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SCHEDULES

SCHEDULE 8

EMPLOYEE SHARE SCHEMES

PART 3

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—

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“(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”.
- 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—

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“(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—

- (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—

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- (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).
- (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.

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- (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.
- (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—

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- “(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
- (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

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.

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- (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),
 - “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.

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- (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.
- (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.

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- (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 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.

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- (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.
- (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,

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- (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—
- (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.

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- (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.
- (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.

Status: Point in time view as at 17/07/2014.

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- (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.
- (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;

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- (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 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—

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- (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—

“non-UK company paragraph 35ZA”
reorganisation arrangement

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

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 ”.

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- 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.
- (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.

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- (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).
- 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.

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- (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 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.

Status:

Point in time view as at 17/07/2014.

Changes to legislation:

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