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SCHEDULES

SCHEDULE 8

EMPLOYEE SHARE SCHEMES

PART 1

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

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—

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

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.

Status:

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