heading before section 405 for “*approved*” substitute “ *Schedule 2* ”.

62 (1) Section 405 (SIP shares: introduction) is amended as follows.

(2) In subsection (1) for “an approved” substitute “ a Schedule 2 ”.

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- (3) In subsections (3) and (4) omit “approved”.
- 63 (1) Section 407 (dividend payment when dividend shares cease to be subject to SIP) is amended as follows.
- (2) In subsection (1) for “an approved” substitute “ a Schedule 2 ”.
- (3) After subsection (3) insert—

“(3A) But if the shares cease to be subject to the plan by virtue of a provision of the kind mentioned in paragraph 65(2) of Schedule 2 to ITEPA 2003 (provision requiring dividend shares to be offered for sale), the amount of the dividend treated as paid is the amount equal to the relevant fraction of the market value of the shares at the time they are offered for sale if that amount is less than the amount given by subsection (3).

(3B) For the purposes of subsection (3A) “the relevant fraction” is—

$$\frac{A}{B}$$

where—

A is so much of the amount of the cash dividend applied to acquire the shares on the participant's behalf as represents a cash dividend paid in respect of plan shares in a non-UK resident company, and

B is the amount of the cash dividend applied to acquire the shares on the participant's behalf.

(3C) Paragraph 92(2) of Schedule 2 to ITEPA 2003 (market value of shares subject to a restriction) applies for the purposes of subsection (3A).”

- (4) In subsection (5) for “approved” substitute “ Schedule 2 ”.
- 64 In section 408 (reduction in tax due in cases within section 407) in subsections (1) (b) and (3) for “approved” substitute “ Schedule 2 ”.
- 65 Chapter 9 of Part 6 of ITTOIA 2005 (exempt income) is amended as follows.
- 66 In the cross-heading before section 770 for “*Approved*” substitute “ *Schedule 2* ”.
- 67 (1) Section 770 (amounts applied by SIP trustees) is amended as follows.
- (2) In subsection (1)(a) for “an approved” substitute “ a Schedule 2 ”.
- (3) In subsections (5) and (6) omit “approved”.

*Other amendments: Part 9 of ITA 2007*

- 68 Part 9 of ITA 2007 (special rules about settlements and trusts) is amended as follows.
- 69 In section 462 (overview of Part) in subsection (5) for “an approved” substitute “ a Schedule 2 ”.



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- 70 In section 479 (trustees' accumulated or discretionary income charged at special rates) in subsection (5) for “approved” substitute “ Schedule 2 ”.
- 71 (1) Section 488 (application of section 479 to trustees of SIP) is amended as follows.
- (2) In the heading for “**approved**” substitute “ **Schedule 2** ”.
- (3) In subsection (1)—
- (a) in paragraph (a) for “an approved” substitute “ a Schedule 2 ”, and
- (b) in paragraph (b) omit “approved”.
- 72 In section 489 (“the applicable period”) in subsection (8)(a) for “approved” substitute “ Schedule 2 ”.
- 73 In section 490 (interpretation of Chapter 5) in subsection (1) omit “approved”.

*Other amendments: Chapter 1 of Part 11 of CTA 2009*

- 74 Chapter 1 of Part 11 of CTA 2009 (relief for employee share acquisition schemes: share incentive plans) is amended as follows.
- 75 (1) Section 983 (overview of Chapter) is amended as follows.
- (2) In subsection (1) for “approved” substitute “ Schedule 2 ”.
- (3) In subsection (7) for “approval for a plan is withdrawn” substitute “ a plan ceases to be a Schedule 2 share incentive plan ”.
- 76 (1) Section 987 (deduction for cost of setting up plan) is amended as follows.
- (2) In the heading for “**an approved**” substitute “ **a Schedule 2** ”.
- (3) In subsection (1) for “approved by an officer of Revenue and Customs” substitute “ a Schedule 2 share incentive plan ”.
- (4) Omit subsection (3).
- (5) In subsection (4) for “approval is given” (in both places) substitute “ relevant date falls ”.
- (6) After subsection (4) insert—
- “(4A) In subsection (4) “the relevant date”, in relation to a share incentive plan, has the meaning given in paragraph 81A(6) of Schedule 2 to ITEPA 2003.”
- 77 (1) Section 988 (deductions for running expenses) is amended as follows.
- (2) In the heading for “**an approved**” substitute “ **a Schedule 2** ”.
- (3) In subsections (1) and (3) for “an approved” substitute “ a Schedule 2 ”.
- 78 In section 989 (deduction for contribution to plan trust) in subsection (1)(a) for “an approved” substitute “ a Schedule 2 ”.
- 79 In section 994 (deduction for providing free or matching shares) in subsection (1) for “an approved” substitute “ a Schedule 2 ”.
- 80 In section 995 (deduction for additional expense in providing partnership shares) in subsection (1)(a) for “an approved” substitute “ a Schedule 2 ”.

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- 81 In section 997 (no deduction for expenses in providing dividend shares) in subsection (1) for “an approved” substitute “ a Schedule 2 ”.
- 82 For the cross-heading before section 998 substitute “ *Plan ceasing to be a Schedule 2 SIP* ”.
- 83 (1) Section 998 (withdrawal of deductions) is amended as follows.
- (2) In the heading for “**approval for share incentive plan withdrawn**” substitute “ **share incentive plan ceases to be a Schedule 2 share incentive plan** ”.
- (3) In subsection (1)—
- (a) in paragraph (a)—
- (i) after “section” insert “ 987, ”, and
- (ii) for “an approved” substitute “ a Schedule 2 ”, and
- (b) for paragraph (b) substitute—
- “(b) by virtue of paragraph 81H or 81I of Schedule 2 to ITEPA 2003 the plan is not to be a Schedule 2 share incentive plan.”

*Other amendments: Individual Savings Account Regulations 1998 (S.I. 1998/1870)*

- 84 The Individual Savings Account Regulations 1998 are amended as follows.
- 85 In regulation 2 (interpretation) in paragraph (1)(a)—
- (a) omit the definition of “approved SIP”,
- (b) in the definitions of “ceasing to be subject to the plan”, “participant” and “plan shares” for “an approved” substitute “ a Schedule 2 ”, and
- (c) at the appropriate place insert—
- ““Schedule 2 SIP” shall be construed in accordance with the SIP code (see section 488(3) of ITEPA 2003);”.
- 86 In regulation 7 (qualifying investments) in paragraph (2)(h)(iii) for “an approved” substitute “ a Schedule 2 ”.
- 87 In regulation 34 (capital gains tax: adaptation of enactments) in paragraph (2)(a)—
- (a) in the inserted subsections (12)(b)(iii) and (13)(d) for “an approved” substitute “ a Schedule 2 ”, and
- (b) in the inserted subsection (13)(c) for “approved” substitute “ Schedule 2 ”.

*Revocation of Employee Share Schemes (Electronic Communication of Returns and Information) Regulations 2007 (S.I. 2007/792)*

- 88 The Employee Share Schemes (Electronic Communication of Returns and Information) Regulations 2007 are revoked.

*Commencement and transitional provision*

- 89 This Part is treated as having come into force on 6 April 2014.
- 90 Paragraphs 91 to 96 below apply in relation to a SIP established before 6 April 2014.
- 91 (1) If the SIP was an approved SIP immediately before 6 April 2014, this paragraph applies to any provision which the SIP contains immediately before that date and which requires the approval or agreement of Her Majesty's Revenue and Customs or an officer of Revenue and Customs to be obtained in relation to any matter.

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- (2) On and after 6 April 2014, the provision is to have effect without the requirement for the approval or agreement, unless the requirement reflects a requirement for approval or agreement set out in Schedule 2 to ITEPA 2003 (as amended by this Part).
- 92 (1) If the SIP was an approved SIP immediately before 6 April 2014, the amendments made by paragraph 19 above have effect in relation to the SIP only if, and when, there is an alteration in a key feature of the SIP or plan trust on or after that date.
- (2) In sub-paragraph (1) “key feature” has the meaning given in paragraph 81B(8) of Schedule 2 to ITEPA 2003 (as inserted by paragraph 28 above).
- 93 If the SIP was an approved SIP immediately before 6 April 2014, on and after that date the SIP and the plan trust have effect with any modifications needed to reflect the amendments made by paragraphs 20 to 22, 25, 27, 29 and 30 above.
- 94 (1) Paragraph 81A of Schedule 2 to ITEPA 2003 (as inserted by paragraph 28 above) has effect in relation to the SIP—
- (a) as if, at the end of sub-paragraph (1), the words “on or before 6 July 2015” were inserted,
  - (b) if the first date on which awards of shares are made under the SIP falls before 6 April 2014—
    - (i) as if, in sub-paragraph (3)(b), the reference to that date were a reference to 6 April 2014 and, accordingly, as if all references in paragraph 81A to the first award date were references to 6 April 2014,
    - (ii) as if sub-paragraph (3)(b)(i) were omitted, and
    - (iii) as if, in sub-paragraph (3)(b)(ii), “otherwise” were omitted,
  - (c) as if sub-paragraph (5) were omitted, and
  - (d) as if, in sub-paragraph (6), the definitions of “the initial notification deadline” and “the relevant tax year” were omitted.
- (2) But the SIP cannot be a Schedule 2 SIP if, before 6 April 2014, an application for its approval was refused or an officer of Revenue and Customs decided to withdraw its approval.
- (3) Sub-paragraph (2) is without prejudice to the outcome of any appeal under paragraph 82 or 85 of Schedule 2 to ITEPA 2003 against the refusal or decision to withdraw approval.
- (4) The amendments made by this Part do not affect any right of appeal under paragraph 82 or 85 of Schedule 2 to ITEPA 2003 against a refusal or decision made before 6 April 2014 in relation to the SIP.
- (5) Sub-paragraphs (6) and (7) apply if shares (“the relevant shares”) were appropriated to, or acquired on behalf of, an individual before 6 April 2014 under the SIP at a time when the SIP was an approved SIP.
- (6) On and after 6 April 2014, the SIP code operates in relation to the relevant shares—
- (a) as if the relevant shares were appropriated to, or acquired on behalf of, the individual under the SIP at a time when the SIP was a Schedule 2 SIP, and
  - (b) if no notice under paragraph 81A of Schedule 2 to ITEPA 2003 is given in relation to the SIP or if the SIP cannot be a Schedule 2 SIP because of sub-paragraph (2) of this paragraph, as if the SIP were a Schedule 2 SIP despite no notice being given or despite sub-paragraph (2).

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- (7) If no notice under paragraph 81A of Schedule 2 to ITEPA 2003 is given in relation to the SIP, paragraph 81B of that Schedule (as inserted by paragraph 28 above) is to apply in relation to the SIP despite no notice being given; and, for this purpose, the relevant date is to be taken to be 6 April 2014.
- (8) In relation to the SIP—
- (a) paragraph 81F of Schedule 2 to ITEPA 2003 (as inserted by paragraph 28 above) has effect as if for sub-paragraph (2) there were substituted—
- “(2) HMRC may enquire into the SIP if HMRC give notice to the company of HMRC's intention to do so no later than 6 July 2016.”, and
- (b) the cases covered by paragraphs 81F(4)(b), 81H(1)(a)(ii) and 81I(1)(a)(ii) of Schedule 2 to ITEPA 2003 (as inserted by paragraph 28 above) include cases in which requirements of Parts 2 to 9 of that Schedule were not met before 6 April 2014.
- 95 If the SIP was an approved SIP before 6 April 2014, the amendments made by this Part do not affect the deductions which may be made in relation to the SIP under section 987 of CTA 2009 (deduction for costs of setting up SIP) if they would otherwise do so; and the amendment made by paragraph 83(3)(a)(i) above has no effect in relation to such deductions.
- 96 The amendments made by paragraph 31 above do not affect a notice given in relation to the SIP under paragraph 93 of Schedule 2 to ITEPA 2003 before 6 April 2014.

## PART 2 U.K.

### SAYE OPTION SCHEMES

#### *Amendments to Chapter 7 of Part 7 of ITEPA 2003*

- 97 Chapter 7 of Part 7 of ITEPA 2003 (employment income: income and exemptions relating to securities: SAYE option schemes) is amended as follows.
- 98 In the title omit “APPROVED”.
- 99 (1) Section 516 (introduction to SAYE option schemes) is amended as follows.
- (2) In the heading omit “**Approved**”.
- (3) In subsection (1)—
- (a) omit paragraph (a) and the “and” after it, and
- (b) in paragraph (b) for “those” substitute “SAYE option schemes which are Schedule 3 SAYE option”.
- (4) Omit subsection (2).
- (5) In subsection (3)(c) for “approved” substitute “Schedule 3”.
- (6) In subsection (4)—
- (a) omit the definition of “approved”, and
- (b) after the definition of “SAYE option scheme” insert—

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- ““Schedule 3 SAYE option scheme” is to be read in accordance with paragraph 1 and Part 8 of Schedule 3;”.
- 100 In section 517 (share options to which Chapter applies) in subsection (1)(a) for “an approved” substitute “ a Schedule 3 ”.
- 101 (1) Section 519 (no charge in respect of exercise of option) is amended as follows.
- (2) In subsection (1)(a) for “approved” substitute “ a Schedule 3 SAYE option scheme ”.
- (3) In subsection (3A)—
- (a) in paragraph (a) for “approved” substitute “ a Schedule 3 SAYE option scheme ”,
  - (b) in paragraph (b)(i) for “or (4)” substitute “ , (4) or (4A) ”,
  - (c) in paragraphs (c), (d) and (f) after sub-paragraph (ii) omit “or” and insert—  
“(ia) the non-UK company reorganisation arrangement, or”, and
  - (d) in paragraph (e) after sub-paragraph (ii) omit “or” and insert—  
“(ia) the making of any non-UK company reorganisation arrangement which would fall within subsection (3H), or”.
- (4) In subsection (3H)—
- (a) after “arrangement” insert “ or a non-UK company reorganisation arrangement ”, and
  - (b) in paragraph (b) for “an approved” substitute “ a Schedule 3 ”.
- (5) In subsection (5)(b)—
- (a) for “paragraph 42(3) provides” substitute “ paragraphs 40H(4) and 40I(9) provide ”,
  - (b) for “approved” substitute “ a Schedule 3 SAYE option scheme ”, and
  - (c) for “approval of the scheme has been previously withdrawn” substitute “ the scheme is not a Schedule 3 SAYE option scheme ”.
- 102 Schedule 3 is amended as follows.
- 103 In the title omit “APPROVED”.
- 104 In the cross-heading before paragraph 1 for “*Approval of*” substitute “ *Introduction to Schedule 3* ”.
- 105 (1) Paragraph 1 (introduction) is amended as follows.
- (2) For sub-paragraphs (1) and (2) substitute—
- “(A1) For the purposes of the SAYE code an SAYE option scheme is a Schedule 3 SAYE option scheme if the requirements of Parts 2 to 7 of this Schedule are met in relation to the scheme.”
- (3) For sub-paragraph (4) substitute—
- “(4) Sub-paragraph (A1) is subject to Part 8 of this Schedule which—
- (a) requires notice of a scheme to be given to Her Majesty's Revenue and Customs (“HMRC”) in order for the scheme to be a Schedule 3 SAYE option scheme (see paragraph 40A(1)),

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- (b) provides for a scheme in relation to which such notice is given to be a Schedule 3 SAYE option scheme (see paragraph 40A(4)), and
  - (c) gives power to HMRC to enquire into a scheme and to decide that the scheme should not be a Schedule 3 SAYE option scheme (see paragraphs 40F to 40I).”
- 106 In the title of Part 2 omit “FOR APPROVAL”.
- 107 In the cross-heading before paragraph 4 omit “*for approval*”.
- 108 For paragraph 5 (general restriction on contents of scheme) substitute—
- “5 (1) The purpose of the scheme must be to provide, in accordance with this Schedule, benefits for employees and directors in the form of share options.
- (2) The scheme must not provide benefits to employees or directors otherwise than in accordance with this Schedule.
- (3) For example, the scheme must not provide cash as an alternative to share options or shares which might otherwise be acquired by the exercise of share options.”
- 109 In paragraph 17 (requirements relating to shares that may be subject to share options) after sub-paragraph (1) insert—
- “(1A) Sub-paragraph (1) and the other paragraphs of this Part are subject to paragraph 37(6B).”
- 110 In paragraph 25 (requirements as to contributions to savings arrangements) in sub-paragraph (3)(a) for “approved” substitute “ Schedule 3 ”.
- 111 (1) Paragraph 28 (requirements as to price for acquisition of shares) is amended as follows.
- (2) After sub-paragraph (3) insert—
- “(3A) If the scheme makes provision under sub-paragraph (3), the variation or variations made under that provision to take account of a variation in any share capital must (in particular) secure—
- (a) that the total market value of the shares which may be acquired by the exercise of the share option is immediately after the variation or variations substantially the same as what it was immediately before the variation or variations, and
  - (b) that the total price at which those shares may be acquired is immediately after the variation or variations substantially the same as what it was immediately before the variation or variations.
- (3B) Sub-paragraph (3) does not authorise any variation which would result in the requirements of the other paragraphs of this Schedule not being met in relation to the share option.”
- (3) Omit sub-paragraph (4).
- 112 In paragraph 32 (exercise of options: death) after “exercised” insert “ at any time ”.
- 113 In paragraph 34 (exercise of options: scheme-related employment ends) in sub-paragraph (5)—
- (a) omit paragraph (a) and the “or” after it, and

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- (b) in paragraph (b) after “organiser” insert “ where the transfer is not a relevant transfer within the meaning of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ”.
- 114 (1) Paragraph 37 (exercise of options: company events) is amended as follows.
- (2) In sub-paragraph (1) after “(4)” insert “ , (4A) ”.
- (3) In sub-paragraph (4)(b) for “an approved” substitute “ a Schedule 3 ”.
- (4) After sub-paragraph (4) insert—
- “(4A) The relevant date for the purposes of this sub-paragraph is the date on which a non-UK company reorganisation arrangement applicable to or affecting—
- (a) all the ordinary share capital of the company or all the shares of the same class as the shares to which the option relates, or
- (b) all the shares, or all the shares of that same class, which are held by a class of shareholders identified otherwise than by reference to their employments or directorships or their participation in a Schedule 3 SAYE option scheme,
- becomes binding on the shareholders covered by it.”
- (5) After sub-paragraph (6) insert—
- “(6A) Sub-paragraphs (6B) to (6F) apply if the scheme makes provision under sub-paragraph (1) or (6).
- (6B) The scheme may provide that if, in consequence of a relevant event, shares in the company to which a share option relates no longer meet the requirements of Part 4 of this Schedule, the share option may be exercised under the provision made under sub-paragraph (1) or (6) (as the case may be) no later than 20 days after the day on which the relevant event occurs, notwithstanding that the shares no longer meet the requirements of Part 4 of this Schedule.
- (6C) In sub-paragraph (6B) “relevant event” means—
- (a) a person obtaining control of the company as mentioned in sub-paragraph (2)(a);
- (b) a person obtaining control of the company as a result of a compromise or arrangement sanctioned by the court as mentioned in sub-paragraph (4);
- (c) a person obtaining control of the company as a result of a non-UK company reorganisation arrangement which has become binding on the shareholders covered by it as mentioned in sub-paragraph (4A);
- (d) a person who is bound or entitled to acquire shares in the company as mentioned in sub-paragraph (6) obtaining control of the company.
- (6D) Provision made under sub-paragraph (6B) may not authorise the exercise of a share option, as the case may be—
- (a) at a time outside the 6 month period mentioned in sub-paragraph (1), or
- (b) at a time not covered by sub-paragraph (6).
- (6E) The scheme may provide that a share option relating to shares in a company which is exercised during the period of 20 days ending with—

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- (a) the relevant date for the purposes of sub-paragraph (2), (4) or (4A),  
or
  - (b) the date on which any person becomes bound or entitled to acquire shares in the company as mentioned in sub-paragraph (6),
- is to be treated as if it had been exercised in accordance with the provision made under sub-paragraph (1) or (6) (as the case may be).
- (6F) If the scheme makes provision under sub-paragraph (6E) it must also provide that if—
- (a) a share option is exercised in reliance on that provision in anticipation of—
    - (i) an event mentioned in sub-paragraph (2), (4) or (4A) occurring, or
    - (ii) a person becoming bound or entitled to acquire shares in the company as mentioned in sub-paragraph (6), but
  - (b) as the case may be—
    - (i) the relevant date for the purposes of sub-paragraph (2), (4) or (4A) does not fall during the period of 20 days beginning with the date on which the share option is exercised, or
    - (ii) the person does not become bound or entitled to acquire shares in the company by the end of the period of 20 days beginning with the date on which the share option is exercised,
- the exercise of the share option is to be treated as having had no effect.”
- 115 (1) Paragraph 38 (exchanges of options on company reorganisation) is amended as follows.
- (2) In sub-paragraph (2) after paragraph (b) omit “or” and insert—
- “(ba) obtains control of the scheme company as a result of a non-UK company reorganisation arrangement which has become binding on the shareholders covered by it; or”.
- (3) In sub-paragraph (3) after paragraph (b) omit “and” and insert—
- “(ba) where control is obtained in the way set out in sub-paragraph (2) (ba), within the period of 6 months beginning with the date on which the non-UK company reorganisation arrangement becomes binding on the shareholders covered by it, and”.
- 116 (1) Paragraph 39 (requirements about share options granted in exchange) is amended as follows.
- (2) In sub-paragraph (4)—
- (a) in paragraph (c) for “equal” substitute “ be substantially the same as ”, and
  - (b) in paragraph (d) for “equal to” substitute “ substantially the same as ”.
- (3) After sub-paragraph (7) insert—
- “(8) For the purposes of this paragraph the market value of any shares is to be determined using a methodology agreed by Her Majesty's Revenue and Customs.”
- 117 For Part 8 substitute—



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## “PART 8 U.K.

### NOTIFICATION OF SCHEMES, ANNUAL RETURNS AND ENQUIRIES

#### Notice of scheme to be given to HMRC

40A(1) For an SAYE option scheme to be a Schedule 3 SAYE option scheme, notice of the scheme must be given to Her Majesty's Revenue and Customs (“HMRC”).

- (2) The notice must—
- (a) be given by the scheme organiser,
  - (b) contain, or be accompanied by, such information as HMRC may require, and
  - (c) contain a declaration within sub-paragraph (3) made by such persons as HMRC may require.
- (3) A declaration within this sub-paragraph is a declaration—
- (a) that the requirements of Parts 2 to 7 of this Schedule are met in relation to the scheme, and
  - (b) if the declaration is made after the first date on which share options are granted under the scheme (“the first grant date”), that those requirements—
    - (i) were met in relation to those grants of share options, and
    - (ii) have otherwise been met in relation to the scheme at all times on or after the first grant date when share options granted under the scheme are outstanding.
- (4) If notice is given under this paragraph in relation to an SAYE option scheme, for the purposes of the SAYE code the scheme is to be a Schedule 3 SAYE option scheme at all times on and after the relevant date (but not before that date).
- (5) But if the notice is given after the initial notification deadline, the scheme is to be a Schedule 3 SAYE option scheme only from the beginning of the relevant tax year.
- (6) For the purposes of this Part—
- “the initial notification deadline” is 6 July in the tax year following that in which the first grant date falls,
- “outstanding”, in relation to a share option, means that the option—
- (a) has not been exercised, but
  - (b) is capable of being exercised in accordance with the scheme (whether on the meeting of any condition or otherwise),
- “the relevant date” is—
- (a) the date on which the declaration within sub-paragraph (3) is made, or
  - (b) if that declaration is made after the first grant date, the first grant date, and
- “the relevant tax year” is—

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- (a) the tax year in which the notice under this paragraph is given, or
- (b) if that notice is given on or before 6 July in that tax year, the preceding tax year.

(7) Sub-paragraph (4) is subject to the following paragraphs of this Part.

### **Annual returns**

40B (1) This paragraph applies if notice is given in relation to an SAYE option scheme under paragraph 40A.

- (2) The scheme organiser must give to HMRC a return for the tax year in which the relevant date falls and for each subsequent tax year (subject to sub-paragraph (9)).
- (3) If paragraph 40A(5) applies in relation to the scheme, in sub-paragraph (2) the reference to the tax year in which the relevant date falls is to be read as a reference to the relevant tax year.
- (4) A return for a tax year must—
  - (a) contain, or be accompanied by, such information as HMRC may require, and
  - (b) be given on or before 6 July in the following tax year.
- (5) The information which may be required under sub-paragraph (4)(a) includes (in particular) information to enable HMRC to determine the liability to tax, including capital gains tax, of—
  - (a) any person who has participated in the scheme, or
  - (b) any other person whose liability to tax the operation of the scheme is relevant to.
- (6) If during a tax year—
  - (a) an alteration is made in a key feature of the scheme, or
  - (b) variations are made under a provision made under paragraph 28(3) to take account of a variation in any share capital,
 the return for the tax year must contain a declaration within sub-paragraph (7) made by such persons as HMRC may require.
- (7) A declaration within this sub-paragraph is a declaration, as the case may be—
  - (a) that the alteration has, or
  - (b) that the variations have,
 not caused the requirements of Parts 2 to 7 of this Schedule not to be met in relation to the scheme.
- (8) For the purposes of sub-paragraph (6)(a) a “key feature” of a scheme is a provision of the scheme which is necessary in order for the requirements of Parts 2 to 7 of this Schedule to be met in relation to the scheme.
- (9) A return is not required for any tax year following that in which the termination condition is met in relation to the scheme.
- (10) For the purposes of this Part “the termination condition” is met in relation to a scheme when—

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- (a) all share options granted under the scheme—
    - (i) have been exercised, or
    - (ii) are no longer capable of being exercised in accordance with the scheme (because, for example, they have lapsed or been cancelled), and
  - (b) no more share options will be granted under the scheme.
- (11) If the scheme organiser becomes aware that—
- (a) anything which should have been included in, or should have accompanied, a return for a tax year was not included in, or did not accompany, the return,
  - (b) anything which should not have been included in, or should not have accompanied, a return for a tax year was included in, or accompanied, the return, or
  - (c) any other error or inaccuracy has occurred in relation to a return for a tax year,

the scheme organiser must give an amended return correcting the position to HMRC without delay.

40C (1) This paragraph applies if the scheme organiser fails to give a return for a tax year (containing, or accompanied by, all required information and declarations) on or before the date mentioned in paragraph 40B(4)(b) (“the date for delivery”).

- (2) The scheme organiser is liable for a penalty of £100.
- (3) If the scheme organiser's failure continues after the end of the period of 3 months beginning with the date for delivery, the scheme organiser is liable for a further penalty of £300.
- (4) If the scheme organiser's failure continues after the end of the period of 6 months beginning with the date for delivery, the scheme organiser is liable for a further penalty of £300.
- (5) The scheme organiser is liable for a further penalty under this sub-paragraph if—
  - (a) the scheme organiser's failure continues after the end of the period of 9 months beginning with the date for delivery,
  - (b) HMRC decide that such a penalty should be payable, and
  - (c) HMRC give notice to the scheme organiser specifying the period in respect of which the penalty is payable.

(The scheme organiser may be liable for more than one penalty under this sub-paragraph.)

- (6) The penalty under sub-paragraph (5) is £10 for each day that the failure continues during the period specified in the notice under sub-paragraph (5)(c).
- (7) The period specified in the notice under sub-paragraph (5)(c)—
  - (a) may begin earlier than the date on which the notice is given, but
  - (b) may not begin until after the end of the period mentioned in sub-paragraph (5)(a) or, if relevant, the end of any period specified in

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any previous notice under sub-paragraph (5)(c) given in relation to the failure.

- (8) Liability for a penalty under this paragraph does not arise if the scheme organiser satisfies HMRC (or, on an appeal under paragraph 40K, the tribunal) that there is a reasonable excuse for its failure.
- (9) For the purposes of sub-paragraph (8)—
  - (a) an insufficiency of funds is not a reasonable excuse, unless attributable to events outside the scheme organiser's control,
  - (b) where the scheme organiser relies on any other person to do anything, that is not a reasonable excuse unless the scheme organiser took reasonable care to avoid the failure, and
  - (c) where the scheme organiser had a reasonable excuse for the failure but the excuse ceased, the scheme organiser is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

#### **Notices and returns to be given electronically etc**

- 40D(1) A notice under paragraph 40A, and any information accompanying the notice, must be given electronically.
- (2) A return under paragraph 40B, and any information accompanying the return, must be given electronically.
  - (3) But, if HMRC consider it appropriate to do so, HMRC may allow the scheme organiser to give a notice or return or any accompanying information in another way; and, if HMRC do so, the notice, return or information must be given in that other way.
  - (4) The Commissioners for Her Majesty's Revenue and Customs—
    - (a) must prescribe how notices, returns and accompanying information are to be given electronically;
    - (b) may make different provision for different cases or circumstances.
- 40E (1) This paragraph applies if a return under paragraph 40B, or any information accompanying such a return—
- (a) is given otherwise than in accordance with paragraph 40D, or
  - (b) contains a material inaccuracy—
    - (i) which is careless or deliberate, or
    - (ii) which is not corrected as required by paragraph 40B(11).
  - (2) The scheme organiser is liable for a penalty of an amount decided by HMRC.
  - (3) The penalty must not exceed £5,000.
  - (4) For the purposes of sub-paragraph (1)(b)(i) an inaccuracy is careless if it is due to a failure by the scheme organiser to take reasonable care.

#### **Enquiries**

- 40F (1) This paragraph applies if notice is given in relation to an SAYE option scheme under paragraph 40A.

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- (2) HMRC may enquire into the scheme if HMRC give notice to the scheme organiser of HMRC's intention to do so no later than—
    - (a) 6 July in the tax year following the tax year in which the initial notification deadline falls, or
    - (b) if the notice under paragraph 40A is given after the initial notification deadline, 6 July in the second tax year following the relevant tax year.
  - (3) HMRC may enquire into the scheme if HMRC give notice to the scheme organiser of HMRC's intention to do so no later than 12 months after the date on which a declaration within paragraph 40B(7) is given to HMRC.
  - (4) Sub-paragraph (5) applies if (at any time) HMRC have reasonable grounds for believing that requirements of Parts 2 to 7 of this Schedule—
    - (a) are not met in relation to the scheme, or
    - (b) have not been met in relation to the scheme.
  - (5) HMRC may enquire into the scheme if HMRC give notice to the scheme organiser of HMRC's intention to do so.
  - (6) Notice may be given, and an enquiry may be conducted, under sub-paragraph (2), (3) or (5) even though the termination condition is met in relation to the scheme.
- 40G(1) An enquiry under paragraph 40F(2), (3) or (5) is completed when HMRC give the scheme organiser a notice (a “closure notice”) stating—
- (a) that HMRC have completed the enquiry, and
  - (b) that—
    - (i) paragraph 40H is to apply,
    - (ii) paragraph 40I is to apply, or
    - (iii) neither paragraph 40H nor paragraph 40I is to apply.
- (2) If the scheme organiser receives notice under paragraph 40F(2), (3) or (5), the scheme organiser may make an application to the tribunal for a direction requiring a closure notice for the enquiry to be given within a specified period.
  - (3) The application is to be subject to the relevant provisions of Part 5 of TMA 1970 (see, in particular, section 48(2)(b) of that Act).
  - (4) The tribunal must give a direction unless satisfied that HMRC have reasonable grounds for not giving the closure notice within the specified period.
- 40H(1) This paragraph applies if HMRC decide—
- (a) that requirements of Parts 2 to 7 of this Schedule—
    - (i) are not met in relation to the scheme, or
    - (ii) have not been met in relation to the scheme, and
  - (b) that the situation is, or was, so serious that this paragraph should apply.
- (2) If this paragraph applies—

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- (a) the scheme is not to be a Schedule 3 SAYE option scheme with effect from—
    - (i) such relevant time as is specified in the closure notice, or
    - (ii) if no relevant time is specified, the time of the giving of the closure notice, and
  - (b) the scheme organiser is liable for a penalty of an amount decided by HMRC.
- (3) Sub-paragraph (4) applies in relation to a share option granted under the scheme if the option—
- (a) is granted at a time before that mentioned in sub-paragraph (2)(a)(i) or (ii) (as the case may be) when the scheme is a Schedule 3 SAYE option scheme, but
  - (b) is exercised at or after the time mentioned in sub-paragraph (2)(a)(i) or (ii) (as the case may be).
- (4) For the purposes of section 519 (exemption in respect of exercise of share option) in its application to the option, the scheme is to be taken still to be a Schedule 3 SAYE option scheme at the time of the exercise of the option.
- (5) The penalty under sub-paragraph (2)(b) must not exceed an amount equal to twice HMRC's reasonable estimate of—
- (a) the total income tax for which persons who have been granted share options under the scheme have not been liable, or will not be liable in the future, and
  - (b) the total contributions under Part 1 of SSCBA 1992 or SSCB(NI)A 1992 for which any persons have not been liable, or will not be liable in the future,
- in consequence of the scheme having been a Schedule 3 SAYE option scheme at any relevant time before the time mentioned in sub-paragraph (2)(a)(i) or (ii) (as the case may be).
- (6) The liabilities covered by sub-paragraph (5) include liabilities for income tax or contributions which a person has not had, or will not have, in consequence of sub-paragraph (4).
- (7) In this paragraph “relevant time” means any time before the giving of the closure notice when requirements of Parts 2 to 7 of this Schedule were not met in relation to the scheme.
- 40I (1) This paragraph applies if HMRC decide—
- (a) that requirements of Parts 2 to 7 of this Schedule—
    - (i) are not met in relation to the scheme, or
    - (ii) have not been met in relation to the scheme, but
  - (b) that the situation is not, or was not, so serious that paragraph 40H should apply.
- (2) If this paragraph applies, the scheme organiser—
- (a) is liable for a penalty of an amount decided by HMRC, and
  - (b) must, no later than 90 days after the relevant day, secure that the requirements of Parts 2 to 7 of this Schedule are met in relation to the scheme.

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- (3) The penalty under sub-paragraph (2)(a) must not exceed £5,000.
- (4) In sub-paragraph (2)(b) “the relevant day” means—
  - (a) the last day of the period in which notice of an appeal under paragraph 40K(2)(b) may be given, or
  - (b) if notice of such an appeal is given, the day on which the appeal is determined or withdrawn.
- (5) Sub-paragraph (2)(b) does not apply if the termination condition was met in relation to the scheme before the closure notice was given or is met before the end of the 90 day period mentioned in sub-paragraph (2)(b).
- (6) If the scheme organiser fails to comply with sub-paragraph (2)(b), HMRC may give the scheme organiser a notice stating that that is the case (a “default notice”).
- (7) If the scheme organiser is given a default notice—
  - (a) the scheme is not to be a Schedule 3 SAYE option scheme with effect from—
    - (i) such relevant time as is specified in the default notice, or
    - (ii) if no relevant time is specified, the time of the giving of the default notice, and
  - (b) the scheme organiser is liable for a further penalty of an amount decided by HMRC.
- (8) Sub-paragraph (9) applies in relation to a share option granted under the scheme if the option—
  - (a) is granted at a time before that mentioned in sub-paragraph (7)(a)(i) or (ii) (as the case may be) when the scheme is a Schedule 3 SAYE option scheme, but
  - (b) is exercised at or after the time mentioned in sub-paragraph (7)(a)(i) or (ii) (as the case may be).
- (9) For the purposes of section 519 (exemption in respect of exercise of share option) in its application to the option, the scheme is to be taken still to be a Schedule 3 SAYE option scheme at the time of the exercise of the option.
- (10) The penalty under sub-paragraph (7)(b) must not exceed an amount equal to twice HMRC's reasonable estimate of—
  - (a) the total income tax for which persons who have been granted share options under the scheme have not been liable, or will not be liable in the future, and
  - (b) the total contributions under Part 1 of SSCBA 1992 or SSCB(NI)A 1992 for which any persons have not been liable, or will not be liable in the future,in consequence of the scheme having been a Schedule 3 SAYE option scheme at any relevant time before the time mentioned in sub-paragraph (7)(a)(i) or (ii) (as the case may be).
- (11) The liabilities covered by sub-paragraph (10) include liabilities for income tax or contributions which a person has not had, or will not have, in consequence of sub-paragraph (9).

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- (12) In this paragraph “relevant time” means any time before the giving of the default notice when requirements of Parts 2 to 7 of this Schedule were not met in relation to the scheme.

### **Assessment of penalties**

40J (1) This paragraph applies if the scheme organiser is liable for a penalty under this Part.

(2) HMRC must assess the penalty and notify the scheme organiser of the assessment.

(3) Subject to sub-paragraphs (4) and (5), the assessment must be made no later than 12 months after the date on which the scheme organiser becomes liable for the penalty.

(4) In the case of a penalty under paragraph 40E(1)(b), the assessment must be made no later than—

- (a) 12 months after the date on which HMRC become aware of the inaccuracy, and
- (b) 6 years after the date on which the scheme organiser becomes liable for the penalty.

(5) In the case of a penalty under paragraph 40H(2)(b) or 40I(2)(a) or (7) (b) where notice of appeal is given under paragraph 40K(2) or (3), the assessment must be made no later than 12 months after the date on which the appeal is determined or withdrawn.

(6) A penalty payable under this Part must be paid—

- (a) no later than 30 days after the date on which the notice under sub-paragraph (2) is given to the scheme organiser, or
- (b) if notice of appeal is given against the penalty under paragraph 40K(1) or (4), no later than 30 days after the date on which the appeal is determined or withdrawn.

(7) The penalty may be enforced as if it were corporation tax or, if the scheme organiser is not within the charge to corporation tax, income tax charged in an assessment and due and payable.

(8) Sections 100 to 103 of TMA 1970 do not apply to a penalty under this Part.

### **Appeals**

40K(1) The scheme organiser may appeal against a decision of HMRC that the scheme organiser is liable for a penalty under paragraph 40C or 40E.

(2) The scheme organiser may appeal against—

- (a) a decision of HMRC mentioned in paragraph 40H(1) or a decision of HMRC to specify, or not to specify, a relevant time in the closure notice;
- (b) a decision of HMRC mentioned in paragraph 40I(1).

(3) The scheme organiser may appeal against a decision of HMRC—

- (a) to give the scheme organiser a default notice under paragraph 40I;



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- (b) to specify, or not to specify, a relevant time in the default notice.
  - (4) The scheme organiser may appeal against a decision of HMRC as to the amount of a penalty payable by the scheme organiser under this Part.
  - (5) Notice of appeal must be given to HMRC no later than 30 days after the date on which—
    - (a) in the case of an appeal under sub-paragraph (1) or (4), the notice under paragraph 40J(2) is given to the scheme organiser;
    - (b) in the case of an appeal under sub-paragraph (2), the closure notice is given;
    - (c) in the case of an appeal under sub-paragraph (3), the default notice is given.
  - (6) On an appeal under sub-paragraph (1) or (3)(a) which is notified to the tribunal, the tribunal may affirm or cancel the decision.
  - (7) On an appeal under sub-paragraph (2) or (3)(b) which is notified to the tribunal, the tribunal may—
    - (a) affirm or cancel the decision, or
    - (b) substitute for the decision another decision which HMRC had power to make.
  - (8) On an appeal under sub-paragraph (4) which is notified to the tribunal, the tribunal may—
    - (a) affirm the amount of the penalty decided, or
    - (b) substitute another amount for that amount.
  - (9) Subject to this paragraph and paragraph 40J, the provisions of Part 5 of TMA 1970 relating to appeals have effect in relation to an appeal under this paragraph as they have effect in relation to an appeal against an assessment to corporation tax or, if the scheme organiser is not within the charge to corporation tax, income tax.”
- 118 (1) Paragraph 45 (power to require information) is amended as follows.
- (2) For sub-paragraph (1) substitute—

“(1) An officer of Revenue and Customs may by notice require a person to provide the officer with any information—

    - (a) which the officer reasonably requires for the performance of any functions of Her Majesty's Revenue and Customs or an officer of Revenue and Customs under the SAYE code, and
    - (b) which the person to whom the notice is addressed has or can reasonably obtain.”
  - (3) In sub-paragraph (2)(a)—
    - (a) for sub-paragraph (i) substitute—

“(i) to check anything contained in a notice under paragraph 40A or a return under paragraph 40B or to check any information accompanying such a notice or return, or”, and”
    - (b) in sub-paragraph (ii) after “scheme” insert “ or any other person whose liability to tax the operation of a scheme is relevant to ”.

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119 After paragraph 47 insert—

*“Non-UK company reorganisation arrangements*

47A(1) For the purposes of the SAYE code a “non-UK company reorganisation arrangement” is an arrangement made in relation to a company under the law of a territory outside the United Kingdom—

- (a) which gives effect to a reorganisation of the company's share capital by the consolidation of shares of different classes, or by the division of shares into shares of different classes, or by both of those methods, and
- (b) which is approved by a resolution of members of the company.

(2) A resolution does not count for the purposes of sub-paragraph (1)(b) unless the members who vote in favour of approving the arrangement represent more than 50% of the total voting rights of all the members having the right to vote on the issue.”

120 In paragraph 49 (index of defined expressions)—

- (a) omit the entry for “approved”, and
- (b) at the appropriate places insert—

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“non-UK company paragraph 47A”  
reorganisation arrangement

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“Schedule 3 SAYE option paragraph 1 and Part 8 of this Schedule”.  
scheme

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*Other amendments: TCGA 1992*

121 TCGA 1992 is amended as follows.

122 (1) Section 105A (shares acquired on same day: election for alternative treatment) is amended as follows.

(2) For “approved-scheme” (in all places) substitute “ tax-advantaged-scheme ”.

(3) In subsection (1)(b)(ii) omit “approved”.

123 In section 105B (provision supplementary to section 105A) in subsections (7) and (8) for “approved-scheme” substitute “ tax-advantaged-scheme ”.

124 In section 238A (share schemes and share incentives) in subsection (2)(b) for “approved” substitute “ Schedule 3 ”.

125 Part 2 of Schedule 7D (SAYE option schemes) is amended as follows.

126 In the title for “APPROVED” substitute “ SCHEDULE 3 ”.

127 In paragraph 9 (introduction) in sub-paragraphs (1) and (2) omit “approved”.

128 (1) Paragraph 10 (market value rule not to apply) is amended as follows.

(2) In sub-paragraph (1)—

- (a) in paragraph (a)(i) for “an approved” substitute “ a Schedule 3 ”, and

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(b) in paragraph (b) for “approved” substitute “ a Schedule 3 SAYE option scheme ”.

(3) For sub-paragraph (3) substitute—

“(3) Sub-paragraph (3A) applies for the purposes of sub-paragraph (1)(b) if—

- (a) the SAYE option scheme is not to be a Schedule 3 SAYE option scheme by virtue of paragraph 40H or 40I of Schedule 3 to ITEPA 2003, and
- (b) the option was granted before, but exercised at or after, the time mentioned in paragraph 40H(2)(a)(i) or (ii) or 40I(7)(a)(i) or (ii) of that Schedule (as the case may be).

(3A) The scheme is to be taken still to be a Schedule 3 SAYE option scheme when the option is exercised.”

*Other amendments: ITEPA 2003, Part 4 of FA 2004, ITTOIA 2005 and CTA 2009*

- 129 ITEPA 2003 is amended as follows.
- 130 In section 227 (scope of Part 4) in subsection (4)(e) omit “approved”.
- 131 In section 417 (scope of Part 7) in subsection (2), in the entry for Chapter 7, omit “approved”.
- 132 In section 431A (provision relating to restricted securities) in subsection (2)(b) for “an approved” substitute “ a Schedule 3 ”.
- 133 In section 473 (introduction to taxation of securities options) in subsection (4)(a) for “approved” substitute “ Schedule 3 ”.
- 134 In section 476 (charge on occurrence of chargeable event) in subsection (6), in the entry for section 519, omit “approved”.
- 135 In section 549 (application of Chapter 11 of Part 7) in subsection (2)(b) omit “approved”.
- 136 (1) Section 554E (exclusions under Part 7A) is amended as follows.
- (2) In subsection (1)(b) for “an approved” substitute “ a Schedule 3 ”.
- (3) In subsection (3)(a)(ii) and (b)(ii) for the first “an approved” substitute “ a Schedule 3 ”.
- (4) In subsection (4)(a) and (b) for the second “approved” substitute “ Schedule 3 ”.
- 137 In section 697 (PAYE: enhancing the value of an asset) in subsection (4)—
- (a) in paragraph (a) omit the words from “Schedule 3” to the second “or”,
  - (b) after paragraph (a) insert—
    - “(aa) any shares acquired by the employee under a scheme which is a Schedule 3 SAYE option scheme (see Schedule 3),”, and
  - (c) in paragraph (b) for “such a scheme” substitute “ a scheme mentioned in any of the preceding paragraphs ”.
- 138 In section 701 (PAYE: meaning of “asset”) in subsection (2)(c)—
- (a) in sub-paragraph (i) omit “Schedule 3 (approved SAYE option schemes) or”, and

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- (b) after sub-paragraph (i) insert—  
“(iza) any shares acquired by the employee under a scheme which is a Schedule 3 SAYE option scheme (see Schedule 3),”.
- 139 In section 195 of FA 2004 (pensions: transfer of certain shares to be treated as payment of contribution) in subsection (5), in the definition of “SAYE option scheme”, omit “approved”.
- 140 (1) Section 94A of ITTOIA 2005 (costs of setting up SAYE option scheme or CSOP scheme) is amended as follows.
- (2) In subsection (1)—
- (a) in paragraph (a) omit “that is approved by an officer of Revenue and Customs”, and
- (b) omit paragraph (b) and the “and” before it.
- (3) In subsection (2)—
- (a) at the beginning of paragraph (a) insert “ Schedule 3 ”,
- (b) at the beginning of paragraph (b) insert “ Schedule 4 ”, and
- (c) omit the final sentence.
- (4) In subsection (4) for “approval is given” (in both places) substitute “ relevant date falls ”.
- (5) After subsection (4) insert—
- “(4A) In subsection (4) “the relevant date”—
- (a) in relation to a Schedule 3 SAYE option scheme, has the meaning given in paragraph 40A(6) of Schedule 3 to ITEPA 2003, and
- (b) in relation to a Schedule 4 CSOP scheme, has the meaning given in paragraph 28A(6) of Schedule 4 to ITEPA 2003.”
- 141 (1) Section 703 of ITTOIA 2005 (SAYE interest: meaning of “certified SAYE savings arrangement”) is amended as follows.
- (2) In subsection (2)(b) for “an approved” substitute “ a Schedule 3 ”.
- (3) In subsection (3) for the definition of “SAYE option scheme” substitute—
- ““Schedule 3 SAYE option scheme” has the meaning given in Schedule 3 to ITEPA 2003.”
- 142 (1) Section 999 of CTA 2009 (deduction for costs of setting up SAYE option scheme etc) is amended as follows.
- (2) In subsection (1)—
- (a) in paragraph (a) omit “that is approved by an officer of Revenue and Customs”, and
- (b) omit paragraph (b) and the “and” before it.
- (3) In subsection (2)—
- (a) at the beginning of paragraph (a) insert “ Schedule 3 ”,
- (b) at the beginning of paragraph (b) insert “ Schedule 4 ”, and
- (c) omit the final sentence.

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(4) In subsection (6) for “approval is given” (in all places) substitute “ relevant date falls ”.

(5) After subsection (6) insert—

“(6A) In subsection (6) “the relevant date”—

- (a) in relation to a Schedule 3 SAYE option scheme, has the meaning given in paragraph 40A(6) of Schedule 3 to ITEPA 2003, and
- (b) in relation to a Schedule 4 CSOP scheme, has the meaning given in paragraph 28A(6) of Schedule 4 to ITEPA 2003.”

*Other amendments: Individual Savings Account Regulations 1998 (S.I. 1998/1870)*

143 The Individual Savings Account Regulations 1998 are amended as follows.

144 In regulation 2 (interpretation) in paragraph (1)(a)—

- (a) omit the definition of “approved SAYE option scheme”, and
- (b) at the appropriate place insert—

““Schedule 3 SAYE option scheme” shall be construed in accordance with the SAYE code (see section 516(3) of ITEPA 2003);”.

145 In regulation 7 (qualifying investments) in paragraphs (2)(h)(i) and (10)(a) for “an approved” substitute “ a Schedule 3 ”.

*Commencement and transitional provision*

146 This Part is treated as having come into force on 6 April 2014.

147 Paragraphs 148 to 157 below apply in relation to an SAYE option scheme established before 6 April 2014.

148 (1) If the scheme was an approved SAYE option scheme immediately before 6 April 2014, this paragraph applies to any provision which the scheme contains immediately before that date and which requires the approval or agreement of Her Majesty's Revenue and Customs or an officer of Revenue and Customs to be obtained in relation to any matter.

(2) On and after 6 April 2014, the provision is to have effect without the requirement for the approval or agreement, unless the requirement reflects a requirement for approval or agreement set out in Schedule 3 to ITEPA 2003 (as amended by this Part).

149 (1) If the scheme was an approved SAYE option scheme immediately before 6 April 2014, the amendment made by paragraph 108 above has effect in relation to the scheme only if, and when, there is an alteration in a key feature of the scheme on or after that date.

(2) In sub-paragraph (1) “key feature” has the meaning given in paragraph 40B(8) of Schedule 3 to ITEPA 2003 (as inserted by paragraph 117 above).

150 If the scheme was an approved SAYE option scheme immediately before 6 April 2014, on and after that date the scheme has effect with any modifications needed to reflect the amendment made by paragraph 110 above.

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- 151 (1) This paragraph applies if, immediately before 6 April 2014, the scheme was an approved SAYE option scheme which contains provision authorised by paragraph 28(3) of Schedule 3 to ITEPA 2003.
- (2) On and after 6 April 2014, the scheme has effect with any modifications needed to reflect the amendments made by paragraph 111 above.
- 152 (1) The amendment made by paragraph 112 above has no effect in relation to share options granted before 6 April 2014 under the scheme.
- (2) If the scheme was an approved SAYE option scheme immediately before 6 April 2014, on and after that date the scheme has effect with any modifications needed to reflect the amendment made by paragraph 112 above (subject to sub-paragraph (1) of this paragraph).
- 153 (1) The amendments made by paragraph 113 above have no effect in a case where P ceases to hold the scheme-related employment before 6 April 2014.
- (2) If immediately before 6 April 2014 the scheme was an approved SAYE option scheme which contains provision authorised by paragraph 34(5) of Schedule 3 to ITEPA 2003, on and after that date the scheme has effect with any modifications needed to reflect the amendments made by paragraph 113 above (subject to sub-paragraph (1) of this paragraph).
- 154 (1) This paragraph applies if, immediately before 6 April 2014, the scheme was an approved SAYE option scheme which contains provision authorised by paragraph 37(1) of Schedule 3 to ITEPA 2003.
- (2) On and after 6 April 2014, the scheme has effect with any modifications needed to reflect the amendment made by paragraph 114(3) above.
- 155 (1) Paragraph 40A of Schedule 3 to ITEPA 2003 (as inserted by paragraph 117 above) has effect in relation to the scheme—
- (a) as if, at the end of sub-paragraph (1), the words “on or before 6 July 2015” were inserted,
  - (b) if the first date on which share options are granted under the scheme falls before 6 April 2014—
    - (i) as if, in sub-paragraph (3)(b), the reference to that date were a reference to 6 April 2014 and, accordingly, as if all references in paragraph 40A to the first grant date were references to 6 April 2014,
    - (ii) as if sub-paragraph (3)(b)(i) were omitted, and
    - (iii) as if, in sub-paragraph (3)(b)(ii), “otherwise” were omitted,
  - (c) as if sub-paragraph (5) were omitted, and
  - (d) as if, in sub-paragraph (6), the definitions of “the initial notification deadline” and “the relevant tax year” were omitted.
- (2) But the scheme cannot be a Schedule 3 SAYE option scheme if, before 6 April 2014, an application for its approval was refused or an officer of Revenue and Customs decided to withdraw its approval.
- (3) Sub-paragraph (2) is without prejudice to the outcome of any appeal under paragraph 41 or 44 of Schedule 3 to ITEPA 2003 against the refusal or decision to withdraw approval.

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- (4) The amendments made by this Part do not affect any right of appeal under paragraph 41 or 44 of Schedule 3 to ITEPA 2003 against a refusal or decision made before 6 April 2014 in relation to the scheme.
  - (5) Sub-paragraphs (6) and (7) apply if a share option was granted before 6 April 2014 under the scheme at a time when the scheme was an approved SAYE option scheme.
  - (6) On and after 6 April 2014, the SAYE code has effect in relation to the option as if it were granted under the scheme at a time when the scheme was a Schedule 3 SAYE option scheme (even if no notice is given under paragraph 40A of Schedule 3 to ITEPA 2003 in relation to the scheme or the scheme cannot be a Schedule 3 SAYE option scheme because of sub-paragraph (2) of this paragraph).
  - (7) If no notice is given under paragraph 40A of Schedule 3 to ITEPA 2003 in relation to the scheme, paragraph 40B of that Schedule (as inserted by paragraph 117 above) is to apply in relation to the scheme despite no notice being given; and, for this purpose, the relevant date is to be taken to be 6 April 2014.
  - (8) Sub-paragraph (9) applies in relation to a share option granted before 6 April 2014 under the scheme at a time when the scheme was an approved SAYE option scheme if—
    - (a) no notice is given under paragraph 40A of Schedule 3 to ITEPA 2003 in relation to the scheme or the scheme cannot be a Schedule 3 SAYE option scheme because of sub-paragraph (2) of this paragraph, and
    - (b) the option is exercised on or after 6 April 2014.
  - (9) The scheme is to be taken to be a Schedule 3 SAYE option scheme at the time of the exercise of the option for the purposes of the following provisions in their application to the option—
    - (a) section 519 of ITEPA 2003 (exemption in respect of exercise of share option), and
    - (b) paragraph 10(1)(b) of Schedule 7D to TCGA 1992 (market value rule not to apply).
  - (10) In relation to the scheme—
    - (a) paragraph 40F of Schedule 3 to ITEPA 2003 (as inserted by paragraph 117 above) has effect as if for sub-paragraph (2) there were substituted—

“(2) HMRC may enquire into the scheme if HMRC give notice to the scheme organiser of HMRC's intention to do so no later than 6 July 2016.”, and
    - (b) the cases covered by paragraphs 40F(4)(b), 40H(1)(a)(ii) and 40I(1)(a)(ii) of Schedule 3 to ITEPA 2003 (as inserted by paragraph 117 above) include cases in which requirements of Parts 2 to 7 of that Schedule were not met before 6 April 2014.
- 156 If the scheme was an approved SAYE option scheme before 6 April 2014, the amendments made by this Part do not affect the deductions which may be made in relation to the scheme under section 94A of ITTOIA 2005 or section 999 of CTA 2009 (deduction for costs of setting up scheme) if they would otherwise do so.
- 157 The amendments made by paragraph 118 above do not affect a notice given in relation to the scheme under paragraph 45 of Schedule 3 to ITEPA 2003 before 6 April 2014.

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### PART 3 U.K.

#### CSOP SCHEMES

##### *Amendments to Chapter 8 of Part 7 of ITEPA 2003*

- 158 Chapter 8 of Part 7 of ITEPA 2003 (employment income: income and exemptions relating to securities: CSOP schemes) is amended as follows.
- 159 In the title omit “APPROVED”.
- 160 (1) Section 521 (introduction to CSOP schemes) is amended as follows.
- (2) In the heading omit “**Approved**”.
- (3) In subsection (1)—
- (a) omit paragraph (a), and
  - (b) in paragraph (b) for “those” substitute “CSOP schemes which are Schedule 4 CSOP”.
- (4) Omit subsection (2).
- (5) In subsection (3)(c) for “approved” substitute “Schedule 4”.
- (6) In subsection (4)—
- (a) omit the definition of “approved”, and
  - (b) after the definition of “CSOP scheme” insert—
 

““Schedule 4 CSOP scheme” is to be read in accordance with paragraph 1 and Part 7 of Schedule 4;”.
- 161 In section 522 (share options to which Chapter applies) in subsection (1)(a) for “an approved” substitute “a Schedule 4”.
- 162 (1) Section 524 (no charge in respect of exercise of option) is amended as follows.
- (2) In subsection (1)(a) for “approved” substitute “a Schedule 4 CSOP scheme”.
- (3) In subsection (2E)—
- (a) in paragraph (a) for “approved” substitute “a Schedule 4 CSOP scheme”,
  - (b) in paragraphs (c), (d) and (f) after sub-paragraph (ii) omit “or” and insert—
 

“(ia) the non-UK company reorganisation arrangement, or”, and
  - (c) in paragraph (e) after sub-paragraph (ii) omit “or” and insert—
 

“(ia) the making of any non-UK company reorganisation arrangement which would fall within subsection (2L), or”.
- (4) In subsection (2L)—
- (a) after “arrangement” insert “or a non-UK company reorganisation arrangement”, and
  - (b) in paragraph (b) for “an approved” substitute “a Schedule 4”.
- 163 Schedule 4 is amended as follows.
- 164 In the title omit “APPROVED”.



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165 In the cross-heading before paragraph 1 for “*Approval of*” substitute “*Introduction to Schedule 4*”.

166 (1) Paragraph 1 (introduction) is amended as follows.

(2) For sub-paragraphs (1) and (2) substitute—

“(A1) For the purposes of the CSOP code a CSOP scheme is a Schedule 4 CSOP scheme if the requirements of Parts 2 to 6 of this Schedule are met in relation to the scheme.”

(3) For sub-paragraph (4) substitute—

“(4) Sub-paragraph (A1) is subject to Part 7 of this Schedule which—

- (a) requires notice of a scheme to be given to Her Majesty's Revenue and Customs (“HMRC”) in order for the scheme to be a Schedule 4 CSOP scheme (see paragraph 28A(1)),
- (b) provides for a scheme in relation to which such notice is given to be a Schedule 4 CSOP scheme (see paragraph 28A(4)), and
- (c) gives power to HMRC to enquire into a scheme and to decide that the scheme should not be a Schedule 4 CSOP scheme (see paragraphs 28F to 28I).”

167 In the title for Part 2 omit “FOR APPROVAL”.

168 In the cross-heading before paragraph 4 omit “*for approval*”.

169 For paragraph 5 (general restriction on contents of scheme) substitute—

“5 (1) The purpose of the scheme must be to provide, in accordance with this Schedule, benefits for employees and directors in the form of share options.

(2) The scheme must not provide benefits to employees or directors otherwise than in accordance with this Schedule.

(3) For example, the scheme must not provide cash as an alternative to share options or shares which might otherwise be acquired by the exercise of share options.”

170 In paragraph 6 (limit on value of shares subject to options) in sub-paragraph (1)(b) for “approved” substitute “Schedule 4”.

171 In paragraph 15 (requirements relating to shares that may be subject to share options) after sub-paragraph (1) insert—

“(1A) Sub-paragraph (1) and the other paragraphs of this Part are subject to paragraph 25A(7B).”

172 In paragraph 21 (requirements relating to share options) in sub-paragraph (1) before the entry for paragraph 22 insert— “ paragraph 21A (general requirements as to terms of option), ”.

173 After paragraph 21 insert—

*“General requirements as to terms of option*

21A(1) The following terms of a share option which is granted under the scheme must be stated at the time the option is granted—

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- (a) the price at which shares may be acquired by the exercise of the option,
  - (b) the number and description of the shares which may be acquired by the exercise of the option,
  - (c) the restrictions to which those shares may be subject,
  - (d) the times at which the option may be exercised (in whole or in part), and
  - (e) the circumstances under which the option will lapse or be cancelled (in whole or in part), including any conditions to which the exercise of the option is subject (in whole or in part).
- (2) Terms stated as required by sub-paragraph (1) may be varied after the grant of the option, but—
- (a) in the case of the price, only as provided for in paragraph 22,
  - (b) in the case of the number or description of shares, only as provided for in paragraph 22 or by way of a mechanism which is stated at the time the option is granted, and
  - (c) in any other case, only by way of a mechanism which is stated at the time the option is granted.
- (3) Any mechanism stated for the purposes of sub-paragraph (2)(b) or (c) must be applied in a way that is fair and reasonable.
- (4) Terms stated as required by sub-paragraph (1), and any mechanism stated for the purposes of sub-paragraph (2)(b) or (c), must be notified to the participant as soon as practicable after the grant of the option.”
- 174 (1) Paragraph 22 (requirements as to price for acquisition of shares etc) is amended as follows.
- (2) In sub-paragraph (1)—
- (a) omit paragraph (a) and the “and” after it, and
  - (b) in paragraph (b) for “that time” substitute “ the time when the option is granted ”.
- (3) After sub-paragraph (3) insert—
- “(3A) If the scheme makes provision under sub-paragraph (3), the variation or variations made under that provision to take account of a variation in any share capital must (in particular) secure—
- (a) that the total market value of the shares which may be acquired by the exercise of the share option is immediately after the variation or variations substantially the same as what it was immediately before the variation or variations, and
  - (b) that the total price at which those shares may be acquired is immediately after the variation or variations substantially the same as what it was immediately before the variation or variations.
- (3B) Sub-paragraph (3) does not authorise any variation which would result in the requirements of the other paragraphs of this Schedule not being met in relation to the share option.”
- (4) Omit sub-paragraph (4).

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- (5) Omit sub-paragraph (5).
- 175 (1) Paragraph 25 (exercise of options: death) is amended as follows.
- (2) Make the existing text sub-paragraph (1).
- (3) In the new sub-paragraph (1) omit “but not later than 12 months after that date”.
- (4) After the new sub-paragraph (1) insert—
- “(2) Provision made under sub-paragraph (1) must permit the exercise of the options at any time on or after the date of death but not later than 12 months after that date.”
- 176 (1) Paragraph 25A (exercise of options: company events) is amended as follows.
- (2) In sub-paragraph (1) for “or (6)” substitute “, (6) or (6A) ”.
- (3) In sub-paragraph (6)(b) for “an approved” substitute “ a Schedule 4 ”.
- (4) After sub-paragraph (6) insert—
- “(6A) The relevant date for the purposes of this sub-paragraph is the date on which a non-UK company reorganisation arrangement applicable to or affecting—
- (a) all the ordinary share capital of the company or all the shares of the same class as the shares to which the option relates, or
- (b) all the shares, or all the shares of that same class, which are held by a class of shareholders identified otherwise than by reference to their employments or directorships or their participation in a Schedule 4 CSOP scheme,
- becomes binding on the shareholders covered by it.”
- (5) After sub-paragraph (7) insert—
- “(7A) Sub-paragraphs (7B) to (7F) apply if the scheme makes provision under sub-paragraph (1) or (7).
- (7B) The scheme may provide that if, in consequence of a relevant event, shares in the company to which a share option relates no longer meet the requirements of Part 4 of this Schedule, the share option may be exercised under the provision made under sub-paragraph (1) or (7) (as the case may be) no later than 20 days after the day on which the relevant event occurs, notwithstanding that the shares no longer meet the requirements of Part 4 of this Schedule.
- (7C) In sub-paragraph (7B) “relevant event” means—
- (a) a person obtaining control of the company as mentioned in sub-paragraph (2)(a);
- (b) a person obtaining control of the company as a result of a compromise or arrangement sanctioned by the court as mentioned in sub-paragraph (6);
- (c) a person obtaining control of the company as a result of a non-UK company reorganisation arrangement which has become binding on the shareholders covered by it as mentioned in sub-paragraph (6A);
- (d) a person who is bound or entitled to acquire shares in the company as mentioned in sub-paragraph (7) obtaining control of the company.

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- (7D) Provision made under sub-paragraph (7B) may not authorise the exercise of a share option, as the case may be—
- (a) at a time outside the 6 month period mentioned in sub-paragraph (1), or
  - (b) at a time not covered by sub-paragraph (7).
- (7E) The scheme may provide that a share option relating to shares in a company which is exercised during the period of 20 days ending with—
- (a) the relevant date for the purposes of sub-paragraph (2), (6) or (6A), or
  - (b) the date on which any person becomes bound or entitled to acquire shares in the company as mentioned in sub-paragraph (7),
- is to be treated as if it had been exercised in accordance with the provision made under sub-paragraph (1) or (7) (as the case may be).
- (7F) If the scheme makes provision under sub-paragraph (7E) it must also provide that if—
- (a) a share option is exercised in reliance on that provision in anticipation of—
    - (i) an event mentioned in sub-paragraph (2), (6) or (6A) occurring, or
    - (ii) a person becoming bound or entitled to acquire shares in the company as mentioned in sub-paragraph (7), but
  - (b) as the case may be—
    - (i) the relevant date for the purposes of sub-paragraph (2), (6) or (6A) does not fall during the period of 20 days beginning with the date on which the share option is exercised, or
    - (ii) the person does not become bound or entitled to acquire shares in the company by the end of the period of 20 days beginning with the date on which the share option is exercised,
- the exercise of the share option is to be treated as having had no effect.”

177 (1) Paragraph 26 (exchanges of options on company reorganisation) is amended as follows.

- (2) In sub-paragraph (2) after paragraph (b) insert—
- “(ba) obtains control of the scheme company as a result of a non-UK company reorganisation arrangement which has become binding on the shareholders covered by it; or”.
- (3) In sub-paragraph (3) after paragraph (b) omit “and” and insert—
- “(ba) where control is obtained in the way set out in sub-paragraph (2) (ba), within the period of 6 months beginning with the date on which the non-UK company reorganisation arrangement becomes binding on the shareholders covered by it, and”.

178 (1) Paragraph 27 (requirements about share options granted in exchange) is amended as follows.

- (2) In sub-paragraph (4)—
- (a) in paragraph (c) for “equal” substitute “ be substantially the same as ”, and

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(b) in paragraph (d) for “equal to” substitute “substantially the same as”.

(3) After sub-paragraph (7) insert—

“(8) For the purposes of this paragraph the market value of any shares is to be determined using a methodology agreed by Her Majesty's Revenue and Customs.”

179 For Part 7 substitute—

## “PART 7 U.K.

### NOTIFICATION OF SCHEMES, ANNUAL RETURNS AND ENQUIRIES

#### *Notice of scheme to be given to HMRC*

28A(1) For a CSOP scheme to be a Schedule 4 CSOP scheme, notice of the scheme must be given to Her Majesty's Revenue and Customs (“HMRC”).

(2) The notice must—

- (a) be given by the scheme organiser,
- (b) contain, or be accompanied by, such information as HMRC may require, and
- (c) contain a declaration within sub-paragraph (3) made by such persons as HMRC may require.

(3) A declaration within this sub-paragraph is a declaration—

- (a) that the requirements of Parts 2 to 6 of this Schedule are met in relation to the scheme, and
- (b) if the declaration is made after the first date on which share options are granted under the scheme (“the first grant date”), that those requirements—
  - (i) were met in relation to those grants of share options, and
  - (ii) have otherwise been met in relation to the scheme at all times on or after the first grant date when share options granted under the scheme are outstanding.

(4) If notice is given under this paragraph in relation to a CSOP scheme, for the purposes of the CSOP code the scheme is to be a Schedule 4 CSOP scheme at all times on and after the relevant date (but not before that date).

(5) But if the notice is given after the initial notification deadline, the scheme is to be a Schedule 4 CSOP scheme only from the beginning of the relevant tax year.

(6) For the purposes of this Part—

“the initial notification deadline” is 6 July in the tax year following that in which the first grant date falls,

“outstanding”, in relation to a share option, means that the option—

- (a) has not been exercised, but
- (b) is capable of being exercised in accordance with the scheme (whether on the meeting of any condition or otherwise),

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“the relevant date” is—

- (a) the date on which the declaration within sub-paragraph (3) is made, or
- (b) if that declaration is made after the first grant date, the first grant date, and

“the relevant tax year” is—

- (a) the tax year in which the notice under this paragraph is given, or
- (b) if that notice is given on or before 6 July in that tax year, the preceding tax year.

(7) Sub-paragraph (4) is subject to the following paragraphs of this Part.

#### *Annual returns*

28B (1) This paragraph applies if notice is given in relation to a CSOP scheme under paragraph 28A.

- (2) The scheme organiser must give to HMRC a return for the tax year in which the relevant date falls and for each subsequent tax year (subject to sub-paragraph (9)).
- (3) If paragraph 28A(5) applies in relation to the scheme, in sub-paragraph (2) the reference to the tax year in which the relevant date falls is to be read as a reference to the relevant tax year.
- (4) A return for a tax year must—
  - (a) contain, or be accompanied by, such information as HMRC may require, and
  - (b) be given on or before 6 July in the following tax year.
- (5) The information which may be required under sub-paragraph (4)(a) includes (in particular) information to enable HMRC to determine the liability to tax, including capital gains tax, of—
  - (a) any person who has participated in the scheme, or
  - (b) any other person whose liability to tax the operation of the scheme is relevant to.
- (6) If during a tax year—
  - (a) an alteration is made in a key feature of the scheme, or
  - (b) variations are made under a provision made under paragraph 22(3) to take account of a variation in any share capital,
 the return for the tax year must contain a declaration within sub-paragraph (7) made by such persons as HMRC may require.
- (7) A declaration within this sub-paragraph is a declaration, as the case may be—
  - (a) that the alteration has, or
  - (b) that the variations have,
 not caused the requirements of Parts 2 to 6 of this Schedule not to be met in relation to the scheme.

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- (8) For the purposes of sub-paragraph (6)(a) a “key feature” of a scheme is a provision of the scheme which is necessary in order for the requirements of Parts 2 to 6 of this Schedule to be met in relation to the scheme.
- (9) A return is not required for any tax year following that in which the termination condition is met in relation to the scheme.
- (10) For the purposes of this Part “the termination condition” is met in relation to a scheme when—
- (a) all share options granted under the scheme—
    - (i) have been exercised, or
    - (ii) are no longer capable of being exercised in accordance with the scheme (because, for example, they have lapsed or been cancelled), and
  - (b) no more share options will be granted under the scheme.
- (11) If the scheme organiser becomes aware that—
- (a) anything which should have been included in, or should have accompanied, a return for a tax year was not included in, or did not accompany, the return,
  - (b) anything which should not have been included in, or should not have accompanied, a return for a tax year was included in, or accompanied, the return, or
  - (c) any other error or inaccuracy has occurred in relation to a return for a tax year,
- the scheme organiser must give an amended return correcting the position to HMRC without delay.
- 28C (1) This paragraph applies if the scheme organiser fails to give a return for a tax year (containing, or accompanied by, all required information and declarations) on or before the date mentioned in paragraph 28B(4)(b) (“the date for delivery”).
- (2) The scheme organiser is liable for a penalty of £100.
  - (3) If the scheme organiser's failure continues after the end of the period of 3 months beginning with the date for delivery, the scheme organiser is liable for a further penalty of £300.
  - (4) If the scheme organiser's failure continues after the end of the period of 6 months beginning with the date for delivery, the scheme organiser is liable for a further penalty of £300.
  - (5) The scheme organiser is liable for a further penalty under this sub-paragraph if—
    - (a) the scheme organiser's failure continues after the end of the period of 9 months beginning with the date for delivery,
    - (b) HMRC decide that such a penalty should be payable, and
    - (c) HMRC give notice to the scheme organiser specifying the period in respect of which the penalty is payable.
- (The scheme organiser may be liable for more than one penalty under this sub-paragraph.)

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- (6) The penalty under sub-paragraph (5) is £10 for each day that the failure continues during the period specified in the notice under sub-paragraph (5) (c).
- (7) The period specified in the notice under sub-paragraph (5)(c)—
  - (a) may begin earlier than the date on which the notice is given, but
  - (b) may not begin until after the end of the period mentioned in sub-paragraph (5)(a) or, if relevant, the end of any period specified in any previous notice under sub-paragraph (5)(c) given in relation to the failure.
- (8) Liability for a penalty under this paragraph does not arise if the scheme organiser satisfies HMRC (or, on an appeal under paragraph 28K, the tribunal) that there is a reasonable excuse for its failure.
- (9) For the purposes of sub-paragraph (8)—
  - (a) an insufficiency of funds is not a reasonable excuse, unless attributable to events outside the scheme organiser's control,
  - (b) where the scheme organiser relies on any other person to do anything, that is not a reasonable excuse unless the scheme organiser took reasonable care to avoid the failure, and
  - (c) where the scheme organiser had a reasonable excuse for the failure but the excuse ceased, the scheme organiser is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

*Notices and returns to be given electronically etc*

- 28D(1) A notice under paragraph 28A, and any information accompanying the notice, must be given electronically.
- (2) A return under paragraph 28B, and any information accompanying the return, must be given electronically.
- (3) But, if HMRC consider it appropriate to do so, HMRC may allow the scheme organiser to give a notice or return or any accompanying information in another way; and, if HMRC do so, the notice, return or information must be given in that other way.
- (4) The Commissioners for Her Majesty's Revenue and Customs—
  - (a) must prescribe how notices, returns and accompanying information are to be given electronically;
  - (b) may make different provision for different cases or circumstances.
- 28E (1) This paragraph applies if a return under paragraph 28B, or any information accompanying such a return—
  - (a) is given otherwise than in accordance with paragraph 28D, or
  - (b) contains a material inaccuracy—
    - (i) which is careless or deliberate, or
    - (ii) which is not corrected as required by paragraph 28B(11).
- (2) The scheme organiser is liable for a penalty of an amount decided by HMRC.



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- (3) The penalty must not exceed £5,000.
- (4) For the purposes of sub-paragraph (1)(b)(i) an inaccuracy is careless if it is due to a failure by the scheme organiser to take reasonable care.

#### *Enquiries*

28F (1) This paragraph applies if notice is given in relation to a CSOP scheme under paragraph 28A.

(2) HMRC may enquire into the scheme if HMRC give notice to the scheme organiser of HMRC's intention to do so no later than—

- (a) 6 July in the tax year following that in which the initial notification deadline falls, or
- (b) if the notice under paragraph 28A is given after the initial notification deadline, 6 July in the second tax year following the relevant tax year.

(3) HMRC may enquire into the scheme if HMRC give notice to the scheme organiser of HMRC's intention to do so no later than 12 months after the date on which a declaration within paragraph 28B(7) is given to HMRC.

(4) Sub-paragraph (5) applies if (at any time) HMRC have reasonable grounds for believing that requirements of Parts 2 to 6 of this Schedule—

- (a) are not met in relation to the scheme, or
- (b) have not been met in relation to the scheme.

(5) HMRC may enquire into the scheme if HMRC give notice to the scheme organiser of HMRC's intention to do so.

(6) Notice may be given, and an enquiry may be conducted, under sub-paragraph (2), (3) or (5) even though the termination condition is met in relation to the scheme.

28G(1) An enquiry under paragraph 28F(2), (3) or (5) is completed when HMRC give the scheme organiser a notice (a “closure notice”) stating—

- (a) that HMRC have completed the enquiry, and
- (b) that—
  - (i) paragraph 28H is to apply,
  - (ii) paragraph 28I is to apply, or
  - (iii) neither paragraph 28H nor paragraph 28I is to apply.

(2) If the scheme organiser receives notice under paragraph 28F(2), (3) or (5), the scheme organiser may make an application to the tribunal for a direction requiring a closure notice for the enquiry to be given within a specified period.

(3) The application is to be subject to the relevant provisions of Part 5 of TMA 1970 (see, in particular, section 48(2)(b) of that Act).

(4) The tribunal must give a direction unless satisfied that HMRC have reasonable grounds for not giving the closure notice within the specified period.

28H(1) This paragraph applies if HMRC decide—

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- (a) that requirements of Parts 2 to 6 of this Schedule—
    - (i) are not met in relation to the scheme, or
    - (ii) have not been met in relation to the scheme, and
  - (b) that the situation is, or was, so serious that this paragraph should apply.
- (2) If this paragraph applies—
- (a) the scheme is not to be a Schedule 4 CSOP scheme with effect from—
    - (i) such relevant time as is specified in the closure notice, or
    - (ii) if no relevant time is specified, the time of the giving of the closure notice, and
  - (b) the scheme organiser is liable for a penalty of an amount decided by HMRC.
- (3) The penalty under sub-paragraph (2)(b) must not exceed an amount equal to twice HMRC's reasonable estimate of—
- (a) the total income tax for which persons who have been granted share options under the scheme have not been liable, or will not be liable in the future, and
  - (b) the total contributions under Part 1 of SSCBA 1992 or SSCB(NI)A 1992 for which any persons have not been liable, or will not be liable in the future,
- in consequence of the scheme having been a Schedule 4 CSOP scheme at any relevant time before the time mentioned in sub-paragraph (2)(a)(i) or (ii) (as the case may be).
- (4) In this paragraph “relevant time” means any time before the giving of the closure notice when requirements of Parts 2 to 6 of this Schedule were not met in relation to the scheme.
- 28I (1) This paragraph applies if HMRC decide—
- (a) that requirements of Parts 2 to 6 of this Schedule—
    - (i) are not met in relation to the scheme, or
    - (ii) have not been met in relation to the scheme, but
  - (b) that the situation is not, or was not, so serious that paragraph 28H should apply.
- (2) If this paragraph applies, the scheme organiser—
- (a) is liable for a penalty of an amount decided by HMRC, and
  - (b) must, no later than 90 days after the relevant day, secure that the requirements of Parts 2 to 6 of this Schedule are met in relation to the scheme.
- (3) The penalty under sub-paragraph (2)(a) must not exceed £5,000.
- (4) In sub-paragraph (2)(b) “the relevant day” means—
- (a) the last day of the period in which notice of an appeal under paragraph 28K(2)(b) may be given, or
  - (b) if notice of such an appeal is given, the day on which the appeal is determined or withdrawn.

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- (5) Sub-paragraph (2)(b) does not apply if the termination condition was met in relation to the scheme before the closure notice was given or is met before the end of the 90 day period mentioned in sub-paragraph (2)(b).
- (6) If the scheme organiser fails to comply with sub-paragraph (2)(b), HMRC may give the scheme organiser a notice stating that that is the case (a “default notice”).
- (7) If the scheme organiser is given a default notice—
  - (a) the scheme is not to be a Schedule 4 CSOP scheme with effect from—
    - (i) such relevant time as is specified in the default notice, or
    - (ii) if no relevant time is specified, the time of the giving of the default notice, and
  - (b) the scheme organiser is liable for a further penalty of an amount decided by HMRC.
- (8) The penalty under sub-paragraph (7)(b) must not exceed an amount equal to twice HMRC's reasonable estimate of—
  - (a) the total income tax for which persons who have been granted share options under the scheme have not been liable, or will not be liable in the future, and
  - (b) the total contributions under Part 1 of SSCBA 1992 or SSCB(NI)A 1992 for which any persons have not been liable, or will not be liable in the future,in consequence of the scheme having been a Schedule 4 CSOP scheme at any relevant time before the time mentioned in sub-paragraph (7)(a)(i) or (ii) (as the case may be).
- (9) In this paragraph “relevant time” means any time before the giving of the default notice when requirements of Parts 2 to 6 of this Schedule were not met in relation to the scheme.

#### *Assessment of penalties*

- 28J (1) This paragraph applies if the scheme organiser is liable for a penalty under this Part.
- (2) HMRC must assess the penalty and notify the scheme organiser of the assessment.
  - (3) Subject to sub-paragraphs (4) and (5), the assessment must be made no later than 12 months after the date on which the scheme organiser becomes liable for the penalty.
  - (4) In the case of a penalty under paragraph 28E(1)(b), the assessment must be made no later than—
    - (a) 12 months after the date on which HMRC become aware of the inaccuracy, and
    - (b) 6 years after the date on which the scheme organiser becomes liable for the penalty.

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- (5) In the case of a penalty under paragraph 28H(2)(b) or 28I(2)(a) or (7) (b) where notice of appeal is given under paragraph 28K(2) or (3), the assessment must be made no later than 12 months after the date on which the appeal is determined or withdrawn.
- (6) A penalty payable under this Part must be paid—
  - (a) no later than 30 days after the date on which the notice under sub-paragraph (2) is given to the scheme organiser, or
  - (b) if notice of appeal is given against the penalty under paragraph 28K(1) or (4), no later than 30 days after the date on which the appeal is determined or withdrawn.
- (7) The penalty may be enforced as if it were corporation tax or, if the scheme organiser is not within the charge to corporation tax, income tax charged in an assessment and due and payable.
- (8) Sections 100 to 103 of TMA 1970 do not apply to a penalty under this Part.

#### *Appeals*

- 28K(1) The scheme organiser may appeal against a decision of HMRC that the scheme organiser is liable for a penalty under paragraph 28C or 28E.
- (2) The scheme organiser may appeal against—
  - (a) a decision of HMRC mentioned in paragraph 28H(1) or a decision of HMRC to specify, or not to specify, a relevant time in the closure notice;
  - (b) a decision of HMRC mentioned in paragraph 28I(1).
- (3) The scheme organiser may appeal against a decision of HMRC—
  - (a) to give the scheme organiser a default notice under paragraph 28I;
  - (b) to specify, or not to specify, a relevant time in the default notice.
- (4) The scheme organiser may appeal against a decision of HMRC as to the amount of a penalty payable by the scheme organiser under this Part.
- (5) Notice of appeal must be given to HMRC no later than 30 days after the date on which—
  - (a) in the case of an appeal under sub-paragraph (1) or (4), the notice under paragraph 28J(2) is given to the scheme organiser;
  - (b) in the case of an appeal under sub-paragraph (2), the closure notice is given;
  - (c) in the case of an appeal under sub-paragraph (3), the default notice is given.
- (6) On an appeal under sub-paragraph (1) or (3)(a) which is notified to the tribunal, the tribunal may affirm or cancel the decision.
- (7) On an appeal under sub-paragraph (2) or (3)(b) which is notified to the tribunal, the tribunal may—
  - (a) affirm or cancel the decision, or
  - (b) substitute for the decision another decision which HMRC had power to make.

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- (8) On an appeal under sub-paragraph (4) which is notified to the tribunal, the tribunal may—
- (a) affirm the amount of the penalty decided, or
  - (b) substitute another amount for that amount.
- (9) Subject to this paragraph and paragraph 28J, the provisions of Part 5 of TMA 1970 relating to appeals have effect in relation to an appeal under this paragraph as they have effect in relation to an appeal against an assessment to corporation tax or, if the scheme organiser is not within the charge to corporation tax, income tax.”
- 180 (1) Paragraph 33 (power to require information) is amended as follows.
- (2) For sub-paragraph (1) substitute—
- “(1) An officer of Revenue and Customs may by notice require a person to provide the officer with any information—
- (a) which the officer reasonably requires for the performance of any functions of Her Majesty's Revenue and Customs or an officer of Revenue and Customs under the CSOP code, and
  - (b) which the person to whom the notice is addressed has or can reasonably obtain.”
- (3) In sub-paragraph (2)(a)—
- (a) for sub-paragraph (i) substitute—
    - “(i) to check anything contained in a notice under paragraph 28A or a return under paragraph 28B or to check any information accompanying such a notice or return, or”, and”
  - (b) in sub-paragraph (ii) after “scheme” insert “ or any other person whose liability to tax the operation of a scheme is relevant to ”.
- 181 After paragraph 35 insert—
- “Non-UK company reorganisation arrangements*
- 35ZA1) For the purposes of the CSOP code a “non-UK company reorganisation arrangement” is an arrangement made in relation to a company under the law of a territory outside the United Kingdom—
- (a) which gives effect to a reorganisation of the company's share capital by the consolidation of shares of different classes, or by the division of shares into shares of different classes, or by both of those methods, and
  - (b) which is approved by a resolution of members of the company.
- (2) A resolution does not count for the purposes of sub-paragraph (1)(b) unless the members who vote in favour of approving the arrangement represent more than 50% of the total voting rights of all the members having the right to vote on the issue.”
- 182 In paragraph 37 (index of defined expressions)—
- (a) omit the entry for “approved”, and
  - (b) at the appropriate places insert—

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“non-UK company paragraph 35ZA”  
reorganisation arrangement

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“Schedule 4 CSOP scheme paragraph 1 and Part 7 of this Schedule”.

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*Other amendments: TCGA 1992*

- 183 TCGA 1992 is amended as follows.
- 184 In section 238A (share schemes and share incentives) in subsection (2)(c) for “approved” substitute “ Schedule 4 ”.
- 185 Part 3 of Schedule 7D (CSOP schemes) is amended as follows.
- 186 In the title for “APPROVED” substitute “ SCHEDULE 4 ”.
- 187 (1) Paragraph 11 (introduction) is amended as follows.
- (2) In sub-paragraphs (1) and (2) omit “approved”.
- (3) In sub-paragraph (3)(a)(i) for “an approved” substitute “ a Schedule 4 ”.
- 188 In paragraph 12 (relief where income tax charged in respect of grant of option) in sub-paragraph (4)(b) for “approved” substitute “ a Schedule 4 CSOP scheme ”.
- 189 In paragraph 13 (market value rule not to apply) in sub-paragraphs (1)(a) and (3) for “approved” substitute “ a Schedule 4 CSOP scheme ”.

*Other amendments: ITEPA 2003*

- 190 ITEPA 2003 is amended as follows.
- 191 In section 227 (scope of Part 4) in subsection (4)(g) omit “approved”.
- 192 In section 417 (scope of Part 7) in subsection (2), in the entry for Chapter 8, omit “approved”.
- 193 In section 431A (which makes provision relating to restricted securities etc) in subsection (2)(c) for “an approved” substitute “ a Schedule 4 ”.
- 194 In section 473 (introduction to taxation of securities options) in subsection (4)(b) for “approved” substitute “ Schedule 4 ”.
- 195 In section 475 (no charge in respect of acquisition of option) in subsection (2) omit “approved”.
- 196 In section 476 (charge on occurrence of chargeable event) in subsection (6), in the entry for section 524, omit “approved”.
- 197 In section 480 (deductible amounts) in subsection (4) omit “approved”.
- 198 In section 539 (CSOP and other options relevant for purposes of section 536) in subsection (4) for “approved under Schedule 4 (CSOP schemes)” substitute “ which is a Schedule 4 CSOP scheme (see Schedule 4) ”.
- 199 In section 549 (application of Chapter 11 of Part 7) in subsection (2)(c) omit “approved”.
- 200 (1) Section 554E (exclusions under Part 7A) is amended as follows.

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- (2) In subsection (1)(c) for “an approved” substitute “ a Schedule 4 ”.
- (3) In subsection (3)(a)(ii) and (b)(ii) for the second “an approved” substitute “ a Schedule 4 ”.
- (4) In subsection (4)(a) and (b) for the third “approved” substitute “ Schedule 4 ”.
- 201 In section 697 (PAYE: enhancing the value of an asset) in subsection (4) before paragraph (b) insert—
- “(ab) any shares acquired by the employee under a scheme which is a Schedule 4 CSOP scheme (see Schedule 4),”.
- 202 In section 701 (PAYE: meaning of “asset”) in subsection (2)(c)(ia) for “approved under Schedule 4 (approved CSOP schemes)” substitute “ which is a Schedule 4 CSOP scheme (see Schedule 4) ”.
- 203 In paragraph 5 of Schedule 5 (enterprise management incentives: maximum entitlement of employee) in sub-paragraph (5) for “approved under Schedule 4 (CSOP schemes)” substitute “ which is a Schedule 4 CSOP scheme (see Schedule 4) ”.

*Commencement and transitional provision*

- 204 This Part is treated as having come into force on 6 April 2014.
- 205 Paragraphs 206 to 215 below apply in relation to a CSOP scheme established before 6 April 2014.
- 206 (1) If the scheme was an approved CSOP scheme immediately before 6 April 2014, this paragraph applies to any provision which the scheme contains immediately before that date and which requires the approval or agreement of Her Majesty's Revenue and Customs or an officer of Revenue and Customs to be obtained in relation to any matter.
- (2) On and after 6 April 2014, the provision is to have effect without the requirement for the approval or agreement, unless the requirement reflects a requirement for approval or agreement set out in Schedule 4 to ITEPA 2003 (as amended by this Part).
- 207 (1) If the scheme was an approved CSOP scheme immediately before 6 April 2014, the amendment made by paragraph 169 above has effect in relation to the scheme only if, and when, there is an alteration in a key feature of the scheme on or after that date.
- (2) In sub-paragraph (1) “key feature” has the meaning given in paragraph 28B(8) of Schedule 4 to ITEPA 2003 (as inserted by paragraph 179 above).
- 208 If the scheme was an approved CSOP scheme immediately before 6 April 2014, on and after that date the scheme has effect with any modifications needed to reflect the amendment made by paragraph 170 above.
- 209 (1) The amendments made by paragraphs 172, 173 and 174(2) and (5) above have no effect in relation to share options granted under the scheme before 6 April 2014.
- (2) If the scheme was an approved CSOP scheme immediately before 6 April 2014, on and after that date the scheme has effect with any modifications needed to reflect the amendments made by paragraphs 172, 173 and 174(2) and (5) above (subject to sub-paragraph (1) of this paragraph).

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- 210 (1) This paragraph applies if, immediately before 6 April 2014 the scheme was an approved CSOP scheme which contains provision authorised by paragraph 22(3) of Schedule 4 to ITEPA 2003.
- (2) On and after 6 April 2014, the scheme has effect with any modifications needed to reflect the amendments made by paragraph 174(3) and (4) above.
- 211 (1) The amendments made by paragraph 175 above have no effect in relation to share options granted before 6 April 2014 under the scheme.
- (2) If immediately before 6 April 2014 the scheme was an approved CSOP scheme which contains provision authorised by paragraph 25 of Schedule 4 to ITEPA 2003, on and after that date the scheme has effect with any modifications needed to reflect the amendments made by paragraph 175 above (subject to sub-paragraph (1) of this paragraph).
- 212 (1) This paragraph applies if immediately before 6 April 2014 the scheme was an approved CSOP scheme which contains provision authorised by paragraph 25A(1) of Schedule 4 to ITEPA 2003.
- (2) On and after 6 April 2014, the scheme has effect with any modifications needed to reflect the amendment made by paragraph 176(3) above.
- 213 (1) Paragraph 28A of Schedule 4 to ITEPA 2003 (as inserted by paragraph 179 above) has effect in relation to the scheme—
- (a) as if, at the end of sub-paragraph (1), the words “on or before 6 July 2015” were inserted,
  - (b) if the first date on which share options are granted under the scheme falls before 6 April 2014—
    - (i) as if, in sub-paragraph (3)(b), the reference to that date were a reference to 6 April 2014 and, accordingly, as if all references in paragraph 28A to the first grant date were references to 6 April 2014,
    - (ii) as if sub-paragraph (3)(b)(i) were omitted, and
    - (iii) as if, in sub-paragraph (3)(b)(ii), “otherwise” were omitted,
  - (c) as if sub-paragraph (5) were omitted, and
  - (d) as if, in sub-paragraph (6), the definitions of “the initial notification deadline” and “the relevant tax year” were omitted.
- (2) But the scheme cannot be a Schedule 4 CSOP scheme if, before 6 April 2014, an application for its approval was refused or an officer of Revenue and Customs decided to withdraw its approval.
- (3) Sub-paragraph (2) is without prejudice to the outcome of any appeal under paragraph 29 or 32 of Schedule 4 to ITEPA 2003 against the refusal or decision to withdraw approval.
- (4) The amendments made by this Part do not affect any right of appeal under paragraph 29 or 32 of Schedule 4 to ITEPA 2003 against a refusal or decision made before 6 April 2014 in relation to the scheme.
- (5) Sub-paragraph (6) applies if a share option was granted before 6 April 2014 under the scheme at a time when the scheme was an approved CSOP scheme.
- (6) On and after 6 April 2014, the CSOP code has effect in relation to the option as if it were granted under the scheme at a time when the scheme was a Schedule 4 CSOP scheme (but not if no notice under paragraph 28A of Schedule 4 to ITEPA 2003 is



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given in relation to the scheme or if the scheme cannot be a Schedule 4 CSOP scheme because of sub-paragraph (2) of this paragraph).

(7) In relation to the scheme—

(a) paragraph 28F of Schedule 4 to ITEPA 2003 (as inserted by paragraph 179 above) has effect as if for sub-paragraph (2) there were substituted—

“(2) HMRC may enquire into the scheme if HMRC give notice to the scheme organiser of HMRC's intention to do so no later than 6 July 2016.”, and

(b) the cases covered by paragraphs 28F(4)(b), 28H(1)(a)(ii) and 28I(1)(a)(ii) of Schedule 4 to ITEPA 2003 (as inserted by paragraph 179 above) include cases in which requirements of Parts 2 to 6 of that Schedule were not met before 6 April 2014.

214 If the scheme was an approved CSOP scheme before 6 April 2014, the amendments made by this Part and paragraphs 140 and 142 above do not affect the deductions which may be made in relation to the scheme under section 94A of ITTOIA 2005 or section 999 of CTA 2009 (deduction for costs of setting up scheme) if they would otherwise do so.

215 The amendments made by paragraph 180 above do not affect a notice given in relation to the scheme under paragraph 33 of Schedule 4 to ITEPA 2003 before 6 April 2014.

## PART 4 U.K.

### ENTERPRISE MANAGEMENT INCENTIVES

#### *Amendments to Schedule 5 to ITEPA 2003*

216 Schedule 5 to ITEPA 2003 (enterprise management incentives) is amended as follows.

217 (1) Paragraph 44 (notice of option to be given to HMRC) is amended as follows.

(2) In sub-paragraph (2) omit paragraph (b) and the “and” before it.

(3) In sub-paragraph (4) for “each of sub-paragraphs (5) and (6)” substitute “ sub-paragraph (5) ”.

(4) In sub-paragraph (5)—

(a) after paragraph (a) omit “and”, and

(b) after paragraph (b) insert “, and

(c) that the individual to whom the option has been granted has made and signed a written declaration within sub-paragraph (6) and that the declaration is held by the employer company”.

(5) After sub-paragraph (5) insert—

“(5A) The employer company must—

(a) retain the declaration mentioned in sub-paragraph (5)(c) and, if requested to do so by an officer of Revenue and Customs, produce

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it to such an officer before the end of the period of 7 days after the day on which the request is made, and

- (b) give a copy of that declaration to the individual before the end of the period of 7 days after the day on which the declaration is signed by the individual.”

(6) After sub-paragraph (7) insert—

“(8) The notice, and any information supporting it, must be given electronically.

- (9) But, if an officer of Revenue and Customs considers it appropriate to do so, the officer may allow the employer company to give the notice or any supporting information in another way; and, if the officer does so, the notice or information must be given in that other way.

(10) The Commissioners for Her Majesty's Revenue and Customs—

- (a) must prescribe how notices and supporting information are to be given electronically;
- (b) may make different provision for different cases or circumstances.”

218 For paragraph 52 (annual returns) substitute—

“52 (1) This paragraph applies in relation to a company whose shares are (or have been) subject to qualifying options.

- (2) The company must give to Her Majesty's Revenue and Customs (“HMRC”) a return for each tax year falling (wholly or partly) in the company's qualifying option period.

(3) The company's “qualifying option period” is the period—

- (a) beginning when the first qualifying option to which the company's shares are subject is granted, and
- (b) ending when the termination condition is met.

(4) “The termination condition” is met when the company's shares—

- (a) are no longer subject to qualifying options, and
- (b) will no longer become subject to qualifying options.

(5) The return for a tax year must—

- (a) contain, or be accompanied by, such information as HMRC may require, and
- (b) be given on or before 6 July in the following tax year.

(6) The information which may be required under sub-paragraph (5)(a) includes (in particular) information to enable HMRC to determine the liability to tax, including capital gains tax, of any person who has been granted a qualifying option to which the company's shares are subject.

(7) If the company becomes aware that—

- (a) anything which should have been included in, or should have accompanied, a return for a tax year was not included in, or did not accompany, the return,
- (b) anything which should not have been included in, or should not have accompanied, a return for a tax year was included in, or accompanied, the return, or

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- (c) any other error or inaccuracy has occurred in relation to a return for a tax year,  
the company must give an amended return correcting the position to HMRC without delay.
- 52A (1) A return under paragraph 52, and any information accompanying the return, must be given electronically.
- (2) But, if HMRC consider it appropriate to do so, HMRC may allow a company to give a return or any accompanying information in another way; and, if HMRC do so, the return or information must be given in that other way.
  - (3) The Commissioners for Her Majesty's Revenue and Customs—
    - (a) must prescribe how returns and accompanying information are to be given electronically;
    - (b) may make different provision for different cases or circumstances.”
- 219 (1) Paragraph 53 (compliance with time limits) is amended as follows.
- (2) In sub-paragraph (1)—
    - (a) after “a person” insert “ (“P”) ”, and
    - (b) in paragraphs (a) and (b) for “the person” substitute “ P ”.
  - (3) After sub-paragraph (2) insert—
    - “(3) For the purposes of sub-paragraph (1)—
      - (a) an insufficiency of funds is not a reasonable excuse, unless attributable to events outside P's control, and
      - (b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure.”
- 220 After paragraph 57 insert—

#### *“Penalties*

- 57A A company is liable for a penalty of £500 if the company fails—
- (a) to produce a declaration to an officer of Revenue and Customs as required by paragraph 44(5A)(a) before the end of the period mentioned in that provision, or
  - (b) to provide a copy of a declaration to an individual as required by paragraph 44(5A)(b) before the end of the period mentioned in that provision,
- and Her Majesty's Revenue and Customs (“HMRC”) decide that such a penalty should be payable.
- 57B (1) This paragraph applies if a company fails to give a return for a tax year (containing, or accompanied by, all required information) on or before the date mentioned in paragraph 52(5)(b) (“the date for delivery”).
- (2) The company is liable for a penalty of £100.
  - (3) If the company's failure continues after the end of the period of 3 months beginning with the date for delivery, the company is liable for a further penalty of £300.

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- (4) If the company's failure continues after the end of the period of 6 months beginning with the date for delivery, the company is liable for a further penalty of £300.
- (5) The company is liable for a further penalty under this sub-paragraph if—
- (a) the company's failure continues after the end of the period of 9 months beginning with the date for delivery,
  - (b) HMRC decide that such a penalty should be payable, and
  - (c) HMRC give notice to the company specifying the period in respect of which the penalty is payable.
- (The company may be liable for more than one penalty under this sub-paragraph.)
- (6) The penalty under sub-paragraph (5) is £10 for each day that the failure continues during the period specified in the notice under sub-paragraph (5) (c).
- (7) The period specified in the notice under sub-paragraph (5)(c)—
- (a) may begin earlier than the date on which the notice is given, but
  - (b) may not begin until after the end of the period mentioned in sub-paragraph (5)(a) or, if relevant, the end of any period specified in any previous notice under sub-paragraph (5)(c) given in relation to the failure.
- 57C (1) This paragraph applies if a return under paragraph 52, or any information accompanying such a return—
- (a) is given otherwise than in accordance with paragraph 52A, or
  - (b) contains a material inaccuracy—
    - (i) which is careless or deliberate, or
    - (ii) which is not corrected as required by paragraph 52(7).
- (2) The company is liable for a penalty of an amount decided by HMRC.
- (3) The penalty must not exceed £5,000.
- (4) For the purposes of sub-paragraph (1)(b)(i) an inaccuracy is careless if it is due to a failure by the company to take reasonable care.
- 57D (1) This paragraph applies if a company is liable for a penalty under this Part.
- (2) HMRC must assess the penalty and notify the company of the assessment.
  - (3) Subject to sub-paragraph (4), the assessment must be made no later than 12 months after the date on which the company becomes liable for the penalty.
  - (4) In the case of a penalty under paragraph 57C(1)(b), the assessment must be made no later than—
    - (a) 12 months after the date on which HMRC become aware of the inaccuracy, and
    - (b) 6 years after the date on which the company becomes liable for the penalty.
  - (5) A penalty payable under this Part must be paid—

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- (a) no later than 30 days after the date on which the notice under sub-paragraph (2) is given to the company, or
  - (b) if notice of appeal is given against the penalty under paragraph 57E(1) or (2), no later than 30 days after the date on which the appeal is determined or withdrawn.
- (6) The penalty may be enforced as if it were corporation tax or, if the company is not within the charge to corporation tax, income tax charged in an assessment and due and payable.
- (7) Sections 100 to 103 of TMA 1970 do not apply to a penalty under this Part.
- 57E (1) A company may appeal against a decision of HMRC that the company is liable for a penalty under this Part.
- (2) A company may appeal against a decision of HMRC as to the amount of a penalty payable by the company under this Part.
- (3) Notice of appeal must be given to HMRC no later than 30 days after the date on which the notice under paragraph 57D(2) is given to the company.
- (4) On an appeal under sub-paragraph (1) which is notified to the tribunal, the tribunal may affirm or cancel the decision.
- (5) On an appeal under sub-paragraph (2) which is notified to the tribunal, the tribunal may—
- (a) affirm the amount of the penalty decided, or
  - (b) substitute another amount for that amount.
- (6) Subject to this paragraph and paragraph 57D, the provisions of Part 5 of TMA 1970 relating to appeals have effect in relation to an appeal under this paragraph as they have effect in relation to an appeal against an assessment to corporation tax or, if the company is not within the charge to corporation tax, income tax.”

*Other amendment: section 98 of TMA 1970*

- 221 In the second column of the Table in section 98 of TMA 1970 (special returns etc) omit the entry for paragraph 52 of Schedule 5 to ITEPA 2003.

*Commencement and transitional provision*

- 222 This Part is treated as having come into force on 6 April 2014.
- 223 The amendments made by paragraph 217 above have no effect in relation to options granted before 6 April 2014.
- 224 (1) The amendment made by paragraph 218 above has effect so as to require returns for the tax year 2014-15 and subsequent tax years.
- (2) It has effect in relation to companies whose qualifying option periods begin before 6 April 2014 (as well as those whose qualifying option periods begin on or after that date).
- (3) It does not affect the duty of a company to deliver a return for a tax year earlier than the tax year 2014-15 in accordance with paragraph 52 of Schedule 5 to ITEPA 2003

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as that paragraph stood before its substitution; and the effect of the amendment made by paragraph 221 above is limited accordingly.

- (4) In paragraphs 57B(1) and 57C(1) of Schedule 5 to ITEPA 2003 (as inserted by paragraph 220 above) the reference to a return is to a return under paragraph 52 of that Schedule as substituted.
- 225 The amendment made by paragraph 219(3) above does not affect a reasonable excuse which began before 6 April 2014.

## PART 5 U.K.

### OTHER EMPLOYEE SHARE SCHEMES

#### *Amendments to Chapter 1 of Part 7 of ITEPA 2003*

- 226 Chapter 1 of Part 7 of ITEPA 2003 (employment income: income and exemptions relating to securities: general) is amended as follows.
- 227 (1) Section 421J (duty to provide information) is amended as follows.
- (2) Omit subsections (3), (7), (8), (11) and (12).
- (3) In subsection (10) for “by, or by a notice under,” substitute “by a notice under”.
- 228 After section 421J insert—

#### “421JA Annual returns

- (1) This section applies in relation to a person who is (or has been) a responsible person (see section 421L) in relation to reportable events (see section 421K).
- (2) The person must give to Her Majesty's Revenue and Customs (“HMRC”) a return for each tax year falling (wholly or partly) in the person's reportable event period.
- (3) The person's “reportable event period” is the period—
  - (a) beginning when the first reportable event occurs in relation to which the person is a responsible person, and
  - (b) ending when the person will no longer be a responsible person in relation to reportable events.
- (4) The return for a tax year must—
  - (a) contain, or be accompanied by, such information as HMRC may require, and
  - (b) be given on or before 6 July in the following tax year.
- (5) The information which may be required under subsection (4)(a) includes (in particular) information to enable HMRC to determine the liability to tax, including capital gains tax, of any employee.
- (6) If the person becomes aware that—
  - (a) anything which should have been included in, or should have accompanied, a return for a tax year was not included in, or did not accompany, the return,

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- (b) anything which should not have been included in, or should not have accompanied, a return for a tax year was included in, or accompanied, the return, or
  - (c) any other error or inaccuracy has occurred in relation to a return for a tax year,
- the person must give an amended return correcting the position to HMRC without delay.
- (7) A person's return for a tax year under this section need not contain, or be accompanied by, duplicate information and a person is not required to give a return for a tax year under this section if it would only contain, or be accompanied by, duplicate information.
- (8) “Duplicate information” means information which is contained in or accompanies—
- (a) a return which another person gives for the tax year under this section, or
  - (b) a return which any person gives for the tax year under any of the following provisions—
    - (i) paragraph 81B of Schedule 2 (annual return for Schedule 2 SIP);
    - (ii) paragraph 40B of Schedule 3 (annual return for Schedule 3 SAYE option scheme);
    - (iii) paragraph 28B of Schedule 4 (annual return for Schedule 4 CSOP scheme);
    - (iv) paragraph 52 of Schedule 5 (annual return for company whose shares are subject to qualifying options under the EMI code).

#### **421JB Returns to be given electronically**

- (1) A return under section 421JA, and any information accompanying the return, must be given electronically.
- (2) But, if HMRC consider it appropriate to do so, HMRC may allow a person to give a return or any accompanying information in another way; and, if HMRC do so, the return or information must be given in that other way.
- (3) The Commissioners for Her Majesty's Revenue and Customs—
  - (a) must prescribe how returns and accompanying information are to be given electronically;
  - (b) may make different provision for different cases or circumstances.

#### **421JC Penalties for late returns**

- (1) This section applies if a person fails to give a return under section 421JA for a tax year (containing, or accompanied by, all required information) on or before the date mentioned in section 421JA(4)(b) (“the date for delivery”).
- (2) The person is liable for a penalty of £100.

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- (3) If the person's failure continues after the end of the period of 3 months beginning with the date for delivery, the person is liable for a further penalty of £300.
- (4) If the person's failure continues after the end of the period of 6 months beginning with the date for delivery, the person is liable for a further penalty of £300.
- (5) The person is liable for a further penalty under this subsection if—
  - (a) the person's failure continues after the end of the period of 9 months beginning with the date for delivery,
  - (b) HMRC decide that such a penalty should be payable, and
  - (c) HMRC give notice to the person specifying the period in respect of which the penalty is payable.

(The person may be liable for more than one penalty under this subsection.)
- (6) The penalty under subsection (5) is £10 for each day that the failure continues during the period specified in the notice under subsection (5)(c).
- (7) The period specified in the notice under subsection (5)(c)—
  - (a) may begin earlier than the date on which the notice is given, but
  - (b) may not begin until after the end of the period mentioned in subsection (5)(a) or, if relevant, the end of any period specified in any previous notice under subsection (5)(c) given in relation to the failure.
- (8) Liability for a penalty under this section does not arise if the person satisfies HMRC (or, on an appeal under section 421JF, the tribunal) that there is a reasonable excuse for the person's failure.
- (9) For the purposes of subsection (8)—
  - (a) an insufficiency of funds is not a reasonable excuse, unless attributable to events outside the person's control,
  - (b) where the person relies on any other person to do anything, that is not a reasonable excuse unless the (first mentioned) person took reasonable care to avoid the failure, and
  - (c) where the person had a reasonable excuse for the failure but the excuse ceased, the person is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

#### **421JD Penalty if information not given correctly**

- (1) This section applies if a return under section 421JA, or any information accompanying such a return—
  - (a) is given otherwise than in accordance with section 421JB, or
  - (b) contains a material inaccuracy—
    - (i) which is careless or deliberate, or
    - (ii) which is not corrected as required by section 421JA(6).
- (2) The person in question is liable for a penalty of an amount decided by HMRC.



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- (3) The penalty must not exceed £5,000.
- (4) For the purposes of subsection (1)(b)(i) an inaccuracy is careless if it is due to a failure by the person in question to take reasonable care.

#### **421JE Assessment of penalties**

- (1) This section applies if a person is liable for a penalty under section 421JC or 421JD.
- (2) HMRC must assess the penalty and notify the person of the assessment.
- (3) Subject to subsection (4), the assessment must be made no later than 12 months after the date on which the person becomes liable for the penalty.
- (4) In the case of a penalty under section 421JD(1)(b), the assessment must be made no later than—
  - (a) 12 months after the date on which HMRC become aware of the inaccuracy, and
  - (b) 6 years after the date on which the person becomes liable for the penalty.
- (5) A penalty payable under this Part must be paid—
  - (a) no later than 30 days after the date on which the notice under subsection (2) is given to the person, or
  - (b) if notice of appeal is given against the penalty under section 421JF(1) or (2), no later than 30 days after the date on which the appeal is determined or withdrawn.
- (6) The penalty may be enforced as if it were income tax or, if the person is a company within the charge to corporation tax, corporation tax charged in an assessment and due and payable.
- (7) Sections 100 to 103 of TMA 1970 do not apply to a penalty under section 421JC or 421JD.

#### **421JF Appeals**

- (1) A person may appeal against a decision of HMRC that the person is liable for a penalty under section 421JC or 421JD.
- (2) A person may appeal against a decision of HMRC as to the amount of a penalty payable by the person under section 421JC or 421JD.
- (3) Notice of appeal must be given to HMRC no later than 30 days after the date on which the notice under section 421JE(2) is given to the person.
- (4) On an appeal under subsection (1) which is notified to the tribunal, the tribunal may affirm or cancel the decision.
- (5) On an appeal under subsection (2) which is notified to the tribunal, the tribunal may—
  - (a) affirm the amount of the penalty decided, or
  - (b) substitute another amount for that amount.

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(6) Subject to this section and section 421JE, the provisions of Part 5 of TMA 1970 relating to appeals have effect in relation to an appeal under this section as they have effect in relation to an appeal against an assessment to income tax or, if the person is a company within the charge to corporation tax, corporation tax.”

229 In section 421K (reportable events) in subsection (1) for “section 421J (duty to provide information)” substitute “ sections 421J and 421JA (duties to provide information and annual returns) ”.

230 In section 421L (responsible persons) in subsection (1) for “section 421J (duty to provide information)” substitute “ sections 421J and 421JA (duties to provide information and annual returns) ”.

*Other amendment: section 98 of TMA 1970*

231 In the second column of the Table in section 98 of TMA 1970 (special returns etc) omit the entry for section 421J(3) of ITEPA 2003.

*Commencement and transitional provision*

232 This Part is treated as having come into force on 6 April 2014.

233 The amendments made by paragraphs 227 and 231 above have no effect in relation to reportable events occurring before 6 April 2014.

234 (1) Section 421JA of ITEPA 2003 (as inserted by paragraph 228 above) has effect so as to require returns for the tax year 2014-15 and subsequent tax years.

(2) That section has effect in relation to persons whose reportable event periods begin before 6 April 2014 (as well as those whose reportable event periods begin on or after that date).

**Status:**

Point in time view as at 06/04/2014.

**Changes to legislation:**

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