These notes refer to the Finance Act 2009 (c.10) which received Royal Assent on 21 July 2009

FINANCE ACT 2009

EXPLANATORY NOTES

INTRODUCTION

Section 50Schedule 26: Saye Schemes

Summary

1. Section 50 and Schedule 26 make amendments to the rules relating to Save As You Earn (SAYE) share option schemes. They simplify certain administrative aspects, and make it possible for HM Revenue & Customs (HMRC) to ease practical difficulties that can arise for companies sending invitations to employees shortly before a change in the certification and bonus rates applying to SAYE contracts.

2. These changes to the current provisions on certified SAYE savings arrangements will:

   - provide for the transfer of certain administrative functions under the legislation from HM Treasury to HMRC;
   - remove the requirement for HMRC to send some documents by post;
   - allow HMRC to specify in the notices of withdrawal and variation of certified savings arrangements that certain savings contracts using the previous specifications entered into after the date of withdrawal or variation will be valid; and
   - reduce from 28 to 15 days the minimum period between the date when a notice with revised SAYE requirements is issued, and the date when the new requirements (including changes to interest rates) come into force.

Details of the Section

3. Subsection (2) provides for the Schedule to come into force the day after the Budget resolutions are passed.

Details of the Schedule

Transfer of certain functions from HM Treasury to HMRC

4. Paragraph 2 amends section 705 of the Income Tax (Trading and Other Income) Act 2005 (ITTOIA), to transfer from HM Treasury to the Commissioners for HMRC responsibility for certifying "linked savings contracts" - contracts used in approved SAYE schemes.

5. Sub-paragraph (2) of paragraph 2 substitutes "Commissioners" for "Treasury" in subsections (1) and (2) of section 705, and sub–paragraph 3 inserts a new subsection (5) explaining the term "Commissioners".

6. Paragraph 3 amends section 706 of ITTOIA, to transfer from HM Treasury to the Commissioners for HMRC powers to withdraw and vary certifications and connected requirements in relation to SAYE savings arrangements.

7. Paragraph 4 amends section 707 of ITTOIA, to transfer from HM Treasury to the Commissioners for HMRC powers to authorise providers of certified savings arrangements.

8. Paragraph 5 makes amendments to section 708 of ITTOIA, to transfer from HM Treasury to the Commissioners for HMRC powers to withdraw and vary the authorisation of providers.

Removal of requirement that certain notices be sent by post

9. Paragraph 6 removes the requirement for certain communications relating to certified savings arrangements and providers to be made by post. It will be possible for these communications to be made electronically in future.

Reduction of notice period for withdrawals and variations

10. Paragraph 7 amends section 706(2)(b) to reduce from 28 to 15 days the minimum period from notification by HMRC and coming into effect of withdrawal or variation of requirements relating to certified savings arrangements.

Power to provide for withdrawals and variations not to affect certain contracts

11. Paragraph 8 amends the provisions of section 706(3) concerning the withdrawal or variation of requirements relating to certified savings arrangements. It will allow HMRC to assist companies that have offered SAYE contracts to their employees shortly before HMRC gives notice of withdrawal or variation of certified SAYE savings arrangements.

12. New subsections (a) and (b) inserted in section 706(3) restate existing rules about the withdrawal and variation of requirements. New subsection (c) has the effect that HMRC may specify that certain SAYE contracts made after a withdrawal and variation will not be affected by the change. This means, for example, that certain savings contract may continue to reflect bonus rates in force before the change. The contracts to which this will apply are to be specified in the notice from the Commissioners for HMRC to savings providers announcing the change.

Background Note

SAYE schemes

13. SAYE share option schemes approved by HMRC allow employees to save under Save As You Earn contracts and to use the savings should they wish to exercise an option to buy shares in their company. They are all-employee schemes, designed to encourage employees to save, and to acquire a stake in the company they work for.

14. Under SAYE schemes a company offers its employees the option to buy, at a future date, shares in the company at a price set at the outset. Employees can choose to save in a 3 or 5 year savings contract. When the contract reaches maturity, a bonus is added, and the employee can use the proceeds to exercise the option and acquire shares, or alternatively may take the savings with the bonus, in either case free of income tax and National Insurance contributions.

15. The bonus rates to be used in SAYE contracts are set by the Government - at present, by HM Treasury and in future by HMRC, in accordance with a formula agreed with savings providers.

Administrative changes

16. The switch of certain administrative responsibilities from HM Treasury to HMRC and removing the need for communications to be made by post will streamline the process, ending duplication of work and enhancing communication with savings providers.

17. Currently, HM Treasury sets out specifications that linked savings arrangements must meet to be certified. There is a minimum period of 28 days between giving notice of withdrawals or variations (which can include interest rate changes) and the revisions coming into force. Under these changes, HMRC will take over administrative

responsibility for the specifications, and the notice period will be reduced to 15 days. This ensures savings providers are notified of changes in certifications much earlier than is the case now.

Invitations issued shortly before a change in requirements for certified savings arrangements

18. The new provisions that HMRC may apply when an invitation to enter into an SAYE contract is issued just before a change in the requirements for certified SAYE savings arrangements reflect concern expressed by companies and administrators about the effect of the current rules.

19. At present if employees wish to enter into the savings contract but their application is accepted on or after the date of the change in the certification requirements, for example as to bonus rates, it is likely (depending on the facts of the case) that the application may be invalid, because the invitation reflects the old SAYE bonus rates which have been withdrawn.

20. The new provisions will have the effect that employers may be allowed to accept applications based on the old arrangements provided they are received within 30 days of the date of withdrawal or variation. For example, if the variation is a change in bonus rates, the previous bonus rate would apply for applications made on the basis of that rate.

21. Requirements for certified SAYE savings arrangements are reflected in a standard specification document, reissued with amendments to savings providers when changes in certified SAYE savings arrangements take place.