



Employee share schemes: Office of Tax Simplification recommendations

Who is likely to be affected?

Businesses that award employment-related securities (ERS) (such as shares) or ERS options to employees.

Payroll and share plan administrators.

General description of the measure

The measure will give effect to a number of changes to the rules for employee share arrangements, as recommended by the Office of Tax Simplification (OTS). The changes include the replacement of the current arrangements for HM Revenue & Customs (HMRC) approval of Share Incentive Plans (SIP), Save As You Earn Option Schemes (SAYE) and Company Share Option Plans (CSOP) with self certification of these schemes by businesses; as well as new digital filing arrangements for the ERS information companies are required to submit to HMRC. New 'purpose tests' will be applied for SIP, SAYE and CSOP schemes, and the measure also includes technical clarifications in relation to the operation of these schemes.

Policy objective

These changes support the Government's objective to simplify the tax system.

Background to the measure

In July 2011, the Government asked the OTS to identify potential simplifications of the tax rules for employee share schemes. The OTS published recommendations on tax advantaged employee share schemes in March 2012. These included proposals that there should be:

- self certification of SIP, SAYE and CSOP schemes by businesses (rather than an HMRC approval procedure);
- online filing of share scheme returns; and
- changes to the SIP, SAYE and CSOP purpose tests and to associated rules that prohibit scheme features that are not essential or reasonably incidental to the provision of shares or share options to employees.

In June 2012, the Government launched a consultation on recommendations made by the OTS. A summary of responses to this consultation, including confirmation that the Government intended to proceed with the three OTS proposals set out above, was published in December 2012.

In May 2013, HMRC published details of its proposed arrangements for self certification of SIP, SAYE and CSOP schemes and digital filing of ERS forms and returns.

Detailed proposal

Operative date

The changes will take effect on 6 April 2014.

Current law

Many of the rules in relation to ERS and ERS options are set out in the Income Tax (Earnings and Pensions Act) 2003 (ITEPA).

The ITEPA requirements that SIP, SAYE and CSOP schemes must be approved by HMRC before they are operated can be found at Part 10 of Schedule 2 (SIP), Part 8 of Schedule 3 (SAYE) and Part 7 of Schedule 4 (CSOP).

ITEPA provisions concerning the duties of employers to provide information to HMRC about ERS and ERS options can be found at section 421J–421L. There are also specific provisions in relation to tax advantaged employee share schemes, which can be found at paragraph 93 of Schedule 2 (SIP), paragraph 45 of Schedule 3 (SAYE) and paragraph 33 of Schedule 4 (CSOP). For the Enterprise Management Incentives scheme (EMI) the relevant information requirements can be found at paragraphs 44 and 51–52 of Schedule 5.

The current purpose tests for SIP, SAYE and CSOP (which set out what the purpose of a scheme must be and prohibit the inclusion of features not essential or reasonably incidental to that purpose) can be found at paragraph 7 of Schedule 2 (SIP), paragraph 5 of Schedule 3 (SAYE) and paragraph 5 of Schedule 4 (CSOP).

The other changes within this measure concern the technical rules governing the operation of SIP, SAYE and CSOP, which can generally be found in Schedule 2 (SIP), Schedule 3 (SAYE) and Schedule 4 (CSOP) to ITEPA.

Proposed revisions

Legislation will be introduced in Finance Bill 2014 to amend ITEPA so as to remove the current requirement that a SIP, SAYE or CSOP scheme must be approved by HMRC before it can be operated. This will be replaced with new requirements in relation to the self certification of schemes by businesses. ITEPA will also be amended to provide for digital filing of ERS information to HMRC, including annual return forms and notifications of options granted under EMI. These changes will be accompanied by new HMRC compliance, penalty and assessment powers, information requirements, and appeal rights for businesses.

Legislation will also be introduced in Finance Bill 2014 to amend ITEPA to provide new purpose tests for SIP, SAYE and CSOP, and to clarify or simplify certain requirements of these schemes. This includes requirements in relation to the provision of information by companies to scheme participants; variations of share capital; company events that are subject to overseas legislation; and the exchange of options.

Summary of impacts

Estimates of compliance costs are shown in the table below, including an estimate of total costs for a five year period at present value.

Exchequer impact (£m)	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	
	-	negligible	negligible	negligible	negligible	negligible	negligible
This measure is expected to have a negligible impact on the Exchequer.							
Economic impact	The measure is not expected to have any significant economic impacts.						
Impact on individuals and households	It is anticipated that any impact upon individuals and households will be negligible as most of the changes within this measure concern the reporting and information requirements upon companies. Where these changes could affect an individual (for example the modifications of the technical rules for SIP, SAYE or CSOP), the effect should largely be to clarify the relevant scheme rules, as currently applied by HMRC.						
Equalities impacts	Detailed information on the award of ERS or ERS options to individuals with protected characteristics is not available. However it is not anticipated that any of the proposed changes will impact disproportionately on any individuals with protected characteristics. Where individuals are able to demonstrate a particular difficulty in submitting returns digitally, appropriate reasonable adjustments will be made.						
Impact on business including civil society organisations	The measure simplifies and streamlines a number of processes used by businesses that award ERS or ERS options. There will be around 21,000 ERS arrangements in the UK for which businesses/agents will have to become familiar with the new reporting requirements, and around 3,000 CSOP, SAYE and SIP schemes for which self certification will be required. There will be some one-off costs for businesses, associated with familiarisation with the changes and the self certification of SIP, SAYE and CSOP schemes, but these are estimated to be negligible.						
	It is estimated that there will be annual savings of around £300,000 per year in administrative costs for businesses. These savings will arise from introduction of digital filing arrangements for annual ERS returns and for notifications of EMI options. It is estimated that:						
	<ul style="list-style-type: none"> • 15 minutes of time on average will be saved per scheme by businesses due to digital filing of annual returns for approximately 75 per cent of 21,000 employee share schemes in the UK; and • 18,000 employees will be granted EMI options per year, and the average time saving for businesses per employee due to digital notification of these grants will be 10 minutes. 						
	Reductions in businesses' postage costs from being able to submit information to HMRC digitally rather than by post are also included in the estimates.						
				Cost	Time Period (yrs)		
	Compliance Costs						
One-off Costs			Negligible	N/A			
Average Annual Costs			N/A	N/A			
Total Costs (PV)			N/A	N/A			

	Compliance Benefits		
	One-off Benefit	N/A	N/A
	Average Annual Benefit	£0.3m	5
	Total Benefit (PV)	£1.5m	N/A
	Net Benefit (NPV)	£1.5m	N/A
	Impact on Administrative Burden (included in Net Benefit)		
	Increase	Decrease	Net Impact
	N/A	£0.3m	-£0.3m
Operational impact (£m) (HMRC or other)	There will be net additional costs to HMRC, estimated at £3.5 million, from introducing the new digital filing system. There may be some ongoing administrative savings for HMRC with the move to self certification and digital filing, but these are not anticipated to be significant.		
Other impacts	<p><u>Small and micro business assessment</u>: the impact on small businesses is expected to be broadly similar to that for other businesses. As set out above, these changes should reduce administrative costs for businesses that award ERS or ERS options to employees.</p> <p>Other impacts have been considered and none have been identified.</p>		

Monitoring and evaluation

This measure will be kept under review through communication with affected taxpayer groups.

Further advice

If you have any questions about this change, please contact Andrew Ellis on 03000 585259 (email: andrew.ellis1@hmrc.gsi.gov.uk).

1 Employee share schemes

Schedule 1 makes provision in relation to employee share schemes.

SCHEDULES

SCHEDULE 1

Section 1

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 of Schedule 2 (subject to Part 10 of that Schedule);”.
- 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”.

- 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 In section 509 (modification of section 696) in subsection (1)(a) for “an approved” substitute “a Schedule 2”.
- 9 In section 510 (payments by trustees) in subsection (1) for “an approved” substitute “a Schedule 2”.
- 10 In section 511 (deductions to be made by trustees) in subsection (1) for “an approved” substitute “a Schedule 2”.
- 11 In section 515 (tax advantages and charges under other Acts) in subsection (2)(a) and (d) for “an approved” substitute “a Schedule 2”.
- 12 Schedule 2 is amended as follows.
- 13 In the title omit “APPROVED”.
- 14 In the cross-heading before paragraph 1 for “*Approval of*” substitute “*Introduction to Schedule 2*”.
- 15 (1) Paragraph 1 (introduction) is amended as follows.
(2) For sub-paragraphs (1) and (2) substitute –
 - “(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 (and are being) 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 taken 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 no longer be a “Schedule 2” SIP (see paragraphs 81F to 81I).”
- 16 In the cross-heading before paragraph 6 omit “*for approval*”.
- 17 (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).”
- 18 (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.”
- (4) Omit sub-paragraph (2).
- 19 In paragraph 18 (requirement not to participate in other SIPs) in sub-paragraph (1) for “approved” substitute “Schedule 2”.
- 20 In paragraph 18A (participation in more than one connected SIP) in sub-paragraph (1) for “approved” substitute “Schedule 2”.
- 21 In paragraph 37 (holding period: power of participant to direct trustees) in sub-paragraph (3)(b) for “an approved” substitute “a Schedule 2”.
- 22 In paragraph 43 (partnership shares: introduction) after sub-paragraph (2A) insert –
- “(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 on the employee ceasing to be in relevant employment 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 the 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.”
- 23 In the cross-heading before paragraph 56 for “*withdrawal of approval*” substitute “*plan ceasing to be a Schedule 2 SIP*”.
- 24 (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 no longer to be a Schedule 2 SIP by virtue of paragraph 81H or 81I”.
- (3) In sub-paragraph (2) for “notice of the withdrawal of approval” substitute “the closure notice or the default notice (as the case may be)”.
- 25 (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 on the employee ceasing to be in relevant employment 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.”
- 26 (1) Paragraph 71 (establishment of trustees) is amended as follows.
- (2) For sub-paragraph (4) substitute –
- “(4) The trust instrument may only contain terms which are necessary for the purpose of securing compliance with the requirements of this Part of this Schedule.”
- (3) In sub-paragraph (6) for “reasonably incidental to complying” substitute “necessary for the purpose of securing compliance”.
- 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 that –
- (a) the requirements of Parts 2 to 9 of this Schedule are (and are being) met in relation to the SIP, and
 - (b) if the declaration is made after the date on which the first award of shares is made under the SIP, those requirements –
 - (i) have always been met in relation to the SIP from (and including) that date, and
 - (ii) were met in relation to that award.
- (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 taken to be a “Schedule 2” SIP from (and including) 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 taken to be a “Schedule 2” SIP only from the beginning of the relevant tax year.

- (6) For the purposes of this paragraph—
- “the initial notification deadline” is 6 July in the tax year following that in which the first award of shares is made under the SIP,
- “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 date on which the first award of shares is made under the SIP, the date on which that award is made, and
- “the relevant tax year” is—
- (a) if the notice under this paragraph is given on or before 6 July in a tax year, the tax year preceding the tax year in which the notice is given, or
- (b) if the notice under this paragraph is given after 6 July in a tax year, the tax year in which the notice is given.
- (7) Sub-paragraph (4) is subject to the following paragraphs of this Part.

Annual returns

- 81B (1) This paragraph applies in relation to a SIP which is a Schedule 2 SIP during all or part of a tax year.
- (2) The company must give a return for the tax year to HMRC.
- (3) The return 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.
- (4) The information which may be required under sub-paragraph (3)(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.
- (5) If during a tax year an alteration is made—
- (a) in a key feature of the SIP, or
- (b) in the terms of the plan trust,
- the return for the tax year must contain a declaration within sub-paragraph (6) made by such persons as HMRC may require.
- (6) A declaration within this sub-paragraph is a declaration that the requirements of Parts 2 to 9 of this Schedule—
- (a) are (and are being) met in relation to the SIP, and
- (b) have always been met in relation to the SIP since the alteration.
- (7) For the purposes of sub-paragraph (5)(a) a “key feature” of a SIP is a provision of the SIP which is necessary in order for the requirements of Parts 2 to 9 of this Schedule to be met in relation to the SIP.

- (8) A return is not required for any tax year following that in which the termination condition is met in relation to the SIP.
 - (9) 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.
- 81C (1) This paragraph applies if the company fails to give a return for a tax year (including any information required to accompany it) on or before the date mentioned in paragraph 81B(3)(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 is payable, and
 - (c) HMRC give notice to the company specifying the date from which the penalty is payable.
 - (6) The penalty under sub-paragraph (5) is £10 for each day that the failure continues from (and including) the date specified in the notice under sub-paragraph (5)(c).
 - (7) The date specified in the notice under sub-paragraph (5)(c) –
 - (a) may be earlier than the date on which the notice is given, but
 - (b) may not be earlier than the end of the period mentioned in sub-paragraph (5)(a).
 - (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,
 - (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

- 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 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, is given otherwise than in accordance with paragraph 81D.
- (2) The company is liable for a penalty of an amount decided by HMRC.
- (3) The penalty must not exceed £5,000.

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.
- “The initial notification deadline” and “the relevant tax year” have the meaning given by paragraph 81A(6).
- (3) 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 in the second tax year following that in which a return containing a declaration within paragraph 81B(6) is given.
- (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 (or are not being) 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 (or are not being) 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 no longer to be a Schedule 2 SIP, 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 awarded under the SIP before the giving of the closure notice.
 - (4) References in the SIP code to a Schedule 2 SIP in relation to such shares are to the SIP as it stood when the shares were awarded.
 - (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 national insurance contributions for which any persons have not been liable, or will not be liable in the future,

in consequence of the SIP having been taken to be a Schedule 2 SIP at any relevant time (taking into account sub-paragraphs (3) and (4) as relevant).

- (6) In sub-paragraph (5) “relevant time” means any time before the giving of the closure notice when requirements of Parts 2 to 9 of this Schedule were not (or were not being) 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 (or are not being) 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 day on which the closure notice is given, secure that the requirements of Parts 2 to 9 of this Schedule are (and are being) met in relation to the SIP.
- (3) The penalty under sub-paragraph (2)(a) must not exceed £5,000.
- (4) 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).
- (5) 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”).
- (6) If the company is given a default notice –
- (a) the SIP is no longer to be a Schedule 2 SIP, and
 - (b) the company is liable for a further penalty of an amount decided by HMRC.
- (7) Sub-paragraph (6)(a) does not affect the operation of the SIP code in relation to shares awarded under the SIP before the giving of the default notice.
- (8) References in the SIP code to a Schedule 2 SIP in relation to such shares are to the SIP as it stood when the shares were awarded.
- (9) The penalty under sub-paragraph (6)(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 national insurance contributions for which any persons have not been liable, or will not be liable in the future,
- in consequence of the SIP having been taken to be a Schedule 2 SIP at any relevant time (taking into account sub-paragraphs (7) and (8) as relevant).

- (10) In sub-paragraph (9) “relevant time” means any time before the giving of the default notice when requirements of Parts 2 to 9 of this Schedule were not (or were not being) 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) The assessment –
- (a) is to be treated for procedural purposes in the same way as an assessment to corporation tax or, if the company is not within the charge to corporation tax, an assessment to income tax,
 - (b) may be enforced as if it were such an assessment, and
 - (c) may be combined with such an assessment.
- (4) The notice to the company under sub-paragraph (2) must state the accounting period of the company or the tax year in respect of which the penalty is assessed.

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 decision of HMRC mentioned in paragraph 81H(1) or 81I(1).
- (3) The company may appeal against a decision of HMRC to give the company a default notice under paragraph 81L.
- (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) An appeal under this paragraph is to be treated in the same way as an appeal against an assessment to corporation tax or, if the company is not within the charge to corporation tax, an assessment to income tax (including by the application of any provision about bringing the appeal by notice to HMRC, about HMRC review of the decision or about determination of the appeal by the tribunal).
- (7) Sub-paragraph (6) does not require the company to pay a penalty before an appeal, the outcome of which could affect the company’s liability for the penalty or its amount, is determined.
- (8) On an appeal under sub-paragraph (1), (3) or (5) the tribunal may affirm or cancel the decision.

- (9) On an appeal under sub-paragraph (2), the tribunal may –
- (a) affirm or cancel the decision, or
 - (b) substitute for the decision another decision which HMRC had power to make.
- (10) On an appeal under sub-paragraph (4), the tribunal may –
- (a) affirm the amount of the penalty decided, or
 - (b) substitute another amount for that amount.”
- 29 In paragraph 90 (effect of plan termination notice) in sub-paragraph (2) for “awarded to” substitute “appropriated to, or acquired on behalf of,”.
- 30 (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”.
- 31 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 see Part
 | 10)”.

Other amendments: TCGA 1992

- 32 TCGA 1992 is amended as follows.
- 33 In section 236A (relief for transfers to share incentive plans) for “an approved” substitute “a Schedule 2”.
- 34 (1) Section 238A (share schemes and share incentives) is amended as follows.
- (2) In the heading omit “**Approved**”.
 - (3) In subsection (1) omit “approved”.
 - (4) In subsection (2)(a) for “approved” substitute “Schedule 2”.

- 35 Schedule 7C (relief for transfers to share plans) is amended as follows.
- 36 In the title for “APPROVED” substitute “SCHEDULE 2”.
- 37 In paragraph 2 (conditions relating to disposal) in sub-paragraph (1) for “approved” substitute “a Schedule 2 SIP”.
- 38 Schedule 7D (share schemes and share incentives) is amended as follows.
- 39 In the title omit “APPROVED”.
- 40 In the title of Part 1 for “APPROVED” substitute “SCHEDULE 2”.
- 41 (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”.
- 42 In paragraph 2 (gains accruing to trustees) in sub-paragraph (1)(a) omit r “approved”.

Other amendments: ITEPA 2003 and Part 4 of FA 2004

- 43 ITEPA 2003 is amended as follows.
- 44 In section 227 (scope of Part 4) in subsection (4)(c) omit “approved”.
- 45 In section 417 (scope of Part 7) in subsection (2), in the entry for Chapter 6, omit “approved”.
- 46 (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”.
- 47 In section 549 (application of Chapter 11 of Part 7) in subsection (2)(a) omit “approved”.
- 48 (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”.
- 49 In paragraph 11 of Schedule 4 (CSOP schemes: material interest) in sub-paragraph (5)(a) for “approved” substitute “Schedule 2”.
- 50 In paragraph 30 of Schedule 5 (enterprise management incentives: material interest) in sub-paragraph (7)(a) for “share incentive plan approved” substitute “Schedule 2 SIP”.
- 51 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”.

Other amendments: ITTOIA 2005

- 52 Chapter 3 of Part 4 of ITTOIA 2005 (savings and investment income: dividends etc from UK resident companies) is amended as follows.
- 53 In section 382 (contents of Chapter 3) in subsection (1)(c) for “an approved” substitute “a Schedule 2”.
- 54 In the cross-heading before section 392 for “*approved*” substitute “*Schedule 2*”.
- 55 In section 392 (SIP shares: introduction) in subsection (1) for “an approved” substitute “a Schedule 2”.
- 56 (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) In subsection (7) for “approved” substitute “Schedule 2”.
- 57 In section 395 (reduction in tax due in cases within section 394) in subsections (1)(b) and (4) for “approved” substitute “Schedule 2”.
- 58 In section 396 (interpretation) in subsections (1) and (2) omit “approved”.
- 59 Chapter 4 of Part 4 of ITTOIA 2005 (savings and investment income: dividends etc from non-UK resident companies) is amended as follows.
- 60 In the cross-heading before section 405 for “*approved*” substitute “*Schedule 2*”.
- 61 (1) Section 405 (SIP shares: introduction) is amended as follows.
- (2) In subsection (1) for “an approved” substitute “a Schedule 2”.
- (3) In subsections (3) and (4) omit “approved”.
- 62 (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) In subsection (5) for “approved” substitute “Schedule 2”.
- 63 In section 408 (reduction in tax due in cases within section 407) in subsections (1)(b) and (3) for “approved” substitute “Schedule 2”.
- 64 Chapter 9 of Part 6 of ITTOIA 2005 (exempt income) is amended as follows.
- 65 In the cross-heading before section 770 for “*Approved*” substitute “*Schedule 2*”.
- 66 (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

- 67 Part 9 of ITA 2007 (special rules about settlements and trusts) is amended as follows.

- 68 In section 462 (overview of Part) in subsection (5) for “an approved” substitute “a Schedule 2”.
- 69 In section 479 (trustees’ accumulated or discretionary income charged at special rates) in subsection (5) for “approved” substitute “Schedule 2”.
- 70 (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”.
- 71 In section 489 (“the applicable period”) in subsection (8)(a) for approved substitute “Schedule 2”.
- 72 In section 490 (interpretation of Chapter 5) in subsection (1) omit “approved”.

Other amendments: Chapter 1 of Part 11 of CTA 2009

- 73 Chapter 1 of Part 11 of CTA 2009 (relief for employee share acquisition schemes: share incentive plans) is amended as follows.
- 74 (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 of a plan is withdrawn” substitute “a plan ceases to be a Schedule 2 share incentive plan”.
- 75 (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) In subsection (3) for “approval” substitute “relevant date”.
- (5) In subsection (4) for “approval is given” (in both places) substitute “relevant date falls”.
- (6) After subsection (5) insert –
- “(6) In this section “the relevant date”, in relation to a share incentive plan, has the meaning given in paragraph 81A(6) of Schedule 2 to ITEPA 2003.”
- 76 (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”.
- 77 In section 989 (deduction for contribution to plan trust) in subsection (1)(a) for “an approved” substitute “a Schedule 2”.
- 78 In section 994 (deduction for providing free or matching shares) in subsection (1) for “an approved” substitute “a Schedule 2”.

- 79 In section 995 (deduction for additional expense in providing partnership shares) in subsection (1)(a) for “an approved” substitute “a Schedule 2”.
- 80 In section 997 (no deduction for expenses in providing dividend shares) in subsection (1) for “an approved” substitute “a Schedule 2”.
- 81 For the cross-heading before section 998 substitute “*Plan ceasing to be a Schedule 2 SIP*”.
- 82 (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) 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 no longer to be a Schedule 2 share incentive plan.”

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

- 83 The Individual Savings Account Regulations 1998 are amended as follows.
- 84 (1) Regulation 2 (interpretation) is amended as follows.
- (2) In paragraph (1)(a) –
- (a) omit the definition of “approved SIP”,
 - (b) in the definition of “ceasing to be subject to the plan” 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);”.
- (3) In paragraph (1)(b), in the definitions of “participant” and “plan shares”, for “an approved” substitute “a Schedule 2”.
- 85 In regulation 7 (qualifying investments) in paragraph (2)(h)(iii) for “an approved” substitute “a Schedule 2”.

Commencement and transitional provision

- 86 The amendments made by this Part are treated as having come into force on 6 April 2014.
- 87 (1) This paragraph applies to a SIP established before 6 April 2014.
- (2) If the SIP was an “approved” SIP immediately before 6 April 2014, the amendments made by paragraphs 18 and 26 above have effect in relation to the SIP only if, and when, a provision of the SIP or the plan trust is altered on or after that date.
- (3) 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 date on which the first award of shares is made under the SIP falls before 6 April 2014 –
 - (i) as if, in sub-paragraph (3)(b)(i) and in paragraph (b) of the definition of “the relevant date” in sub-paragraph (6), the reference to the date on which the first award of shares is made under the SIP were a reference to 6 April 2014, and
 - (ii) as if sub-paragraph (3)(b)(ii) 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.
- (4) 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.
- (5) Sub-paragraph (4) 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.
- (6) 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.
- (7) Sub-paragraph (8) applies in relation to shares 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.
- (8) On and after 6 April 2014, the SIP code has effect in relation to the shares as if they were appropriated to, or acquired on behalf of, the individual under the SIP at a time when the SIP was a “Schedule 2” SIP (even if no notice under paragraph 81A of Schedule 2 to ITEPA 2003 is given in relation to the SIP).
- (9) 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.
- (10) The amendments made by paragraph 30 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.
- (11) 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.

PART 2

SAYE OPTION SCHEMES

Amendments to Chapter 7 of Part 7 of ITEPA 2003

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

“Schedule 3” SAYE option scheme is to be read in accordance with paragraph 1 of Schedule 3 (subject to Part 8 of that Schedule);”.
- 91 In section 517 (share options to which Chapter applies) in subsection (1)(a) for “an approved” substitute “a Schedule 3”.
- 92 (1) Section 519 (no charge in respect of exercise of option) is amended as follows.
- (2) In subsection (1)(a) for “approved” substitute “a Schedule 3 SAYE option scheme”.
- (3) In subsection (3A) –
- (a) in paragraph (a) for “approved” substitute “a Schedule 3 SAYE option scheme”, and
 - (b) for paragraph (b) substitute –

“(b) the option is exercised by virtue of provision included in the scheme under paragraph 37 of Schedule 3 apart from provision included under sub-paragraph (4B) of that paragraph,”.
- (4) In subsection (3H)(b) for “an approved” substitute “a Schedule 3”.
- (5) In subsection (5)(b) –
- (a) for “paragraph 42(3) provides” substitute “paragraphs 40H(4) and 40I(8) provide”,
 - (b) for “approved” substitute “a Schedule 3 SAYE option scheme”, and

- (c) for “approval of the scheme has been previously withdrawn” substitute “the scheme is no longer a Schedule 3 SAYE option scheme”.
- 93 Schedule 3 is amended as follows.
- 94 In the title omit “APPROVED”.
- 95 In the cross-heading before paragraph 1 for “*Approval of*” substitute “*Introduction to Schedule 3*”.
- 96 (1) Paragraph 1 (introduction) is amended as follows.
- (2) For sub-paragraphs (1) and (2) substitute –
- “(A1) For the purposes of the SAYE code an SAYE option scheme is a “Schedule 3” SAYE option scheme if the requirements of Parts 2 to 7 of this Schedule are (and are being) met in relation to the scheme.”
- (3) For sub-paragraph (4) substitute –
- “(4) Sub-paragraph (A1) is subject to Part 8 of this Schedule which –
- (a) requires notice of a scheme to be given to Her Majesty’s Revenue and Customs (“HMRC”) in order for the scheme to be a “Schedule 3” SAYE option scheme (see paragraph 40A(1)),
- (b) provides for a scheme in relation to which such notice is given to be taken to be a “Schedule 3” SAYE option scheme (see paragraph 40A(4)), and
- (c) gives power to HMRC to enquire into a scheme and to decide that the scheme should no longer be a “Schedule 3” SAYE option scheme (see paragraphs 40F to 40I).”
- 97 In the title of Part 2 omit “FOR APPROVAL”.
- 98 In the cross-heading before paragraph 4 omit “*for approval*”.
- 99 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.”
- 100 In paragraph 17 (requirements relating to shares that may be subject to share options) after sub-paragraph (1) insert –
- “(1A) Sub-paragraph (1) and the other paragraphs of this Part are subject to paragraph 37(3D).”
- 101 In paragraph 25 (requirements as to contributions to savings arrangements) in sub-paragraph (3)(a) for “approved” substitute “Schedule 3”.

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- 102 (1) Paragraph 28 (requirements as to price for acquisition of shares) is amended as follows.
- (2) After sub-paragraph (3) insert –
- “(3A) If the scheme makes provision under sub-paragraph (3), the variation or variations made under that provision to take account of a variation in any share capital must (in particular) secure –
- (a) that the total market value of the shares which may be acquired by the exercise of the share option is immediately after the variation or variations 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 manifestly the same as what it was immediately before the variation or variations.
- (3B) Sub-paragraph (3) does not authorise any variation which would result in the requirements of the other paragraphs of this Schedule not being met in relation to the share option.”
- (3) Omit sub-paragraph (4).
- 103 In paragraph 34 (exercise of options: scheme-related employment ends) in sub-paragraph (5) –
- (a) omit paragraph (a) and the “or” after it, and
- (b) in paragraph (b) after “organiser” insert “where the transfer is not a relevant transfer within the meaning of the Transfer of Undertakings (Protection of Employment) Regulations 2006”.
- 104 (1) Paragraph 37 (exercise of options: company events) is amended as follows.
- (2) In sub-paragraph (1) for “(2), (4) or (5)” substitute “(2)”.
- (3) After sub-paragraph (3B) insert –
- “(3C) Sub-paragraphs (3D) to (3F) apply if the scheme makes provision under sub-paragraph (1).
- (3D) The scheme may provide that if, in consequence of the person mentioned in sub-paragraph (2)(a) obtaining control of the company, 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 no later than 7 days after the relevant date notwithstanding that the shares no longer meet those requirements.
- (3E) The scheme may provide that a share option relating to shares in the company which is exercised no earlier than 7 days before the relevant date is to be treated as if it had been exercised in accordance with the provision made under sub-paragraph (1).
- (3F) If the scheme makes provision under sub-paragraph (3E) it must also provide that if –
- (a) a share option is exercised in reliance on that provision in anticipation of a person obtaining control of a company, but

- (b) that person does not obtain control of the company within the required period,
the exercise of the share option is to be treated as having had no effect.
 - (3G) The scheme may provide that share options relating to shares in a company may be exercised within 6 months after the relevant date for the purposes of sub-paragraph (4) or (4A).”
 - (4) In sub-paragraph (4)(b) for “an approved” substitute “a Schedule 3”.
 - (5) After sub-paragraph (4) insert –
 - “(4A) The relevant date for the purposes of this sub-paragraph is the date on which a non-UK company reorganisation arrangement applicable to or affecting –
 - (a) all the ordinary share capital of the company or all the shares of the same class as the shares to which the option relates, or
 - (b) all the shares, or all the shares of that same class, which are held by a class of shareholders identified otherwise than by reference to their employments or directorships or their participation in a Schedule 3 SAYE option scheme,
becomes binding on the shareholders covered by it.
 - (4B) The scheme may provide that share options relating to shares in a company may be exercised within 6 months after the relevant date for the purposes of sub-paragraph (5).”
- 105 (1) Paragraph 38 (exchanges of options on company reorganisation) is amended as follows.
- (2) In sub-paragraph (2) after paragraph (b) omit “or” and insert –
 - “(ba) obtains control of the scheme company as a result of a non-UK company reorganisation arrangement; 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”.
- 106 In paragraph 39 (requirements about share options granted in exchange) 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.”
- 107 For Part 8 substitute –

“PART 8

NOTIFICATION OF SCHEMES, ANNUAL RETURNS AND ENQUIRIES

Notice of scheme to be given to HMRC

- 40A (1) For an SAYE option scheme to be a “Schedule 3” SAYE option scheme, notice of the scheme must be given to Her Majesty’s Revenue and Customs (“HMRC”).
- (2) The notice must –
- (a) be given by the scheme organiser,
 - (b) contain, or be accompanied by, such information as HMRC may require, and
 - (c) contain a declaration within sub-paragraph (3) made by such persons as HMRC may require.
- (3) A declaration within this sub-paragraph is a declaration that –
- (a) the requirements of Parts 2 to 7 of this Schedule are (and are being) met in relation to the scheme, and
 - (b) if the declaration is made after the date on which the first option is granted under the scheme, those requirements –
 - (i) have always been met in relation to the scheme from (and including) that date, and
 - (ii) were met in relation to that grant.
- (4) If notice is given under this paragraph in relation to an SAYE option scheme, for the purposes of the SAYE code the scheme is to be taken to be a “Schedule 3” SAYE option scheme from (and including) 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 taken to be a “Schedule 3” SAYE option scheme only from the beginning of the relevant tax year.
- (6) For the purposes of this paragraph –
- “the initial notification deadline” is 6 July in the tax year following that in which the first option is granted under the scheme,
- “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 date on which the first option is granted under the scheme, the date on which that grant is made, and
- “the relevant tax year” is –
- (a) if the notice under this paragraph is given on or before 6 July in a tax year, the tax year preceding the tax year in which the notice is given, or
 - (b) if the notice under this paragraph is given after 6 July in a tax year, the tax year in which the notice is given.
- (7) Sub-paragraph (4) is subject to the following paragraphs of this Part.

Annual returns

- 40B (1) This paragraph applies in relation to an SAYE option scheme which is a Schedule 3 SAYE option scheme during all or part of a tax year.
- (2) The scheme organiser must give a return for the tax year to HMRC.
- (3) The return 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.
- (4) The information which may be required under sub-paragraph (3)(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.
- (5) If during a tax year an alteration is made in a key feature of the scheme, the return for the tax year must contain a declaration within sub-paragraph (6) made by such persons as HMRC may require.
- (6) A declaration within this sub-paragraph is a declaration that the requirements of Parts 2 to 7 of this Schedule –
- (a) are (and are being) met in relation to the scheme, and
 - (b) have always been met in relation to the scheme since the alteration.
- (7) For the purposes of sub-paragraph (5) a “key feature” of a scheme is a provision of the scheme which is necessary in order for the requirements of Parts 2 to 7 of this Schedule to be met in relation to the scheme.
- (8) A return is not required for any tax year following that in which the termination condition is met in relation to the scheme.
- (9) For the purposes of this Part “the termination condition” is met in relation to a scheme when –
- (a) all 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 options will be granted under the scheme.
- 40C (1) This paragraph applies if the scheme organiser fails to give a return for a tax year (including any information required to accompany it) on or before the date mentioned in paragraph 40B(3)(b) (“the date for delivery”).
- (2) The scheme organiser is liable for a penalty of £100.

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- (3) If the scheme organiser's failure continues after the end of the period of 3 months beginning with the date for delivery, the scheme organiser is liable for a further penalty of £300.
 - (4) If the scheme organiser's failure continues after the end of the period of 6 months beginning with the date for delivery, the scheme organiser is liable for a further penalty of £300.
 - (5) The scheme organiser is liable for a further penalty under this sub-paragraph if –
 - (a) the scheme organiser's failure continues after the end of the period of 9 months beginning with the date for delivery,
 - (b) HMRC decide that such a penalty is payable, and
 - (c) HMRC give notice to the scheme organiser specifying the date from which the penalty is payable.
 - (6) The penalty under sub-paragraph (5) is £10 for each day that the failure continues from (and including) the date specified in the notice under sub-paragraph (5)(c).
 - (7) The date specified in the notice under sub-paragraph (5)(c) –
 - (a) may be earlier than the date on which the notice is given, but
 - (b) may not be earlier than the end of the period mentioned in sub-paragraph (5)(a).
 - (8) Liability for a penalty under this paragraph does not arise if the scheme organiser satisfies HMRC (or, on an appeal under paragraph 40K, the tribunal) that there is a reasonable excuse for its failure.
 - (9) For the purposes of sub-paragraph (8) –
 - (a) an insufficiency of funds is not a reasonable excuse, unless attributable to events outside the scheme organiser's control,
 - (b) where the scheme organiser relies on any other person to do anything, that is not a reasonable excuse unless the scheme organiser took reasonable care to avoid the failure, and
 - (c) where the scheme organiser had a reasonable excuse for the failure but the excuse ceased, the scheme organiser is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

Notices and returns to be given electronically

- 40D (1) A notice under paragraph 40A, and any information accompanying the notice, must be given electronically.
- (2) A return under paragraph 40B, and any information accompanying the return, must be given electronically.
- (3) But, if HMRC consider it appropriate to do so, HMRC may allow the scheme organiser to give a notice or return or any

accompanying information in another way; and the notice, return or information must be given in that other way.

- (4) The Commissioners for Her Majesty’s Revenue and Customs –
- (a) must prescribe how notices, returns and accompanying information are to be given electronically;
 - (b) may make different provision for different cases or circumstances.

40E (1) This paragraph applies if a return under paragraph 40B, or any information accompanying such a return, is given otherwise than in accordance with paragraph 40D.

- (2) The scheme organiser is liable for a penalty of an amount decided by HMRC.
- (3) The penalty must not exceed £5,000.

Enquiries

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

- (2) HMRC may enquire into the scheme if HMRC give notice to the scheme organiser of HMRC’s intention to do so no later than –
 - (a) 6 July in the tax year following the tax year in which the initial notification deadline falls, or
 - (b) if the notice under paragraph 40A is given after the initial notification deadline, 6 July in the second tax year following the relevant tax year.

“The initial notification deadline” and “the relevant tax year” have the meaning given by paragraph 40A(6).

- (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 6 July in the second tax year following that in which a return containing a declaration within paragraph 40B(6) is given.
- (4) Sub-paragraph (5) applies if (at any time) HMRC have reasonable grounds for believing that requirements of Parts 2 to 7 of this Schedule –
 - (a) are not (or are not being) met in relation to the scheme, or
 - (b) have not been met in relation to the scheme.

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

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

40G (1) An enquiry under paragraph 40F(2), (3) or (5) is completed when HMRC give the scheme organiser a notice (a “closure notice”) stating –

- (a) that HMRC have completed the enquiry, and
- (b) that –
 - (i) paragraph 40H is to apply,

- (ii) paragraph 40I is to apply, or
 - (iii) neither paragraph 40H nor paragraph 40I is to apply.
- (2) If the scheme organiser receives notice under paragraph 40F(2), (3) or (5), the scheme organiser may make an application to the tribunal for a closure notice for the enquiry to be given within a specified period.
- (3) The application is to be subject to the relevant provisions of Part 5 of TMA 1970 (see, in particular, section 48(2)(b) of that Act).
- (4) The tribunal must give a direction unless satisfied that HMRC have reasonable grounds for not giving the closure notice within the specified period.
- 40H (1) This paragraph applies if HMRC decide –
- (a) that requirements of Parts 2 to 7 of this Schedule –
 - (i) are not (or are not being) 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 no longer to be a Schedule 3 SAYE option scheme, and
 - (b) the scheme organiser is liable for a penalty of an amount decided by HMRC.
- (3) Sub-paragraph (4) applies in relation to an option granted under the scheme if the option –
- (a) is granted before the giving of the closure notice at a time when the scheme is a Schedule 3 SAYE option scheme, but
 - (b) is exercised after the giving of the closure notice.
- (4) For the purposes of section 519 (exemption in respect of exercise of share option) in its application to the option, the scheme is to be taken still to be a Schedule 3 SAYE option scheme at the time of the exercise of the option.
- (5) The penalty under sub-paragraph (2)(b) must not exceed an amount equal to twice HMRC’s reasonable estimate of –
- (a) the total income tax for which participants in the scheme have not been liable, or will not be liable in the future, and
 - (b) the total national insurance contributions for which any persons have not been liable, or will not be liable in the future,
- in consequence of the scheme having been taken to be a Schedule 3 SAYE option scheme at any relevant time (taking into account sub-paragraph (4) as relevant).
- (6) In sub-paragraph (5) “relevant time” means any time before the giving of the closure notice when requirements of Parts 2 to 7 of this Schedule were not (or were not being) met in relation to the scheme.

- 40I (1) This paragraph applies if HMRC decide—
- (a) that requirements of Parts 2 to 7 of this Schedule—
 - (i) are not (or are not being) met in relation to the scheme, or
 - (ii) have not been met in relation to the scheme, but
 - (b) that the situation is not, or was not, so serious that paragraph 40H should apply.
- (2) If this paragraph applies, the scheme organiser—
- (a) is liable for a penalty of an amount decided by HMRC, and
 - (b) must, no later than 90 days after the day on which the closure notice is given, secure that the requirements of Parts 2 to 7 of this Schedule are (and are being) met in relation to the scheme.
- (3) The penalty under sub-paragraph (2)(a) must not exceed £5,000.
- (4) 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).
- (5) 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”).
- (6) If the scheme organiser is given a default notice—
- (a) the scheme is no longer to be a Schedule 3 SAYE option scheme, and
 - (b) the scheme organiser is liable for a further penalty of an amount decided by HMRC.
- (7) Sub-paragraph (8) applies in relation to an option granted under the scheme if the option—
- (a) is granted before the giving of the default notice at a time when the scheme is a Schedule 3 SAYE option scheme, but
 - (b) is exercised after the giving of the default notice.
- (8) For the purposes of section 519 (exemption in respect of exercise of share option) in its application to the option, the scheme is to be taken still to be a Schedule 3 SAYE option scheme at the time of the exercise of the option.
- (9) The penalty under sub-paragraph (6)(b) must not exceed an amount equal to twice HMRC’s reasonable estimate of—
- (a) the total income tax for which participants in the scheme have not been liable, or will not be liable in the future, and
 - (b) the total national insurance contributions for which any persons have not been liable, or will not be liable in the future,
- in consequence of the scheme having been taken to be a Schedule 3 SAYE option scheme at any relevant time (taking into account sub-paragraph (8) as relevant).
- (10) In sub-paragraph (9) “relevant time” means any time before the giving of the default notice when requirements of Parts 2 to 7 of

this Schedule were not (or were not being) met in relation to the scheme.

Assessment of penalties

- 40J (1) This paragraph applies if the scheme organiser is liable for a penalty under this Part.
- (2) HMRC must assess the penalty and notify the scheme organiser of the assessment.
- (3) The assessment –
- (a) is to be treated for procedural purposes in the same way as an assessment to corporation tax or, if the scheme organiser is not within the charge to corporation tax, an assessment to income tax,
 - (b) may be enforced as if it were such an assessment, and
 - (c) may be combined with such an assessment.
- (4) The notice to the scheme organiser under sub-paragraph (2) must state the accounting period of the scheme organiser or the tax year in respect of which the penalty is assessed.

Appeals

- 40K (1) The scheme organiser may appeal against a decision of HMRC that the scheme organiser is liable for a penalty under paragraph 40C or 40E.
- (2) The scheme organiser may appeal against a decision of HMRC mentioned in paragraph 40H(1) or 40I(1).
- (3) The scheme organiser may appeal against a decision of HMRC to give the scheme organiser a default notice under paragraph 40I.
- (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) An appeal under this paragraph is to be treated in the same way as an appeal against an assessment to corporation tax or, if the scheme organiser is not within the charge to corporation tax, an assessment to income tax (including by the application of any provision about bringing the appeal by notice to HMRC, about HMRC review of the decision or about determination of the appeal by the tribunal).
- (6) Sub-paragraph (5) does not require the scheme organiser to pay a penalty before an appeal, the outcome of which could affect the scheme organiser's liability for the penalty or its amount, is determined.
- (7) On an appeal under sub-paragraph (1) or (3), the tribunal may affirm or cancel the decision.
- (8) On an appeal under sub-paragraph (2), the tribunal may –
- (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), the tribunal may –

- (a) affirm the amount of the penalty decided, or
- (b) substitute another amount for that amount.”

108 (1) Paragraph 45 (power to require information) is amended as follows.

(2) For sub-paragraph (1) substitute –

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

- (a) which the officer reasonably requires for the performance of any functions of Her Majesty’s Revenue and Customs or an officer of Revenue and Customs under the SAYE code, and
- (b) which the person to whom the notice is addressed has or can reasonably obtain.”

(3) In sub-paragraph (2)(a) –

(a) for sub-paragraph (i) substitute –

“(i) to check anything contained in a notice under paragraph 40A or a return under paragraph 40B or to check any information accompanying such a notice or return, or”, and

(b) in sub-paragraph (ii) after “scheme” insert “or any other person whose liability to tax the operation of a scheme is relevant to”.

109 After paragraph 47 insert –

“Non-UK company reorganisation arrangements

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

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

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

110 In paragraph 49 (index of defined expressions) –

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

“non-UK company reorganisation arrangement	paragraph 47A
Schedule 3 SAYE option scheme	paragraph 1 (and see Part 8)”.

Other amendments: TCGA 1992

- 111 TCGA 1992 is amended as follows.
- 112 (1) Section 105A (shares acquired on same day: election for alternative treatment) is amended as follows.
- (2) For “approved-scheme” (in all places) substitute “tax-advantaged-scheme”.
- (3) In subsection (1)(b)(ii) omit “approved”.
- 113 In section 105B (provision supplementary to section 105A) in subsections (7) and (8) for “approved-scheme” substitute “tax-advantaged-scheme”.
- 114 In section 238A (share schemes and share incentives) in subsection (2)(b) for “approved” substitute “Schedule 3”.
- 115 Part 2 of Schedule 7D (SAYE option schemes) is amended as follows.
- 116 In the title for “APPROVED” substitute “SCHEDULE 3”.
- 117 In paragraph 9 (introduction) in sub-paragraphs (1) and (2) omit “approved”.
- 118 (1) Paragraph 10 (market value rule not to apply) is amended as follows.
- (2) In sub-paragraph (1) –
- (a) in paragraph (a)(i) for “an approved” substitute “a Schedule 3”, and
- (b) in paragraph (b) for “approved” substitute “a Schedule 3 SAYE option scheme”.
- (3) For sub-paragraph (3) substitute –
- “(3) Sub-paragraph (3A) applies for the purposes of sub-paragraph (1)(b) if –
- (a) the SAYE option scheme is no longer to be a Schedule 3 SAYE option scheme by virtue of paragraph 40H or 40I of Schedule 3 to ITEPA 2003, and
- (b) the option was granted before, but exercised after, the giving of the closure notice or the default notice (as the case may be).
- (3A) The scheme is to be taken still to be a Schedule 3 SAYE option scheme when the option is exercised.”

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

- 119 ITEPA 2003 is amended as follows.
- 120 In section 227 (scope of Part 4) in subsection (4)(e) omit “approved”.

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- 121 In section 417 (scope of Part 7) in subsection (2), in the entry for Chapter 7, omit “approved”.
- 122 In section 431A (provision relating to restricted securities) in subsection (2)(b) for “an approved” substitute “a Schedule 3”.
- 123 In section 473 (introduction to taxation of securities options) in subsection (4)(a) for “approved” substitute “Schedule 3”.
- 124 In section 476 (charge on occurrence of chargeable event) in subsection (6), in the entry for section 519, omit “approved”.
- 125 In section 549 (application of Chapter 11 of Part 7) in subsection (2)(b) omit “approved”.
- 126 (1) Section 554E (exclusions under Part 7A) is amended as follows.
- (2) In subsection (1)(b) for “an approved” substitute “a Schedule 3”.
- (3) In subsection (3)(a)(ii) and (b)(ii) for the first “an approved” substitute “a Schedule 3”.
- (4) In subsection (4)(a) and (b) for the second “approved” substitute “Schedule 3”.
- 127 In section 697 (PAYE: enhancing the value of an asset) in subsection (4)–
- (a) in paragraph (a) omit the words from “Schedule 3” to the second “or”,
- (b) after paragraph (a) insert –
- “(aa) any shares acquired by the employee under a scheme which is a Schedule 3 SAYE option scheme (see Schedule 3),” and
- (c) in paragraph (b) for “such a scheme” substitute “a scheme mentioned in any of the preceding paragraphs”.
- 128 In section 701 (PAYE: meaning of “asset”) in subsection (2)(c)–
- (a) in sub-paragraph (i) omit “Schedule 3 (approved SAYE option schemes) or”, and
- (b) after sub-paragraph (i) insert –
- “(iza) any shares acquired by the employee under a scheme which is a Schedule 3 SAYE option scheme (see Schedule 3),”.
- 129 In section 195 of FA 2004 (pensions: transfer of certain shares to be treated as payment of contribution) in subsection (5), in the definition of “SAYE option scheme”, omit “approved”.
- 130 (1) Section 703 of ITTOIA 2005 (SAYE interest: meaning of “certified SAYE savings arrangement”) is amended as follows.
- (2) In subsection (2)(b) for “an approved” substitute “a Schedule 3”.
- (3) In subsection (3) for the definition of “SAYE option scheme” substitute –
- ““Schedule 3 SAYE option scheme” has the meaning given in Schedule 3 to ITEPA 2003.”
- 131 (1) Section 999 of CTA 2009 (deduction for costs of setting up SAYE option scheme etc) is amended as follows.

- (2) In subsection (1) –
 - (a) in paragraph (a) omit “that is approved by an officer of Revenue and Customs”, and
 - (b) in paragraph (b) for “it is approved” substitute “the relevant date”.
- (3) In subsection (2) –
 - (a) at the beginning of paragraph (a) insert “Schedule 3”,
 - (b) at the beginning of paragraph (b) insert “Schedule 4”, and
 - (c) omit the final sentence.
- (4) In subsection (6) for “approval is given” (in all places) substitute “relevant date falls”.
- (5) After subsection (7) insert –
 - “(8) In this section “relevant date” –
 - (a) in relation to a Schedule 3 SAYE option scheme, has the meaning given in paragraph 40A(6) of Schedule 3 to ITEPA 2003, and
 - (b) in relation to a Schedule 4 CSOP scheme, has the meaning given in paragraph 28A(6) of Schedule 4 to ITEPA 2003.”

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

- 132 The Individual Savings Account Regulations 1998 are amended as follows.
- 133 In regulation 2(1)(a) (interpretation) –
- (a) omit the definition of “approved SAYE option scheme”, and
 - (b) at the appropriate place insert –

“Schedule 3 SAYE option scheme” shall be construed in accordance with the SAYE code (see section 516(3) of ITEPA 2003);”.
- 134 In regulation 7 (qualifying investments) in paragraphs (2)(h)(i) and (10)(a) for “an approved” substitute “a Schedule 3”.

Commencement and transitional provision

- 135 The amendments made by this Part are treated as having come into force on 6 April 2014.
- 136 (1) This paragraph applies to an SAYE option scheme established before 6 April 2014.
- (2) If the scheme was an “approved” SAYE option scheme immediately before 6 April 2014, the amendment made by paragraph 99 above has effect in relation to the scheme only if, and when, a provision of the scheme is altered on or after that date.
 - (3) Paragraph 40A of Schedule 3 to ITEPA 2003 (as inserted by paragraph 107 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 date on which the first option is granted under the scheme falls before 6 April 2014 –

- (i) as if, in sub-paragraph (3)(b)(i) and in paragraph (b) of the definition of “the relevant date” in sub-paragraph (6), the reference to the date on which the first option is granted under the scheme were a reference to 6 April 2014, and
 - (ii) as if sub-paragraph (3)(b)(ii) 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.
- (4) But the scheme cannot be a “Schedule 3” SAYE option scheme if, before 6 April 2014, an application for its approval was refused or an officer of Revenue and Customs decided to withdraw its approval.
- (5) Sub-paragraph (4) is without prejudice to the outcome of any appeal under paragraph 41 or 44 of Schedule 3 to ITEPA 2003 against the refusal or decision to withdraw approval.
- (6) The amendments made by this Part do not affect any right of appeal under paragraph 41 or 44 of Schedule 3 to ITEPA 2003 against a refusal or decision made before 6 April 2014 in relation to the scheme.
- (7) Sub-paragraph (8) applies in relation to an option granted before 6 April 2014 under the scheme at a time when the scheme was an “approved” SAYE option scheme.
- (8) On and after 6 April 2014, the SAYE code has effect in relation to the option as if it were granted under the scheme at a time when the scheme was a “Schedule 3” SAYE option scheme (even if no notice under paragraph 40A of Schedule 3 to ITEPA 2003 is given in relation to the scheme).
- (9) Sub-paragraph (10) applies in relation to an option granted before 6 April 2014 under the scheme at a time when the scheme was an “approved” SAYE option scheme if –
- (a) no notice is given under paragraph 40A of Schedule 3 to ITEPA 2003 in relation to the scheme, and
 - (b) the option is exercised on or after 6 April 2014.
- (10) The scheme is to be taken to be a “Schedule 3” SAYE option scheme at the time of the exercise of the option for the purposes of the following provisions in their application to the option –
- (a) section 519 of ITEPA 2003 (exemption in respect of exercise of share option), and
 - (b) paragraph 10(1)(b) of Schedule 7D to TCGA 1992 (market value rule not to apply).
- (11) In relation to the scheme –
- (a) paragraph 40F of Schedule 3 to ITEPA 2003 (as inserted by paragraph 107 above) has effect as if for sub-paragraph (2) there were substituted –
 - “(2) HMRC may enquire into the scheme if HMRC give notice to the scheme organiser of HMRC’s intention to do so no later than 6 July 2016.”, and
 - (b) the cases covered by paragraphs 40F(4)(b), 40H(1)(a)(ii) and 40I(1)(a)(ii) of Schedule 3 to ITEPA 2003 (as inserted by paragraph 107 above) include cases in which requirements of Parts 2 to 7 of that Schedule were not met before 6 April 2014.

- (12) The amendments made by paragraph 108 above do not affect a notice given in relation to the scheme under paragraph 45 of Schedule 3 to ITEPA 2003 before 6 April 2014.
- (13) If the scheme was an “approved” SAYE option scheme before 6 April 2014, the amendments made by this Part do not affect the deductions which may be made in relation to the scheme under section 999 of CTA 2009 (deduction for costs of setting up scheme) if they would otherwise do so.

PART 3

CSOP SCHEMES

Amendments to Chapter 8 of Part 7 of ITEPA 2003

- 137 Chapter 8 of Part 7 of ITEPA 2003 (employment income: income and exemptions relating to securities: CSOP schemes) is amended as follows.
- 138 In the title omit “APPROVED”.
- 139 (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 of Schedule 4 (subject to Part 7 of that Schedule);”.
- 140 In section 522 (share options to which Chapter applies) in subsection (1)(a) for “an approved” substitute “a Schedule 4”.
- 141 (1) Section 524 (no charge in respect of exercise of option) is amended as follows.
- (2) In subsections (1)(a) and (2E)(a) for “approved” substitute “a Schedule 4 CSOP scheme”.
- (3) In subsection (2L)(b) for “an approved” substitute “a Schedule 4”.
- 142 Schedule 4 is amended as follows.
- 143 In the title omit “APPROVED”.
- 144 In the cross-heading before paragraph 1 for “*Approval of*” substitute “*Introduction to Schedule 4*”.
- 145 (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 (and are being) 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 taken 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 no longer be a “Schedule 4” CSOP scheme (see paragraphs 28F to 28I).”
- 146 In the title for Part 2 omit “FOR APPROVAL”.
- 147 In the cross-heading before paragraph 4 omit “*for approval*”.
- 148 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.”
- 149 In paragraph 6 (limit on value of shares subject to options) in sub-paragraph (1)(b) for “approved” substitute “Schedule 4”.
- 150 In paragraph 15 (requirements relating to shares that may be subject to share options) after sub-paragraph (1) insert –
- “(1A) Sub-paragraph (1) and the other paragraphs of this Part are subject to paragraph 25A(5B).”
- 151 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),”.
- 152 After paragraph 21 insert –
- “General requirements as to terms of option*
- 21A (1) A share option which is granted must be capable of being exercised at some time during the period covered by section 524(2).

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- (2) The following terms of the option must be stated, and notified to the participant, 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).
- (3) Terms stated as required by sub-paragraph (2) 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 and notified to the participant at the time the option is granted, and
 - (c) in any other case, only by way of a mechanism which is stated and notified to the participant at the time the option is granted.
- (4) Subject to sub-paragraph (5) –
- (a) any terms stated for the purposes of sub-paragraph (2)(c) or (e), and
 - (b) any mechanism stated for the purposes of sub-paragraph (3)(b) or (c),
- must be based on fair and objective criteria.
- (5) Such terms or any such mechanism –
- (a) may confer a discretion on the participant;
 - (b) may confer a discretion on any other person but only if it is fair and reasonable for the discretion to be conferred on that person;
- and a discretion falling within paragraph (b) must be exercised in a way that is fair and reasonable.”
- 153 (1) Paragraph 22 (requirements as to price for acquisition of shares etc) is amended as follows.
- (2) In sub-paragraph (1) omit paragraph (a) and the “and” after it.
 - (3) After sub-paragraph (3) insert –
 - “(3A) If the scheme makes provision under sub-paragraph (3), the variation or variations made under that provision to take account of a variation in any share capital must (in particular) secure –
 - (a) that the total market value of the shares which may be acquired by the exercise of the share option is immediately after the variation or variations 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 manifestly 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-paragraphs (4) and (5).
- 154 (1) Paragraph 25A (exercise of options: company events) is amended as follows.
 - (2) In sub-paragraph (1) omit “or (6)”.
 - (3) After sub-paragraph (5) insert –
 - “(5A) Sub-paragraphs (5B) to (5D) apply if the scheme makes provision under sub-paragraph (1).
 - (5B) The scheme may provide that if, in consequence of the person mentioned in sub-paragraph (2)(a) obtaining control of the company, 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 no later than 7 days after the relevant date notwithstanding that the shares no longer meet those requirements.
 - (5C) The scheme may provide that a share option relating to shares in the company which is exercised no earlier than 7 days before the relevant date is to be treated as if it had been exercised in accordance with the provision made under sub-paragraph (1).
 - (5D) If the scheme makes provision under sub-paragraph (5C) it must also provide that if –
 - (a) a share option is exercised in reliance on that provision in anticipation of a person obtaining control of a company, but
 - (b) that person does not obtain control of the company within the required period,the exercise of the share option is to be treated as having had no effect.
 - (5E) The scheme may provide that share options relating to shares in a company may be exercised within 6 months after the relevant date for the purposes of sub-paragraph (6) or (6A).”
 - (4) In sub-paragraph (6)(b) for “an approved” substitute “a Schedule 4”.
 - (5) 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.”

- 155 (1) Paragraph 26 (exchanges of options on company reorganisation) is amended as follows.
- (2) In sub-paragraph (2) after paragraph (b) insert –
 “(ba) obtains control of the scheme company as a result of a non-UK company reorganisation arrangement;”.
- (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”.
- 156 In paragraph 27 (requirements about share options granted in exchange) 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.”
- 157 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 that –
- (a) the requirements of Parts 2 to 6 of this Schedule are (and are being) met in relation to the scheme, and
 - (b) if the declaration is made after the date on which the first option is granted under the scheme, those requirements –
 - (i) have always been met in relation to the scheme from (and including) that date, and
 - (ii) were met in relation to that grant.
- (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

taken to be a “Schedule 4” CSOP scheme from (and including) 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 taken to be a “Schedule 4” CSOP scheme only from the beginning of the relevant tax year.
- (6) For the purposes of this paragraph –
 - “the initial notification deadline” is 6 July in the tax year following that in which the first option is granted under the scheme,
 - “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 date on which the first option is granted under the scheme, the date on which that grant is made, and
 - “the relevant tax year” is –
 - (a) if the notice under this paragraph is given on or before 6 July in a tax year, the tax year preceding the tax year in which the notice is given, or
 - (b) if the notice under this paragraph is given after 6 July in a tax year, the tax year in which the notice is given.
- (7) Sub-paragraph (4) is subject to the following paragraphs of this Part.

Annual returns

- 28B
- (1) This paragraph applies in relation to a CSOP scheme which is a Schedule 4 CSOP scheme during all or part of a tax year.
 - (2) The scheme organiser must give a return for the tax year to HMRC.
 - (3) The return 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.
 - (4) The information which may be required under sub-paragraph (3)(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.
 - (5) If during a tax year an alteration is made in a key feature of the scheme, the return must contain a declaration within sub-paragraph (6) made by such persons as HMRC may require.
 - (6) A declaration within this sub-paragraph is a declaration that the requirements of Parts 2 to 6 of this Schedule –
 - (a) are (and are being) met in relation to the scheme, and
 - (b) have always been met in relation to the scheme since the alteration.

- (7) For the purposes of sub-paragraph (5) 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.
 - (8) A return is not required for any tax year following that in which the termination condition is met in relation to the scheme.
 - (9) For the purposes of this Part “the termination condition” is met in relation to a scheme when –
 - (a) all 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 options will be granted under the scheme.
- 28C (1) This paragraph applies if the scheme organiser fails to give a return for a tax year (including any information required to accompany it) on or before the date mentioned in paragraph 28B(3)(b) (“the date for delivery”).
- (2) The scheme organiser is liable for a penalty of £100.
 - (3) If the scheme organiser’s failure continues after the end of the period of 3 months beginning with the date for delivery, the scheme organiser is liable for a further penalty of £300.
 - (4) If the scheme organiser’s failure continues after the end of the period of 6 months beginning with the date for delivery, the scheme organiser is liable for a further penalty of £300.
 - (5) The scheme organiser is liable for a further penalty under this sub-paragraph if –
 - (a) the scheme organiser’s failure continues after the end of the period of 9 months beginning with the date for delivery,
 - (b) HMRC decide that such a penalty is payable, and
 - (c) HMRC give notice to the scheme organiser specifying the date from which the penalty is payable.
 - (6) The penalty under sub-paragraph (5) is £10 for each day that the failure continues from (and including) the date specified in the notice under sub-paragraph (5)(c).
 - (7) The date specified in the notice under sub-paragraph (5)(c) –
 - (a) may be earlier than the date on which the notice is given, but
 - (b) may not be earlier than the end of the period mentioned in sub-paragraph (5)(a).
 - (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

- 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 the notice, return or information must be given in that other way.
 - (4) The Commissioners for Her Majesty’s Revenue and Customs –
 - (a) must prescribe how notices, returns and accompanying information are to be given electronically;
 - (b) may make different provision for different cases or circumstances.
- 28E (1) This paragraph applies if a return under paragraph 28B, or any information accompanying such a return, is given otherwise than in accordance with paragraph 28D.
- (2) The scheme organiser is liable for a penalty of an amount decided by HMRC.
 - (3) The penalty must not exceed £5,000.

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.
- “The initial notification deadline” and “the relevant tax year” have the meaning given by paragraph 28A(6).

-
- (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 6 July in the tax year following that in which a return containing a declaration within paragraph 28B(6) is given.
- (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 (or are not being) met in relation to the scheme, or
 - (b) have not been met in relation to the scheme.
- (5) HMRC may enquire into the scheme if HMRC give notice to the scheme organiser of HMRC's intention to do so.
- (6) Notice may be given, and an enquiry may be conducted, under sub-paragraph (2), (3) or (5) even though the termination condition is met in relation to the scheme.
- 28G (1) An enquiry under paragraph 28F(2), (3) or (5) is completed when HMRC give the scheme organiser a notice (a "closure notice") stating—
- (a) that HMRC have completed the enquiry, and
 - (b) that—
 - (i) paragraph 28H is to apply,
 - (ii) paragraph 28I is to apply, or
 - (iii) neither paragraph 28H nor paragraph 28I is to apply.
- (2) If the scheme organiser receives notice under paragraph 28F(2), (3) or (5), the scheme organiser may make an application to the tribunal for a 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 (or are not being) 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 no longer to be a Schedule 4 CSOP scheme, 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 participants in the scheme have not been liable, or will not be liable in the future, and
- (b) the total national insurance contributions for which any persons have not been liable, or will not be liable in the future,

in consequence of the scheme having been taken to be a Schedule 4 CSOP scheme at any relevant time.

- (4) In sub-paragraph (3) “relevant time” means any time before the giving of the closure notice when requirements of Parts 2 to 6 of this Schedule were not (or were not being) 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 (or are not being) met in relation to the scheme, or
 - (ii) have not been met in relation to the scheme, but
- (b) that the situation is not, or was not, so serious that paragraph 28H should apply.

(2) If this paragraph applies, the scheme organiser –

- (a) is liable for a penalty of an amount decided by HMRC, and
- (b) must, no later than 90 days after the day on which the closure notice is given, secure that the requirements of Parts 2 to 6 of this Schedule are (and are being) met in relation to the scheme.

(3) The penalty under sub-paragraph (2)(a) must not exceed £5,000.

(4) 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).

(5) 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”).

(6) If the scheme organiser is given a default notice –

- (a) the scheme is no longer to be a Schedule 4 CSOP scheme, and
- (b) the scheme organiser is liable for a further penalty of an amount decided by HMRC.

(7) The penalty under sub-paragraph (6)(b) must not exceed an amount equal to twice HMRC’s reasonable estimate of –

- (a) the total income tax for which participants in the scheme have not been liable, or will not be liable in the future, and
- (b) the total national insurance contributions for which any persons have not been liable, or will not be liable in the future,

in consequence of the scheme having been taken to be a Schedule 4 CSOP scheme at any relevant time.

- (8) In sub-paragraph (7) “relevant time” means any time before the giving of the default notice when requirements of Parts 2 to 6 of this Schedule were not (or were not being) met in relation to the scheme.

Assessment of penalties

- 28J (1) This paragraph applies if the scheme organiser is liable for a penalty under this Part.
- (2) HMRC must assess the penalty and notify the scheme organiser of the assessment.
- (3) The assessment –
- (a) is to be treated for procedural purposes in the same way as an assessment to corporation tax or, if the scheme organiser is not within the charge to corporation tax, an assessment to income tax,
 - (b) may be enforced as if it were such an assessment, and
 - (c) may be combined with such an assessment.
- (4) The notice to the scheme organiser under sub-paragraph (2) must state the accounting period of the scheme organiser or the tax year in respect of which the penalty is assessed.

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 decision of HMRC mentioned in paragraph 28H(1) or 28I(1).
- (3) The scheme organiser may appeal against a decision of HMRC to give the scheme organiser a default notice under paragraph 28I.
- (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) An appeal under this paragraph is to be treated in the same way as an appeal against an assessment to corporation tax or, if the scheme organiser is not within the charge to corporation tax, an assessment to income tax (including by the application of any provision about bringing the appeal by notice to HMRC, about HMRC review of the decision or about determination of the appeal by the tribunal).
- (6) Sub-paragraph (5) does not require the scheme organiser to pay a penalty before an appeal, the outcome of which could affect the scheme organiser’s liability for the penalty or its amount, is determined.
- (7) On an appeal under sub-paragraph (1) or (3), the tribunal may affirm or cancel the decision.
- (8) On an appeal under sub-paragraph (2), the tribunal may –

- (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), the tribunal may –
 - (a) affirm the amount of the penalty decided, or
 - (b) substitute another amount for that amount.”
- 158 (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”.
- 159 After paragraph 35 insert –
 - “*Non-UK company reorganisation arrangements*
 - 35ZA(1) For the purposes of the CSOP code a “non-UK company reorganisation arrangement” is an arrangement made in relation to a company under the law of a territory outside the United Kingdom –
 - (a) which gives effect to a reorganisation of the company’s share capital by the consolidation of shares of different classes, or by the division of shares into shares of different classes, or by both of those methods, and
 - (b) which is approved by a resolution of members of the company.”
 - (2) A resolution does not count for the purposes of sub-paragraph (1)(b) unless the members who vote in favour of approving the arrangement represent more than 50% of the total voting rights of all the members having the right to vote on the issue.”
- 160 In paragraph 37 (index of defined expressions) –
 - (a) omit the entry for “approved”, and
 - (b) at the appropriate places insert –

“non-UK company reorganisation arrangement	paragraph 35ZA
Schedule 4 CSOP scheme	paragraph 1 (and see Part 7)”.

Other amendments: TCGA 1992

- 161 TCGA 1992 is amended as follows.
- 162 In section 238A (share schemes and share incentives) in subsection (2)(c) for “approved” substitute “Schedule 4”.
- 163 Part 3 of Schedule 7D (CSOP schemes) is amended as follows.
- 164 In the title for “APPROVED” substitute “SCHEDULE 4”.
- 165 (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”.
- 166 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”.
- 167 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

- 168 ITEPA 2003 is amended as follows.
- 169 In section 227 (scope of Part 4) in subsection (4)(g) omit “approved”.
- 170 In section 417 (scope of Part 7) in subsection (2), in the entry for Chapter 8, omit “approved”.
- 171 In section 431A (which makes provision relating to restricted securities etc) in subsection (2)(c) for “an approved” substitute “a Schedule 4”.
- 172 In section 473 (introduction to taxation of securities options) in subsection (4)(b) for “approved” substitute “Schedule 4”.
- 173 In section 475 (no charge in respect of acquisition of option) in subsection (2) omit “approved”.
- 174 In section 476 (charge on occurrence of chargeable event) in subsection (6), in the entry for section 524, omit “approved”.
- 175 In section 480 (deductible amounts) in subsection (4) omit “approved”.
- 176 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)”.

- 177 In section 549 (application of Chapter 11 of Part 7) in subsection (2)(c) omit “approved”.
- 178 (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”.
- 179 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),”.
- 180 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)”.
- 181 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

- 182 The amendments made by this Part are treated as having come into force on 6 April 2014.
- 183 (1) This paragraph applies to a CSOP scheme established before 6 April 2014.
- (2) If the scheme was an “approved” CSOP scheme immediately before 6 April 2014, the amendment made by paragraph 148 above has effect in relation to the scheme only if, and when, a provision of the scheme is altered on or after that date.
- (3) Paragraph 28A of Schedule 4 to ITEPA 2003 (as inserted by paragraph 157 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 date on which the first option is granted under the scheme falls before 6 April 2014—
- (i) as if, in sub-paragraph (3)(b)(i) and in paragraph (b) of the definition of “the relevant date” in sub-paragraph (6), the reference to the date on which the first option is granted under the scheme were a reference to 6 April 2014, and
- (ii) as if sub-paragraph (3)(b)(ii) 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.
- (4) 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.

- (5) Sub-paragraph (4) 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.
- (6) 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.
- (7) Sub-paragraph (8) applies in relation to an option granted before 6 April 2014 under the scheme at a time when the scheme was an “approved” CSOP scheme.
- (8) 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 (even if no notice under paragraph 28A of Schedule 4 to ITEPA 2003 is given in relation to the scheme).
- (9) In relation to the scheme –
- (a) paragraph 28F of Schedule 4 to ITEPA 2003 (as inserted by paragraph 157 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 157 above) include cases in which requirements of Parts 2 to 6 of that Schedule were not met before 6 April 2014.
- (10) The amendments made by paragraph 158 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.
- (11) If the scheme was an “approved” CSOP scheme before 6 April 2014, the amendments made by this Part and paragraph 131 above do not affect the deductions which may be made in relation to the scheme under section 999 of CTA 2009 (deduction for costs of setting up scheme) if they would otherwise do so.

PART 4

ENTERPRISE MANAGEMENT INCENTIVES

Amendments to Schedule 5 to ITEPA 2003

- 184 Schedule 5 to ITEPA 2003 (enterprise management incentives) is amended as follows.
- 185 (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 produce it to an officer of Revenue and Customs if requested to do so by such an officer before the end of the period of 7 days after the day on which the request is made, and
- (b) give a copy of that declaration to the individual before the end of the period of 7 days after the day on which the declaration is signed by the individual.”

(6) After sub-paragraph (7) insert –

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

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

186 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.
- 52A (1) A return under paragraph 52, and any information accompanying the return, must be given electronically.
- (2) But, if HMRC consider it appropriate to do so, HMRC may allow a company to give a return or any accompanying information in another way; and 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.”
- 187 In paragraph 53 (compliance with time limits) 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 the person's control, and
 - (b) where the person relies on any other person to do anything, that is not a reasonable excuse unless the person took reasonable care to avoid the failure.”
- 188 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 is payable.
- 57B (1) This paragraph applies if a company fails to give a return for a tax year (including any information required to accompany it) 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,
 - (b) HMRC decide that such a penalty is payable, and
 - (c) HMRC give notice to the company specifying the date from which the penalty is payable.
 - (6) The penalty under sub-paragraph (5) is £10 for each day that the failure continues from (and including) the date specified in the notice under sub-paragraph (5)(c).
 - (7) The date specified in the notice under sub-paragraph (5)(c)—
 - (a) may be earlier than the date on which the notice is given, but
 - (b) may not be earlier than the end of the period mentioned in sub-paragraph (5)(a).
- 57C (1) This paragraph applies if a return under paragraph 52, or any information accompanying such a return, is given otherwise than in accordance with paragraph 52A.
- (2) The company is liable for a penalty of an amount decided by HMRC.
 - (3) The penalty must not exceed £5,000.
- 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) The assessment—
 - (a) is to be treated for procedural purposes in the same way as an assessment to corporation tax or, if the company is not within the charge to corporation tax, an assessment to income tax,
 - (b) may be enforced as if it were such an assessment, and
 - (c) may be combined with such an assessment.
 - (4) The notice to the company under sub-paragraph (2) must state the accounting period of the company or the tax year in respect of which the penalty is assessed.
- 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) An appeal under this paragraph is to be treated in the same way as an appeal against an assessment to corporation tax or, if the company is not within the charge to corporation tax, income tax

(including by the application of any provision about bringing the appeal by notice to HMRC, about HMRC review of the decision or about determination of the appeal by the tribunal).

- (4) Sub-paragraph (3) does not require a company to pay a penalty before an appeal, the outcome of which could affect the company's liability for the penalty or its amount, is determined.
- (5) On an appeal under sub-paragraph (1), the tribunal may affirm or cancel the decision.
- (6) On an appeal under sub-paragraph (2), the tribunal may –
 - (a) affirm the amount of the penalty decided, or
 - (b) substitute another amount for that amount.”

Commencement and transitional provision

- 189 The amendments made by this Part are treated as having come into force on 6 April 2014.
- 190 The amendments made by paragraph 185 above have effect in relation to options granted on or after 6 April 2014.
- 191 (1) The amendment made by paragraph 186 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.
- 192 The amendment made by paragraph 187 above does not affect a reasonable excuse which began before 6 April 2014.

PART 5

OTHER EMPLOYEE SHARE SCHEMES

Amendments to Chapter 1 of Part 7 of ITEPA 2003

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

“421JA Annual returns

- (1) This section applies in relation to a person who is (or has been) a responsible person (see section 421L) in relation to reportable events (see section 421K).
- (2) The person must give to Her Majesty’s Revenue and Customs (“HMRC”) a return for each tax year falling (wholly or partly) in the person’s reportable event period.
- (3) The person’s “reportable event period” is the period –
 - (a) beginning when the first reportable event occurs in relation to which the person is a responsible person, and
 - (b) ending when the person will no longer be a responsible person in relation to reportable events.
- (4) The return for a tax year must –
 - (a) contain, or be accompanied by, such information as HMRC may require, and
 - (b) be given on or before 6 July in the following tax year.
- (5) The information which may be required under subsection (4)(a) includes (in particular) information to enable HMRC to determine the liability to tax, including capital gains tax, of any employee.
- (6) A person’s return for a tax year under this section need not contain, or be accompanied by, duplicate information and a person is not required to give a return for a tax year under this section if it would only contain, or be accompanied by, duplicate information.
- (7) “Duplicate information” means information which is contained in or accompanies –
 - (a) a return which another person gives for the tax year under this section, or
 - (b) a return which any person gives for the tax year under any of the following provisions –
 - (i) paragraph 81B of Schedule 2 (annual return for Schedule 2 SIP);
 - (ii) paragraph 40B of Schedule 3 (annual return for Schedule 3 SAYE option scheme);
 - (iii) paragraph 28B of Schedule 4 (annual return for Schedule 4 CSOP scheme);
 - (iv) paragraph 52 of Schedule 5 (annual return for company whose shares are subject to qualifying options under the EMI code).

421JB Returns to be given electronically

- (1) A return under section 421JA, and any information accompanying the return, must be given electronically.
- (2) But, if HMRC consider it appropriate to do so, HMRC may allow a person to give a return or any accompanying information in another way; and the return or information must be given in that other way.
- (3) The Commissioners for Her Majesty’s Revenue and Customs –

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

421JC Penalties for late returns

- (1) This section applies if a person fails to give a return under section 421JA for a tax year (including any information required to accompany it) on or before the date mentioned in section 421JA(4)(b) (“the date for delivery”).
- (2) The person is liable for a penalty of £100.
- (3) If the person’s failure continues after the end of the period of 3 months beginning with the date for delivery, the person is liable for a further penalty of £300.
- (4) If the person’s failure continues after the end of the period of 6 months beginning with the date for delivery, the person is liable for a further penalty of £300.
- (5) The person is liable for a further penalty under this subsection if—
 - (a) the person’s failure continues after the end of the period of 9 months beginning with the date for delivery,
 - (b) HMRC decide that such a penalty is payable, and
 - (c) HMRC give notice to the person specifying the date from which the penalty is payable.
- (6) The penalty under subsection (5) is £10 for each day that the failure continues from (and including) the date specified in the notice under subsection (5)(c).
- (7) The date specified in the notice under subsection (5)(c)—
 - (a) may be earlier than the date on which the notice is given, but
 - (b) may not be earlier than the end of the period mentioned in subsection (5)(a).
- (8) Liability for a penalty under this section does not arise if the person satisfies HMRC (or, on an appeal under section 421JF, the tribunal) that there is a reasonable excuse for the person’s failure.
- (9) For the purposes of subsection (8)—
 - (a) an insufficiency of funds is not a reasonable excuse, unless attributable to events outside the person’s control,
 - (b) where the person relies on any other person to do anything, that is not a reasonable excuse unless the person took reasonable care to avoid the failure, and
 - (c) where the person had a reasonable excuse for the failure but the excuse ceased, the person is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

421JD Penalty if information not given correctly

- (1) This section applies if a return under section 421JA, or any information accompanying such a return, is given otherwise than in accordance with section 421JB.

- (2) The person in question is liable for a penalty of an amount decided by HMRC.
- (3) The penalty must not exceed £5,000.

421JE Assessment of penalties

- (1) This section applies if a person is liable for a penalty under section 421JC or 421JD.
- (2) HMRC must assess the penalty and notify the person of the assessment.
- (3) The assessment –
 - (a) is to be treated for procedural purposes in the same way as an assessment to corporation tax or, if the person is not within the charge to corporation tax, an assessment to income tax,
 - (b) may be enforced as if it were such an assessment, and
 - (c) may be combined with such an assessment.
- (4) The notice to the person under subsection (2) must state the tax period in respect of which the penalty is assessed.
- (5) “Tax period” means –
 - (a) if the assessment is being treated as an assessment to corporation tax, an accounting period of the company in question, or
 - (b) if the assessment is being treated as an assessment to income tax, a tax year.

421JF Appeals

- (1) A person may appeal against a decision of HMRC that the person is liable for a penalty under section 421JC or 421JD.
- (2) A person may appeal against a decision of HMRC as to the amount of a penalty payable by the person under section 421JC or 421JD.
- (3) An appeal under this section is to be treated in the same way as an appeal against an assessment to corporation tax or, if the person is not within the charge to corporation tax, an assessment to income tax (including by the application of any provision about bringing the appeal by notice to HMRC, about HMRC review of the decision or about determination of the appeal by the tribunal).
- (4) Subsection (3) does not require a person to pay a penalty before an appeal, the outcome of which could affect the person’s liability for the penalty or its amount, is determined.
- (5) On an appeal under subsection (1), the tribunal may affirm or cancel the decision.
- (6) On an appeal under subsection (2), the tribunal may –
 - (a) affirm the amount of the penalty decided, or
 - (b) substitute another amount for that amount.”

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

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

Commencement and transitional provision

- 198 The amendments made by this Part are treated as having come into force on 6 April 2014.
- 199 The amendments made by paragraph 194 above have no effect in relation to reportable events occurring before 6 April 2014.
- 200 (1) Section 421JA of ITEPA 2003 (as inserted by paragraph 195 above) has effect so as to require returns for the tax year 2014-15 and subsequent tax years.
- (2) That section has effect in relation to persons whose reportable event periods begin before 6 April 2014 (as well as those whose reportable event periods begin on or after that date).

EXPLANATORY NOTE

EMPLOYEE SHARE SCHEMES

SUMMARY

1. Clause [X] and Schedule [Y] implement several recommendations of the Office of Tax Simplification (OTS) to simplify the tax rules and administrative processes for employee share schemes. The main changes include:

- replacing approval by HM Revenue & Customs (HMRC) with self certification for three of the tax advantaged employee share schemes - Share Incentive Plans (SIP), Save As You Earn Option Schemes (SAYE) and Company Share Option Plans (CSOP);
- introducing online filing for all employee share scheme returns and information, including for Enterprise Management Incentives (EMI) and non-tax advantaged arrangements providing employment-related securities;
- a number of technical changes to the SIP, SAYE and CSOP rules designed to clarify the legislation, including modification of the 'purpose test' that must be met by these schemes.

2. These changes aim to simplify the employee share scheme rules where these may create undue complexities or unnecessary administrative burdens for scheme users. They support the Government's objective to simplify the tax system. The changes will come into effect on 6 April 2014.

DETAILS OF THE SCHEDULE

3. The Schedule implements a series of changes across all schemes and arrangements providing employment-related securities.

4. The main legislation as it currently stands is set out in Income Tax (Earnings and Pensions) Act 2003 (ITEPA). The provisions on SIP are in sections 488-515 and Schedule 2 to ITEPA; on SAYE in sections 516-519 and Schedule 3; on CSOP in sections 521-526 and Schedule 4; and on EMI in sections 527-541 and Schedule 5. Statutory references in this Note are to provisions in ITEPA unless otherwise stated.

Part 1, Share Incentive Plans

5. Paragraph 1 introduces amendments to Chapter 6 of Part 7 of ITEPA, which provides for income tax advantages to be available in connection with shares obtained under SIP.

6. Paragraphs 2-11 make various changes to Chapter 6 to reflect the replacement of the present arrangements for HMRC approval of SIPs with self certification of plans by employers. In particular the paragraphs remove legislative references to 'approved SIPs'. Instead the concept is introduced of SIPs that meet the conditions being certified by employers as 'Schedule 2 SIPs'.
7. Paragraphs 12-30 set out amendments to Schedule 2 ITEPA. Many of these are consequential changes caused by the shift from HMRC approval of SIPs to self certification by employers, and there are new powers for HMRC to determine that a plan is no longer to be a Schedule 2 SIP, and to make enquiries into the running of a SIP.
8. Paragraph 15 amends the introductory provision for the SIP rules in paragraph 1 Schedule 2, taking account of the new self certification arrangements and HMRC powers to enquire into plans and decide that certain plans should no longer be Schedule 2 SIPs.
9. Paragraph 18 amends paragraph 7 Schedule 2 to introduce a new purpose test to be met by Schedule 2 SIPs. In addition to the current requirement that the purpose of a SIP must be to provide shares that give employees a continuing stake in the company, key new conditions are that SIPs must not provide benefits other than in accordance with Schedule 2, and in particular must not provide participants with cash as an alternative to shares.
10. Paragraph 22 amends paragraph 43 Schedule 2 to make clear that a plan may require an employee who has purchased SIP partnership shares to sell them on leaving service, and provides certain conditions in relation to the consideration paid to the employee for the shares.
11. Paragraph 25 amends paragraph 65 Schedule 2 to make clear that a plan may require an employee who has acquired SIP dividend shares to sell them on leaving service, and provides certain conditions in relation to the consideration paid to the employee for the shares.
12. Paragraph 26 amends paragraph 71 Schedule 2 to revise the requirements that apply to SIP trust instruments.
13. Paragraph 28 inserts a new Part 10 in Schedule 2, setting out rules for notification of SIPs, annual returns and HMRC enquiries. The new provisions reflect the shift to self certification of plans and online filing of returns. They include HMRC powers to apply penalties, determine that a plan is no longer to be treated as a Schedule 2 SIP and make enquiries into the running of a SIP, as well as appeal rights in respect of these powers.
14. New paragraph 81A of Schedule 2 provides new rules concerning notification of SIPs to HMRC. For a plan to be a Schedule 2 SIP and qualify for favourable tax treatment, the company must give notice to HMRC and make a declaration that the plan has met (and is meeting) the relevant conditions of Schedule 2. The notice should be given by 6 July following the tax year in which the first award of shares is made under the scheme, and sub-paragraph (5) explains when the plan will be a Schedule 2 SIP in cases when this deadline is missed.

15. New paragraph 81B obliges companies to make annual returns to HMRC in respect of Schedule 2 SIPs, containing the information required by HMRC. Returns must give details of any alterations made to a key feature of the SIP in the tax year in question and contain a declaration by the employer. Returns must be made not later than 6 July following the end of the tax year to which they relate, and must be in the form required by HMRC. The requirement to make an annual return to HMRC applies for each year prior to and including the year of the termination of a plan.
16. New paragraph 81C lays down the penalties to which companies may be liable for failure to deliver annual returns by the specified deadline. An exception is allowed where companies have a 'reasonable excuse' for the failure.
17. New paragraph 81D provides that notification of SIPs and annual SIP returns must be delivered in electronic form in a manner prescribed by HMRC, unless a company has been specifically allowed by HMRC to use some other form. The Commissioners for HMRC will prescribe how the notices and returns must be submitted.
18. New paragraph 81E sets out the penalties that may apply where returns are not delivered in the form required by HMRC.
19. New paragraph 81F empowers HMRC to make enquiries into a SIP after giving notice to a company of their intention to do so, and sets out time periods for providing this notice. This is allowed in specified circumstances, including where HMRC have reasonable grounds for believing the requirements of Schedule 2 are not or have not been met in relation to the plan.
20. New paragraph 81G provides the rules for closure of HMRC enquiries, the decision that may be included within an HMRC closure notice, the right of companies to apply to tribunals to direct that closure notices be given and the requirement on the tribunal to provide such a direction in certain circumstances.
21. New paragraph 81H sets out the action HMRC may take where a SIP has not met (or is not meeting) the conditions of Schedule 2. If the breach of the SIP rules is considered serious enough to warrant it, HMRC may decide that a plan will no longer be a Schedule 2 SIP, and certain penalties will be imposed on the company. This will not affect the operation of the SIP rules (and any tax advantages available) in relation to shares awarded prior to that time.
22. New paragraph 81I sets out the action HMRC may take in cases where a breach of the SIP rules is not considered serious enough for the plan to cease being a Schedule 2 SIP. HMRC will require the company to put right any failure within a specified period, and the company will be liable for certain penalties. Where the breach is not put right within the specified period, HMRC may provide by a 'default notice' that a plan is no longer a Schedule 2 SIP, and the company is liable for a further penalty. This will not affect the operation of the SIP rules (and tax advantages available) in relation to shares awarded prior to the default notice.
23. New paragraph 81J sets out procedures for the assessment and enforcement of penalties by HMRC.

24. Paragraph 81K provides rights for companies to appeal against decisions of HMRC, for example that a plan is no longer to be a Schedule 2 SIP and on imposition of penalties, and lays down rules for the handling of appeals and the action tribunals may take in response to an appeal.
25. Paragraph 29 confirms that shares appropriated to, or acquired on behalf of, a SIP participant may not be awarded under a plan following its termination. This makes clear that the paragraph 90 Schedule 2 prohibition on the award of further shares after termination of a plan applies to SIP dividend shares as well as other types of SIP shares.
26. Paragraph 30 amends HMRC's powers in paragraph 93 Schedule 2 to require information concerning a SIP. In particular HMRC are empowered to require information needed to check details supplied by companies in their notification of a SIP or annual SIP returns, or to determine the liability to tax of any relevant person.
27. Paragraphs 32-42 make amendments to various provisions of Taxation of Chargeable Gains Act 1992 (TCGA) arising from the replacement of HMRC approval of SIPs with self certification.
28. Paragraphs 43-51 make amendments to various provisions of ITEPA and Finance Act 2004 (FA 2004).
29. Paragraphs 52-66 make amendments to various provisions of Income Tax (Trading and Other Income) Act 2005 (ITTOIA).
30. Paragraphs 67-72 make amendments to various provisions of Income Tax Act 2007 (ITA 2007).
31. Paragraphs 73-82 make amendments to various provisions of Corporation Tax Act 2009 (CTA 2009).
32. Paragraphs 83-85 make amendments to the Individual Savings Account Regulations 1998.
33. Paragraphs 86-87 set out commencement and transitional provisions. The new rules take effect from 6 April 2014.
34. Paragraph 87 provides various transitional arrangements for SIPs approved by HMRC before 6 April 2014. In particular, sub-paragraph (2) provides that where a SIP has been approved by HMRC before 6 April 2014, the new purpose test introduced by paragraph 18 of this Schedule and the revisions to the requirements that apply to SIP trust instruments at paragraph 26 of this Schedule only apply from such time as there is alteration to a provision of the SIP or the trust. This paragraph also modifies arrangements for the notification of these plans under self certification (sub-paragraph (3)), as well as HMRC's powers of enquiry (sub-paragraph (9)). Sub-paragraphs (7) and (8) concern shares acquired or appropriated under a SIP before 6 April 2014. The SIP code (and tax advantages where appropriate) will still apply in relation to these shares, even if the plan is not notified to HMRC. The paragraph also ensures (sub-paragraph 9(b)) that HMRC's ability to determine that a scheme is not a Schedule 2 SIP applies in relation to breaches of the SIP rules that occurred prior to 6 April

2014. By virtue of sub-paragraph (11), the availability of certain corporation tax deductions in relation to set up costs for a SIP approved by HMRC before 6 April 2014 is not affected by any changes in Part 1 of the Schedule.

Part 2, SAYE Option Schemes

35. Paragraph 88 introduces amendments to Chapter 7 of Part 7 of ITEPA, which provides for exemption from income tax in connection with share options granted under SAYE schemes.

36. Paragraphs 89-92 make various changes to Chapter 7, mainly to reflect the replacement of the present arrangements for HMRC approval of SAYE schemes with self certification by scheme organisers. In particular these paragraphs remove legislative references to 'approved SAYE schemes'. Instead the concept is introduced of schemes that meet the conditions being certified by scheme organisers as 'Schedule 3 SAYE option schemes'.

37. Paragraphs 93-110 set out amendments to Schedule 3 ITEPA. Many of these are consequential changes caused by the shift from HMRC approval of SAYE schemes to self certification by employers, and there are new powers for HMRC to determine that a scheme is no longer to be a Schedule 3 SAYE scheme, and to make enquiries into the running of a scheme.

38. Paragraph 96 amends the introductory provision for the SAYE rules in paragraph 1 Schedule 3, taking account of the new self certification arrangements and HMRC powers to enquire into schemes and decide that certain schemes should no longer be Schedule 3 SAYE schemes.

39. Paragraph 99 amends paragraph 5 Schedule 3 to introduce a new purpose test to be met by Schedule 3 SAYE schemes. Key conditions are that schemes must provide benefits for employees and directors in the form of share options, and must not provide benefits other than in accordance with Schedule 3. In particular, schemes must not provide participants with cash as an alternative to shares or share options.

40. Paragraph 102 amends the provisions of paragraph 28 Schedule 3, which allow adjustment of the price, amount or description of shares under an SAYE option where there is a variation in the share capital of the company. This amendment removes the requirement for these adjustments to be approved by HMRC, but provides that the market value of the shares that may be acquired under the option and the exercise price of the option must be the same immediately before and after the variation.

41. Paragraph 103 amends provisions in paragraph 34 Schedule 3 concerning exercise of options where employment ceases, to remove a minor element of duplication in relation to arrangements under the Transfer of Undertakings (Protection of Employment) Regulations.

42. Paragraph 104 amends provisions in paragraph 37 Schedule 3 allowing exercise of SAYE options where certain 'company events' occur.

- Where in such cases shares in the company to which an option relates cease to meet the conditions of Schedule 3 (because control of the original company has changed hands), new sub-paragraphs (3C) to (3G) of paragraph 37 allow scheme rules to provide that the option may still be exercised by the participant within a period of seven days either before or after the event. If an option has been exercised in anticipation of a change of control and this does not in the event take place, the exercise is treated as having had no effect.
- The circumstances in which paragraph 37 may apply in 'non-UK company reorganisations' are clarified in sub-paragraph (4A).

43. Paragraph 105 concerns provisions in paragraph 38 Schedule 3 allowing exchange of options on a company reorganisation. Scheme rules may provide for exchange of options if a company acquires control as a result of a 'non-UK company reorganisation arrangement', where certain conditions are met.

44. Paragraph 106 amends provisions in paragraph 39 Schedule 3 concerning the requirements about share options granted in exchange for other SAYE options on a company reorganisation. The market value of shares for the purposes of paragraph 39 must be determined using a methodology agreed by HMRC.

45. Paragraph 107 inserts a new Part 8 in Schedule 3, setting out rules for notification of SAYE schemes, annual returns and HMRC enquiries. The new provisions reflect the shift to self certification of plans and online filing of returns. They include HMRC powers to apply penalties, determine that a scheme is no longer to be treated as a Schedule 3 SAYE scheme and make enquiries into the running of a scheme, as well as appeal rights in respect of these powers.

46. New paragraph 40A of Schedule 3 provides new rules concerning notification of SAYE schemes to HMRC. For a scheme to be a Schedule 3 SAYE scheme and qualify for favourable tax treatment, the scheme organiser must give notice to HMRC and make a declaration that it has met (and is meeting) the conditions of Schedule 3. The notice should be given by 6 July following the tax year in which the first option is granted under the scheme, and sub-paragraph (5) explains when the scheme will be a Schedule 3 SAYE scheme in cases where this deadline is missed.

47. New paragraph 40B obliges scheme organisers to make annual returns to HMRC in respect of Schedule 3 SAYE schemes, containing the information required by HMRC. Returns must give details of any alterations made to key features of the SAYE scheme in the tax year in question and contain a declaration by the scheme organiser. Returns must be made not later than 6 July following the end of the tax year to which they relate, and must be in the form required by HMRC. The requirement to make an annual return to HMRC applies for each year prior to and including the year of the termination of a scheme. This will be where there are no outstanding options under the scheme, and no intention to grant any further options under the scheme.

48. New paragraph 40C lays down the penalties to which scheme organisers may be liable for failure to deliver annual returns by the specified deadline. An exception is allowed where scheme organisers have a 'reasonable excuse' for the failure.

49. New paragraph 40D provides that notification of SAYE schemes and annual SAYE returns must be delivered in electronic form in a manner prescribed by HMRC, unless a company has been specifically allowed by HMRC to use some other form. The Commissioners for HMRC will prescribe how the notices and returns must be submitted.
50. New paragraph 40E sets out the penalties that may apply where returns are not delivered in the form required by HMRC.
51. New paragraph 40F empowers HMRC to make enquiries into an SAYE scheme after giving notice to scheme organisers of their intention to do so, and sets out time periods for providing this notice. This is allowed in specified circumstances, including where HMRC have reasonable grounds for believing the requirements of Schedule 3 are not or have not been met in relation to the scheme.
52. New paragraph 40G provides the rules for closure of HMRC enquiries, the decisions that may be included in an HMRC closure notice, the right of scheme organisers to apply to tribunals to direct that closure notices be given and the requirement on the tribunal to provide such a direction in certain circumstances.
53. New paragraph 40H sets out the action HMRC may take where an SAYE scheme has not met (or is not meeting) the conditions of Schedule 3. If the breach of the SAYE rules is considered serious enough to warrant it, HMRC may decide that a scheme will no longer be a Schedule 3 SAYE scheme and certain penalties will be imposed on the scheme organiser. This will not affect the operation of the SAYE rules (and tax advantages available) in relation to options granted prior to, but exercised after, HMRC's decision (as set out in its closure notice).
54. New paragraph 40I sets out the action HMRC may take in cases where a breach of the SAYE rules is not considered serious enough for the scheme to cease being a Schedule 3 SAYE scheme. HMRC will require the scheme organiser to put right any failure within a specified period, and the scheme organiser will be liable for certain penalties. Where the breach is not put right within the specified period, HMRC may provide by a 'default notice' that a scheme is no longer a Schedule 3 SAYE scheme, and the scheme organiser is liable for a further penalty. This will not affect the operation of the SAYE rules (and tax advantages available) in relation to options granted prior to, but exercised after, the default notice.
55. New paragraph 40J sets out procedures for the assessment and enforcement of penalties by HMRC.
56. New paragraph 40K provides rights for scheme organisers to appeal against decisions of HMRC, for example that a scheme is no longer to be a Schedule 3 SAYE scheme and on imposition of penalties, and lays down rules for the handling of appeals and the action tribunals may take in response to an appeal.
57. Paragraph 108 amends HMRC's powers in paragraph 45 Schedule 3 to require information concerning an SAYE scheme. In particular HMRC are empowered to require information needed to check details supplied by scheme organisers in their notification of an SAYE scheme or annual SAYE returns, or to determine the liability to tax of any relevant person.

58. Paragraph 109 explains the term 'non-UK company reorganisation arrangement', involving companies set up under the law of an overseas territory, for the purposes of the SAYE code.
59. Paragraphs 111-118 make amendments to various provisions of TCGA, mainly arising from the replacement of HMRC approval of SAYE schemes with self certification.
60. Paragraphs 119-131 make amendments to various provisions of ITEPA, FA 2004, ITTOIA and CTA 2009.
61. Paragraphs 132-134 make amendments to the Individual Savings Account Regulations 1998.
62. Paragraphs 135-136 set out commencement and transitional provisions. The new rules take effect from 6 April 2014.
63. Paragraph 136 provides various transitional arrangements for SAYE schemes approved by HMRC before 6 April 2014. In particular, sub-paragraph (2) provides that where a scheme has been approved by HMRC before 6 April 2014, the new purpose test introduced by paragraph 99 of this Schedule only applies from such time as there is alteration to a provision of the scheme. This paragraph also modifies arrangements for the notification of these schemes under self certification (sub-paragraph (3)), as well as HMRC's powers of enquiry (sub-paragraph (11)). Sub-paragraphs (7) to (10) concern SAYE options granted before 6 April 2014. The SAYE code (and tax advantages where appropriate) will still apply in relation to these options, even if the scheme is not notified to HMRC. The paragraph also ensures (sub-paragraph (11)(b)) that HMRC's ability to determine that a scheme is not a Schedule 3 SAYE scheme applies in relation to breaches of the SAYE rules that occurred prior to 6 April 2014. By virtue of sub-paragraph (13), the availability of certain corporation tax deductions in relation to set up costs for a SAYE scheme approved by HMRC before 6 April 2014 is not affected by any changes in Part 2 of the Schedule.

Part 3, CSOP Schemes

64. Paragraph 137 introduces amendments to Chapter 8 of Part 7 of ITEPA, which provides for exemption from income tax in connection with share options granted under CSOP schemes.
65. Paragraphs 138-141 make various changes to Chapter 7 to reflect the replacement of the present arrangements for HMRC approval of CSOPs with self certification by scheme organisers. In particular these paragraphs remove legislative references to 'approved CSOP schemes'. Instead the concept is introduced of schemes that meet the conditions being certified by scheme organisers as 'Schedule 4 CSOP schemes'.
66. Paragraphs 142-160 set out amendments to Schedule 4 ITEPA. Many of these are consequential changes caused by the shift from HMRC approval of CSOPs to self certification by employers, and there are new powers for HMRC to determine that a scheme is no longer to be a Schedule 4 CSOP, and to make enquiries into the running of a scheme.

67. Paragraph 145 amends the introductory provision for the CSOP rules in paragraph 1 Schedule 4, taking account of the new self certification arrangements for CSOP and HMRC powers to enquire into schemes and decide that certain schemes should no longer be Schedule 4 CSOPs.

68. Paragraph 148 amends paragraph 5 Schedule 4 to introduce a new purpose test that must met by Schedule 4 CSOPs. Key conditions are that schemes must provide benefits for employees and directors in the form of share options, and must not provide benefits other than in accordance with Schedule 4. In particular, schemes must not provide participants with cash as an alternative to shares or share options.

69. Paragraph 152 inserts new paragraph 21A in Schedule 4, which sets out a series of general conditions that CSOP options must satisfy. In particular, options must be capable of exercise within a specified period; and the main terms of the option must be stated and notified to the option holder at the outset. Terms of an option may be changed after grant, but only on the basis of a mechanism notified to the option holder at grant, which is based on fair and objective criteria, or as provided for elsewhere in CSOP legislation. The use of discretion in applying mechanisms for change to the terms of an option is permitted, provided this is exercised in a way that is fair and reasonable.

70. Paragraph 153 amends the provisions of paragraph 22 Schedule 4, which allow adjustment of the price, amount or description of shares under a CSOP option where there is a variation in the share capital of the company. This amendment removes the requirement for these adjustments to be approved by HMRC, but provides that the market value of the shares that may be acquired under the option and the exercise price of the option must be the same immediately before and after the variation.

71. Paragraph 154 amends provisions in paragraph 25A Schedule 4 allowing exercise of CSOP options where certain 'company events' occur.

- Where in such cases shares in the company to which an option relates cease to meet the conditions of Schedule 4 (because control of the original company has changed hands), sub-paragraphs (5B) to (5D) of paragraph 25A allow scheme rules to provide that the option may still be exercised by the participant within a period of seven days either before or after the event. If an option has been exercised in anticipation of a change of control and this does not in the event take place, the exercise is treated as having had no effect.
- The circumstances in which paragraph 25A may apply in 'non-UK company reorganisations' are clarified in new sub-paragraph (6A).

72. Paragraph 155 concerns provisions in paragraph 26 Schedule 4 allowing exchange of option on a company reorganisation. Scheme rules may provide for exchange of options if a company acquires control as a result of a 'non-UK company reorganisation arrangement', where certain conditions are met.

73. Paragraph 156 amends provisions in paragraph 27 Schedule 4 concerning the requirements about share options granted in exchange for other CSOP options on a company

reorganisation. The market value of shares for the purposes of paragraph 27 must be determined using a methodology agreed by HMRC.

74. Paragraph 157 inserts a new Part 7 in Schedule 4, setting out rules for notification of CSOPs, annual returns and HMRC enquiries. The new provisions reflect the shift to self certification of plans and online filing of returns. They include HMRC powers to apply penalties, determine that a scheme is no longer to be treated as a Schedule 4 CSOP and make enquiries into the running of a scheme, as well as appeal rights in respect of these powers.

75. New paragraph 28A of Schedule 4 provides new rules concerning notification of CSOPs to HMRC. For a scheme to be a Schedule 4 CSOP and qualify for favourable tax treatment, the scheme organiser must give notice to HMRC and make a declaration that it has met (and is meeting) the conditions of Schedule 4. The notice should be given by 6 July following the tax year in which the first option is granted under the scheme and sub-paragraph (5) explains when a scheme will be a Schedule 4 CSOP in cases where this deadline is missed.

76. New paragraph 28B obliges scheme organisers to make annual returns to HMRC in respect of Schedule 4 CSOPs, containing the information required by HMRC. Returns must give details of any alterations made to key features of the CSOP in the tax year in question and contain a declaration by the scheme organiser. Returns must be made not later than 6 July following the end of the tax year to which they relate, and must be in the form required by HMRC. This requirement to make an annual return to HMRC applies for each year prior to and including the year of the termination of a scheme. This will be where there are no outstanding options under the scheme, and no intention to grant any further options under the scheme.

77. New paragraph 28C lays down the penalties to which scheme organisers may be liable for failure to deliver annual returns by the specified deadline. An exception is specified where scheme organisers have a 'reasonable excuse' for the failure.

78. New paragraph 28D provides that notification of CSOPs and annual CSOP returns must be delivered in electronic form in a manner prescribed by HMRC, unless a company has been specifically allowed by HMRC to use some other form. The Commissioners for HMRC will prescribe how the notices and returns must be submitted.

79. New paragraph 28E sets out the penalties that may apply where returns are not delivered in the form required by HMRC.

80. New paragraph 28F empowers HMRC to make enquiries into a CSOP after giving notice to scheme organisers of their intention to do so, and sets out time periods for providing this notice. This is allowed in specified circumstances, including where HMRC have reasonable grounds for believing the requirements of Schedule 4 are not or have not been met in relation to the scheme.

81. New paragraph 28G provides the rules for closure of HMRC enquiries, the decisions that may be included in an HMRC closure notice, the right of scheme organisers to apply to tribunals to direct that closure notices be given and the requirement on the tribunal to provide such a direction in certain circumstances.

82. New paragraph 28H sets out the action HMRC may take where a CSOP has not met (or is not meeting) the conditions of Schedule 4. If the breach of the CSOP rules is considered serious enough to warrant it, HMRC may decide that a scheme will no longer be a Schedule 4 CSOP and certain penalties will be imposed on the scheme organiser.

83. New paragraph 28I sets out the action that HMRC may take in cases where a breach of the CSOP rules is not considered serious enough for the scheme to cease being a Schedule 4 CSOP. HMRC will require the scheme organiser to put right any failure within a specified period, and the scheme organiser will be liable for certain penalties. Where the breach is not put right within the specified period, HMRC may provide by a 'default notice' that a scheme is no longer a Schedule 4 CSOP, and the scheme organiser is liable for a further penalty.

84. New paragraph 28J sets out procedures for the assessment and enforcement of penalties by HMRC.

85. New paragraph 28K provides rights for scheme organisers to appeal against decisions of HMRC, for example that a scheme is no longer to be a Schedule 4 CSOP and on imposition of penalties, and lays down rules for the handling of appeals and the action tribunals may take in response to an appeal.

86. Paragraph 158 amends HMRC's powers in paragraph 33 Schedule 4 to require information concerning a CSOP. In particular HMRC are empowered to require information needed to check details supplied by a scheme organiser in their notification of a CSOP scheme or annual CSOP returns, or to determine the liability to tax of any relevant person.

87. Paragraph 159 explains the term 'non-UK company reorganisation arrangement', involving companies set up under the law of an overseas territory, for the purposes of the CSOP code.

88. Paragraphs 161-167 make amendments to various provisions of TCGA arising from the move to self certification.

89. Paragraphs 168-181 make amendments to various provisions of ITEPA.

90. Paragraphs 182-183 set out commencement and transitional provisions. The new rules take effect from 6 April 2014.

91. Paragraph 183 provides various transitional arrangements for CSOPs approved by HMRC before 6 April 2014. In particular, sub-paragraph (2) provides that where a CSOP has been approved by HMRC before 6 April 2014, the new purpose test introduced by paragraph 148 of this Schedule only applies from such time as there is alteration to a provision of the scheme. This paragraph also modifies arrangements for the notification of these schemes under self certification (sub-paragraph (3)), as well as HMRC's powers of enquiry (sub-paragraph (9)). Sub-paragraphs (7) to (8) concern CSOP options granted before 6 April 2014. The CSOP code (and tax advantages where appropriate) will still apply in relation to these options, even if the scheme is not notified to HMRC. The paragraph also ensures (sub-paragraph (9)(b)) that HMRC's ability to determine that a scheme is not a Schedule 4 CSOP applies in relation to breaches of the CSOP rules that occurred prior to 6 April 2014. By virtue of sub-paragraph (11), the availability of certain corporation tax deductions in relation

to set up costs for a CSOP scheme approved by HMRC before 6 April 2014 is not affected by certain changes made in this Schedule.

Part 4, Enterprise Management Incentives

92. Paragraph 184 introduces a series of changes to Schedule 5 ITEPA in respect of EMI.

93. Paragraph 185 makes several amendments to paragraph 44 Schedule 5 concerning the requirement to provide HMRC with notice of EMI options granted:-

- The employer company's declaration in the return to HMRC must include confirmation that EMI option holders have made written declarations that they meet the 'working time requirement' of EMI (paragraph 26 Schedule 5), and copies of those declarations must be retained and produced to HMRC if so requested.
- Notices must be delivered in electronic form in a manner prescribed by HMRC, unless a company has been specifically allowed by HMRC to use some other form. The Commissioners for HMRC will prescribe how the notices and returns must be submitted.

94. Paragraph 186 replaces the existing paragraph 52 Schedule 5, which sets out rules for submission of annual returns in respect of EMI options. New paragraphs 52 and 52A of Schedule 5 reflect the shift to online filing of returns and are consistent with the new provisions in this Schedule for the other tax advantaged schemes.

95. New paragraph 52 of Schedule 5 obliges companies whose shares are or have been subject to an EMI option to make annual returns containing the information required by HMRC. Returns must be made not later than 6 July following the end of the tax year to which they relate, and must be in the form required by HMRC. The requirement to make an annual return to HMRC applies for each year prior to and including the year of termination of a scheme. This will be where there are no outstanding EMI options over the company's shares, and no intention to grant any further options over the company's shares under the scheme.

96. New paragraph 52A provides that returns must be delivered in electronic form in a manner prescribed by HMRC, unless a company has been specifically allowed by HMRC to use some other form. The Commissioners for HMRC will prescribe how the notices and returns must be submitted.

97. Paragraph 187 makes a change to paragraph 53 Schedule 5 to clarify the meaning of 'reasonable excuse'.

98. Paragraph 188 inserts new provisions on penalties and appeals (at new paragraphs 57A-57E Schedule 5), similar to those in Parts 1, 2 and 3 of this Schedule.

99. New paragraph 57A of Schedule 5 lays down the penalties to which companies may be liable for failure to deliver the declarations required by paragraph 44 Schedule 5 where an EMI option over its shares has been granted.

100. New paragraph 57B lays down the penalties to which companies may be liable for failure to deliver annual returns by the specified deadline.
101. New paragraph 57C sets out the penalties that may apply where returns are not delivered in the form required by HMRC.
102. New paragraph 57D sets out procedures for the assessment and enforcement of penalties by HMRC.
103. New paragraph 57E provides rights for companies to appeal against decisions of HMRC in relation to penalties, and lays down rules for the handling of appeals and the action tribunals may take in response to an appeal.
104. Paragraphs 189-192 set out commencement and transitional provisions. The new rules take effect from 6 April 2014, and the rules in relation to annual returns will apply for returns for the tax year 2014-15 onwards.

Part 5, Other Employee Share Schemes

105. Paragraph 193 introduces a series of changes to Chapter 1 of Part 7 of ITEPA, which sets out general rules and requirements in relation to employment-related securities, including arrangements that are not tax advantaged.
106. Paragraphs 194-195 amend section 421J of ITEPA concerning the duty to provide information to HMRC, and insert new provisions (new sections 421JA-421JF of ITEPA) concerning annual returns, electronic submission, penalties and appeals. These changes reflect the shift to online filing of annual returns for employment-related securities and are consistent with the new provisions in this Schedule for the tax advantaged schemes.
107. New section 421JA of ITEPA obliges a responsible person (as defined in section 421L) to make an annual return to HMRC in respect of 'reportable events' within the meaning of section 421K. Returns must contain the information required by HMRC, and be made not later than 6 July following the end of the tax year to which they relate. This requirement to make an annual return to HMRC applies for each year during the period for which they are 'responsible persons' in relation to a reportable event. Sub-paragraph (6) provides that there is no need to report 'duplicate' information, as defined at sub-paragraph (7).
108. New section 421JB provides that returns must be delivered in electronic form in a manner prescribed by HMRC, unless a company has been specifically allowed by HMRC to use some other form. The Commissioners for HMRC will prescribe how the notices and returns must be submitted.
109. New section 421JC lays down the penalties which may apply for failure to deliver annual returns by the specified deadline. An exception is allowed where a person has a 'reasonable excuse' for the failure.
110. New section 421JD sets out the penalties that may apply where returns are not delivered in the form required by HMRC.

111. New section 421JE sets out procedures for the assessment and enforcement of penalties by HMRC.

112. New section 421JF provides rights of appeal against decisions of HMRC in relation to penalties, and lays down rules for the handling of appeals and the action tribunals may take in response to an appeal.

113. Paragraphs 198-200 set out commencement and transitional provisions. The new rules take effect from 6 April 2014, and the rules in relation to annual returns will apply for returns for tax year 2014-15 onwards.

BACKGROUND

114. SIP is an 'all employee' scheme under which employees may purchase 'partnership' shares out of their pre-tax (gross) salary; be awarded 'matching' or 'free' shares by their employer; or reinvest dividends earned on SIP shares into 'dividend' shares.

115. SAYE is an 'all employee' share option scheme under which employees save out of taxed earnings and can use their savings to purchase shares in their company at a discounted price.

116. CSOP is a scheme under which selected employees may be awarded options to purchase shares in their company.

117. EMI is a scheme targeted on small and medium sized businesses carrying out certain trades, under which selected employees may be awarded share options in their company.

118. The OTS published a report on the tax advantaged employee share schemes in 2012. This identified various areas where the present rules created undue complexities or disproportionate administrative burdens for scheme users, and made recommendations on how the legislation and related provisions could be simplified. The Government implemented the first tranche of changes to give effect to these recommendations in Schedule 2 Finance Act 2013.

119. This measure implements the further OTS recommendations that the Government should introduce self certification and a new 'purpose test' for SIP, SAYE and CSOP (self certification already applies in the case of EMI), and online filing for all employment-related securities returns to HMRC. In drawing up these provisions the Government has consulted extensively over the past 12 months to devise arrangements that will meet the needs of scheme users.

120. The measure also includes minor technical changes to clarify or simplify certain aspects of the current statute, where companies might potentially have found it difficult to self certify with confidence as the legislation stood.

121. If you have any questions about these changes, or comments on the legislation, please contact Andrew Ellis on 03000 585259 (email: andrew.ellis1@hmrc.gsi.gov.uk).



HM Revenue
& Customs

Employment Related Securities:
Registration, Self-certification and online filing
of employee share schemes and arrangements

Information Note for Employers

10 December 2013

Employment Related Securities: Registration, Self-certification and online filing of employee share schemes and arrangements

HMRC is changing the way **both new and existing** employee share schemes and arrangements are administered. The changes affect:

- Enterprise Management Incentives (EMI)
- Company Share Option Plans (CSOP)
- Save As You Earn option schemes (SAYE)
- Share Incentive Plans (SIP)
- Any non-tax advantaged arrangements

If you are an employer operating this type of scheme or arrangement, read on to find out what you need to do.

Getting ready now

The Employment Related Securities (ERS) service will be part of PAYE Online for employers' service. To use the new ERS service you will need access to HMRC online service, so make sure you are registered for HMRC taxes and signed up as an organisation for online services.

You don't have to wait to sign up if you are not already registered you can do this now.

Register for HMRC taxes and sign up for online services

<http://www.hmrc.gov.uk/online/new.htm>

If your organisation is already signed up for online services it is easy to add other people within your organisation so they can access all or some services.

About Government Gateway

https://myaccount.gateway.gov.uk/Pages/Common/Help.aspx?content=Whitelabel_RegisterOrLogon_AboutGateway

If there are valid reasons which mean you are unable to file online please contact shareschemes@hmrc.gsi.gov.uk to discuss alternative arrangements.

Not operating PAYE?

If you are already registered with HMRC as a business but you need to add PAYE only so you can use the ERS service (you don't operate PAYE on employees now) we will provide further details on how to register before April 2014.

Changes being introduced from 6 April 2014

You must register all existing and new employee share schemes and arrangements online. You must also self-certify that any tax advantaged schemes meet certain requirements.

You must register:

- Unexercised EMI options
- New grants of EMI options
- Non-tax advantaged arrangements currently recorded on Form 42
- CSOP schemes, SAYE option schemes and SIPs

HMRC will no longer provide approval for any new tax advantaged schemes

You must self-certify:

- CSOP, SAYE and SIP to confirm that they meet legislative requirements. If this is not done any tax advantages will be lost.

Changes being introduced from April 2015

- Filing of all information returns must be done online
- Automatic penalties will apply for late filing
- We will no longer issue notices to file or reminders

What happens if you don't register?

If you don't register your schemes and arrangements by 6 July 2015:

- you won't be able to file online
- late filing penalties will apply
- previously approved schemes will lose the tax advantages

More information

You can read more about the changes by following the links below.

Employment Related Securities Bulletin

<http://www.hmrc.gov.uk/shareschemes/erss-bulletin.htm>

Employer Bulletin – Issue 45

<http://www.hmrc.gov.uk/payerti/forms-updates/employer-bulletin/eb45.rtf>

Further information will be available before the online service goes live on 6 April 2014.