

SCHEDULES

SCHEDULE 8

EMPLOYEE SHARE SCHEMES

PART 4

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 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

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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
- (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

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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.
 - (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,

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- (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—
 - (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.

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

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- (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.