SCHEDULES

SCHEDULE 8

EMPLOYEE SHARE SCHEMES

PART 3

CSOP SCHEMES

Amendments to Chapter 8 of Part 7 of ITEPA 2003

179 For Part 7 substitute—

"PART 7

NOTIFICATION OF SCHEMES, ANNUAL RETURNS AND ENQUIRIES

Notice of scheme to be given to HMRC

28A (1) For a CSOP scheme to be a Schedule 4 CSOP scheme, notice of the scheme must be given to Her Majesty's Revenue and Customs ("HMRC").

(2) The notice must—

(a) be given by the scheme organiser,

(b) contain, or be accompanied by, such information as HMRC may require, and

(c) contain a declaration within sub-paragraph (3) made by such persons as HMRC may require.

(3) A declaration within this sub-paragraph is a declaration—

(a) that the requirements of Parts 2 to 6 of this Schedule are met in relation to the scheme, and

(b) if the declaration is made after the first date on which share options are granted under the scheme ("the first grant date"), that those requirements—

(i) were met in relation to those grants of share options, and

(ii) have otherwise been met in relation to the scheme at all times on or after the first grant date when share options granted under the scheme are outstanding.

(4) If notice is given under this paragraph in relation to a CSOP scheme, for the purposes of the CSOP code the scheme is to be a Schedule 4 CSOP scheme at all times on and after the relevant date (but not before that date).

(5) But if the notice is given after the initial notification deadline, the scheme is to be a Schedule 4 CSOP scheme only from the beginning of the relevant tax year.

(6) For the purposes of this Part—

"the initial notification deadline" is 6 July in the tax year following that in which the first grant date falls,

"outstanding", in relation to a share option, means that the option—

(a) has not been exercised, but

(b) is capable of being exercised in accordance with the scheme (whether on the meeting of any condition or otherwise),

"the relevant date" is—

(a) the date on which the declaration within sub-paragraph (3) is made, or

(b) if that declaration is made after the first grant date, the first grant date, and

"the relevant tax year" is—

(a) the tax year in which the notice under this paragraph is given, or

(b) if that notice is given on or before 6 July in that tax year, the preceding tax year.

(7) Sub-paragraph (4) is subject to the following paragraphs of this Part.

Annual returns

28B (1) This paragraph applies if notice is given in relation to a CSOP scheme under paragraph 28A.

(2) The scheme organiser must give to HMRC a return for the tax year in which the relevant date falls and for each subsequent tax year (subject to sub-paragraph (9)).

(3) If paragraph 28A(5) applies in relation to the scheme, in sub-paragraph (2) the reference to the tax year in which the relevant date falls is to be read as a reference to the relevant tax year.

(4) A return for a tax year must—

(a) contain, or be accompanied by, such information as HMRC may require, and

(b) be given on or before 6 July in the following tax year.

(5) The information which may be required under sub-paragraph (4)(a) includes (in particular) information to enable HMRC to determine the liability to tax, including capital gains tax, of—

(a) any person who has participated in the scheme, or

(b) any other person whose liability to tax the operation of the scheme is relevant to.

(6) If during a tax year—

(a) an alteration is made in a key feature of the scheme, or

(b) variations are made under a provision made under paragraph 22(3) to take account of a variation in any share capital,

the return for the tax year must contain a declaration within sub-paragraph (7) made by such persons as HMRC may require.

(7) A declaration within this sub-paragraph is a declaration, as the case may be—

(a) that the alteration has, or

(b) that the variations have,

not caused the requirements of Parts 2 to 6 of this Schedule not to be met in relation to the scheme.

(8) For the purposes of sub-paragraph (6)(a) a "key feature" of a scheme is a provision of the scheme which is necessary in order for the requirements of Parts 2 to 6 of this Schedule to be met in relation to the scheme.

(9) A return is not required for any tax year following that in which the termination condition is met in relation to the scheme.

(10) For the purposes of this Part "the termination condition" is met in relation to a scheme when—

(a) all share options granted under the scheme—

(i) have been exercised, or

(ii) are no longer capable of being exercised in accordance with the scheme (because, for example, they have lapsed or been cancelled), and

(b) no more share options will be granted under the scheme.

(11) If the scheme organiser becomes aware that—

(a) anything which should have been included in, or should have accompanied, a return for a tax year was not included in, or did not accompany, the return,

(b) anything which should not have been included in, or should not have accompanied, a return for a tax year was included in, or accompanied, the return, or

(c) any other error or inaccuracy has occurred in relation to a return for a tax year,

the scheme organiser must give an amended return correcting the position to HMRC without delay.

28C (1) This paragraph applies if the scheme organiser fails to give a return for a tax year (containing, or accompanied by, all required information and declarations) on or before the date mentioned in paragraph 28B(4)(b) ("the date for delivery").

(2) The scheme organiser is liable for a penalty of £100.

(3) If the scheme organiser's failure continues after the end of the period of 3 months beginning with the date for delivery, the scheme organiser is liable for a further penalty of £300.

(4) If the scheme organiser's failure continues after the end of the period of 6 months beginning with the date for delivery, the scheme organiser is liable for a further penalty of £300.

(5) The scheme organiser is liable for a further penalty under this sub-paragraph if—

(a) the scheme organiser's failure continues after the end of the period of 9 months beginning with the date for delivery,

(b) HMRC decide that such a penalty should be payable, and

(c) HMRC give notice to the scheme organiser specifying the period in respect of which the penalty is payable.

(The scheme organiser may be liable for more than one penalty under this sub-paragraph.)

(6) The penalty under sub-paragraph (5) is £10 for each day that the failure continues during the period specified in the notice under sub-paragraph (5)(c).

(7) The period specified in the notice under sub-paragraph (5)(c)—

(a) may begin earlier than the date on which the notice is given, but

(b) may not begin until after the end of the period mentioned in sub-paragraph (5)(a) or, if relevant, the end of any period specified in any previous notice under sub-paragraph (5)(c) given in relation to the failure.

(8) Liability for a penalty under this paragraph does not arise if the scheme organiser satisfies HMRC (or, on an appeal under paragraph 28K, the tribunal) that there is a reasonable excuse for its failure.

(9) For the purposes of sub-paragraph (8)—

(a) an insufficiency of funds is not a reasonable excuse, unless attributable to events outside the scheme organiser's control,

(b) where the scheme organiser relies on any other person to do anything, that is not a reasonable excuse unless the scheme organiser took reasonable care to avoid the failure, and

(c) where the scheme organiser had a reasonable excuse for the failure but the excuse ceased, the scheme organiser is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

Notices and returns to be given electronically etc

28D (1) A notice under paragraph 28A, and any information accompanying the notice, must be given electronically.

(2) A return under paragraph 28B, and any information accompanying the return, must be given electronically.

(3) But, if HMRC consider it appropriate to do so, HMRC may allow the scheme organiser to give a notice or return or any accompanying information in another way; and, if HMRC do so, the notice, return or information must be given in that other way.

(4) The Commissioners for Her Majesty's Revenue and Customs—

(a) must prescribe how notices, returns and accompanying information are to be given electronically;

(b) may make different provision for different cases or circumstances.

28E (1) This paragraph applies if a return under paragraph 28B, or any information accompanying such a return—

(a) is given otherwise than in accordance with paragraph 28D, or

(b) contains a material inaccuracy—

(i) which is careless or deliberate, or

(ii) which is not corrected as required by paragraph 28B(11).

(2) The scheme organiser is liable for a penalty of an amount decided by HMRC.

(3) The penalty must not exceed £5,000.

(4) For the purposes of sub-paragraph (1)(b)(i) an inaccuracy is careless if it is due to a failure by the scheme organiser to take reasonable care.

Enquiries

28F (1) This paragraph applies if notice is given in relation to a CSOP scheme under paragraph 28A.

(2) HMRC may enquire into the scheme if HMRC give notice to the scheme organiser of HMRC's intention to do so no later than—

(a) 6 July in the tax year following that in which the initial notification deadline falls, or

(b) if the notice under paragraph 28A is given after the initial notification deadline, 6 July in the second tax year following the relevant tax year.

(3) HMRC may enquire into the scheme if HMRC give notice to the scheme organiser of HMRC's intention to do so no later than 12 months after the date on which a declaration within paragraph 28B(7) is given to HMRC.

(4) Sub-paragraph (5) applies if (at any time) HMRC have reasonable grounds for believing that requirements of Parts 2 to 6 of this Schedule—

(a) are not met in relation to the scheme, or

(b) have not been met in relation to the scheme.

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

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

28G (1) An enquiry under paragraph 28F(2), (3) or (5) is completed when HMRC give the scheme organiser a notice (a "closure notice") stating—

(a) that HMRC have completed the enquiry, and

(b) that—

(i) paragraph 28H is to apply,

(ii) paragraph 28I is to apply, or

(iii) neither paragraph 28H nor paragraph 28I is to apply.

(2) If the scheme organiser receives notice under paragraph 28F(2), (3) or (5), the scheme organiser may make an application to the tribunal for a direction requiring a closure notice for the enquiry to be given within a specified period.

(3) The application is to be subject to the relevant provisions of Part 5 of TMA 1970 (see, in particular, section 48(2)(b) of that Act).

(4) The tribunal must give a direction unless satisfied that HMRC have reasonable grounds for not giving the closure notice within the specified period.

28H (1) This paragraph applies if HMRC decide—

(a) that requirements of Parts 2 to 6 of this Schedule—

(i) are not met in relation to the scheme, or

(ii) have not been met in relation to the scheme, and

(b) that the situation is, or was, so serious that this paragraph should apply.

(2) If this paragraph applies—

(a) the scheme is not to be a Schedule 4 CSOP scheme with effect from—

(i) such relevant time as is specified in the closure notice, or

(ii) if no relevant time is specified, the time of the giving of the closure notice, and

(b) the scheme organiser is liable for a penalty of an amount decided by HMRC.

(3) The penalty under sub-paragraph (2)(b) must not exceed an amount equal to twice HMRC's reasonable estimate of—

(a) the total income tax for which persons who have been granted share options under the scheme have not been liable, or will not be liable in the future, and

(b) the total contributions under Part 1 of SSCBA 1992 or SSCB(NI)A 1992 for which any persons have not been liable, or will not be liable in the future,

in consequence of the scheme having been a Schedule 4 CSOP scheme at any relevant time before the time mentioned in sub-paragraph (2)(a)(i) or (ii) (as the case may be).

(4) In this paragraph "relevant time" means any time before the giving of the closure notice when requirements of Parts 2 to 6 of this Schedule were not met in relation to the scheme.

28I (1) This paragraph applies if HMRC decide—

(a) that requirements of Parts 2 to 6 of this Schedule—

(i) are not met in relation to the scheme, or

(ii) have not been met in relation to the scheme, but

(b) that the situation is not, or was not, so serious that paragraph 28H should apply.

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

(a) is liable for a penalty of an amount decided by HMRC, and

(b) must, no later than 90 days after the relevant day, secure that the requirements of Parts 2 to 6 of this Schedule are met in relation to the scheme.

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

(4) In sub-paragraph (2)(b) "the relevant day" means—

(a) the last day of the period in which notice of an appeal under paragraph 28K(2)(b) may be given, or

(b) if notice of such an appeal is given, the day on which the appeal is determined or withdrawn.

(5) Sub-paragraph (2)(b) does not apply if the termination condition was met in relation to the scheme before the closure notice was given or is met before the end of the 90 day period mentioned in sub-paragraph (2)(b).

(6) If the scheme organiser fails to comply with sub-paragraph (2)(b), HMRC may give the scheme organiser a notice stating that that is the case (a "default notice").

(7) If the scheme organiser is given a default notice—

(a) the scheme is not to be a Schedule 4 CSOP scheme with effect from—

(i) such relevant time as is specified in the default notice, or

(ii) if no relevant time is specified, the time of the giving of the default notice, and

(b) the scheme organiser is liable for a further penalty of an amount decided by HMRC.

(8) The penalty under sub-paragraph (7)(b) must not exceed an amount equal to twice HMRC's reasonable estimate of—

(a) the total income tax for which persons who have been granted share options under the scheme have not been liable, or will not be liable in the future, and

(b) the total contributions under Part 1 of SSCBA 1992 or SSCB(NI)A 1992 for which any persons have not been liable, or will not be liable in the future,

in consequence of the scheme having been a Schedule 4 CSOP scheme at any relevant time before the time mentioned in sub-paragraph (7)(a)(i) or (ii) (as the case may be).

(9) In this paragraph "relevant time" means any time before the giving of the default notice when requirements of Parts 2 to 6 of this Schedule were not met in relation to the scheme.

Assessment of penalties

28J (1) This paragraph applies if the scheme organiser is liable for a penalty under this Part.

(2) HMRC must assess the penalty and notify the scheme organiser of the assessment.

(3) Subject to sub-paragraphs (4) and (5), the assessment must be made no later than 12 months after the date on which the scheme organiser becomes liable for the penalty.

(4) In the case of a penalty under paragraph 28E(1)(b), the assessment must be made no later than—

(a) 12 months after the date on which HMRC become aware of the inaccuracy, and

(b) 6 years after the date on which the scheme organiser becomes liable for the penalty.

(5) In the case of a penalty under paragraph 28H(2)(b) or 28I(2)(a) or (7)(b) where notice of appeal is given under paragraph 28K(2) or (3), the assessment must be made no later than 12 months after the date on which the appeal is determined or withdrawn.

(6) A penalty payable under this Part must be paid—

(a) no later than 30 days after the date on which the notice under sub-paragraph (2) is given to the scheme organiser, or

(b) if notice of appeal is given against the penalty under paragraph 28K(1) or (4), no later than 30 days after the date on which the appeal is determined or withdrawn.

(7) The penalty may be enforced as if it were corporation tax or, if the scheme organiser is not within the charge to corporation tax, income tax charged in an assessment and due and payable.

(8) Sections 100 to 103 of TMA 1970 do not apply to a penalty under this Part.

Appeals

28K (1) The scheme organiser may appeal against a decision of HMRC that the scheme organiser is liable for a penalty under paragraph 28C or 28E.

(2) The scheme organiser may appeal against—

(a) a decision of HMRC mentioned in paragraph 28H(1) or a decision of HMRC to specify, or not to specify, a relevant time in the closure notice;

(b) a decision of HMRC mentioned in paragraph 28I(1).

(3) The scheme organiser may appeal against a decision of HMRC—

(a) to give the scheme organiser a default notice under paragraph 28I;

(b) to specify, or not to specify, a relevant time in the default notice.

(4) The scheme organiser may appeal against a decision of HMRC as to the amount of a penalty payable by the scheme organiser under this Part.

(5) Notice of appeal must be given to HMRC no later than 30 days after the date on which—

(a) in the case of an appeal under sub-paragraph (1) or (4), the notice under paragraph 28J(2) is given to the scheme organiser;

(b) in the case of an appeal under sub-paragraph (2), the closure notice is given;

(c) in the case of an appeal under sub-paragraph (3), the default notice is given.

(6) On an appeal under sub-paragraph (1) or (3)(a) which is notified to the tribunal, the tribunal may affirm or cancel the decision.

(7) On an appeal under sub-paragraph (2) or (3)(b) which is notified to the tribunal, the tribunal may—

(a) affirm or cancel the decision, or

(b) substitute for the decision another decision which HMRC had power to make.

(8) On an appeal under sub-paragraph (4) which is notified to the tribunal, the tribunal may—

(a) affirm the amount of the penalty decided, or

(b) substitute another amount for that amount.

(9) Subject to this paragraph and paragraph 28J, the provisions of Part 5 of TMA 1970 relating to appeals have effect in relation to an appeal under this paragraph as they have effect in relation to an appeal against an assessment to corporation tax or, if the scheme organiser is not within the charge to corporation tax, income tax.”