

INCOME TAX (EARNINGS AND PENSIONS) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Omitted material

Schedule 2: Approved Share Incentive Plans

Overview

Part 6: Partnership shares

3080. This Part is the fifth of eight that deal with the requirements that a SIP must meet before it may be approved. This Part, which consists of paragraphs 43 to 57, deals with requirements relating to partnership shares. A SIP does not have to provide for partnership shares to be acquired for employees (it may provide for free shares to be appropriated to employees - see paragraph 2(1)), so there may well be SIPs to which the provisions of this Part of this Schedule do not apply.

Paragraph 43: Partnership shares: introduction

3081. This paragraph is introductory.

3082. In Schedule 8, the requirements relating to partnership shares are introduced in paragraph 33. But that paragraph merely states that if a plan provides for partnership shares, it must comply with the requirements of that Part of Schedule 8. *Sub-paragraph (1)* follows an alternative, more helpful, procedure and (adopting the procedure used elsewhere in this Schedule) indicates the provisions that apply.

3083. *Sub-paragraph (1)* nevertheless departs from the introductory wording used at the beginning of the majority of the other Parts of this Schedule. This is because a number of the paragraphs in this Part of the Schedule are permissive as opposed to mandatory - that is, they deal with provisions which the plan may contain, as opposed to provisions that the plan must contain.

3084. *Sub-paragraph (3)* deals with a general point relating to the acquisition of partnership shares. This provision derives from paragraph 39(2) of Schedule 8; but it has now been moved so that this general point is dealt with early on.

3085. *Sub-paragraph (4)* contains the definition of the word “salary”. This definition is in paragraph 48 of Schedule 8; and it has been amended by paragraph 3 of Schedule 13 to FA 2001. The ambit of this definition has, however, been widened, so that this definition, instead of applying only for the purposes of the provisions relating to partnership shares, applies for the purposes of the SIP code generally. *See Note 65(A)* in Annex 2.

Paragraph 44: Partnership share agreements

3086. This paragraph states that the SIP must provide for qualifying employees to enter into partnership share agreements. (The definition of “qualifying employee” may be found in paragraph 8(6) of this Schedule.) This paragraph derives from paragraph 34 of Schedule 8.
3087. This paragraph now has three sub-paragraphs. *Sub-paragraph (2)* deals with the definition of the term “partnership share agreements” and the ambit of that definition.
3088. [Paragraph 34](#) of Schedule 8 referred to “the company” on three different occasions, with the company being defined elsewhere in that Schedule, in relation to a SIP, as the company which established the plan (as it is in paragraph 2(2) of this Schedule). One of those three occasions referred to the employee authorising the company to deduct part of the employee’s salary. However, in the case of a group plan, an employee might be employed by a group company which had not established the SIP; and, in such a case, the reference to authorising “the company” to make deductions from salary would not work well.
3089. *Sub-paragraph (1)(a)*, read with *sub-paragraph (3)*, accordingly provides for the authorisation to make deductions from the employee’s salary to be given to the company by reference to which the employee meets the employment requirement in relation to the plan. See *Change 162* in Annex 1.

Paragraph 45: Deductions from salary

3090. This paragraph states that the SIP must provide for a partnership share agreement to be given effect by deductions from the employee’s salary. Amounts so deducted are referred to in the SIP code as “partnership share money”. This paragraph derives from paragraph 35 of Schedule 8.
3091. The rewritten paragraph has six sub-paragraphs (as opposed to the four in paragraph 35 of Schedule 8); but in the rewritten legislation each sub-paragraph consists of a single sentence. (In the case of sub-paragraph (3), two separate sentences have been joined.)
3092. In sub-paragraph (2), the term “partnership share money” now applies to the entirety of the SIP code, instead of being confined to one part of Schedule 8, as was the case in FA 2000. In other contexts the expression was undefined; but it is considered that the definition provided here would have been held to apply in those other contexts also. See *Note 65(B)* in Annex 2.

Paragraph 46: Maximum amount of deductions

3093. This paragraph specifies the maximum amount of partnership share money that may be deducted. The paragraph derives from paragraph 36 of Schedule 8.
3094. In the second sentence of *sub-paragraph (2)*, the word “This” has been replaced by the more specific “10% of the employee’s salary”.
3095. In *sub-paragraphs (3)* and *(4)*, two sub-paragraphs, each one sentence long, now replace a single sub-paragraph with two sentences. In *sub-paragraph (4)* there have been changes in the detail of the wording.

Paragraph 47: Minimum amount of deductions

3096. This paragraph specifies the minimum amount of partnership share money that may be deducted. The paragraph derives from paragraph 37 of Schedule 8.
3097. In *sub-paragraph (1)*, the words “under a partnership share agreement” replace the words “in pursuance of the partnership share agreement”; and in *sub-paragraph (3)*, the words “may be” have been added at the end.

Paragraph 48: Notice of possible effect of deductions on benefit entitlement

3098. This paragraph states that the SIP must provide that the company may not enter into a partnership share agreement unless the employee is given a notice relating to the possible effect of deductions on social security benefits. The paragraph derives from paragraph 38 of Schedule 8.
3099. That paragraph provides authority to make regulations, and regulations have been made. They are the [Employee Share Ownership Plans \(Partnership Shares - Notice of Effects on Benefits, Statutory Sick Pay and Statutory Maternity Pay\) Regulations 2000 \(SI 2000 No 2090\)](#).

Paragraph 49: Partnership share money held for employee

3100. This paragraph states that the SIP must provide that partnership share money must be paid to the trustees and held by them on the employee's behalf. The paragraph derives from paragraph 39(1), (3) and (4) of Schedule 8.
3101. In *sub-paragraph (1)* the words "in accordance with" have been replaced by the word "under".
3102. *Sub-paragraph (3)* has been amended to take account of the amendments made by article 107 of the [Financial Services and Markets Act 2000 \(Consequential Amendments\) \(Taxes\) Order 2001 \(SI 2001 No 3629\)](#).
3103. In *sub-paragraph (4)*, the word order has been changed. The subject of the sentence has been placed first, followed immediately by the main verb, and the condition has been moved to the end of the sentence.

Paragraph 50: Application of money deducted where no accumulation periods

3104. This paragraph specifies how partnership share money must be applied if the SIP does not provide for an accumulation period. The paragraph derives from paragraph 40 of Schedule 8.
3105. The five sub-paragraphs have, however, been placed in a different order. The major proposition has been placed first (*sub-paragraph (1)*); and this is followed by the proposition relating to the market value of the shares (*sub-paragraph (2)*). It is only these two sub-paragraphs that are affected by the operation of paragraph 53 (restrictions on number of shares awarded), so this limitation is dealt with next (*sub-paragraph (3)*). The definition of the expression "the acquisition date" is dealt with next (*sub-paragraph (4)*) in a location that follows the two sub-paragraphs in which the expression is used (as opposed to being placed between those two sub-paragraphs). The provision dealing with surplus partnership money is now placed at the end (*sub-paragraph (5)*).

Paragraph 51: Accumulation periods

3106. This paragraph contains provisions that apply if the SIP provides for an accumulation period. The paragraph derives from paragraph 41 of Schedule 8.
3107. The material in Schedule 8 has been rearranged, with a view to making the main propositions more prominent and easier to understand. *Sub-paragraph (2)* derives from the opening words of paragraph 41(2) of Schedule 8; and *sub-paragraphs (3)* and *(4)* reorganise all the other material in paragraph 41(2) and (3) of that Schedule.
3108. At the end of *sub-paragraph (4)(b)*, the words "all individuals entering into partnership share agreements" have replaced the words "all individuals who are eligible to participate in the award". The new wording is intended to be a more accurate statement of the legislative intention. See *Change 163* in Annex 1.

3109. *Sub-paragraph (5)* is arranged somewhat differently from paragraph 41(4) of Schedule 8.

Paragraph 52: Application of money deducted in accumulation period

3110. This paragraph contains provisions that govern how partnership share money deducted may be applied during an accumulation period. The paragraph derives from paragraph 42 of Schedule 8.
3111. The material in this paragraph has been rearranged. After the introductory proposition (*sub-paragraph (1)*), the central propositions are now in *sub-paragraphs (2)* and *(3)*; those propositions are followed by a limitation that applies to those two sub-paragraphs (*sub-paragraph (4)*), and then by a definition with the same ambit (*sub-paragraph (5)*).
3112. *Sub-paragraph (4)* provides for sub-paragraphs (2) and (3) (instead of the paragraph as a whole) to be subject to paragraph 53; and sub-paragraph (5) provides for the definition of “the acquisition date” to apply in both sub-paragraphs (2) and (3) (instead of in sub-paragraph (2) only as in paragraph 42 of Schedule 8).
3113. In sub-paragraph (2) the words “under a partnership share agreement” have been added; and in *sub-paragraph (7)* the constituent parts of this provision have been reorganised, and the words “to be” have been added in the expression “is to be paid”.

Paragraph 53: Restriction on number of shares awarded

3114. This paragraph provides that the SIP may authorise the company to specify the maximum number of shares to be included in an award of partnership shares.
3115. This paragraph derives from paragraph 43 of Schedule 8, presenting the material in a somewhat different order.
3116. The wording of sub-paragraph (5) has been modified to deal with the removal of the expression “the individual award” (an expression introduced in paragraph 3 of Schedule 8), which made its one and only appearance at this point. The new wording includes the expression “on behalf of each employee”.

Paragraph 54: Stopping and re-starting deductions

3117. An employee is entitled both to stop deductions under a partnership share agreement and to restart those deductions. This paragraph sets out the requirements that the SIP must contain to deal with these matters.
3118. This paragraph derives from paragraph 44 of Schedule 8. The material is presented in a somewhat different order, with the new order following the order in which events may be expected to occur.
3119. *Sub-paragraphs (1)* and *(3)* refer to deductions “under” a partnership share agreement and not to deductions “in pursuance of” a partnership share agreement.
3120. *Sub-paragraph (7)* retains the requirement that a notice under this paragraph should be a notice in writing, but moves that requirement to a sub-paragraph of its own.

Paragraph 55: Withdrawal from partnership share agreement

3121. This paragraph sets out the requirement that a SIP must provide that an employee may give notice to withdraw from a partnership share agreement. The paragraph derives from paragraph 45 of Schedule 8.
3122. *Sub-paragraph (1)* has been rewritten to emphasise that it is the notice that may be given at any time rather than the withdrawal from the plan that may be effected at any time.

*These notes refer to the Income Tax (Earnings and Pensions)
Act 2003 (c.1) which received Royal Assent on 6th March 2003*

3123. *Sub-paragraph (4)* retains the requirement that a notice under this paragraph should be a notice in writing, but moves that requirement to a sub-paragraph of its own.

Paragraph 56: Repayment of partnership share money on withdrawal of approval or termination

3124. This paragraph sets out the requirement that a SIP must provide that partnership share money held on behalf of an employee must be paid over to that employee in certain circumstances. The paragraph derives from paragraph 46 of Schedule 8.
3125. This material has been placed in a different order. Provisions relating to the withdrawal of approval are dealt with before the provisions relating to the issue of a plan termination notice.

Paragraph 57: Access to partnership shares

3126. This paragraph sets out the requirement that a SIP must provide that, when partnership shares have been awarded to an employee, the employee may withdraw any or all of those shares from the plan. The paragraph derives from paragraph 47 of Schedule 8.
3127. *Sub-paragraph (2)* has been expanded by the addition of the words “If the employee does so” at the beginning of this provision.